

Seminar Four: Immigration Detention and its Socio-legal Consequences

In this seminar, we will explore the core substantive legal issues around migration control, specifically immigration detention; including, the international human rights law norms drawn from the *International Covenant on Civil and Political Rights* that address protection of liberty and, therefore, the 'administrative' detention of asylum seekers and refugees. We will carefully examine the rationale for immigration detention and gain a critical understanding of the costs of detaining asylum seekers and refugees. We will contemplate alternatives to prolonged detention of non-citizens seeking refugee protection.

Essential reading (all accessible via Learn.UQ in pdf):

S Silverman and A Nethery, "Understanding Immigration Detention and its Human Impact" in *Detention and its Human Impact* (Routledge, 2015) pp 1-12.

P Billings and D Stevens "Protection Seekers and Preventive Justice: Immigration Detention in Australia and the United Kingdom" in, T Tullich et al, *Regulating Preventive Justice* (Routledge, 2017) Ch. 6 [**accessible online** via law library catalogue] (for a contemporary and comparative perspective on the detention of asylum seekers); and

M Bosworth and S Turnbull, "Immigration Detention, Punishment and the Criminalization of Migration" in S Pickering and J Ham, *The Routledge Handbook on Crime and International Migration* (2014) Ch.6 [**accessible online** via law library catalogue] (authored by two criminologists this is a useful comparative and historical survey of immigration detention).

Questions for discussion

The **right to personal liberty** is one of the most powerful norms in liberal states' domestic laws and in international (human rights) law but frequently asylum seekers and refugees find themselves deprived of their liberty for prolonged and indefinite periods of time via 'administrative detention'. What is 'administrative (immigration) detention' and what is its logic (i.e. on what basis do states justify locking up asylum seekers and refugees)?

What are the **core human rights** protections applicable to safeguard people's liberty and protection them from arbitrary detention? And which supra-national institutions have responsibility for overseeing the application and enforcement of: (i) international human rights norms; (2) regional human rights norms?

International law provides that detention must be **proportionate**: what does this mean and (procedurally) who ought to determine whether detention is in fact warranted (i.e. proportionate) — politicians, Ombudsman, tribunals and/or the courts?

What are the **costs and benefits** of immigration detention (you are encouraged to consider the costs broadly)?

Is administrative (immigration) detention employed as a measure of last resort, and consistently with international law, in Australia?