Asylum-Seekers and National Histories of Detention

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The Australian system of mandatory detention of asylum-seekers has become increasingly controversial. Insofar as commentary on detention has been framed historically, critics have pointed to Australia’s race-based exclusionary laws and policies over the twentieth century. In this article, we suggest that exclusion and detention are not equivalent practices, even if they are often related. Here we present an alternative genealogy of mandatory detention and protests against it. Quarantine-detention and the internment of “enemy aliens” in wartime are historic precedents for the current detention of asylum-seekers. Importantly, in both carceral practices, non-criminal and often non-citizen populations were held in custody en masse and without trial. Quarantine, internment and incarceration of asylum-seekers are substantively connected over the twentieth century, as questions of territory, security and citizenship have been played out in Australia’s histories of detention.

The Australian system of mandatory detention for asylum-seekers, now more than ten years old, has been discussed, advocated, protested and analysed in just about every medium and arena imaginable: in parliament; by refugee lobby groups; as performance art; in numerous senate enquires; in various courts; as a staple of talkback radio; in investigative journalism; in street marches; in academic circles; amongst the families and communities of those seeking asylum; and in international diplomacy. The Tampa incident in 2001, in which the Australian government refused entry to hundreds of rescued asylum-seekers, repeated “riots” in the centres, and the scrutiny of human rights lawyers and the United Nations are the latest chapters in an increasingly controversial practice. If there is much left to do with respect to this issue, what is there left to say? What follows, we hope, offers a new perspective on, and argument about, detention centres. In particular, we argue for an historically grounded analysis of mandatory detention that looks both to parallels and to a lineage of confining non-criminal individuals and populations in Australia.

The significance of processes of exclusion for (national/racial/communal/ethnic) identity has been extensively considered from many perspectives.1 Insofar as the detention centres have been understood historically, they are often placed within a

1 On race, citizenship and exclusion in Australia, see Alastair Davidson, From Subject to Citizen (Cambridge, 1997); Andrew Markus, Australian Race Relations (North Sydney, 1994), pp. 110-54; A.M. Jordens, Redefining Australia: immigration, citizenship and national identity (Sydney, 1995); S. Brawley, The white peril: Foreign Relations and Asian immigration to Australasia and North America 1919-1978 (Kensington, 1995); David Dutton, One of Us? A Century of Australian Citizenship (Kensington, 2002).

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genealogy of racial exclusions in Australia: the White Australia policy and its manifestation as the *Immigration Restriction Act* 1901 (Cth). Don McMaster’s recent book *Asylum-seekers* provides the most explicit rendition of this idea: “Australia’s history of immigration is also a history of exclusion”.

2 He details how “a nation-state such as Australia can discriminate against its ‘other’ by incorporating policies that[…] exclude targeted groups”.

3 We concur that the current crisis in the management of asylum-seekers is part of this history of race-based exclusion as a way of securing national/racial identity in Australia. But here we seek to extend this understanding of detention centres by suggesting simply: exclusion and detention are not equivalent, even if they are historically related. Reconceiving the mandatory detention of asylum-seekers within a history of non-criminal detention, rather than a history of exclusionary practices, exposes precedents that have yet to be acknowledged, either by advocates or critics of the contemporary detention centres.

Current detention policies toward onshore refugee-claimants in Australia were foreshadowed in the history of quarantine confinement and in the wartime policies of enemy alien internment. In both of these carceral practices non-criminals were detained on grounds of their suspected threat to national security. However, the link we draw between quarantine stations, interment camps and current detention centres turns out to be far more than a process of comparison or drawing resemblances between detention strategies. Rather, there are telling connections and overlaps here, some direct and some indirect, but all circling around questions of citizenship, security, alien-ness, unfreedom and national security. Not simply exclusion and inclusion but detention has intermittently been part of the process in the definition and assessment of who belongs and who doesn’t, and in enforcing and creating degrees of belonging and alien-ness in the project of nation-building.

4 This genealogy clarifies how confinement policies have, in times of crisis, prioritised collective security concerns over individual rights and the common law tradition of *habeas corpus*, and how detention, alongside exclusion, has created “Fortress Australia” in the past. But it also underlines that detention policies have never been uncontested: along with a history of internments we detail here a history of resistance to the justifications, scope and nature of detention in a liberal democratic polity.

The recent controversies over asylum-seekers in Australia have emerged in tandem with a global reconfiguration of the long historical relationship between citizenship and nation. This reconfiguration has been prompted by globalisation, by national and international policies on refugees, and it is being scrutinised by citizenship theory, which increasingly interrogates “foreign-ness” and “alien-ness” in a postmodern world sometimes imagined as borderless and postnational.

5 Partly in response to this
threatening “borderless world” and certainly as a response to the terrorist attacks on the US in September 2001 and the subsequent war, many national governments have tightened their borders. The Tampa incident, coincident with the “war on terrorism”, prompted a set of major legal and policy changes towards asylum-seekers, co-ordinated under the so-called “Border Protection Legislation” of September 2001. Current carceral practices imposed upon refugees reproduce prior forms of mandatory detention, in which foreignness, enemy status, dangerousness and undesirability were conflated.

In the first section of this article we describe the detention centres, and the current powers of detention and look critically at the analogies typically drawn between the centres and other places of incarceration, in particular the idea (shared by advocates and critics) that detention centres are prisons. Despite the barbed-wire fences, the policing by Australasian Correctional Management and even the (arguable) political efficacy of voicing the prison analogy, there are critical distinctions between detention centres and criminal imprisonment. Most importantly, the latter is a practice of incarceration coordinated within a criminal justice system that legitimates the suspension of lawbreakers’ liberty for periods defined statutorily. Detainees in detention centres are non-criminal (despite rhetoric to the contrary) and non-citizens. Detention centres are prison-like in their administration, architecture, and high security features, but they more closely resemble quarantine and enemy internment: the detention of groups, most often non-citizens, who were incarcerated on grounds other than having committed criminal offences. The history of the legal and political mechanisms that led to the detention of non-criminals “in times of epidemic” and “in time of war” reveals telling connections to the history of immigration and refugee intake in Australia. In the final section of this article, we sketch the genealogy of protest, showing how the language of liberalism was re-worked in the later half of the twentieth century, into arguments based on notions of human rights. As the history of quarantine and enemy alien internment confirms, voices of protest and mechanisms for appeal did emerge in times of great security concerns. Opponents, both official and unofficial, managed to intervene to a limited extent, and internees found both legitimate and unsanctioned ways to contest their incarceration. Here, too, we find that our examples of quarantine and internment are not simply historical parallels but are rather connected and continuous histories of liberal languages of protest.

