

**States of Exclusion:
Narratives from Australia's Immigration
Detention Centres, 1999 - 2003**

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Certificate of Authorship/Originality

I certify that the work in this thesis has not previously been submitted for a degree nor has it been submitted as part of requirements for a degree except as fully acknowledged within the text.

I also certify that the thesis has been written by me. Any help that I have received in my research and the preparation of the thesis itself has been acknowledged. In addition, I certify that all information sources and literature used are indicated in the thesis.

Signature

Julie Browning.

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Abstract

This thesis interrogates immigration detention as a space of intricate ambivalence - one which seeks to exclude, but which is also entreated to protect.

The focus is so-called 'unauthorised' asylum seekers detained both within Australia and offshore on the Pacific island of Nauru between 1999 and 2003 - when the numbers of detained asylum seekers reached its maximum and the government introduced offshore processing centres.

Australia's immigration detention regime sits awkwardly with the discourse of universal human rights and brings into sharp conflict two robust political values: the right of endangered people to seek refuge and the right of the nation to determine who will enter.

Focusing on the experiences of detainees reveals immigration detention as a complex regime through which the state's dominating power targets the stateless, non-white, male body. This targeting is intentional, serving to secure sovereign borders and to rearticulate the naturalised ties between the national population and the modern state.

Immigration detention holds the seeker in a limbo that sets parameters for the seeker's experience of ongoing and intensifying insecurity. It specifically and intentionally fractures the identity of detainees: masochistic actions and collective protests, from hunger strikes to breakouts, reflect the common currency of anxiety and violence.

The creation of offshore camps was, in part, a response to ongoing protests within onshore detention and the failure of onshore detention to stop boat arrivals. My chief focus here is the largest Pacific camp, 'Topside', on the island

of Nauru. Unlike the onshore detention centres where publicised protests and breakouts screamed of continuing detention of asylum seekers, those on Nauru were effectively silenced.

The thesis explores purpose as inscribed within the body of the exile. To give up hope for asylum is to face the possibility of endless wandering and death. Mechanisms of resistance, whether explicit protest or more passive waiting, are parts of the continuing struggle by the detained against mechanisms of exclusion and exception. The detained carve out small openings to contest their exclusion and to reassert an identity as survivors.

There is a complex and fluid interplay between such resistance and government policies aiming to silence protest and limit identity – and ultimately to deter all unauthorised boat arrivals.

Glossary/Abbreviations

ACM - Australasian Correctional Management.

APS - Australian Protective Services, a security service of the Australian Federal Police.

CERT – Centre Emergency Response Team.

DIMA - Department of Immigration and Multicultural Affairs (1996-2001). The Department reverted to this acronym in 2006.

DIMIA - Department of Immigration, Multicultural and Indigenous Affairs. For consistency I have used the acronym DIMIA throughout the thesis.

Hazara – A minority community from Afghanistan, targeted by successive Afghan regimes.

GSL - Global Solutions Limited.

HREOC - Human Rights and Equal Opportunity Commission.

IDAG - Immigration Detention Advisory Group.

IDC - Immigration Detention Centre.

IOM - International Organisation for Migration. This organisation works under contract for UNHCR and national governments managing refugee camps and migration issues.

IRPC – Immigration Reception and Processing Centre.

MOU - Memorandum of Understanding.

MPS – Ministerial Press Statement.

PPV – Permanent Protection Visa.

RRT - Refugee Review Tribunal, the primary review body for applicants refused a protection visa by DIMIA.

SIEV - Suspected Illegal Entry Vehicle.

TPV - Temporary Protection Visa, introduced in 1999.

UNHCR - United Nations High Commissioner for Refugees, mandated to lead international action to protect refugees.

Non-refoulement - A key principle of the United Nations Convention and its 1967 Protocol Relating to the Status of Refugees. Signatory countries are obligated to protect people from the risk of being returned to a country where they may face persecution.

Refugee - Article 1A of the Refugee Convention defines a refugee as a person who 'owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.'

Prologue

I cannot telephone my family...So I take medicine... its name is Xanax. I always think for my family. I have dream my wife. She asked me 'where you were long time?' when we get up to my bed but I didn't see anyone. I cried too much... I think refugee is very hard' (D23 to Ze 1/7/2003).

On August 24th 2001 a twenty-metre wooden fishing boat, the KM Palapa, broke down 140 kilometres north of Christmas Island, an offshore coastal territory of Australia. The dilapidated vessel was *en route* to Australia and carrying 433 asylum seekers.

The Indonesian boat began to take in water and the passengers believed they were 'facing death' (D17 to Za 10/2001). Instead, these men, women and children would soon face the full force of powerful institutional mechanisms aimed at excluding such undocumented asylum seekers from Australia.

The becalmed vessel was spotted by Australian search and rescue authorities. These officials attempted to rouse the Indonesian sea rescue authorities to manage the rescue of the passengers of the Palapa. Another day passed before the Australian Rescue Coordination Centre relayed a distress message to ships in the vicinity of the becalmed boat (Marr & Wilkinson 2003).

On August 26th, the asylum seekers - 364 men, 26 women and 43 children - were winched onto the tanker of a Norwegian container ship, the MV Tampa. Their rescue came as the *Palapa* began to break up and disintegrate into the Pacific. In future years these asylum seekers would celebrate their survival and their rescuer: the captain of the Tampa, Arne Rinnan.

Captain Rinnan attempted to take those rescued to Indonesia, but when the asylum seekers protested a return to Indonesia he set sail for the nearest Australian port, Christmas Island. Rinnan would have expected to follow the normal procedure, to be allowed to dock and put the 433 ashore on Christmas Island. Instead the Australian government mounted a *de facto* war on the high seas against these asylum seekers. This defensive campaign made explicit the government's intention to stop not only this boatload of asylum seekers but all future 'unauthorised' voyagers from reaching Australian territory.

As the Tampa neared Christmas Island the Australian government requested the captain stay out of Australian territorial waters. When the MV Tampa came within four nautical miles of Christmas Island, the container ship was boarded by forty-five Special Air Service (SAS) troops, who took control of the ship (Crock & Saul 2002, p. 36).

One Afghani on board described the arrival and the impact of the SAS troops thus:

It is very hard for a desperate person fleeing brutal persecutions in his homeland to face mistreatment, violence and even persecution in a place he or she taught to be an ideal place, paradise and utopian country of the world. The state of mind of asylum seekers were very obvious when we first saw the SAS forces fully alert and heavily armed while boarding the Tampa. This was a turning point (D1 to Za 14/6/2002).

The SAS guarded the asylum seekers - most of whom were Afghan nationals – before transferring them the Australian naval ship, the HMAS Manoora. Aboard the Manoora the asylum seekers were then held in the tank deck and closely watched by Australian forces.

On September 7th the Manoora picked up 229 Iraqi asylum seekers near Ashmore Reef. There were now a total of 662 asylum seekers on board. Exhausted, humiliated and distressed, the asylum seekers were cramped into a space with no daylight and where the noise and heat of the engines was intense. There was not enough food, water or toilets. The voyagers would queue for hour upon hour to use a toilet. Some were videotaped by soldiers scrambling for a pot of jam placed in the middle of a room (D1 to Za 14/6/2002). Night and day children cried.

For three weeks they floated while the Australian government fought against legal action that sought to bring the rescued asylum seekers to Australia. On September 17th the government won on appeal in the Federal Court.

This court decision gave legal sanction to the state to detain the asylum seekers in offshore locations whilst their claims for refugee protection were assessed. The asylum seekers would be denied any access to Australian tribunals.

The Manoora set sail for the Pacific island of Nauru.

We were only told that Nauru was a friendly country with Australia and was very much rich due to its phosphate minerals and coconut productions. A soldier on board the Tampa had whispered with an asylum seeker that Nauru was very beautiful and that he had spent his honeymoon in Nauru. But none of us were convinced. We were very keen to know more about Nauru. Some of us thought Nauru was a tiny island under Australia's colonial rule. Some would say Nauru was an island where Australia would keep convicts and criminals as Australia was used by the British Empire. Some thought it was a military base where Australia would test bombs and weapons. Nauru was an unknown and distant place where we could not reach as days and nights passed on and we suffered more and more hunger. As we asked IOM and the Major Dunn lots of questions one day they pasted a paper on the wall describing again Nauru as a beautiful Island Nation with beautiful nature, phosphate and agricultural products (D1 to Za 29/8/2002).

The image of a beautiful island may well have had some allure for asylum seekers locked into a tank deck built to hold army tanks and trucks. The ship was now run by the army's elite Transit Security Element.

On the last days mood of the soldiers had totally changed. They became tougher and more violent to the asylum seekers. It seemed they hated every one of us. They were more suspicious. Some of them would say 'You are economic migrants...there may be terrorists among you...why do you keep long beards...' (D1 to Za 2002).

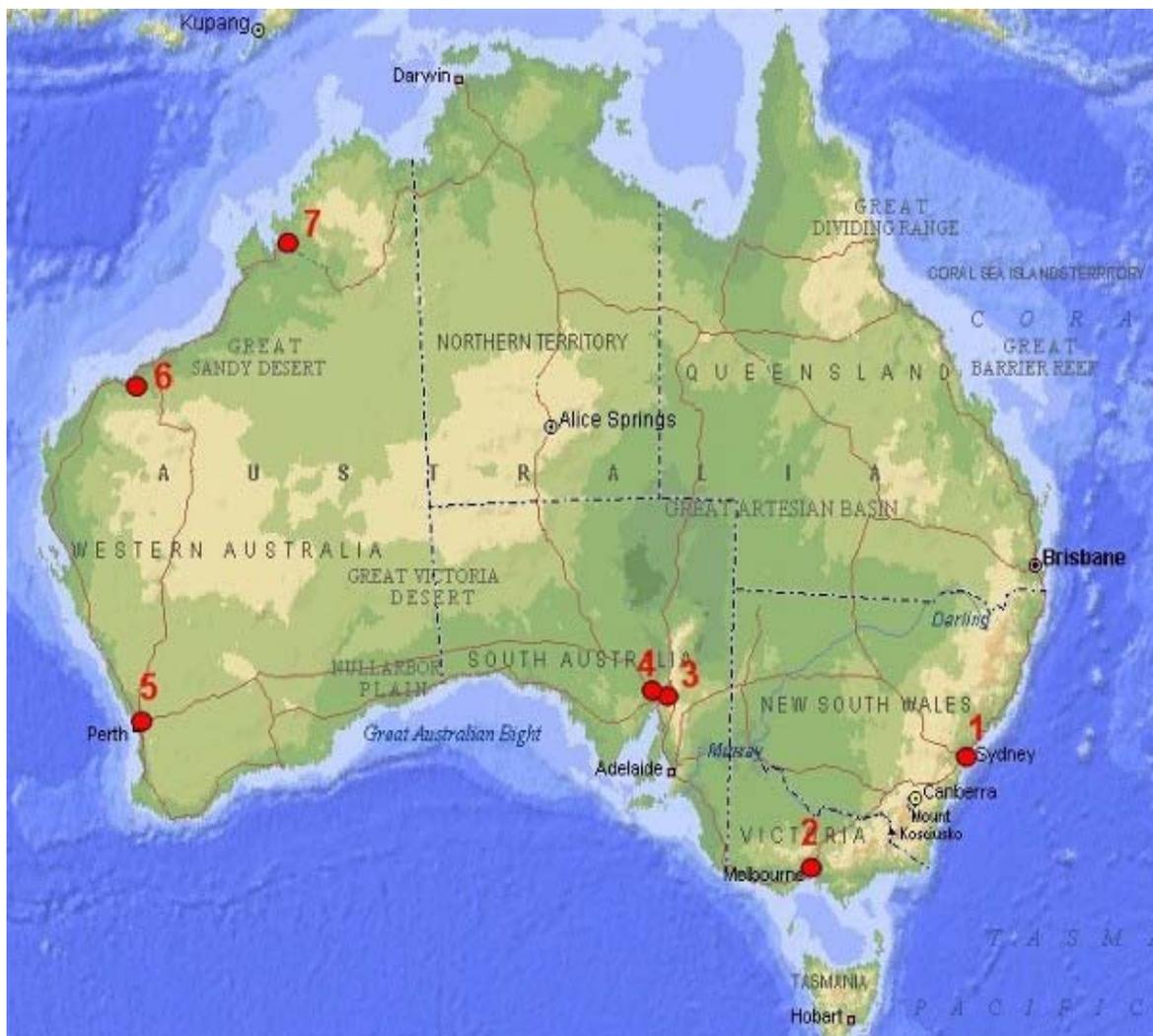
Two days later the first group of asylum seekers was taken to Nauru's hastily constructed Topside Camp. One of the Afghans who chronicled these events wrote:

...on the 19th of September 2001 a group of us were transported in small boats from Manoora onto Nauru. Next day others were moved in large groups. Families were sent to New Zealand. Days later we knew of 11 September and the big changes in the whole world (D1 to Za 29/8/02).

The asylum seekers were informed that they had no choice except to stay on Nauru and wait to be processed. Under the terms of the agreement with Nauru, the asylum seekers would have no right to access the Nauru courts, and the asylum seekers could be detained for an indefinite period.

This combative move tightened the restrictions against the body of the unwanted. Like its onshore counterpart, offshore detention tended the asylum seeker toward a minimum of existence. But in these detention sites detainees engineered spaces to question the violent mechanisms and restrictions of the immigration camps.

Australia's Onshore Detention Centres Operational at various times, 1999 - 2003

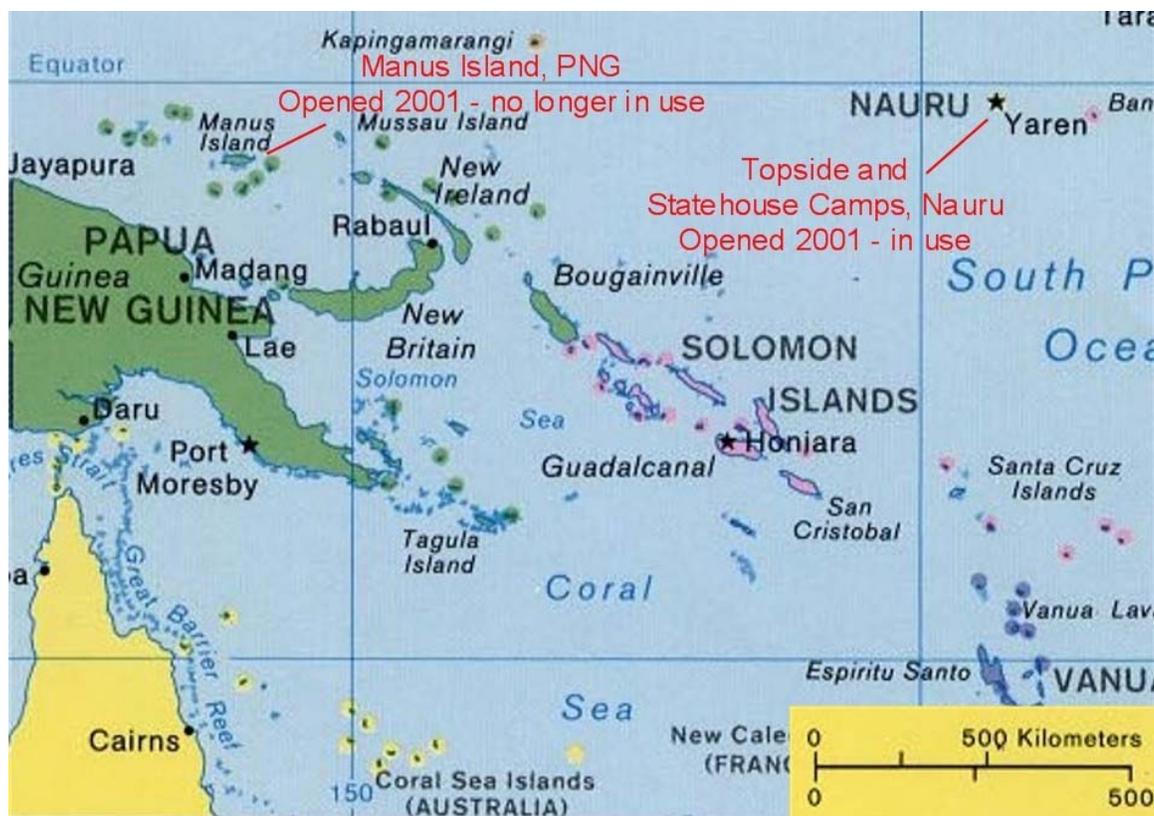


Detention Centres

- | | |
|----------------------------------|-----------------------|
| 1. Villawood – Sydney (NSW) | 5. Perth – Perth (WA) |
| 2. Marybyrnong – Melbourne (VIC) | 6. Port Hedland – WA |
| 3. Baxter – SA | 7. Curtin - WA |
| 4. Woomera - SA | |

<http://www.shusta.org/gallery/Australia/map_australia>

Offshore Detention, Nauru and Manus Island Operational at various times from 2001



<http://www.lib.utexas.edu/maps/australia/west_pacific_islands98.jpg>

Introduction

*At this time (approx 1540) there were six detainees on the roof. Police were now on the perimeter. The detainees had detached the razor wire from the compound side of the roof and were arranging it along the outside edges of the roof near K Block. The residents on the roof had now begun to slash their arms. I could see blood... By now the CERT team was kitted up and behind me in the lower corridor of K Block. Extra Centre staff had by now also kitted up. The detainees were gathering rocks, blankets, sticks and ropes on the roof.*¹

In modern Australia, the enclosed spaces of immigration detention are sites of bitter struggle. The above passage is part of a report written by one guard in response to a rooftop protest at the Port Hedland Immigration Processing and Reception Centre (IPRC) in December 2003.² The internees' protest erupted after a group of Perth schoolgirls, trying to visit detainees, were refused entry to the centre. According to some detainees (A16; B9; B4) the visit was cancelled because managers at the centre claimed they feared the teenagers could be sexually assaulted by the male detainees.³

That afternoon and into the night, a group protested on the roof and threw stones and sticks at the centre's emergency squad. Some men slashed their bodies with knives and fought guards.

The protest was one among the many that took place inside this enclosed space of immigration detention during the period under focus - 1999 to 2003.

¹ACM guard's report of a protest at Port Hedland IPRC. The Freedom of Information document was obtained by a refugee detained at Port Hedland in 2003.

² The Department of Immigration refers to the detention centres located in city areas as Immigration Detention Centres (IDC). The detention centres in regional Australia are named IPRC.

³ The ongoing difficulties for some people interviewed for this thesis has meant that all interviewees remain anonymous and are only referred to by a number and a letter.

In this thesis I want to explore, through two main avenues, the violence, contradictions and torsions of immigration detention - both within Australia and offshore on the Pacific island of Nauru.

The first revelation emerging from this examination of the common practices found within immigration detention is that the centres constitute a special kind of space, unknown elsewhere in the 'reality' of modern Australia. This realisation directs our attention to a second reflection on modernity, where the disciplinary techniques operating within the place of immigration detention offer a particular lens through which to explore the specific characteristics of the Australian detention regime. The thesis thus addresses both the general nature of suspended spaces in modernity and the exact individuality of the Australian national pursuit of this fragment of the modern nightmare.

This thesis is concerned with so-called 'unauthorised' asylum seekers. Immigration detention centres incarcerate two main groups of 'illegal' immigrants. The first are tourists and migrants who have stayed in Australia after their visa has expired and they are detained prior to deportation. The second group, and the focus of this thesis, are asylum seekers who have entered Australia without a valid entry visa.

A detained asylum seeker is someone whose claim to being a refugee has yet to be verified by the government or by the United Nations High Commissioner for Refugees (UNHCR). As the state does not yet 'know' what status should be accorded to the person they are holding - who he/she 'really' is - it holds the seeker in a limbo that sets the parameters for the seeker's experience of ongoing and intensifying insecurity. The detention centre has at its heart the multiplicity of such personal experiences, magnified by an overall ethos of suspicion and constraint.

The plight of asylum seekers and their incarceration in detention centres in

Australia and offshore raises significant questions about the relationship between international law, national sovereignty and the rights of the person in modern Australia. These tensions are generated by some contradictions of modernity - between ideas of universal human rights and the realities of national juridical identities; between globalisation's contribution to national prosperity and its enabling of massive global population movements; between competition for 'valued added' immigrants and the rejection of those seen to be costly and socially marginal. Furthermore these 'illegals' are said to appear as threatening apparitions and thereby undermine the societal acceptance of the 'legal' immigration program. There are many dimensions to these relationships, through which one can develop an understanding of the particular characteristics of Australian modernity that allows or even requires that these apparent contradictions co-exist.

These circumstances generate many questions, debated on many levels - not just within institutional politics. They include questions of embodiment, place and the mutability of identity. We will need to explore ways in which indefinite incarceration works in and through the body of the detained.

The asylum seeking refugee is the corporeal symbol of the indivisible nature of human rights (derived as these rights are from the simple status of being human), yet in detention these so-called indivisible rights are fragmented, and most are actually suspended. The embodied detainee is held in a state of what Agamben (1998) has described as 'exception'. This state of exception connects with the self-harming actions endemic within detention centres, suggesting that action by the state on the body provokes a series of consequential catastrophes for the self of the asylum seeker.

Put crudely, I will posit that the Australian government has generated an innovative strategy to separate human rights from asylum rights as a

means to manage the government's broad political goals.⁴ Individuals who seek refuge thus enter a legal and psychic limbo, disconnected from the 'normal' world of individual respect and recognition, until they are specifically re-attached to normality with recognition of refugee status - or rejected, expelled back into a world without refuge, to face danger and even death.

The detention sites where individuals are held are simultaneously prisons, safe houses, transit zones and exit terminals. The specific conditions within Australian immigration detention centres are unique to Australia; but as refugee Bessie Head notes, while the etymological roots of the word 'asylum' may promise sanctuary, in practice it is more often experienced as brutal confinement (Nixon 1990, p.155). Detention can be a bitter imprisonment, yet it also holds out the hope of a new life. It serves to both isolate this aberrant community of undocumented migrants from the nation-state and to provide them with provisional protection, both while they are being assessed and later if they are successful in their bid to be classed as refugees.

Australia's practice of detaining unauthorised asylum seekers is notoriously amongst the most rigid and total in the world. Undocumented asylum seekers are incarcerated until their claims are processed and protection or other visas granted, or until they are deported or decide to leave. Some are detained for weeks, but the majority are held for months - and thousands have been detained for more than a year.

The state of exception is applied to the transgressive border crosser, who is seized and held without charge - as though they were criminals, or in

⁴ Immigration is a necessary component of Australian government policy. A tightly managed immigration program that reaps identifiable economic benefits for Australian society is highly regarded by government and its officials. 'Illegal' immigration undercuts this controlled system. The broad political goals that inform the management of immigration will be explored in Chapters three and four.

expectation of being found to be so. In Australia, the government detains asylum seekers not because they are suspected of committing any criminal offence, but because they have not met visa requirements and have broken a domestic administrative law.⁵

But who are these asylum seekers? What do they experience? How do they construct meaning about their experiences? What strategies emerge for individual and group survival? Answers to these questions lie in detention camps – both onshore and offshore (namely ‘Topside’ Camp in Nauru). These questions can be traced through critical reading of interviews with, and letters from, asylum seekers, refugees, visitors and former detention employees. These documents help to expose the inbuilt tensions and contradictions within immigration detention as a system of exclusion - a system that is also, under international law, obliged to provide rudimentary protection to ascertain the validity of refugee claims. The thesis concentrates on the period between 1999 and 2003 - when the numbers of detained asylum seekers reached its maximum and the government introduced offshore processing centres.

To understand what people experience, we need first to describe the complex bureaucratic and legal structures that constrain them. Here I define some of the relevant terms and offer a sketch of Australia’s immigration deterrent systems; I then identify the key stepping stones in the critical argument of the thesis.

⁵ Australia’s system of mandatory detention is supported both by major political parties and by large sections of the Australian community. Yet by the late 1990s, increasingly vocal protests by detainees generated wide-ranging debate on the politics and consequences of

Seeking Asylum - A Problem for the Nation State

Asylum seekers are driven out of nation states fleeing for their lives and their confirmation as refugees depends on recognition by other nation-states. In an essay written in the 1940s, Hannah Arendt suggests that the refugee is the embodiment of the *avant garde* and suggests that the stateless are a paradigm of a new historical consciousness (Arendt in Agamben 1994). Agamben believes that Arendt's analysis has lost none of its currency and until the dissolution of the nation state, the stateless refugee is the 'sole category in which it is possible today to perceive the forms and limits of a political community to come' (Agamben 1994).

The connection between the asylum seeker and the nation-state is central to this thesis. It identifies immigration detention as a site that operates because the asylum seeker is both a product of modernity and a problem to the modern nation-state. The stateless asylum seeker is a figure that by very definition calls into question the principles of the nation-state, and the detention site is a space that reiterates the naturalised legitimacy of the nation state.

The asylum seeker as a legal concept and mass phenomenon emerged in the first years of the twentieth century when, in the aftermath of the First World War, millions of people sought escape from their homelands. Since the 1940s, the international community of states has mandated a refugee regime – the United Nations High Commissioner for Refugees (UNHCR) - to monitor and manage refugee populations. The 1951 Convention Relating to the Status of Refugees (Refugee Convention) and its 1967 Protocol defines a 'refugee' as any person who:

indefinite detention.

*... owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable, or owing to such fear, is unwilling to return to it.*⁶

An asylum seeker must be 'outside the country of his nationality' to come under the remit of the Convention. But the Convention remains silent on the asylum seeker's right to enter a nation-state. Therein lies the legal rub: asylum seekers are entitled to seek protection outside their country, yet it is at the discretion of the receiving state to determine if they can enter and remain. Having moved outside their country, asylum seekers are in a legal limbo. The international legal definition exists, yet the wealthiest nation states have domestic laws and intricate technological mechanisms designed to prevent movements of such people. As Castles notes, the fall in refugee numbers after 1995 is in the main due to the 'non-arrival' regimes established by developed countries. Consequently there has been a growth in people-smuggling operations and millions of refugees remain at risk in their areas of origin (Castles 2003, p.14).

If a person reaches Australia and seeks refuge, the state is obliged to hear their protection claims. These claims are assessed according to the UN Convention's definition of the term 'refugee'. An important obligation assumed by signatories to the Convention is that signatory countries refrain in all but exceptional circumstances from returning a refugee to a country where he/she faces persecution without proper assessment – this is the Convention's principle of *non-refoulement*. Australian authorities

⁶ The appearance of the refugee as a mass phenomenon began towards the end of the First World War. However, it was only from the 1980s, and particularly since the collapse of the former Soviet bloc, that there has been a dramatic increase in asylum seeker/refugee numbers. According to the UNHCR the global refugee population grew from 2.4 million in 1975 to 10.5 million in 1985. A peak was reached after the end of the Cold War with 18.2 million in 1993. By 2000, the global refugee population had declined to 12.1 million and numbers continue to decline (UNHCR 2000).

cannot, without contravening the Convention, return an asylum seeker without there being an assessment of the refugee claim. Without this obligation of *non-refoulement*, Australian authorities could immediately expel unauthorised asylum seekers. Instead, these are detained awaiting such assessment.

Limiting Protection

The refugee is the 'Man of Rights' (Arendt 1973) and as such, the refugee is a potent symbol of the progressiveness of democratic modernity and the embodiment of human rights promised by this political framework. These dimensions are suggestive of why the detention centre is a site of dynamic contestation.

Most asylum seekers are not detained - only those who arrive without an entrance visa are confined, on the basis of flouting a domestic law. As McMaster (2002, p.6) notes, this system of management targets a small percentage of arrivals, with undocumented arrivals representing less than 0.01% of all arrivals to Australia.

The Australian government operates a humanitarian program that prefers to admit refugees identified outside Australia by either the UNHCR or the Australian authorities as people in need of protection. Around two-thirds of refugees and humanitarian claimants are brought to Australia under this non-obligatory resettlement program. The other strand of this humanitarian program issues visas to refugees who ask for protection from within Australia. This onshore strand is based on protection obligations under international law. The majority of these applicants – over 80% (DIMIA 2003, p.2), arrive with valid visas and then apply for refugee status. This group of asylum seekers hold valid entry visas and thus are not detained.

Under the 1901 Australian Constitution, the federal government has the right to make laws concerning refugees and asylum seekers. The Department of Immigration, Multicultural and Indigenous Affairs (DIMIA) administers these migration laws. The Migration Act (1958) and the Migrant Regulations (1994) require all non-citizens who enter or remain in Australia to possess a visa. In theory, all non-citizens without a visa must be detained and removed from Australia. In practice, complex rules determine who is actually detained and removed. As Crock and Saul (2002 p. 24) outline, the detention of an individual depends on how they entered Australia and what, if any, visa they have held. At any one time, unauthorised over-stayers - mainly British, Chinese and North American citizens - number around 50,000 (DIMIA 2001a) but the vast majority of these never spend any time in immigration detention.

The detention of non-criminals fits awkwardly within a system of liberal rule. As Mehta explores, the modern government 'feels compelled to provide credible explanations for their exclusionary practices' (1999, p.427). DIMIA rationalises immigration detention by claiming it is responding to attempts by undocumented asylum seekers to circumvent the processing regime of the United Nations through which asylum seekers can find protection. It is suggested that asylum seekers could have stayed in the first country they entered (DIMIA 2003, p.6); or 'approached the UNHCR or the Australian Embassy, but that people have 'shopped around' to find a place they choose to settle' (DIMIA 2003, p.7).

The detention of undocumented asylum seekers has been a fixture in Australia since 1989 and has a peculiar and fraught genealogy. In November 1989, 23 Cambodian asylum seekers landed at Penders Bay in Western Australia and were detained. Three years later a series of amendments to Australia's Migration Act (1958) provided a secure statutory basis for detention to last until the asylum seekers had been granted a refugee visa or deported from Australia.

Indefinite incarceration for all unauthorised asylum seekers regardless of age or health has been challenged in many arenas, but the administrative legality of indefinite immigration detention was upheld by a High Court decision in 1992. The court recognised the legality of detention for administrative purposes but found it could not be used as a system of punishment or deterrence. Yet, as this thesis will illuminate, long-term detainees⁷ have clearly experienced detention as punishing.

Border crossers who arrived prior to September 2001 were detained in one of seven Immigration Detention Centres (IDCs) or Immigration Reception and Processing Centres (IRPCs): Villawood in Sydney, Maribyrnong in Melbourne, Perth, Port Hedland and Curtin in the remote north of Western Australia, and Woomera in the South Australian desert. The Baxter IRPC in South Australia began detaining people in September 2002.⁸ From August 26, 2001 all asylum seekers interdicted at sea were incarcerated in offshore camps in Nauru, Papua New Guinea and Christmas Island. Those arriving by plane are detained in onshore facilities.⁹

Australia's vast littoral borders are a physical barrier against illegal immigration - and by international standards, a relatively small number of asylum seekers reach Australia. Between 1989 and 2000 the government documented the arrival of 13,489 people arriving by boat without permission and 11,805 people arriving by plane without visa permission - just over 25,000 people over an 11-year period (DIMIA 2001). Most of these asylum seekers arrived after 1997.

By the late 1990s, asylum seekers from particular Middle Eastern and

⁷ I use the term 'long-term' to refer to a period of 6 months or more of detention.

⁸ The Curtin IRPC on the Curtin Air Force Base and the Woomera IRPC were opened in 1999 and mothballed in 2003. Port Hedland was mothballed in June 2004.

⁹ The government has also tried, but failed, to withdraw the right of judicial appeal for asylum

Asian countries - Kuwait, Afghanistan and Iraq - had approval rates of over 90% (Millbank 2000a) following appeal reviews by the Refugee Review Tribunal (RRT). This high admission rate was of concern to the central government and the immigration bureaucracy (DIMIA 2003).

From 1997, the government introduced additional measures to prevent asylum seekers reaching Australia - and once here, to reduce their opportunity of being granted permanent protection. These measures included an increase in coastal patrolling, allowing the navy to pursue, board and search boats, additional compliance officers in several cities in Asia, Africa and Europe, and targeting busy Asian and Middle Eastern airports to interdict people attempting to board aircraft using false documents. The Australian government also employed fingerprinting and language analysis to identify the 'true' identity and nationality of asylum seekers. In 1999, it established three-year Temporary Protection Visas (TPV)¹⁰ for all refugees arriving unauthorised. This visa allows a person to reside in Australia for thirty months; the holder cannot sponsor their family to Australia - if they leave the country their protection visa is cancelled.

Mapping the thesis

I interrogate immigration detention as a space of intricate ambivalence - one which seeks to exclude, but which is also entreated to protect. The detention policy sits awkwardly with the discourse of universal human rights - in particular, the indivisible right to freedom, justice and equality for all non-criminal bodies. The refugee is the 'man of rights', yet the system of indefinite detention excludes most rights from the detained asylum seeker.

seekers held within onshore detention centres (Brennan, 2003).

¹⁰ For detailed discussion on the limits of the Temporary Protection Visa see Leach and Mansouri (2003).

The detention and deterrence of asylum seekers brings into sharp conflict two strongly held political values: the right of people in danger to seek refuge, and the right of the nation to determine who will enter.

As the situation in refugee-generating regions worsened in the early 21st century, thousands managed to reach Australian waters. Once there, they found neither welcome nor respite, but instead entered a bureaucratic maze in which outcomes were uncertain. There are many potential approaches to understanding this situation – the perspectives of state actors at various levels, the experiences of those charged with detaining the interlopers, the asylum seekers themselves and the vast majority of the population whose role as bystanders can legitimise or contest policy prerogatives of government. The ‘reality’ of detention must encompass at least some of these participants in the drama.

There have been a number of studies of Australia’s asylum seeker politics - ranging from legal analyses of governmental practices, to journalistic examinations of the political decision steps in cases such as the Tampa or SIEV-X (Marr & Wilkinson 2003; Kevin 2004); yet we still know little of the regimens imposed on asylum seekers and the interplay of individual life-story, institutional practices of management and control and public awareness and reactions. Such a lacuna points us towards the experiences of the asylum seekers once apprehended and held in detention - an ethnography of their lives and the slowly unfurling canvas on which the complex and increasingly counter-productive script for resolving the human tragedy of refugees is being drafted.

This thesis explicates inherent ambivalences of the immigration detention site. It is a hostile place, albeit one tied to offering some form of shelter to asylum seekers who may be identified as a refugee. Detention is also a place where people can ‘live’ for years and from which people can be speedily and forcibly removed. By unpacking entrenched contradictions

one can critique the impact on the lived realities of those detained. In his writings on the Lagers of the Second World War, Primo Levi (1998) describes the *Muselmann*: a term used to describe the ‘walking dead of the camps’ – those who through the deprivations and violence of the camp experienced a fundamental loss of will and consciousness. Agamben (1998) finds that the *Muselmann* is the limit condition of human experience. It is a life exposed to death – a liminal point of human existence.

The Nazi concentration camps discussed by Levi were factories of genocide. Australian detention centres are holding spaces where the spectre of death is not pervasive. Despite this evident difference, the figure of the *Muselmann* is a fixture of the detention site. Psychology literature describes the breaking down of long-term detainees’ identity to accommodate a fundamental loss of will (Barnes 2003; Biro 1993; Sultan & O’Sullivan 2001; Browning 2005). This literature detail cases of long-term detainees reduced to catatonia – a non-speaking human shell. The psychological breakdown of detained asylum seekers has echoes of Levi’s (1998) *Muselmann* and is a starting and end point from which to explore the violence and self-harm that pervades immigration detention. The indefinite removal from the ‘normal’ world outside reduces life inside the enclosed environment of detention to a bare minimum.

Through interviews, Chapter One pieces together specific mechanisms that condition the detention regime as a site of exception. Interviewees detail the practices of surveillance, acts of violence, and the uncertainty of the bureaucracy, their fear of deportation and of continued incarceration. These experiences bring to the fore the exceptional space of immigration detention.

Chapter Two investigates the quasi-military and hyper-masculine space of detention. Violence and protest are endemic within onshore immigration centres. Between 1999 and 2003 hundreds of male detainees took part in

collective protests ranging from hunger strikes to breakouts, riots, lip sewing and arson. Other self-harming actions, that in another space would have been unthinkable, became commonplace: people drank shampoo, cut their bodies and dug their own graves. Identity is historically and culturally contingent through place and space. Immigration detention is specifically and intentionally a space that fractures the identity of those detained. Masochistic actions reflect the anxiety and the violent practices operating within immigration detention.

The majority of detainees are men; the detention space disables quintessentially masculine activity. We can confidently explain this emasculating process by description and analysis of daily routines, the everyday bureaucratic systems, the detainee's fear of indefinite incarceration and their submission to the removal of 'everyday' freedoms.

Chapter Three then moves on to consider the gap between the common experience of detention and the universal 'guarantee' of human rights. Equality and rights frame the promise of democratic modernity (Lloyd 1984); but the relationship between citizen and state determines to what extent those rights can be realised. The state-citizen order frames the border crosser as threatening and dangerous and thus legitimates the exceptional state of immigration detention.

Foucault offers a map to interpret the disconnection between the principles of human rights and their absence within the detention setting. The national government does not seek to exclude all refugees; rather, the executive exercises its absolute control over the immigration program by stopping the permeation of its territory by undocumented asylum seekers. Foucault's analysis of modernity (1997, 1978 & 2001) identifies 'bio-political' power as central to modern governance. For Foucault, governing regimes can hide their disciplinary practices behind the discourses of human rights.

Chapter Four explores detention as a practice embedded within the genealogy of racial exclusions in Australia (McMaster 2001). In the Australian context the detained asylum seeker is not only predominately male, but is also routinely fleeing an Asian, Middle Eastern or African nation. Detention centres are not something new in Australia - they have a long history and some fairly corrosive forebears, in both Indigenous and immigrant control, and as places to put those who are threatening to the identity of the nation. Since Federation, the Australian state has imposed tight regulations on migrant entry, and for over seventy years these restrictions were racialised. The significance of processes of exclusion for identity (national/racial/communal/ethnic) has been extensively considered from many perspectives. There are strong correlations between race and immigration programs. The introduction of immigration detention and the reduction in the humanitarian intake coincided with a jump in world refugee numbers and the impacts of globalisation and in Australia, with community anxiety around racially neutral immigration policies *per se* (Collins 1991; Stratton 1998; Ang 1999).¹¹

The fourth chapter explores this history and the usefulness of Foucault's (2003) understandings of 'state racism' as an effective theoretical tool in unpicking the current practice of immigration detention. It suggests that the repulsion of undocumented asylum seekers is connected to the ambitions of a pluralistic modern state.

The creation of offshore camps reduced the size and frequency of protests at onshore centres.¹² After September 2001, asylum seekers interdicted at sea were detained on Manus Island in Papua New Guinea and on the island

¹¹ Gold (1992) suggests that with the end of the Cold War a powerful political rationale for Western nations to settle anti-communist dissidents was removed. The political efficacy of the refugee, as a symbol of the freedoms of liberal modernity, thus declined.

¹² It is difficult to determine what component of the decision to move people offshore was a consequence of a drive to reduce vocal campaigns at onshore facilities.

state of Nauru.

Offshore detention secured specific outcomes for Australia's central government – it removed the undocumented asylum seeker from Australian territory and from any opportunity to lodge legal appeals. In this way 'Border Protection' (DIMIA 2003a) was designed not only to halt boat arrivals but also to reduce the numbers of refugees admitted to Australia in the review process. A combination of militaristic and bureaucratic measures realised these objectives.

Chapters Five and Six explore the workings of the largest Pacific camp, 'Topside' on the island of Nauru. By carefully working with hundreds of letters a complex history of detention can be given. These chapters offer the first detailed account of conditions and processes that operated at Topside camp in its first two years of existence.

Unlike the onshore detention centres where publicised protests and breakouts screamed of the continuing detention of asylum seekers, those on Nauru were effectively silenced. The offshore detainees were suspended as juridical subjects, but the physical brutality that pervaded mainland detention was less marked. At Topside detainees created more of a semblance of 'normal' everyday life than was possible for their onshore counterparts.

There is a determination which marks the exile. To give up hope for asylum is to face the possibility of endless wanderings and even death. The refugee Bessie Head wrote, '[T]he best and most enduring love is that of rejection ... I'm going to bloody well adopt this country as my own, by force. I'm going to take it as my own family' (in Mackenzie 1990, p.155). It is a perversity born of desperation to survive and hope to rebuild a devastated life.

In the following pages, immigration detention is revealed as a byzantine regime through which the dominating power of the state targets the bodies of the undocumented and stateless. This targeting is intentional, serving to enhance the legitimacy of the modern state and reassert the links between the state and the citizen. Within this construct, the undocumented border crosser is illegitimate: their exclusion is a confirmation of the continuing strength of the modern Australian state.

Critical Questions

Just to have the title asylum seeker is enough to justify the deprivation of the very basic human rights, and to put in long-term unending detention (D1 to Za, 14/1/2002).

DIMIA is ...persuading the detainees to return to their countries. In a meeting asylum seekers asked DIMIA 'Why you pressure us to return to Afghanistan? Do you want to send us by force?' DIMIA officer said 'I hope you will not be those people and it is better for you not to lose this chance and decide before government takes any action (D5 to Ze, 18/5/03).

This thesis explores three key ideas neglected by the extant body of refugee literature. Below I refer to the literature that assists in the investigation of immigration detention and reveals critical gaps in our understanding of the detention regime.

One key area of exploration emerged in the examination of literature considering the relation between the citizen, the state and the stateless. Commonly texts point to discursive conflict between the state-citizen framework and the discourse of universal human rights. To be stateless is to be suspended from access to a complex array of supposedly indivisible rights. The extant literature is illuminating but makes little distinction between the refugee and the asylum seeker – it assumes a global commonality of experience and meaning. Yet, in Australia, the specific target of detention policy is the undocumented asylum seeker, not the refugee.

In Australia immigration detention does not target the refugee *per se*, nor the vast majority of asylum seekers. Detention only pursues the undocumented asylum seeker. It is the lack of bureaucratic documentation; couple with the status as asylum seeker, which is critically important in any examination of immigration detention. The particular targeting of the

undocumented raises questions into the nature of suspended spaces in modern Australia.

Immigration detention is a practice that sits awkwardly alongside the modernist discourse of universal human rights: the indivisible right to freedom, justice and equality for all. The system of indefinite immigration detention excludes key rights to a class of people whose status has not been verified by the government: the undocumented asylum seeker.

The introductory comment that in bearing the name 'asylum seeker' one is deprived of basic rights helps to phrase the question: does the Australian body politic insist that the undocumented asylum seeker is a physical body of exception?

Detention detaches an individual from the 'normal' world of respect and recognition. Agamben offers a theory of sovereign power that is singularly powerful - arguing that the state is not the institution safeguarding civil law, but is centrally involved with the enforcement of legal violence. Agamben (1998, 2005) calls the brutal space where an individual is placed and suspended from the usual rules of civil law, a 'state of exception'. He then argues a nightmarish version of western modernity in which the condition of exception is said to inhabit every power structure. This radical evaluation empties any experience and definition of democratic rights.

A second critical question thus arises: could aspects of Agamben's overarching framework of modernity be selectively applied to explore the multiple micro-acts of constraint that operate within the particular site of immigration detention?

Agamben's account does not offer a complete theoretical frame to examine the workings of immigration detention. There is a history of protest within Australian detention centres that requires critical examination. Agamben's

work does not engage with questions of struggle and although some literature has detailed riots at these centres, there is no expansion beyond description. As Foucault's work reminds us, history does not happen as one dominant group wills it, but rather as a result of the interaction of human wills. Thus a third focusing question emerged from the literature review.

This thesis explores both reasons for protests and some consequences of mass protest action, both at the level of the lived body of the detainee and in regard to responses by government. The creation of Topside (and Statehouse) Camp on Nauru is a necessary adjunct to the two processes of exception and resistance. The condition of exception and the resultant resistance in the mainland camps enabled the deflection of resistance into unresponsive and unseen spaces that could not be viewed in the public sphere in Australia.

The cited refugee literature below is bundled into five broad groupings as a guide to the critical questions which emerged and which helped chart the direction of the thesis.

Refugee Studies

Immigration detention is one element in an intricate set of policies governing asylum seekers. Since 1992 successive Australian governments have systematically detained undocumented asylum seekers; yet research exploring the complex practices that operate within this place is sparse. This inattention is perhaps unsurprising, given that refugee studies is an emergent area of research. In 1986, Stein noted that refugee research is 'sporadic, unsystematic, isolated and cursory' (1986, p. 6). Almost two decades later Castles (2004) calls for more attention to be given to refugee studies and suggests the complexity of issues involved in this area demands both greater sophistication and cross-disciplinary approaches.

In the main, refugee studies research in Australia has focused on refugee communities (see for example Viviani 1984, 1996; Wise 2002). The literature specific to detention centres was, until recently, generally limited to government inquiries (see for instance 2000), annual DIMIA reports, ministerial media statements, and reports (1998, 2001a, 2004) from the Human Rights and Equal Opportunity Commission (HREOC). The gap in academic research reflects the difficulties in accessing information and researching the closed site of immigration detention.

Despite the paucity of academic research it was evident from documentation by government and human rights organisations that detention centres occupy a unique space in Australia: no other government-run institution has been accused of such systematic and systemic violations of human rights. Reports from the HREOC (1998, 2001, 2004), Amnesty International (2005), the US Committee for Refugees (2002) and the UNHCR (2002) discuss the Australian system of detention as flouting various internationally accepted human rights principles. The HREOC reports document violations of rights; they question the incarceration of children and the elderly, the length of detention, and the practice of solitary confinement; and they examine allegations of physical abuse, including the handcuffing and drugging of asylum seekers being deported. In 2005 the Department of Immigration published the *Palmer Report*, which identified a departmental culture of distrust toward those detained.

The wave of protest that swept through immigration detention centres from 1999 turned attention to the system, and more analyses – by lawyers, journalists, psychologists and academics - emerged (for instance Crock & Saul 2002; Sultan & O’Sullivan 2001; Mares 2001; Manne 2004). The literature also includes personal and descriptive accounts from people who have worked within detention centres (see for instance, Mann 2003).

Without exception these accounts of detention are critical of the regime. Brennan (2004), Manne (2004), Crock and Saul (2002), Mares (2001), McMaster (2002) and Jupp (2002) argue that during the 1990s, and in particular after 1996,¹³ government policies targeting unauthorised asylum seekers have become increasingly harsh and punitive. Manne (2004) argues that government policies toward asylum seekers reflect a new 'politics of indifference' and proposes that the government adopt a more humane liberal framework akin to the procedures adopted when the first wave of asylum seekers arrived in Australia in the late 1970s.

In a piece written just after mandatory detention became government policy, Cronin (1993) identifies a bureaucratic culture of control that seeks to deter and constrain undocumented migrants. In her analysis of the Department of Immigration, Cronin (1993) observed an obsession with holding back a projected imminent 'flood' of arrivals. In 2001 Maley reiterates and supports Cronin's arguments.

The field of psychology is a significant strand of study as background to any investigation of detainees' experiences. Pittaway and Ferguson (1999), Silove (1999), Sultan and O'Sullivan (2001), Barnes (2003) and Fernandes (2002) have examined psychological trauma for refugees and asylum seekers in Australia. The Sultan and O'Sullivan cohort study documents widespread psychological trauma resulting from prolonged and indeterminate detention, and chronic depression arising from sheer idleness of years 'inside'. Sultan and O'Sullivan (2001) and Silove (1993, 1999) all note common psychological consequences for long-term detention - consequences such as depression, insomnia and catatonia.

