***Introduction***

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*Especially after a protest, I would feel proud of myself. Cos I did something that every free man would do. You know? You are not dead body. You are human, you have got dream. So when you do those things and you come back to your room and think ‘Oh that was good.’ Even if we didn’t achieve what we wanted, like talking with Immigration or bring Immigration to see us, but at least you feel like the things inside your chest come out. It’s better than inside, you get sick. You feel a little bit open and relax, until the next action.*

Osman, detained 3 years and 4 months

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*… in detention we had very well educated people. We had politicians, we had pilots and they knew how to deal with protests and everything. So there were the people that says ‘Okay. We do it peacefully. We sit here,’ and there were the people who said ‘Peacefully doesn’t answer anything because there is no journos here. We need to get journos here.’ And how we can do it just go to a town and sit in there until journos gets here. Or just burn the place down and the smoke will bring journalists, you know? … We had lots of well educated people who could get their heads around policies and politics and everything. They played it well. We played it like politicians. … So all the demonstrations and all the protests we did, there was a great reason behind it. It wasn’t just like ‘we are bored and let’s break something.’*

Issaq, detained 3 years and 11 months

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As the use of immigration detention has proliferated around the globe, so too has the academic literature addressing the practice. Immigration detention has generated a broad and rich body of literature spanning law (Goodwin-Gill 1986; Hailbronner 2007; Hamilton 2011; Kalhan 2010; Stevens 2013), sociology (Marfleet 2006; Nethery and Silverman 2015; Story 2005), criminology (Grewcock 2009; Malloch and Stanley 2005; Pickering 2005), psychology and psychiatry (Robjant, Hassan and Katona 2009; Steel and Silove 2001), politics (Nethery, Rafferty-Browne and Taylor 2012; Sampson and Mitchell 2013) and cultural studies (Pugliese 2007; Wolfram Cox and Minahan 2004**)** to name a few. Much of this literature focuses on the practices of the state and takes ‘the refugee’ in abstract form, as a passive, interchangeable object caught in an extraordinary exercise of state power. The refugee is at once a concern as the victim of human rights violations, yet is not present in any distinct or recognisable form. While there is a discernible consensus among writers, advocates and human rights bodies that immigration detention presents serious challenges to human rights (in law, ethics and politics), very few turn to those subjected to detention as a means of furthering our understanding of the troubling practice. Very few works engage with detained refugees as agents in the exercises of power or the challenges to human rights that immigration detention entails.

This book takes accounts of formerly detained refugees as the entry point for analysis of the detention of refugees and the implications for human rights. This book looks at immigration detention at a specific and localised level. It looks at the daily individual interactions and social relations occurring inside detention centres in Australia, taking formerly detained refugees as key sources of knowledge. By taking a detailed approach to immigration detention and refugees’ resistance to it, I hope to generate new insights into understandings of the global figure of ‘the refugee’ and human rights. Refugees occupy a critical position in human rights theory and practice, both exemplifying why human rights remain utterly necessary and exposing the failings of modern human rights institutions. Through in-depth interviews with refugees who protested against their incarceration in immigration detention centres this book moves between the micro (daily relations inside detention) and the macro (political, legal and theoretical frameworks which enable or contest detention) to stimulate new ways of thinking about detention, refugees and human rights.

The use of immigration detention is on the rise globally. More than one million people pass through immigration detention centres in the US, Canada, Australia, and Europe each year. They may be held in over-crowded, dilapidated detention centres or in modern, purpose built facilities designed as ‘super-max’ prisons, allocated an identification number, subjected to arbitrary rules and sometimes to arbitrary and excessive use of force, distanced from legal protections by their incarceration, a lack of knowledge, little political voice and their status as non-citizens; non-people. Life inside immigration detention centres is precarious, filled with uncertainty and monotony and, too often, with degrading treatment. As the use of immigration detention has risen, so too has detainee protest. When detainees go on hunger strike or riot or occupy the roofs of detention centres, their actions are usually narrated by governments keen to discredit them and their actions as criminal, manipulative and evidence of ‘their’ barbarity and difference. A secondary, counter narration is provided by detainee supporters who explain the actions as evidence of detainees’ distress and deteriorating mental health. The voices of the actors themselves, people held in detention and taking protest action, are rarely heard in any depth.