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6 This package of legislation includes the excision of certain Australian island-territories from the “migration zone”. Thus if asylum-seekers on boats land at Ashmore and Cartier Islands in the Timor Sea, Christmas Island or Cocos Island in the Indian Ocean, or any offshore installation such as an oil-rig, they will no longer be able to claim asylum from those places. See Migration Amendment (Excision from Migration Zone) Act 2001. The Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act 2001 sets up differential visa (as well as future migration or naturalisation) possibilities according to where the application for a temporary protection visa is made. Under “New Measures to Strengthen Border Control”, the Department of Immigration and Multicultural and Indigenous Affairs summarises the new legislation at <www.immi.gov.au/facts/71border.htm>.
I. The Detention Centres

From the 1980s, increasing numbers of asylum-seekers arrived at the borders of Australia by plane and by boat, largely from China, Cambodia and Vietnam. Over the last few years, asylum-seekers have arrived predominantly from the Middle-East. A series of amendments to Australia’s Migration Act (1958) Cth has resulted in the mandatory detention of nearly all of these asylum-seekers. Currently, they are held in custody until their claims are processed and protection or other visas granted, or until they are deported or choose to leave. While the number of people who arrive without visas and seeking asylum in Australia is small, compared to the number of asylum-seekers in other nations, and compared to other kinds of “unlawful non-citizens” (for example people who have overstayed their visas), the system of detention for asylum-seekers is notoriously amongst the most rigid and total in the democratic world. While many claims are processed in a matter of months, there are also significant numbers of people — including children, some born in detention — who have been held for up to five years awaiting the processing of their claims and their appeals of earlier decisions. As a result of the Tampa crisis, the Coalition Government has initiated what it calls the “Pacific Solution”, in which asylum-seekers are held in detention in other Pacific nations (notably Nauru) while their application for Australian temporary protection visas are processed. The system of detention has thus been exported.

Since the early 1990s, there have been numerous legal cases and government enquiries about detention, its breaching of Australian human rights and administrative law and its inconsistency with international law. One of the issues that has brought the implementation of the Migration Act into the courts, and up against international human rights conventions and human rights law is the length of detention. The holding of children has also been questioned, as has the forced drugging of people being deported. And many expert reports have pointed to the mental health problems resulting from prolonged and indeterminate detention and chronic depression arising from sheer idleness of years inside. Violations of human rights have been determined by the Human Rights and Equal Opportunity Commission.

No matter how remote their location, detention centres are entirely closed. Barbed-wire fences surround them, movement in and out is prohibited for detainees, although there have been some attempts at accommodating women and children outside the

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8 Such people are not subject to detention, but may apply for a “bridging visa” while their application for a substantive visa is processed. Savitri Taylor “Weaving the Chains of Tyranny: The misuse of Law in the Administrative Detention of Unlawful Non-Citizens”, Law in Context, 16, 2 (1998), p. 2.
centres, but under limited conditions and circumstances. In some detention centres phone or mail contact has been prohibited or rendered nearly impossible. These procedures of enclosure also severely limit public access to knowledge about the internal working of the detention centres: employees are bound by agreements not to disclose information to the public; the media and politicians seeking entry are usually denied by the Department of Immigration and Multicultural and Indigenous Affairs. Many have questioned the inadequate level of accountability in the privatised management of the centres by the US-owned Australasian Correctional Management. As we shall see, these closed conditions compare unfavourably with the mechanisms for independent scrutiny of internment camps in the Second World War, which the Menzies and Curtin governments were anxious to ensure.

The placement of detention centres is significant when considering the practice as part of a history of isolation and exclusion. Like quarantine stations in the past, some are placed on the very edge of the continent — Port Hedland in Western Australia for example. Others, are located in interior isolated places in the same way that Hay was chosen as an internment camp in the Second World War. Notable in this respect is the most recent Woomera detention centre. In inland South Australia, Woomera was until recently a joint defence testing facility with the UK. The same remoteness and isolation which made Woomera desirable for the national security and military purposes makes it desirable for the Australian government to place “unlawful non-citizens”, and the heightened secrecy which applied to the military site applies equally to its current use as a detention centre. Below we discuss at length the clustering of issues of citizenship, alien-ness, security and risk, which recurs in the history of internment, immigration, quarantine and detention, and so the intersections between immigration, security and defence on the site of Woomera are especially striking. The very ground of Woomera carries a tortured and telling territorial history where colonisation, sovereignty, globalisation and international defence meet in profoundly uncomfortable ways. Itself already colonised, making traditional owners alien, Woomera forms part of a connected history of the use of inland Australia and Aboriginal communities’ land for UK and US as well as Australian military and defence purposes. Now, it is occupied by people legally nowhere, in that asylum-seekers are understood not to have “entered” Australia under the Migration Act.

In news accounts and popular discussion, the detention centres are often likened to other forms and places of detention and imprisonment. Most polemically, critics decry them as concentration camps. More commonly, and this is case for both proponents and opponents of the detention system, the centres are likened to prisons, in which

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13 At the time of writing, the hunger-strikes at several detention centres have again raised the possibility of housing some asylum-seekers in the community, and fostering some unaccompanied children.
15 At time of writing moves towards the closure of the Woomera centre have been suggested by the Minister.
16 The Pine Gap US base outside Alice Springs, the US base at Nurrungar near Woomera, and the Maralinga nuclear tests by the UK government in the 1950s are examples.
18 For example: “I am sure that all the people who support this idea of concentration camps etc. were the ones who had there [sic] hands up saying SEIG HEIL during the 40s”. Christopher Collins, “Open Letters”, Four Corners, www.abc.net/cgi-bin/guestist/guestbook.pl?4corners/guestbook/gb27&, p. 1.
detainees are either legitimately or illegitimately imprisoned. Opponents who protest against detention argue that the detainees are not criminal, and therefore should not be deprived of their liberty. Alternatively, popular approval for maintaining detention centres as prisons rests on circular reasoning: refugees must be criminals who deserve to be detained because they have arrived without authorisation, without a visa. There is widespread misunderstanding of them as migrants who have entered illegally as opposed to being people seeking protection. For example, one correspondent to Sydney’s Daily Telegraph wrote: “Illegal migrants should have no rights whatsoever. They are criminals and should be treated accordingly.” In fact asylum-seekers’ status on arrival is moot because they have rights under international agreement to enter without any authorisation if they are seeking a protection visa.