The confusing and eventually disintegrating condition of detention is not a new phenomenon. In 1993 Silove argues that detained asylum seekers are

¹³ The conservative Coalition government was first elected to office in 1996.

changed by their experience of incarceration. He suggested that indefinite detention can produce an overwhelming depressive inertia. Silove maintains that detention in Australia is a devastating experience which for many asylum seekers was often more difficult than extra-judicial imprisonment within their own countries - since in detention they are more completely deprived of connection with the outside, such that no-one may know they exist (Silove 1993).

In addition to this literature, this thesis incorporated information and reports generated by refugee activist groups. In the wake of an increasing number of protests several refugee activist groups emerged. Organisations including Children Out of Detention (ChilOut), Rural Australians for Refugees (RAR), the Refugee Action Coalition (RAC) and A Just Australia campaigned for detained asylum seekers, generated information and reported critical flash points inside the detention centres - including protests and detainees' reports of solitary confinement.

When placed within an international context (Gibney 2004; Crock & Saul 2002) the policy of mandatory detention is argued to be both unforgiving and particular to Australia. These authors, however, admit that while Australia's detention practice is singular, other western nations have adopted various constraining practices that reduce the ability of asylum seekers to permeate a nation's territorial borders. Western nations have attempted to fortify their territory against migration from below. The buttressing of Europe, America and/or Australia against undocumented migrants is explored in a number of texts: see Giddens (2000), Dummett (2001), Castles and Davidson (2000), Harding (2000), and Sassen (1996).

The extant refugee literature draws our attention to torsions and tensions within immigration policy in general and immigration detention in particular; but notably absent so far have been detailed first-hand accounts of detainees' experiences.

The lived experiences of detention and survival in the Australian camps offer a particular discursive space from which we can explore key critical questions.

The Stateless Being

Many accounts assume interchangeability between the terms 'refugee' and 'asylum seeker'; but there is a significant legal and political distinction between these two terms. Under international law a refugee is a person who has been recognised as in need of protection: their identity and status has been confirmed by either the receiving state or the UNHCR. In contrast, the asylum seeker is the person seeking protection, whose identity and need for protection has not been verified by these authorities.

This distinction is recognised by government. In Australia undocumented asylum seekers are interned; acknowledged refugees are not. The state does not seek to exclude all refugees. Government immigration policy includes accepting a small intake of refugees as a part of the Humanitarian Program. What the executive finds threatening is the permeation of Australian territory by undocumented asylum seekers.

The following literature does not make this distinction; but their analyses do draw our attention to the complex relationships between the state, the citizen, territory and rights. In particular, these texts highlight a key conflict of modernity that is located in the gap between the discourse of human rights and the realities of national juridical identities. This gap suggests why the undocumented asylum seeker is a target of specific exclusionary practices.

The stateless body is a source of confusion in the theory and practice of both citizenship and human rights. Only the state – through its myriad of

institutions - can uphold human rights. In the international ordering system of states the practice of human rights functions only for citizens within the nationalised territory.

The state/citizen relation is bound to the political ideal of democratic government for the people, of the people and by the people – and was born from political theory that a progressive society can be measured in terms of the freedom and equality enjoyed by its citizens ('Liberty, Equality, Fraternity'). The political framework of democratic modernity imagines that human rights are intrinsic to all individuals within the state and must be recognised. 'All men are born free and equal to each other, they are individual' (Pateman 1988, p. 6).

The attributes of the state are as Weber identified: sovereignty, territory, population and the legitimate use of violence (Gerth & Mills 1991). The state is legitimated to use violence against supposed threats to the political community. In modern societies these continue; although many of the ordering functions that produced the effect of a unitary force - such as the organisation of health care, education, economic production, imprisonment and military and policing interventions - have disappeared. As Brown (1995) explores, the state is not a thing, system or subject, but a significantly unbounded terrain of powers and techniques; it is an ensemble of discourses, rules and practices cohabiting in limiting, tension-ridden, and often contradictory relations with each other.

This internal relation between the state, the citizen and rights is incomplete and contested. In nation-states, there are *de facto* exceptions of significant groups - often marked by ethnicity, religion or gender - that are denied, often violently, full rights as citizens. Kymlicka's work (1995, 2000) draws out some of these complex issues in his work on minority rights and the democratic state. Lloyd (1984) and Gatens (1990) note that the citizen is always meant to be universalistic and above cultural differences, yet the

modern state functions only in the reality of a corporeal difference. All citizens are supposed to have equal rights as citizens, whatever their actual economic and social positions, yet specific corporealities are privileged (Gatens 1990). Corporeal difference unsettles the homogenising tendencies of the nation-state.

But as Anderson (1991) recognises the nation-building project is framed by concern for unity and homogeneity. The nation-state is a political community imagined as inherently limited and sovereign. It is envisaged as possessing a unique culture, territory and history. The sovereign right to exert absolute authority over cross-border movement is a central feature of the nation-state (Sassen 1996; Giddens 2000; Hage 1998; Burke 2001).

Hannah Arendt observed the critical disconnection between (what she referred to as) the refugee and Western notions of citizenship and belonging. Arendt (1973) reflects on the pre-war refusal of other nations to permit the entry of Jews fleeing Germany. She concludes that it is not human rights that legitimate the individual, but rather membership of a nation.

The central problem for the asylum seeker is lack of citizenship. It is through citizenship that rights are actualised by the nation-state. Arendt argued that people are reduced to their membership of a nation, rather than affirmed by indivisible rights. Arendt observes that when groups of people are denationalised they are not only the detested 'Other' in that nation – such as the Jews in pre-World War II Germany - but they also become the detritus of the world. In *The Origins of Totalitarianism* (1973) Arendt argues that the refugee 'problem' can only be resolved with legitimate state power that is bound to the rule of law, but she does not offer an alternative rendition to the existing state/citizen order.

For Agamben (1998) the refugee as non-citizen always called into question

the citizen-state relation, and always represented an exacting problem for the state. The stateless subject breaks up the naturalised identity between man and citizen, and between nativity and nationality - and thus throws into crisis the original political fiction of sovereignty. Industrialised modernity has produced growing numbers of humanity who can no longer be represented within the state and thus threaten the foundations of the nation-state.

Agamben's critique echoes Arendt's; but he goes further to claim that when an individual's rights are no longer the rights of a citizen, then he/she is exposed to 'bare life' and is always destined to exist in a state of exception. Agamben frames this discussion on citizenship by considering the Jews in the Nazi camps who were first denationalised and stripped of all citizenship rights remaining after Nuremburg, and were then erased as legal subjects.

One of the few rules the Nazis faithfully observed in the course of the 'final solution' was that only after the Jews and the gypsies were completely denationalised (even of that 2nd class citizenship that belonged to them after Nuremburg laws) could they be sent to the extermination camps. When the rights of man are no longer the rights of the citizen, then he is truly Sacred... destined to die (1994, Para 5).

Thus for Agamben, the refugee – an apparently marginal figure - deserves to be considered as the central figure of modernity. This tension between the state/citizen order and the border crosser is taken up by other authors (see for instance Holt 2002; Lui 2002; Sassen 1996); but Agamben is alone in suggesting that political exclusion exposes the refugee to 'bare life'.

Castles and Miller (2003) emphasise historic change and suggest that globalisation in the western world has exacerbated tensions between the state/citizen relation and the asylum seeker. They point to the end of an international economic boom and the beginning of processes of fiscal restructuring resulting from globalisation as central to a critique of

immigration policies. In their analysis, immigrants, refugees and asylum seekers appear as the physical embodiment of the external threat to jobs, living standards and welfare. 'Illegal' migrants are increasingly labelled as threatening state security.

Sassen (1996) addresses the themes of globalisation, undocumented migrants and challenges to modern sovereignty. She situates the destabilisation of the old order of the nation-state with the rise of the global economy and the international legal system. This globalised order creates the conditions for the extensive movement of goods and services and of groups of elites to cross borders. A globalised economy has increased the mobility of people, including their capacity to cross borders 'illegally' and undermined the ideology of distinct and relatively autonomous national cultures.

Sassen proposes the bonds to state are weakened by globalisation questioning the territorial principle - that nexus between power and place (1996). Yet the nation-state still holds a sovereign right over its borders. In this way immigration is a key site for interrogating the impact of globalisation upon the body of the nation-state. The presence of the undocumented migrant signifies the erosion of sovereignty (1996, p. 66); and the containment of these migrants signals the strength and coherence of the nation. Thus a state's immigration policy, including its refugee intake, 'has a dual property of being a central object in and a tool for the renationalising of political discourse and being the object of government policy and practice' (1996, p. 62).

Likewise Castles and Davidson (2000) argue that the task for modern nation builders is to re-imagine and refigure those bonds to state. The citizen and the alien are crucial reference points in this re-shaping. In Australia, globalisation has generated pressure for immigration policies to be managed on the basis of human capital (see Becker 1993; Jupp 2002)

and of attracting the most appropriate migrants for an outward and dynamic economy (Kelly 2004).

Far from witnessing the dissolution of the nation-state as suggested by O'Hare (1995), Turner (1994) and Miyoshi (1993), immigration is a site of vigorous contest between the old nation-state order and the forces of globalisation. Sassen identifies a difficult and complex reordering of the state system in an era of globalisation, including the internationalisation of human rights principles (1996, p. 97).

The above literature offers sophisticated critiques of the state-citizen relation and draws together the complex connections between the state, the citizen, territory and national identity. What is lacking is a detailed elaboration of why the asylum seeker, as opposed to the refugee or other migrant, has become a specific target for violent exclusion by the Australian government. This thesis explores and extends these critiques in placing the undocumented asylum seeker, a body that is stateless, as a central figure of Australian modernity. Undocumented asylum seekers are detained on the basis of their permeation of state borders; their detention is an assertion of absolute control by the Australian state in the face of global modernity.

The Threatening Other

The construction by the state of the threatening 'Other' as a legitimisation for public order measures has been a focus of much study: for example, Balibar & Wallerstein (1991) and Vasta & Castles (1996). These authors argue that such policies divert attention from fundamental economic and political problems.

In Australia there is a history of detaining the threatening immigrant 'Other'. Jupp (2002) and Bashford and Strange (2002) draw connections

between historic procedures to confine feared communities and the current system of immigration detention. Like detention, these historical modes of confinement were often practised within a rubric of security and responded to vexing questions of menace, belonging and nation.

Bashford and Strange (2002) detail parallels between immigration detention and the former quarantine and enemy alien camps. In both of these carceral practices, non-criminals were detained on grounds of their suspected threat. The authors critique these systems as constituent parts in the nation-building project to create degrees of belonging and alienness. Bashford and Strange (2002), Pugliese (2002) and Holt (2002) all suggest that the detention of asylum seekers is a means to manage the government's broad political goals.

Joseph Pugliese's critique reflects on the violence of the nation-state upon the body of the asylum seeker and asks a Foucauldian question: what sort of body does the state need, and what apparatus is it deploying to produce it? For Pugliese the practice of indefinite non-criminal incarceration is bound to government objectives of securing the nation-state. Immigration detention is understood as in defence of the imagined nation-state, the undocumented asylum seeker imagined as threatening both to state sovereignty and to a dominant national identity.

Bashford and Strange (2002) and Holt (2002) raise questions of corporeal difference and the nation-state. In the 19th century an Australian national consciousness emerged, laden with a strong attachment to racial specificity. Aboriginal dispossession and resultant ongoing conflict remain as unresolved issues - as explored by Reynolds (1998) and Goodall (1996) among others. In the postwar era the strictly racialised immigration system was fragmented; but the Australian architects of the mass migration program promoted assimilation, and migrants - including Jewish refugees - were selected to 'fit' into Australian society (Golvan 1995). For Jupp, the

official government policy of multiculturalism that emerged in the early 1970s served to mask continuing discrimination based on biological and cultural markers linked to the discourses of race and ethnicity (Jupp, 1996).

Links between immigration practices and racialised discourses are oft made and compelling: see for instance Jupp (2002), McMaster (2001, 2002) and Manne (2001, 2004). These writers' link current refugee policies with past racialised immigration practice. According to Manne (2001), a set of fears reminiscent of the debates surrounding the 1901 Immigration Restriction Act underwrote the 2001 Migration Act amendments which excised nominated territory from the migration zone. McMaster (2002) also argues that a genealogy of racialised exclusion can be identified from the White Australia policy and through to the current operation of immigration detention. In addition Ansell (1997) establishes connections between the rise of a populist nationalism, anti-immigration rhetoric and racism or culturalism.

Unwanted asylum seekers not only permeate territory; their corporeality is also imagined as threatening to the national identity. Their bodily difference unsettles the account of a homogenous national identity.

The Body of Exception

Giorgio Agamben and Michel Foucault both ask us to consider systems of incarceration and the relationship between life and death and the political community. Agamben and Foucault suggest that at the very heart of modern politics is the relationship between the power over life ('bio-politics') and over death ('thanato-politics').

Agamben (1998) radically departs from normative accounts of modern politics. He argues that political sovereignty is not grounded in the

community or the people; rather, in essence, it is the power to declare the state of exception.

Unlike Foucault, who suggests that political interest in life emerged as the modern state emerged, Agamben suggests that politics has always been about both life and death. To Agamben, the connection between politics and life is fundamental to the Western tradition. *Homo Sacer* (1998) is Agamben's exploration of sovereign powers over life since antiquity: the power to let live or to take life, he suggests, are invested in sovereignty.

Agamben (1998, 2005) elaborates on a conception of modern sovereignty based on Carl Schmitt's (1988) critique of modernity and the state of emergency. Schmitt argues that sovereign power is distinct in the ability to constitute the exception. Only the sovereign can declare the point at which law can be suspended. Agamben works within this frame, seeing the zone of exclusion and exception as the heart of modern sovereignty and grounding the rule of law (1998).

In *Homo Sacer* (1998) Agamben outlines his key claim: that the original political relation is a ban in which a mode of life is actively and continuously excluded from the polis. According to ancient Roman law, *Homo Sacer* (Sacred Man) refers to a person that could be killed without accountability. The Sacred Man is a life destined to be taken: the body of exception and exclusion. In abandoning individuals the law leaves them exposed and threatened. This state of exception removes the distinction between life and law, between outside and inside (Agamben 1988). The original form of politics, the fundamental activity of sovereign power, is the production of bare life. Sovereignty is therefore not a historically specific form of political authority that arises from the modern nation-states and their conceptualisation, but is rather the essence of the political.

Agamben uses the term 'naked life' to name the limit of humanity, the bare

minimum of existence that is exposed in the state of exclusion. He explains that modern sovereignty rules over naked life and biopower is the power to rule over life itself. Agamben positions the biopolitical as intrinsic to sovereignty: the state of exception has become the normal form of modern governance. This differs from Foucault, who sometimes suggests biopower is incompatible with sovereign as opposed to disciplinary power (1977, 1978).

To Agamben, the state of exception is not necessarily decided by a situation of conflict; rather, it is decided to affirm a juridical order in which lawfulness is suspended in the name of law. The state of exception establishes a hidden but fundamental relationship between law and the absence of law. The sovereign state is paradoxically and at the same time 'outside and inside the judicial order' (Agamben 1998, p15). It is a void, a blank - and this empty space is constitutive of the legal system.

In Agamben's account the western political model is no longer the city-state but is now the concentration camp - where the rule of law is routinely displaced by the state of exception or emergency and people are increasingly subject to extra-judicial violence (Agamben 2005). The full realisation of modern sovereignty is the Nazi concentration camp. Agamben thus spurns the normative account of the Nazi camp as anomalous. Such zones of violent exclusion and exception, he asserts, lie at the heart of modern sovereignty. In this account the state is not the institution safeguarding democratic laws, but is the enforcement of legal violence. Modernity is the time when the biopolitical essence of sovereignty is revealed in its full horror.

... if the essence of the camp consists in the materialisation of the state of exception and in the subsequent creation of a space in which bare life and the juridical rule enter into a threshold of indistinction, then we must admit we find ourselves virtually in the presence of a camp every time such a structure is created, independent of the

kinds of crimes that are committed there and whatever its denomination and specific topography (Agamben 1998, p.174).

Agamben argues that the condition of exception now inhabits every power structure and radically empties any experience and definition of democracy - there is no difference between the state of exception and constituent power, because they both live on the same plane of indistinctiveness. He places us all in a state of ferocious and permanent civil war. In this state lawfulness and unlawfulness become indistinguishable - 'such that what violates a rule and what conforms to it coincide' (Agamben 1998, p. 57). State sovereignty then presents itself as the law, which stands outside the law. The lack of distinction between transgression and execution of the law that characterises the state of exception, a state within which anything can happen, leaves the law as a terrifying force devoid of meaning from which one cannot escape.

In this critique the refugee camp as a form of exclusion and total control seems to have replaced the Foucauldian prison (1977) as a model of absolute control over life.

Agamben (2005) suggests that all people are increasingly subject to extra-judicial violence; and he proposes a continuum between democracy and totalitarianism – a link between the rule of law and the state of emergency. Thus the Guantanamo Bay detainees, in having no legal status, are in legal terms comparable to the inmates of the Nazi concentration camps.

Further Agamben argues that in our modern political system whereby citizens gained certain rights and liberties, the foundation is simultaneously laid for a deeper insertion of human life within the political order: everything in the world today seems to have been fixed onto a totalitarian and static horizon.

Agamben (1998) uses the term 'naked life' to name the limit of humanity, the bare minimum of existence that is exposed in the concentration camp. Agamben elaborates on Primo Levi's (1988) identification of the *Muselmann* in Auschwitz, who through exposure to starvation, deprivation, violence and brutality experiences a fundamental 'loss of will and consciousness. Levi hesitates to call them living: one hesitates to call their death' (Levi cited in Agamben 1998, p. 44). The *Muselmann* neither survives nor is killed, but rather remains between life and death.

Agamben's critique yields an account of bare life that consists of natural life politicised through its irreparable exposure to sovereign violence and death (1998). Auschwitz is the sire of an extreme bio-political experiment, wherein the 'Jew is transformed into a *Muselmann* and the human into a non-human' (Agamben 1999, p. 52). The *Muselmann* has endured the inhuman, borne more than he/she should ever have had to, and thus remains fundamentally human. Agamben characterizes the *Muselmann* as the 'non-human who obstinately appears as human: his is the man that cannot be told apart from the human' (1999).

In exploring the exceptional space of immigration detention I employ the radical and compelling force of Agamben's critical arguments; but Agamben's frame cannot map or accommodate either the specificity or the fluid and contested dimensions of Australian immigration detention.

Relations of Power

Australian immigration detention targets undocumented bodies. It typically incarcerates young, non-white men. As Goffman (1961) and Levi (1988) detail, totalising institutions of violent restraint can transform and reconstitute identities. Bruno Bettelheim (1971) and Primo Levi (1988) both explore the changing nature of inmates within the Nazi concentration camps of World War II. These internees underwent changes that

transformed the survivors. Levi notes that those who lived through the Nazi camps were forever changed by their experiences and the guilt of surviving when millions had died (Levi 1988).

Unlike Agamben's account, Michel Foucault recognises that all political moments are contingent. In *Society Must be Defended* (2003) he outlines the re-codings and re-inscriptions of fatherland, territory and blood with the bio-political discourses of eugenics that created the conditions to make the Holocaust possible. Foucault's extensive body asks us to consider questions of transformation and resistance.

Foucault understands Western modernity not as a unitary and essentially principled tradition but rather as a body of reflection upon the art and practice of government. Emerging from the 16th century onwards, he observes, was a concern for the freedom of the individual and the regulation of markets.

In the reworking of *A History of Sexuality* (1992) and in his lectures *On Governmentality* (2001), Foucault outlines the rise of the 'bio-politic'. From the 16th century, as life in Europe became less threatened by the immediate and constant presence of death, life expectancy was not only extended but became increasingly valued.

Modern governance is tied to the management of the human body. The living body has become the site for 'rights' and simultaneously for a system of punishment linked to the withdrawal or exclusion from rights. The main point of power's application is its control over life. The emergence of rights is embedded within the rise of 'bio-politics'. Foucault asserts that modern governance is not concerned with freedom but with management of populations. Put crudely, the lived body is the major issue for the application of modern power.

In his histories of the secretive sites of the prison and the mental asylum, Foucault draws attention to the practice of modernity in both respecting and violating liberty - or in Mehta's words, how the 'inclusionary pretensions' of modernity have exclusionary effects (1990, p. 427).

Foucault's work suggests that the mechanisms of disciplinary power hide behind the principles of rights. These mechanisms manage and discipline the subject and serve to secure political rule through the agency of bureaucratic expertise. But Foucault also suggests is that the power that excludes can also empower politically - simply because the exclusion is already a form of address, which as Deranty (2004) argues, 'provides implicit recognition' (para 48).

Foucault abandons the traditional approach to the problem of power as one which resides in juridico-institutional models, preferring an analysis in which power penetrates subjects and arranges lived bodies. In Foucault's account, power is always relational – power is not possessed but exercised. It permeates society and cannot be held by anyone or any one group; rather, there exists a network of power relations. In the relationship of power there is always a field of alternate action. Although recognising that there are vast differences in the ability to exercise power between the dominating and dominated subjects within the violent constraints of the immigration site, the relation between the dominating and the subjugated remains contested and volatile.

This thesis considers ideas of subjugation and struggle to explore how men experience detention. Detention typically incarcerates men under the age of forty five (Crock & Saul 2002). The extant literature investigating detention does not consider in any depth questions of masculinity. This thesis suggests that masculinity is a crucial component not only in the decision to detain and the mechanisms of constraint, but also in the modes of struggle against the limits of detention.

Connell (1987, 2005) explores normative masculinity as linked to social discourses of dominance, power and control. Male detainees in Australia have routinely protested their ongoing incarceration. The visibly visceral protests, hunger strikes, lip-sewing and breakouts, alongside the quieter acts of letter writing, friendship-building and determined waiting, can be investigated as elements of the limited space to restructure and resist.

In his exploration of hypermasculinity and prison violence, Toch notes that when men are together there is a willingness to fight. The capacity for combat is a measure of self-worth (1998, pp. 170 -171). Fighting is tied to bravery, fearlessness and heroism and is linked back to masculinity; to step back from fighting and to display fear is to display feminised emotion. Connell and Toch offer paths to investigate gender and protests within detention.

The history of onshore and offshore camps is bound to the government's determination to permanently jettison the excluded; yet Foucault consistently reminds us of the ongoing contest and struggle for inclusion. This thesis draws these ideas together to detail specific and embodied characteristics of these struggles and their transformative possibilities.

Methodology

Those who experienced imprisonment (and, more generally, all persons who have gone through harsh experiences) are divided into two distinct categories, with rare intermediate shadings: those who remain silent and those who speak. Both obey valid reasons: those remain silent who feel more deeply that sense of malaise which I for simplicity's sake call 'shame'...The others speak and often speak a lot, obeying different impulses. They speak because, at varied levels of consciousness, they perceive in their imprisonment the centre of their life, the event that for good or evil has marked their entire existence. They speak because they know they are witnesses in a trial of planetary and epochal dimensions. They speak because (as a Yiddish saying goes) 'troubles overcome are good to tell' (Levi 1988, p. 121).

Immigration detention is a closed system and knowledge about the experiences of detainees is highly protected by the Immigration Department. Independent researchers cannot move freely within the detention site, nor will the Department allow formal interviews with detainees. Thus I needed to look elsewhere to discover a means of charting detainees' lives and thereby producing data that could contribute to the resolution of the research problem; therefore the majority of my research was conducted outside of the detention centre space.

In the first instance, I wanted to speak with people who had been confirmed by the government as refugees. These refugees had successfully navigated the processing system and their experience of detention was not informed by a final rejection of their claims. Interviews were conducted with people who had been released from detention and had been successful in gaining either a Permanent Protection Visa (PPV) or more usually a Temporary Protection Visa (TPV) or Bridging Visa.

The focus of my interviews was guided by two broad questions: First, how did refugees experience detention? And second, how did they attempt to secure their release?

My field work began in mid-2002 when I became a part of the Visitors Program initiated by a refugee support group, ChilOut. Due to the workings of the detention system, when a person wants to enter the visitors' compound they must give the name and number of the detained person they wished to visit. By linking up with ChilOut's visitors program I was given names and numbers of detainees who had said they wished to receive visitors. Over the course of 2002 and 2003 I made seven visits to the Villawood Immigration Detention Centre in the southwest of Sydney. These visits allowed me to speak informally with asylum seekers and offered limited opportunity to observe some systems operating within this isolated space.

After obtaining ethics clearance for the research from the University of Technology, Sydney, I began the formal interviews. I was mindful of the observation made by the Auschwitz survivor and philosopher Jean Amery, who wrote:

... anyone who has been tortured remains tortured. Anyone who has suffered torture never again will be able to be at ease in the world. Faith in humanity, already cracked by the first slap in the face, then demolished by torture, is never acquired again (in Levi 1988, p. 11).

Former detainees are a particularly traumatised community (Silove & Steel 1998; Silove 1999; Steel *et al* 2004). They have fled their homeland, spent months and sometimes years in immigration detention; and many are TPV holders. The TPV prevents family reunion and offers no certainty of permanent settlement in Australia. The research approach took these

factors into account.

Ethical considerations imposed certain restrictions on the depth of what could be explored in the thesis. For instance, my questions did not enquire as to the reasons for their departure from their country of origin, but were concerned with their experiences in detention. However, during the course of the conversation some interviews did touch upon some of their reasons for fleeing their homeland.

Discussion of detention can be highly distressing and I included a list of telephone numbers for refugee counselling services. These ethical considerations, coupled with the cross-cultural and linguistic dimensions, shaped the focus of the research. The interviews offer a broad account of immigration detention, rather than a highly detailed exploration of personal histories.

After first contacting the interviewee by telephone to discuss the research, I would interview them in their home or in the home of a friend. The relationship between the interviewer and interviewee is a negotiated one. The interviews took the form of open-ended conversations and would usually take place over food and drink. Several key questions helped structure the interview and gave space for the interviewee to talk about the memories, ideas and thoughts that arose from the questions. Cynthia Hay notes that oral history testimonies have often been criticised on the grounds that they are confined to a cosy view of the past (Hay 1981, p. 41). Former detainees share a common experience: of having their history and identity questioned by the Australian authorities. This shared experience, coupled with the trauma of flight, perhaps indicates why this 'cosy view of the past' is not mirrored in the interviews for this thesis. Many spoke with anger, bitterness and determination.

The interviews were sometimes awkward. Interviewees had differing levels

of fluency in English and I had no knowledge of their primary language. The discomfort was also in part a result of a concern that my questions may trigger particularly traumatic memories. Many of the refugee expressed sadness at having to flee their homes and the bitterly compounding experience of detention. They all expressed a degree of isolation and loneliness in their lives in Australia, a finding mirrored by other research on TPV holders (see Fernandes 2002; Barnes 2003). I approached these interviews understanding that the process of remembering is immersed in tandem with forgetting. What could be told was a refracted glimpse of the experience, not a replica.

In conversation or when interviewing asylum seekers I was often struck by their sense of bereavement and anger. Each person was exiled from their family, culture and community and this traumatic loss was intensified by their experience of detention. This thesis is concerned with bringing together these individual recollections to offer a collective account of detention. It is not a history of one life but a reflection on these collected stories of detention, loss and transformed identity.

For Clendinnen the capacity of traumatised refugees to speak of their harrowing experiences within a narrative structure brings the extraordinary back to the ordinary (Clendinnen 2002) - thus making it intelligible to others. Memory and the retelling of traumatic events has a role in the active practice of creating meaning. Clendinnen suggests that traumatised memory is the site where change can be produced - because once organised within this narrative of meaning these accounts offer alternatives to officially sanctioned accounts. Fritzsche (2001) notes that there is a difficulty presented by private memories which run counter to official history. These counter-memories have difficulty in articulating themselves, as they resist the smooth continuity between past and present and remain outside socially sanctioned narratives. Both Fritzsche (2001) and Clendinnan (2002) confirm that memory records traces of the

unspeakable, the matters that official narratives cannot or will not recognise. Thus organised within this construction of meaning, these traumatic accounts are alternatives to officially sanctioned descriptions.

Professional interpreters were not used. Frequently I noted a determination to write or speak of the detention experience in English. Rather than accept an offer of an interpreter, interviewees wanted to have an unmediated conversation. In addition many refugees were wary of translators - the reasons for this distrust became more apparent as the research continued, and the thesis discusses reasons for a common distrust towards translators employed by the DIMIA. Some refugees were concerned that the interviews could be mistranslated, and all the interviewees said they preferred to speak in English. Some interviewees were assisted by friends who would translate a particular word or sentence.

With the exception of three refugees, all other interviewees were given clear assurances that they would not be identified by the research. Three other refugees - two PPV holders and one TPV holder - were asked if certain material may be used that could identify them. All three gave their consent. Interviewees were also assured that their participation was voluntary and that they could withdraw from the study at any time. Interviewees are only 'identified' by a number and letter. This was necessary due to the continuing vulnerability of some interviewees who hold temporary visas. The letter 'A' refers to refugee participants. The letter 'B' denotes a visitor and the letter 'C' denotes interviewees who worked at several onshore detention centres.

The qualitative research involved 28 formal face-to-face interviews with refugees, asylum seekers, former employees and visitors to refugee centres. These interviews were generally recorded onto a digital recorder. On a number of occasions extensive verbatim notes were made during the conversation. This initial research phase also included informal meetings

and conversations on the telephone with those interviewed and with fifteen other refugees and visitors who were not formally interviewed. Many others were approached but were reluctant to speak of their experiences and decided not to participate in the research. Four people decided to withdraw from the research on the day of the interview.

During 2002 and 2003 I interviewed fourteen refugees in various locations in New South Wales: Sydney, Mudgee, Cootamundra and Young.

Interviews were conducted in Melbourne in November 2003. In total eighteen refugees were interviewed. The participants came from a range of cultural backgrounds. The majority were of the Hazara Shia minority from Afghanistan (11); others were Sri Lankan (2), two men from Iran, another from Bangladesh, and two others were Afghans from the Tajik community. With the exception of two men, the refugees had been living in the community for less than one year. Seventeen of the refugees were male and all the refugees were under forty years of age. The disproportionate number of men to women is a reflection of the relatively larger numbers of men detained in comparison to women. In addition, although I talked with several women about the research, they declined on the grounds that any discussion of their detention was distressing.

During the initial stage of the research I was interested in making inquiries into qualitative variations in understandings and experiences (Ashworth & Lucas 2000). Each narrative is singular, as the experiences differ in a multitude of respects between individuals, between detention centres and over time. Nevertheless, as the research progressed, striking similarities emerged.

The period spent in detention varied markedly between interviewees. Two men were only held for a month, the rest were detained for more than three months, and eight men were detained for more than two years. According to DIMIA in 1999 around 55% of detainees were held for less than three

months (Crock & Saul 2002, p. 79). By 2002 the average time in detention for Afghan refugees had increased to five months, after the government decided to stop processing the claims following the 2001 United States invasion of Afghanistan and the fall of the Taliban regime (Crock & Saul 2002, p. 80). Those detained for the longest periods expressed the greatest frustration and anger over their incarceration. Of the eighteen refugees interviewed, two would have been deported if they had not received substantial assistance from visitors to the detention centres.

I also interviewed ten people who were either regular visitors to detention centres or had worked in them. Of these non-refugee participants, seven were female and all were over forty years of age. The disproportionate numbers of women is a reflection of the gendered dimensions to refugee activism. At a glance it seems that significantly more women than men have become active in the campaigns around immigration detention. More specifically, more women than men appeared to visit detention centres and write to detainees.

I then began to investigate experiences of offshore detention and incorporated hundreds of letters written by asylum seekers detained on Topside Camp on Nauru. I draw on 172 letters written by forty asylum seekers to seven people in Australia. Letter writers are denoted by the letter 'D' and the letter 'Z' refers to their Australian correspondent.

Letters rather than interviews were a necessary research tool because at this time (mid-2003) few refugees detained on Nauru had been resettled in Australia: most had either been resettled in New Zealand, were still detained on Nauru or had been repatriated. I was aware that a substantial number of letters had been written by asylum seekers which gave accounts of the largest camp: Topside.

Aside from a handful of refugee activist websites¹⁴ there were few sources of information on the workings of the Nauru camps. The Australian government published very limited information but did provide some details in relation to cost and the changing number of people held offshore. Between 2001 and 2004 no researcher was permitted to officially enter Topside camp and speak with detainees¹⁵.

This thesis draws on some of the thousands of letters sent by asylum seekers detained on Nauru. This letter-writing campaign was initiated by a small group of Australians concerned that asylum seekers were being detained with no juridical rights on Nauru and Manus Island. In late 2001 an asylum seeker sent to a Melbourne barrister a list of names (and the numbers assigned to each asylum seeker) of those who wanted to receive and send letters.

Between 2001 and 2003 phone and email access to Topside was virtually non-existent and these letters were the only reliable means of communication with those outside Nauru. The asylum seekers detained at Topside (numbering over 1,000 in 2002) had been cast adrift from Australia and had limited presence in the public imagination. Letter-writing was the initial channel through which people in Australia were reminded of the detainees' existence. The letters were written in English and date from December 2001 to March 2004. Most writers were young male adults, but some letters were written by women and others by children and teenagers.

I sought to find a representative sample from these letters and thus to detail a range of experiences in order to offer a complex evaluation of life and conditions in the camp.

¹⁴ Activist websites on Nauru included www.nauru.org or www.sparerooms.org

¹⁵ In 2002 a journalist and refugee activist did visit some detainees at Topside camp. By 2005 the majority of asylum seekers had either been repatriated or resettled. And a lawyer and

There were five critical limitations to this approach.

First, many letter writers were restrained by a rudimentary knowledge of English and few chose to write in their mother tongue. Letters written by people with minimal English tended to be short and often copied letters by other writers.

Second, a collection of letters written by an asylum seeker proficient in English to an Australian reader tended to disclose a greater complexity of ideas and details. As the writer and reader established a friendship, the letter writer revealed more about their personality and gave intricate particulars of the changing conditions in the camp. I cited these writers more heavily than others, but many of their observations were reinforced by information contained in other non-cited letters.

Third, some of the letter writers had been repatriated and their whereabouts were unknown. In these cases permission could not be gained to cite their letters. These letters helped to build a representative history of the camp, but could not be quoted directly.

Fourth, few women wrote of their experiences. It is thus difficult to investigate in any detail women's (or even one woman's) lives at Topside.

And fifth, there was an additional ethical consideration: there were dozens of children held at Topside and although I read many letters from minors, I have avoided all but occasional and oblique references to these letters.

Where possible, permission was sought and granted to use these letters. In some cases asylum seekers had already been repatriated and could not be found to gain their permission; but prior to repatriation they had given

researcher were allowed to visit the remaining asylum seekers on Nauru.

permission to their Australian readers/friends that their letters could be shown to journalists and researchers. Topside held many more Afghan asylum seekers than asylum seekers from other nations and the thesis typically draws on letters from Afghan men.

The letters offer a complex account of (changing) conditions in the Nauru camp, and the bureaucratic procedure determining claims for refugee protection; many voice anger, frustration and fear at their continuing incarceration.

These letters, like the interviews or indeed any narrative, are not representations of a 'pure' objective truth; but they do chart significant events in the camp and the changing dynamics and emotional well-being of detainees. Many writers were keen to detail the horrors of the camp to their Australian reader. Letter writing had a political purpose as a means to inform Australians of the conditions in the camp. The writer also hoped that their readers may help them in either securing their release or in providing materials that would make life at Topside marginally more tolerable.

Generally the writer revealed more of their character as they became familiar with the reader/friend. The writer would describe more about their life before detention: their family, their occupation, political and religious views, aspirations and the reasons for their flight. Their humour and changing emotions became palpable.

As a researcher reading these letters I was drawn to the personalities of the letter writers, but for the thesis I avoided revealing personal information that might reveal the identity of the individual writer, many of whom still live precarious lives. I was interested in differences of experiences but also looked for repetitions and similarities in the accounts. These repetitions are crucial in critiquing the mechanism of detention at Topside and in

substantiating specific allegations made against the Australian government.

A handful of letters made allegations that were not reiterated by other writers and in these cases I have not recounted these claims.

Together the letters and interviews offer an extraordinary and disturbing account of Australia's detention regime. These are stories of a raw existence. For Primo Levi (1988) the survivors of the Nazi concentration camps were marked by their survival and the role that both accident and decision-making had played in their survival, when others had died. The survivors spoke by proxy for the dead - for it was only through death that one could know the whole truth of the Lagers. Levi reminds us that in the narratives of bitter survival there are stories of despair, trauma, guilt and anger - but also of transformation and sometimes hope.

One final point before moving into the main body of the thesis is the use of past and present tense. Although the thesis concentrates on the period between 1999 and 2003 I have generally favoured using the present tense where (most) detention practices remain unchanged. There have been small shifts in procedures but there has not been any significant reform of government policy. The use of mostly present tense is a reminder that a myriad of rigidly constraining mechanisms continue to be used against the detained asylum seeker.

Chapter 1

Immigration Detention: A State of Exception

Abstract:

Immigration detention operates with manifold contradictions. Within this site the life of the detained is reduced and managed by rigidly constraining systems. Yet under international law the Australian state is obliged to hear asylum seekers' claims for protection. Detained asylum seekers can uncover a complex raft of procedural and appeal rights. The state has not withdrawn in totality its obligations to the possibility that the undocumented asylum seeker can also become the 'man of rights', the refugee. This chapter examines some common factors of detention described by former detainees, to explore the inherent uncertainty of the detention space. What unfurls is an administrative system that funds a site of exception. The unremitting surveillance, atomised and entrenched acts of violence, the complexity and uncertainty of the bureaucracy, the fear of deportation and the apprehension of continued incarceration permeate the system. Giorgio Agamben's critique of the state of exception frames the discussion, bringing to the fore the exceptional space of immigration detention.

When we landed from aeroplane from Adelaide we saw a very beautiful place. We didn't see a place like that before... They took us to Woomera Detention centre by bus. [When we left Adelaide] it was night time and we saw many people in the street. But we were very unhappy because we were going to a sort of prison and we saw people going very free. There were some concerns although we had almost ended a very dangerous and scary journey (A1).

[The] Australian Government does not 'lock up' refugees, nor does it detain people for seeking asylum. We do, however, place people in detention who arrive unlawfully until their asylum claims are determined and we find out who they are [and] where they are from... They make a lifestyle choice to travel to Australia, breaking the laws of many countries along the way (MPS 2002).

The intensity of the heat is the first thing the nurse recalls as she speaks of her work at the Curtin IRPC. The now closed Curtin centre lies in the remote northwest of the Kimberley region. When she arrived, soaked in sweat, she remembers staring at acre upon acre of red dirt and rows of shipping containers. Few asylum seekers were visible, with most resting as a way to escape the searing March heat. It was like ‘a nuclear blast’ (C1).

She first worked at the Curtin detention centre in 2002 and was struck by its inhospitable terrain and seclusion. But speaking eighteen months later and after working at the Baxter IRPC in Port Augusta, she recalls that vast red acreage with a little fondness. For, unlike at Baxter - where asylum seekers were confined within highly monitored and segregated spaces - at least at Curtin, detainees could walk around the entire compound.

The nurse, like many who enter into the confines of detention, was hit by a sense of entering into a place that ‘isn’t Australia’ (B1), but rather is alien territory – an excised zone removed from civil and juridical standards. It is a space that functions apart from normative codes.

The Australian government has identified unauthorised asylum seekers as in its view dishonestly attempting to circumvent Australia’s immigration processes; and the indefinite incarceration of undocumented asylum seekers is positioned as ‘in the national interest’ (MPS 1999a). This underlines a practice that reiterates state rights over territorial boundaries.

The primary purpose of the Migration Act (the Act) 1958 is to regulate, in the national interest, the entry and presence in Australia of people who are not Australian citizens...Immigration detention is an important element of this overall approach to the integrity of Australia’s entry arrangement (DIMIA submission to HREOC undated).

Immigration detention removes people from the workings of civil society. Asylum seekers are incarcerated regardless of their age or health, without being

charged with any criminal offence, and they face detention without temporal limits. Australia is not alone in trying to restrict the entry and quicken the expulsion of unauthorised asylum seekers; but as McMaster (2001) and Mares (2002) identify, the Australian detention system is notorious as one of the most unyielding among modern democratic states.

This chapter identifies immigration detention as a site that is simultaneously unpredictable and tightly controlled. The randomness of detention operates both through the actions of detainees (the focus of the following chapter) and at the level of those agents who are part of the management of the detention regime.

The chapter distinguishes specific mechanisms that compose the exceptional state of immigration detention. Particular attention is given to detainees' experiences of incarceration without temporal limits, the opaque refugee processing system, the tight controls over daily life and threats of physical violence. As a regime, these mechanisms have the capacity, over time, to disable to a point of bare life – to reduce the detainee to a minimum of biological existence.

A Currency of Distrust

Agamben's stark account of the refugee as the *homo sacer* of modernity (1998) offers a broad frame from which to tease out the detention regime. He suggests that the refugee occupies a contradictory space in which law is used to postpone law, and in which the juridical subject of modern capitalist democracy is suspended outside the realm of subjectivity. This is the condition of exception.

Agamben's account offers an overarching frame for unravelling the complex layers of violence directed toward the undocumented. Yet his theoretical

exposition suggests that modernity is fixed on a stagnant horizon.¹ Thus his critique is utilised here without necessarily endorsing Agamben's conclusion that 'the camp' is central to modern political life.

Agamben identifies the refugee as the modern *homo sacer* but makes no distinction between the undocumented asylum seeker and the refugee. In any exploration of Australian detention policies it is critical to differentiate between the status of refugee and the status of asylum seeker.

In Australia detention operates on the assumption that the identity, and thus the subject status, of an undocumented asylum seeker is still to be verified. The asylum seeker is stateless and non-subject as soon as he/she tests the barriers of the national space.

In detention the veracity of a person's name, history, experience and even emotions is suspect. Everything they knew and understood about their self is now on trial. The camps have no outside, only a tenuous past somewhere else and a hazy terrain that can barely be described as a future.

The moment there is agreement between the state and the asylum seeker – once their refugee status is confirmed - these polarities are removed. Only the state can confer and recognise the subject, and the refugee by legal definition has been reconfirmed as a subject of a state. Once an asylum seeker is recognised as a refugee and leaves the detention site he/she is allowed to reclaim her/his subjectivity through the state moving them through the delicate tendrils of recognition.

Immigration detention is a transit zone. There is a regular movement of people into and out of detention centres. For those whose experiences and histories are

¹ In 2004 Agamben argued '...the state of exception, or state of emergency has become a paradigm of government today. Originally understood as something extraordinary, an exception which should have validity only for a limited period of time, but historical transformation has made it the normal form of governance' (Raulff 2004).

confirmed by the state, detention is eventually an entry point into Australia. For those whose claims are dismissed, detention is ultimately an exit (repatriation to homeland) station. Whilst interned the asylum seeker is insecure – they cannot assess if they will be verified, or dismissed and forced to depart.

It is thus critical to unravel the mechanisms used in this questioning of the asylum seeker and their truth. Whilst in immigration detention all detained asylum seekers are held under suspicion. The conditions of exception are underpinned by this currency of distrust.

Non-Criminal Imprisonment

The suspension of the juridical subject is initiated by the act of imprisoning people who have committed no criminal offence. Immigration detention centres are not prisons – for prisons are still interwoven with the social world outside their walls. Detention centres are excised from the daily workings of society. There are parallels between jail and detention systems in relation to the architecture, security and systems of punishment; but unlike prisoners, detained asylum seekers exist outside the usual, accepted parameters of modern civil society and the ‘rule of law’ in that they cannot assume the principles of privacy, natural justice, rights to education, work or movement.

The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) is responsible for executing immigration detention policy. There are external bodies that concern themselves with the treatment of detainees;² although they have the capacity to review and report, they have no power to compel the government to act on their recommendations.

² These organisations are the Human Rights and Equal Opportunity Commission (HREOC), the United Nations High Commissioner for Refugees (UNHCR), the Immigration Detention Advisory Group (IDAG) and the Commonwealth Ombudsman. The government-appointed IDAG is the only monitoring group allowed to freely enter the centres.

The Department of Immigration has a permanent and daily presence at all centres and provides detention centres with a list of standards and measures to be followed.³ These standards cover a range of issues including physical care, health, security and the complaints mechanism but the detention centres' levels of compliance with these standards have been questioned (HREOC 2004a).

This thesis is primarily concerned with the period 1999-2003 – five years during which Australasian Correctional Management Ltd (ACM) managed the day-to-day operation of Australia's onshore immigration centres. ACM also manages private prisons in several Australian states. The partnership between the department and the managing company is complex;⁴ but both have a duty of care and responsibility to detainees. The decision-making capacity of the management company covers the administering of punishment, including segregation of detainees. In August 2003 Global Solutions Limited, Australia (GSL) signed a contract to operate all the Australian immigration centres.

On entry into this space DIMIA ascribes each individual with a set of numbers. In the period under focus detention staff frequently referred to detainees by this number rather than by their name.

Asylum seekers are physically held away from the community. The architecture and security of detention centres mimic prison: they are surrounded by four to five metres of palisade fencing backed by razor wire, and usually electronic surveillance.⁵

³ A list of standards found on the DIMIA website at: www.immi.gov.au/detention/standards_index.htm

⁴ The commercial-in-confidence agreements between the company and DIMIA, and the subcontracting of key services within immigration detention centres shroud the exact workings of this partnership.

⁵ The secured, enclosed space of detention is positioned as a preventative site that may discourage would-be asylum seekers. In 2001 the Immigration minister said: *We go out of our way to ensure the detention centres provide as much amenity as reasonably possible without making them holiday camps. Without making them an incentive for people to come in the first place (The Inside Story 2001).*

The Baxter IRPC, near Port Augusta in South Australia, is enclosed by a 9000 volt electric fence in addition to the razor wire. Guards patrol the perimeter fence. The specifically constructed centre has nine separate compounds, separating detainees not only from the world beyond detention but also from each other. The detainees' gaze cannot move beyond the enclosed space of the compound. The physical constraints are so tight that only with permission and while accompanied by detention staff can detainees move from one compound to another.

... everyone had to be transported. So you had to get a vehicle with an officer and they (detainees) would be signed out and 'wanded' for security reasons and go out through double gates, one lot of gates into no mans land and another lot of gates to the vehicle where they are handed over to another officer brought to medical where they are brought to an airlock area, 'wanded' again into medical. Such an enormous performance for the simplest problem.... The centre is surrounded by electrified fencing. There are even wired corridors between compounds, it looks like the worst kind of high security prison... It is impossible to look out (C1).

The architectonics of Baxter prevents large groups of asylum seekers from congregating in one area. It also prevents detainees from cutting the wire to escape, as had been done at other camps, and from seeing people beyond their small enclosed space.

The setup at Baxter is such that you could have 10,000 protesters outside and the detainees wouldn't know it. Because the compound is so far from the perimeter fence on three sides it's military territory, so really no one can get within cooee. You couldn't throw anything in, where you could at Christmas and Curtin (C1).

When refugee activists protested outside the Baxter IRPC in April 2003 they could only release balloons into the sky to communicate their presence to detainees. Observers inside the detention centre saw the Centre Emergency Response Team (CERT) dressed in riot gear, helmets, shields, batons - and with guns to shoot down the offending balloons (C1). In March 2005 protesters who released balloons were arrested for breaching the 'excluded airspace' above

Baxter.

In South Australia, the Woomera IRPC sits three kilometres out of the desert town. In the wake of ongoing self-harm protests and decreasing numbers of detainees, Woomera, like Port Hedland and Curtin, was mothballed⁶. When operational it was fenced by two rows of metal bars, about four and a half metres high. Coils of razor wire were strung along the top of the dual fence. A water cannon sat in the dirt and gravel car park (Goode 2002, p. 19) - this was a visual reminder of the force that could be used to quell protests.