The separation of detained refugees’ narrations from their actions rests upon a distancing of the refugee from the citizenry. The less contact that ‘ordinary citizens’ have with detained refugees, the less likely they are to have access to refugees’ own explanations of their actions. Indeed, governments practicing immigration detention often go to great lengths to obstruct, if not entirely prohibit, contact between detained refugees and citizens, thereby retaining greater control over the narrative used to frame asylum seeking and the need for immigration detention. Detention, in a self-perpetuating logic, both enables, and is itself enabled by, the distance between asylum seekers and citizens.

The dominant narrative surrounding refugees and asylum seekers in the UK, Europe, Australia and north America is one in which the refugee is viewed either as a victim or a villain. Possible responses are consequently narrowed to charity or hostility. Most commonly, the (real) refugee appears in fund raising campaigns as a familiar image of a poor, visibly needy, brown skinned woman or child (see for example Malkki 1996 or Rajaram 2002). Whereas asylum seekers are more commonly represented as male, lawless, unknown and threatening (see for example Aas 2007, Pickering 2005 or Philo, Briant and Donald 2013). The dominant hegemony provides only a simplistic binary for understanding a complex and dynamic phenomenon involving real people. This hegemony needs to be challenged and unsettled, it has philosophical, ideological and moral limitations and, further, it is a world view which results in material harm and injustice - for asylum seekers and others ‘here’ as well as for refugees in lands far away.

Both humanitarian and criminalising discourses draw upon archetypal figures and, as established discourses easily overwhelm the voices of refugees in detention centres. Refugees are popularly seen as passive victims, and any display of agency or assertion of political identity risks being recast as suspect; the ‘cheating, conniving, manipulative, dishonest person out to subvert the aid system’ (Harrell-Bond 1999, 153). The power of these archetypes effectively precludes any chance of detained refugees’ protest actions being read as legitimate responses to injustice. In addition to governments’ and refugee supporters’ greater public voice and access to media, explanations for refugee protest against detention that reduce actions to simple criminality or despair are readily digested by the nation’s population. As Issaq and Osman demonstrate above however, protest holds many layers of significance: deliberate actions aimed at particular goals, existential functions to express agency and, sometimes catharsis to relieve the pressure of detention. Most importantly, their testimony reveals conscious agents analysing their situation and disputing the ethics and efficacy of possible actions. All of which are obscured in external narrators’ explanations of refugee protest.

This book attempts to intervene in the dominant hegemony surrounding refugees and to unsettle the polarised discourse in which asylum seekers and refugees are to be either feared or saved. The work is based on a series of lengthy, in-depth interviews with fifteen refugees who had been previously detained in Australian detention centres. The fifteen participants were all men and came from Iran, Iraq, Afghanistan, and Jordan. One person was stateless. The men had been held in detention for periods ranging from seven months to six years, and between them had been held in every detention centre on Australian territory operating between 1999 and 2005. Most had been held in multiple detention centres during their periods of detention. All had found the experience of detention profoundly offensive and dehumanising and all had engaged in protest against it. Beyond agreement on the injustice of detention, the men did not hold a consensus view about protest, as following chapters will reveal. The men were all interviewed after their release from detention, primarily as gaining access to detained populations for research of this nature was unlikely to be granted. The research draws on a relatively small sample of formerly detained refugees as it seeks rich qualitative understandings of the experience of immigration detention and the social relations produced there. This book does not make any claims to a new Truth, but rather presents previously unexamined experiences and perspectives that enrich our understanding of just how detention works and challenges us to rethink refugees, detention and human rights.