The very process of mandatory detention can render asylum-seekers into criminals even if they do not arrive as such. For example, attempting to escape, organising protests or rioting within camps are all punishable offences: when “escapees” have been found by authorities, they have been placed in local gaols; property damage or assault on employees of ACM further confirms some detainees’ criminal status. Not only does this justify detention in the view of many, it also justifies other extreme measures:

The criminals attempting to enter Australia illegally who rioted at the Port Hedland detention centre should be tossed out of the country immediately. If they need to be drugged, handcuffed or placed in chains before being bundled on to aircraft it doesn’t matter. There are genuine refugees and there are criminal frauds.

Of course, the detention centres are like prisons and must be seen as kinds of prisons: they are managed by a correctional services enterprise which runs gaols across Australia; they are fenced in with layers of barbed-wire; they have internal systems of punishment, solitary confinement, for example. Simply put, there is total deprivation of liberty and freedom of movement. Yet, there are critical ways in which they depart from the prison model. First, what characterises the detention centres is idleness, which historically characterised pre-modern, pre-penitentiary punishment. They are holding places, not places where citizen-subjects are produced, where labour of any kind is required (punitive, useful or reforming), or where re-education happens. Second, if

19 For an example or protest in these terms, see the Australian Public Intellectual Network, “Illegal: Refugees, Queue Hoppers and Detention Centres”, 11 June 2001, <www.api-network.com/cgi-bin/chat/archive.pl?topic=illegal>
23 Some commentators have pointed to the isolation and incarceration of convicts as a founding history in Australia, to which current detention policies may be connected: “remnants of the penal attitude” writes McMaster (Asylum-seekers, p. 39) or an “obsession [...] with locking people up”, as former Human Rights Commissioner Chris Sidoti put it in his foreword to McMaster’s book (p. v). However the transportation system was also linked to objectives of colonisation and aspirations of reform. Thus, as “holding places” the detention-centres have a very different rationale for isolation and separation from the community.
the prison in Australia is open to public scrutiny and accountability, and if inmates have access to, and communication with, the world outside, the detention centres far outstrip them in terms of total exclusion and the impermeability of the boundaries between inside and outside. Most significantly, prisons incarcerate criminals for defined periods of time. Interned refugees currently have no idea when they may look forward to release.

In all these respects, quarantine-detention and internment of enemy aliens in war time are two instructive precedents for the detention of asylum-seekers. Like current detention centres, these historical modes of confinement were practised within a rubric of national defence and security, responses to challenging questions of danger, alien-ness, belonging and nation. But they were simultaneously contested by critics who saw that the detention of non-criminals fits awkwardly within a system of liberal rule.

II. Quarantine: detaining the “foreign germ” and the “prohibited immigrant”

Geographically and coercively separating the “clean” from the “unclean” in the pursuit of a greater health of nations was one formative site where emerging liberal states implemented their new, and, as we shall see, disputed powers of detention. Public health, an enterprise closely tied to the emergence of nation-states and the governance of national populations, was a set of practices, which in the past often manifested as policing of bodies-in-space, through segregation and containment. The medical and the penal have often dovetailed as strategies to define and manage problem populations, involving geographies of isolation and shared histories of the policing of boundaries of exile and enclosure. As a result of what Rose has called “the liberal vocation of medicine”, the modern liberal subject emerged in part through contestation of government’s capacity and right to detain and compulsorily treat the infected separately from the community. In this way, the medical and the penal have coincided and produced practices that have invited and incited critical attention to the legitimacy of (liberal) government.

If quarantine now implies the separation and treatment of animals entering Australia, in the past, quarantine and quarantine stations were primarily for the isolation and inspection of people. The Quarantine Act (1908) Cth, still in force, mandated the inspection and detention of people with prohibited diseases, or contacts of those with prohibited diseases, on entering Australian harbours: it included measures for “exclusion, detention, observation, segregation, isolation, protection and disinfection” of persons, vessels, goods, animals or plants. Historically if someone aboard a vessel had a prohibited infectious disease, all passengers and crew were compulsorily isolated in the quarantine stations that had been built in the nineteenth century at geographically strategic sites. Within these Stations, elaborate internal segregations by race, gender, class and disease status were also mandatory. The infected were also compulsorily isolated from the uninfected (or symptomless).

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27 *Quarantine Act*, 1908 Cth. Section 4.
Quarantine stations in Australia were also used as places to legally detain residents and citizens: people with notifiable diseases and their contacts. For example, the *Infectious Disease Supervision Act*, 1881 (NSW) was introduced in the midst of a smallpox epidemic in Sydney. A Board of Health was created by the Act, and given “powers to isolate”. This authority derived from English legislation of 1832 introduced to control the spread of cholera. In this instance, people were removed from their homes, often in the middle of the night, by the police or by the newly created Ambulance Service and taken by boat to the liminal space of the Quarantine Station on the north head of the harbour. There, they were also internally segregated, and like the enclosure of the quarantine station itself, they were policed with the use of physical force. In other cases, people have been detained under legislation aimed at the control of a particular disease. In the case of leprosy, known to be minimally infectious, people were detained on island “leper colonies” sometimes for their whole lives, and up until the 1960s. Notably, over the twentieth century, detention powers were imposed differentially on racial grounds. The Director-General of the Commonwealth Department of Public Health explained in 1928:

> For Chinese, Kanakas and Aborigines, isolation under the strictest control is obviously all that can be considered. For Europeans who are indigent or feeble-minded a similar control is necessary. The remainder of Europeans present the great problem of leprosy administration.28

Like the rioting and the escapes in contemporary detention centres, non-criminals in the quarantine stations or leper colonies were not infrequently criminalised by protesting, escaping or resisting their detention in one way or another. For example in 1881 a husband, wife and baby, were sent to the quarantine station in Sydney. There, they were compulsorily separated from each other: he was sent to a hulk, a ship moored off the station, in which infected men were segregated. His wife came to the shore several times to tell him that their child was dying, and when he “escaped” from the hulk swimming to shore to see the dying child, he was caught and placed in chains.29 Below we examine more formalised modes and expressions of protest to detention in these historical cases, but the parallel remains striking: in the act of resisting detention, or the conditions of detention, non-criminal detainees become criminal, escapees end up in gaol, rioters are charged with damage to property.