These sites are places of heightened state secrecy. Detainees' experienced this impenetrability in the form of being held incommunicado,⁷ with phone and mail contact with detainees difficult and at times all but impossible (B4; B9; B2; Bashford & Strange 2002). One visitor to detention centres said she was told repeatedly by released detainees how they had been silenced:

I heard about what it had been like for them at Woomera, how they hadn't been able to ring their families or contact their families for six months, they had been held incommunicado where they knew nothing about how long they were to be held and what was to happen to them (B2).

On entry to detention many of the persons' possessions - photographs, documents, money, jewellery are removed by staff (Fernandes 2002). Movement is restricted, people cannot work, socialise freely, effectively raise their children or determine their leisure.⁸ In all the material spaces the

⁶ Woomera and Curtin closed in 2003 and Port Hedland in 2004.

⁷ The revelation that an Australian resident, Cornelia Rau, and Australian citizen, Vivian Solon, had been incarcerated brought into sharp relief the impermeability of the detention space. The Department of Immigration intended to deport Rau to Germany after Cornelia Rau claimed to be from Germany. A diagnosed schizophrenic she was only released and placed in psychiatric care after other detainees alerted refugee activists of Cornelia's psychotic state. Vivian Solon was deported to a hospice in the Philippines after being held in detention as an illegal immigrant (Palmer, 2005).

⁸ In 2001 the Federal Ombudsman's Detention Report revealed evidence at every IDC of self harm, damage to property, fights and assaults, which suggested that there were systemic deficiencies in the management of the detainees, including individuals and groups, staff, women and children. The Commonwealth Ombudsman observed that 'immigration detainees

detained body is regulated and surveyed. Detainees have little privacy. Video and guard surveillance is ongoing - even in their rooms ('dongas') and bathrooms. Three times a day detainees queue for food that many described as inedible (A1; A2; A6; A7).

Daily life in detention is shaped by sleep, meals and 'musters'. Every few hours detainees are 'mustered' – that is, they are called and the group is counted and accounted for.

... they would call us by loudspeakers inside the compounds and we were always called by numbers. My number was... I wouldn't say it. I was an interpreter, but they wouldn't call me by my name. I was representing a big community just because I could speak English, but they would call me by my number, not my name... The main counting starts in the morning in the main hall. People would be ordered to come to the gate if they didn't appear in the main hall (A1).

The musters continue overnight as guards ensure no-one has escaped. Staff awaken inmates by shining torches into their faces as photo identification is checked. 'Sometimes they would wake you up at midnight and some people didn't know English and there were problems' (A1). The enforced limits of detention diminish the non-subject, preventing them from maintaining complex identity/person of their past life.⁹

Thousands of people have inhabited the detention space, severed from the community of citizens and deprived of the right to liberty. The non-subject does not even know if or when they will be released from this specific form of incarceration.

have lesser rights than convicted criminals held in jail and... (are) held in an environment that appeared to have a weaker accountability framework' (reported in US Committee for Refugees 2002, p. 24). Another research document found that that 'there is no evidence that standards and scrutiny are specifically set up in ways to effectively minimise the possibility of abuse and exploitation' (Cox & Priest 2005, p1).

One Afghan man who was jailed in Kabul describes his first impressions of Woomera:

When I saw it looked like a jail. First it was very hard for me. Many of the Iraqi people say 'Why are you coming here, we have been 15 months, 2 years why you come?' So I feel sick, headaches, first day very upset... Woomera was a real shock...I thought it was bad conditions. When I was in camp... no difference between Taliban jail and Woomera (A7).

Asylum seekers' minds become fixed upon two dates: the certain day of incarceration and the uncertain day of release. One man kept repeating through his interview with me that he had been detained for twenty-six months. More than two years of his life had been 'taken away' (A4). In detention, the previous life is gone and the future life is unknowable.

Woomera is like a jail, all fence, no trees, some persons sick. After three weeks no news for my visa I got headache and got sick in stomach because I was confused as to why I didn't get my visa. I saw some people, one years, two years no visa, in jail, in Woomera jail (A7).

There are some replication between immigration detention and jail; however, the parallels are limited. In prisons people are jailed for a statutorily defined period coordinated within a criminal justice system. As Holt suggests, detention in-infinitude severs the connection between time and justice (2002, p. 98) and supplies the state of exception. The timeless possibility is inscribed upon the body of the detained and can rewrite identity.

While many claims are processed within a year, thousands have been detained for more than two years, and some longer than five, awaiting the decision of their claims. Others remain in detention for months and even years after being accepted as refugees, waiting for police clearance. Some individuals face a lifetime of detention for 'administrative not correctional purposes' (DIMIA submission to HREOC Inquiry undated).

The indefinite detention of asylum seekers runs contrary to Australia's

international obligations to protect asylum seekers under the Refugee Convention, International Covenant on Civil and Political Rights (ICCPR 1966) and Convention on the Rights of the Child (CROC 1989).¹⁰

Time is all-important - the exact days and months spent in detention are inscribed in memory; yet time can become hollow when detainees have no knowledge of when or if they will be released. Asylum seekers are sentenced to a temporal open-endedness but are also bound by a tightly contained space enclosed by razor wire that strictly marks the material borders of their existence. This is a condition Pugliese calls a 'bipolar spatio-temporal logic' (2002).

Detention may be tolerable if limited to weeks rather than months or years. One Afghan Tajik who is now living with his family in rural NSW remembered the six weeks he spent in Port Hedland in 1998 thus: 'Port Hedland for me very good. Good for food, bed, everything good. Morning go to eating and then lunch time and then after night time and watch TV and video. [There was] sport - football, volleyball' (A9).

Holt (2002) and Bashford and Strange (2002) draw compelling parallels between immigration detention and prisoner of war internment camps. There are connections and tensions between the conditions of 'exception' and the conditions of 'war'. The internment camps of World War II also detained non-criminals indefinitely and spatially isolated them from the Australian community. The heightened secrecy and security allowed by remoteness enhances the ability of the state to enforce the non-subject's continuing disconnection and dislocation.¹¹

¹⁰ The ICCPR extends a system of protection for those who may not be recognised as refugees, as defined by the Refugee Convention, but would face persecution if returned home. It confirms that no one should be subjected to arbitrary arrest or imprisonment. The CROC provides the same safeguards for children regardless of whether the children have been recognised as refugees or whether they are asylum seekers. These rights include the right to education and freedom of movement.

¹¹ When the remote Port Hedland detention centre became operational in 1991, the human

For Holt, detention centres are more akin to internment camps than prisons: there is little freedom of movement and little or no right of appeal; and there is no differentiation between relative needs, claims and personal situations -

...all of which would have been taken into account prior to 'normal' imprisonment. Moreover, there exists an overwhelming sense of incapacitation, and, perhaps above all, an acute visceral sense of being suspended in a legal, social and cultural limbo, which can only occur when reasons are not presented, situations left unexplained, and time left vacant and unbounded (2002 p. 98).

The detention regime and the actions by the military against asylum seekers on the MV Tampa speak of a low level war; but in this 'war' the asylum seekers did not know until captured that they were the enemy - only in detention does it become transparently clear that that they have entered a war-like zone.

The parallels drawn by Holt (2002) and Bashford and Strange (2002) are apt, but there is a tension between 'state of war' and 'state of exception'. Prisoners of War are disciplined by the 'rules' of war. But the 'war' against undocumented asylum seekers is a dirty war, in which the interned have no sense of their part until captured. Many had fled declared civil wars only to enter another, unofficial, undeclared conflict zone.

Questioning Claims

The condition of exception is not only bound to imprisonment-in-infinitude but is also bound to the process of bureaucratic fact-finding. The detainee's history and truth is always suspect. Asylum seekers can fall into a void, entangled in a mesh of departmental and judicial rulings. The asylum seeker's claim for protection is processed through numerous complex administrative and legal

rights lawyer Nicholas Poynder recognised that:

There is a desire to deter those already here from continuing their applications for asylum. In effect, to persuade to give up and go home. I believe that the establishment of the detention centre in Port Hedland is crucial to this policy.... their enforced movement to the isolation and heat of Port Hedland had been a deliberate ploy to take them away from these comforts and make things harder for them (Crock (ed.) 1993, p.67).

channels. An orderly processing system is operational; yet there is no guarantee that this process will be followed precisely or transparently. There is a highly random and chaotic system of processing that continually exposes the asylum seeker to the possibility of repatriation.

In Australia only a minority of detained asylum seekers have been accepted as refugees. Of the 3,980 people who arrived 'unauthorised' between 1989 and 1998, 615 gained refugee status, 75 humanitarian entry status,¹² 2648 were expelled, 654 remained in custody, and 6 had escaped (DIMIA 1999a).

The Inquiry into the detention of Cornelia Rau claimed that there were serious problems in the handling of cases and that these stemmed from 'deep seated cultural and attitudinal problems within DIMIA and a failure of executive leadership in the immigration compliance areas' (Palmer 2005). Of the most recent undocumented arrivals who have largely come from the Middle East and Asia - in particular, Iraq and Afghanistan - a significant percentage have been assessed as refugees. In the year ending June 30th 1999, almost all Iraqi (97%) and Afghani (92%) arrivals were recognised as refugees (Crock & Saul 2002, p. 33).¹³ This unusually high acceptance rate was in part due to Australia's recognition of the extreme brutality of the Afghan and Iraqi government regimes. Yet the Australian government consistently referred to these unauthorised asylum seekers as not *bona fide* but rather as 'economic migrants', 'queue jumpers', 'illegal' or possible terrorists (Klocker & Dunn; MPS 2002; Mares 2001; Crock & Saul 2002, p.31).

On entering Australia but before entering detention, undocumented asylum seekers are interviewed. If they are not immediately put back onto a plane (which occurs regularly), they are incarcerated.

¹² A Humanitarian entry visa recognises a person is not classified as a refugee as understood by the UN Refugee Convention, but the Australian state issues a visa for other humanitarian grounds.

¹³ Over the last twenty years Afghanistan has spawned the world's largest refugee community.

People are incarcerated even though many undocumented asylum seekers have fled violence, faced threats of imprisonment, torture and death. Some have escaped in the wake of state militias killing a member of their family; others have fled after guerilla groups tried to coerce them into fighting. Asylum seekers are always in some sense bereaved – and their trauma is exacerbated on entering detention, a space of multiple unknowns. Many talk of insomnia, headaches and depression: ‘... sometimes I would get up at night, and I have a shower and I would cry about what was happening’ (A4).

In detention and before their second interview, an asylum seeker is separated from other detainees - they have no access to the telephone, cannot read newspapers, watch or listen to the news. They are held isolated from family and friends and are unable to contact any family living in Australia:

When you first arrive, before you have given your interviews, they don't let you listen to the news or read papers, newspapers, before we would give interviews. After you give interviews take to different compounds. You can get some information and see TV sometimes and get the news (A1).

According to DIMIA, segregation is necessary to prevent other detainees ‘coaching’ new arrivals on how to present their accounts (submission to HREOC Inquiry, undated). New arrivals are not told of their legal entitlements unless they make a specific request for such advice. In this isolation unit a DIMIA official interviews the asylum seeker to determine identity and to decide if the detainee triggers Australia’s ‘protection obligations’. There are no lawyers or others present. When the US Committee on Refugees compiled its report on the Australian detention system it found that these entry interviews were often held late at night and in hurried conditions (US Committee 2002, p.18). The content of these interviews can be used against an asylum seeker later in the process.

Many asylum seekers are ‘screened out’ (deemed not in need of protection) at

this initial point - although a more senior bureaucrat reviews a negative decision. After this review a person is subject to deportation. People are routinely screened out if they do not use certain phrases such as being 'in fear for their life', or if they fail to specify that they are seeking asylum, or to give details of why they fear going back to their country.

Detention centres are the physical structures of a bureaucratic assumption: You are deceptive. The character and history of the asylum seeker is under examination, and the verification of stories is held with DIMIA. Distrust is the underpinning currency through which all relations within detention take place. The Department distrusts the asylum seeker, the asylum seeker comes to mistrust DIMIA and asylum seekers begin to distrust each other. This bedrock of suspicion is recognised by many asylum seekers (Browning 2005) and admitted to by the Department of Immigration:

Decision-makers are trained to ensure that all issues are thoroughly and objectively examined and resolved before proceeding to make a decision. In considering an application and issues of credibility, decision-makers are required to critically and objectively test the reliability of information provided in the face of possible efforts by some individuals to present a coherent but fabricated account (DIMIA Submission to HREOC Inquiry undated, p.11).

Detainees are assumed to be bogus and non-subject until state officials prove they are refugees and reconfirm their subject status. Only then can these people be released.¹⁴

One interviewed refugee was suspected of being Pakistani rather than Afghani because he spoke English.

¹⁴ The majority of asylum seekers (both documented and undocumented) are denied refugee protection. This however doesn't mean that the reasons for seeking asylum were fabrications. Rather it in part reflects the limited definition of 'Refugee' under the UN Convention. The legal definition of refugee applies to a narrow range of people who are victims of politicised forms of state persecution.

Q. Did you have problems because of your English... did that set you apart?

To some extent, yes. My case officer suspected me of not being an Afghan just because of my English skills. He suspected say you might be from Pakistan. 'When I see you or hear you are not the sort of thing you are describing yourself as. You always speak before the translator could have translated'. Yes they were some problems, yes they would say: 'Your English accent is not from Afghanistan, it is actually Indian, so you might be from Pakistan' (A1).¹⁵

After nine months, this school-aged boy was released and given temporary protection. Others have been deported on the basis that DIMIA determined the applicants were Pakistanis and not Afghans as they had claimed.

It is departmental policy not to tell applicants where they are up to in the process (B4), and asylum seekers are routinely unaware if they are to be deported or admitted. When asylum seekers are screened out, they are segregated¹⁶ - but are not informed at this point that they have been screened out, nor advised as to their right to reapply. Once documentation is finalised, the state can deport the asylum seeker.

If an applicant is successful at the initial interview, they are moved into the main compound. Here they have a second, more substantial interview. Each person is assigned to a DIMIA protection visa officer and a registered migration agent. Interpreters are provided for this interview. A number of refugees have said they had no sense of whether they were to be deported or released. A young man who fled Afghanistan when he was sixteen remarked:

¹⁵ DIMIA was concerned that Pakistani nationals were masquerading as Afghan asylum seekers (A6; B1; B9; Macken 2004). In December 2004 a family of seven was returned to Pakistan, despite the government having originally granted the father a TPV on the basis that he was a Hazara refugee from Afghanistan. The Department of Immigration now believed the family was from Pakistan. His family had spent four years in detention. Once deported to Pakistan the family made their way back to Afghanistan.

¹⁶ In 2002 it was reported that a six-year-old boy, Shayan Badraie, was hospitalised after refusing food and water and to speak. His family was rejected as refugees and placed in Woomera's Sierra compound, where the child witnessed other detainees brutalising their bodies (B2). In 2006 the NSW Supreme court approved compensation for Shayan Badraie after he sued the Commonwealth government on the grounds that he was psychologically damaged by his detention.

We actually don't know anything about our freedom. That is one of the reasons why people are very frustrated and depressed. Because you know if you make friends after some days your friends would be free. And you gradually lose your friends. Nobody knows about their visa until maybe one hour or two hours before they get them. Same happened to me (A1).

The processing time from application to primary decision varies; but of the refugees interviewed for this research, only two were released from detention within three months. The others, even those who were accepted after the second interview, were detained for more than eight months.¹⁷

A failed asylum seeker can apply to the Refugee Review Tribunal (RRT) to appeal the decision. A single tribunal member assesses the appeal. The majority of appeals are rejected by the RRT. The detainee can seek judicial review, on very limited grounds - to the Federal Magistrates Court, the full Federal Court and then the High Court. If it is found that the RRT erred in law then the case goes back to the RRT. Lastly an asylum seeker can make a request to the Minister on humanitarian grounds. It is when all of this is exhausted that the detainee will face imminent deportation.

It is a complex system, one of the most complicated in the world. In its submission to the Senate inquiry (2000), into the refugee process the Australian Law Reform Commission argued that Australian migration law was infinitely more complex than the British or Canadian equivalents - and that because of its complexity, applicants should receive legal advice.

Asylum seekers are generally held in relative ignorance of the process they are dealing with:

¹⁷ According to DIMIA in 2001 the average time to process an application was nine to ten weeks (US Committee for Refugees 2002 p. 20). If the application is successful and after security checks are finalised - which can take months - a detainee is released. If it is not successful an asylum seeker can then appeal to the RRT and then the courts.

We don't know what's going to happen tomorrow, if we are going to be released or deported. I know an African boy, he has been there four years – four years! He eats, sleeps, he has no choice. If he wants to escape he can escape. He doesn't want to. If you escape, you can't walk, if you see the police it's the same feeling as if I was in my own country, no point to leave here (A4).

For this Sri Lankan man there was always a fear of sudden deportation:

Sometime some Sri Lankans are deported and they don't know they are going to be deported. The white coloured van arrives and they just take him. If I see the white van, my heart beats very fast because I don't know if they are going to call my name and deport me too... it's very very hard (A4).

In 2005 the Edmund Rice Centre released a report documenting the cases of forty individuals who had been repatriated despite facing serious risks in their homeland.¹⁸ Of the refugees interviewed for this thesis, four men said that they would have been repatriated were it not for the direct intervention and continued actions of people outside detention. All four refugees were detained for more than two years.

Since 2003 the Australian Government has confirmed the deaths of three men who were refused Australia's protection and returned to their country of origin: Ahad Bilal (Pakistan), Alvaro Moralez (Colombia) and Mohammad Mussa Nazari¹⁹ (Afghanistan).

Columbian Alvaro Moralez's claims for refugee status to Australia were refused in December 2001. According to DIMIA Mr Moralez departed voluntarily. He

¹⁸ The extent to which the Australian government sought the repatriation of Iranian asylum seekers includes its signing a Memorandum of Understanding (MOU) with the Iranian government in March 2003. The MOU allows for the 'voluntary repatriation' and forcible removal of Iranians from Australian detention centres (MPS, 2003a) despite the very real possibility that some returnees will be imprisoned. For twenty years human rights groups, including Amnesty International, have documented human rights violations by the state against the Iranian community. Those who have arrived as unauthorised asylum seekers in Australia have, according to one report, encountered systemic bureaucratic indifference to their plight (<www.erc.org.au>).

¹⁹ Mohammad Mussa Nazari was detained on Nauru and his death is discussed in chapter five.

was shot by the paramilitary in 2002. According to one report:

Alvaro was one of many Colombians who came to Sydney to escape the paramilitary. They were part of a New Colombia Movement in Australia, which held a peaceful protest at the Colombian Consulate on August 28, 2001. His story is buttressed by the evidence that another of the protesters, DB, has disappeared since leaving Australia and arriving in Bogotá airport. DB was also detained and interrogated in Buenos Aires en route to Colombia. Human rights activists suggest there are disquieting elements about the way Alvaro Moralez and other Colombians have been treated by the authorities in Australia (Leavey 2002).

In 2002 a young Pakistani man, Ahad Bilal, was detained at Villawood. He told the Immigration Department that his grandfather and uncle had been killed by a drug-smuggling network operating in north Pakistan. Ahad's life was threatened by criminals and was thus not covered under the ambit of the Refugee Convention; therefore his bid for refugee protection failed. From a newspaper report it appears a migration agent failed to properly advise Ahad and the eighteen-year-old was not given the time to arrange travel documents to meet his parents who were living in the United Arab Emirates. Instead he was deported back to Pakistan - and four weeks later, he was murdered. He was found by his sister-in-law vomiting and dying from a massive shot of heroin (Macken 2004).

Lost in Translation

The currency of distrust affects all in detention. The Department suspects the asylum seekers, who in return learn to mistrust the officials – particularly the guards, DIMIA officers and translators.

The translation of people's claims can operate in a Kafkaesque manner. Poor translation can misrepresent a history or lose its entire impact. Former detainees detail a decision making system that is not only dependant on the capabilities of interpreters but also offers little recourse if a story is

mistranslated.

One man spent two years incarcerated at Villawood detention centre in Sydney because of mistranslation. When he landed at Sydney airport, unable to speak any English, he was interviewed by airport officials. A translator was present, but not a registered translator - an airport worker.

I got a translator... my life turning point. A translator, not a Sri Lankan, but an Indian. He was a good guy. [But] he didn't pass on all the information. If I say LTTE [a Tamil organisation] he doesn't know what I'm talking about. He wasn't a translator, he was just working there. I didn't know if he was translating well or not because I didn't speak English. He is not Tamil, but he can speak some Tamil. Like I can speak English but couldn't be a translator (A4).

This farmer spent the next twenty-six months in detention as a result of this mistranslation. He was rejected after his initial interview with a DIMIA case officer. When he appealed to the Refugee Review Tribunal, with appropriate translators, he was asked why he had not given as full an account at the airport - it was assumed by the RRT that he was now embellishing his story. DIMIA officials claimed they only ever used registered translators. He remembers:

I go to the Tribunal and the Tribunal interview me. And they interview me for about two to three hours and at the end the member said 'Your case is strong, why didn't you say this at the airport?' I said I told them and he said maybe translator didn't say. He says OK, I'll check with the airport. He called the airport and they said no, we only used telephone translators. So the member he thinks I am lying, because they don't have proof for the translator. They called me in the afternoon, and said they were coming... 'You were rejected.' I was very sad.

He then appealed to the Federal Court. Again, when the court checked with the airport, the officials there repeated that they only used registered translators.

After the second rejection I went to the Federal Court. I didn't get a lawyer, I went myself. I lodged myself and I speak with the judge. I said 'this is a problem, please check with the airport.' He checked and again the same answer: they only use telephone interpreters.

He now faced deportation. This was only prevented as a visitor to the Villawood detention centre provided the money and assistance to seek documents through Freedom of Information. Amnesty International also became involved in his case.

... a sister [nun] said to me 'You have to write to find out the interpreter.' She writes the letter and pays for me \$30 and she puts it in to FOI. They rejected me and they send the money back because they couldn't give me the information because I wasn't a legal person. Then Amnesty puts the money in to FOI and they got the information. When they got the letter Mr Clugston [from Amnesty] sent me a copy and I feel I'm a little bit saved not 100% saved.

The Freedom of Information documents revealed the use of the airport worker as translator. Amnesty then applied to the Minister of Immigration to use his discretionary powers to have the man released.

They were getting ready to deport me at the end of 1999 [then] Amnesty writes to Minister: 'Please don't deport him', and after one year I got from Minister I got a 48b section and I could re-lodge my paper. The minister used his power. I lodged the paper and I got it and then I was released... I was happy but also sad for my friends inside, because we have a community. They are also happy because I'm going out but in my heart I am sad... but I thank god...I stayed in Villawood totally 26 months, it takes too long.

This young man now lives with other former detainees and with a permanent visa. If he had been detained at one of the centres on the edge of the continent - with fewer regular and determined visitors - he may well have been deported.²⁰

²⁰ An interviewed Iranian asylum seeker detained at Port Hedland and then Villawood described needing help with his High Court case. A visitor to Villawood, concerned at his deteriorating psychological condition after more than two years of detention, 'became involved with the case' in January 2002. She sought a barrister and migration lawyer to take on the case *pro bono*. She eventually found a barrister and worked for weeks trying to uncover evidence that the RRT had erred in law. On the eve of the High Court hearing, DIMIA conceded that there had been mistakes with the RRT hearing. There were numerous errors in the RRT hearing, mistakes in translation, the migration agent was cut off the line for much of the hearing and so the detainee was without legal representation. The High Court allowed his case to go back to the RRT for a third time. The activist then made telephone calls 'all over the world' to find new evidence for the RRT hearing. Her evidence was drawn from country information and journalists. Finally a 23 page submission was provided to the RRT - which did not accept the whole submission, but accepted enough to recommend that the man be given a permanent protection visa (A10; B3).

Poor translation is a problem described by detainees from diverse language groups. There is evidence that the Afghan Hazara asylum seekers who arrived in Australia from 1998 have faced a particular problem with this (Macken 2004; various letters from Nauru; A1; A6).

In a study of enmity in Bosnia, Kaplan interrogates the 'visceral sense of the past' which continues in the aftermath of trauma (1993, p. 3) and the capacity for old enmities to be played out in a new setting. This critical point resonates with the experiences of groups of Hazara Afghan asylum seekers.

It is estimated that the minority Hazara community make up around 80% of the recent Afghani asylum seeker population (Maley 2001); but various Afghan regimes have persecuted these Mogul descendants of Genghis Khan in the name of religious and ethnic differences. When thousands of Hazara asylum seekers began arriving in Australia from 1998 the Department of Immigration drew many of its interpreters from the previous wave of Afghan refugees - those who had fled to Australia during the 1980s in the wake of the Soviet invasion. These were almost exclusively Pashtuns. But there is deep cultural and religious animosity between the minority Hazara and the majority Pashtun and Tajik Afghan communities. Within detention these past hatreds could be reignited.

One teenager detained at Woomera during 2001 explained that whilst his English was good enough not to need a translator, other Afghan detainees feared using some of the interpreters:

...some interpreters are not very honest with their duty. Some of them have hatred for Hazaras. Some of them are Tajiks or Pashtuns so they have hatred and prejudice for the Hazaras. Before the interview starts, you know the interview is taped so before the tape starting, each interpreter would threaten the detainee 'If you do this, I will do this' so yeah.

Q. What kind of threats?

There was an interpreter, I have forgot his name, and he would take us and say you are a Pakistani, you must tell the truth that you are a Pakistani and I know that you are a Pakistani, because I can recognise an Afghan and you're not an Afghan, so you must tell the truth or otherwise will get the truth at last. They would say 'Who else is Pakistani inside the detention centre, you must also tell their name'. They would always make us afraid. But some of the interpreters were really good and they would not tell us things like that (A1).

According to a newspaper report, two interpreters and translators used extensively in Woomera, Port Hedland, Curtin and Nauru were Pashtun Afghans:

Malyar and Sayar Dehsabzi are Afghan-Australian brothers. They work as migration agents through their company, Ethnic Interpreters & Translators, located in Parramatta, Sydney. Both men have worked extensively as interpreters and translators for DIMIA and are registered migration agents (Macken 2004).

It was alleged that these men had reported to DIMIA that certain Hazara asylum seekers were from Pakistan.

Immobilised

The detainee is suspended outside the realm of subjectivity by the overt mechanisms of imprisonment-in-infinitude, the riddles of refugee determination and the currency of mistrust. Other devices, often mundane, reinforced and compounded this state of limbo.

Detention is a space of enforced idleness. It constrains - removing the exile from the activities of daily life. In this sense it disables the detained from the usual operation and preoccupations of daily life, reducing theirs to a minimal existence. There is a dulled rhythm to detention - musters, eating, sleeping; perhaps English classes, games and piece-meal work. Detainees are immobilised - they can do nothing but wait while their application is processed

and their bodies disciplined and tightly regulated.

When asked what he did during his months of detention one man replied:

'Nothing, I was confused about my family. Just eating and sleep' (A6).

Detention enforces idleness and waiting. People describe hours where they would sit, sleep or wander the perimeter of the compounds. Caught in a space of isolation and obfuscation, theirs is a cycle of boredom, hope, anxiety and frustration.

The physical accommodation in the centres is sparse. 'When I first saw the camp I thought they were shipping containers in the middle of nowhere, there were dozens of them and my accommodation was exactly the same' (C1). At Curtin in Derby these container-buildings could get so hot that people suffered burns from leaning against the joints between the panels. In many of the remote centres the rooms for sleeping have been a series of demountable, air-conditioned metal huts. Such temporary structures are easily removed. The furniture in each room is minimal - beds and the occasional chair. Families and minors are generally given separate sleeping areas from the single adult men. There are communal bathrooms for men and women. There is a room with a television in it, and often an area where tea and coffee can be made. There are other rooms used for classes and communal eating. During the day some attend an English class, or work in the kitchens, or perhaps as translators. Those working are paid a dollar an hour - to spend often on phone cards, cigarettes or overpriced food (B2; B9). One sixteen-year-old, instead of attending the high school, is paid \$59 a week to translate for guards and nurses at Woomera:

I saw that these people were being paid a \$1 an hour I saw the documents from the store where they were forced to buy second hand clothing at exorbitant prices, coke-a cola, mars bars, anything (B2).

English classes are held in all of the centres, but these take little account of varying levels of English literacy: 'Sometimes I would go to English classes but I never found my place in the English classes' (A1). Others tell of wishing to learn

English but being unable to concentrate due to anxiety over their application or what may be happening to their families. One man explained why his English did not improve significantly, despite having access to some English classes for his two years of detention: 'After two months I was sick - what is happening with my case, what is happening with my country' (A4).²¹

For most adults it was exceptional to leave detention except for a visit to hospital or dentist or for an appeal hearing. At Baxter, detainees were handcuffed for medical and dental appointments outside detention. Some refuse their appointment rather than suffer the ignominy of handcuffs. A nurse working at Baxter during 2003 recalls a fax arriving from the ACM head office instructing staff not to handcuff children (C1). One man reports being assaulted by guards after refusing to be handcuffed to the arms of a chair in a plane taking him back to Port Hedland (B4).

But refugees also speak of 'good' and 'bad' officers. Often the program officers, those running the education and sports programs, offer the 'ethics of hospitality' (Pugliese, 2002). 'We had some very good officers. They would sing songs with us. They would find out how our review was and they would ask us if we had any problems with DIMIA or ACM. But the things we would discuss, would never be solved' (A1). At Port Hedland IRPC during 2002 and 2003 the children were allowed out to walk to school. Adults were taken out of the centre to play competition soccer and cricket. In 2002 guards at the Curtin detention centre ignored the brewing of alcohol and late-night drinking by some detainees (C1).

At Port Hedland there was a weekly music class and sewing machines brought in for people to make clothes. There were rooms set outside for Shia, Sunni Muslims and Christians. Every afternoon the women went walking. Anyone who took detainees out wore ordinary clothes so they

²¹Some primary school-aged children would go to school, although access to schools was in a state of continuing flux. HREOC described the education available to children in Woomera as abysmal (HREOC 2004) and in the town of Port Augusta, residents protested against asylum seeker children attending the local school. When children travelled from the Curtin detention centre to school in the township of Derby, they were followed by a van of uniformed officers (C1).

weren't conspicuous as detainees. And at five o'clock in her running shorts and joggers she met the women in their joggers and off they went along the waterfront for an hour. By the time they got back it was pitch dark, anyone could have run away if that had been the intention (C1).

These moments when asylum seekers and staff sang or walked together reintroduced echoes of ordinary life - one of simple pleasures, from sowing seeds to sewing dresses. But these concessions toward the 'everyday' could be withdrawn at any moment depending on a change of ACM management or directives from DIMIA.

Atomised Violence

Physical violence pervades the detention space, and acts of individual violence and intimidation are commonplace. It tended to be men who were both the perpetrators and targets of physical brutality. Men numerically dominated the institution. As Connell points out, masculinities are defined collectively in culture and are sustained in institutions (2000, p.11). In the detention space individual engagement with hegemonic patterns of male violence was commonplace. The following chapter will explore detention as a hegemonic masculine institution.

Agamben refers to the disciplinary practices of punishment as a 'terrible form of intimacy' (1998, p.110) implying a special relation between the individual who is punished and the individual who punishes him. Similarly Foucault writes:

The agent of punishment must exercise total power which no third party can disturb; the individual to be corrected must be entirely enveloped in the power that is being exercised over him. Secrecy is imperative and so too is autonomy at least in relation to this form of punishments (1977 p129).

One man who has been jailed in Afghanistan observes: 'Taliban jail is a small

room, deep, too dark, no air, no food. Woomera [there is] food. [But] Woomera is also dangerous... people going crazy and dangerous and bad for life' (A6).

As they slept asylum seekers would still be enveloped by a punishing power. Each night and at four hourly intervals, guards would shine torches into the faces of the sleeping asylum seekers, even with their photo ID hanging from their bed: '...the guard would know the detainee well but I have no doubt there are officers who shove the torch in their faces or give a shove with boot and say roll over, can't see your face' (C1).

These systems of punishment operate to limit and constrain bodies, not to extinguish life. Yet some deaths have occurred in detention. These have included young people: between 2001 and 2003 it was reported that nine young people died in these facilities.²²

Reports of physical brutality are commonplace. Some punishments are systematised – handcuffing, night musters – other violence is explosive and unsystematic. The climate of suspicion fixes and entrenches multiple mechanisms of threat.

There is the permanent menace of potential violence - be it by detainees against other detainees, by detention staff against detainees, or by detainees against staff. Children and adolescent girls and boys are at particular risk of assault.

Every six weeks most of the detention staff - guards and nurses - would change. One nurse recalls this as a measure to prevent human bonding between staff and detainees.

²²This number includes 25-year-old Fatima Erfani who died on Sunday 19 January 2003. According to an interviewee Fatima died of a brain aneurysm after experiencing extremely high blood pressure for two days. The Department of Immigration sent her body with her husband and their three children back to Afghanistan, just days after her death (B2).

Comments were made by officers: 'the best place to be with the cunts is with your foot on the head and a baton in your hand.' That man I heard say that on two occasions, he was a nasty individual. I heard racist comments about 'bloody Arabs'. I think they would soon learn who to say these things in front of. There were a couple of nurses who were brutally aggressive (C1).

Former employees from Woomera have argued that people could lose their jobs if they were perceived as too caring (HREOC 2004; Mann 2003). Others resigned in response to the brutalities of the system (HREOC 2004; C2; B2). One doctor resigned because she found the punishing regime at Woomera distressing and reported that some detainees asked to be repatriated rather than remain incarcerated.

In fact they were so stressed and depressed and they would say, 'Get me a visa and let me go home. I don't care what I face at home', and time again they were saying, 'I've been here six months and I don't know whether I have to go home or whether I can stay; can you please find out where I am at?' (Morton 2002).

One Afghan teenager recalled that: 'Some rude officers would tease us and, sorry to use this language, they would say you are eating shit, or in Australia our dogs eat better shit than you' (A1). He describes some of the violence towards detainees he witnessed at Woomera during his eight months of detention in 2002:

...many detainees fight with officers, like there was an officer who would come to our donga and he would smash things and break things and they would use coarse language. And there was even a time when an officer had thrown the Koran, the Holy book into the rubbish bin and the people protested about that. There was another rude officer who ACM would especially use for the people, he would come and break the cupboards, throw the blankets away in the dirt. You know, breaking things and smashing things (A1).

In 2002 several guards at Curtin and Woomera were charged with assault (B2), including assault of children. Three guards at the Woomera IRPC were charged with assaulting a thirteen-year-old boy. Two of the guards escaped prosecution

by leaving Australia for New Zealand (B2). There were also reports of sexual assault of children at Villawood and Port Hedland (B2; B4; B1).

Although the state has never ordered, acknowledged, mandated or positively permitted individual acts of violence, it has also ignored evidence of acts of thuggery. Since 2000 there have been numerous allegations of physical and sexual assaults against detainees made via refugee email news networks, by detainees to HREOC and by former staff.

There was a thirteen-year-old at Woomera eighteen months ago, two guards held him down while the third one thumped him. The only reason charges were laid and it's the only time charges have been laid was because a doctor witnessed it and the doctor wouldn't be silenced.

What happened: the three guards were charged and they failed to show at the magistrate's court on two occasions. The third time, two turned up; their charges were dropped so they could give evidence against the third. The third had disappeared into New Zealand. I have rung the federal police over and over; they haven't done anything about it. I don't know what has happened to the boy, he will be in Baxter or released into the community carrying the memory of a beating from adults who nobody could protect him from (B2).

The standard rules of civil law are absented within the confused space of immigration detention. Many detainees have left the country; those now living on temporary protection visas would be unlikely to press charges; and from all accounts, most assaults occurred in secrecy. The punishment directly marks and inscribes the body of the detained.

Aberrant or non-compliant acts are consistently punished by placing the detainee into solitary confinement.²³ One detainee in Maribyrnong was kept in isolation for seven months until refugee activists lobbied to get him out of isolation.

²³ Australian resident Cornelia Rau was held in solitary confinement at the Baxter IRPC in 2004. Suffering from schizophrenia she was held in confinement whilst psychotic (Palmer, 2005).

I have learnt with advocacy work that a lot of it is connections and knowing the right people at the right time. My next-door neighbour is a psychologist and she happened to know the psychiatrist who headed the multicultural psychiatric unit. In desperation after seven months of trying to get this guy out...after seeing him do things such as eating light bulbs, anything to get into the hospital, even for an hour, because he became quite psychotic and his psychoses was relieved, if he was in a new surrounding and the people were a little kinder than the guards he would come back to reality. I rang this guy and I kept chasing up and eventually he was admitted to a hospital and then got out on a bridging visa and got a TPV. What they had done to this man was criminal; they had nearly driven this man crazy (B2).

Detained asylum seekers would manoeuvre to avoid punishment and conflict: 'Yes, some guards talking badly but we can't do nothing - if we argue with them we could [go] to stage 1 [as a punishment]. We control ourselves, we walk away. Different people have different rules' (A4). Non-retaliation became the strategy this young Sri Lankan man chose to minimise physical threat and reduce his exposure to possible retribution.

Solitary confinement or the removal to another compound was used as punishment to separate detainees from their community of friends and place them in compounds with strangers.

As I was there for eight months and when I saw a separate cage in which the most Irani or Iraqis were detained, they were like hungry lions, I would say, and most of the people were detained for two years at that time. So I would think that it would be very possible that I would be like one of them and they would take me to one of those cages. And those people were not treated as humans. Inside Woomera there are several cages, they would call it 'compound', so yeah there are different compounds and sometimes you are separated from your community or your friends. Sometimes they would separate you from your community. Say if you were an Afghan they would put you to a totally separate community, like Iraqis or Iranians (A2).

One psychologist working at Woomera observed that 'many of the officers treated detainees as if they were violent criminals' (Morton 2002). The

brutality of immigration detention intensifies detainees' vulnerability, their minds and bodies constantly at risk from the detention setting.

The persecutory power of the guards is acted out with beatings, abuse and threats of extradition. The guards, alongside the migration agents, translators and DIMIA officials, become the object of constant speculation, rumour and fear.

Agamben's 'state of exception' draws us to the sanctioned and deadly violence perpetrated by the state, where legal process is undermined and superseded by a complex opaque system of bureaucratic management. The longer the incarceration, the greater the threat of an existence reduced to what Agamben (1998) refers to as 'bare life'. When a person is defined by exclusion from the political realm, they are exposed to continual violence that can reduce them to little more than a biological being.

For already highly traumatised people, long-term²⁴ detention can add further and acute mental harm. Severe psychological depression, insomnia and post-traumatic stress disorders in detainees, both adults and children, are relatively well documented (see Silove *et al* 1991; Steel *et al* 2004). Long-term inmates speak of detention as making them ill and confused. Long-term detention shifts notions of fixed identity, and in their place a madness can take hold. One Afghan refugee said his mind remains changed and disorientated by the experience:

I have no words for Woomera. I think I spent lost years in jail. Sometimes I don't understand where I'm going, sometimes I can't cross the road, because many times I can't cross the road, car and buses crossing. Sometimes I go from house to the city and I forget where I'm going and I forget my house. It affected my mind (A6).

²⁴ Long term detention refers to incarceration for more six months. This time frame is used by psychologist Dr Louise Newman who has tried to assist long term detainees (Browning 2005).

Australian immigration detention is Janus-faced. One side offers a semblance of hope of inclusion; the other, dominant, side threatens permanent exclusion from rights. The confusion between protection and prevention is played out within the day-to-day functioning of the system.

Immigration detention centres operate by distrust and until their status as refugee (the man of rights) or illegal (subject of another state) is confirmed by the state, the detained border crosser inhabits a space governed by the indistinction between law and lawlessness. This condition of exception is marked by indefinite detention, opaque methods of processing, complex strategies for disciplining and the atomised and systematic violence that punishes the detained body. The art of rule does not kill the body of the interloper; rather, the state seeks to constrain and discipline those it suspects.

A systematic incoherence governs and regulates the body of the detained and renders the immigration detention site inherently volatile. The exceptional space of law/lawlessness threatens the incarcerated bodies and the identities.

But immigration detention is marked by the detainee's struggle against reduction to bare life. Agamben's critique of modernity implies that every struggle is driven to dust - but even within a camp, the conditions of exception cannot flatten out all struggles.

The dynamic condition of the detention site takes numerous forms, but collective protests are the focus of the next chapter. Male detainees numerically dominate - and it is overwhelmingly men who are active in organised mass protests against ongoing incarceration. As shall be revealed there is an intense and bitter struggle against absolute acquiescence to the state of exception.

Chapter 2

Shifting Identities

Abstract

A history of protest exists within immigration detention centres. A sharp rise in detainee numbers from 1999 and the consequential surge in mass protest action exacerbated the (dys)functioning frenzy of the detention regime. The process of exception produced a number of different effects. Male detainees dominated the detention space and the alienated male subject tended to overtly resist and organise against the detention system. Collective hunger strikes and riots sought changes to the detention regime. The anatomy of violence within detention also led to individual acts of self-harm and self destruction. These differing forms of male protest overlapped and collided as men struggled against the conditions of exception.

I actually didn't take part in violence very much. I have been in a hunger strike for four days. I must say the people feel very compelled and they have nothing to lose. The only thing they have to bargain with is their own self. I have witnessed many, many things that are hard to believe. I have seen people who are trying to suicide, children slashing their bodies with razors. People fighting, different communities fighting with each other. It is a very depressed, tense environment in Woomera and nobody would tolerate each other at all (A1).

Within minutes an urgent 'Greenlight' call came over the airway. I gave a 'Go Go Go' to my team. They entered the unlocked gate to the hotel compound...The rocks now came thick and fast and as the group regrouped towards K Block the detainees were jumping onto the mesh roof near the visits side. They were attempting to assault X and his party...The number of rocks coming in was intensified and two shields were broken. My men's safety was now at risk... my team was calling for 'Charlie Alpha', our call sign for use of chemical agents... (ACM Officer Report 2003).

The appearance of flotillas of rusty boats carrying hundreds of asylum seekers to Australia was met with alarm. From 1999 the newly opened and poorly equipped Curtin and Woomera centres, as well as the older Port Hedland centre, held the majority of these new arrivals.

Numbers swelled and heightened the capacity of detainees to resist the mechanisms of constraints. Between 2000 and 2003 hundreds of protests - ranging from silent, individual acts of defiance to large-scale collective demonstrations – disturbed the operation of detention. Any act of ‘non-compliance’, but in particular that of assertive protest, risked the body of the detained. Physical assault and segregation were common forms of punishment, but so too was the threat of repatriation (Steel *et al* 2004, p. 528). Many were held in isolation units for indefinite periods. Even the threat of disturbances was sometimes enough for the authorities to segregate individuals (A7; A4; A6).

The pattern and mode of demonstration was shaped by incarceration and knowledge of reprisals. Frequently men protested by punishing their own bodies - through the denial of food and water, the slicing of skin and the suturing of lips – the self-inflicted punishment upon the body deflected possible physical punishment meted out by the agents of the detention system. But detainees also attacked the material space of detention, the architectonics of their incarceration. Detainees set fire to buildings and cut razor wire cut as they sought at least temporary escape from their detention.

These forms of protest were met with physical constraints. One can point to three defining characteristics of collective protests. First, the protests sought to effect change. Second, protest action was overwhelmingly by male detainees who had been detained for more than three months and were concerned with the system of claims decision making. The longer the incarceration and the greater the likelihood of deportation, the more probable it was that detainees would be involved in explicit protest activity. Third, the methods and strategies

commonly employed in the demonstrations reflected a hegemonic masculine form of political protest that repositioned the male detainee as an active masculine subject.

This chapter employs Foucault's interpretation of the body as a point of anchorage. The body, he contends, even when imprisoned, exercises power to evade the apparatus of subjugation.

There is a gender dimension to both the rationale for detention and the forms of struggle against incarceration. Masculinity is linked with dominance, threat and violence (O'Connell 2005) and the male asylum seeker is the embodied target of government action. Against this gendered body the government exaggerates and inflates an aggressive stance. The torsions of detention are reactionary stances against the threat of the male border crosser.

Profligate violence is embedded in a system of hypermasculine domination. Within the zone of exception excessive force is sanctioned. But this surfeit is paradoxically a measure of a system's imperfections. The scale of the violence points to the crisis tendencies (Connell 2005) of the detention system. In this hypermasculine space there emerged a form of masculine protest that publicised the devastation of detention.

This chapter differentiates between forms of collective protest and the actions of individual despair – the drinking of poisons, the digging of graves, hangings. These acts tended toward emasculation, where the normative masculine characteristics – including stoicism, strength and dominance – are threatened. Identity is torn and fragile.

The Foucauldian Body

Foucault's disparate work clusters around thematics of carnality and its relation to subjectivity. He suggests that power permeates society and cannot be held by anyone or any single group; rather, there exists a network of power relations (1977). Power is not possessed but rather is exercised. Foucault argues that power marks or brands the body – inscribing each and every body with the attributes of subjectivity. The body is moulded and it constructs resistances through modes of social supervision and discipline as well as self reflection.

In his reading of power and the body there is always a field of alternate action. For Foucault, history is replete with the revolts of disqualified knowledges and of their insistent emergence in political struggles (1978, 1977). The incarcerated body is directly involved in a political field: '... power relations have an immediate hold upon it, they invest it, mark it, train it, torture it, force it to carry out tasks, to perform ceremonies, to emit signs' (1977, p.25). There are many, localised circuits, tactics, mechanisms and effects through which power circulates – what Foucault calls the 'micro-physics of power' (1977, 1978).

Although recognising that there are vast differences in the ability to exercise power between the dominating and the dominated subjects within the exceptional site of immigration detention, there remains a contested relation between the dominating and the subjugated. This challenge has produced shifting and dynamic relations of power.

The multiple agents of the detention regime exercise overt bio-political power that shaped the actions of the detained asylum seekers. The detained resisted this dominating power through and with their bodies. Protests were identifiable moments of struggle against the conditions of exception and bare life.

Hunger Strike at Curtin

From 1999 the numbers held in detention grew exponentially; this was despite an increasingly complex series of measures to prevent undocumented arrivals.¹ In January 1993, 560 people were detained; there were 1,410 in January 1996 and 3,574 in 1999. The numbers leapt to over 8,000 during 2000 and just below 8,000 in 2001 (Crock & Saul 2002, p. 80). Detainee numbers gradually declined after the 2001 Border Protection Legislation² began to take effect.

The remote Curtin detention centre in the Kimberley region of Western Australia re-opened in mid 1999 to take hundreds of Middle Eastern and Asian asylum seekers. This outdated military air base was designed to imprison a few hundred - but by January 2000 over 1100 asylum seekers were detained. In February around a quarter of the detainees were actively involved in a mass protest. In the scorching summer heat about three hundred Iraqi, mainly male, detainees began a hunger strike. Of these, between twelve and twenty men sewed their lips together using needles and thread (Mares 2001, p. 10). These men could barely speak, for their lips could not open more than half a centimetre.

During the worst heat of the day, protesters would lie on old mattresses in the shipping containers that were used as bedrooms - the walls were hot enough to burn skin (C1). At other times the hunger strikers congregated outside their rooms and, at intervals, would chant 'Where is human rights? Where is freedom?' A banner depicting the Iraqi dictatorial President Saddam Hussein thanking the Australian Department of Immigration for imprisoning his critics was held up by the crowd (Mares 2001, p. 10). Scores of detainees took no food and little water for several days.

¹ Details noted in introduction and chapter 3.

² Discussion of the legislation and details of the decline in detention numbers is found in chapters 3 - 6.

