“Migrant Protest: Democratic States of Exception” ©

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*In 2017, after Trump has put new orders in, my stay of removal was denied. After discussing it with 17 different attorneys, nobody was even trying to take my case because of the new administration’s rules. It was either go to the immigration office and report to them and get detained and deported or go into the sanctuary and have some hope that you’re going to resolve your case. And I could see my children (a son, then 10, two daughters, then both age 4) and my family. That was the most important thing.* Irida Kakhtiranova, sanctuary participant[[1]](#endnote-1)

*In the face of the coronavirus pandemic, undocumented immigrants at a Georgia detention center [Irwin County Detention Center], are staging a strike, refusing to go to work in the kitchen, laundry room or commissary or accept meals from the facility… The immigrants begged for help over the weekend and on Monday, posing with signs and handwritten letters, and reading petitions through a video communication service…‘HELP US / IMMIGRANTS LIFES MATTER,’ read one of the signs that a group of men, who wore masks fashioned out of disposable plastic meal containers and strips of fabric...‘WE ARE NOT SAFE HERE / AFRAID OF COVID-19,’ another read. In a video provided by one of the relatives of detainees, women held signs reading ‘our children need us,’ and ‘please help us.’* ICDC hunger strikers[[2]](#endnote-2)

*‘We want freedom or die,’ read the handwritten note smuggled out from Woomera, an immigration detention centre in the South Australian desert where three children were found yesterday to have joined about 70 adults who have sewn their lips together in a hunger strike by Afghan asylum-seekers.* Woomera lip-sewers[[3]](#endnote-3)

*“What kind of bad person am I that this has happened to me?”*

Child detainee, Australia*[[4]](#endnote-4)*

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These epigraphs indicate a somewhat new reality in Australia and the United States, two wealthy democracies that have instituted policies treating migrant arrivals without documents not as potential refugees but rather, enemy invaders. Both countries have implemented mandatory detention and deportation policies such that detention and deportation are dominant elements of migration policy, affecting masses of people rather than one or two individuals. While other host countries have also implemented detention and deportation policies, these two stand out in the scale of apprehensions of “unauthorized” arrivals and mandatory arbitrary jailing.[[5]](#endnote-5) As I explain in this paper, detainees and foreigners scheduled for detention and deportation, are effectively rightless and so they have engaged in radical forms of protest: faith-based sanctuary and self-harming protest.[[6]](#endnote-6) As I argue, these protests are radical because they do not draw on even minimal personhood rights of most civil disobedient activists and the state powers they resist are plenary powers of the “warfare state,” not those guided by the rule of law.[[7]](#endnote-7) Rather, they instantiate forms of counter-sovereignty, creating democratic states of exception challenging the state’s extra-constitutional use of plenary powers.

Since the late 1800s, both countries notably created federal power over foreigners that treat people as if they were on foreign soil. This has meant that foreigners at border sites have had few to no due process rights and courts do not view detention as a liberty deprivation. Both systems were established in the late 1800s as concentrated, unchecked authority based on eugenic motivations: in the United States, debates about Chinese Exclusion led to the foundation of the plenary power doctrine and in Australia, similar closure against Asian and Pacific Islanders formed the basis of the White Australia Policy. Although each country modified their explicitly racist stances and adopted some human rights provisions from the 1960s-1980s, each implemented mandatory detention policies in reaction to arriving waves of refugees in the 1980s (Australia) and the 1990s (the United States). In effect, the more recent creation of mass detention and deportation systems is authorized by these extra-constitutional powers.[[8]](#endnote-8) What this has meant is that foreigners are treated as a threat first and only refugees, migrants, or even “persons” second. Instead, their identity as detainees transcends other categories—i.e. their detained status is accounted for over and above all other elements of their background—and therefore, they are not ignored but rather cast as an existential enemy.[[9]](#endnote-9) Their status, including their country of origin and/or lack of documentation, is treated as a “crime” that cannot be named, charged, or tried.[[10]](#endnote-10)