**Why This Book?**

This book has three aims. Firstly, it provides a platform for refugees subject to immigration detention to speak for themselves, to explain what their experiences of detention were and, particularly, to explain their protests against detention. This leads to the second purpose, to better understand a phenomenon which has grown over the last two decades and which is set to become more frequent and more widespread as the use of immigration detention spreads. The use of immigration detention has grown at an alarming rate in the last two decades. As recently as the 1990s immigration detention was used by only a few states and almost entirely as a last resort, whereas in 2015, almost all states practice immigration detention, creating a global carceral web (Silverman and Nethery 2015, 6). Finally, this book considers what immigration detention, and refugees’ use of human rights in their protest against it, means for human rights - theoretically and practically.

At the time of writing, the world is experiencing the largest refugee flows since World War Two. Almost 60 million people are currently displaced from their homes and if gathered together, would form the twenty-fourth most populous nation on earth (UNHCR 2015, 2). Some have been refugees for years or decades, such as Afghans and Burmese, but newer conflicts in Syria, Burundi and Ukraine, and escalations of existing conflicts in Democratic Republic of Congo, South Sudan and Central African Republic have produced millions of newly displaced people. While it continues to be true that the vast majority of refugees remain close to home in neighbouring countries, over one million people entered Europe in 2015, all except a little more than 50,000 have lodged claims for refugee status (BBC 2016). The numbers of people entering Europe have overwhelmed sophisticated border protections and Europe’s extensive immigration detention capacity. It is difficult to conceive of a world in which there are no refugees and no one crossing borders without prior authorisation and proper travel documents.

Extra-judicial, administrative immigration detention has been the ascendant trend in response to unauthorised crossing of borders throughout *Refugee Convention* signatory countries. Chapter seven outlines the rapid expansion of immigration detention in Europe, the UK, north America and Australia, including the more recent phenomenon of extraterritorial detention - intercepting and detaining would-be asylum seekers before they reach a signatory country. The EU funds detention centres in Ukraine, the US in Mexico and, Australia in Indonesia, interrupting refugee journeys and holding them outside the potentially protective embrace of western liberal democratic states’ legal systems. Immigration detention is an administrative practice deployed against non-citizens. It is not subject to the same oversight, monitoring and protections as judicially ordered detention, the resulting regimes and conditions of detention very often fall short of standards set for judicial detention (Silverman and Nethery 2015, 3). In addition to the sometimes deplorable physical conditions of detention, people typically do not know how long they will be detained, rules and punishments are often meted out arbitrarily and, there are not infrequent allegations of physical and sexual abuse of detainees (ACLU n.d.; Elliot and Gunasekera 2016, 9; Shaw 2016, 22).

Who is targeted for detention varies somewhat in different states. Immigration detainees may be refugees, asylum seekers, people who have over-stayed their visas, unauthorised migrants or people who were in a state lawfully but had their visa cancelled. This book focuses in particular on refugees and asylum seekers held in detention, partly because they are the largest group that Australia detains, but more importantly because, while administrative immigration detention is problematic in and of itself, the detention of refugees and asylum seekers is especially so. Refugees and asylum seekers are of particular concern as they have no state to claim them or to advocate for their release and so are in a profoundly asymmetrical relationship with the detaining state. They are a key concern of international human rights regimes and present particular challenges to human rights, both practically - how to respond to people falling outside the nation-state-territory structure of the world since at least the Treaty of Westphalia? (Haddad 2008) and theoretically - refugees embody the tension between citizenship (sovereign) and universal human rights and expose deep fissures in a body of knowledge that insists that human rights are universal, inalienable and inabrogable. Immigration detention centres are becoming notorious as sites where human rights violations are most likely to occur in liberal democracies. That refugees and asylum seekers are principal targets of detention regimes raises compelling ethical and theoretical challenges.

It is not uncommon for detained refugees to resist or protest against their incarceration. Resistance may take the form of non-compliance with directives or work ‘go-slows’, actions that can be difficult to police and which rarely come to public light, but which nonetheless aim to subvert, frustrate or directly challenge immigration detention, through to more explicit protests such as hunger strikes, escapes or riots. Many messages coming from inside detention centres in Australia and around the world use a language of human rights to articulate the wrongs of detention and the claims of the detained. The cry, variously formulated, ‘We are human! We need our rights’ is made over and over in detainee correspondence from detention; through emails, letters, protest banners and phone calls. So too, the former detainees who participated in this research frequently expressed their critique using a language of human rights. At the same time, Western governments have repeatedly assured the domestic and international communities that they are adhering to their human rights obligations. ‘Human rights’ is disputed terrain, carrying different meanings for different actors referring to quite different points of reference. What then, in light of such divergent claims, are ‘human rights’?