The Iraqi asylum seekers were protesting against perceived delays in processing their refugee claims, in comparison to the applications of Afghans. This highly organised protest sought a more systematic and responsive processing system. The men also wanted access to lawyers and means of communication - thus far, detainees at the remote Curtin centre had been held incommunicado with no access to telephones or to sending or receiving mail.

The Curtin hunger strike was unusual, for unlike most of the previous protests, it received some media attention. There is a history of protests within immigration detention centres (Crock 1993); but until the mass hunger strike at Curtin, protests had mostly passed unreported by the Australian media. The numbers involved and the spectacle of torturing one's body was newsworthy (US Committee for Refugees 2002, p. 23). The media discussion of the Curtin protest often focused on the suturing of lips, frequently labelling this act as 'bizarre' or 'gruesome' (Mares 2001).

The Curtin protest marked the escalation of organised campaigns of resistance by asylum seekers - in the form of hunger strikes, the suturing of lips, breakouts, riots and arson. These protests identified detention centre as troubling and contested. Pugliese argues that hunger strikes and lip sewing reflected back onto the body of the nation the gestures of refusal and denial that are deployed within detention. Lip-sewing is thus an act that conjoins the body of the protesting asylum seeker to the larger 'corpus of the nation in a complex relation of power and violence' (2002 para. 7). The acts of self-mutilation reflect and reinscribe the mental and physical violence deployed against asylum seekers.

The national media intermittently reported ensuing protests; from 2000 this was augmented by the emergence of various refugee activist groups which regularly reported disturbances via electronic newsletters and emails.³

³ For instance regular emails sent via AustHumanRightsNews email group, <Ausnews@yahoogroups.com>. and ChilOut Announce,

The sharp rise in detainee numbers made a series of mass protests possible. In June 2000 nearly half of those detained at Woomera cut through the razor wire and walked the three kilometres into the Woomera township. This was soon followed by a hunger strike and breakout at the Villawood detention centre and then by hunger strikes and riots at Woomera. It was a pattern of protest that continued for the next four years.

A Masculine Space

Physical brutality permeates the detention space and all detained asylum seekers are vulnerable to its permutations; but men are the principal targets of the detention regime and are the primary instigators of mass demonstrations. Men and adolescent boys comprise the majority (typically around 80%) of all undocumented border crossings to Australia. It is a gender imbalance that can be explained because young men, rather than women, are typically pursued by militias in their country of origin. These men invariably have certain positions responsibility to their family and community (C1; A1; A6;A9) and thus they or their families have found the resources to enable them to flee. Male detainees commonly believe the future of others in their family is dependent on their quest for asylum (Browning 2005).

Until the introduction of the Temporary Protection Visa (TPV) in 1999, 75-80% of detainees were men aged between 18 and 40 years (Crock & Saul 2002, p. 77). The TPV prevents refugees sponsoring their spouses and children via the family reunion scheme. Consequently the people-smuggling route from Indonesia to Australia became the only possible avenue for a TPV holder to be reunited with his/her family. From 1999 there was a sharp rise in the numbers of women and young children journeying from Indonesia. Despite this increase, men and adolescent boys continued to outnumber female asylum seekers in

detention.

Immigration detention has developed in response to unauthorised male asylum seekers. Detention is an aggressive act against the perceived threat of male bodies. The state justifies the ongoing incarceration and limits imposed on detainees as being in the interests of the nation (MPS 2001b).

Punitive detention is a highly gendered form of social control. Internationally adult and juvenile males are jailed and Australia is no exception. The incarceration of women and children is less predictable, although a characteristic of the camps of World War Two and the camps that held Indigenous communities.

Some literature has focused on the vulnerability of women and children in detention. Priest and Cox (2005) raise questions about the particular risk women may face within immigration detention. HREOC (2004) conducted its national inquiry into children in detention and reported numerous breaches of human rights against children. Gender has also been emphasised in advocacy to release detainees, with refugee groups highlighting the barbarity of locking up women and children. The activist group, ChilOut, placed children at the forefront of its campaign against detention.⁴

The question of men, masculinity and detention centres has received little attention. The incarceration of predominantly male bodies is a key not only to the operation of detention but also to the forms of protest that have occurred. Detention deliberately restricts many of the activities ascribed to adult masculinity: there are bans on drinking alcohol and, for single men, a ban on sex; there are also strict controls over work, study and physical movement. For men there is a near complete loss of control over the workings of their life that unsettles the cultural assumptions linking maleness with dominance.

⁴ The focus on the vulnerability of women and children has the potential to strengthen the legitimacy of detaining men.

Defining what is meant by the term 'masculinity' is complex.⁵ Socially and historically constructed, masculinity is contingent and fluid. At any historical moment there is no single masculinity, but rather a number of masculinities.

Indeed, even within the individual male body, masculine identities are fractured and shifting - because multiple discourses intersect in any individual life (Connell 2005). Connell points out that:

... to the extent the term can be briefly defined at all, is simultaneously a place in gender relations, the practices through which men and women engage that place in gender, and the effects of these practices in bodily experience, personality and culture (2005, p. 71).

Adult masculinities are thus produced through a complex process of development involving negotiation in multiple social relationships and in specific historical circumstances. Different masculinities exist in definite relation with each other, but often in relations of hierarchy and exclusion.⁶

The biological male body is an inescapable part of this construction; but the material body does not confer masculinity but rather receives masculinity (or some fragment thereof) as its social definition (Connell 1987, p. 83). Men's bodies do not fix patterns of masculinity but they are still very important in the expression of masculinity, which constantly involves physical experiences, corporeal pleasures and the vulnerabilities of bodies.

Although masculinities are fluid, there is a social definition across cultures of men as the dominant holders of power (Connell 1987 p. 85). A hegemonic

⁵ Connell suggests gender exists precisely to the extent that biology does not determine the social. It marks one of those points of transition where historical processes supersede biological evolution as a form of change (Connell et al. 2000, p. 27).

⁶ Poynting argues that questions of ethnicity should not be merely added on to debates on masculinities (Poynting et al 1998). It is beyond the scope of this thesis to examine questions of ethnicity, masculinity and detention.

masculinity of control and dominance is naturalised and legitimated; and Connell demonstrates a recognisable link between masculinities, social conflict and violence (2005, p. 258).

Donaldson (1993) suggests hegemonic masculinity can confer control of men by other men. For him hegemonic masculinity is a question of:

how particular groups of men inhabit positions of power and wealth, and how they legitimate and reproduce the social relationships that generate dominance. Through hegemonic masculinity most men benefit from the control of women. For a very few men, it delivers control of other men (p. 655).

It is the question of the control over men that helps frame discussion of masculinity and detention. In this tightly managed space the naturalised aggression that is linked to masculinities is exaggerated further. Violence is a bedrock of detention.

The detention space is threatening to all detained; but the physical violence in the centres most commonly involves male bodies. Fights and assaults between male detainees, and between male detainees and male guards, are commonplace. Interviews and letters speak of the forms of hypermasculine aggression - including physical assaults, handcuffing and body searches. During riots, fires and rooftop protests, the Centre Emergency Response Teams (CERTs) have used batons, tear gas, pepper spray, water cannons and electric prods to quell male protesters (A6;A7;A10;B2).

Letters were sent in 2003 to Amnesty International and ACM detailing assaults against one Iranian asylum seeker while he was being transferred from one detention centre to another. The assaults included beatings to the man's legs with a baton, the application of leg cuffs and being bound and forcibly restrained in an aeroplane seat (B3).

One man said of the guards' reaction at Woomera during hunger strikes: 'Sometimes there are beatings. I saw beating many people during strikes. Some people crazy after two years. Their minds are changed. Tried to break fences. ACM have big sticks and beat them... punches and by sticks' (A6).

A former ACM Officer told this story about the deportation of an Algerian man from the Villawood detention centre.

We get this guy out of bed early in the morning. We pull the sheet off him. He's in his pyjamas or those long pants that those people wear. He clings on to the bedstead; this is a steel bedstead. My job is to unwind his fingers, struggling, shouting he won't go. There are nurses. First time I'd seen a 'chemical restraint' used.

They must have broken about three needles on him. I'm thinking there must be a better way. This bloke's not an animal. Sometimes there's a smell. They've urinated or something. We put him in the fish bowl. That's like a cage. There were about six big blokes like me. Another tries to get these injections into him. But it's not working.

He scratches and there's blood. He's shouting he won't go back. Also he's Muslim, this guy. Putting this chemical stuff into his blood - that's unclean. That's against his religion. Anyway we get the handcuffs on him. We get him out of the cage and get him into the van to the airport. He's saying 'I want my shoes.' His T-shirt is torn. He's saying: 'I can't go without my shoes.'

When we get him into the aircraft we handcuff him to the seat. But he pulls the whole seat out of the floor. That was it. We got him off the plane and took him back. Next week we did it again. This time he went quietly. 'Just give me the tablet', he said. 'Don't inject me with that'. I don't know what happened to him. I think he went to jail at the other end (Milne 2004).

Gendered Protests

Van Deburg makes connections between forms of hypermasculinity – 'macho resistance' and various protest movements (1997). These acts of protest are rooted in an identity politic and a performative masculinity (Toch 1998;

Connell 2005).

In his exploration of hypermasculinity and prison violence Toch notes that when men are together, tough and heroic figures are emulated. The willingness to fight and the capacity for combat are measures of male self-worth (1998, pp. 170 -171).⁷ Fighting is tied to bravery, fearlessness and heroism and is linked back to masculinity; to step back from fighting and to display fear is a feminised emotion. For Toch, two objectives can be achieved when 'one assaults a man who is fearful: (a) one shows contempt for the man's demeaning 'femininity', while (b) one reassures oneself that one is different (i.e., non-fearful from one's target' (1998, p. 173).

Toch suggests that in the prison system men become targeted for further assaults unless they respond to violence. In detention many men did respond to generalised uncertainties through protest and violence.

Toch's critique is pertinent - but as discussed previously, there are crucial differences between the prison system and the detention regime. The fear of catastrophic reprisals deterred some detainees from any involvement with overt protests. A refugee detained at Villawood for more than two years told me that dissent was too dangerous: he believed that if he protested he would be punished and possibly repatriated. To stoically wait and stay 'out of trouble' were imagined as his only options:

I can't do nothing. I just wait and wait. Better to keep quiet if you want to be released. Never ever go on hunger strike and you have to be good. I know one guy he has been waiting three, maybe four months for an answer and he rings RRT (Refugee Review Tribunal) and says 'Can you tell me?' They say OK and that night they tell him he has been rejected. We don't want to ask them. Don't write to them and say why do you delay - they will reject us (A4).

⁷ Hans Toch argues that there is a tendency for male inmates to subscribe to a normative system that 'holds under certain circumstances a prisoner must respond to physical force' (1998, p. 168).

As suspended juridical subjects, to respond to threats or force always threatens greater levels of intimidation and extra-judicial punishment. Most specifically, many men believed if they protest it would affect their chances of receiving a visa (Steel *et al* 2004, p. 528).

Toch suggests (1998) that in a space of hypermasculine violence, to not respond physically to aggression is to risk emasculation. Femininity is set in an oppositional relation to masculinity (Pateman 1988a) and when incarcerated men respond without violence these men are linked to the feminine and to emasculation (1998, pp. 170-172).

Male detainees continually struggled against complete loss of control and symbolic emasculation. Some sought non-aggressive methods to control elements of their environment. Echoing Goffman's account of the total institution (1961), detainees deliberately broke small rules and avoided surveillance. The solitary and meditative action of digging and tending a vegetable garden in spite of fines being issued by the DIMIA is an act of non-compliance in a system of tightly constraining limits.

Baxter offered less - when one man dug a five metre squared garden patch from some of the grass strip using a plastic spoon... he also got a letter from the Department advising him that he had done damage to Commonwealth property to \$40,000 worth of lawn. He took no notice. He and his wife were busy all day gardening (C1).

In 2001 medical doctor and detained asylum seeker Aamer Sultan and clinical psychologist Kevin O'Sullivan co-wrote a paper for the *Medical Journal of Australia* linking the systems of protest with temporality, suggesting that routines of resistance became more common in the wake of the first decision by DIMIA to reject a claim for asylum. The authors suggest that the 'sense of injustice overwhelms many detainees' (2001, p. 594) who then begin to protest their detention. Their report was in addition to several others that have documented severe depression in long-term detainees and have been

disregarded by the Department of Immigration (HREOC 2004; B4; B1).

Sultan and O'Sullivan proposed four common stages in the psychological reactions of detainees to their incarceration over time. The first is a non-symptomatic stage in the early months of detention; then a second stage which they termed the 'primary depressive stage'. This second stage follows the first negative decision by DIMIA. Sultan and O'Sullivan document that it is at this point - the point of first rejection and corresponding fear of deportation - that asylum seekers determined to take 'non-compliant' action against their detention. The asylum seeker seeks here to reassert a degree of control over the minutiae of daily life.

The nature of the revolt varies: some become protesters (engaging in hunger strikes and other non-violent demonstrations); others become advocates (attempting to raise public awareness about the realities of detention); and some become aggressors (engaging in confrontations, riots, detainee-guard conflict and other inter-detainee violence (2001, p.594).

The various forms of protestation were responses to the limits and violence of incarceration. Macho posturing is a component part of these actions. One young Iranian asylum seeker said he had to assume typically hegemonic masculine modes of being - to be rude and aggressive - to get anything. He took part in several macho and masochistic acts of bravado and bravery, including riots and eleven hunger strikes. This tall, muscled man in his twenties spent a total of five months in isolation during his four years of detention, and was beaten by guards on a number of occasions (A17).⁸

⁸ There are minimum standards required for keeping people in isolation; Juliet Block, the isolation unit at the Port Hedland detention centre, was found by HREOC (2004) of breaching article 9 (1) of the ICCPR. This article states that everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. HREOC also found it breached Article 10(1) of the ICCPR that states: All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

Male detainees were routinely placed under observation for 'protest behaviour' or 'escaping detention'. Collective protests are one way that the detainees can challenge the emasculating processes of internment. Detention limits and strikes at masculinity through its relation to control. The forms of protest are strategies for resisting the violence of imprisonment. Women are occasionally involved in these mass actions, but the instigators and actors are typically men. These protests represent a struggle against acquiescence, including submission to emasculation or bare life.

The hunger strike has become a dominant mode of protest for male detainees. By denying themselves food and water they can protest their incarceration and limit the fear of retaliatory violence or forced deportation. The imposition on self of pain through hunger and thirst is re-masculinising, for it tests the capacity of the man to resist the blandishments of acquiescence. These hunger strikes were frequently broken by the forceful feeding of the hunger striker – marking the absolute control of the state over biological life.

Hunger Strikes

The detainee population jumped from around 2, 700 between July 1997/June 1998 to over 8,000 between July 1999/June 2000 (Crock & Saul 2002, p. 80). This increase reflected a surge in state violence in Iraq and Afghanistan against certain political and ethnic groups - it was now cheaper to be smuggled into Australia as opposed to Europe or the United States; and the increase also arose from the introduction in Australia of the TPV.⁹

As the numbers grew, so did waves of mass hunger strikes. The January 2000 hunger strike at Curtin was soon followed by others. The self-inscribed

⁹ Before October 1999 when the TPV was introduced, 80% of detainees were male adults and about 5% were children. Over 1200 people arrived by boat in November 1999, and a large percentage were children. By 2001 almost one in three detainees were children (Crock & Saul, 2002, p.77). 353 asylum seekers drowned in the Pacific Ocean when their boat sank on October 26th 2001; many were women and children trying to be reunited with their husbands and fathers in Australia.

infliction of pain upon the body both externalised an internal anguish and called attention to the protesters' objective: release from detention. These masochistic/macho protests made connection between the violence by the detained upon their own body and the brutality of the detention system.

Hunger strikers had very specific aims (A1;A2; A6; A7, and A4). One Hazara refugee said he joined in a hunger strike after DIMIA stopped processing Afghan applications in the wake of the 2001 invasion of Afghanistan by the United States. The Afghan hunger strikers called on DIMIA to begin reprocessing their claims.

Yes. I was ten days, we are all men [in] camp on hunger strike. Because stopped processing. What's the problem? [We] had three demands for government. If you say I'm a terrorist, put me in jail directly [or], decide, if you want to give me freedom, [or] if you don't want me to stay... send me to another country or send me back to Afghanistan. So we have three demands. Give me my freedom as it is my right. We are on hunger strike (A6).

This man was convinced that this hunger strike resulted in his subsequent release from Woomera on a TPV. He said: 'Delegates from government came and talked and started again interviews and then they decide and gave me a visa' (A6).

In the desperately disempowering and emasculating space of detention, male detainees used their bodies to exercise power. The protesting body is both the space for expressing mental anguish and the vehicle to question on-going detention. These acts of self-torture are understood by asylum seekers as acts of bravery and heroism. The starving body became a critical means of communicating the fractured chaos that 'invaded' the detainee's life. In the gesture toward self-annihilation, the hunger strike also demands more than bare life.¹⁰

¹⁰ Several children who had reported abuse to the state Department of Community Services sewed their lips together after coming to the view that nothing would be done to ensure their

There were also spontaneous protests against the detention setting. These included riots, arson, escapes and physical violence targeting guards. With few exceptions these actions were by male detainees, whose masochistic/macho acts lashed out at their imprisonment despite inevitable repercussions. The hyper-masculinity of the detention space challenged male detainees to respond through forms of masculine violence

On June 5th 2001 riot-gear-clad officers at Woomera attempted to stop a group of mainly Afghan asylum seekers from smashing windows, computers and musical instruments. The denial of visas for two of the Afghan detainees after other Afghans had received visas provoked this destruction. The next day detainees threatened to riot again. Water cannons were moved into place and the guards donned their riot gear. The material surroundings, even the children's playroom, were smashed by rioters over the course of several days. The razor wire was cut and some ran into the desert.

A few days later about a hundred people began a hunger strike. The Woomera hunger strikers stood near the perimeter of the fence with their banners proclaiming 'freedom' and 'visa'. Riot officers stood nearby. The hunger strike was in response to detainees' frustration at the time it was taking for their applications to be processed (Mann 2003, pp.85-95).

One man told me that in the aftermath of fires being lit at Woomera in 2002, ACM guards and managers were asking who had lit the fires. His response was to tell them to inquire not into the arsonist's identity but into his motive:

... your question is wrong. You should ask: Why burn? Why burn? Why people suicide? Why hanging? Why jumping fence? Why drinking shampoo? This is the question. You ask: Who burn? This is not the question (A6).

safety in detention. (<http://news.ninemsn.com.au/sunday/cover_stories/article_1045.asp>.)

Another man said he helped organise a riot and breakout from Port Hedland after hearing of protests at Woomera in June 2000. He and several other detainees planned a breakout to protest against overcrowding, their inability to access lawyers and the overall conditions at Port Hedland IRPC. For this man the protest was also an attempt to delay what he believed to be his forthcoming deportation to Iran (A10). In the aftermath he was sent to Roebourne jail for three months. Ironically, he viewed this place of criminal punishment as a relief from the supposedly non-punitive immigration detention: he could receive medical attention and take part in a wider range of daily activities.

Another protest at Port Hedland was ignited by an attempt to forcibly remove a detainee and send him to Woomera. The man was handcuffed, as was his son who was trying to prevent his father being removed (C1).

In December 2003 Port Hedland was again the site of violent protest. The riot was sparked when a group of teenaged school girls were denied entry to visit asylum seekers. Detainees were apparently told that the girls were denied entry for fear they would be sexually assaulted by the detainees. Men climbed onto the roof and hurled rocks at ACM guards.

The mob became nasty and was becoming more aggressive...The detainees were armed with iron bars/sticks and missiles. They moved in to engage. We used our gas...Like the rest of the squad I used the gas in self-defence only I am aware of hitting three detainees with my streamer. The courage and discipline of the squad made me very proud... I do not know how long we were under fire from what appeared to be large pieces of concrete, rocks, sticks and iron bars. Out of nowhere something hit me on the left side and neck. I felt my legs buckle. I was stunned. I turned to my right and caught sight of the detainee running at our rear. At this instant I was struck again on the front right of the head. I was stunned felt dizzy and I believe lost consciousness (ACM report 2003).

When the rioters were brought down from the roof many were placed in isolation. There were claims of asylum seekers being handcuffed, stripped and beaten (A17). The group then responded with a hunger strike.

Immigration detention had become a place of ongoing and blatant battle. Between 1999 and 2003 riots, hunger strikes and breakouts became so commonplace that DIMIA came under increasing pressure to defend its management and system.

Bare Life

Some men suggested they felt compelled to respond through protests that sought their release, or risk indefinite incarceration and madness. The mad or psychotic asylum seeker is a fixture of the detention regime, and the psychological demise of some long-term detainees is now well documented (Browning 2005). The desolate detainee reminds us of the figure of *Muselmann* - the anonymous mass that in Levi's (1988) account of Auschwitz formed the backbone of the Nazi camp.¹¹ The *Muselmann* is already beyond life, as they could never be resuscitated once their souls had dissipated. Levi hesitates to call them living: 'one hesitates to call their death, death' (Levi, cited in Agamben 1999, p. 44).

Agamben (1999) elaborates and extends Primo Levi's essays. For Agamben the *Muselmann* – the man reduced to bare life – is found in the space of exception. 'Under these conditions the human can be transformed into a non-human' (Agamben 1999, p. 52).

The *Muselmann* is the indefinite being in whom the distinction between humanity and non-humanity is brought to crisis. Their presence yields an account of bare life that consists of natural life politicised through its irreparable exposure to sovereign violence and death (Agamben 1999, p.88).

¹¹ At Auschwitz there were two classes of inmates: those who were to be worked and those who were to be killed. Jews, Soviet soldiers and gypsies fell in this second category. The *Muselmann* was a part of the group to be worked. In *Modernity and the Holocaust* (1989) Bauman argues it was the authorised, routinised and dehumanised characteristics of the Nazi Holocaust that were most concerning.

Agamben suggests, against Foucault, that the definitional formula of biopolitics is not to make live or die, but rather to make survive - that is, to produce bare life - life reduced to survival through the separation of the human from the inhuman, or the speaking from the living being (1999, pp.156-160). The *Muselmann* has endured the inhuman, borne more than should ever have been required, and thus remains fundamentally human. In Agamben's account the *Muselmann* is the real face of modernity. It is a life which has reached an absolute limit: to be pushed further would be to cross into death.

Bare life is life reduced to biological existence. Agamben's critique makes connections between the genocidal Nazi camps and modern camps that do not kill the physical body, but suspend the individual in a space of lawlessness. The Australian centres are far removed from the murderous intent of Auschwitz, yet the figure of the *Muselmann* - the person who is living/not living - is still manifest within Australian immigration detention.

Typically, refugees would describe some other detainees as mad and aggressive:

Many people going crazy and going to psychologist. Other people sick. The person who have lived two years or more they have gone crazy. Many people have cut themselves, their bodies. Someone shouting and someone crazy fighting (A7).

I was there for eight months and when I saw a separate cage in which the most Irani or Iraqis were detained, they were like hungry lions. I would say most of the people were detained for two years at that time. So I would think that it would be very possible that I would be like one of them and they would take me to one of those cages. And those people were not treated as humans (A2).

Some detainees exist on that threshold between life and death - they are still living, but often not speaking or acting in a way that is fully human. Their state of mind is a response both to the horrors they have fled and to the violence of detention. One psychologist who treats detainees describes it thus:

People don't think about the future any more, they feel themselves to be in a void somehow - sort of floating in space. They come to believe that their detention is inevitable and that it will be forever, there's no sense of it ending. And so people as you observe them, as has been done, deteriorate to the point where some become profoundly withdrawn, extremely isolated, intolerant of human contact. There's no such thing amongst the long term detainees as a supportive friendship in the majority of cases. Those relationships have broken down as each person becomes totally stuck in their own misery... There's one man who I saw with my colleague, Michael Dudley, when we were last in Baxter, was someone who struck me as probably the most damaged person I'd seen as a result of their experiences in detention, a man who had been highly educated and a philosopher and writer in his country of origin - who by the time we saw him again (he had been in detention for years) was literally broken - to the extent that he was catatonic, meaning he was virtually immobile, frozen, unable to speak and he had been put in solitary confinement in the Red One Unit next door to Cornelia Rau (Browning 2005).

In their pivotal study of detained asylum seekers, Sultan and O'Sullivan refer to a 'secondary depressive stage' that follows the second rejection – the detainee's application to the Refugee Review Tribunal (RRT). The detainee now contemplates a limitless detention or deportation. The asylum seeker is more severely depressed and continues to seek ways to defy the detention regime. The asylum seeker's resistance is 'less aggressive and largely associated with passive, non-compliant resistance and attempts to escape' (2001, p. 594).

The authors identify a final 'tertiary depressive stage' where the detainee's '...mental state is dominated by hopelessness, passive acceptance and overwhelming fear of being targeted or punished by the managing authorities' (p. 595). The spectre of the *Muselmann* appears once more. It is not a new phenomenon: extreme despondency to the point of catatonia has been documented since the early nineties.¹²

¹² In 1993 a social worker at the Villawood detention centre described the psychological deterioration of one Cambodian woman over time: *She studied English hard and became fluent enough to act as an interpreter for others held in the centre. She helped another woman who was going through problems of depression and who attempted suicide. But, as the months went by, she began to lose interest in studying, and became less and less social. Her eyes became more distant, and she would no longer visit me in the office to talk, nor would she agree to interpret for anyone else. One day in August 1992, after more than a year of detention in Sydney, and two of waiting, we found her catatonic in her room (Crock (ed.)*

Acts of individual self-harm (drinking shampoo, digging graves, slashing and cutting bodies, impaling oneself onto the razor-sharp palisade fencing) speak of psychological anguish and emotional disintegration. One man remembers that after six months in detention he would see a doctor once every two weeks for headaches or pains in his chest. He would speak to a psychologist, but felt this was of little help - for 'if you are caged like an animal the person goes mad' (A4). Since his release he says his mental health has been 'good'.

Hundreds of asylum seekers, including children (Catholic Commission for Social Justice 2003), have attempted to commit suicide. Some experience a total sense of loss and hopelessness, the tortured body emitting many signs of despair through repeated acts of self-harm or self-mutilation. In this hopelessness the detained asylum seeker represents bare life in the sense of having reached a point of absolute nadir.

A nurse working at Curtin in 2002 recalled being on night shift when a group of detainees told her that a man was suicidal. When she entered the man's donga, she found him preparing to hang himself. The Iraqi asylum seeker was articulate and seemed quite rational as to his reasons for killing himself. He explained in English that he was a psychologist and that he had exhausted every line of appeal, his marriage had collapsed whilst he was in detention, he could not return to Iraq for political reasons and he had just received a letter from the Minister of Immigration refusing to intervene in his case and have him released on humanitarian grounds. The man believed he was destined to remain in detention and thus life was not worth continuing.

The woman felt she could say little to offer any comfort but asked the asylum seeker to wait 24 hours, and in that time she promised to make some calls to find someone to help him. The following day she rang lawyers and refugee

support groups. That evening she told him she had found a lawyer who would look at his case and the names of a number of Australians who wished to write and befriend him. Months later the man was released on a temporary humanitarian visa (C1).

The body of the asylum seeker is marked by the battles of their incarceration. This articulation works through the body and speaks of hope, desperation, violation and death.

Everyone don't want to suicide. The people who drink shampoo and jumping from fence, people's minds not working... Also children in camp for years and they have no school or parks for playing. Bad situation. Everyone was worried (A6).¹³

Refugees speak of detention as a zone enveloped by a particular state of madness - a space marked by asymmetrical power relations of calculated and involuntary torsions and contradictions. Over time networks of trust between asylum seekers can break down as they are pitted against each other. Protesting asylum seekers could be separated from their ethnic community as a punishment and placed with other hostile ethnic/religious groups. One teenager who had fled Afghanistan after his cousin was killed by the Taliban called this action 'black politics':

Every day, in a single day you see many fights. The officers say we will do this and this and this if you fight, but no people would do anything. They might take people to separate cage for a few days and then they would let them back in the same compound. The management run many black politics with the detainees. If they have to break a protest they would try to make a fight, so the detainees wouldn't be together so like the Iraqis and Afghanis would be fighting and there wouldn't be any more protest (A1).

¹³ There are numerous examples of individuals who reached a point of near complete psychological demise. One illustrative incident involved seven men who tried to hang themselves from the palisade fencing. Two of the men had been accepted as refugees, but after months of waiting they remained in detention. They said they could not bear any longer the wait for police clearance documents from countries they had travelled through that the Australian Government was demanding (C2).

According to psychologist Dr Louise Newman, the male detainees that she has interviewed fall into several overlapping but somewhat separate groups. These include adolescent males - and some of those have been unaccompanied minors – ‘many of whom became caught up in the protests and distress of the environments they found themselves in.’

The second group who we've particularly focused on, because they have considerable mental health problems, are the long term. By long term I'm meaning several years of detention, particularly amongst say the Iranians and some of the Afghans and people in the Baxter Detention Centre currently; extremely high rates of mental disturbance, depression, obvious post-traumatic stress disorder, and some people with psychotic illness which technically we diagnose as a reactive psychosis. In other words people, because of the environment that they find themselves in, and the intensity of their hopelessness, becoming quite psychotic or out of touch with reality (Browning 2005).

Long-term detainees are exposed to the collapse of their old identity. One young man who witnessed his parents and seven siblings massacred in Mazar-e Sharif in Afghanistan was put into Woomera IRPC in 2001. He was sixteen. In detention he tried to kill himself several times, and in 2002 he described himself as ‘mad’ (A1). His released friends were unable to protect him:

I think everyone at Woomera now is crazy. I had a very good friend ... and he is now mad, totally. He came first. We were the second boat after. We entered Australia about the same time. He is now mad. He was mad about ten months ago I heard, because he was taken to the Adelaide hospital. I have heard he is now crazy. Everyone at Woomera is crazy.

Q. With your friend, do you think he would have gone crazy if he hadn't gone to Woomera?

He was very courageous at first, very enthusiastic. But as his claims were rejected, his claims were rejected and in a very weak basis and he went mad. I think if he was released he would be a happy man (A1).

Newman also identifies fathers as at risk to psychological breakdown.

There are very specific issues for men who are also fathers who are

charged with, and experience themselves as failing in their duty to protect their wives and particularly their children, who witness the deterioration of their own family and who suffer a tremendous amount of guilt as a result of that. I think for those fathers they feel that they have totally not only let themselves down, but destroyed their children's lives. So I've had fathers begging me to kill them, to give them drugs so that they could die, so that their children might get a chance. That's how intense people's self blame can become in that situation (Browning 2005).

The particular vulnerability of fathers can be linked back to Connell's (1987, 2005) assessment that the nature of hegemonic masculinity is highly contradictory. Hegemonic masculinity requires men to value dominance on the one hand, but on the other, is fulfilled in fatherhood, which requires a caring and protecting ability. In detention men's inability to assume their traditional protective role for their families is a part of the emasculation process. They can no longer imagine themselves being able to defend and protect their children and wives.

A Dynamic Regime

Public debate regarding immigration detention ensued in the wake of these large-scale protests. Images of detained protesters being dispelled by black-clad and helmeted riot officers wielding batons and using water cannons were played again and again on television news. There were increasing allegations of children and adults being beaten by guards and 'they have got away with it' (B4; B1; B2; B9).

Campaigns by detainees ignited academic and journalistic research into the workings of detention, a surge in refugee activist groups¹⁴, an increased number of visitors to detention centres - and ultimately, through these increased visits and friendships, secured the release of some asylum seekers who otherwise

¹⁴ For instance ChilOut, A Just Australia, Project SafeCom, Refugee Action Collective and Rural Australians for Refugees are a loose collection of community activist groups who in the wake of riots and the introduction of offshore detention centres, began to lobby, visit detention centres and work on behalf of individuals detained.

would have been deported. Most of these visitors to detention were women (Browning 2004).

In the wake of protests, government responded with variations and adjuncts to the system. The Woomera Residential Housing project was initiated in 2002, where some women and their children were taken out of detention and placed in homes in the general community, but still under constant supervision and monitoring. For the asylum seekers this offered little relief and had the disadvantage of separating the women from their husbands as the state remained trenchant toward unauthorised male asylum seekers. In 2003 after four years of ongoing protests, Woomera and Curtin were closed; the closure of Port Hedland followed in 2004. Other detention centres, including Baxter IRPC, remained open. In 2005 women and children were released from detention centre. Their release, however, reinforced the notion that detention is no place for women and children, but is legitimate in detaining men.

Further legislative measures were introduced in 2001 to intensify security in centres and to criminalise resistance. The Australian Parliament also inserted provisions to limit the Refugee Convention definition of a refugee and created new definitions of 'non-political' and 'particularly serious' crimes. In both instances the apparent intention of the new provisions was to expand the range of circumstances in which refugees convicted of criminal offences either abroad or in Australia could be exempted from the Refugee Convention (Crock & Saul 2002, pp.66-67). These changes facilitated the removal of refugees involved in riots and other disturbances in the detention centres, and potentially further limited how asylum seekers could protest.

Government statements rebutted criticism of its detention model and of the effects of long-term indefinite incarceration by asserting that protesters were failed asylum seekers and that the state would not submit to acts of intimidation: 'Where there are adults causing self-harm, forcing children to sew their lips together can only be described as barbaric. It's unacceptable

behaviour in our community and should not be tolerated' (MPS 2002).

In September 2001 the government intensified its military capacity to interdict and repel flotillas of boats; it also introduced legislation that excised territory from the migration zone and established offshore camps on Nauru and Papua New Guinea.

The multiple and micro acts of constraint that extrude the conditions of exception are continually challenged. The explicit protests, the hunger strikes, breakouts and riots were a response to the constraining system of incarceration and sought particular resolution. This forceful dissent was a struggle for control; but in seeking confrontation, the male protesters risked punishment and an even deeper insertion into the conditions of exception. These violent protest and retaliation brought into sharp relief the impasse of the detention regime.

All those incarcerated are over time dragged toward a madness/hopelessness that envelopes the detention space. The detained body is marked with hope, desperation, violation and fear.

The creation of offshore processing on Nauru and Manus Island was a necessary adjunct to the condition of exception. It deflected the noisy and bodily resistance into an unseen space. Before moving onto a discussion of Topside camp on Nauru, it is necessary to explore the overarching conditions that are bound to the construction and operation of the Australian detention regime. The rationale for detention is embedded in the nexus of the state, territoriality and the citizen. The relation between citizens' rights and the modern state is the key lens with which to investigate the workings of detention and it is to this discussion that the thesis now turns.

A Summary Guide:

Detention Numbers and Reported Protests within Australia's Onshore Detention Centres, 1999 to 2003.

1998 - 1999	3,574 people held in detention.	Crock & Saul 2002, p.80
1999 July 1999	3,123 asylum seekers arrive by boat. Australian government passes law removing ability of HREOC to provide detained asylum seekers of their legal rights. Riots and escapes from Port Hedland IRPC	Parliamentary Library 2000 HREOC 2004a HREOC 2004a
November 1999	Over 1,200 asylum seekers arrive by boat - the largest number of boat arrivals to reach Australia in one month.	Parliamentary Library 2000
February 2000	1,290 people held at the Woomera IRPC.	Mann 2003

Protests 2000		
February	Around 300 people, mostly Iraqis involved in hunger strike at Curtin detention centre. A group of men suture their lips.	US Committee for Refugees Report 2002, p.23
March	Demonstrations at Woomera IRPC	HREOC 2004a
June	Two days of protest and approximately 480 detainees walk out of Woomera and into Woomera township.	HREOC 2004a
July	Riot at Port Hedland IRPC	A 10; HREOC 2004a
August	Hunger strike and mass breakout from Villawood IDC.	A6; A7
November	Riots at Woomera. Tear gas and water canons used Hunger strike at Woomera by more than 30 detainees. Some forcibly fed in hospital	Mann, 2003; A6; A7; A1; A2; HREOC 2004a

Protests 2001		
January	<p>Detainees at Port Hedland IRPC protest against the beating of detainee by guards. Riot involves about 180 detainees.</p> <p>Riot involving about 300 detainees held at Curtin.</p>	A9; HREOC 2004a
March	<p>Riot at Port Hedland</p> <p>Riots and fires at Curtin involving around 200 detainees. Tear gas used</p>	HREOC 2004a
June	<p>Mass breakout and riot at Woomera. Riot at Curtin.</p>	HREOC 2004a
July	<p>50 detainees escape Villawood.</p>	Crock & Saul 2002, p.115
July	<p>Hunger strike at Curtin.</p>	HREOC 2004a.
August	<p>Riot, fires, self harm at Woomera. Tear gas used. Centre on riot alert for more than a week.</p>	HREOC 2004a
November	<p>Around 250 people riot and light fires at Woomera.</p>	HREOC 2004a
December	<p>Fires set alight at Woomera, 13 buildings torched and 4 destroyed. About 300 people involved. Tear gas and water canons used. Hunger strikes continue.</p>	HREOC 2004a

August 2001	3,721 people held in detention.	MPS 2003b
Protests 2002		
January	Hunger strike by Afghan asylum seekers at Woomera. Hunger strikes, lip sewing at Woomera, Port Hedland and Curtin.	A1, A2, A9, A10; HREOC 2004a
March	About 50 people breakout from Woomera and hundreds of refugee activists protest outside centre.	HREOC 2004a
April	Around 150 detainees protest at Curtin detention centre. Tear gas used.	A9; A16
	Around 150 detainees riot at Port Hedland.	HREOC 2004a
December	Extensive fires lit at several centres including Woomera and Port Hedland. Curtin is closed.	HREOC 2004a
January 2003	1,165 people incarcerated in mainland immigration detention centres.	MPS, 2003b

Chapter 3

The (im)materiality of Human Rights

Abstract:

The exceptional state of immigration detention is embedded within the genealogy of the Australian state. The imagined nation-state is assumed to offer safeguards for citizens within the bounded national territory. This state-citizen relation orders the international system of states and fastens human rights to citizens' rights. The state confirms or denies access to rights for its nationals and thus in the transgressive move of crossing borders the undocumented asylum seeker - the stateless body - is marked as aberrant. Those excluded from the state-citizen relation are a target of government practices aimed at preventing their admittance. Permeation phobia is a component part of a myriad of immigrations policies, including immigration detention. Thus the detention system is a vehicle in the affirmation and reconfirmation of the state-citizen order and the contingency of rights within this frame.

While human rights belong supposedly to all human beings on account of their humanity, it is citizenship that turns people into human beings by protecting their so-called eternal or inalienable rights. The nation-state comes into existence through the exclusion of other people and nations... The alien is not a citizen. He does not have rights because he is not part of the state and he is a lesser human being because he is not a citizen. One is a human being to a greater or lesser degree because one is a citizen to a greater or lesser degree. The alien is the gap between man and citizen; between human nature and political community lies the moving refugee (Douzinas 2002, pp. 31-2).

I could characterise the task for both of us in familiar terms of doing good and fighting evil. The good is extending our compassion and welcome to refugees who have no other option. The fight against evil is against the exploitation by people smugglers of people desirous of a

better life and the resultant abuse and distortion of the system that has been set up to support refugees (Minister for Immigration in Manne with Corlett 2004, p.9).

Undocumented asylum seekers journey to Australia with the assumption that it is a country where human rights are upheld. Yet for the detained border crosser the promise of common rights is habitually unrealised. This begs the question of why indivisible human rights - seemingly fundamental to democratic modernity - are routinely absented from the site of detention.

The construction and operation of the system of immigration detention is bound to the complex workings and contradictions of modernity. One particular lens with which to investigate the workings of detention specifically, and permeation phobia generally, is the relation between human rights, citizens' rights and the modern state.

This chapter discusses recent policy measures introduced by the Australian government aimed at regularising the presence of undocumented asylum seekers. It suggests that these policies, rather than being innovative or original, are merely the contemporary expression of a sequence of acts designed to control entry into Australia.

The chapter locates these policies within the frame of the state-citizen relation and contends that with the exclusion of a stateless 'other' the state appears to confirm the protection and rights of nationals within a bounded territory. The modernist state is tied to contradictory claims: one as the legitimate guarantor of citizens' rights and human rights; and second as the sovereign defender of territorial borders from human incursion. Permeation phobia is a reflection of this second claim.

It is proposed that it is the connectedness of birth, nationality and rights which inevitably problematises the exile. These linkages suggest why the

movement of stateless people across borders is imagined as threatening - more menacing to the state than the transfer of goods, capital or culture.

The chapter examines the genealogical connectedness between human rights, citizens' rights and the development of the democratic state. In framing human rights principles as political ideals connected to the political rationalities of modern state power and the assumed compact between state and citizen, the chapter interrogates the (im)materiality of human rights for asylum seekers within an international system ordered by states. It concludes with an exegesis of Foucault's notion of bio-power to ask whether the term 'rights' is an accurate descriptor. Foucault's bio-political schema suggests that the asylum seeker is dealt with by government on the basis, not of rights, but of the management of populations. The modern state is prepared to secure only the biological survival of the stateless border crosser.

Permeation Phobia

Successive governments have presented Australia as a nation which adheres to human rights law, including the Refugee Convention (1951), and which has generously settled thousands of refugees fleeing humanitarian crises (see for instance DIMIA 2003a). Australia is a signatory to a wad of international human rights agreements - including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (CROC). Human rights principles - including freedom of religion, of movement, of justice before the law, freedom of political association and freedom from torture - are enshrined in the multiple international conventions and protocols agreed to by successive Australian governments. These treaties impose upon Australia the obligation to respect and protect the basic human rights of all persons within its jurisdiction, regardless of immigration or other status. Consecutive governments have confirmed a commitment to upholding

human rights principles and point as evidence to the settlement of over 700,000 refugees since Australia became a signatory to the Refugee Convention. The majority of these refugees were selected and settled via the humanitarian programs administered by the Department of Immigration.

Yet the settlement of refugees by modern states is never straightforward. More specifically the mechanisms that can confirm a person as refugee as opposed to undocumented border crosser are both fraught and limited. The international declarations and ratified agreements, including the UN Convention and its Protocol, are remarkable for their promise of rights of asylum. But central to the United Nations' Convention and Protocol is the assumption that inalienable human rights can be safeguarded and realised only within the context of the nation-state.

With an international system divided into nation-states, it is governments that manage the movement of people both within and across national borders. The asylum seeker remains an anomaly in a world where the human population is managed by 'belonging' to a sovereign state as a national citizen. The state can assert its sovereign right to exclude asylum seekers and leave them stateless, unable to enter a country of asylum and unable to return to the state of origin. This right of refusal reflects the institutional power of each state - embedded in national and international law - to control its immigration policy. As Sassen states in her analysis of the Refugee Convention:

... the 1951 Convention on refugees, which asserted that the right to leave is a universal right, remained silent on the right to enter. The status of refugees and their right not to be forcibly returned are established in international law, but there is no corresponding right of asylum; that is at the discretion of the receiving state (1996, p. 64).

On fleeing a state the exile is caught in a limbo - having no automatic right

to enter another sovereign territory.

The tension between sovereign rights and human rights is reflected in the way in which Australian governments have routinely managed refugee intakes. The government prefers to settle refugees as a monitored adjunct to its broad nation-building immigration strategies (Jupp 2002; Rubinstein 1987; Sluga 1988). The Immigration Department favours the settlement of select refugees and has been accused of 'cherry picking' the young, healthy and skilled, rather than those refugees who are perhaps most in need (Maley 2001, p. 89).

The resettlement of thousands of European Jews preceding and in the aftermath of World War II reflects the policy of strategic intake. The decision to accept and resettle Jewish refugees was never clearly a response to a humanitarian disaster. In 1933, when Jewish asylum seekers began to leave Germany, the Australian Department of the Interior, then responsible for immigration, argued that Australia should take 'special precautions so as to avoid any unwanted influx' (Bartrop 1987, p.178). Under international pressure the Australian government accepted about 8,000 German, Austrian and Czechoslovak Jewish refugees between 1933 and the closing of the sea-lanes in 1940-41.

After the war security and economic concerns fuelled a mass immigration program. Some 25-40,000 European Jews who survived the Holocaust came to Australia (Rubinstein 1987, p. 4), though Jews from Asia had only a short window of opportunity before they were blocked. Eventually, the Australian government allowed the entry of more Holocaust survivors, per head of population, than any other country aside from Palestine/Israel. The refugees and displaced persons were mainly not Jewish – rather Russians, Italians and Germans. Australia also accepted thousands of refugees fleeing the aftermath of the Soviet invasion of Hungary (1956) and Czechoslovakia (1968). Most of these arrivals were placed in immigration camps such as

Bonegilla. This final large intake was not the result of humanitarian concern but was fuelled by a desire for cheap labour and the failure of the immigration program to attract enough British migrants (Collins 1991, p.53).

The problematic disjuncture between sovereign rights and human rights became increasingly evident from the late 1970s, when the number of people fleeing political crises escalated. The international system of modern states responded with increasingly sophisticated measures to thwart cross border movement (Dummett 2001; Castles & Davidson 2000; Castles & Miller 2003). Western governments have employed various stringent policies to stop the unwanted movement of people interstate. 'Fortresses' Europe, America and Australia were forged¹. As Lui (2002) notes, these measures have included the US Coast Guard intercepting the passage of asylum seekers from entering US waters; and in the name of co-operation, European nations have established 'sophisticated' regulatory treaties like the Schengen Agreements and the Dublin Convention that subvert their treaty obligations under the Refugee Convention.

In Australia the first sign of the political impact of undocumented asylum seekers came in 1976, when a boat docked in Darwin. On board were young male asylum seekers from Vietnam. The men were housed in migrant hostels. Their arrival raised fears about the exposure of the nation's northern borders and the problem of trying to uphold both international law on the treatment of asylum seekers and national sovereignty (Viviani 1984, p.17). This boat was followed by others. Between 1976 and 1981 about 2,000 Indochinese arrived by boat. The boat arrivals were often slighted as bogus, a 'national threat and diseased' (Viviani 1984, p.63). But in the wake of Australia's involvement in the Vietnam War, and support for the anti-

¹ In 2000 there were an estimated 21 million internally and externally displaced refugees - but only 90,000 places were offered by western countries for resettlement through the UNHCR (Castles & Miller 2003). Australia offered to take 4,000 of this 90,000.

communist Vietnamese groups, the granting of protection visas to Vietnamese refugees was all but guaranteed by the Coalition government led by Malcolm Fraser.²

This government sought to regularise the numbers and method of arrival of these non-European refugees - by striking agreements with regional governments about holding camps and resettlement and by encouraging Vietnam to create an Orderly Departure Program (1979). Agreements between Vietnam and its regional neighbours stopped the trickle of unauthorised boat arrivals by minimising the need to use 'people smugglers'.

The aftermath of Australia's military involvement in Vietnam coincided with the emergence of Australian multiculturalism. In the late 1970s Australia promised to re-settle 10,000 refugees a year from the camps in Southeast Asia. As with the refugees who had fled Europe, the Australian government would decide who to take according to how they would 'fit' Australian national needs and interests. Over the next twenty-five years and in the interests of regional cooperation, Australia resettled thousands of Vietnamese refugees (Gibney 2004).