Infectious disease control, then, is an important historical instance in which preventive detention and the denial of liberty of non-criminals and subjects has been justified “for the public good”. Detention centres for asylum-seekers and old quarantine stations for the infected are substantively linked in that quarantine historically entailed detention at the border on the grounds of national security and defence. Compulsory quarantine detention in Australia is thus also part of the history of immigration restriction — one technology through which “white Australia” was implemented. In an under-recognised way, the *Immigration Restriction Act* (1901) and the *Quarantine Act* (1908) were twin legislative tools for the creation of an imagined white (read: clean, pure, immune, uncontaminated) Australia. The *Immigration Restriction Act* had an infectious disease control power: section 3d of the Act named as a prohibited immigrant “any person suffering from an infectious or contagious disease of a loathsome or dangerous character”. Complementarily, the Quarantine Act excluded would-be immigrants on grounds of their infected physical (or mental) state.

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Thus, in practice, immigration officers were quarantine officers and vice versa, and both had powers of detention under the *Quarantine Act*.\(^{30}\)

In this instance of the lawful detention of non-criminals, quarantine and immigration powers and practices were conflated within the over-riding problematic of national security and defence. In early twentieth century Australia, national defence and security were explicitly racialised: invasion of the pure white nation by disease was conflated with the idea of invasion by would-be Asian immigrants. Quarantine, immigration and their associated mechanisms of detention (and exclusion) were comprehended within military discourse, through a language of invasion, defence, security, and international intelligence. For example, J.H.L. Cumpston, the major health bureaucrat of the first half of the twentieth century, wrote in 1909:

> Hygienists in Australia will look on the seaward frontiers as the places that must be fully manned and equipped with the most modern armamentaria in order that the possibility of invasion by disease shall be reduced to an absolute minimum.\(^{31}\)

And as one journalist described Cumpston, then extensively exerting new Commonwealth powers of isolation and compulsory segregation of the infected: “He controls the quarantine service and conducts a ceaseless war against the foreign germ declared by his department to be a prohibited immigrant”.\(^{32}\) In this instance, preventive detention of non-criminals was justified on grounds of managing risks and dangers, and bolstering security at the borders. Like the anxieties boat-people currently raise about the insecurity of the western and northern coastline borders, public health worries have historically been addressed as matters of national defence.

### III. Enemies, aliens, and internment

In time of war, defence and border policing become national obsessions. Just as public health governance led to internal segregations in the nineteenth and early-twentieth centuries, so the insecurities of war led to the forced confinement of “dangerous” populations in the First and Second World War. Once other countries became enemy nations, foreigners within Australia turned into “enemy aliens,” suspects on account of birth. Like symptomless carriers of disease, aliens were separated from the general population and closely monitored under the assumption that they posed too great a danger to circulate freely. Although small numbers of Anglo-Celtic Australians suspected of sympathising with or aiding the enemy were interned during the First and Second World Wars the vast majority were people born in Germany, Italy or Japan. Furthermore, and significantly for the connection to current policies toward asylum-seekers, wartime internments blurred the distinctions between enemies and refugees, in the reconstitution of foreign nationals as enemy aliens.

In both wars, Germans were immediately identified as potential threats to the nation’s cause; in the Second, Italians and later Japanese were also declared enemy aliens.\(^{33}\) When war broke out, persons born in enemy countries were required to

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\(^{30}\) Bashford, *Imperial Hygiene*, chs. 4 and 5; Alison Bashford, “At the Border: contagion, immigration, nation”, *Australian Historical Studies*, 120 (2002), pp. 344-357.


\(^{32}\) “War on Foreign Germs”, (1933), Album of newscippings, 1913-45, Cumpston Papers, MS613 Box 8 (iv), National Library of Australia.

\(^{33}\) Allies and satellites of Australia’s principal foes were also suspect in both wars: Austrians, Finns, Romanians, Albanians, Croatians, Dalmatians, and Serbians.
register as “aliens,” no matter how long they had resided and irrespective of their naturalisation. Thus the forerunner to internment was the identification and tracking of people suspected of disloyalty simply on the basis of their nationality or ethnic heritage. Once detained, the onus of proof for loyalty, unlike verifying individuals’ health status in times of epidemic, rested with detainees. Like today’s asylum-seekers, they learned in internment camps that their nationality and ethnicity rendered them prime subjects for detention in a country that simultaneously maintained exclusionary immigration policies.

Alien internments were administered by the military and integrated with national defence plans in both wars. In October 1914, the Commonwealth government passed the *War Precautions Act*, which effectively centralised and militarised the administration of government for the war’s duration. 34 Through that Act, War Precautions Regulations were passed from time to time, largely in response to shifting war fortunes. These Regulations empowered district military commanders to intern enemy subjects with “whose conduct they were not satisfied”. The detention of naturalised subjects could be ordered by the minister of defence, who exercised the authority to locate persons considered “disaffected or disloyal”. By 1915, even people “of enemy descent” but born in Australia could be interned on the minister’s orders. The Regulations not only stretched the meaning of alien but also left the definition of objectionable conduct unclear. The stage was set for the mass incarceration, without trial, of people who had committed no crime.