The third aim of this book is to think through some of the challenges that detained refugees’ use of human rights language present to human rights, and to do so from a perspective that focuses more on the human subject of rights than on the juridical and institutional mechanisms. Drawing on the experiences and opinions of people who have been subject to immigration detention, I hope to enable readers to think about immigration detention and human rights from a perspective not often accessible in depth. Foucault articulated the subtle and expansive ways in which hierarchies of knowledge work to reinforce power relations – to legitimise and ‘naturalise’ certain sources of knowledge as authorities, while simultaneously marginalising, silencing and discrediting other sources of knowledge. Invariably ‘the knowledge of the psychiatrised, the patient . . . the delinquent’ is disregarded as anecdotal, self-serving, non-conceptual and ultimately as hierarchically inferior, if not false, knowledge (Foucault 1997, 7). Yet people subject to immigration detention have expansive, intimate experiential knowledge of human rights, and specifically of the tensions between legally based, institutionalised rights and moral and ethical dimensions of human rights.

Human rights, particularly when discussing refugees and immigration detention in Western liberal states is likely to lead one to think about human rights law – the bodies of jurisprudence at national, regional and international levels pertaining to the movement of refugees across borders and their treatment by the states engaged. Indeed, it is to this body of law that asylum seekers present their claims for formal recognition as refugees and the range of protections and guarantees that come with recognition. Human rights also exist beyond legal positivism, they have power as an idea, a set of values and ethics, and they provide a language with which to articulate wrongs and legitimise opposition to lawfully enacted injustices. While human rights in this sense do not carry the same enforceability as legally based rights, they can be powerful nonetheless. Serena Parekh posits that essentialist positions are particularly useful for social movements in that they establish a good base from which to claim rights which do not yet exist in law and are not recognised by institutions (Parekh 2007, 768-769). While a ‘right’ is interpreted in legal discourses as a claim of an individual made against a state, ‘right’ has layers of meaning. ‘Right’ makes an appeal to conscience, each person’s capacity to make judgements and discern ethical actions (Parekh 2008). In this sense, human rights are the responsibility of us all, and one does not need a degree to form a significant opinion and participate in public debate. Because human rights exist beyond legal frameworks in philosophical and moral domains, human rights claims can continue to exist even where there are no legally encoded rights protected. Through a language of human rights, it may be possible for refugees to lay their claims not only at the feet of the state, but also to fellow humans through an appeal to conscience. A language of human rights can appeal for political, legal and human responses all at the same time.

The refugees interviewed for this book spoke about human rights both as laws and as a philosophical or ethical framework. While this book draws on positivist and essentialist approaches to human rights, it relies principally on a constructivist approach in which human rights come in to being through human decision and action. Hannah Arendt (1976) famously stated that universal and inalienable human rights are a nonsense, as any stateless person or refugee can attest (the bounded nature and alienability of rights is discussed in more detail in chapter two). Arendt’s perspective argues that human rights are essentially a contract between members of a political community and that they only exist to the extent that members agree to guarantee those rights to one another and are therefore constructed, contested and contingent. The task for humans is to decide what rights we want (and therefore are willing to guarantee others) and to whom we are willing to extend this guarantee or with whom we share a political community (Parekh 2007). This approach is useful in a number of ways. It is sufficiently broad to enable space for legal, ethical and strategic approaches to human rights – whichever ways human rights are being conceived or used, and the interaction between these approaches can all be considered and thought through. Secondly, and perhaps more importantly, it places actual human beings and the contestations and alliances between human beings as the central object of study, rather than an abstract principal or the legality (or otherwise) of policies and practices of states to non-citizens. Maintaining specificity (and specific humans) in discussions of human rights sheds unsettling light on the absurdity of states proclaiming the importance of human rights generally and affirming their continued commitment to refuge, while systematically violating the rights of people within its territory. Finally, a constructivist approach gives more scope for the agency of people in defining and shaping human rights.