From 1981 to 1989 there were no unauthorised asylum seekers from Indochina (Crock & Saul 2002). The arrival of boats carrying Indochinese asylum seekers in 1989³ signalled the beginning of a more intensive strategy that specifically targeted the undocumented arrivals. The federal Labor

² Australia's refugee program is also influenced by the political ideology of the country the refugee is fleeing. The Australian Labor party has tended to more readily accept those fleeing right wing regimes, including refugees from Chile and El Salvador during the 1980's. The Coalition has been more sympathetic to refugees fleeing communist nations, including Hungary in the 1950s and Vietnam in the 1970's. The Australian state is not alone in moderating refugee intakes according to political persuasion. The politics of refugee intakes in the United States is detailed in Gold's 1992 study, *Refugee Communities*

³ The cross-border movement in 1989 came in the wake of regional governments' agreement to a second Comprehensive Plan of Action. This agreement had the effect of reducing the acceptance rate, increasing delays, and leaving about 40,000 rejected applicants in camps who refused to go back to Vietnam.

government began to detain asylum seekers in ramshackle facilities in Sydney and Melbourne. This form of detention was understood by the bureaucracy and government as a system of preclusion (Maley 2001, 2002). More specifically it affirmed the sanctity of territorial borders against the undocumented 'other'.

Gerry Hand was one of the first ministers to preside over the detention system as Minister for Immigration. In 1992, he stated:

I believe it is crucial that all persons who come to Australia without prior authorisation not be released into the community. Their release would undermine the government's strategy for their status or entry claims. The government is determined that a clear signal be sent that migration may not be achieved by simply arriving in this country and expecting to be allowed into this community (Poynder in Crock 1993, p. 63).

This deterrence objective defied the 1992 High Court finding that mandatory detention was lawful only with the proviso that it was not used to punish or deter.

The sedimentation of immigration detention in the early 1990s sought to preclude and isolate the body of the 'other'. Immigration detention became a part of a 'bulging armoury of migration control devices' (Cronin 1993, p. 24).⁴ In her examination of the Department of Immigration, Cronin argued there was a bureaucratic 'culture of control' (1993) to hold back a projected imminent flood of arrivals. This was a bureaucracy obsessed and fearful about the size and profile of the immigration program.

With the institution of detention, an explicit space of exception was forged. In 1992 the Migration Amendment Act abolished the rule of law in making

⁴ In 1989 the central government also reduced its overall humanitarian intake from 20,000 to 16,000 in 1989 and then to 12,000 in 1991. This quota remained static for the next twelve years.

detention mandatory and extrajudicial (Mares 2001, p. 69). The Act removed all migration decisions from the mainstream judicial review process and made no provision for release from detention - and, except for a limited number of cases, no provision for independent or judicial review of a decision to continue the detention. Immigration detention now operated as a state of exception, existing beyond the law.

The government justifies and legitimates this as a reflection of '... Australia's sovereign right under international law to determine who can be permitted to remain and the condition under which they may be removed' (DIMIA 2003b). The government power to operate both in and outside the law is 'legitimated' by the primacy of sovereign rights. The authority of sovereignty is recognised under international law.

Yet the extrajudicial incarceration of asylum seekers counters human rights agreements, and immigration detention is a system of last resort - the state prefers to prevent all undocumented asylum seekers from reaching and penetrating sovereign borders.

By the late 1990s and in direct response to the increased numbers of undocumented asylum seekers, both anxious policy measures and rhetoric intensified.⁵ The nation's permeation phobia intensified. The Coalition government pioneered increasingly punitive measures against unauthorised asylum seekers. Legislation introduced in 1999 and 2001 reducing asylum seekers' access to judicial procedures (see Crock & Saul 2002; Brennan 2003) and the introduction in 1999 of the Temporary Protection Visa (TPV) further undermined the capacity of asylum seekers and refugees to be permanently admitted into the Australian community. The temporary protection device is not prohibited under the UN Convention. It was a

⁵ In 1997 the anti-immigration politician Pauline Hanson called for social debate on immigration and argued that 'ordinary' Australians had been kept out of the immigration debate. Australians should decide who could and could not enter the country (Hanson 1997).

system advocated by the One Nation leader Pauline Hanson during the 1998 election campaign. At first rejected by the government as 'inhumane', the TPV was introduced as policy by the Coalition the following year (McMaster 2002a). The TPV targeted certain groups of refugee, and in particular those who first arrived unauthorised. It provides temporary protection for thirty months, during which refugees are not eligible for any English language programs or employment assistance; nor are refugees entitled to family reunion or travel overseas to visit their family.

In addition the government introduced significant increases in coastal patrolling, including allowing the navy to pursue, board and search boats; they placed additional compliance officers in several cities in Asia, Africa and Europe - in Shanghai, Guangzhou, New Delhi, Colombo, Nairobi, Pretoria and Ankara; and they targeted busy Asian and Middle Eastern airports in Kuala Lumpur, Bangkok, Denpasar, Singapore and Dubai to interdict people attempting to board aircraft using false documents. The Australian government also employed fingerprinting and language analysis to identify the 'true' identity and nationality of asylum seekers.

But these elaborate national and international systems of preclusion failed to prevent thousands of undocumented asylum seekers reaching Australian territory. The government responded with increasingly militarised programs. In 2001 it authorised its 'People Smuggling Disruption Program' to disorder people smuggling rings in Indonesia (Kevin 2004)⁶; the government also sought bilateral and multilateral agreements with Asian and Middle Eastern nations to thwart border-crossing and strengthen inter-government mechanisms for repatriation (Catholic Commission for Justice

⁶ The Immigration Minister described people-smuggling as 'a major threat to national sovereignty and political stability (which) causes significant fiscal and social costs and can threaten lives' (Minister of Immigration, 2001a). The Minister - in defence of immigration detention - suggested that detained asylum seekers who had paid a smuggler were less worthy than those who remain in UNHCR camps (DIMIA 2003a).

Development and Peace 2002).

Manne (2004) argues that the recent extension of permeation phobic policies, introduced by a conservative Coalition government, reflects a new politics of 'indifference'. However, whilst these strategies reflected a heightened response, they expose the historical concern to assert the nation's right of sovereignty above the individual's right to protection.

In 2001 following the New York World Trade Centre attack of 9/11 and the 'Tampa Affair' (when the Australian government prevented a Norwegian container vessel, the MV Tampa, from docking in Australian waters and allowing asylum seekers to disembark), the government rushed through seven acts of Parliament. This legislation effectively thwarted the attempts by undocumented boat arrivals to reach Australia. It determined that undocumented boat arrivals would be further disabled from the right to claim rights.

On 26th September 2001, The Border Protection (Validation and Enforcement Powers) Act was passed – an Act which 'had no precedent in Australian law' (Crock & Saul 2002, p. 38). It retrospectively validated any action taken by the Commonwealth in relation to the Tampa and other ships intercepted between August 27th and the date of the Royal Assent to the Act. It also prevented any civil or criminal proceedings challenging actions covered by the legislation.

This legislation excised specified Australian territories from the migration zone, thereby making it virtually impossible for boats carrying undocumented asylum seekers to reach any Australian migration zone. Under the Migration Amendment (Excision from Migration Zone) Act 2001, people coming ashore at Ashmore Reef, on the Keeling or Cocos Islands or on Christmas Island are now deemed not to have entered Australia's migration zone for the purpose of making an application for an Australian

visa. In effect this meant that these 'boat people' now fell outside Australia's refugee protection system, and had no right to access Australia's tribunals (Crock & Saul 2002, p. 56). Instead they would have their refugee claims assessed by UNHCR or by Australian officials.

The act confirmed the power of the government to act outside of parliamentary authority. Parliament also inserted provisions to limit the Refugee Convention definition of a refugee, and created new definitions of 'non-political' and 'particularly serious' crimes. In both instances the new provisions expanded the range of circumstances in which refugees convicted of criminal offences either abroad or in Australia can be exempted from the Refugee Convention (Crock & Saul 2002, pp. 66 - 67). These changes facilitate the removal of refugees involved in riots or other disturbances in detention centres.

The supposed religious and cultural differences of the border crosser mark them as targets in a populist and war-like campaign. In the wake of 9/11 and the emergence of a new western 'threat' in the form of transnational terrorism fuelled by religious fervour - one perceived as tied to Middle Eastern and Arab ethnicity - the government introduced its 'Border Protection' legislation.

Arendt observed (1973) that in a time of perceived national crisis the modern state commonly exercises its right to exclude the non-citizen. The political tactic constructing the threatening 'other' as a legitimation for public order measures has a long and common history (Balibar & Wallerstein 1991; Vasta & Castles 1996). Since the late 1980s government has regularly implied that groups of asylum seekers are not in need of protection, but pose a threat to Australia; that they are disingenuous, will 'flood' the nation and carry disease (Crock 1993, p.31). It was in the redefined space of post-9/11 that asylum seekers - the majority being Muslims fleeing the Middle East and central Asia - could be represented not

only as economic migrants or carriers of disease or potential criminals, but more ominously as potential Islamic terrorists.

There were ministerial claims that ‘whole villages’ in the Middle East were packing up and on the move and that Australia could expect as many as 10,000 people trying to come into Australia (Crock & Saul 2002). The government made direct links between asylum seekers and threats of terrorist infiltrators⁷, illegality and violence (Klocker & Dunn 2003; Mares 2001, p. 54; Marr & Wilkinson 2003, pp. 280-1; MPS 2001b). In Dunn and Klocker’s analysis of government documents, 90% of descriptive terms used by the government were negative (2003, p.10).

The Australian government was at pains to stress that it does not repel refugees, the man of rights. The militarisation of policies was frequently explicated in the language of fighting, people smugglers, criminals and rebuffing bogus asylum seekers - those with the resources to pay a smuggler and merely ‘desirous of a better life’ (Minister for Immigration in Manne with Corlett 2004, p. 9). The perceived danger to border integrity was a recurrent theme within Government documents and statements.

It was a campaign where the boundaries between fiction and reality become indistinguishable as the ‘brandishing of “facts” goes hand in hand with great leaps in discursive fantasy’ (Arextaga 2003 p.402).⁸ Routinely asylum seekers were constructed by government as a physical and cultural ‘threat’ (Catholic Commission for Justice Development and Peace 2002, p.11).

⁷ There is no supporting evidence to suggest undocumented asylum seekers are linked with terrorist groups. The Australian Security and Intelligence organisation (ASIO) vets all illegal entrants. ASIO’s 2001 annual report says that of the 3,700 checks of unauthorised asylum seekers it made to July 2001, only one person was found to be of concern for security (*The World Today*, 2002, radio broadcast, ABC Radio National, Sydney 14 February).

⁸ For example, the fanciful claim by the Australian government (October 2001) that asylum seekers had threatened to throw their children from a boat trying to bring them to Australia. According to Foreign Minister Alexander Downer; ‘These people have behaved abominably right from the start. The disgraceful way they treat their own children. Any civilised person would never dream of treating their children in that way.... [They are].... not welcome in our country’ (in Catholic Commission for Justice Development and Peace 2002, p. 22).

These included references to arson and the use of weapons by detained asylum seekers, and the risk posed to border integrity and migrant selection. These excessive policy and rhetorical strategies bypassed rational functionality and staged a political fantasy in which the Australian government defended nationals against the threat of an invasion of border crossers. This was phobia embedded within the frame of state protection of the citizen population in the newly declared War on Terror.

(Non-) Belonging

The strategies adopted to thwart asylum seekers' efforts to reach Australia had broad support. A qualitative study conducted just after the 9/11 attacks in the United States found widespread community fear of asylum seekers. The negative attitudes applied mainly to people from Islamic nations – particularly Afghani and Iraqi people claiming asylum. Respondents worried that large numbers of asylum seekers wanted to migrate here, that their cultural differences would irrevocably and negatively affect the broad Australian society and that amongst them could be terrorists (Community Aid Abroad 2001).

Other research similarly found that the majority of respondents believed asylum seekers posed a threat to Australian borders and security. The entry of boats carrying asylum seekers into Australian waters was seen as a national crisis. A third of the comments regarded violence, fanaticism and terrorism as stereotypical of Muslim fanaticism, and felt Muslims caused cultural problems within Australia by being too different (Klocker & Dunn 2003).

There is a history of community antagonism towards refugees and asylum seekers⁹. Dummett (2001) suggests this fear is linked to the relation

⁹ Opinion polls conducted during the 1940s on immigration of Jewish refugees drew little support. In 1943, of 439 interviewees polled, 75% were opposed to large-scale Jewish

between territory, belonging and rights. The limits of the nationalist belonging and citizenship rights are defined by geographic borders. Sovereign states with distinctive territorial characters map political life by distinguishing the community of citizens from the mass of non-citizens.

The nation-state is differentiated from other states and populations by cultural, historical, territorial and political specificities. The maintenance and reiteration of the 'common vision' of the nation-state (Clenndinnen 1999) is ongoing. Thus sovereign territory is an object for nationalistic attachment - providing the group with a sense of collective ownership and hostility towards those who transgress those borders. This visceral sense of belonging is in contradistinction to the border crosser's non-belonging.

Permeation phobia is fluid and complex. In unpacking connections between state, territory and nativity rights the 'rationale' for this anxiety can be examined. The refugee is a symbol of the progressive ideal of the modern polity - the living embodiment of western, enlightened progress. Yet the undocumented asylum seeker - the precursive status to refugee subjecthood - also symbolises a threat to the rights proffered by citizenship.

Agamben suggests that every decisive political act is double-sided, where the liberties and rights won by modern communities is always simultaneously prepared with a tacit but increasing inscription of individual lives with the state order (Deranty, 2004, para 13). With enhanced individual 'freedoms' there are corresponding insertions of state control over life and thus simultaneous reductions of 'freedom'. In *Homo Sacer* Agamben's narrative makes little distinction between the citizen and the non-citizen suspended between bare life and citizenship (1998).

immigration (Golvan 1990, p. 25). In a 1993 poll a thousand people were asked for their views on this issue. Seven percent of respondents said asylum seekers should be able to stay and 44% believed they should be sent straight back without their claims being assessed (Kingston 1993, p. 9).

In this reading any declaration of rights also represents the point of inscription of bare life into the juridical-political order of the nation state (Dean 2005). Agamben argues that the modern state and the totalitarian state are seamlessly connected by the power of the sovereign to condemn and expose targeted groups to bare life (2005). In this sense Agamben's critique offers no critical distinction between modern democratic states and totalitarian states, nor between the non-national and the modern national – as all are equally subject to the possibility of bare life.¹⁰ But as Arendt (1973) makes clear, national belonging is the key to the individual's right to have rights. The non-national is always vulnerable to bare life – or life where rights are extinguished. The national endures no such absolute vulnerability for the political genealogy of human rights is bound to the rights of citizenship.

Arendt suggests that only when it is recognised that a subject has the claim to have rights, than they are a member of a political community. Arendt asserts that the political solution lies with the citizen. When man and citizen come apart, we realise that man never really existed as a subject of enlightenment. Citizenship is the status that can confirm human rights.

Citizenship is at the core of the modern political unit. Citizenship confers the claim to exclusive membership of a political community. As a member, one is assumed to have privileges within the state and a status that is distinct from that of non-citizens. National citizenship entails legal, social as well as cultural and normative dimensions that function as markers of belonging. This sense of being accounted for and being in control, all add up to what is the national's capacity to receive what Michelet called 'his share of hope' (in Hage 2003, p. 14).

¹⁰ In contrast to Agamben, Habermas points to the advances made by modernity in the entrenchment of rights (1998). Habermas admits of the resources that rights provide and dismisses claims that democratic modernity can be neatly equated with totalitarianism.

Human rights are also bound to citizenship. The acceptance of the political formulation that human rights are inalienable by virtue of birth was linked to the rise of international ordering based on a system of states and guaranteed to citizenship. The discussion of rights first appeared in Britain in the 16th century and then in France in the 17th in political formulations against sovereign rule. By the 18th century a liberal utilitarian form of government had been elaborated which made appeals to the interplay of individual and public interest. Governance was concerned with freedom of economic markets and of the individual in the public interest. Liberalism demanded that the individual be governed as little as possible, but within spheres of social activity which would ensure that the capacity to operate was not infringed in random and illicit ways. The framework of the state-citizen order was advanced on the ground of claimed furtherance of peace, justice, reason and humanity. These expressions of liberty and equality were political acts which moved governing power from the sovereign to democratic national governance. The attributes of the democratic state - sovereignty, territory, population and the legitimate use of violence - became the preferred political system based on its claim to acknowledge and defend equality and freedom within a bounded territory.

Classic liberal theory argues that a progressive society can be measured in terms of the freedom and equality enjoyed by its citizens; and these rights, intrinsic to all individuals within the state, must be recognised. 'All men are born free and equal to each other, they are individual' (Pateman 1988, p. 6).

The social contract, so the story goes, creates a society in which individuals can make contracts, secure in the knowledge that their actions are regulated by the law of the state – and that if necessary, the state will enforce their agreements (Pateman 1988, p. 40).

The Universal Declaration of Human Rights (1948) assumed human rights are universal, inalienable and indivisible. It is derived from the Universal

Declaration of Independence, the US Constitution and the Declaration of Man and Citizen (Sassen 1996, p. 90).

As the unit of political organisation, the nation-state has gained universal acceptance and continues to be held together by the assumption that the object of government is the life, welfare and happiness of the population of a state: its citizens. Under the imagined social compact the national community (the population) has the power to impose its political will within those boundaries. The tension between human rights, citizens' rights and the state marks the uneven and incomplete development of modernity.

Weber defined the state as 'a compulsory association which organises domination: through the means of physical force' (Gerth & Mills 1991); but he also understood that in reality obedience to the legality of the state is determined by highly robust motives of fear and hope (Gerth & Mills 1991).

The state has lost many of the ordering functions that produced the effect of a unitary force. The traditional functions of the state as regulator of diverse areas of social life such as 'law, education, health, crime national security – what Althusser (1971) called the 'state apparatus' – has shifted and substituted by private companies and institutions' (Aretxaga 2003, p. 394). The state is at once an incoherent, multifaceted ensemble of power relations and a vehicle of massive domination. It is not a thing, system or subject, but a significantly unbounded terrain of powers and techniques; it is an ensemble of discourses, rules and practices cohabiting in limiting, tension-ridden, and often contradictory relations with each other (Brown 1995, p.174).

The era of intense phobic policies by modern states against border crossers was initiated at a time when the dissolution of the nation-state has been repeatedly touted (O'hame 1995; Soysal 1995). But despite these massive shifts including international human rights law, the supra-national power of

corporations, the significant transfer of economic management from states to corporations, as detailed in O'Hare's borderless world thesis (1995) and the emergence of nascent post-national membership system,¹¹ the state form remains a crucial presence.

This form is both fluid and tenacious. The domination and centrality of the state order continues, although challenged - for it remains the key reference point for the rights and aspirations of the citizen.¹² The link between the state and the citizen remains firm. Aretxaga asserts that; 'Invested with a kind of meta-capital, the state remains a crucial presence, a screen for political desires and identifications as well as fears' (Aretxaga 2003, p. 393). It is a relation bound to the political ideal of democratic government for the people, of the people and by the people – and it gave rise to the acknowledgment of the so-called inalienable rights of the individual.

The belief in an essential commonality and equality between all humans is the logic rooted within the modern democratic state-citizen relation. The modern polity makes a primary claim to liberate the individual (Pateman 1988a).

For John Rawls (1972), democratic government is an expression of fundamental modern principles: justice, equality, rationality and progress. Under the rule of law the modern state balances private interests and the

¹¹ In *The Borderless World*, Kenichi O'Hare argues that supra-national power has already emerged: he calls it the Interlinked Economy (ILE), which consists of the 'Triad' (the USA, Europe and Japan), joined by new industrial economies such as Taiwan, Hong Kong and Singapore. 'It has become so powerful that it has swallowed most consumers and corporations, made traditional national borders almost disappear, and pushed bureaucrats, politicians and the military towards the status of declining industries' (1995, p. xi).

¹² Some discussion has centred on the weakening of the state in the wake of globalisation and the emergence of a global citizenship. Soysal in *Limits of Citizenship* examines human rights instrumentalities and legislation as a component of globalisation and a fracturing of the citizen-state relation and argues that 'A new and more universal concept of citizenship has unfolded in the post-war era, one whose organising and legitimating principles are based on universal personhood rather than national belonging' (1995, p.1) As McMaster notes, 'universal schemes of citizenship have foundered on the necessarily local character of citizenship, a resource that is maintained while specific boundaries exist' (2001, p. 188).

public good. This view of modernity offers an account of western political history as a neat process of rationalisation. But the relation between the state and the subject is always incomplete, ambiguous and contingent.

The nation-state is ordered and bounded by cultural, historical, territorial and political specificities. This particular embodiment marks one nation-state's distinction from other states and populations. Clenndinnen suggests that the nation-state holds together when there is a 'common vision as to how the world works, what constitutes the good life' (1999).

The incredibly resilient link between nationality and rights overwhelms the indivisible dimension of rights. The body that can make no citizen-based claim to rights in a state becomes the very exception, the very life excluded. The tenacious connection between the national community and national territory necessarily excludes non-nationals. The border crosser is so defined as an effect of the division of population into territorial units. The state/citizen nexus connects territorial boundaries to the rights of citizens within this defined space, and legitimates state violence against threats to territory and citizenry.

The geographic boundaries of the state's territory are arbitrary - most fellow citizens will never know each other - yet like religion or kinship, the image of national communion is a matter of faith. It is this belief in a common identity and shared space which provides the strength of the nation-state's construction of rights and territorial limits.

The citizen and state are joined in strangely ambiguous ways (Trouillot 1995). The citizen is always meant to be universalistic and above cultural differences - the Hobbesian 'artificial man' - yet the modern state functions only in the reality of a corporeal difference. All citizens are supposed to have equal enlightenments as citizens; yet, as Lloyd details (1984), specific corporealities are privileged. The imaginings of a homogeneous national

community clashes with these ambiguities, internal differences and power struggles. The anxiety with corporeal difference is at the heart of Morris's (1995) assessment of the 'problem of Australian nationality' as located within a scene of white, male ordinariness.

Lloyd (1984) and Pateman (1988, 1988a) detail the connections between citizenship, rights and masculinity. To be a masculine subject is to recognise oneself in the ideals of reason and to aspire to the norms of rational thought and reason. By extension of this argument it could be suggested that the withdrawal of rights is perhaps experienced more acutely by the embodied male than by the embodied female; for men are the naturalised subjects of rights, and their absence is therefore particularly anomalous.

Critiques of modern democratic practices unravel the failure of the state to uphold full citizenship to all nationals (Lloyd 1984; Kymlicka (ed.) 1995; Hardt & Negri 2000). The *de facto* exceptions of significant groups, often marked by ethnicity, disability, religion or gender, create differences in citizenship (Goodall 1996; Vasta & Castles 1996; Pateman 1988). The citizen of exception can encounter the state as a powerful spectral threat (Aretxaga 2002).

The problematic quality of the state-citizen relation (one marked by fears and hopes) demands ongoing renationalising and the reworking of a 'common vision'. It is a consequence understood by Anderson (1991) with his 'imagined communities' and by other critical writings on nation and nationalism (Bhabha 1990). The experience of the disjunction of the status of citizenship can be masked by the outsider. Aretxaga suggests discourses of patriotism and practices of war against a magnified enemy disguise the internal violence of the nation (2003, p. 397).

In violating the modernist need for homogeneity and the sanctity of sovereign territory, unauthorised asylum seekers question the strength of

the nation-state and its ability to provide and protect citizens' rights. The interloper's permeation of sovereign borders signifies an erosion of state management of territory and population. The border crosser signals a perceived threat to the hopes of wellbeing and protection within the nation-state. Undocumented asylum seekers are thus readily defined as threats and burdens to the body of the nation-state.

International human rights agreements are frequently touted as providing the legal leverage to counter phobic policies targeting asylum seekers (see for instance Sassen 1996; Crock & Saul 2001; Brennan 2004). But the international system of states confirms that human rights can only be actualised within the state.

Statehood anchors understandings of modern politics and fixes the foundations and conditions of international relations. Within the arena of international relations, the maintenance of the cartography of states is a primary objective. The imaginaries of the national form and the national citizen provide the grid of intelligibility in contemporary discourses of 'international community' and 'humanity'. Being stateless is necessarily problematic as one's subjecthood cannot exist without a state. Subjecthood is a product of the relation between the state and the individual.

Human rights are founded by national and international law. They are not inviolable but are limited to their juridical nature. The state has the power to grant and deny rights; it can continually defer or compromise human rights in the interest of sovereign rights. In an examination of the UNHCR, Lui (2002) argues that this international bureaucracy is a form of geopolitical humanitarianism that has as its core business the preservation of the value of the nation-state form and the institution of national citizenship. Lui argues that the current asylum seeker regime is simultaneously oppressive and liberating: this regime, including state-to-state agreements and national practices, functions as a globalised system of

policing non-citizens; but at the same time these non-citizens are governed in a regime which locates rights within the state-citizen order.

Lui suggests that rather than fracturing this current order, the international refugee regime confirms and strengthens it - whilst trying to manage the stateless population. This totalising state-citizen order has produced a regime of truth about international relations and the form of life possible (and desirable) inside and outside the state (Lui 2002).¹³

The international refugee regime in the form of the United Nations High Commissioner for Refugees (UNHCR) is mandated to manage and protect stateless asylum seekers; but the United Nations functions through compromise between nation-states. The contradiction of this framework is evident in the highly complex debates and decisions around human rights emergencies, such as the humanitarian crisis in Darfur during 2006.

Governance of Populations

The asylum seeker represents such a disquieting element, above all, because by breaking up the identity between man and citizen, between nativity and nationality, he/she throws into 'crisis the original fiction of inclusion and of rights as inviolable and protected by the sovereign state' (Agamben 1994, para 5).

Foucault's sketchy but skilful questioning on what he termed

¹³ Lui draws on historic links between the current international refugee system and the nascent refugee regime which emerged in the postscript to World War I, to argue that they are strikingly similar in a central concern with managing immigration at a time when immigration mechanisms were failing to achieve their aims. Lui suggests the refugee regime which emerged after WW1 was couched in the language of international protection but the commitment to protecting vulnerable people was a secondary aim. For the community of Allied states, the maintenance of the fragile order in Europe following the extensive geopolitical and demographic changes brought on by the Peace Treaties was crucial. A refugee regime which monitored and controlled the cross-border movement of people was deemed essential to international peace (Lui 2002).

'governmentality' (2001) and the bio-political opens alternate avenues to discuss human rights that neither reduce rights to empty content (as with Agamben), nor as the mark of rational progress (as with Rawls). In his analysis of the Enlightenment and the modern state, Foucault moves away from more traditional notions of Western progress or contradictions between the rights of states and the rights of individuals.

Part of his work is to ask us to rethink the understandings of the state as a privileged site of an immense power that stands in opposition to civil society imagined as the absence of power. What interests Foucault is the emergence of a new form of political rationality which 'combines simultaneously two seemingly contradictory modalities of power: one totalizing and centralizing, the other individualizing and normalizing' (Scott 1995, p. 202).

Governmentality and bio-power rethinks the notion of the state as a contradictory ensemble of practices and processes and locates Western modernity as a bio-political system where management of populations is central. Foucault's studies of governmentality suggest that from the 18th century the power of the absolute sovereign was replaced by an array of practices and discourses aimed at the ordering and control of bodies and populations. The emergence of statistics, new notions about health and contagion, madness and sanity, sexuality and reproduction, techniques of surveying and mapping and census, new institutions such as the clinic and the prison – all these were aimed at rendering populations and bodies legible, disciplined and controlled.

Rather than interpreting the principles of equality and democracy as the markers of modern progressiveness, Foucault argues that modernity is marked by its contact with the biological body and its management of populations (1978, 2001). This is the emergence of bio-politics. Foucault identifies two technologies of power in the modern epoch: bio-politics and discipline. As Kelly explains: 'Discipline is a technology which is concerned

with individuals, the control of individual bodies; bio-politics is newer and correspondingly more sophisticated: it deals with populations at the level of the multiplicity' (2002, p. 59).

Bio-politics is the ability to control people by maintaining them in life. In this schema, rather than understanding 'rights' as universal and indivisible, they can be understood as tied to debates on individual and public interests - and in particular, to judicial limits constraining government. A modern state is concerned with the wellbeing of the population. Society can and must defend itself (Foucault, 2003) against threats to the perceived interests of the population.

This modern system of governance is best understood as a set of operational categories and concepts which have no necessary ideal representation in political principles but which are concerned with the management and life of the population. Foucault argues it was the human body that had become the major issue for the application of power.

For Foucault, it is the practice of this management, rather than the enactment of principles, which is the key to modern government. His analysis of the emergence of governmentality and the bio-political in the modern state opens up ways to explore two critical themes: state power and the institutional inscription of the lived body.

Foucault understands Western modernity not as a unitary and essentially principled tradition but rather as a body of reflection upon the art and practice of government which is closely connected to the work of political rule through the agency of bureaucratic expertise (Burchell 1997). Foucault locates the emergence of 'rights' of the individual as a way of critiquing and limiting the systems of governance. The rise of liberty (freedom) both respected and violated modernity.

In the reworking of *A History of Sexuality* (1978) and in his lectures *On Governmentality* (2001), Foucault outlines the rise of the 'biopolitic'. From the 16th century, as life in Europe became less threatened by the immediate and constant presence of death, life expectancy was not only increased but became increasingly valued. Foucault writes that for

... the first time in history, no doubt, biological existence was reflected in political existence; the fact of living was no longer an inaccessible substrate that only emerged from time to time, amid the randomness of death and its fatality; part of it passed into knowledge's field of control and power's sphere of intervention (Foucault 1978, p.142).

Thus in the modern era political power was extended over an entire population. Political power, in the form of the emerging states, assigned itself the task of managing life and introduced the principles of good and humane government, 'thus enabling the modernising tradition from the 'rule of force' to the 'rule of law'' (Scott 1995, p.192).

As the state became secular, life itself became sacred and the very fact of life (and thus of birth, health, reproduction and mortality) became an issue for modern power, particularly for state power. If human life is taken to be a sacred entity then the right to what constitutes a 'good life' is extended. The techniques, devices and points of application of power were devoted to the health and control of the population. Foucault sees this form of modern governmentality dispersed throughout the modern world in various institutions and discourses, including hospitals, prisons, armies and schools. Life and the modern state are brought together in an intimate relation between biological life and the techniques and strategies of power which manage it.

As sovereign power shifts to the secularisation of government, paradoxically the sanctity of life emerges as a key to the modern polity. Holt describes biopolitics as one of the most important inventions of modern political culture

in that the sanctity of life, of existence itself 'has become congruent with the very fact of birth and furthermore, began its modern history in the political rather than the religious sphere' (Holt 2002, p. 91).

Bio-politics targets the conditions in which the body is to live and define its life (Scott 1995). Foucault views power not as the antithesis of freedom and reason, but as the general name of a relation in which the differential effects of one action upon another are produced. Power does not merely operate over the social domain but rather constructs the normative (that is, enabling/constraining) regularities that positively constitute civil society. In the modern era people have become populations to be managed; individuals are bodies that are normalised. Within the modern polity the citizen is identified as the normative body – the subject whose life is managed for extension and protection; the stateless body is the aberrant – the subject where life is threatened.

... modern politics is generated by its contact with the biological government of populations and the institutional inscription of the individual body in the processes, techniques and organisations of normalisation - both of which are centred, in the final instance, on where one is born, that is, on the nation (Holt 2002, p. 94).

In the Foucauldian account rights can be a site of resistance against disciplining power. But the precursor to human rights is the license of the sovereignty. It is a theme cogently argued by Holt as he interprets current policies towards asylum seekers. The claim to liberty and equality were initially political, but 'quickly became inscribed... in the new sovereignty of the nation which was placed antecedent to the rights of the people and of the individual. In fact national sovereignty became the default position of all rights' (2002, p. 96).

Foucault understands human rights as a modern technique to manage the life of the population. This benevolent management is withdrawn in the

excised zone of detention. The sovereign state presupposes an authority to dehumanise or humanize – to honour or dishonour the subject.

Immigration policies identify undocumented asylum seekers as being outside the population and thus beyond the bio-political technologies developed to maintain life. In this way those targeted are exposed to greater risk of death than would be normal for the body of the population. The border crosser's relationship to the state is one of being abandoned or excluded by it, and thus of being reduced to bare life. The state needs constant exclusions: those who are excluded are included through their exclusion. This is seen in the detention camp, a space where, the experiences of the border crosser tell us, anything can happen.

There is a tension inherent in modern communities between the overtures toward human equality and the systematic tendencies that generate methodical and violent exclusions. The permeation of state borders by the non-citizen disrupts the normative relation between nativity, territoriality and rights. On entry the exile becomes a target of state power that seeks to limit the perceived disruption of its management of populations and to reaffirm the state-citizen nexus. Citizenship not only means to belong to a nation, but is also the status that legitimates a subject. Only full citizenship can turn people into human beings by protecting their claim to rights. Asylum seeker phobia reflects the irresolvable tension between the discourse of human rights and the capacity of the state to manage populations according to citizenship norms of inclusion and exclusion.

The phobic policies pioneered by the Australian government vigorously affirms the state-citizen logic, reconfirms territorial borders and the state's sovereign right to manage cross-border movement. These policies are not innovative and follow a trajectory of immigration strategies that function as

testimony to the state's management of population and the assurances that rights bequeathed by virtue of nativity and nationality will be protected.

Immigration detention is the unsettling confirmation of the modern state's authority to dishonour those excluded from the polis. The state has a mandate to use violence in enforcing the protection of citizens and sovereign territory.

Foucault indicates that the power that excludes can also empower politically - simply because the exclusion is already a form of address, 'provides implicit recognition' (Deranty 2004, para 48). It is this sense of fluidity and contestation, the continuing struggle for inclusion, that renders the state's mission to absolutely control immigration a continuing and forever partial project. Foucault's account draws our attention to the implicit contingency of rights - not only for the border-crosser, but also for the citizen. By extrapolation it suggests that the most fundamental ongoing struggle is the struggle over the control of living bodies.

Chapter 4

In Defence of the Nation

Abstract:

The demographic and economic vitality of the nation is a primary determinant of Australia's immigration program. Exploring the broad shifts in Australia's immigration policy during the 20th century reveals complexities in managing the directives of economic and population growth. Australia emerged as a federated nation anxiously asserting a white national identity. In the latter stages of the 20th century globalisation unsettled the premise of national belonging and homogenous identity. Although the contemporary immigration program abrades the historic assertion of Australia as a white nation, immigration still seeks to manage the drives for cultural unity and fiscal strength. A set of immigration policies that is understood to foster both cultural unity and economic strength has broad social support. Immigration can also generate wide ranging debate and anxiety. The anomalous condition of the undocumented asylum seeker is an answer to the ambiguities of community, belonging and modernity.

Asylum seekers should be put in Port Augusta's El Alamein detention centre and shot if they misbehave, maverick Port Lincoln mayor Peter Davis says. 'Put them in El Alamein and tell them `settle down boys or you might be buried', he said yesterday. 'We'll only have to shoot a few to get the message across.' (ABC online 2002)

Immigration risks backlash because in some suburbs of Sydney and Melbourne it is hard to hear an Australian accent. Of course parts of Australian big cities have been immigrant ghettos for a generation. The change is that today's immigrants look as well as sound different from most Australians.... The issue is the sort of Australia we want our children and grandchildren to inherit. Will it be a relatively cohesive society that studies Shakespeare, follows cricket and honours the Anzacs; or will it be a pastiche of cultures with only a

geographic home in common.... Race matters - but only because it usually signifies different values, attitudes and beliefs. The real problem is not race, but culture. (Tony Abbott, Federal member for the NSW seat of Warringah, in Jamrozik 2004, p.112).

The imagined state-citizen relation offers a particular lens through which to assess the visceral antagonism directed toward undocumented asylum seekers. The stateless individual is one critical aspect of this lens; another is the multiple negative associations with the body of the non-white asylum seeker.

The anxieties of national identity are redolent with historic fears and dreams that seek to exclude those imagined as possibly damaging to the nation. These anxieties emerge through an investigation of the nexus between national identity and racialised immigration practices. The links between racial discourses and Australian national identity have been the subject of numerous analyses; in referring to some of these, one can investigate interconnections between the iteration of an Australian identity and immigration detention praxis. Concerns for social cohesion and the attendant logic of cultural homogeneity inform immigration policy: capturing the undocumented asylum seeker in a maelstrom of unresolved anxieties.

Since 1901 and Federation, Australia has imposed tight regulations on migrant entry - and for over seventy years these restrictions were overtly racialised. Currently the desire to limit cultural difference within the nation-state via immigration policies is constrained by the more recent demands of modernity. But despite the operation of a non-racially-specific immigration system, the notion that Australians should necessarily and 'naturally' cleave to an Anglo-Celtic culture dominated by Shakespeare, cricket and the ANZACs still resonates. In 1996, twenty years after the 'White Australia' policy was officially rescinded, a right-wing populist candidate in the federal

election garnered significant electoral support by arguing that Australia was in 'danger' of being 'swamped' by 'Asians' (Stratton 1998).

This chapter seeks to trace the historic connections between past racialised policies and more recent policies targeting undocumented asylum seekers. Within this schema it also points to the discontinuities and transformations that have marked the border crosser as particularly vulnerable to demands for exclusion. For while the national politic that strives for cultural homogeneity is powerful, so to is the historic demand for a robust economic nation. Thus Australia's immigration program seeks to combine the goals of cultural unity and economic strength. This desire is critical in unpicking the upsurge in phobic policies affecting asylum seekers.

From the 1980s, Australian debates on multiculturalism and immigration revolved around questions of national belonging. In contradistinction to these debates, Australia was increasingly geared towards survival in a globalising world and towards its external dialogue as a modern, non-racialised society. In this context, Australia could no longer enforce a racialised immigration program; yet the demands of national homogenous culture determined that the one uncontrolled aspect of immigration - undocumented arrivals - would become a specific target.

The demand for a vital society is always connected to the politics of exclusion/inclusion and can be explored with reference to Foucault and the concept of state racism as intimately tied to bio-politics of governmentality. Australia's immigration program is attendant both to the reinvigoration of the nationalist project of cultural homogeneity and to the stimulation of an economic and demographic system which is explicitly global and outward-looking. Both the cultural and the economic are expressed in the immigration program – therefore the non-white undocumented asylum seeker becomes a magnet for the full force of exclusion. It is this collision which helps direct strategies to specifically and resolutely isolate and excise

the border crosser.

State Racism

The preoccupation with race and national identity is embedded in the history of Australia as a nation born of European colonial enterprise and shaped by the legal fiction of *Terra Nullius*. In the mid-19th century the question of race was deeply entrenched in the concern with identifying and safeguarding the emerging nation-state.

As Fredrickson asserts (2002), 19th century racialised notions were legitimated within the western 'science' of race and racial classificatory systems. As the Australian state was being formulated, the study of human differentiation became combined with social progress and human evolution. Darwinist ideas around species survival were extended into social and political debates around human unity and conflict. The classification of races produced a racial order - a sliding scale from 'superior' to 'inferior' – more or less from white-skinned to black. This scale was understood by its adherents as biologically determined and therefore innate and eternal.

The emergence of a western 'scientific' racism sat awkwardly alongside the Enlightenment political principle that individuals are born free and equal. Fredrickson argues that; 'People are denied the prospect of equal standing only if they allegedly possess some extraordinary deficiency that makes them less than fully human' (2002, p. 11). This move to 'unpeople' humans was necessary in order to rationalise discriminatory actions and practices that ran contrary to the discourse of human equality.

Racism as defined by Fredrickson has two components: difference and subjugating power (Fredrickson 2002, p. 8). Fredrickson argues that racism is particular and is permanently tied to notions of blood. The biological or blood connections are for Fredrickson incontrovertible - for it is only when

this biological difference is invoked that actions can be called racial.

Michel Foucault offers a more fluid and general account of race and racism. Although his body of work is mostly concerned with the regulation of populations, his attention also turned to questions of exclusion and race – particularly to histories of racial exclusion and thanato-politics. In a series of lectures in 1976, 'Society Must Be Defended', Foucault's traced, as did Fredrickson, the emergence in the 18th century of a racism that involved the idea of the nation as a body of people which is racially homogenous (2003).

Foucault suggests that the emergence of what he calls 'state racism' corresponded with the appropriation of a basic and historic struggle between the ruler and a group of the ruled. These historic battles and struggles were always broadly racial - that is, tied to cultural difference. In Foucault's reading, racism is not intrinsically wedded to biology but is always loosely racial, in that a specific group struggles against the ruler. The conflict between opposing forces is basic to any society. By the 18th century this struggle is transformed to the idea that society itself is the agent caught in a struggle with its enemies both within and without. The discourse has been transformed to that of state racism - which involves the idea of the nation as a race of people, where internal and external racial Others are dangers to the idea of a homogenous national population (Kelly 2004). Foucault argues that this co-option of race struggle by the modern state is intimately connected with the emergence of bio-politics, where the proper end of government is extending the life of the population.

By linking elements Fredrickson historic account of biological racism with Foucault's account of state racism, a productive theoretical frame is assembled to interpret Australia's past and present immigration practices.

Foucault defines state racism as whatever 'justifies the death-function in the economy of biopower by appealing to the principle that the death of others

makes one biologically stronger insofar as one is a member of a race or population' (2003, p. 258). State racism is legitimated by the demands of bio-politics and the maintenance of life for the broad community. Bio-politics seeks the regularisation of life, where irregular death of the population is incompatible. For Foucault state racism – the right to vilify the Other – is caught in a relationship with the domain of bio-politics, which demands life and the sovereign right to kill.

Foucault argues that with the emergence of bio-politics, a corresponding discourse emerged that served to 'unpeople' targeted racial groups and justified thanato-directives.

Foucault suggests state racism - the sovereign claim to kill or let die certain targeted groups - continues alongside biopower - the extension of life for the members of the population. Bio-political racism has altered but is still premised upon the broad interests of the nation. In an exploration of Foucault's loose account of state racism, Kelly (2004) asserts:

Ever since the development of bio-power, state racism has essentially comprised an antagonism between a population and its outside. The only essential of state racism is the vilification of the other, not the specific form it takes. Unless a biopolitical system can be invented where the state never needs to claim the right either to kill or to let die, then biopolitics seems to need sovereign power and so requires state racism in the broad sense. State racism neither underpins the state, nor is it a mere device for allowing the state to wage war, but is rather caught in a relationship of profound necessity with the biopolitical state, yet largely divorced from the everyday life of the people, which is the domain of biopolitics itself, not the sovereign right to kill and let die (p.68).

Foucault's sketchy and broad definition of state racism offers a template to explore notions of national identity, society's wellbeing and links to policies of exclusion. This can link the historic practices of racial exclusion (the more overt systems of state racism) with contemporary immigration practices (those centred around economic and demographic questions) -

both operating to fortify the nation-state.

National Identity

The historian Richard White (1981) suggests that from the mid-19th century a preoccupation evolved with identifying and confirming an Australian national identity. As the Australian colonies prepared for the birth of the federated nation, there developed a necessary assertion of the nature and distinctive features of the Australian character. A singular Australian identity would confirm the 'naturalness' of this new nation-state.

From the outset this national identity was racialised. The 18th century British declaration of *Terra Nullius* in the face of Aboriginal settlement exposed the colonial preoccupation with questions of race and national belonging. What emerged was a national identity which ascribed certain moral and social, as well as physical and racial, characteristics (White 1981). It was a vision of an egalitarian and vibrant society formed from the mix of Anglo resolve and energy and the British political framework (Birrell 2001). Jakubowicz (2002) recognises that this emerging national character legitimised and secured both the interests of the colonising peoples and the ongoing subjugation of the indigenous communities.

The colonists looked to Europe for their heritage, forging a deep sense of the nation's marginality. The island, far away from the seats of international power, continued to cast its gaze towards the imperial English-speaking nations for inspiration. Yet the logic of the nation-state demanded that it also looked inward to understand itself. As an isolated 'white' nation, placed in the midst of the Pacific and on the southern edge of the Asian continent, an uneasy national identity was forged.

In the 19th century essay 'What is a Nation?' (republished 1996) Renan

argues that overcoming cultural differences is vital to national specificity. The national population needs to share a language, cultural, economic and political identity. In defining this broad commonality a national community is imagined (Anderson 1991) and the heterogenous dimensions of people and communities is veiled and denied.

Homogenisation is at the core of the nation-building project; its appeal, as Anderson (1991) compelling suggests, is the connection with something whose existence seems to extend back into time immemorial, and forward into the indefinite future. It enables us to transcend our mortality and seeks to resolve the tension between the biological urge for personal survival and the psychological awareness of our inevitable death.

In Australia, specific racially-defined policies were legitimated as the dictates of nation-building and reconfirmed the emerging national identity. This state racism was played out, on the one hand, by denying the entry of non-British migrants, and on the other, by strategies of dispossession, annihilation and assimilation of the indigenous communities (see for instance Tatz 2003; Reynolds 1998; Goodall 1996).

Tony Birch (2001) has discussed how, after the foundational period of colonisation, the establishment of the Board of Protection of Aborigines in 1860 marked a period when the dispossessed Aboriginal was reconfigured as a landless refugee. From this period onwards thousands of Aboriginal Australians were held in camps. Disposed of their land and, even after 1901, with no rights of citizenship, the indigenous communities were effectively unpeopled. Through dispossession, violence, disease and incarceration Indigenous peoples were the target of thanato-politics.

Perara argues (2002) that the camps incarcerating Aborigines combined the functions of colonial war camps with the lethal ends of the classic concentration camp. Characteristics of camp life included the unpaid labour

of children and adults and control over domestic and sexual life. Marriages were regulated according to degrees of 'caste' and colour and forms of re-education aimed to eliminate the Aboriginality of their inmates. This intersection of camp and prison is the point at which racialised populations become subjected to processes of criminalisation.¹

The structures enforced in the camps incarcerating Aboriginal communities echo the characteristics of immigration detention. These colonial precedents perhaps are, as Veranci (2005) proposes, a prerequisite for successive practices of brutalising confinement. Historically the camp in Australia has been a site of racialised punishment legitimated by anxieties over the strength of the nation. As Foucault suggests, there is an intractable link between the bio-politics of a strong nation and life, and the thanato-politics of exclusion and death.

The system of immigration detention carries historical whispers of the carceral practices against Aborigines in the 19th and 20th centuries; but the techniques that disciplined the body of the Indigenous differed from those that targeted the non-white migrant. The undocumented border crosser has also been subjected to very specific policies of exclusion and excision from Australian territory. Again there are echoes of past practices - in particular, the exclusion of non-white migrants - in legislation designed to rid the recalcitrant body of the 'other' from the nation. These exclusionary practices were from the outset linked to a complex set of racial, cultural and economic discourses.

In the 1850s the gold rush brought tens of thousands of Chinese workers to Queensland, Victoria, New South Wales and Northern Australia; and this rise in numbers 'produced a qualitative change in the nature of racism: what had been negative contempt turned into positive hatred' (McQueen 1970,

¹ Cunneen's work (2000) argues that criminalisation is a part of the maintenance of the nation-state through processes of exclusion.

pp. 44-45).

There was an inexorable push to rid the nascent state of those who were perceived to destabilise the national project. Anti-Chinese violence erupted on many of the goldfields, often tolerated and encouraged by leaflets and newspapers - though some Chinese settlers were protected by other white miners and settlers from attacks.

The arguments against the Chinese community were racial, cultural and economic. The Chinese were deemed to be distinct from their Anglo-Celtic counterparts and as having the capacity to undermine the conditions won by the labor movement due to their frugal lives. The Chinese were routinely described as 'vermin', 'a race of slaves', infectors, 'diseased-discoloured devils;' and 'leprous heathens' (Cronin 1975, p. 258). They were seen as contaminated polluters of the colony – which could only rid itself of this racial and economic infection by purging or amputating it.

Colonists agitated to restrict Chinese immigration by outright prohibition, but were hindered by British opposition to race-based exclusion. Other means were sought to discriminate - including pay scales, punitive taxation and tonnage restrictions, all commensurate with a racial pecking order. Through these fiscal means the colonial authorities worked towards the removal and exclusion of the Chinese (Collins 1991, p. 204).