While there are important differences between each country, there are significant commonalities: each is a liberal representative democracy, a country of immigration, and both countries are signatories to important human rights conventions, particularly the two conventions on the rights of a refugee. However, each is a settler colonial country with neo-imperial foreign policies that directly or indirectly causing displacement.[[11]](#endnote-11) This paradox unites the two countries, despite their apparent differences: both of these democracies and human rights signatories arbitrarily jail all foreigners appearing at the border without prior authorization and suspend constitutional guarantees and inalienable rights in detention centers.[[12]](#endnote-12) Both countries largely ban all civil society groups’ entry into these centers, are not transparent about information regarding detention (from who is being detained to circumstances surrounding illness, injury, or death), and run the centers as if they were outside of the country.[[13]](#endnote-13) There are also some differences: while Australia has taken the extreme measure of moving centers from rural areas to islands (and pressuring other countries to house refugee applicants), the United States has separated families, putting thousands of children up for adoption under Trump; it uses solitary confinement as punishment for many detainee “transgressions” (including putting children in solitary); and it employs esophogal forcefeeding on conscious hunger strikers.[[14]](#endnote-14)

Detainees protest their conditions, their legal limbo, and migration policies more broadly, and they protest quite frequently, but it is hard to gain information about protests because neither government considers matters of foreign policy open to constitutional scrutiny or requiring transparency. The highly discretionary character of this system, the absence of even minimal criminal rights, and the lack of checks and balances translate to an informational void and a system in which abuses are committed largely with impunity. As detainees realize that filing grievances will not get them what they need, some turn to protest through self-harming methods. Outside of detention, those who are about to be deported have had similarly bad luck in complying with bureaucratic norms.[[15]](#endnote-15) Individuals who have appeared at migration offices in the United States for mandatory check-ins have suddenly been informed they will be detained and deported; U-Visa victims who have complied with all provisions in their cases have still been denied this visa if a bureaucratic agent fails to certify the case; and in certain localities (often suburbs or rural areas in the US) random police stops can trigger deportation, even if no infraction was committed.[[16]](#endnote-16) If these individuals have the support of a religious institution and some time before they are put into removal proceedings, they can move into a faith-based institution to live there until their case is reopened and reconsidered. In both cases of protest, they end up taking matters into their own hands, even if the protest could lead to coercion and lethal violence. Australian border policing and detention methods of new arrivals are similar, if not nearly identical, to the US system, but they do not police people who become residents as often or as extensively.[[17]](#endnote-17) Accordingly, if individuals slated for deportation were to participate in Australian sanctuary, the numbers would be lower. However, in both countries, there is significant grassroots support employing radical tactics to interrupt detention and deportation processes.

In this paper, I first explore facets of detainee protest and their political significance, followed by an examination of faith-based sanctuary.[[18]](#endnote-18) While detainee protest is often pathologized and sanctuary activity is frequently interpreted as criminal (and conflated with sanctuary locality practices), I argue that both protest forms are political (not individual) and invoke a plural democratic community that is “fugitive” in nature. In the following section, I argue that both forms of protest create democratic states of exception through dissensus, counter-sovereignty, and fugitive democracy, primarily drawing on the work of Sheldon Wolin and Jacques Rancière. In the concluding section, I suggest that researchers committed to understanding democracy should pay attention to these protests as important instantiations of resistance to extra-constitutional state warfare powers, invoking a plural political community and modeling democratic inclusiveness.