The second major conceptual challenge that refugee protest presents is forcing a rethinking of ‘the refugee’ and agency. Humanitarian approaches construct and portray refugees as inherently dependent, helpless and passive (Harrell-Bond and Voutira 1992; Harrell-Bond 1999; Malkki 1996; Soguk 1999), a portrayal difficult to maintain when refugees go in search of their own solutions and impossible when they set fire to detention centres. The practice of immigration detention is an extraordinary exercise of state power, exempt from many of the limitations placed on the detention powers of the state over its own citizens (Gibney 2004, 256; Silverman and Nethery 2015, 2). It is unsurprising then that much writing on immigration detention focuses on the sources, justifications, deployments and effects of this power, and in doing so, quietly rests on a presumption of the powerlessness of detainees (Maley 2003; Tazreiter 2006; Wilsher 2012). Indeed, it is indisputable that detainees have far less power than the sovereign states which detain them. Refugee protests against detention however, reveal that detainees are not only passive recipients of state power. Asylum seekers, through their own movement both away from their homelands, and particularly at the moment of their unauthorised entry in to a state, are initiating the relationship with the receiving state. The state’s actions are in *response* to the agency of refugees. The relationship between the state and the refugee is marked by a cycle of struggle, power and resistance. This book seeks to rehabilitate the figure of the refugee into something more closely resembling the actual people to whom the label is ascribed, not only for the purpose of definitional accuracy, but more importantly, because the embedded passivity and powerless of ‘the refugee’ plays an important role in enabling governments to criminalise asylum seeking, thereby facilitating the broad range of punitive practices that are increasingly deployed against refugees to continue.

**A Brief Note on Terminology**

The use of language is critically important. Through the careful use of words and positioning of ideas, subjects are constructed and positioned and meanings and values are conveyed. Some key terms are explained here.

*Refugee, Asylum Seeker or Detainee?*

The UNHCR, in its *Handbook on Procedures and Criteria for Determining Refugee Status* makes it clear that a refugee is made by events in their home countries and not by receiving governments’ decisions:

A person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee. (UNHCR 1992, para 28)

The term asylum seeker is a relatively recent invention of Western governments. It refers to the status of a person who has applied to a government for protection under the *Refugees Convention* and who is awaiting a determination of that application. It is a term which creates a layer of suspicion around refugees. Until verified by a government body, even if a person already holds a refugee card issued by the United Nations High Commission for Refugees (UNHCR), the person is placed in the unstable category of ‘asylum seeker’. This enables governments to cast the arrival of refugees (needing protection) as a security threat and is essential for the many regressive policies employed by western governments to deter and repel refugees from their nations.

Initially I wanted to use the term refugee because almost everyone interviewed in this work had been found to be a refugee by the Australian government, but also as a political statement. However, the use of refugee to refer to people at various stages of the refugee journey and at various stages of government processing of claims became confusing and cumbersome. Consequently, I have used both the terms refugee and asylum seeker, according to the context.

The term detainee is used to refer to asylum seekers and refugees held in detention throughout most of this book. The term is less pejorative than asylum seeker, and enables a distinction with refugees recognised by the Australian government. It is a descriptor of the situation that people were in. It was also the fact and conditions of people’s detention which underpinned much of the protest. ‘Detainee’ proved to be a mobilising identity, one which could, in particular moments, transcend other identities (such as linguistic, religious, political, ethnic or gender identities) and unite people in protest against detention. The power of being detainee is evident in Osman’s pledge to help any detainee who needed it:

Anyone! Anyone who are detainee. It doesn’t matter if you are Iraqi, Afghan, No No. We are detainee. We are detainee!