The White Australia policy grew out of the antipathy felt by the dominant colonial society towards Chinese migrants; but not only the Chinese were affected - the Labourers Act and the Immigration Restriction Act also sought to exclude Melanesians, Indians and Japanese migrants - indeed, to exclude all non-Europeans from the new nation-state. Australia was not alone in this: New Zealand and Canada had similar acts.

In 1901 the first law passed by the new Federal government was the Pacific

Islands Labourers Act, which provided for the deportation of Islanders; the Immigration Restriction Act was passed in the same year. Both acts supplied the initial framework for the unofficial 'White Australia Policy'. Attorney-General Alfred Deakin explained that they were the necessary complement of a single policy - the policy of securing a 'white Australia' (Lake 2004, p. 4).

Immigration practices at the time of Federation were informed by the fear of racial miscegenation and impurity which might pollute and weaken the nascent nation (see for instance Jupp 2002; Cronin 1975; McQueen 1970). For a new nation to prosper, society demanded that those imagined as contaminants should be excluded.

An Australian national consciousness emerged, laden with a strong attachment to racial and cultural specificity. In controlling the entry of non-Anglo migrants the new nation sought to construct a classless national community of British stock.

These immigration practices operated to strictly control certain population intakes and to avoid racial miscegenation - although the espoused mechanism was cultural (a language test) rather than visual. This regime, in tandem with systems of exclusion targeting the Indigenous community, allowed citizens of the new Australian nation-state to imagine a vital and essentially homogeneous future. Jakubowicz concludes:

The dream that Australia carried into the twentieth century was of a white, democratic, egalitarian society, without hierarchies of entrenched inherited privilege, and without an underclass of helots or coolies. For three generations after federation this was the reality of the society, the worldview of its leaders and citizens, and the milieu into which its children would be socialized. It was intensely fair and decent for all those allowed in to share the wealth, and stubbornly intolerant of those deemed other and unacceptable (2002, p. 108).

As intended, the non-European population declined substantially. In 1901 the number of 'full' Chinese was just under 30,000. By 1947 the number sat at 9,000 and most had been born outside Australia (Collins 1991, p.205). The 'White Australia Policy' had successfully created a more culturally homogenous society in 1945 than had existed in 1901. Alongside it a national identity emerged, premised on a cultural and racial homogeneity. For much of the 20th century the 'logic' of this national narrative prevented the rendering of viable alternatives to this scene.

A Vital Nation

The utopian nationalistic dream of the colonists was consistently challenged from within its borders by subjugated indigenous communities; and from the middle of the 20th century Australia was transformed by historic shifts and a changing perception of what was required for a robust nation-state.

In the aftermath of World War II Australia's geography and exclusionary immigration practices brought specific military and economic insecurities. In the immediate post-war era, immigration policy took on new significance and reflected the concerns of a state negotiating a post-colonial political system. A remapping of immigration policy was fuelled by wartime events: the bombings of Darwin and Broome, the attack on Sydney by Japanese midget submarines, and the Japanese occupation of Pacific islands. The Japanese invasion of Singapore demonstrated vulnerability in the British security system in the Pacific - a system which Australia had relied upon for its own protection. The government sought better armed defence systems and initiated immigration policies to bolster the population and to form the bedrock of defence against new regional post-colonial powers in Asia.

In July 1945 the Ministry of Immigration was given portfolio status in the Federal government. The first Minister for Immigration, Arthur Calwell, came under pressure to increase dramatically the rate of immigration. This

defensive strategy sought to build population numbers to the point where the nation could defend its territory from any invasion from the north. The militarism of Asia preoccupied federal governments as the new nations and a revolutionary nationalism emerged in Asia. The feared Other was still located in Asia - and for the moment, remained excluded.

In a 1946 speech to Parliament, Calwell gave these reasons for increasing the population with a mass immigration program:

There was a time just four years ago when Australia faced its gravest peril. Armies recruited from the teeming millions of Japan threatened to overrun our cities and broad hinterland. They were so many. We were so few... The call to all Australians is to realise that without adequate numbers this wide brown land may be held in another clash of arms (in Gibney 2004, p.171).

The state imperative to engineer rapid population growth was an overriding state concern. Migrants, including refugees from Europe, were sought². The postwar immigration push helped keep the door open for thousands of Holocaust survivors; but these refugees were carefully selected according to how the bureaucracy believed they may 'fit into Australian society' (Carr-Grey 1987, p.187). In China, Jewish refugees who had fled Eastern Europe were handpicked by Australian officials for their 'Aryan' features (Golvan 1990, p. 324). Some refugees were considered too different, to possess inviolable character and group traits that could infect national unity.³

In the wake of the Holocaust, the international community of nations through the United Nations condemned biological racism and racial

² Only a decade earlier at the Evian Conference attended by 32 nations, the Australian delegation had announced its opposition to settling German Jews escaping the Nazi regime, reasoning that Australia didn't want to import a 'race problem' (Bartrop 1987, pp.179-180).

³ In 1947 an official in the Department of Immigration recommended the complete cessation of refugee migration of Jewish refugees in Shanghai on the basis of them being an 'enigma' and believing some were involved in prostitution and drug running. In his report he wrote that '... under no circumstances do I consider that humanitarian grounds or outside pressure should be allowed to influence the granting of permits to these people' (Blakeney 1987, pp. 46-47).

policies. It was to become increasingly difficult for a modernist state to legitimate racial exclusion. In the immediate postwar era mass migration was virtually unopposed, for it was so intimately tied with national defence and security.

The 1960s was the decade in which the White Australia policy began to be wound back.⁴ In 1966 Australia signed the United Nations Convention on the Elimination of All Forms of Racial Discrimination; and under the government of Harold Holt, educated English-speaking Asians were allowed to migrate to Australia. The White Australia policy was officially rescinded in 1973.

By 1975 Australia had introduced the Racial Discrimination Act, which stated that prospective migrants could not be discriminated against on the basis of race, colour, or nationality. The practice of a non-racial multiculturalism was officially implemented and Australia's immigration program was reoriented to reflect economic models for fiscal growth - and in particular, to fall into line with the emerging behemoth of 'globalisation'. In thirty years, successive Australian governments had shifted immigration policy from being one of the most exclusionary systems to being remarkably inclusive. This shift had multiple unforeseen effects.

Transnational Flows

The concerns of modern Australia are tied to the complex operations of globalisation. In innumerable ways, multi-nodal global systems steer the functioning of the nation-state. The transnational space of economics refigures the premise upon which the nation-state rests: notably the relative integrity and autonomy of the nation-state to manage economic and social

⁴ The phrase 'Australia for the White Man' was finally removed from the masthead of *The Bulletin* magazine in the early 1960s.

systems operating within its territory.

The crucial characteristics of globalisation are the growth of cross-border courses and their organisation by means of multi-nodal transnational networks (Castells 1996; Held et al 1999). Flows and networks can relate to economic factors such as trade and investment, to political cooperation and international organisations and to cultural products. These flows are always linked to movements of people. As Castles and Miller (2003) note, much of this is not counted as migration: circulation of business people, executives and highly-skilled personnel within transnational companies and inter-governmental agencies is seen as desirable mobility.

Globalisation exposed the porous nature of national borders; the task of nation-builders in a globalised world is to re-imagine and refigure these bonds to the state (Castles & Davidson 2000, p.7). State borders and economies have been transformed by transnational corporations and by high-order political processes of unification – such as the formation of the European Union (Aretxaga 2003, p. 394). Bauman (2000) argues that mobility has become the most powerful and most coveted stratifying factor in global modernity. The new global economic and political elites are able to cross borders at will, while the poor are meant to stay at home: ‘the riches are global, the misery is local’ (p. 9).

Australia’s multicultural immigration practices reflect the tenets of globalism and its impact on the modernising nation-state. Race is no longer a principle organising feature of Australian immigration policy, which has been redirected to accept educated and skilled populations regardless of race or ethnicity. This has created new levels of multiculturalism, which contest the traditional dominant culture of nation-states such as Australia (Vasta & Castles 1996). In the process, the dialogue about who could belong in the nation-state shifted: no longer could Australia’s northern neighbours be unequivocally understood as a security threat; nor could those of Asian

ancestry be assumed to be outsiders.

Numbers of immigrants entering Australia are determined by economic priorities. These numbers rose and fell from the 1970s to the 1990s. Immigration policy was directed by neo-liberal human capital theory, with a focus on highly skilled and educated migrants. According to human-capital theory any racial filtering of migrants would negatively affect Australia's ability to compete in the global marketplace. Migrants should only be selected on the basis of skills. Research, including the influential Fitzgerald Report, came out in favour of non-racial mass migration to boost Australia's pool of skilled labour (Collins 1992).

By the 1970s Australian trade links with Britain declined in the wake of the latter joining the European Common Market; Australia responded with overtures to its regional neighbours. Economic growth was turning Asia 'into one of the world's three greatest centres of economic production and trade' (Garnaut 1994, p. 227). According to one former Prime Minister, Paul Keating, the state overtures to Asian nations were about seeking 'security within Asia' not 'security from Asia' (reported in Jamrozik 2004, p.147). This shift was seen as the result of an economic imperative - and by the mid-1990s, 53% of all of Australia's trade was being done with Asian nations (Gibney 2004, p. 183).

In Australia, globalisation generated pressure for immigration policy to be managed on the basis of human capital and of attracting migrants possessing the most appropriate skills for an outward and dynamic economy. Without the importation of skilled groups adding to population, Australia would 'become a declining, aging place and questions would be asked about its viability as a national sovereign entity' (Jamrozik 2004, p. 121). Many of the required skilled and educated migrants arrived from Asian nations. By 1997 the immigration push had resulted in 23% of the population having been born overseas, being members of more than a

hundred ethnic groups, and 15% of Australian residents speaking a language other than English at home (Delanty 2000, p.167).

The modernist immigration program aims to strengthen the nation at the level of the economic via a reinvigoration of the population as a whole, by incorporating new elements that strengthen it. But although the passage of elite groups across borders is encouraged by states and global capital, a wider mass movement of immigrants can generate fear - or as Delanty puts it: 'It is more a matter of xenophobia than jingoism' (2000, p. 97).

In Australia the presence of non-Anglo-Celtic migrants unsettles the historic dream of a vital homogenous national identity. The demand for economic reinvigoration was underscored by the historic desire for cultural homogeneity.

By the 1990s the Vietnamese refugee community was one of the largest settler communities in Australia. Their corporeal differences from Anglo-Australia marked a discontinuity from the national cultural narrative. Multicultural immigration policies generated considerable debate - particularly in relation to questions of national identity and community. The increasing presence of non-European migrants sat uneasily with the careful construction of Australian identity as being Anglo-Celtic. This revived two perennial fears: of an influx of Asian population and of susceptibility to an invasion from the north. Australia's national pride in its 'whiteness' could no longer be officially declared; but the legacy of a racialised dream and the demand that 'society must be defended' continued.

Reiterating Whiteness

During the 20th century, government policy reflected the shift away from a state racism embedded within understandings of biology and blood and

increasingly toward a state racism linked to a discourse of cultural difference. Despite the shift, state racism was still bound to the assumed interests of the nation as an economic, demographic entity. And although race in the strict Fredrickson sense diminished, there continued the understanding that Anglo whiteness is a standard of nationality.

During the 1950s and 60s, when settler arrivals from Europe, including refugees from the Communist East, were at their highest, Australia's immigration program was widely supported (Goot 1999). By the mid 1980s, debates in the media, community and parliament swirled around the questions of immigration and national belonging. In his book of 1992 Collins reflected on the diversity of Australia's non-British immigrant community. He argued that given the level of xenophobia in the community, the immigration programs were a remarkable achievement - but suggested that 'none of this would have occurred had public opinion been the decisive factor in Australian immigration policy' (p. 292). Research suggests (Goot 1999) that the community was becoming increasingly unhappy with the number of migrants to Australia, and in particular the number of migrants from Asia.

As globalisation emerged to challenge the nation-state and its sovereignty, a populist and isolationist nationalism became a strident force in the world (Delanty 2000; Bauman 2000). In a now oft-cited 1984 speech given at a Rotary Conference in Warrnambool in Victoria, historian Geoffrey Blainey argued against Australia's non-racialised immigration policies and multiculturalism in general. He believed that the history of White Australia had made Australians deeply cautious of race. Arguing for conserving a traditional identity, Blainey claimed that racial tension would necessarily increase in a 'multicultural' Australia that recognised racial differences, as Australians feared and would fight against these cultural differences. He was critical of multicultural policies and called for 'shared values as well as different values' (in McMaster 2002, p. 147).

In calling for restrictions on migration and arguing that the multiplication of cultural difference was problematic to the ideal of national unity, Blainey's argument struck a chord with the logics of homogeneity and national identity. Blainey unknowingly articulated a key problem of national identity: that equality is tolerated as long as citizens conform to a relation of identity and sameness with each other. The 'other', whose corporeality is seen as upsetting Australia's national identity, is constructed as threatening to Australian nationhood.

The multiplication of difference, which Blainey sees as the structure of Australia's immigration policy, is, for Blainey, antagonistic to the ideal of national ideological unity,...Blainey in stating in effect that all Australians are essentially the same in their suspicion of difference, a tension which is by definition natural in humanity...exposes the 'liberalism' of dominating groups as artificial and false (Kapferer 1988, pp.190-191).

Kapferer identifies Blainey's account as according with a national identity informed by British colonialism - and one intrinsically unable to accommodate cultural multiplicities. Corporeal difference unsettles the ideal of national unity and unique national identity. Blainey's speech resonated with the demands of bio-politics: in the logic of defending the community, he intimated, threats are to be identified and excluded.

Blainey's concerns were echoed by several other prominent media commentators, academics and politicians - including the leader of the conservative Coalition parties, John Howard. There was some pressure to move away from the bipartisan approach to multicultural immigration and to 'reduce Asian immigration if necessary' (Collins 1991, p. 286). In 1988, the bicentennial year of white settlement, Howard reiterated Blainey's position: 'My argument with multiculturalism is not that it respects and tolerates diversity but rather in many ways it emphasises division' (Stratton 1998, p. 67). These arguments were not engendered by a biological racism,

but by a fear of national degeneration in the wake of cultural differences.

For Howard, the rapid pace of 'Asianisation' had left the country facing a 'cultural identity crisis' (Collins 1991, p. 301) which necessarily fractured the cohesion of Australian society by undermining the primacy of a singular national culture. For multiculturalism to reach a logical position it would have to mean a significant 'dilution' of the Anglo core of society, so deeply embedded in the core institutions: education system, professional bodies, politics and government. A new national identity would have to evolve (Vasta & Castles 1996). This was a vision that Howard, among others, could not tolerate. In this view national identity is incontestable: if it is open to dispute, this is an expression of national weakness and degeneration. Official policies of multiculturalism were always fragile in a nation conditioned by a history of linking white privilege with national strength and identity.

Howard promised that if elected he would replace multiculturalism with a philosophy of 'One Australia'. In 1988 this social agenda did not generate significant support, certainly not from within the Liberal party or from the media. The vision did appeal to a section of the electorate, but an anti-Asian immigration policy was totally inconsistent with dominant fiscal policy promoting a dynamic, globally-focused economy.

By the election of 1996, however, the philosophy of 'One Australia' was resonant - and trumpeted a resurgent assault against cultural diversity (Vasta & Castles 1996, pp. 54-55) and against the perceived burden brought by multiculturalist policies that had, it was suggested, served to malign Australia's core culture.

Qualitative and quantitative research conducted during the nineties suggested that the community was uneasy over the rapid social and economic shifts associated with multiculturalism (Manne 2001, pp. 79-81).

UNSW research, based on surveys in 1994 and 1996, found anti-Asian feeling to be high, with 45% saying some cultural groups did not belong in Australia. About 12% admitted to being prejudiced (Dunn & Geeraert 2003).

A 1996 report by the Department of the Parliamentary Library reviewed literature demonstrating the negative impact of Asian migration on Australians, who felt their 'identity [was] under threat' (p. 3). The report made extensive use of research by Monash University's prominent Centre for Population and Urban Research, maintaining that Australians were mistrustful of the objectives of both immigration and multiculturalism.

Surveys of public opinion over the last 40 years show that public support for immigration has steadily declined as economic conditions have become less favourable, as the balance of the program has moved towards low-skilled family reunion and humanitarian migration, and as source countries have become more diverse (p. 2).

The report makes the link between economic wellbeing and antipathy toward non-white immigrant communities.

In the aftermath of the 1996 federal election and the return of the Coalition parties, there followed a state-endorsed attack on multiculturalism, indigenous rights and human rights – the main argument being that these ideas had 'gone too far' and that government should reflect the 'mainstream' (Jakubowicz 2002). The rights of non-Europeans migrants and Indigenous Australians were again pushed further to the margins. It was more than twenty years since non-racial immigration had last been endorsed - but non-whites could still be figured as unwelcome guests in the nation, as a burden or a source of deviance and criminality.

In that federal election Queensland voters returned an independent, ex-

Liberal candidate, Pauline Hanson, in the seat of Oxley.⁵ In her maiden speech to Parliament, Hanson claimed the community of citizens should decide who should reside in the country. 'We are in danger of being swamped by Asians.... They have their own culture and religion, form ghettos and do not assimilate.... I should have the right to have a say in who comes into my country' (in Jupp 2002, p. 130.) Hanson's speech echoed with traditional nationalist fears of the 'threat' of an invading Other that threatened the wellbeing of the nation.

Hanson espoused what Stratton (1998) describes as 'culturalism' and what Young (1990) refers to as 'cultural imperialism'; both terms signify the universalising of a dominant cultural group as the national cultural identity, whereas the cultures of subordinate groups are erased or constructed as deviant. Etienne Balibar continues that we have seen the transition from a biological racism to a 'neo-racism' in which culture has replaced ethnicity as a stigma of otherness (Balibar 1991). All suggest migrants can be accepted and absorbed into the nation as long as they acculturate to the dominant national identity.

In 1996 some researchers argued that the Australian community was anxious about a possible negative economic drain on the nation by refugee groups.

Recent research has shown that unemployment rates for recently arrived humanitarian and family migrants have been higher and persisted longer than previously thought. The first results of the Longitudinal Survey of immigrants to Australia showed last that

⁵ Prior to the election Hanson had been disendorsed as a Liberal Party candidate for her strident and clearly articulated anti-Aboriginal and anti-Asian immigration views. The electoral popularity of the anti-indigenous, anti-immigration, anti-globalisation rhetoric of Hanson's One Nation Party (established in 1997) in several state and federal elections from 1996 to 2001 demonstrated the salience of her message (Stratton 1998). In the 1998 Federal election One Nation received around a million votes, becoming the third most successful party after the Liberals and Labor. It also received 22% of the vote in the 1997 Queensland election. The popular nationalism tapped into by Hanson was a force not easily controlled by the state but the thrust of her immigration message resonant with ideas expressed by Geoffrey Blainey and John Howard.

recently arrived migrants in the business stream, under 3% were unemployed, compared with 85% for humanitarian entrants, 39% for preferential family and 36% for concessional family migrants (Parliamentary Library 1996, p. 2).

This report went on to suggest that the Vietnamese refugee community were in need of more state assistance than the 'Australian-born':

The Vietnamese are the largest and most researched Asia-origin group who have entered predominately (over 80%) through the humanitarian and family migration categories. A 1992 study showed that in 1989 the Vietnamese-born were receiving unemployment benefits at five times the rate of the Australian-born (p. 7).

The report proposed that the Vietnamese, with other recently arrived refugee communities, formed part of an emerging structural underclass. It suggested an economic argument for limiting refugee numbers - by proposing that refugees' communities were highly dependent on welfare support and thus constituted an economic burden for a nation competing in the global marketplace.

A modernising state demands an open, non-isolationist immigration system that selects migrants on the basis of human capital and potential.⁶ Since 1996 the Coalition government has sought to reassert the achievements of white Australia without offending minority communities or potential 'value-added' migrants. Australia's immigration program identifies migrants with education and skills, manages family reunion and carefully selects offshore refugees and the federal government promotes a muted multiculturalism. In one public relations pamphlet the then Immigration Minister Philip Ruddock claimed:

⁶ When the Liberal/National coalition parties led by John Howard were returned in the 1996 election it cut immigration numbers, but did not promote any racial filtering of potential settlers, and to further thwart undocumented immigration. The government also promoted its radical cutback of a range of services and settlement provisions for new migrants. After lowering the immigration intake of permanent settlers in the first three years of office, the Coalition government began to increase numbers. DIMIA figures for 2001-2002 showed an increase of 15% from 1997-98 figures.

Like our sophisticated migration program, our multicultural policy continues our tradition of successful nation building. Our commitment to and defence of Australia's values of equality, democracy and freedom, unite us in our diverse origins and enhance the ability of us all to participate fully in all spheres of Australian society (2003, p. 6).

Many students, business people and professionals from Asia are regarded as having the necessary aptitude, education and entrepreneurial initiative that maximise their value to Australia. The undocumented asylum seeker is the only exception to this nation-building rationale. In the frame of bio-politics a regulated immigration system is positive, and the permeation of undocumented bodies offensive - for it introduces an uncontrolled and thus possibly damaging dimension to immigration intake.

The shift in government immigration policy that admitted large number of non-European migrants unsettled an embedded national dream for homogeneity. But echoes of history and past practices remained. A national identity initially formulated during the years of 'White Australia' constructed a framework that could rationalise the punitive detention of the non-white body who has flouted domestic law.

It is the scaffold of illegality that positions the undocumented asylum seeker as threatening to social cohesion⁷ for this body represent cultural difference, can penetrate sovereign borders and holds the potential to take resources and jobs away from locals. By targeting undocumented migration the government could defend its policies as necessary for the security of the nation, without facing the accusation of promoting state racism.

⁷ John Stone, the former head of the Australian Treasury, made the comment that Arabs were not welcome in Australia because of their supposed inability to assimilate into what he called Australia's 'Judeo-Christian civilization' (Tascon 2001).

The Penetrating Body

The increasing numbers of undocumented boat arrivals during the 1990s exacerbated tensions inherent within the logic of a globalised immigration regime and the historic concerns for a singular national community. There is an inbuilt tension between the demands of national identity and of economic modernity. The nation-state is locked into a fiscal system that demands the movement of people, yet remains apprehensive over the possible consequences of this movement and the threat it may pose to national cohesion. A heightened permeation phobia is the unforeseen offshoot of the overriding dictates of globalisation colliding with the demands of populist nationalism.

Sassen identifies a difficult and complex reordering of the state system in an era of globalisation (1996, p. 97). Immigration, she argues, is a site of vigorous contest between the old nation-state order and the demands of globalisation. Sassen interprets the phobic responses by modern democracies to asylum seekers as a reflection of the difficult and complex reordering of the state system under globalisation, including the internationalisation of human rights principles. She identifies the nation-state as a crucial locus for the (re)articulation of racial ideas, because of the extent to which it embodies the ideas of 'race' and legitimises it through immigration systems. Who the state allows to enter and to remain in a country, the granting and withholding of citizenship, is a feature of all nation-states and is often racialised (Sassen 1996).

Sassen queries whether the dominant force of globalisation, including the international acceptance of human rights principles, will reorder state control over refugee policies. By suggesting that human rights laws have transformed those states under 'the rule of law', Sassen anticipates that this sovereignty-versus-human-rights dilemma will be resolved with the strengthening of human rights systems both in- and outside the nation state

(Sassen 1996, p. 60). Sassen, like Arendt, looks to international human rights principles and the 'rule of law' as offering a legitimate guide for state and international responses to asylum seekers. Both frame their discussions by asserting that the legitimacy of a nation-state is necessarily undermined if it fails to uphold the rights of non-citizens. Yet both admit of the problematic connection between the state's role as protector and its sovereign right to defend.

McMaster (2001) suggests that a near-seamless trajectory can be traced between the racialised attitudes which informed the Immigration Restriction Act of 1901 through to contemporary practices regulating asylum seekers. For McMaster, asylum seeker policies reflect the continuation of a specific fear of the Asian Other. He writes: 'The White Australia policy reflected a fear of invasion from the 'other', a fear which permeates Australian society and which has resurfaced in the detention of asylum seekers' (2001, p.1). McMaster's thesis implies a seamless continuation in the operation of biological racialised discourse over a hundred-year period.

But permeation phobia is not a simple reflection of a historically racialised immigration system. In contemporary Australia the modern bio-political directive to maintain the vitality of society makes connections between the flow of selected migrants, national identity and economic robustness. This has had the effect of energising exclusionary policies toward the undocumented asylum seeker.

Immigration policy, including immigration detention, is part of a state response on the one hand to the demands for human capital immigration practices, and on the other to the unresolved tension of a national identity premised on cultural homogeneity. We can see by identifying these demands that state policies regulating asylum seekers are part of an attempt to ameliorate this conflict.

Undocumented asylum seekers have become a specified target in the assertion of a populist nationalism and its reiteration of a dominant national identity. Themes of asylum seekers as potential corrupters of morals, criminals, carriers of disease and 'sleepers' for 'terrorism' against whom fortress-like barriers must be erected, resonate deeply with the historical anxieties surrounding the White Australia policy. The pervading discourses that describe (Klocker & Dunn 2003), and the isolating systems that manage, unauthorised asylum seekers distinguish the difference between those who belong in the nation and the body that threatens the state.

In the wake of the 9/11 terrorist attacks in the US, states regularly described detained asylum seekers not as people in need of protection but rather as a national security threat by virtue of their cultural heritage. The antipathy towards Islam in Australia reached new heights (Klocker & Dunn 2003); Muslims, including asylum seekers fleeing Muslim states, have assumed prime position as popular enemies of national unity and the nation-state. It is a national anxiety that, at least temporarily, surpasses the fear of the Asian Other (see Dunn & Geeraert 2003; Browning *et al* 2003).

A whole genre of literature on the perceived threats to the modern state from ethnic conflict and Islamic terrorism emerged during the 1990s (see Huntington 2002; Davidson 1997); although, as Edward Said's (1985) work attests, the antipathy towards Islam by the Christian West has a long history. Said demonstrates that at the level of image and language there emerges a distorted representation of the subjected 'other': the 'Orientalised Other'. Since western colonisation the Middle East - the Orient - has been inscribed as an absence of civil society, the embodiment of a tendency towards various kinds of social stagnation on one hand and the breeding of irrational violence on the other. In the more recent view, Islam became the

chief anathema to the principles of democracy and modernity.⁸

Refugees on boats heading for Australia were associated with criminality and a perceived threat of 'terrorism'. They had become the Other that the nation needed to protect itself from. The historic phobia of invasion that now targeted undocumented migrants was played out with an upsurge in the militarisation of the nation's littoral borders, including air and water surveillance and interception over the vast ocean approaches to Australia which came into full effect during the 'Tampa Affair' (Marr & Wilkinson 2003).

By the end of 2001, boats carrying unauthorised asylum seekers had effectively ceased. Permeation phobia had come into full effect. The Border Protection (Validation and Enforcement Powers) Act - excising Australian territory from the migration zone and allowing for the increased militarisation of littoral borders - and leading to the drowning of over three hundred asylum seekers when their boat (the so called SIEVX) sank - combined to halt this migration from 'under the radar'.

Antipathy has been expressed for those who dared breach the sanctity of borders and whose culture is understood as threatening. In these phobic times the undocumented were barred, whilst the state could still keep its doors open to value-added documented migrants. It may no longer be a fear of Asia that permeates the national consciousness, but the premise of a homogenous and culturally specific national identity remains. In the face of racially neutral immigration alongside the continuing demand for corporeal homogeneity, the war to end border transgression has become imagined requirement for national wellbeing. Border control is the hard kernel of

⁸ A political vacuum has been filled with the restated western fear of Islam in the wake of ethnic conflict and religious terrorism as a principal site of destabilisation and organised violence. In a broader political context, it is linked to the demise of the Cold War and the Soviet enemy as an ordering principle of national political life in the West.

Australian immigration program.

The rationale for targeting undocumented asylum seekers is determined by the bio-politics of governmentality with the demand to continually reinvigorate and defend the nation. There is not a simple link between contemporary phobic policies and past exclusionary policies, but there are echoes, continuities and relationships connecting discourses of race and systems of exclusion. The particular contradictions of Australian modernity - the desire for cultural homogeneity and the dictates of globalisation - compel government to rigidly constrain the undocumented.

By targeting undocumented asylum seekers, but not denouncing migrants *per se*, the state reconfirms Australia as an outward looking, dynamic nation that allows the legal entrance of productive value-added bodies. Detention is seen to protect the nation as a robust and specific economic/demographic entity. Immigration detention seeks to prevent the transgressive entry of bodies that are imagined as disabling to the body politic.

Immigration detention is a toll in the supposed defence of society against the Other. This state racism claims the right to exclude the internal or external threat to the population, in defence of society. In this way immigration detention is a modern salve to the tense dialogue between the dream of national identity and the dictates of modernity. For it is only the lack of documentation (rather than ethnicity or potential productivity) that distinguishes the 'bad' migrant – the undocumented asylum seeker - from the 'good'.

We can now turn to the establishment of offshore processing. This militarised strategy became an further innovation to further separate human rights from asylum rights and to enhance the government's defensive goals.

Topside Camp, Nauru



Anon detainee

Chapter 5

Topside Camp: Governing the Excised

Abstract:

The 2001 Border Protection legislation was a response both to the failure of other deterrence measures to curtail border crossers moving into Australian territory, and to a heightened political determination to exclude the undocumented Other. The offshore camps that emerged with the 2001 legislation differed from the onshore detention centres. By careful reading of hundreds of letters, a history can be told of the conditions of the largest offshore camp: Topside, on Nauru. These letters offer richly detailed narratives of the lives of those detained at Topside between September 2001 and December 2003. In particular, this chapter investigates detainee experiences of the bureaucratic process of refugee determination in the first two years of the camp. This heightened condition of exclusion sought to finally render as untenable the principles of juridical rights.

The Pacific Strategy is an important element in the prevention and disruption of unauthorised people movements to Australia...There have been no boat arrivals transferred to the mainland of Australia for processing for almost two years...The operation of processing centres in Nauru and Papua New Guinea are also part of this comprehensive strategy (DIMIA 2003a, p. 9).

Every camp residents live under heavy psychological and mental pressures. You know that the tragedies of twenty-three years has have touched and devastated every Afghan individual. The long painful journey, inhuman treatments and the change of Australia's immigration policy 'bringing to Nauru' and the business smugglers have dealt with their lives and money have affected everyone's zeal, courage, hopes and even memories. No-one seems to be intact psychologically. Everything is uncertain and unreliable (D1 to Za, 24/12/2001).

Another question which always rises in our mind is that we are treated differently from the 131 families and minors taken by the New Zealand Government. They were granted refugee status almost four months ago and their situation is completely resolved, and we are still suffering. While we fled the same persecution regime, at the same time, in the same boat, and assessed according to the 1951 Refugee Convention. What might be our fault to wait several more months? (Group letter from Afghan asylum seekers to Zd 19/4/2002)

It was only with the introduction of the Border Protection legislation in September 2001 that the flotilla of fishing boats carrying border crossers stopped. Asylum seekers intercepted at sea were taken to the Pacific camps – two established in the Nauru Republic and a third on Manus Island¹. These camps were holding zones, incarcerating those caught betwixt and between their departure point and their longed-for final destination. The majority of the excluded were banished to Nauru: a bankrupted state whose complicity² with the Australian state denied the asylum seekers any juridical status on the tiny island.

This chapter draws on 172 letters written by forty Afghan asylum seekers to seven people in Australia.³ With limited phone and email access, letters were, until late 2003, often the only means of communication with those outside Nauru. The Afghan letter writers were all detained in the largest of all the Pacific camps: Topside – thus it is Topside, rather than the smaller Statehouse Camp, that is the focus here. The letters written between

¹ See Map p. ix

² In 2001 Nauru was offered \$26.5 million by the Australian government in ‘aid’ money as payment for housing asylum seekers. This included \$9 million to pay for fuel and \$4.7 million for power and a water desalination plant (Manne with Corlett 2004, p. 45). According to the Federal Government the total cost of detention on Nauru and Manus Island to February 2004 was \$165 million– this did not include the cost of ‘coastal defence’ nor the additional aid payments made to the ‘host’ nations, Nauru and Papua New Guinea (MPS, 2004).

³ It was only possible for an Australian to write to an asylum seeker if the sender had both the detainee’s name and number (DIMIA and the UNHCR gave all detainees numbers). The letter writing campaign was initiated by barrister Julian Burnside. Initially he obtained the number of one of the asylum seekers held on HMAS Manoora. He and artist Kate Durham wrote to this asylum seeker and asked that he send back the numbers and names of others who wished to receive letters from Australians.

November 2001 and March 2003 are of particular interest, for these coincide with the principal determination period and the repatriation of hundreds of asylum seekers to Afghanistan. Men numerically and socially dominated the camp and tended to be the most prolific letter writers; but letters written by women and children are also included.⁴

As a collection the letters reveal much about the camp and detail the shock of detention. These missives were sometimes written or dictated in Dari or Farsi and then translated and rewritten by someone more fluent in English. Some of the letters appeal for help, others offer descriptions and observations. These communications find words and images to organise and shake the traumatic experiences of war and incarceration into narrative and to bring the extraordinary back ‘...to the ordinary, the unspeakable to the spoken’ (Clendinnen 2002, p. 39).

The 2001 Border Protection Act removed the excised asylum seekers’ access to tribunals in both Australia and Nauru.⁵ As Chapter One explores, the procedures for processing the claims of onshore asylum seekers are convoluted and flawed; moreover hundreds of refugees have been given protection visas on appeal after their claims were first dismissed by DIMIA and then the RRT. On Nauru, asylum seekers claims were only assessed through a bureaucratic management system. In 2002 Crock and Saul (p. 49) questioned whether the lack of judicial appeal would result in determination procedures qualitatively inferior to those in Australia.

⁴ In the following chapter we return to questions of masculinity and the detention space. It should also be noted that many Afghan women have had limited access to education and are illiterate.

⁵ This reordering of the detention system reflected the government’s determination to remove access to judicial procedures for all undocumented asylum seekers. The government sought to introduce a putative system for onshore asylum seekers. Immigration Minister Philip Ruddock first tried introducing legislation to lock out the courts in June 1997, and again in September 1997 (Brennan 2003). In 2003 the High Court ruled that the government could not prevent onshore asylum seekers from accessing the courts to review the legality of decisions on their status.

This chapter explores how the intensification of exclusionary politics altered the detainees' limited access to rights. The Pacific camps differed in crucial ways to onshore detention, but of these shifts some were the unintended (rather than intended) effect of transplanting camps offshore.

Physical excision from Australia not only altered the mechanism of bureaucratic decision making, it also changed the day-to-day management of detainees. The chapter begins by describing the establishment of Topside camp and touches upon the problems of everyday living for those incarcerated.⁶ The chapter then turns to investigate detainees' experiences of refugee determination - more than half of the missives from Afghan asylum seekers make observations about the nature of the process and about the absence of judicial access. This juridical exclusion was a consuming focus for those detained. The chapter concludes by detailing the repatriation to Afghanistan of over 400 people between November 2002 and December 2003.

Deepening the Exception

The modern state seeks to maintain and extend the life of the 'legitimate' population. Border crossers are excluded - imagined as threatening entities from which society must defend itself.

Offshore camps were deliberately formulated to stop the permeation of Australia's littoral borders and to absent juridical rights from these undocumented border crossers. As a system of deterrence it has been, thus far, successful: since September 2001 there have been few undocumented boat arrivals, although undocumented plane arrivals continue relatively unabated. The creation of offshore camps succeeded both in halting boat arrivals and in diminishing the clamour of protests that had emerged from within onshore centres.

In order to conclude that the Australian government did not intend Pacific detention to be both untenable and hopeless certain characteristics would have to be in operational that recognised the humanity of the people detained. But detention in the Pacific only permitted minimalism. Administratively there was an incoherent system of procedural fairness and experientially, detainee lives were reduced to a bare existence. In sending people to Manus Island and Nauru and in denying legal appeals, the government rendered meaningless the treaty-ensconced right to seek asylum. In this sense offshore detention intensified the conditions of exclusion.

But in establishing Pacific detention, the state also cast adrift some systems of control. In this tightly regulated and traumatising zone of offshore detention limited avenues were found to struggle against the exception and for the resource to rights. The subsequent chapter explores in detail the systems of resistance that emerged as a consequence.

Agamben's (1998) radical formulation draws attention to the right of the sovereign state to call a state of exception; but there is little differentiation in this account, either between differing forms and degrees of exception or in the strategies of struggle. Thus for Agamben there is no difference between the *Muselmann* in the extermination camp and an immigrant locked up by immigration officials: all are exposed to bare life - a life on a threshold between life and death. This chapter charts both specific characteristics of a particular zone of exception and the fault lines of this exclusion.

This state of exception is never complete, nor is it stable. Within immigration detention the government's absolute control over the detention environment was never absolute. The tensions produced by the indefinite

⁶ The minutiae of daily life are critically examined in the following chapter.

locking up of the 'man of rights' rendered detention as inherently volatile and shifting. Detention is a dangerous project, for it offends the ideal of the democratic state as the protector of rights. The incarceration of asylum seekers, as opposed to normative targets for incarceration - criminals, or prisoners of war - calls into question the supposed connection between democratic modernity and rights.

Building Topside

The coral island of Nauru is a speck in the Pacific Ocean sitting roughly two degrees south of the equator. It is the world's smallest independent nation. Politically and geographically anomalous, Nauru is a barren, drought-ridden island occupying a total area of just over twenty-one square kilometres. Arable soil, fresh food and fresh water are scarce. The coral moonscape that covers much of the island is a result of large-scale phosphate mining by British, American and Australian companies. By the 1990s the fiscal wealth brought by mining had all but dissipated and the community faced economic and ecological bankruptcy.

In September 2001 the Nauru government agreed to the quasi-colonisation of their territory and in exchange received much-needed income. Statehouse and Topside camps were not under the authority of the Nauru government; rather, the camp was under Australian governance in an uneasy partnership with the United Nations. The daily life of inmates was managed by the intergovernmental organisation, the International Organisation for Migration (IOM).

On the 19th of September 2001 the first group of predominantly Afghan and Iraqi asylum seekers were transferred from the Australian navy vessel HMAS Manooka. They were reluctant to disembark. But after three weeks of being locked in the holding tank of the Manooka and with limited access to food and toilets, the asylum seekers were exhausted. They were forced off

the naval vessel, but with assurances that they would not be on Nauru for more than a few months (D1 to Za 29/8/2002).

When we were on the Tampa ship the IOM came and told us they will move you, we will help you in Nauru, it is a very good island, there are railways and very green island and you will be free on Nauru. So we had an idea that if we go to Nauru we would be free and they told us that in only two months we will process you and we will get a decision. I was thinking that two months is not very long time and so we will go to the island. So when we disembark in Nauru just there were police and they quickly moved us to buses and moved us to the inside of the island and when we saw detention. We didn't know it was going to be detention, you know fence around the grounds and only some tents. We didn't know what it was but when we entered we saw that it was the place where we would be for two months (A15).

A week after the first group was incarcerated at Topside, 131 people (families, women and minors) were flown to New Zealand to have their claims processed. Of these asylum seekers, all but one were issued protection visas within four months of their arrival. For those asylum seekers who remained on Nauru, the process would take much longer - and more than a third would ultimately fail in their bid for protection.

Initially over 500 people were grouped into the hastily built Topside and Statehouse camps. The nationalities were divided, many Iraqis going to Statehouse and Afghanis to Topside. A month later a second group interdicted at sea was brought by the HMAS Tobruk; and in December a third group was brought from Christmas Island.

Topside Camp was a rudimentary facility. It was once a football field and retained these dimensions - roughly 300 by 200 metres. It lay on a plateau, close to the island's rubbish dump, the smell of rotting garbage wafting through the camp (B1). A fence encircled the camp; detainees were monitored by Australian security guards inside the wire, while the government's Australian Protective Services patrolled the perimeter outside the camp.

Large tents had been erected to house detainees, each holding up to thirty people. There was little privacy - tent walls were clear plastic, offering no relief from the equatorial heat. The army-issue bedding was crude: small mattresses, no sheets or pillows. Some preferred to sleep on the ground under some old wooden buildings to escape the intense heat (B1). Some months later the tents were replaced by air-conditioned metal containers that slept fifteen each.

Electricity, water and medical services were all scarce. Generators provided electricity for the communal areas; but for the first five months, asylum seekers had no power in their rooms. There were no fans to cool them and no lights. 'We have no power yet. One day it is very hot and nights lots of mosquitoes - no repellent and spray' (D1 to Za 2/2002).

It was only in February 2002 – six months after they had first arrived and just before the visit by the Minister for Immigration, Philip Ruddock – that the electricity was finally connected: 'Simultaneously this afternoon we have got electricity in all the rooms and long houses. I think it may solve part of our problems. But our major problems shortage of water still remains unsolved' (D1 to Za 2/2002).

The facilities reflected the economic poverty of Nauru and the Australian government's guarantee of no more than the detainees' biological survival.

By the beginning of December 2001 there were 532 people at Topside: 399 adult males and 51 females, 42 male and 40 female minors (Crock & Saul 2002, p. 41). By the end of that month the number of people had risen again, letters estimating that there were around 800 people in the camp - and around 90% of these were Afghans. The movement of people between the two camps meant that numbers at Topside rose and fell, but by the end of 2001 a total of over 1,500 asylum seekers had been taken to one or other

of the Nauru camps.

Now Topside camp is really overpopulated and State House Camp Residents have been transferred here. The number of our camp population has jumped from three hundred to more than eight hundred. The increase of facilities and extension of our living space is obviously necessary and reasonable. While everything has not remained the same only but we have to confront with a lot more problems. We stand and wait very long in the lines of meals, toilets, shower any hardship you may imagine (D1 to Zb 24/12/2001).

The basic problem of water shortages grew as numbers increased. For four months detainees had no fresh water for showering or for washing clothes. Even when the desalination machine worked, fresh water continued to be scarce. There were four water tanks, but these were not always filled. Each day inmates would queue with buckets to get water. Meanwhile IOM and Australian staff drank from packs holding imported water from the Solomon Islands and Australia.

There were regular problems with the desalination machine and the generator. Every day the water supply to the toilets was switched off and the inmates would be left without water to flush away excrement. The lack of water did not improve significantly from 2001 to 2003. Letters often allude, sometimes obliquely, to the problem of soiled toilets. One letter asks for some shoes with thick soles which could offer better protection when walking through the ablution block with lavatories that could be overflowing (D6 to Ze 2003). Letters regularly referred to water shortages and the consequently persistent threat of illness:

We do not have enough water for going to the toilet, taking bath and washing our clothes. For example in one corner of the camp there is one water store in which most oftenly one water tank is delivered every day and here almost five hundred people consuming water from the same tank. An interesting story is that when Mr Philip Ruddock came here our water stores were almost full. And we tried to utilize our best. Most of us take bath when it rains heavily. However the water is spent very soonly. And in the rest of day and night our

toilets are awfully smelling and thousands of flies and mosquitoes are in each toilet (D1 to Za 2/2002).

Our major problem shortage of water still remains unsolved. The unavoidable consequences of water shortage is lack of sanitation and cleanliness. Our toilets and bathrooms are particularly dirty and harbour several types of flies and mosquitoes. However the new power generator seems to be strong and working well. This afternoon IOM medical team called for a meeting and said the increase of diarrhea cases is alarming. There are two bloody diarrhea cases hospitalised at present (D5 to Ze 2002).

In addition to the lack of fresh water, fresh food was inadequate. All the food was flown and shipped from Australia. 'The food is getting worse day by day. Two months ago it was better than now. When we talk to IOM, they just pretend ship hasn't arrived yet' (D5 to Ze 6/11/2002).

Letters report instances of stale food and insects being found in meals. 'Asylum seekers are not happy with the ways the foods are cooked. Most oftenly the rices and meats they cook are either stale or raw that can cause diarrhea' (D8 to Ze 16/2/2002). One asylum seeker reported that when he complained about the number of flies in the food he was told by an IOM official that he should only complain when there were more than four flies in the meal (B5).⁷

The Trauma of Topside

Nauru tested the physical bodies of the detained. The inadequate food, the salty water, the deficient sanitation and the relentless heat were daily reminders of their physical susceptibility. The letters indicate that many, if not all, were suffering from a myriad of ailments - insomnia, migraines, diarrhoea and skin rashes. The asylum seekers at Topside were susceptible to a host of diseases - including dengue fever, skin and eye infections and gastro-intestinal illnesses.

Although freer to move around within the camp, asylum seekers were not permitted to leave Topside, except on occasional visits to the town or beach.⁸

There were attempts to impose violent constraints and disciplines that had some parallels with those found onshore. In the first two years there was a wooden bar at the gate which those imprisoned could not cross without authorisation - facing punishment if they did so: 'If we go outside the camp the APS arrest us and send us to Nauru prison for two weeks' (D5 to Ze 1/12/2002). Some detainees were jailed for leaving the camp. 'An Afghan young boy, who is under treatment of the Norwegian psychiatrist and also suffering from a very serious problem went over the fence on 11/3/02 and Nauru police took him to the prison. He is still in solitary confinement' (D5 to Ze 16/3/02).

Between 2001 and 2004 detainees could be jailed in Nauru's tiny prison for various misdemeanours. One man was put in isolation in prison after he hit his head with stones (D7 to Zb 4/2002). In jail, writers told of prisoners being stripped of their clothes. This naked humiliation was justified as a preventative against suicide.

One man wrote:

We must follow whatever IOM and DIMIA tell us otherwise we are put in Nauru prison. The detainees are treated in a very affrontive and inhuman ways when they are put in Nauru prison. When a detainee is sent to prison, first Nauru police make him naked and take all his clothes then lock him in prison. A detainee was affected with dengue fever while he was in prison (D5 to Ze May 2003).

⁷ Some asylum seekers managed to grow some vegetables in tiny area of dirt within the camp.

⁸ By 2005 the remaining asylum seekers were allowed to leave the camp during the day and without guard surveillance.

The asylum seekers were traumatised by wounds inflicted not only upon the body but also upon the mind. It has been noted (Nixon 1990) that traumatised memory is a site where change can be produced. The refugee Bessie Head suggested that trauma breaches the mind's experience of time, self, and the world (Nixon 1990). In this view, the wounds inflicted upon the asylum seeker have a capacity to reveal what has been hidden, matters that official narratives will not and cannot recognise. From these letters a history of Topside camp emerges to shatter the near silence which would otherwise surround the camp in the near absence of publicly available official records of it.

For detained asylum seekers, their imprisonment is traumatic - in part because it is an affront to their assumption that the Australian government would safeguard their political claims and thus secure a future; but beyond this, those placed in detention confronted unending uncertainty and torment.

The experience of nearby death had left a permanent stain upon many of Nauru's newest arrivals, inscribing a vulnerability and fragility upon the asylum-seeking body. Many of the letters referred to the circumstances from whence they had fled: 'We are in a state of despair and have lost our sleep and peace of mind. Every part and corner of my country is coloured with bloods of innocent people everywhere rocks, mountains, valleys, rivers from Herat to Mazar-I-Sharif and from east to west' (D9 to Za 7/06/02).

A month after the first group had been incarcerated at the camp, an Indonesian fishing boat carrying nearly four hundred asylum seekers *en route* to Christmas Island sank in international waters. 353 people drowned, including many women and children who were trying to be reunited with their husbands and fathers living in Australia on Temporary Protection Visas. The sunken boat came to be named by Australian authorities SIEVX (Suspected Illegal Entry Vessel X).

Asylum seekers living illegally in Indonesia now knew that if a boat sank in international waters its passengers and crew would not necessarily be rescued by Australian authorities (Kevin 2004).