The establishment of reception camps quickly followed legislative stage-setting. Borrowing from the British, who were the first to use concentration camps for enemy nationals and refugees in the Anglo-Boer War, the Commonwealth government empowered the states to set up camps for suspect aliens. 35 Local authorities improvised at first by using army barracks. But as the numbers of detainees mushroomed from hundreds to thousands, larger camps were established in suburban Brisbane, Melbourne and Sydney, as well as on islands near Hobart, Adelaide, and Perth. The lattermost, Rottnest Island, had a long history of race-based internment as a prison for Aboriginal men. 36 Although the confinement of Germans identified as enemy aliens on the island was largely a matter of logistical and administrative convenience for Western Australian authorities, it symbolically reinforced the endurance and wartime reinvention of racialised strategies of spatial control, and it foreshadowed the detention of asylum-seekers from non-European countries. 37

While the current Australian government has thus far shrugged off UN declarations concerning the treatment of refugees, wartime governments nominally adhered to international conventions concerning the treatment of prisoners. In the First World War

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the majority of detainees were civilians, however the Commonwealth government defined them as prisoners of war, a designation that demanded certain minimum standards of care, according to the Hague Convention of 1907. Adequate food, clothing, shelter, and medical care were to be provided; contact with outside agencies, such as the Red Cross, was to be permitted; and discipline was to be maintained in a fair and restrained manner. Yet in the country’s far-flung detention centres, excess was more common than restraint when it came to enforcing discipline. Camp commandants summarily imposed punishment, such as solitary confinement and bread-and-water diets, against internees who smoked without permission or used insubordinate language. Prisoners who refused to work, organised strikes or attempted escape were treated even more harshly as guards used handcuffs, leg irons and body belts with metal restraints. If the barbed wire and guard towers were insufficient to render the camps prison-like, the internal disciplinary regime certainly rendered them into places of punishment.

Treatment as Torren’s Island, a former quarantine station in the mouth of the Port River near Adelaide, was especially harsh. In 1915, after two men attempted to escape, guards stripped, handcuffed, and publicly whipped them before the other prisoners. The deterioration of discipline among the commanding troops at Torren’s Island prompted a new containment policy in which the vast majority of internees around the country would be sent to the main camp at Holdsworthy, on Sydney’s outskirts. But the extremes at the South Australian camp only confirmed the general tenor of camp detention: internees were treated like criminals, without having been convicted of crimes; and the rules of camp life criminalised their protests against confinement and their attempts to assert their claims to freedom. Like current-day refugee claimants, the World War I internees’ insubordination, disciplinary infractions, and escape bids reinforced authorities’ claims of security threats, rather than undermining the government’s confidence in the internment scheme itself.

By end of the First World War almost 7,000 people had been detained, about 4,500 of whom were Australian residents (including Australian-born subjects with German heritage). The armistice led to their release from camps, however the great majority of released internees were deported. Some appealed against Department of Defence deportation orders, but only about three hundred (half of whom were naturalised residents or native-born Australians) were permitted to stay. The internment policy during wartime thus cohered with the post-war restrictive immigration policy. As Prime Minister Hughes famously declared in 1919, “We are more British than the people of Britain […] our great destiny […] is to hold this vast continent in trust for those of our race who come after us.” The expulsion of formerly interned Germans and others of European heritage reinforced rather than contradicted the White Australia policy by clarifying that “white” (for the moment) meant British, not Teutonic or Slavic. All naturalised deportees were stripped of British citizenship, thus depriving them of the right of re-entry.

The tenuous hold of non-British Australians on civil liberties came to the fore again as war loomed in 1939. Following precedents set in the Great War, Menzies’ government initiated alien registration and internment schemes just prior to Australia’s

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38 In total 6,150 enemy aliens were deported, 5,414 of whom had been interned (the remainder comprised of family members and “volunteers” for repatriation). Fischer, Enemy Alien, p. 302.
40 Fischer, Enemy Aliens, p. 297.
entry into the war. Since 1921, with the passage of the Aliens Registration Act, non-British residents had been required to lodge their particulars with local authorities but the Department of Defence singled them out for increased scrutiny according to its official War Book of 1939. The rationale for internment was to prevent individuals “from acting in a manner prejudicial to the public safety, or the defence of the Commonwealth.” Registered aliens were to be questioned, but the Book declared that internments be restricted to the “narrowest limits consistent with public safety and public sentiment.” Nevertheless public sentiment quickly shifted as it had in the Great War, from belief in ideals of “British” justice to raw fears about internal security. While the initial round-ups seized known Nazis and Fascists, the circle of suspicion widened as hopes of a quick Allied victory faded and the possibility of Japanese invasion grew. Ethnic and racial identity, rather than individual criminal action or even intent, once again activated internment orders. After the bombing of Darwin, the RSL along with numerous local shires and councils pressured the government to move toward a policy of total internment of enemy aliens. There could be no question in the war cabinet’s mind that identifying and interning enemies could provide a powerful tonic for the Anglo-Australian war effort.

Nonetheless a modicum of restraint was evident. Although Australian Japanese residents were interned almost to a man, woman, and child, internment of other enemy aliens was never total, nor as extensive as it had been during the First World War. One reason for this was the official concern about the extraordinary nature of the suspension of habeas corpus. During the Parliamentary debate over the passage of the National Security Act of 1939, Prime Minister Menzies had affirmed that preserving civil liberties at home was critical to the war effort: “The greatest tragedy that could overtake a country would be for it to fight a successful war in defence of liberty and lose its own liberty in the process.” Mindful of the scandals over the treatment of Great War internees, an Aliens Tribunal was established in November 1940 to consider individual appeals from internees. Without clear criteria for release eligibility, however, the Tribunal erred on the side of security and ethnically-based suspicion, and the number of releases was negligible. In the case of the Japanese, appeals against internment were fruitless except on the grounds, as some claimed, that they were not of Japanese heritage. Despite Menzies’ and later Curtin’s assurances to the contrary, and despite the greater safeguards over abuses of rights in the Second World War, internment remained an adaptable tool for the selective dismantling of civil liberties.