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*A hunger strike is a dramatic, but civil form of protest. It is civil because it is ultimately a communicative act: it seeks to send a message and open up pathways for discussion and negotiation. It is a radical departure from impersonal bureaucratic communication. It is intended to shock, to bypass the system and reach out directly to the conscience of viewers, forcing them to recognise that they are implicated in the spectacle that they behold.*

Fiske et al.[[19]](#endnote-19)

Detaining refugee arrivals is a human rights violation but has been characterized as a policy aiding national security to more properly vet applicants and/or to ensure they appear in court when and if they go before a judge. Refugees in detention have already experienced trauma in their home country, en route to the “host” country, and are further subjected to traumatic conditions in detention. Without evidence against them, without a sentence, and with no guarantee of securing refugee status, detention forces refugees to wait and experience precarity.[[20]](#endnote-20) Both countries have devised legal mechanisms designed to undermine the refugee process and to expedite deportation before a successful application can be approved. It is also important to note that the majority of detention centers are prison-like, including guard violence, gender-based assaults, food deprivation, ad overcrowding. For all of these reasons, detainees participate in protests.

*Self-harming protests in detention* most often include cutting, suicide attempts, hunger strikes, and lip-sewing. These tactics are frequently employed after bureaucratic efforts fail to produce the desired result and/or after a lengthy period in detention, when the individual or group aims at challenging their indefinite detention.[[21]](#endnote-21) Aligning with Frantz Fanon’s analyses of decolonial resistance, Armbruster-Sandoval characterizes hunger strikers as “high-risk activists” who have moved from a more passive stance to one of self-sacrifice on behalf of a cause.[[22]](#endnote-22) This sacrifice is evident at the visceral level—we can remember a time when we have been hungry and appreciate the level of commitment one must have to deny oneself food or water for a period of time—and at the representational level, in shaming political forces responsible for untenable conditions.

Lip-sewing arguably takes the hunger strike to the next level. The black thread and large, crude stitches affirm a long-term commitment to the protest as well as the willingness to undergo the pain of stitching. Lip-sewing dramatizes what Arendt has identified as the stateless’ lack of the “right to have rights,” inviting those witnessing this protest to experience discomfort, revulsion, and destabilization.[[23]](#endnote-23) The state does not deny the intense suffering of refugees in remote, overcrowded detention centers with little access to water or ventilation, but repeatedly warns future immigrants not to wind up in the same circumstances. They shift the burden of responsibility to would-be refugees for their criminalization upon arrival. The government portrays this as a *safety issue*: through their indifference, and continuously cruel treatment of all refugees, regardless of circumstances, age, or disability, they will prevent refugees from arriving by boat and thus, save their lives.[[24]](#endnote-24)

Most research concludes that self-harming protest among refugees does not occur at the same rate or intensity outside of detention, even if the stress of uncertainty over legal status, encountering xenophobia, and economic instability take its toll.[[25]](#endnote-25) Self-harming protest in detention is correlated with time spent in detention, the amount of uncertainty in these conditions, and the conditions themselves.[[26]](#endnote-26) Both countries retaliate against self-harming activists by moving them to other detention centers to break up their community, disorient them, and cut off access to lawyers and activists’ groups. Public reactions to these protests are more mixed: from sympathy and activism on behalf of detainees to pathologization, following each government’s lead. The latter reaction depoliticizes self-harming protest, denying the context and import of this resistance and effectively leads to “epistemic injustice.”[[27]](#endnote-27) Negative reactions overdetermine protests, projecting bio-political assumptions on protesters, and ignore how these protests occur in a public health context in which detainee trauma is socially produced and experienced.[[28]](#endnote-28) From another perspective, in pathologizing self-harming protest, these acts are individualized and depoliticized.[[29]](#endnote-29)

However, “extreme protest” often draws more attention to these conditions than filling out bureaucratic forms because detainees cannot draw on existing rights as once interned, they are treated as individuals who are in the process of removal.[[30]](#endnote-30) The detainee is not merely stateless but criminalized along intersectionally racist, gendered, and class-biased lines that align with the host country’s neo-imperial policies. Acts of bodily self-harm have drawn attention to the painful and unjust circumstances refugee detainees have experienced, when simply following the rules did not.[[31]](#endnote-31) Lip-sewing, hunger strikes, and suicide attempts are a form of communication that cannot be reduced to words or conventional protest methods, but which challenge dominant understandings of their confinement conditions and legal situations.[[32]](#endnote-32) As Michael Feola argues, the affective and bodily elements of self-harming protest often propel others to “get their hands dirty,” move the bodies, or otherwise “suffer with.”[[33]](#endnote-33)