Many at Topside realised that they could easily have lost their lives at sea. Their survival appeared to be of no value. One man wrote on October 26th 2001 of his feelings on hearing of the SIEVX tragedy:

... today we are sat to mourn for those 380 human beings who had put themselves to sea for the purpose of requesting asylum or reaching our destinies, but they went to sharks mouths instead. Why this affair affected too much our mental condition?? Oh yeah!!! This event reminds us the two months ago when we with our small leaky wooden boat and 438 Asylum seekers on board includes women, children and men with a broken machine and leaked broken woods for three continuously days were suffered to the dangerous waves and unclear places, and we were waiting for the death (D17 to Zb).

This continuing inability to secure life rendered the experience of Topside acutely disturbing. There were distinct signs of widespread anxiety and distress. As with detainees held onshore, insomnia and depression were endemic: at night men would wander around the camp, many sleeping during the day. The women tended to stay inside. Letters convey a profound sense of loss and emptiness.

Many of our experiences are very difficult and even unimaginable for people outside detention centres. As an asylum seeker in the same situation with others, I can't dare claim I perceive the cost of all this to each and every one of the detainees. Mostly I keep reading books, magazines, novels, or writing letters and account of my journey but can clearly see how difficult it is for many of the sleepless and restless detainees wandering around the camp days and nights. This is beyond the power of imagination and expression. They have so much to say but very little they can say these are endless stories. You had better not be involved with this sort of stories. Our tears have dried up and yours have just begun to flow. Probably my mother is no longer able to cry for me as I can't for her (D1 to Za 4/2002).

Some children would plead for help as they became responsible for caring for parents who had suffered psychological collapse:

*I hate it, we are fed up with this situation. I always pray for everybody. I pray for my parents because they don't feel happy with this situation. My mother always has a headache and she ill, my father too. My father can't eat anything... I worry for them, they usually sleep. We aren't in good mood. I wish my parents were happy, but now they nap a lot (D13 to Ze undated 2002).*⁹

Psychological disintegration was the primary threat to the detainees suffering the derisory conditions of Topside. Some letter writers expressed a wish to die. One man protested his internment by nailing his head and hitting himself with stones (D1 to Za 3/2002); another wrote that he was a prisoner of war - a war he did not realise he was fighting until captured:

As I write this letter, my fingers are cut, my heart is broken, my liver is full of blood and my eyes are weakening and my face is twisted with fear. People have to come to investigate the Nauru camp. I wish they could tell our story to the world. I am tired of living. I want to commit suicide (D2 to Za 4/2002).

Detainees were frustrated and as the time passed some were deeply disturbed by their ongoing internment. The letter below describes one incident of a young man hacking at his body.

He hit his body with a blade in his room. Someone had seen blood on his abdomen while he was going to bathroom. When we went to bathroom the door was closed, we knocked at the door but we could not hear anything. After a few minutes we opened the door and found him lying on the floor and the blood was coming from his body. The security guards also arrived and we took him to the main gates of detention for medication. The security guards took him to hospital. He is still in IOM's clinic in State House detention center. At the moment he is feeling better. He has been suffering psychological pressure for the last one year and has been under medical treatment (D5 to Ze 22/7/2003).

⁹ In on and offshore detention it was not uncommon for a child to express the feeling that the usual parent-child roles have been reversed and they now need to care for their parent (Browning 2005).

Internment was enervating. Now imprisoned, asylum seekers had neither the means of securing their own safety nor the security of those they had left behind – wives, children and parents: ‘I have been living at a deplorable and intolerable situation in the hell of Nauru detention centre. Its 2 years I didn’t have any contact with my family. I don’t know how are they’ (D8 to Ze undated).

Detention assumes that the detainee is untrustworthy until proven otherwise. As in onshore detention, a currency of suspicion permeated Topside. DIMIA, UNHCR and IOM distrusted the asylum seekers, who in turn came to mistrust the officials. Some detainees also felt excluded by other detainees. Some women felt vulnerable to sexual assault. For other detainees old ethnic enmity exacerbated tensions. One teenage girl writes that she and her family distrusted and felt their lives intruded upon by other detainees:

In this letter I want to tell you about our problems in the camp. There is English and computer classes in camp but we can’t went because of people. They always disturb us. My parents are also disturbed because my brother has gone to Afghanistan. All day we sit in our room and just thinking what would happen to us. My sisters are losing their health. Sometimes I think if I remain in camp I become crazy. I am writing this letter only because I am very upset (D4 to Ze 2002).

One young Hazara man now living in Australia observed that detention-in-infinitude had the potential to undermine all relations:

... inside the centre everyone is very tired... Even sometimes myself when I was inside the centre I didn’t like to speak to anyone if someone was speaking about a good thing with me I was very angry and I wanted to fight with him because I didn’t want to talk. I think everyone was the same (A15).

However, as will be discussed in the following chapter, enduring bonds did

emerge even in these conditions - and the flow of suspicion did not destroy all friendships.

Letters report many physical and psychological health problems. The Nauru hospital was ill-equipped for the influx of so many malaises, some resulting from torture injuries. Many chronic physical conditions remained untreated on Nauru; back, leg and dental injuries, in particular, were endemic.

I was sick in Afghanistan with a bad back because the Taliban beat me. I am in pain all the time. I can't sit because it hurts too much.... At night I can't sleep because of the pain. the night seems like day.... From seven months of going to the doctor they still do not have any facilities and just give me Brufen tablets... At first the tablets helped me but now they do not help at all. The doctor says we have no facilities in Nauru. I want to die (D2 to Za April 2002).

One man went on a hunger strike to force DIMIA to send him to have an operation on his leg, after being told by doctors in Nauru that the limb would be amputated if he did not have the surgery (D5 to Ze and Zd July 2003).

In some emergencies, detainees were airlifted to Australia to receive medical treatment. Gaining access to medical and diagnostic treatment – even general, let alone specialist - was difficult:

Some patients need serious medical treatment such as waist pain, leg pain and so forth. Some people have lost their eyesight and need to see an eye specialist. They have been waiting to have their eyes checked since they arrived in Nauru. There are over 60 persons who need to see dentist but the dentist only sees two patients in a week in Nauru hospital. Once anyone gets dental problem should wait 8 months to see the dentist (D5 to Ze 9/6/2003).

The offshore detainees were living on the periphery of human existence. Their detention in this elementary camp on this barren and remote island spoke of their designated position in modernity: on its extreme margins, both geographically and politically.

The First Interviews

The Republic of Nauru is not a signatory to the Refugee Convention and has no obligation to process protection claims. This task was undertaken by UNHCR and DIMIA. UNHCR agreed to process the claims of the asylum seekers who had been held on board the HMAS Manoora; the remainder were to be assessed by DIMIA.

Permeation phobia coupled with Australia's obligation to the Refugee Convention is an explosive contradiction. On Nauru, DIMIA continued in its awkward observance of the 1951 Refugee Convention and pursued its primary aim of tightly controlling and limiting undocumented immigration.

The processing systems of the UNHCR and DIMIA differed only in one respect: the UNHCR believed the spouses and children of those already accepted as refugees should be acknowledged automatically, while the Immigration Department disagreed and processed each applicant separately. The decisions reached were made without independent scrutiny or any legal advice to the detained. UNHCR or DIMIA officials, working with the assistance of interpreters, were the sole decision makers. Until 2004 – beyond which falls outside the focus of this research - Australian lawyers hoping to represent the asylum seekers were denied entry visas for Nauru.

Interviews began as soon as the first group of asylum seekers was bundled onto Nauru; but it would take eight months for the eventual decisions on their status to be released. For the Afghans this delay coincided with the invasion of Afghanistan by the United States and the fall of the Taliban regime. By early 2002 an interim Afghan government had been installed, reliant on the political support of the United States. This regime change had an immediate impact on the outcome of refugee claims. In Australia and

Nauru, Afghans' claims were stalled in the wake of the political transitions. At Topside each person would be put through at least one interview, most three and more. Some had already been recognised as refugees by the UNHCR in Indonesia but after years of waiting for resettlement they had decided to travel undocumented to Australia. Now incarcerated on Nauru, they had no choice but to apply for protection all over again.

By December, after four months in detention, some wrote of their frustration with the time it was taking to process claims: 'The interview process is likely to end and we are waiting for release of decisions, while we have heard informal news that our decisions will be released with the Tobruk group, processed by DIMIA' (D1 to Za 24/12/2001).

Even before the determinations were released, detainees were expressing their misgivings about the method of processing the claims - in particular, the lack of legal assistance and the behaviour of interpreters. These concerns were repeated by many others over the course of the next eighteen months.

We intend to send letters to UNHCR, Canberra and Amnesty International mainly focusing on three issues: at first we request an availability of a law advisor. We know that the International Refugee Convention and human rights principles provide the asylum seeker the right to seek legal advice and to present his claims to a court. We are concerned that a genuine refugee might lose the right of protection, not because of invalid claims but because of not knowing the law and lack of education and the ability to present his case well.

Second, we request that a UNHCR officer while determining our refugee status must consider that an asylum seeker, especially Afghans is not similar to an ordinary person born and grown in normal circumstances. An Afghan asylum seeker has been touched by terrible tragedies and grown up in war torn country. He is totally devastated. He/she has never seen a legal argument and does not have sufficient education and knowledge of law. He/she has grown up under circumstances that a gun could and can speak much louder than hundreds of human voice. The long term painful journey has demoralised him/her and has affected his memory. This clear

reasonable fact must be considered an important element in determination of a refugee status...Thirdly, we request a skilful and professional interpreter for the appeal period (D1 to Za 24/12/2001).

For asylum seekers who had travelled across borders in the hope of political inclusion and safety, their continuing detention was harrowing. After six months in detention, many felt hostile toward the Australian government. The visit to Nauru of Australian Immigration Minister Philip Ruddock on February 3rd 2002 further angered detainees, who congregated at the gates hoping to speak with the Minister, children waving to him; but according to letters, he did not respond (D11 to Za 23/11/2002). On that day the water tanks were filled to capacity and people used the extra water to bathe and wash their clothes in non-salty water.

Ruddock held one short meeting with the group leaders. As one man recalls, writing several days after the visit:

He was asked: 'Why are we put in such a desperate situation. Please try to take us out of this hell'. He answered: 'You are here to be processed and you have to wait for a legal yes or no. We accept three kind (of) people: skilled, those who have close family relation in Australia and those fleeing genuine persecution'. 'Why have you brought us here?' He answered 'Because you came from the window not from the front door'. One man raised with the minister that 'Front door is almost closed.' They continued to press him on why they were being treated differently with the minister commenting that 'Australia gives priority to those in countries of first asylum'. He continued : 'If you are granted refugee status it does not mean that you will necessarily go to Australia but it means you must be taken care of and remain safe' (D1 to Za 2/2002).

The majority of asylum seekers were not found to be refugees in the first round of decisions. The results of these initial interviews were given to the detainees on the 8th April 2002. Of the 350 asylum seekers rescued by the MV Tampa and brought to Nauru on HMAS Manoora, only seven were given protection visas; of these, only two were Hazaras (D5 to Ze, 4/2002).

One man wrote that after these results became known the asylum seekers were desperate and made a futile plea to be permitted to speak with journalists¹⁰:

...people were angry and unhappy and gathered in front of the main gates. After a few minutes IOM came to answer questions of detainees (Tampa) 'We want to talk to journalists' – 'There are no journalists in Nauru'. People were nervous depressed and unhappy [they] wanted to talk to Nauru officials high ranking to ask 'why have we been brought here. Why have they dealt with our destiny and fate without journalists - we want to tell the journalists of our conditions and fate here so the world can know' (D4 to Za 4/2002).

Hostile Witnesses?

The system of processing claims for protection was observed closely by the asylum seekers. Many letter writers acknowledged that the high failure rate of the Afghan applicants was an effect of the changed political regime in Afghanistan and the assessment by the international community, including the UNHCR, that the unbridled violence from which the asylum seekers had fled was now more contained. However, many Afghan detainees also believed that at least two of the Afghan interpreters used by both DIMIA and UNHCR were hostile to the claims made by Hazara Afghans. The DIMIA and UNHCR bureaucrats were reliant upon the interpreters, who were fluent in one or two of the principle languages of Afghanistan: Dari and Farsi - but not necessarily Hazargi: the language spoken by many Hazaras.

As with onshore detention, most of the Afghan translators were either from the Pashtun or Tajik communities.¹¹ There is a historic and deeply

¹⁰ The few Australian journalists who attempted to report on the Nauru camps were routinely denied visas to Nauru. This situation changed in 2005 and after the majority of asylum seekers had left Nauru.

¹¹ Tajiks are an ethnic Afghan group. After the Pashtun community, Tajiks are the second largest community group in Afghanistan

embedded animosity between the Hazara and the two majority Afghan communities, the Pashtun and Tajiks. Maley (2001) comments that the Pashtun hostility against the Hazaras has racial qualities: Hazaras are descendants of the invading Mongol armies and many have classic Central Asian features rather than the more Caucasian appearance of the Pashtuns and Tajiks. The enmity has been shaped by centuries of conflict, including the most recent civil wars. The majority of Afghan asylum seekers at Topside were Hazaras who had fled Afghanistan fearing persecution from the Pashtun-dominated Taliban regime.

According to letters of 2002 the Hazara community made up about 80% of the total community at Topside (D9 to Za). This figure corresponds with Maley's estimate that at this time the Hazara community made up around 80% of Afghan asylum seekers in Australia (Maley, 2001).¹² Some of the Hazaras kept a count of who had been given protection visas; they compared the number of Pashtun asylum seekers who were successful with the number of Hazara successes.

While the 80% of asylum seekers are Hazaras and 17% are other ethnic [Afghan] groups, there are 17% acceptance for Hazaras and more than 80% for the others. Personally, I believe the hands of [UNHCR interpreters] Nadir and Maliyar were behind this (D9 to Za 9/2002).

For the Hazara asylum seekers this disparity in acceptance rates was explained by the historic enmity, even though all now inhabited a surreal new space far from their origins. On Nauru, as with onshore detention centres, ethnic antagonisms could be played out anew, exacerbated by the tensions of the situation.

'Almost all the interpreters are non-Hazaras and are thinking of Hazaras

¹² The Afghan refugee community is also one of the world's largest refugee groups. In 2000 the UNHCR estimated there were around two million Afghan refugees. However since 2003 this number has been steadily declining.

according to their old hatred and feuds against Hazaras. To them being a Hazara can arouse their hatreds and dislikes and even may regard it as an unforgivable crime' (D7 to Zj 29/7/2002).

As Kaplan explores (1993) there is a sense that those who have experienced extreme trauma and loss carry about in daily life a visceral sense of the past. In the close isolation of detention, the historic religious and political distrust between Pashtun and Hazara were re-imagined.

The UNHCR interpreters did wrong... as you know they were 'Pashton' and many of us 'Hazara' so they have had big problems from first until now, about old things which our grand-grand fathers were fight with each other about that, so until now they have the same problems with us, so they killing our hazara people in here by pen which their fathers killed our hazara people by weapons in Afghanistan. So they killed us in here by pen, and they give negative advice to the UNHCR Officers about us and wrong information (D14 to Zb 12/2002).

The UNHCR and DIMIA were reliant upon the translations given by the interpreters. Translators had the authority to make recommendations and assessment about the asylum seekers' character, language and accent (D1 to Za; D5 to Ze; B1 and B5).

One young Afghan, Mohammad Mussa Nazari, wrote:

I want to tell you about difficulties at topside camp. Some translators of Pashton who work with IOM they do with us like the enemy, because we are Hazara and Sheya (Shia) religion. The IOM don't listen our anything and whatever the Afghan asylum translators say to them they just listen to them (to Zc, undated).

In 2003 Nazari returned to Afghanistan from Nauru. Within ten months of his return it was reported that he had been shot dead by Taliban forces while riding his motorbike through the Zardak Pass (D14 to Zb; B2).

Before he left Topside camp at the beginning of 2003 Nazari wrote another letter in which he described some of his fears of returning to Afghanistan:

At first the IOM and DIMIA and UNHCR were saying the people to go back to Afghanistan and they were saying that there is peace in Afghanistan now. And they said if we will not go back they would send us back by force. And the IOM are saying now there are 50 persons who are not Afghani... I have not become a refugee for the dollar and for the food... The government is a fake government and their democracy is also fake. And in the law of Afghanistan Independence is not allowed for my party... If I am sent back by IOM I will be killed by name of a communist. Haven't I the right of life as a human? (to Zc 27/1/03)

Mohammad Mussa Nazari's letters are distressing; and many other letters written by those enduring the processing procedure express a view of it as systemically flawed. DIMIA and UNHCR officials would have been aware of the enmity between Afghan Hazaras and Pashtuns - employing Pashtun translators can be seen as an additional element in securing an Australian intent to deny the unwanted.

At meetings with the UNHCR the asylum seekers raised their issues about translators¹³ but believed their concerns were routinely dismissed. Unlike asylum seekers held onshore, those on Nauru had no recourse to the courts - nor were they afforded even limited access to Freedom of Information processes to retrieve documents which might verify their claims of poor or deliberate mistranslation.

Many tell me that interpreters did not listen to their whole stories or curtailed them partly, and even misled them for example not to speak of their membership, political parties by frightening them that this would make their cases more complicated...A Hazara asylum seeker who had a Tajik¹-like face and a hairy complexion told me: 'When I entered the interview room for the first time and sat in front of the interpreter I spoke a Kabuli accented Dari, the interpreter told me: 'Well you have a strong claim let me make your case. You tell them I

¹³ No letters viewed by the author mention whether asylum seekers also spoke to DIMIA officers.

was a Tajik, I was persecuted...’ [the asylum seeker responded] ‘No no I am a Hazara and I have genuine stories to tell. I don’t need to add something unreal’...Then the interpreter collected himself, sighed and asked me to begin. As it went on he sighed again and again leaned forward and backward (D1 to Za 29/7/2002).

There were rumours among the detainees that Pashtun asylum seekers were being coached by an interpreter, who would visit them to talk about their cases. ‘Another Hazara had witnessed one come to a Pashtun guy handed him over a letter according to which he had to defend himself in his appeal interviews’ (D1 to Za 29/7/2002).

Letters (D9 to Za; D 16 to Ze), including one from a group of asylum seekers, named two feared interpreters. One of those named also featured in an *Australian Financial Review* article (Macken 2004).

The letter from ‘Representatives’ of Afghan asylum seeker states:

Quite obviously, the UNHCR interpreters Mr. Nadir and Mr. Maliyar [Malyar – see below] have played their own role and once again under the UN caps exercised their own ethnic and religious feuds and hatreds against the poor Hazaras... there are many Hazaras who was distracted or misled not to tell the stories which would probably meet the refugee criteria and many others who complain of the poor and careless interpretation and translation services. We are quite surprised at the powers given to interpreters that even they play decisive role on the assessment of claims for asylum. Once Mr Maliyar told to a group of us: ‘I swear by God that if you open fires from your mouths, and still, I don’t help you, you won’t succeed.’ If Hazaras open fires from their mouth which means probably stories that may qualify the Refugee Convention, and Mr Maliyar does not approve, they won’t get refugee status (9/9/2002).

According to Macken (2004), Malyar Dehsabzi confirmed working as an interpreter for both the Department of Immigration and ASIO in the Woomera, Port Hedland, Curtin and Nauru detention camps from 1999 onward. This man and his brother had also worked for an Afghan warlord in New Delhi who had distributed anti-Hazara pamphlets. Malyar worked for

both DIMIA and UNHCR in Nauru, despite other translators complaining of his negative attitude toward Hazaras.

At the same time Afghan interpreters, both on- and offshore, were also responsible for making an assessment of an applicant's nationality. DIMIA was convinced that many claiming to be Afghan asylum seekers had in fact come from Pakistan (Macken 2004).

Interpreters were assigned 15 or so cases at a time,' says an International Organisation for Migration officer who worked on Nauru at the time. Malyar would regularly declare 10 out of his 15 to be Pakistani. Other interpreters found either none or one at most (Macken 2004, para. 9).

One asylum seeker found that on his file a UNHCR case officer had written that he found the applicant's 'political and intellectual opinions incredible in a remote part of Afghanistan', and that after eleven months at Topside the UNHCR still had not come to a conclusion about his nationality (D1 to Za 8/2002). Attempts to (dis)prove applicants' nationality sometimes involved interview questions that asylum seekers found nonsensical:

The officers would usually distract the claimant by changing the course of questions or make them nervous by showing mistrust or giving less attention. For example, before one could answer why did he hold to a particular political opinion, he would then be asked 'How do you grow wheat in your town?' 'How many hours would you walk from your home to your farm?' Or 'How much would cost a kilo of rice in Afghanistan?' I was really astonished. It still does not make any sense for me to claim protection measures to know how to plant a tree and to know how to graze sheeps on a mountain. One person was asked 'How do you build an oven in Afghanistan?' (D1 to Za 9/2002)

When asylum seekers complained to the UNHCR about the hostility and mistranslation of two of the interpreters, they reported the UNHCR team leader telling them that 'many of the things you are telling are ridiculous' (D1 to Za 9/2002). If the asylum seekers had at first expected to find the UNHCR more sympathetic to their claims, by the middle of 2002 this hope

had gone: for the asylum seeker at Topside there was little difference between the organisation designed to protect refugees and the Australian government.

The applicants made attempts to plead with the UNHCR that that not only were the Pashtun interpreters hostile to the Hazaras but that the nationality-assessing information used by DIMIA and UNHCR was inaccurate - or in the words of one man, 'ridiculous':

...I am sending you a copy of my refusal paper... I might have been portrayed by the Pashtun interpreters not to be an Afghan but I am prepared to challenge them and the incredibility of UNHCR. The current UNHCR team leader told us in a meeting 'I know there are gossips at the camp...many of the things you are telling me are ridiculous'. I answered him 'we can prove we have lots of evidences you are defending interpreters because partly you are guilty' (D1 to Za 8/2002).

Another man wrote in September 2002:

I can dare say that I have been denied my due rights by the UNHCR and involvement of the interpreters. I am really regretful why Australian government is giving that much chances and power to the fanatic interpreters who have historical hate against the poor Hazaras (D9 to Za).

According to the Macken's (2004) report, the Pashtun interpreter Malyar, while travelling around Afghanistan, sent emails from that country to various detainees on Nauru telling them how peaceful and safe Afghanistan had now become. A Dutch psychiatrist, Dr Maarten Dormaar, who was working for IOM at Topside, is reported as saying:

I was arguing with some colleagues from IOM, saying it was not safe for the Hazaras to be sent back, when one of my colleagues said I was wrong and produced these emails from Malyar. In the emails Malyar said Afghanistan was wonderful and that he had travelled all over the

country and it was safe to travel everywhere (Macken 2004, para. 15).

One asylum seeker wrote to one of his correspondents in November 2002:

There were two Afghan translators with UNHCR they were able to assist many people but instead they guided those who had been recommended by someone else these are the things I can't stand and can't explain anymore. We are going to leave Nauru to end this game (D16 to Ze).

Another letter writer reports the distrust he feels towards one of the Pashtun interpreters working in the clinic:

In Nauru Topside camp most of the people have got mental problems and they have been checked by doctors and the doctors acknowledge them that they have psychological problems. The one who works with doctors as interpreter as well as male nurse he is also Pashtun and he has citizenship of Australia. Even though the mental problems acknowledged by doctors, again he tried himself to hide the truth and he has published untruth news by media (D5 to Ze and Zd July 2003).

By the middle of 2002 many of the Hazara detainees had come to believe that the translators, the Department of Immigration, the UNHCR and IOM were all working toward the mass repatriation of Afghan asylum seekers.

Timeline of key events:

Topside Camp, September 2001 - December 2003

September 19 th 2001	First group of 662 asylum seekers taken off HMAS Manoora and detained at Topside and Statehouse.	Marr & Wilkinson 2003, p.164; D1 to Za
September 26 th 2001	131 asylum seekers (women, families and minors) are flown to New Zealand.	Various letters Marr & Wilkinson 2003, p.165
October 2001	261 asylum seekers brought to Nauru by HMAS Tobruk.	Op. cit pp.147-149
October 26 th 2001	353 people (mostly asylum seekers) drown after their overcrowded boat now known as SIEVX sinks.	D17 to Za
December 2001	532 people at Topside and increases to around 800 as people are transferred from Statehouse. 1,155 asylum seekers now detained on Nauru.	Crock & Saul 2002,p. 41; D1 to Zb; Manne with Corlett 2004, p. 45
December 2001	UNHCR concludes first round of interviews with asylum seekers rescued by MV Tampa.	D1 to Za
December 16 th 2001	Eid celebrations.	D1 to Za
December 2001 to January 2003	Topside overcrowded - shortages of water and multiple health concerns.	D30 to Zj; D6 to Ze; B1; B5

February 3 rd 2002	Immigration Minister Ruddock visits Topside camp.	D1 to Za D12 to Ze D11 to Ze Manne, with Corlett, p. 49.
April 8 th 2002	Release of first round of decisions by UNHCR and DIMIA. Seven people rescued by MV Tampa are recognised as refugees.	D4 to Zb
June 12 th 2002	Release of second round of decisions. 25 asylum seekers rescued by MV Tampa and 16 who arrived via the Tobruk are recognised as refugees. In total 1141 people held on Nauru and have been accessed: with 268 approvals and 873 refusals.	D10 to Zb; DIMIA 2002a
August 26 th 2002	Celebration of anniversary of rescue by MV Tampa. Death of 28 year old Mohammad Sawar.	D17 to Zc; A16
September 6 th 2002	Release of 3 rd round of decisions. An additional 36 people rescued by the MV Tampa are recognised as refugees.	D5 to Ze

November 16 th 2002	First group comprising 113 asylum seekers are repatriated to Afghanistan.	D6 to Ze D15 to Za
December 14 th 2002	Second group comprising 121 asylum seekers repatriated to Afghanistan.	D15 to Za; D5 to Ze and Zf
February 2003	Asylum seekers continue to be repatriated to Afghanistan. DIMIA and IOM put increasing pressure on Afghan asylum seekers to return. Around 400 Afghan and 150 Iraqi nationals remain incarcerated at Topside and Statehouse camps.	D17 to Zc; D20 to Ze; D15 to Za
April 2003	20 people on Nauru affected by dengue fever.	D5 to Ze and Zf
July 2003	Hunger strike.	D5 to Ze; D15 to Za
December 2003	Hunger strike. DIMIA announces the UNHCR is reviewing Afghan asylum decisions in light of its new assessment of political violence in Afghanistan.	MPS 2003c

The Drive to Repatriate

The written accounts from asylum seekers held at Topside give additional weight to Lui's (2002) analysis of the UNHCR. This refugee institution has as a core objective the maintenance of the international order of states; its activities reaffirm the democratic state as the fundamental source of human wellbeing. Rather than fracturing the state-citizen order, the international refugee regime works with modernist governments to confirm the current order. The UNHCR was not compelled to work with the Australian government on Nauru and in 2006 the UNHCR refused to co-operate with the plans by the Australian government to cement its offshore detention system. The refugee regime is both liberating and oppressing and for hundreds of asylum seekers detained on Nauru, the UNHCR's attitudes and practices were as problematic as those of DIMIA:

As usual when the screening bodies take a new step they use new tactics, show better sympathy in words, not in their actions and find better and more effective ways of convincing us that they are following the right procedure and no-one's rights under human rights convention is violated... here is huge complaints of poor partly cynical and even misleading translation and interpretation services of both DIMIA and the UNHCR (D1 to Za 2002).

A priority for both DIMIA and the UNHCR was to repatriate or resettle the stateless held at Topside and to move them off Nauru quickly. The inexorable drive to re-establish asylum seekers back within the system of states, despite the physical dangers asylum seekers might still face in their homeland, was evident even before the release of the first round of decisions. From 2002, letters record how the UNHCR and DIMIA informed the Afghans that the Australian government was meeting with Afghan officials on the question of repatriation:

In a meeting with UNHCR officers they told us 'There is a high level dialogue between Kabul and Canberra about the future of Afghan refugees.' I asked them 'Don't you think the dialogue politicises our

cases, which is something legal and here might be people complaining against those in power at present?' They said 'That is a question we can't answer' (D1 to Za 18/2/02).

There were fiscal and political pressures to remove the asylum seekers from Nauru relatively quickly. The island republic had not agreed to detain them indefinitely. Under its Memorandum of Understanding (MOU) with the Nauru government, Australia had agreed to resettle or repatriate asylum seekers within a 'reasonable timeframe' (undated DIMIA information sheet to Afghan asylum seekers); or, using the language of the Minister: 'The Australian Government is fulfilling its commitment to reducing the numbers of people held at Nauru and Manus Island' (BBC World Service 2002).

Asylum seekers were bitter that the UNHCR offered little practical or alternate recourse to basic rights:

I don't have much expectation of people who have imprisoned me here. The charity organizations involved in our situation have very attractive patterns and slogans but indeed I see almost all of them are directed by the donor countries. The organizations working on Nauru have no word to say and no right to choose unless they are told by the Howard government what to say and what to do. They intend to return us to Afghanistan and do never care for our future, life and our rights (D9 to Za 6/2002).

Most evenings several English-speaking asylum seekers would listen to Radio Australia and the BBC World Service. In June 2002 they heard radio reports that the Australian government intended to repatriate Afghans detained in onshore and offshore centres. One writer records that the 'mood of the inmates are inevitably changing as the news moves from mouth to mouth' (D1 to Za 6/2002).

The confirmation that the Australian government had signed an MOU on May 16th 2002 with the interim Afghan government that allowed for the

voluntary repatriation of Afghan asylum seekers intensified the unease for those held at Topside.¹⁴ They had little confidence that the interim Afghan administration would have the power or willingness to secure safety for Hazaras.

We are quite closely following the current changes and political movements in our homeland and worried about our families and relatives. The present Interim Government is formed by the warlords who deserve to be prosecuted as war criminals. Here are people with us who have lost their family members at the hands of those in power at present and been looted by them. We don't think there is a political regime willing and able to protect the religious and ethnic minorities. There is a very long way to walk (19/4/2002 group letter from 300 asylum seekers).

On Wednesday 12th June the second round of decisions was released. Again, most Hazara Afghans were disappointed: 25 Afghans rescued by the MV Tampa were given protection visas, 19 were undecided and the rest were rejected. Six Afghans brought to Nauru by the HMAS Tobruk were accepted, the rest rejected or left undetermined.

The rejected Afghan asylum seekers were told that their applications had failed as a result of the installation of the new interim government and in some cases due to 'discrepancies, inconsistencies and lacking confidence of the claimant while telling their stories' (D1 to Za 14/6/2002). Others were told their stories lacked 'credibility' (D9 to Za 8/2002). Many despaired:

There were few self harm attempts by some of the detainee after they were told of a negative decision. A young Iraqi detainee hospitalised for his psychiatric problems, after the APS (Australian Protective Services) guards took control of the Nauru hospital and restricted the patients in their rooms, had slashed his whole body. They were treated very badly by the APS. They were not allowed to speak and communicate with others or get out of their rooms. An Afghan patient who had witnessed the Iraqi in a pool of blood described the situation

¹⁴ Several months later the transitional Afghan government requested that Australia not return Afghan asylum seekers due to continuing violence and unrest.

as the most frightening in his life (D1 to Zb 6/2002).

Unsuccessful asylum seekers still had a third chance to seek a more favourable outcome. Letters from those stuck in the stifling heat of Nauru, and with a system that was weighed against them, begin to talk in more detail of psychological breakdown. Mental disintegration of asylum seekers detained long-term was a typical and graphically-demonstrated outcome:

They are getting mostly negative decisions after months of sufferings in very desperate conditions. All these prove damaging to mental and physical health of all the asylum seekers, particularly the children. There were [a] few self-harm attempts by some of the detainees after they were told of a negative decision. A young Iraqi detainee hospitalised for his psychiatric problems after the APS guards took control of the Nauru hospital and restricted the patients into their rooms, had slashed his whole body (D1 to Za 24/6/2002).

On September 6th 2002 the final decisions were released. From the 'Tampa group' the UNHCR approved 36 more cases. Rejection at this stage was devastating:

I got the result of my last interview on 6th September and I have been rejected by UNHCR. Now UNHCR has closed our case and don't accept any application for review. They have told us to go back to Afghanistan, otherwise wait for better situation of Afghanistan in camp. Our application won't be received by UNHCR and DIMIA. We have to decide whether to wait in detention or go back in 28 days. I have not decided yet (D5 to Ze and Zf 10/2002).

By October, 1141 people detained on Nauru had been notified of decisions on their asylum claims. There were 268 approvals and 873 refusals. 697 Afghan asylum seekers were 'refused' and 54 were 'approved' and of the Iraqi asylum seekers 136 were 'refused' and 196 were 'approved' (DIMIA 2002a).

DIMIA sought to persuade the Afghans to return 'voluntarily'. The Refugee Convention's principle of *non-refoulement* prevents a signatory state from

forcibly returning people to where they may face persecution. The UNHCR appeared to support the departmental position, suggesting that the major reasons people had fled Afghanistan no longer applied and that many Afghan asylum seekers could now return safely (MPS 2002a).

...I know the ongoing debates about repatriation of Afghan refugees. I think those who want to repatriate Hazaras either are not familiar with the composition of Afghan society and historical realities or do not care for the future of refugees (D1 to Za 2002).

For those holed up at Topside the reasons for acceptance or failure were opaque. In some instances members of the same family would find that some in the family had been accepted and others rejected. Some wives who were trying to be reunited with husbands in Australia and living on Temporary Protection Visas were found not to be refugees by DIMIA and were thus unable to rejoin their partners. In some cases the New Zealand government offered a protection visa for the family and the husband moved from Australia to join his wife and children in New Zealand.

Topside detainees calling themselves 'Representatives for the Afghan Asylum Seekers' wrote to Minister Ruddock protesting the decisions – particularly the number of Hazaras who were rejected as refugees.

Moreover, the decisions are negative majorly for the Hazaras. Out of the total 292 Tampa cases there were 69 cases approved by the UNHCR both in the first decisions and the appeal decisions. 257 of the total number was of Hazara origins, 14 were Tajiks, 16 were Pashtoons and 4 were Uzbaks. Of the 69 cases approved there were 43 Hazaras, 11 Tajiks, 11 Pashtoons and 3 Uzbaks which would translate as 17% approval for Hazaras, more than 79% for Pashtoons and Tajiks and 75% for Uzbaks (9/9/2002).

Other detainees addressed the weekly meetings with the UNHCR to complain about the use of Pashtun interpreters - but were told not to 'scapegoat the interpreters' (D9 to Za 10/9/2002). According to the letter, the UNHCR refused to sit with the group leaders and the interpreters to

discuss these complaints.

UNHCR officials told the asylum seekers that money was pouring into Afghanistan and that this money would promote pluralism (D1 to Za 29/7/2002). According to this letter, this UNHCR claim was treated with disbelief by asylum seekers, most of whom had only experienced their country wracked by war and dominated by warlords. Others had previously written of the continuing violence against Hazaras:

I've got a fax letter from my father describing the situation very insecure and dangerous. He has repeatedly asked me not to return home because of the security problems. I am very concerned of my mother and smaller brothers and sisters. At nights when I think of them I can't sleep (D1 to Za 29/4/2002).

With political pressure to repatriate to Afghanistan increasing, many of the Afghan asylum seekers were distraught:

Every people are feeling very upset and disappointment. Because they had great hope to take protection in Australia, but now they are sending back. It seems very strange because people abandoned their country because of cruelty, injustice, killing etc and without any protection they are sending back. What kind of justice is it from human to human? (D18 to Ze 23/7/03).

From September 2002 the repatriation program began in earnest. It seemed that the outcome the Australian government had been seeking was now close to total realisation: the physical and judicial excision of these border crossers from the Australian nation had closed off any further appeal mechanisms. The Afghan asylum seekers were informed that their files were closed and that those who had failed to secure protection would have to accept repatriation. If they signed up for repatriation within 28 days of receiving the final notification they would receive a monetary payment of \$2,000 from the Australian government; families would receive \$10,000.

DIMIA warned the Nauru detainees that the government was ‘exploring all options for return including involuntary return’ (undated DIMIA sheet). The inmates were informed that given the MOU signed with the Nauru government, they would have to be removed at some point.

In September one man wrote:

We can challenge the whole process. I know there are some former officers of the armed forces of the communist regimes in Afghanistan with years of services. But they are turned down despite the obvious dangers they would face by the present warlords ruling over Afghanistan. You can discredit the whole procedure of the DIMIA and the UNHCR (D1 to Za 10/9/2002).

By the end of 2003 the UNHCR had revised its assessment of Afghanistan, recognising continuing violence against the civilian population. But in September 2002 the majority of Afghan detainees at Topside still faced only two options: either to agree to ‘voluntary’ repatriation or to continue to wait in the hope that cases for refugee determination might be reopened. From September 2002 until December 2003, when cases were reopened, there was a systematic government drive for repatriation:

*Dear friend,
...We don't know exactly what happens to the people who are going back, are they safe or not because we cannot contact them... Dear friend the people are leaving because the IOM and DIMIA always says one thing that you have to go back. DIMIA said the government had an agreement about the refugee to go back (D2 to Ze 28/5/03).*

Topside camp was constructed as an empty meaningless space – one that would ease the speedy removal of these asylum seekers from Nauru and to places other than Australia.¹⁵ The hundreds of Afghan asylum seekers refused refugee protection faced a Sophie’s Choice: remain incarcerated, threatening their identity, or return to a place that threatened them with physical violence. Some letters speak of needing to escape madness on

Nauru, even at the risk of returning to physical danger in Afghanistan.

Hundreds did return; many of the later letters, faxes and emails suggest that a majority moved to Pakistan after they were sent to Afghanistan (D1 to Za; D5 to Ze and Zf; D20 to Ze; Corlett 2005). Others report having their money stolen from them when they arrived in Kabul or in Pakistan.

About 448 people in camp are ready to go back to Afghanistan, I mean they have enlisted their names for repatriation, but most of them have the same of idea of mine, to face the problems in their country of origin, and any persecution, not to have a gradually death in Australian Detention Centers (D18 to Ze 30/10/2002).

I have personally decided to go back. UNHCR and DIMIA do not accept any further application. I will go to neighbouring countries if I can not find any safe place for life. I will get admission in any university, especially Kabul university to study computers or philosophy and politics if anyone financially supports me (D5 to Ze and Zf 17/10/2002).

According to letters, 113 people were deported from Topside on 16th November 2002 and a further 121 on 14th December 2002. Unlike forced deportations from Australia, no letters or reports detail the use of chemical restraints against people leaving Nauru. Many, however, expressed profound sadness as friends departed:

Today 120 people were deported by IOM and you know most of them were from the Tampa ship... Today was very tense day for everyone. Everyone was crying for his friend because they were very good friends of everyone and we spend good time with each other in this very bad condition. Almost five hundred people have given their name for deportation and I am one of those people (D20 to Ze November 2002).

Thanks a lot for your kind and informed letter. A few days ago I received the picture of the Tampa ship I distributed them to the most ones, we are flying tomorrow. It is the first flight of refugees going

¹⁵ But even in 2006 two Iraqi asylum seekers remained on Nauru.

backing the Holy month of Fast. Arne Rinnan is our great hero, he is a real name behind all this story. We never forget him. The villain was your prime minister (D19 to Ze 15/11/02).

By February 2003 around 400 people remained at Topside, and about another 150 in Statehouse. By the end of that year letters indicate that around 400 Afghans had returned to Afghanistan. Of those rescued by the Tampa – in the incident that sparked the creation of Topside - almost 180 had been repatriated, a further 194 had been resettled (186 to New Zealand) and 59 were still on Nauru.

One man emailed his impressions of Kabul to an Australian supporter soon after his return. The letter reveals that this man, at this time, remained on the margins of existence:

I am very much sorry to be so late to contact you and to let you know of my whereabouts. It took me several days to get an address or have a place to stay. After some days in Kabul I discovered that my father was in Pakistan. In order to see him after almost 2 years I went to Pakistan. In my way to Quetta, the city where my father was, I and so many other Afghans were looted by the Pakistani police. The police stopped our bus in a remote desert and got us out of the bus. Checking our pockets and luggage they took all of our money. As I resisted they started beating, slapping and kicking me. Then they forced me back into the bus and went away. It was a dark night and I could not identify the area, the police, and why they looted us. Therefore I could not complain and tell the exact story when I arrived in the city on the next day, as I did not know the location.

Anyhow I have go through all these hardships and difficulties here in Kabul. At the moment I am teaching English Language at this private educational centre which can hardly allow living from hand to mouth. I can have lesser time to study and fewer facilities to work. Kabul is very much overpopulated and everything is very much expensive, making many basic things inaccessible for most of its populations. It is very much insecure as well. No-one feels secure at nights at the homes and days in the streets and roads. Here is always a fear existing in everyone's life, fear of rocket attacks from the mountains surrounding Kabul, and fears of lootings and robberies at nights and on the days. A large number of Kabulis spend their whole nights guarding their streets and their houses. There are gangs of armed thieves who enter the houses in groups and take away everything.

This is the situation in Kabul.

The security situation in the other provinces is much worse. Not only lootings and robberies are something usual everywhere, but armed groups are competing with each other to gain more controls of the cities, villages and towns. So far three representatives of the transitional administration have been refused entry in my hometown Jaghoori. It is ruled by the armed groups controlling different parts of it.

More than half of the returnees who were on our flight on 16 November last year have gone back into Iran or Pakistan, seeing the current situation in Afghanistan insecure and difficult to bear. Many are scattered in the streets of Kabul with no job (D1 to Za 2003).

Like many of the returned asylum seekers, this man subsequently crossed 'illegally' into Pakistan – Afghanistan was still too dangerous for Hazaras.

Topside camp was a closed and excised site – one which operated with the imperative to prevent these asylum seekers from ever reaching Australia. Offshore detention enhanced the ability to repel the stateless body - even if this compulsion meant, as was the case for Afghans, deportation to violence and possibly death. Such an imperative rendered the seeking of asylum close to senseless.

However, even in this space of physical and juridical exclusion, the eventual departure of asylum seekers from Topside was hard won by the Australian authorities: in their desperate battle for inclusion the detainees were tenacious. Topside was a site of intense struggle. Those detained within the camp constantly disturbed the intended order. Not only did the asylum seekers continually question the refugee process; they also sought to create a provisional community which helped sustain many through their years of detention.

The Australian government wished to remove detainees from Nauru

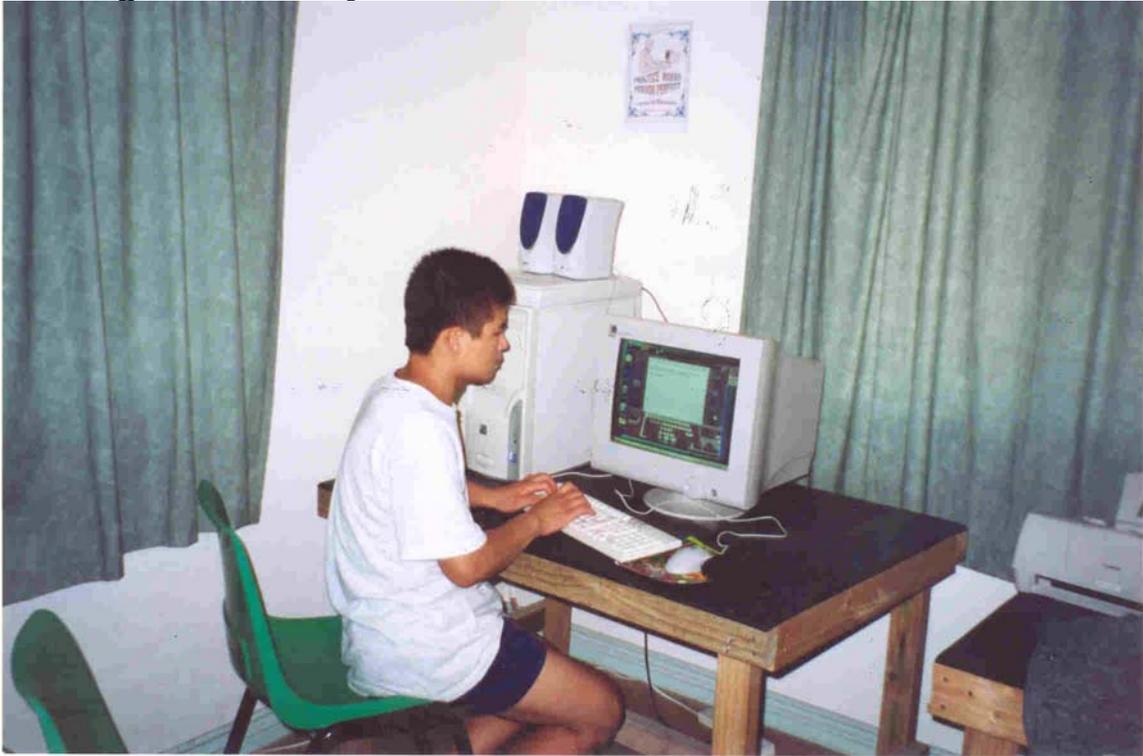
quickly; yet five years later, in 2006, two asylum seekers remained. The drive to get rid of these unwanted bodies was disturbed by asylum seekers forging a temporary community within Topside. This is the focus for the sixth and final chapter.

Repatriation to Afghanistan

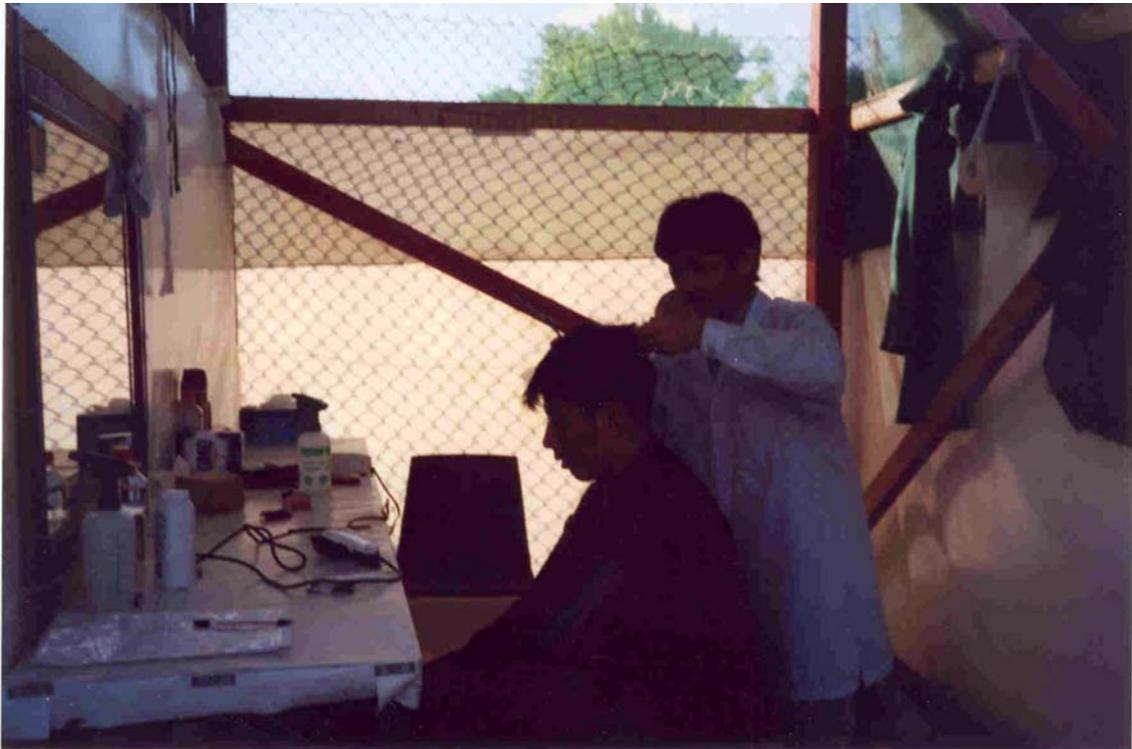


Anon detainee

Building a Community



Learning Computer Skills



The Barber

Anon detainee

Sporting competition



Anon detainee

The Prayer Room, Topside Camp



Anon detainee

Chapter 6

Challenging Futility

Abstract:

Offshore detention insisted that the seeking of asylum by the 'undocumented' was all but futile. Excised from their intended destination and excluded from juridical rights, the motives for their risky journeys had been emptied of content. The insubstantial architectonics of the camp itself echoed the meaninglessness of this existence. Detainees, however, confronted the futility by seeking small moments of control and consequence as they forged a provisional community. In this Pacific zone of exception the capacity to experience moments of purposefulness became a crucial means of survival. Women could maintain some of their traditional roles, but the absence of conventional masculine roles assaulted male detainees' vulnerability. In finding moments of meaning making in the face of this subjugation, the subaltern could transform themselves as survivors in a new realm.