Just as the current asylum-seekers are presumed to be dangerous in a non-specific way, so were interned foreigners, particularly those who arrived from Asian and European combat zones. Distinctions between people who presented a serious threat to national security, and those whose ethnicity alone rendered them suspect, were faint. The most egregious conflation of enemy aliens and refugees during the Second World War occurred when Britain devised a latter-day transportation scheme, sending its “colonies” 7,000 prisoners of war and internees. Although many of the latter were Jewish refugees escaping Nazi persecution, the Secretary of State for the Dominions

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43 After one year’s operation the Aliens Tribunal approved of only 150 releases. Bevege, *Behind Barbed Wire*, p. 120.
44 Internees who claimed to be Chinese, Korean or Formosan appealed against their internment. Bevege, *Behind Barbed Wire*, p. 195. Bevege does not supply the total number but it was likely tiny.
described them as “the most dangerous characters of all”. Certainly the more than 2,500 male refugees transported aboard the Dunera were treated without regard to the 1929 Geneva Convention protocols concerning the treatment of prisoners, let alone humanitarian concern for people persecuted by racist Nazi policies. Robbed and beaten by their British guards, they likened their 1940 voyage to Australia to a passage on a slave ship.\(^{45}\) As one refugee later complained to the Home Office, “having suffered in a German concentration camp it seems a terrible thing to receive the same treatment at the hands of the British”.\(^{46}\) Indeed the Dunera refugees, sent to the country’s main internment camp at Hay in June 1940, were subjected to the same carceral regime that Italian Fascists and German Nazis faced: strict discipline, barbed wire fences, armed guards, and the threat of death on escape.

In a repetition of First World War patterns, enemy aliens, along with naturalised subjects and native-born Australians of foreign parents were interned as possible threats to the war effort. When the prospect of Allied victory seemed most remote in 1942, the total number of internments topped 10,000 (including foreign POWs). Once the threat of Japanese invasion waned and the Axis coalition broke down a gradual release policy quietly began. Although ALP Attorney General H.V. Evatt, repeating Menzies’ reassurances of 1939, vowed in 1942 that internment was justifiable only when “the possibility of injury to the nation was undeniable”, internment practices operated throughout the war in response to presumptive collective security concerns, rather than to proven individual acts of disloyalty, subversion or sabotage.\(^{47}\)

The end of internments after the Second World War did not lead to mass deportation as it had after the First. In fact, in a little recognised way, the internment experience led to the reception of Europeans and displaced persons after the War. Through this process the official commitment to white Australia slowly eroded. Arthur Calwell, the first Cabinet member appointed to the post of Immigration Minister in 1946, was a promoter of Australia’s population growth through European immigration. Ironically, his ideas on the matter were formed through his work from 1942-1946 on the Aliens Classification and Advisory Committee (ACAC). Unlike the Aliens Committee of the First World War, mandated to deal with the post-war disposal of aliens,\(^{48}\) the ACAC was established by Curtin’s government at the zenith of wartime internments, and it was empowered to make recommendations for releases as the war proceeded. In one of its first moves the ACAC officially created a new classification category for internees that transformed 6,500 “enemy aliens” into “alien refugees” with the stroke of a pen.\(^{49}\) Calwell headed the committee and became an advocate of the interned but law-abiding Italians, Germans and others (twenty-six nationalities in all) whom he argued would make good Australians after the war. Resident Japanese, in contrast, were “repatriated”


\(^{47}\) Commonwealth Parliamentary Debates, vol. 172, 10 September 1942, p. 152. Some interned individuals (such as high-profile Nazis, Fascists, and members of the Communist and Australia First Movement) were exceptions to this broader pattern.

\(^{48}\) Fischer, Enemy Aliens, p. 285.

\(^{49}\) Saunders, “Inspired by Patriotic Hysteria?”, p. 302.
en masse in 1946, just as they had been rounded up summarily four years earlier.\textsuperscript{50} Japanese and Asians more generally remained outsiders in the post-war Australian imagination: in fact, having once tentatively “belonged”, they were actively turned into outsiders as a result of this post-war deportation policy.

IV. Rights, Liberty and Protest

In the historic detention practices we have discussed — internment camps in time of war, and the quarantine-detention of immigrants and subject-citizens — interned persons and external advocates protested against their confinement. Both strategies inspired questions about the rights of citizenship, freedom of movement and the legitimacy of coercive powers in liberal democracies. This history of protest against detention is as important to recognise as the techniques of detention themselves. In part it has created the possibilities and languages for contemporary legal and political challenge.

In the case of quarantine, coercion and force was often questioned and sometimes legally challenged. For example, immediately upon enactment of the powers to isolate in the \textit{Infectious Disease Supervision Act} 1881 (NSW) there was formal protest registered through the appointment of the Royal Commission on the Quarantine Station and the Hulk \textit{Faraway}. It reported in 1882 on the conditions of care in quarantine (bedding, food, clothing), the mode by which people were removed from their homes and by whom, the segregation of people within the quarantine station, the use of chains and irons in some cases (which it found were justified) and the length of detention.\textsuperscript{51} In questioning witnesses, Royal Commissioners were concerned to establish the use of force and its legitimacy by posing such questions as: “Do you consider that you were forcibly removed?” “Did Dr Clune consent to go into Quarantine?” “Do you think he understood that he would be removed by force if he objected to go?” Persons who had been quarantined replied unequivocally: “No, sir. I was removed by force”.\textsuperscript{52}

In this instance, the powers to isolate were problematic immediately upon their creation.\textsuperscript{55} Parliamentary observers and liberal-minded newspaper editors challenged nineteenth and twentieth century medicine, law and government over the issue of the mandatory detention of the infected, and later, the detention of the “carrier”, the infected but symptomless person. In Australia, “the germ carrier and the law”, as one article summarised the problem, posed a conundrum for liberal governance: can a person carrying a germ but who is not sick, be quarantined against his will?\textsuperscript{56} Compulsory detention or spatial restriction was often articulated then as the illegitimate return of outdated modes of “medieval” governance, a version of the “civilised-
barbaric” continuum on which objections to similar strategies now more commonly rest. For example, when the town of Launceston in Tasmania was quarantined in 1903 as a result of cases of smallpox, critics protested that “the medieval method of urban quarantine be relegated to the limbo of similar historic freaks”. Their complaints prompted health authorities to institute alternative prevention measures. Less successful, but constantly voiced were protests from inside the nation’s various leper colonies. From the passage of the *Leprosy Act* 1892 (Qld) onwards, detainees protested individually and as communities to every level of government. Sometimes they adopted the pose of supplicants. Lepers on one island, “humbly” petitioned the Governor to “intercede on our prolonged & wrongful detention [sic]”. At other times the sense of injustice over their wrongful detention, as they saw it, provoked threats of extra-legal action. For example the “White Patients” of Peel Island threatened the Home Secretary in 1920:

having begged, and requested so often without avail, we now demand a visit from yourself to enable us to lay before you many grievances we are labouring under, failing which the consequences are yours. […] It is said “there is no law for Peel Island[,] then naturally it cuts both ways?“