While these protest methods do not guarantee sympathy, they often lead to change when conventional protest and bureaucratic interaction do not.[[34]](#endnote-34) These protests further demonstrate how sovereign power over these subjects may be deeply totalizing and highly asymmetrical and yet, it is a power relationship that detainees can interrupt, alter, and contest.[[35]](#endnote-35) While detention centers are deterritorialized spaces of extra-constitutional activity, creating a “state of exception,” detainee protest produces a “democratic state of exception” by demanding help, better conditions for others, and ultimately, trying to close down this system. [[36]](#endnote-36) Their actions constitute a state of exception precisely because their statuses are formally illegible, they do not draw on extant rights, and the meaning of their protest cannot be reduced to any one demand or policy outcome. Rather, they confront sovereign attempts to control bodily movements and life sustaining activities and more broadly, the legal limbo in which migrants find themselves.[[37]](#endnote-37)

Detainee protest challenges state sovereignty, forcing others to be inconvenienced and/or to suffer with detainees. Accordingly, while protest does not draw on extant rights and may not be “legible” to some, the formally rightless do exercise agency.[[38]](#endnote-38) They create “dissensus,” opening a democratic state of exception.[[39]](#endnote-39) This state of exception is asserting democratic agency where it is not permitted or legible. That is, a legally illegible demos stages a confrontation with state power, forcing a relationship that was otherwise refused by the state. It is related to “civil” disobedience, drawing on the same self-discipline and political logic,[[40]](#endnote-40) but it is an assertion of power in a context of deep violence and imperialist racism, which is why work by Fanon, Mbembe, and Scott is more relevant to this situation than rights-based analyses.[[41]](#endnote-41) Self-harming protest in a relatively rightless context is “necro-protest” and thanatic, even if the individual survives—the point is understanding that this is not a context of positive freedoms and an uplifting of the human spirit, but one which entails pain and long-term harm.

Colin Dayan, whose work largely focuses on prisoners in solitary confinement, argues that “hunger strikes are the only weapon these prisoners have left. Legal avenues are closed. Communication with the outside world, even with family members, is so restricted as to be meaningless. Possessions—paper and pencil, reading matter, photos of family members, even hand-drawn pictures—are removed.”[[42]](#endnote-42) Solitary confinement is a site of “cultivated debilitation” in which cutting, suicide attempts, and other forms of self-harm are preferable to losing touch with reality.[[43]](#endnote-43) While self-harming acts are not always *interpreted* as political, they occur in a deeply political context that seeks control over voice, appetite, and bodily sensation—self-harm resists these moves with affective and sense-oriented countermoves.

For example, hunger-striker Ajay Kumar, who was detained in the Otero County Processing Center in New Mexico, refused food for nearly two months in 2018.[[44]](#endnote-44) Kumar fled political intimidation in Haryana, India, only to experience neglect and abuse in U.S. detention, while also facing the legal limbo of the refugee process. Accordingly, he decided that he must take matters into his own hands through a prolonged hunger strike. Although food withdrawal weakened him and has led to partial blindness and memory loss, he felt that a hunger strike allowed him freedom he otherwise did not have: “’I decided if I am going to die, I’ll die here.’”[[45]](#endnote-45) He continued the strike despite facing an additional form of persecution—esophogal forcefeeding, which is considered torture by most physicians—but argued “’I only thought, freedom or death—I’ll get one of the two.’”[[46]](#endnote-46) Kumar and other detainees were placed in solitary confinement for minor infractions, deepening the levels of control *and* abandonment by the state.