I am more patient, I can wait. I am philosophical about my every defeat (D6 to Ze 23/9/02).

We are worried about my future and my family, what is your attitude about this situation. I don't want to spend my life in this hell. I want some legal advice. What should I do. I forgot when people left Nauru. I forget everything this situation is affecting my mind. Yes I like sport and reading but now in this situation I cannot... Please send me glasses for study. I did not find it from Nauru. The doctor gave me 100 numbers but it is for weak eyes (D24 to Ze 8/2003).

Offshore camps have been highly effective in thwarting the movement of border crossers to Australia. This has been achieved perhaps most significantly by demonstrating the meaninglessness of seeking asylum in Australia. Even those asylum seekers who 'proved' the merits of their refugee claim found that the Australian government was fiercely lobbying other nations - in particular, New Zealand - to resettle offshore detainees.

Topside was a black hole. As already explored, conditions at the camp tended toward the miserable and paltry. In their encounter with this void, detainees responded by seeking to fill the emptiness. This sense-making activity occasionally took the form of limited protests that mirrored masculine forms of demonstration commonly adopted by onshore detainees; but more typically, the Nauru asylum seekers pursued more control over the minutiae of their lives. Inmates of Topside camp had a greater capacity to construct a provisional community than was possible for those held in the secured fixity of onshore internment. In comparison with the onshore facilities, there were relatively few hunger strikes, breakouts, suicide attempts or violent protests. The task of constructing a useful everyday existence increased the capacity to endure the ignominy of detention.

On- and offshore detention specifically threatened the masculine body. At Topside the emasculation of detention was fought in the building of a liminal community. This chapter investigates how through the creation of purposeful everyday routines, detainees created an environment that offered moments of hope and pleasure. Community building was made possible by the relative lack of violent regulation and the absence of any established social or cultural facilities at Topside. Detainees did not have any access to visitors, teachers, lawyers or social workers and many men stepped into new roles as paralegals, teachers and counselors as they forged their new social environment. It was in the creation of meaning that detainees, in particular male detainees, resisted the collapse of identity.

Male detainees dominated Topside and were highly vulnerable. The conditions of exception attack traditional masculine roles. Women were also vulnerable, but the traditional feminine identity was not so threatened. Their role as prime nurturer continued chiefly intact. Women lived separately to men (other than their husbands), spending much of their time indoors, looking after children, cooking and sewing.

Detention particularly constrains masculine identities; it emasculates by enforcing passivity and helplessness seen as antithetical to quintessential male roles. In seeking some sense of purpose or meaning, men created spaces for relaxation, education, sport and spiritual worship; they became teachers, students, group leaders and even ran quasi-businesses; they could be artists, writers, athletes and/or carers of children (see photographs pp. 214-216). In these moments when they were authoritative, stoic, or physical powerful, their masculine identities were both reconfirmed and refigured.

This meaning-making was always minimal and constantly threatened. As the time spent in incarceration extended, hundreds of detained men and women struggled against the DIMIA and UNHCR demands for their repatriation. This tenacious refusal to leave finally became the principal channel of defiance open to many. Such tenacity disturbed the government's objective to rid Topside of 'failed' asylum seekers and prevent any asylum seekers reaching Australia. By 2004 over 500 hundred asylum seekers had arrived in Australia with Temporary Protection Visas (DIMIA 2004).

Gendered Risks

Detainees were acutely aware of their psychological and physical weakness. This vulnerability was underscored on the first anniversary of their rescue by the MV Tampa. Many detainees planned to celebrate this rescue - but on that anniversary morning, a year after his rescue by the Tampa, a 28-year-old man - Mohammad Sawar - died of a heart attack:

We lost one of our friends here in 26th of August, the day that we had prepared to celebrate the anniversary of Tampa and our saving by it...we couldn't celebrate that celebration. So instead we mourned his died with our last year memory (D17 to Zc 27/8/2002).

Mohammad Sawar had had his application for refugee protection twice rejected by the UNHCR.

... if you would see him you would think he is a teenager, although he had left his young wife with his small son and small daughter waiting for him in his homeland Orozogan, which is the unsafe area in his country. Of course he had promised his young wife and his small children with a rapid cure and many other promises that a father gives. But these promises would never be done, because Mohammad Sarwar is not alive anymore. He was cancelled his claim for asylum after one year waiting to countries who are outwardly the human rights protectors. He waited for exactly one year after his saving by the Tampa with hundred kinds of psychological pressures and finally went to God's perpetual asylum (D17 to Zc 27/8/2002).¹

Mohammad Sawar's death, like the deaths of those who had died on the SIEVX, reminded all of their fragility. Their lives had no permanence under Australian authority.

¹ According to letters, the Australian authorities wanted to bury Mohammad Sarwar on Nauru, but his friends sought to have his body removed to Afghanistan to allow his wife and children to bury him. With finance from a relative in Australia, Sarwar's body was sent to Kabul. The date of Mohammad Sarwar sudden death was poignant. He died on the day set aside to celebrate their survival and his death came at a time when the majority of applications for protection had been rejected.

But overall, detainees at Topside endured fewer physical threats and less violence than those held onshore. Their physical abandonment produced a system of detention significantly altered from that applying onshore.

Now that the aberrant border crosser was exiled on this tiny outpost, elaborate surveillance and carceral systems were no longer required. There were no cameras monitoring the detainees' movement, no electrified fences or complex architectural mechanisms to enclose and restrain the interloper. IOM did not run four-hourly musters, nor were handcuffs or other physical or chemical restraints used to subdue, constrain or expel. Letter writers do not report physical or verbal intimidation by guards or IOM staff. At Topside the rationale for rigid physical constraints was inapplicable. Any idea of escape from Nauru was nonsensical when surrounded by a vast expanse of ocean.

In addition the Australian government had to negotiate with another sovereign nation and with the UNHCR the nature of, and constraints on, how detainees could be disciplined. In setting up a new detention regime aiming to render futile the seeking of asylum, Australia had inadvertently created conditions allowing offshore detainees (unlike their onshore counterparts) to work together. Thus in deepening the juridical conditions of exception, the Australian government weakened its own capacity to discipline the detention environment.

The lack of a tight ordering of the detainee's daily life opened a space that allowed asylum seekers to build a camp community. This community-building did not rid the camp of its misery; but as we shall explore, it did allow for moments where meaning and purposefulness were produced.

Some detainees became community leaders. Often possessing some English language skills, these men were selected to represent their fellows at weekly meetings with IOM, UNHCR and DIMIA. These asylum seekers raised

group concerns over a range of problems, from poor or inadequate water or medical facilities to questions about process.

In guarding against psychological disintegration of the self in this emasculating space, male detainees worked together to develop multiple avenues for re-establishing a sense of active purpose and for asserting masculine identities. Men grouped together to fashion a physical and intellectual routine aimed at keeping themselves psychologically and physically resilient. As Connell argues, masculinities are actively produced using the resources and strategies available in a given setting (2000, p.12).

The paths found at Topside to re-create masculine identities echoes Turner's (1999) evaluation of young male Burundian refugees living in a Tanzanian camp who found opportunities to successfully navigate its restrictions.

At Topside many of the men tried to replicate some of the activities that had previously informed their lives. They also took on new roles and imagined their future as male subjects of modernity by acquiring innovative and particular knowledge and education. Around 80% of the detainees were adult males, and community-building became a space for male activity where men could demonstrate more than passive, listless existence.

Women were largely absent from these positions, spending most of their days indoors sewing, cooking, sleeping or looking after children. Men were the primary actors in building community – a role that is commonly seen as a quintessential feminine activity. In mainstream society, the immediate community is often regarded as an extension of the private sphere concerns and therefore a woman's domain. In this highly restricted environment, there was no more than the immediate community available for social or political engagement.

In the absence of other roles, men took on some activities that are associated with the feminine. The numbers of adult women were small² and they did not take on leadership roles. Afghan and Iraqi women have typically experienced strict confinement to the home, with men overwhelmingly dominating the public sphere. Women were largely absent in the community spaces of Topside and their memories/histories are as yet untold. What can be said is that many of the tasks and duties traditionally ascribed to them as women continued to occupy their lives at Topside. For women a more restricted yet quintessential feminine role continued.

Sense-making

Topside Camp was a place of transit: betwixt and between departure and unknown future destination. This hot, denuded waiting zone became for many a paradoxical place of haphazard transformation. Everyday life at Topside was minimal but less physically restrictive than the daily routines imposed upon the onshore detainee. The lack of facilities or any substantial contact with the outside community meant that from the meagerness of Topside an impermanent community had to be imaginatively created.

You know when we arrived there was nothing to do. There was only football there was a football ground and there was circled by high fences and there were tents on the inside and there was no power, no light in night, and no fans and the water was like boiling. No one could use to water to wash their bodies because it was boiling. We had no idea, no hobbies, nothing. It was hard. No one knew what to do. Some boys they were exercising playing football or running around inside the fences (A15).

From the outset many of the men organised themselves into purposeful activity that helped counter the numbing impact of days, weeks, months and even years of imprisonment. From a nothingness, daily routines emerged

² Roughly fifty percent of the females at Topside were minors.

that were, for some, momentarily transformative. The writer and refugee Bessie Head, who spent much of her exiled life in Botswana, wrote that the life of the moving interloper can be a deadening condition, but that it can be equally, a cruelly creative one - forcing people to achieve complex, often imaginatively interim ways of being (Nixon 1990, p. 150).

One of the first recorded decisions made at Topside was by a group of Afghan men who initiated English classes. The men who spoke and wrote English became informal teachers to other male detainees. Some still had American dollars and bought the basic requirement for writing: pens. For writing paper they used toilet paper.

... because there was nothing to do the boys would help each other to learn English. I tried to improve this. Everyone started with a pen. There were no pens inside the centre and I remember I paid. The first English classes we started. So I give \$10 US to get us a pen. No paper, so we were using toilet paper to write and pens if we were lucky enough to get one from outside. Around 6 months they brought us some pen and notebooks to write in (A15).

As the months passed the company managing the camp - IOM - provided additional pens and writing paper. Detainees devised a daily system of classes for older children and male adults³ and IOM paid them a minimal sum of \$20 per week to teach. Other men volunteered to take classes – lessons in English, Farsi, maths, computing and art became part of the educational routine. The male teachers held a privileged status within the detained community.

IOM imposed few restrictions as to what could be sent into the camp; and as correspondence with Australians increased, so did the community resources. Dictionaries, thesauruses, other books, laptop computers, paints, cloth and toys were sent. Reading glasses were among the gifts that arrived:

³ Primary aged children went to the local school.

I have another problem too. I lost my eyesight so I cannot watch TV. I lost my glasses in water when we were suffering dead and life in the sea. I have talked to IOM since we arrived here but I haven't got yet. The number of my eyes is... it would be nice if you could send me (D16 to Ze 20/9/02).

Asylum seekers made repeated requests for a range of items that could confront their bare lives - from clothes and watches to cheap cameras and computers. 'My friend started to learn computer here in February with me and now he knows enough computer, we need some Persian software programs...' (D17 to Zc 27/8/02). These materials and gifts reached detainees. The onshore centres' often zealously enforced regulations on what could be received by detainees⁴ were not mirrored at Topside.

For many held on Nauru, the shared experience of survival and internment spawned deep bonds of affection. Most hoped that Topside would be a transit stop *en route* to a new life in a modern nation. This provisional space allowed restricted opportunity for acquiring skills useful for their imagined future life, and made links both to the past and to projections of the future. In his research on homelessness in New York, Hopper defines liminality as a state of passage where people find themselves 'betwixt and between', in suspension 'between the well-known roles they have left behind and the unknown demands of a new life' (Hopper 2003, p. 20). For the duration of the passage, the usual social markers of distinction are erased - a levelling process that, along with the experience of shared suffering, encourages intense and enduring bonds of solidarity among initiates (p. 20).

The threshold space of Topside gave latitude for the interned to imagine a promising life ahead. One man assigned to teaching art asked in his letters for books on the canon of western art - he wanted to imitate techniques

⁴ In Australian detention centres many gifts sent to detainees were never received by the detainees. Any gifts that were suspected of possibly containing contraband materials were pulled apart or immediately discarded.

forbidden to him in Afghanistan.⁵ Another nurtured youngsters by teaching them art and arranging and painting a room in which they could learn and play. The young children played and painted in the room in the morning, and older children in the afternoon (B5). In this school-like environment some of the men took on the role of primary teacher to the camp.

After several computers were installed in 2002 each detainee was permitted to spend a few hours each week to send emails and write letters. This was the first time many of the men had used computers and this equipment of modern communication and information was keenly sought after:

As I have told you before that I have only three hours per week time on computer, do you know any book which explain the advantages and usage of different computer programs... Actually we don't know how to use computer effectively. There may be some books which explain by examples any task done by specific software... If I study such a book before going to class, I can get the full advantage of that precious three hours... I am waiting impatiently for you guidance and help (D6 to Ze 23/11/2002).

A quasi-business in the form of a barber shop became a fixture. There was also a tailoring room where men used sewing machines to turn sheets into the more traditional Afghan-style shirts. Both men and women made elaborate embroideries. Others created several small gardens around the container-homes - and unlike the onshore experience, they did not receive threats of hefty fines (by DIMIA or the Nauru government) for the creation of these gardens.

These daily routines were punctuated by regular prayers and other religious observances. A minority did not observe these daily religious practices; for Afghans who had risked imprisonment and death as 'heretics', Topside offered a strange freedom to articulate these thoughts.⁶

⁵ When disposable cameras were sent from Australia, the man took numerous photographs of his work to display his new found skills to his Australian friends.

⁶ One teenager wrote an article about Topside for the November 2002 edition of the

For many men, physical exercise was a part of the daily routine. Men built a gymnasium with equipment fashioned from pieces of concrete, wood and metal; they organised soccer competitions and Kung Fu classes. In the gym or on the soccer field the men could demonstrate a 'manly' physical strength and toughness (Higate 2003). Connell (2000) explores connections between sport, male bodies and hegemonic masculinity – which, he suggests, is often reiterated and confirmed through sporting prowess and physical strength. At Topside, building physical strength through martial arts, sporting competitions and weight training was linked to a mental and physical resilience. On a daily basis many men worked out to build their physical strength and fighting abilities. One man wrote: 'I conduct exercises, hours a day to save health and strengthen psychiatric and mental powers and engage minds of detainees' (D6 to Ze 5/2002).

Men sought to develop their physical prowess; but notions of masculinity are contingent, and as Donaldson (1993) suggests, the hegemonic form of masculinity is always contradictory. The conflict between the ideals of Man as fighter and Man as protector of the family are component parts of hegemonic masculinity (Connell 2005).

At Topside these contradictions were evident in the juxtaposition of physical competition between men and the care they demonstrated for one another. Men could survive this realm by being both physically competitive and by showing compassion and support toward each other in a space where isolated individuals were particularly vulnerable and as detainees became a part of a new 'family'.

This duality is a part of the following letter where a man notes the assistance he is receiving from another detainee and then goes on to describe the latest news in the soccer competition.

... Juma Khan teaches me English and he has two English classes in camp. He teaches people voluntarily. The soccer match is being played. Yesterday was a semi-final between Arabs and Afghans refugee teams. Afghans team (Alamdard) won the semi-final. The final will be played very soon (D12 to Ze 19/9/02).

IOM arranged for regular visits to a local beach. Here men and children could swim with locals. Some of the women also left the camp for trips to the beach or to the local shops. Each day different groups of men, women and children were taken on these short outings - and again in contrast with the common onshore experience, no-one was handcuffed.⁷

This afternoon, in a group of 30 people we were taken to the beach. We swam and drove around Nauru. After two hours we returned to camp. We were accompanied by APS supervisor and IOM officials. It is the third day this daily program has begun (D9 to Za 2/2002).

A heterotopic space (Foucault, 1986; Wearing 1998) is a space for joy, pleasure, empowerment and integration. At Topside, the detainees created such liberating spaces for moments of pleasure and meaning. The capacity to experience pleasure was an essential means of surviving and overcoming loss. These spaces for learning and hope opened the possibility of a temporary escape and recovery from continuing stress and distress, from preoccupation with bureaucratic processes, and from concern for family and future. The daily routines the men constructed were reminders of themselves as subject beings – men who could once again be an active part of the polity.

Writing letters offered another way to reconstitute the script of bare identity (Wearing 1998, p. 146). By writing to Australians about their hopes for a new life, detainees not only detailed the conditions and politics of the camp, but also explored their creativities, strengths and potential (Hall & Huyskens 2002). Some encouraged others to write, to study and to occupy

⁷ By 2005 the 56 people still detained on Nauru were allowed to move freely outside of the camp during daylight hours

themselves as a diversion – ‘otherwise he always sits alone and thinks about the future’ (D6 to Ze 23/11/2002).

In one letter a prolific writer - a man who chronicled his experiences of camp life in fine detail - describes how he structures his day. This man was a camp leader, educator and sportsman, who believed physical exercise guarded him against the emasculating drive of detention:

.... each day from 9am until 11am I take two English classes. I keep myself busy in teaching language, reading, writing, listening to the news and taking Kung Fu exercises. I am never disappointed. I think hope does never die... at nine pm every one of the desperate anxious people. Find me. They gather around me and I update them about the ongoing debates, protests about asylum seekers and the changing situation in Afghanistan. I am never tired of translation. The people trust me in whatever I tell or interpret for them. I take Kung Fu exercises because I think it ensures my physical and psychological well-being. Depression, frustration and traumatic signs can be observed in almost everyone's behaviours and actions (D1 to Za 2/2002).

For another man, the daily routine began with prayers at around 6am and often ended at 11pm after a game of chess.

... after prayers and recitation of Holy Quran, I took exercise and breakfast, which normally contains one bowl of juice and milk each. Then study till 8.30am when I take a class in my room. If it is Wednesday, Friday or Monday I take my computer class which is only for one hour. At 11.30 am I take my lunch then study 'Australian School Thesaurus' After mid-day prayer I read mathematics, nearly at 3.30pm I visit any friend... At 5.30pm I take dinner usually I sit in the TV room (D6 to Ze 27/10/02).

The same man tells of his developing ability to write and teach English. In his first eighteen months' incarceration at Topside he became near-fluent in both reading and writing in his would-be adopted tongue. He writes that these skills earned him a desired respect from other detainees:

I received your unexpected gift of 'Thesaurus'. Thanks a lot... I will try my best to use your Thesaurus effectively as possible in the writing of letter for others [he translates letters written by others to send to Australia]. Your book is a treasure, Greek word thesauro - means treasure) not only for me but for the whole camp. I was fed up using my same words in every letter, everyday for every person. Now it would be a pleasant exercise to write letters with a new expression of words. I am doing this because people became my friends due to this, now they respect me, I am improving myself, sometimes I think I should write my all experiences in the form of a fiction 'Hi Australia Bye Australia, what an excited name!' (D6 to Ze 23/9/02).

This young Afghan Hazara was eventually resettled in New Zealand. His letters often describe a niggling frustration with some of his students:

I had distributed your all magazines to English learners after study. A lot of them do mistakes in the spelling when noting from black board new words. I advised them to depend on printed material. In the 'Good Weekend', I liked, 'Two of Us, 'Modern Guru', 'Inner life' and 'Food of Thought' (D6 to Ze 27/10/02).

He concludes this letter with humour by asking his Australian friend to 'have a nice and excited day not only for yourself but for me too' (D6 to Ze 27/10/02).

It was in these heterotopic moments and spaces that asylum seekers resisted the dictates of the bureaucracy and reasserted their primary objective: to be confirmed as refugees and to enter a new state as its legitimated subjects.

Essence

The capacity of the detainees to establish moments or routines of pleasure was limited and unstable. Hopper (2003) argues that liminality can have a liberating potential, but that this is thwarted once the passage of time is extended. The threshold experience is then recreated as limbo: the place of forgotten confinement. 'Unlike stalled liminality that manages to create an

alternative destination, limbo describes a state of suspended resolution, an anomalous way-station for those with nowhere else to go' (p. 21). The detained asylum seeker experienced no definitive break between liminal and limbo state. But by June 2002 the detainees had been incarcerated for nine months and the majority had been refused refugee status. Sporadically the continuing suspension of their lives could overwhelm those refusing to leave Topside.

Around three hundred Afghans were repatriated between November 2002 and February 2003; and for those who remained, the loss of trusted friends was wrenching: 'During last month I remained a little bit upset due to the flight of my friend. I am very sorry that you remained worried about me' (D6 to Ze 15/2/2003). When the second group of asylum seekers prepared to leave Topside in December 2002, their friends prepared small gifts:

In the lunch there was one pack of juice and some sweets for everyone as an Eidy.⁸ (Eidy is a special gift of Eid given by elders to younger in our custom). In the lunch of Eid I used one packet of spice with other people on my table, they liked it. It was just like an invitation of Eid meal for us. Specially for those friends going back in the second flight (D6 to Ze 14/12/2002).

Supporters in Australia sent disposable cameras so detainees could take photographs of each other. No-one knew if they would ever again see these people, who had become so important to them in the camp. The departure of over three hundred Afghan men fractured the liminal community, rendering more difficult the maintenance of spaces and moments of meaningfulness and happiness.

The remaining asylum seekers were faced with continual urging from DIMIA, UNHCR and IOM personnel for repatriation:

⁸ Islamic Festivals are referred to as Id or Eid. This Arabic term meaning "periodically returning", and indicate times when all in the community, rich and poor, friend and stranger, celebrate together.

The situation of the camp is as bad as it was. And IOM staff are not behaving in good manner. Even the doctors who are in the clinic. Especially the mental doctor, she is suggesting for returning back to Afghanistan...which naturally aggravates pressure on our mental problems... The other IOM personnel are from Australian Pashtoon sects (D10 to Za 14/7/2003).

Another man wrote after many of his friends had left Topside:

I reduced my social contacts with other detainees. They need my time to cut their own burden of time I advised them many times to choose a nice activity for themselves but they do not practically agree with me and I will not agree with them... And sometimes just for a change I play with them cards, but their smoking and cheating habits in game hurt me (D6 to Ze 7/2003).

DIMIA could not force all the 'failed' Afghan asylum seekers to leave Nauru. The presence of the UNHCR coupled with the complexities of operating a forceful repatriation program within another sovereign territory constrained Australian officials. The use of physical or chemical restraints in the deportation of some onshore detainees was not replicated on Nauru. Many asylum seekers opted to remain despite the assertion by DIMIA that the department was investigating all 'options' including 'involuntary return' (undated DIMIA notice to detainees) and that DIMIA would withdraw its repatriation incentive money offers.

As time passed, the remaining asylum seekers felt a growing sense of isolation and desperation. This was a life of enervated waiting for diminishing dreams on a denuded equatorial speck.

By the end of 2003 there were less than three hundred people at Topside. They fell into two groups: those who the UNHCR or DIMIA believed were not refugees and therefore should be repatriated, and those who had been identified as refugees and were waiting to be resettled in a third country.⁹

⁹ Those who were resettled in Australia were given a Temporary Protection Visas, not Permanent Protection Visa.

This latter group perhaps found daily life at Topside more tolerable.

The situation of Nauru camp is good not bad, you know better that it is about 2 years that we are in Nauru camp... Right now there is an Afghan doctor who is Australian. It means he came to Australia about six years ago, he works in IOM clinic in our camp. He is Hazara too... I think you know we have shopping and swimming program once a month by IOM. I am accepted by UNHCR on Friday 6th September 2002 and about 8 months I am here. They told us please wait (D8 to Ze 6/2003).

As the number held in detention declined, the physical hardship and systems of constraint were also reduced. There was now greater access to water and electricity; there were fewer time restrictions on the use of computers; and detainees were also given phone access, though this was dependant on their having a phone card. Some detainees could now speak with the Australian readers of their letters. There was also the possibility of speaking with family.¹⁰ From 2004 sanctioned movement outside the camp became increasingly possible. Detainees were no longer imprisoned for walking beyond Topside and eventually the fence around the camp was taken apart. Some of the detainees began to forge friendships with locals and a handful worked with the Nauruan community. For those who remained it could appear that their physical existence on Nauru might become more or less permanent.

Why these physical constraints were gradually dismantled over the eighteen months from the beginning of 2004 to the middle of 2005 is unclear. Certainly there were fewer people left in the camps and a group of Australian human rights lawyers had consistently questioned the legality of the facilities. One of their legal questions revolved around a clause in the Nauru constitution stipulating that the only legal form of imprisonment is the incarceration of those accused or convicted of a criminal offence (B1). Asylum seekers may be unwanted, but they were not accused of a criminal

¹⁰ Consequently hundreds of phone cards were sent by Australians to detainees.

offence.

Some refugees spent many months - some over a year - waiting to be resettled. In their war against boat arrivals, the Australian government lobbied other nations to resettle these refugees (DIMIA, 2004). Excepting New Zealand, these negotiations were largely unsuccessful. In June 2003 one group went on a hunger strike, demanding to be moved from Nauru to a third country of resettlement. This was followed by other hunger strikes with similar demands.

In the first year of detention, Topside inmates considered hunger strikes but rejected this course as unproductive (D1 to Za 2/2002). The forms of masculine protest that emerged onshore were less productive on Nauru: men wondered who would be listening to and watching their actions. Most of all, they recognised their vulnerability and most did not wish to open themselves to further retribution. Two men (D1 and D9) were convinced that their persistent questioning of DIMIA and UNHCR officials had resulted in neither detainee being granted refugee protection.

But as detention continued, explicit protest became more common. These actions could reinforce the asylum seekers' subjugation – such as on one occasion when detainees attempted to make contact with a journalist:

We heard that the journalist was in Nauru. We all gathered and asked to allow the journalist to come to into the camp. We tried to go out of the camp to see the journalist. We went out of the gate. IOM ordered the Nauruan police to attack on us. Police attack on us with stick, they hit with the stick on the head one asylum seeker and blood came out. He was fainted his head was badly injured. The doctor came out and did the dressing. The police officer said us go back the President of Nauru will come and talk to you. After two days we asked DIMIA and UNHCR to allow the lawyers to come and see us. They said we don't stop them but Nauru government doesn't give them visa (D21 to Ze 23/11/03).

One month later in December 2003, nine people began a protest fast. They

congregated at the gates of Topside. Four had sewn their lips together. The male hunger strikers hoped to draw some media attention to the continuing 'plight' of the detainees. They articulated their frustrations in a letter to DIMIA officials:

To DIMIA Officer in Nauru

Dear Sir

With the complement hope to be having healthy health.

As you know that it has been 23 days that we are on Hunger Strike and looking forward for expectation. But still no one felt regarding us, and no one consider regarding our problem, even humanitarian organisations and UNHCR. Meanwhile as we are despair from DIMIA authority in 23 days. We want full attention of UNHCR regarding our problem. So our demand is clear in the letter which we submitted to you on 10th December 2003, (FREEDOM or DEATH). We are human. We don't suicide. But due to our problems to be solved we selected gradual death (1/1/2004).

The presentation of this stark demand, to let die or let live, was an act of desperation and fear. The strike continued for nearly a month and finished after promises that the Australian authorities would bring a medical delegation to Nauru. Hunger strikers were threatened with arrest and with detention in the Nauru jail.

A passive waiting, rather than hunger strikes or riots, emerged as the prime form of productive resistance at Topside. The asylum seekers were mute: unable to speak to lawyers, to journalists, or to the Australian community. Their continuing detention was meaningless and barely noticed except by family left behind and by the few Australians who corresponded regularly. Self-harming protests were regarded by many as pointless. Who would know if they slashed their bodies, went on a hunger strike, or broke out of detention? The only meaningful path was to sit and wait. In this passivity men and women were essence like observers of their being.

I have been interviewed by UNHCR three times and been rejected in all. Once I decided to go back to Afghanistan although I have serious problem in Afghanistan, because I got bored with the situation we have in the camp. I wanted to escape this gradually death and face all the persecutions and dangers in Afghanistan, so I went to IOM office and registered my name for repatriating to Afghanistan, but after a deep concentrate and thinking of my past life, present life, my family and current situation of Afghanistan I decided not to return... so I withdrew my name...and decided to stay and watch the movie to the end, the movie that Mr John Howard and Mr Ruddock are acting in (D15 to Za 8/2/03).

This man articulates the weakness of being able only to watch ‘the movie’ of their fate, marginalised to the absolute periphery of existence. To sit, watch and meditate.

‘I have decided to stay in detention until new information comes from my family. I will end a letter to my family when this group leaves Nauru. I will be waiting for next suggestions of my mother that what should I do when I arrive in Kabul’ (D5 to Ze 7/12/02).

By the end of 2003 people had been held in the camp for over two years. Many of their friends had opted to return and take their chances in Kabul; and the inmates knew that at least one man had been killed after returning to Afghanistan. The camp was filled with rumours of other deaths in Afghanistan and of stories of former detainees who had been robbed or had fled into neighbouring Pakistan.¹¹

In early 2004 the cases of the approximately 280 people still left at Topside were reopened (DIMIA, 2004) after the UNHCR altered its country information on Afghanistan and pronounced that country officially unsafe. The UNHCR decision was a trigger for DIMIA to reopen the cases of those waiting in the Nauru camps.

¹¹ The Afghans who had moved into Pakistan were there illegally and had no security of work or permanent residency.

The majority would be finally granted refugee status. Most were given temporary protection in Australia; others were given permanent asylum in New Zealand. By August 2004, of those 1,547 people first detained on Manus and on Nauru (1232 in Nauru) 960 people had been resettled.¹² More than sixty percent were finally resettled and around one third of detainees were repatriated. Of the original detainees 7% (104 people) remained on Nauru¹³ (DIMIA 2004) - and most were finally resettled in Australia in 2005. After four years in detention the asylum seekers had defeated the government's insistence that seeking asylum to Australia was completely meaningless.

In 2006 two Iraqi men remained detained on Nauru. But with the arrival of West Papuan asylum seekers to Australia in 2006 the Nauru camps are once again destined to become operational.

For those who had resisted repatriation, they had survived the camp and now faced the challenges of life in the community. As one thirteen-year-old girl wrote, the asylum seekers had only ever wished for the chance to lead a 'normal' life.

It was male asylum seekers who numerically dominated; and strong friendships were forged between men who had already survived extraordinary journeys. They were particularly exposed to the limiting constraints of the camp. The condition of exception excludes male detainees from roles that signify a quintessential masculine authority. Women are at risk and were frustrated and angry at their imprisonment; but a quintessential feminine identity was less threatened by internment. The traditional identity that marks women as carers and maintainers of the

¹² 535 of these border crossers had been given TPVs and moved to Australia, 379 to New Zealand, 16 to Canada, 20 to Sweden and 4 to Norway (DIMIA 2004).

¹³ The camp on Manus Island closed in 2004.

domestic space was maintained.

Inside the closed confinement of Topside, male asylum seekers forged a provisional community. The construction daily activities and routines created mechanisms to struggle against emasculation and psychological incapacitation. Although limited and momentary, these spaces allowed for amusement and for a reconfirmation of a past identity and a future. In creating avenues of meaning-making and purpose, male detainees renewed a sense of dynamic self.

With the repatriation of many asylum seekers, this provisional community became increasingly vulnerable. For those who remained, a determined waiting became the principal form of resistance. By reducing the self to an observing essence they could, temporarily at least, continue to survive. For men this passive waiting again challenged their masculine identities.

This tenacious waiting is a reminder that those who have been condemned to bare life will continually challenge their exclusion. The excluded carved out small openings to contest their incarceration and to reassert an identity as survivors in a new realm.

Conclusion

In January 2006 forty-three asylum seekers from the Indonesian province of Papua arrived by boat on Cape York. They were the first significant group of asylum seekers to reach Australia since the 'Border Protection' legislation was introduced in 2001.

The swift decision by the Australian government to grant forty-two of the asylum seekers temporary protection was based on the realisation that for them, Australia was the country of first refuge (MPS 2006a). The decision appeared to deviate strongly from the convoluted asylum procedure that had been enacted for arrivals from more distant source countries. The government defended the decision as purely administrative, even though it drew sharp criticism from the Indonesian government on the grounds that it suggested that Australia agreed there were human rights abuses in West Papua (Martin 2006).

The government then moved in ways which suggested that Australia's economic and security relations with Indonesia, coupled with the probability of more boats arriving from West Papua, would be framed by its sense of realpolitik.

On April 13 2006 the Australian government announced its intention to extend the offshore processing regime to include all people arriving by sea and reaching the mainland, even if Australia was the country of first refuge. The Minister for Immigration said the 'Australian Government would not allow Australia's strong border protection policies to be undermined' (MPS 2006). All unauthorised asylum seekers arriving on the mainland by sea on or after April 13 2006 would, after commencement of the Bill, be subject to the new provisions and be sent to offshore processing centres in another country. The proposed changes effectively removed the Australian mainland

as an immigration zone – leaving no such zone for unauthorised asylum seekers arriving by boat.

The Nauru camps have become Australia's lasting response to these arrivals – although the UNHCR has indicated that it opposes Nauru as a permanent solution and will not play any part in processing asylum seekers held there.

The building of a legislative ditch around Australia reflects how the government views the realpolitik of the age of terror. But the struggle for meaningful protection is ongoing - and whatever celebratory statements it has made, the government cannot close off all avenues for protection. The exclusion regime is justified, after all, by government expressions of strong commitment to its international protection obligations (MPS 2006).

It may appear that the government has enacted an absurdist logic: on the one hand it continues to claim that it supports refugees, but on the other it is driven by a politics of total exclusion toward limiting any right to first asylum. The government has constructed a confusing message – presenting itself on the one hand as a defender of human rights (but only for those it selects) and on the other, as a fierce defender of its territory against any unauthorised incursion, despite the human costs such a policy might entail.

The key findings of this thesis are more starkly revealed in the wake of the permanence of the Nauru solution: first, that the detention regime became subordinated to the War on Terror in the period from 2001 onwards; second, that the detention regime reveals an underlying Australian modernity measuring itself by its productivity and seeking to exclude those who are not seen as primarily contributing to this; third, that men are the specific targets of this government policy; and fourth, that detainees continually react and respond against the shifting mechanisms of incarceration.

These findings explain the dynamic of intensified incarceration and control that I have documented.

The militarisation of asylum policy

In mapping the period between 1999 and 2003 this thesis exposes transitions in the detention regime. In 1999 the majority of asylum seekers were contained in remote sites, their experiences marked by random acts of violence and apparently incoherent processing. One refugee might find that a decision on his/her future was reached swiftly and efficiently, while another might be held for years due to a series of bureaucratic errors - while the relevant 'facts' in each case might be almost indistinguishable.

During 2001 this chaotic system began to rigidify as the processes of containment became warlike and the reception of asylum seekers became conditioned by fallout from the newly-declared 'War on Terror'.

From 2000 the intensity of protests at all the detention sites, but in particular the remote sites of Curtin, Woomera and Port Hedland, focused attention on detention conditions. In 2001, in the wake of increasing unauthorised arrivals and the insistent clamour of detainee protests, the government responded by seeking to reduce numbers onshore, and by intensifying its preventative policy. This came into full effect onshore with the establishment of the Baxter IRPC in 2003; it had also been previewed through the creation of the Pacific Solution in 2001.

This regime of intensified surveillance and incarceration had possibly as one of its goals, and certainly as one of its effects, the restriction of social interaction among the detainees, and between detainees and the Australian community. The detainees held at Baxter are sectioned off from one another, held within a maximum-security-like space; on Nauru the ocean was the barrier. In such isolated spaces, rights can be more systematically

emptied of content.

Baxter imprisons people in small and contained areas, with electronic surveillance and surrounded by electric fences. Those who had been incarcerated at Woomera, Port Hedland or Curtin have found that these often violent and chaotic sites were preferable to the rigid imprisonment of Baxter (C1, B2).

The architectonics of Baxter stop large groups demonstrating or making any protest visible. They also prevent detainees from cutting the wire to escape, as had been done at other camps, and from seeing people beyond their small enclosed space – surrounded by military. Those detained at Baxter are effectively silenced.

Baxter was the first, onshore response; but the Pacific Solution was the critical dimension in Australia's militarised strategy.

The boarding of the MV Tampa by forty-five Special Air Service (SAS) troops, who took control of the ship and held the asylum seekers captive, reflected the explicit assumption that asylum seekers were to be treated initially as enemy aliens. The Tampa Affair preceded the New York attacks of 9/11 by a matter of days. These terrorist attacks in the United States cemented the government link between the asylum seeker and a now clearly articulated War on Terror. Immediately after the September 11 attacks, the Australian community commonly linked asylum seekers with anti-Muslim sentiment and terrorism (Dunn & Geeraert 2003).

The government's war-like campaign achieved its core goals: to stem the steady stream of illicit border crossers reaching Australia, to further isolate asylum seekers from the broader community and to disallow access to Australian tribunals. The Pacific Strategy was designed to demonstrate to intending refugees the extreme difficulty of seeking asylum, and the

significant costs they would bear, emotionally and psychologically, from doing so. Whereas the past practice of refugees had been to try to land in Australia, now such a desire could not be realised and would not mean acceptance even if it was momentarily successful.

Australia's offshore camps promise only to support biological survival; they do not support humanity in the broader sense. The rendering of the human as un-human – a reduction to something like Orwell's 'unperson' - is an intention and a consequence of the detention system.

Australian modernity needs detention as a re-articulation of who is and is not granted access to a spectrum of rights in the 'age of terror'. Access to full rights is only reintroduced if a detainee is allowed entry into the state of inclusion.

However, even when the system of detention is heightened, the conditions of exception are not hermetically sealed. The threshold position of asylum seekers - as border crossers and seekers of rights - marks them at that moment as being without rights (except the right to biological life); yet they still hold a claim for future rights. The detainee as seeker of rights may be hidden but not completely eradicated. This dialectic tension feeds the brutal conflict found within this space.

An additional finding on Australian modernity in the 'age of terror' reveals a nation state that is highly anxious not only about its own identity, but about what the nation's future may hold. The state seeks to sustain a robust and vital community, one that that can seize the advantages brought through globalisation and shield itself from terror. The immigration program is just one government stratagem to privilege 'value-added' bodies.

The national pursuit of productive and able bodies is transforming previous ideas of a national identity predominantly defined by 'whiteness'.

The increasingly militarised response to undocumented asylum seekers is a ruthless strategy to deny access to any perceived possible disablers of this modern vision. The Nauru resolution is the most forceful expression of a desire to be shielded from the disabled body. The fierce implementation of this defensive resistance against such an undeserving target speaks of the extraordinary drive toward this contemporary nationalist ideal.

The thesis is distinctive in its account of the workings of on-shore and offshore asylum practices under Australian federal law. The qualitative research method is successful in offering specific avenues to explore the targets of detention. Quantitative research would have sought a significantly large number of respondents, but this method would have absented much of the experiential detail. The qualitative method adopted provides new insights into experiences of detention and forms an original archive of evidence. One critical insight developed is the gendered quality of the state of exception. In addition, the research is unique in detailing how masculinities are at issue in the forms of resistance and protests.

The approach draws out the numerous consequences for those detained, highlighting the disjuncture between distinct responses to asylum seekers and the broader human rights commitments.

Agamben's work and his idea of 'bare life' offer a pertinent theoretical device. This framework allows one to unpick the complex area of immigration policy that are usually obscured by official dissembling. Both Foucault and Agamben provide analyses of governance, the modern state and penal practices that make available a distinctive interpretation of how the Australian policy of detention sits in the competing modern imperatives of universality and national particularity. These theoretical tools allow access to the demonstration that neither international nor Australian federal law offer adequate safeguards for those held in the 'in-between' state of the asylum seeker.

Shredding Identity

Detention strikes at the identity of all who are detained. In general the detention regime targets a specific corporeality: the undocumented, non-white and male body. Australia's immigration detention regime seeks principally to invalidate the male body as a legitimate asylum seeker.

When the number of children and women held in detention dramatically increased with the introduction of the TPV system, so did critical debate on the regime. Onshore, women and children were progressively placed in supervised housing, and then removed from detention and into the community; on Nauru over a hundred women and children were immediately removed and settled in New Zealand. In 2005 most women and children were removed from detention and the historic link between male corporeality and detention was re-established, with men constituting around 80% of detainees (DIMIA 2006). With the removal of women and children, social debate over immigration detention has declined.

Masculinity is quintessentially connected with violence, aggression and war. This is in contradistinction with femininity which is linked to passivity and nurturing (Gatens 1991). These hegemonic associations legitimate the detention of the male body and, as the binary suggests, problematise the non-criminal detention of women and children. Detention detaches an individual from the 'normal' world of respect and recognition. In essence it disconnects non-white men from the usual systems of value. A sense of hopelessness and loss of purposeful role can disintegrate identity. Women are also vulnerable here, but normative feminine identity is not under threat.

Detention constrains and inactivates the male body. It insistently removes the usual scripts of masculinity; and the male body is the usual target for the

systems of punishment found within onshore detention – isolation, beatings, physical and chemical constraints.

Rather than an unintentional by-product, the disintegration of identity is an intended consequence of the regime. A disintegrated subject is disabled: cannot question, continue to struggle, or campaign. These asylum seekers are marginalised in their future productive and reproductive lives.

The differing forms of masculine protest challenge the emasculating tendencies of detention and question the right of the state to violently constrain the non-criminal body. Particular forms of male protest and resistance - including hunger strikes, riots and escapes – have struggled against a painful disintegration of identity, a symbolic emasculation. The state of exception has been repeatedly resisted and repulsed.

In detention you find yourself walking a fine line between the threat of retribution and the fracturing of self through non-action. If you allow yourself to become too passive, you risk losing your sense of self altogether. It is unclear from one day to the next if you will be released. Long-term detention forever marks the man. Former detainees¹ indicate that shame, anger, fear and distrust are significant components of their post-detention identity.

Protest

At the time of writing (May 2006) just two men, Muhammad Faisal and Mohammed Sagar, continue to be held on Nauru. They are last of the detainees that were first incarcerated in 2001. In March 2006, 26-year-old Faisal attempted suicide². The lives of Faisal and Sagar are little more than

¹ Including A; A4; A10; A9; A15; A16

² <http://www.theage.com.au/news/national/living-hell-built-for-two2006/03/10114170695874.html> (viewed 21/04/06).

essence. The Australian government seeks to have them resettled in a third country, but they could continue to exist on Nauru for many more years - condemned to bare life.

Their continuing incarceration demonstrates the power of the state to exclude even those who have been found to be refugees; yet it also points to the leakages and unintentional repercussions of offshore detention.

On Nauru the asylum seekers' protests cannot be heard; but even within this silenced space, moments have been created to resist total reduction to bare life. By excising detainees, the Australian government has also placed itself out of reach of the asylum seekers. Since 2003 the government has been unable to forcibly deport those held on Nauru. The chemical and physical restraints that have been a part of the government armoury to remove failed asylum seekers onshore cannot be applied offshore on another country's sovereign territory.

Hundreds of asylum seekers have waited on Nauru until their cases were reopened and they were eventually resettled in Australia or New Zealand. They refused to return to their countries of origin and the Australian government could not deport them from Nauru.

Perhaps the most effective tool of resistance in the space of offshore exception has been the determination of many to simply wait. Immigration detention is uncomfortable, threatening and destructive; but deciding to stay in limbo and be reduced to little more than an essence of self is here the only, albeit treacherous, path to resist the direction of government.

The struggle between the objectives of government and the objectives of the individual marked the detention system (on- or offshore and pre or post 2001) as inherently unstable. Australia cannot completely close off all entry points for undocumented asylum seekers unless the government withdraws

from the UN Refugee Convention³ - but for Australia to continue within the Convention, detention cannot be reduced to an entirely empty or meaningless space. For the detainee the only legitimated course lies in appealing to the uncertain discourse of human rights.

The discourse of rights offers very limited resource to mount legitimated protest against political exclusion; but the framework of rights is the only shield in the struggle against indefinite incarceration.

Immigration detention exists because, as a signatory to the Refugee Convention, the Australian government cannot immediately force the return of those claiming protection. It is asylum-seeking status that both places the individual in detention and offers leverage in the struggle against the violent mechanisms of detention and against repatriation.

Protests against indefinite incarceration, on- or offshore, were conditioned by notions of inviolable human rights. The detainees were not criminals, were not terrorists and were not soldiers of an invading army. They were seeking benefits that under international law were and are regarded as inviolable.

The succession of loud demonstrations, along with the government's explicit denial of judicial rights through the establishment of offshore detention, generated greater scrutiny of the system. Visits and letters to detainees increased - and in some cases led to their release, thanks to Australians assisting them with complex legal appeals. For those detained at Topside camp the letters and regular gifts received from Australians helped to sustain the threshold community of hope. The emergence of this provisional community helped to sustain the incarcerated. The official insistence on the

³ Australia's withdrawal from the Convention is unlikely for it is one sign of a state's commitment to democratic modernity. However there have been calls by several western governments for the Convention to be rewritten.

meaninglessness of seeking asylum was undercut by systems of meaning-making in the creation of this community.

Protesters wanted to prove the veracity of their claims but assertive demonstrations made them open to further retribution. Detention is a space of chaotic uncertainty. Detainees could never know if their protests would quicken their release or hasten their deportation. In passivity and compliance a detainee risked losing their identity and their demand of legitimacy. They had to continue to insist on the truth of their claims despite being rejected, yet could not assert those claims so forcefully that they opened themselves to charges of a criminal nature.

Detention is a continually shifting and dynamic space - where the governing power must be responded to, whether it is accepted or resisted. The narratives of detention tell us that immigration detention can never be secured into a mute or cohesive practice. Protest is inevitable - but as mapped in this thesis, the forms of protest differ, in part as a response to government action, threats and the shifting campaigns against unauthorised asylum seekers.

The undocumented asylum seeker is both a threatening presence to sovereign power and a haunting reminder of the modern state's promise to actualise human rights. The international framework of human rights promises so much, but for the asylum seeker in practice it may produce very little.

Is it possible is it to step back and recast human rights discourses in Australia, given the failure of the international order and Australia to confirm them? This recasting may only eventuate through the ongoing and fierce determination of those who are denied inclusion. As with minority national communities, it is only through bodily struggles that a move toward inclusion can occur.

The account of rights is valuable, for the struggle for rights is marked as the most fundamental and enduring political struggle. Detention narratives expose how these rights are contingent on citizenship - and how, in their denial, human life is exposed to a violent disintegration of self. The state of exclusion does not necessarily kill an individual, though hundreds have died because of it. For those who reach their 'haven' the process of determining their claims exposes them to danger as an interloper in myriad and unpredictable ways. Many asylum seekers are survivors of the detention regime, but they remain disturbed by it. The shame of a crimeless and disabling incarceration is ongoing and haunting.

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