Issuing threats to government officials while facing guards with bayonets was not an option that wartime internees chose. While the historic rhetoric of protest against tyranny and lawlessness helped the lepers of Peel Island to attract support in the wider community, alien internees, convinced that their detention was unjust, protested in other ways, refusing to work or voicing concerns through camp representatives. Since internments required no formal charges to be laid, the legitimacy of individual internees’ detention was impossible to disprove. And in the context of war, when criticism of the internment policy was likely to be read as lack of patriotism, public disapproval of enemy aliens’ treatment was sparse. Yet criticism of the conditions of detention, and questions about inappropriate internments did arise. Because the military defined interned enemies as prisoners of war their health and well-being were governed by the Hague Convention of 1907, and, by the Second World War, the Geneva Convention of 1929. As a result, visits from members of the Red Cross, religious representatives and charities were permitted, and minimum standards of housing, clothing, food and hygiene were established. Adherence to those standards was far from complete or uniform across all camps, but the reciprocity issue, namely the understanding that treating POWs and aliens badly might increase Australian captives’ risk of ill treatment in enemy countries, did impose restraints on ill treatment. A political orientation toward liberal values was also evident. Embedded in Australian culture was a sense that there were certain lines of discipline that could not be crossed, even in war. Furthermore traditions of British justice had to be demonstrated as superior to autocratic, fascist, communist and Nazi regimes. In 1942 Attorney General Evatt set both the rationale and the standard in classic liberal terms: “The aim and sole

57 “Outbreak of Smallpox”, *Australasian Medical Gazette*, 20 August 1903, p. 432.
58 Inmates of Peel Island to the Governor, Sir Leslie Wilson, 27 September 1939. Queensland Home Secretary’s Office, Queensland State Archives, COL 323.
justification of all restrictions upon individual liberty is to prevent injury to the war effort of the country, not to punish the individual.\textsuperscript{60}

That the Torren’s Island whippings and the \textit{Dunera} refugee internment caused a scandal suggests that excessive or inappropriate punishment troubled or at least embarrassed governments of the day. In the First World War, internees could not press claims that they had been detained without cause, but they could expect not to be tortured or humiliated by their captors. When news of harsh treatment of the escapees leaked out and found its way to Berlin the Australian Department of Defence reacted first by court-martialling the camp commandant. Continued complaints by German authorities prompted a full military inquiry in 1916. The judges’ 1916 report concluded that there had been “wholesale arrest and imprisonment of [the escaped] men without strict, full, and impartial inquiry,” and they further condemned the “harsh and unjustifiable conduct” of the military guards.\textsuperscript{61} The findings did not dismantle the enemy internment scheme but it did result in the transfer of prisoners held in remote camps to the main camp at Holdsworthy where central authorities could more carefully monitor internment conditions.

By the Second World War, provision for Official Visitors meant that internees had a sanctioned outlet for complaints. To ensure that camps were administered properly, the government appointed high court judges to visit once per month. They were not granted the power to order detainees’ release but they could and did remind the government of its obligations. In 1940 Mr. Justice Davidson reported on his visit to the Italian camp at Hay, claiming that the Geneva Conventions were not being upheld. As he complained to the Military Board: “I can not tolerate for one moment being used as a mere blind to enable the public to be deluded with the idea that the proprieties are being observed”.\textsuperscript{62} The establishment of the ACAC in 1942 finally instituted procedures for detention review, although it operated secretly. Internal correspondence between Calwell, the ACAC head, and the Attorney General explicitly rejected the practice of internment on ethnic grounds. As he wrote of one group of Italian farmers: “they became the victims of mass hysteria which resulted in arrests on omnibus warrants on alleged precautionary grounds”.\textsuperscript{63} Without publicising its activities, the ACAC helped to reduce the number of internees from over 10,000 in 1942 to approximately 5,000 two years later. Public criticism of mass internments, however, remained scant in wartime Australia, partly because they were implemented through emergency legislation acknowledged as temporary measures, but also because British Australians were unlikely to face internment.\textsuperscript{64}

It is important to realise the extent to which, even in these earlier periods, the use of force by government to detain non-criminal individuals, communities and populations was approached with caution by Australian governments, with not a few commentators viewing it as illiberal and justifiable only in the most extraordinary of contexts: war. Indeed, it is more accurate to suggest that this critique from the ground of liberal theory was possible not \textit{even}, but \textit{especially} in this earlier period of Australian history. Liberal principles underpinned weighty and immediately recognisable arguments against

\textsuperscript{60} H. V. Evatt, \textit{Commonwealth Parliamentary Debates}, Vol. 172, 10 September 1942, p. 52.
\textsuperscript{61} Quoted in Fischer, \textit{Enemy Aliens}, p. 198.
\textsuperscript{62} Quoted in Bevege, \textit{Behind Barbed Wire}, p 106.
\textsuperscript{63} Calwell to Evatt, 5 January 1944. Quoted in Bevege, \textit{Behind Barbed Wire}, p. 216.
\textsuperscript{64} In March 1942 twenty white British subjects, members of the Fascist Australia First Movement, were interned. Some politicians argued that they should have been tried for treason. \textit{Commonwealth Parliamentary Debates}, Vol. 170, 26 March 1942, p. 462.
almost any kind of compulsion, especially when it came to the state’s compulsory handling of bodies.65 As inheritors of the Victorian “golden age” of liberalism, these generations shared a language of liberalism that was widely available to challenge the legitimacy of these forms of coercion, even if it did not prohibit them.

Contemporary opposition to the detention centres is occasionally framed for popular consumption in terms of liberal theory. For example the political scientist William Maley wrote: “Mr Ruddock and his colleagues seem to have lost any sense of what it means to be liberal. For a liberal, liberty is precious. Blanket detention [...] is at odds with any meaningful liberalism”.66 Our historical analysis certainly adds weight to Maley’s assessment of liberal amnesia. The caution about detention expressed and to some degree exercised by Robert Menzies and H.V. Evatt even in wartime stands as an historical object-lesson for the current Government and Opposition.