*Identifying Individuals*

Most of the men who spoke with me about their time in detention and protest against it are identified by pseudonyms. Three men are identified by their real names: Farshid Kheirillapour, Shahin Shafaei and Aamer Sultan. Farshid has been an outspoken critic of immigration detention in the years since his release and believes that detainees need to be encountered as real people in the struggle against detention. Accordingly, he wanted to appear in this book as an individual with his real name. Shahin is a playwright, actor and college lecturer. Upon his release from detention he wrote and performed *Refugitive*, a play about hunger strikes in detention centres. Shahin has spoken publicly about his journey as a refugee, about detention and as an activist for other refugees’ rights. A quick internet search of his name will uncover many of his post-detention activities. He could not be de-identified and nor did he have any wish to be. Similarly, Aamer Sultan is a medical doctor who has also spoken publicly about detention. He is most well-known for co-authoring a journal article published in the *Australian Medical Journal* while he was still in detention. The article identifies and outlines the progressive deterioration of a large sample of detainees over a long period of time and proposes a depressive disorder called ‘Immigration Detention Stress Syndrome’. He is also well known in Australia for his role in smuggling out of detention footage of a young boy, Shayan Badraie, which was aired on national television and proved to be a catalyst in challenging the detention of children. Aamer has also spoken frequently with media, community groups and in other public forums since his release. Again, it would not be possible to talk about Aamer’s activism without identifying him.

*Bureaucratic Terms*

Australia’s Department of Immigration has undergone several name changes over the last fifteen years, many of which reflect the shifting discourse surrounding asylum seeking – Farshid was detained in 1999 by the Department of Immigration and Multicultural Affairs, whereas today it is the Department of Immigration and Border Protection. For ease of reading, Department of Immigration is used throughout.

There are a range of classifications of immigration detention centres in Australia, such as Immigration Detention Centre (IDC), Immigration Reception and Processing Centre (IRPC), Alternative Place of Detention (APOD), Immigration Detention Facility (IDF) and more. Each facility is classified differently by the Department of Immigration and has particular features. When referring to a specific detention centre I use the correct classification for it, and when referring to multiple centres or detention in general I use the term ‘detention centre’ or ‘immigration detention centre’. I am unable to discern any meaningful differences between different classifications of detention centres and as Mohammed said after being moved to a ‘better’ detention centre, ‘doesn’t matter golden cage, it’s a cage.’

**Structure of the Book.**

The book begins with using the words and actions of refugees protesting against detention as a framework for rethinking human rights, power and human agency and arguing for a revisiting of the difficult questions of what it means to be human and what the detention of humans from other countries seeking protection raises in terms of human rights. Chapter two considers detainees’ plea, ‘We are human,’ and discusses Hannah Arendt’s theoretical framework of human rights and the human condition. In doing so, it proposes that ontological paradoxes within contemporary human rights theories need to be addressed and that refugee experiences and opinions are vital in this project. The argument is made that, post World War Two, attention to the juridical development of human rights has institutionalised and buried these important paradoxes and that greater attention needs to be paid to the human subject of human rights. From there the book explores the power relations at work in the relationship between asylum seekers and receiving states. In particular, it explores a range of analytical perspectives presented by detainees, some of the multiple ways in which detainees resisted the omnipotent power of detention on a daily basis, as well as the material, semiotic and existential effects of resistance.

The following three chapters are organised around specific protest actions; escape (both in order to simply evade detention and also as a deliberate act of civil disobedience), hunger strike, lip-sewing and self-harm and, riots. In each of these, the work uses accounts by formerly detained refugees to explore how certain protests came about, conflicting opinions between different people in detention about the ethics and efficacy of different actions, the interplay between actions of the state and of detainees and, the implications for how we think about human rights and refugees. While the primary material presented in the book is Australian, I contend that the Australian experience, while having some specificities in the local context, has many more structural similarities with immigration detention in Europe, the US and elsewhere. Many of the dynamics of detention and the theoretical and ethical arguments addressed here will find resonance beyond Australia. The final substantive chapter of the book then provides a broad survey of the use and nature of immigration detention in Australia, Europe and the US.

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