In this respect far better liberals are found within the detention centres themselves. For example, Aamer Sultan, a detainee at Villawood refused asylum and awaiting deportation articulated his position thus:

We are denied the right to contact organisations. Intimidation, reprisals, revenge is applied as a standard here. Speak up and you get denied refugee status. Speak up and the Minister will even deny you staying in Australia for humanitarian reasons. Speak up even more and you will get moved from Villawood to Woomera or Curtin [...] I am just shocked by the fact that here speaking up is as bad as there.67

Of course such protest and analysis situates Aamer Sultan within revered modern traditions of resistance to oppression, whereby the language of “liberties”, “rights” and “freedoms” have been utilised to counter the right of the state and its agencies to coercively isolate, segregate or institutionalise. Current detainees in Australia have adopted forms of protest (especially effective in democracies that purport to respect and safeguard individual rights) that name certain kinds of detention as unfounded, unjustifiable and illegitimate. In particular their mass hunger strikes in January and February 2002 dramatically enacted the classic claims-making tactic of political prisoners.68

Conclusion: Detention, (un)freedom and nationalism

Most troubling, if unsurprising in the light of this history, is the recrudescence since the 1990s of national defence and security as a justification for detention. The more that current detainees were conflated with terrorism at the end of 2001, the more that detention shifted squarely into a military/security/defence rationale.69 One newspaper editorialised on this theme:

65 For example, this is at the core of the Contagious Diseases Acts agitation in Britain, and the constant failure in nineteenth century Britain and Australian governments to make vaccination compulsory.


67 “The Inside Story”, Four Corners, pp. 6-7.


69 The Minister for Defence Peter Reith declared: “in terms of dealing with terrorism [...] you have got to be able to control your borders, otherwise [...] this can be a conduit for extremist terrorist groups”. “Terrorist link with boat people: Reith”, Daily Telegraph, 14 September 2001, p. 8.
With the threat of terrorist counter-attacks against any nation that aids the United States, Australia must also be vigilant, particularly in maintaining the sovereignty of its borders. It is for this reason Mr Howard should reintroduce the Border Protection Bill […] Many of the illegal immigrants claim to be from Afghanistan […] These are unprecedented times and they call for Australia to have the moral courage to make decisions that are in the best interests of the Australian people, not groups who chose to enter the country illegally.70

In the aftermath of the US terrorist attacks, the Department of Immigration now defends detention practices explicitly, if only partially, on grounds of military security: “there are also in immigration detention former terrorists, former senior officers and military personnel of despotic regimes, people who are suspected of crimes against humanity”.71 While national security is the object of all border-control and indeed while the above claims may even be the case, the specific inclusion of the terror-threat in this immigration “Information Paper” of October 2001 is to be noted. In such ways the detention centres become rhetorically re-inscribed as places of military threat. As the war on terrorism expands, and as the US president’s bellicose rhetoric against “evil” nations inflates, detention centres may again serve as internment camps for people classified as enemy aliens.

Both the historical rationales for and protests against internment illustrate that the coerced isolation of populations deemed undesirable or dangerous is intrinsically connected to liberal problematics of rights and obligations.72 Over the past century forced confinement of non-citizens and non-criminals has raised broader questions about territory, nationalism and liberal governance, as well as inspired the codification of universal human rights. When coerced isolation is practised as a way of managing refugees and asylum-seekers, these questions multiply, as do the possibilities for critical reinterpretation. For instance historic sites of detention, such as Robben Island, have been refigured as places of struggle, important commemorative places that are now symbolic of the struggle for freedom and liberty.73 And so, the very practices in Australia and elsewhere of detaining the non-criminal, of wartime-internment, of concentration of the “dangerous” by the state without trial, of radically confusing the refugee and the enemy through assumptions about ethnicity helped to produce the codification of human rights by the United Nations since the Second World War. The history of human rights as ideas, convention and law has evolved in part as a response to wartime detention in many countries.

Indeed, there is a direct lineage connecting Australian internment, the Dunera scandal, critique of “the internment of aliens” and the series of post-war UN conventions that many demand the current Government uphold. Similar calls have borne fruit before. In 1940, as news of the Dunera fiasco filtered back to England, sympathy for the plight of refugees, treated as criminals, grew in international circles.74 The incident prompted the publication of François Lafitte’s The Internment of Aliens

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72 See Bashford and Strange, “Isolation and Exclusion in the Modern World”.
(1940), an influential indictment of refugee and enemy alien policies in a country claiming to uphold tenets of justice. His chief recommendation was that

the principle of internment of classes of men must be dropped. Each man must be judged individually, irrespective of his race, language or birthplace […] a proper trial with a right to appeal are essential.76

Such principles, of course, became encoded in the UN Declaration of Human Rights (1948), the UN Convention Relating to the Status of Refugees (1951), the International Covenant on Civil and Political Rights (1966) and latterly the Convention on the Rights of the Child (1989).77

The shared language of liberalism vibrant at the time of quarantine-detention and of war-time internment has re-emerged in debate on the detention centres, but via the later twentieth-century language of UN-encoded universal human rights. The discourse of universal human rights now provides the primary mode of argumentation against detention per se and against the enforced drugging of detainees and deportees in particular, in an effort to reform conditions within the centres: “There is no excuse, there’s no rationalisation, there are no exceptions to the violation of human rights”.78

Remarkably, the “universality” of human rights is the common ground from which otherwise radically politically disparate groups argue. It unifies, if strangely and momentarily, civil libertarians, human rights lawyers, metropolitan newspaper editors, and Socialist Action, but not, as yet, Parliamentary parties born out of liberalism itself.

75 François Lafitte, *The Internment of Aliens* (London, 1988 [1940]).
77 Davidson notes that the *Aliens Act* (1947) Cth conflicted with many of the principles in these UN agreements, which Australia signed. See *From Subject To Citizen*, pp. 160-61. For details of these Conventions and Australia’s response to asylum-seekers, see McMaster, *Asylum-seekers*, pp. 23-31, 139-42. See also Savitri Tylor, “Weaving the Chains of Tyranny: the Misrule of Law in the Administrative Detention of Unlawful Non-Citizens”, *Law in Context*, 16, 2 (1998), p. 2.