COVID exacerbated conditions at these facilities as it spread throughout the centers and the Trump regime deported very sick detainees back to their countries of origin. For example, “dozens of Guatemalans” were “flown home by” ICE from March of 2020 on, even though they tested positive for the disease.[[47]](#endnote-47) At the same time, hunger strikers at the infamous ICDC facility, which has been implicated in forced sterilizations of detainee women, brought attention to the spread of COVID in this Georgia facility, helping to shut it down.[[48]](#endnote-48) As hunger striker Nilson Barahona-Marriaga has stated: the closure of ICDC was not because of a more benevolent administration when Biden was elected, but “the people who spoke out against the abuse they experienced and who took to the streets to demand ICDC’s closure. This activist argued that when community comes together, it can “accomplish anything”: “What I am telling people is this: This is happening because of the people who spoke out. There is no other reason this is happening. I feel happy and I want us to celebrate this moment, but it is not the end. We have to close down Stewart and every other detention center.”[[49]](#endnote-49) Barahona-Marriaga invokes a political community beyond the detention facility in his actions and statements as well as a clear political goal, even if he lacks formal rights.[[50]](#endnote-50)

This form of protest must be situated in a context of *public* health, with recognition of its inherently political character, given the sovereign context and captive circumstances. Public health experts have already noted the allostatic load that undocumented migrants and refugees experience outside of detention and this load clearly intensifies in a prison-like situation in which the individual or family feels that they have been “disappeared.”[[51]](#endnote-51) Rather than idealizing self-harming protest, attention to allostatic load allows us to understand the amount of trauma caused by hostile rhetoric, criminalizing practices, and very bad detention conditions.[[52]](#endnote-52) At the same time, we can appreciate how self-harming protest communicates something more—or at least different—than the written word in that it signals extreme need and desperation. These actions destabilize by-standers who witness self-harming protest, as individuals must encounter and deal with the weakened body. It is important to note that an individual’s health is part of a “public,” even if this public consists of others who are confined, detainee guards, medical personnel, and administrators. In nearly every case, protest details have been leaked by detention employees, as well as by NGOs that are allowed some minimal contact with these centers. This is evidence that witnesses conceive of themselves as part of a community. The community does not have to be pre-established or even “visible” but rather can be a “community to come,” developed through “dialectic tension that produce[s] a particular praxis” aimed at justice.[[53]](#endnote-53)

However, just as importantly, these behaviors communicate something: they have a logic and a rationality of their own that go beyond bureaucratic logic. In theatricalizing *trauma* through self-harm, detainees hyperbolize their experiences of “meaninglessness and silence” in contrast to *grief* as KM Fierke defines it, which is experienced in a community often drawing on a symbolically rich “shared language.”[[54]](#endnote-54) Embodied acts affect administrators and guards at a visceral level, forcing them to suffer *with* the inmate and experience related, if not similar, forms of revulsion and pain.[[55]](#endnote-55) Self-harm can link societal grief and individual trauma, by provoking sensory instability while interrupting bureaucratic processes, thus challenging the temporal rhythms of sovereign bureaucratic power. As these detainees are in a legal limbo, their protest brings others into this limbo, creating “dissensus” rather than mere “dissent.”[[56]](#endnote-56) In contrast to the binary indicated by dissent, which operates along a formal-informal, legal-illegal axis, dissensus entails a reconfiguration of established political arrangements. Drawing on Derrida’s “deconstructive episteme,” Peter Westoby argues that community building can work to overcome “deadening binaries” opening spaces of hospitality for migrant others in the context of an open-ended notion of justice.[[57]](#endnote-57) Faith-based sanctuary similarly draws on a plural political community in the context of destructive political forces aiming to detain individuals indefinitely (which some take as “disappearance”) and to then exile them (which is legally the equivalent of capital punishment).[[58]](#endnote-58)

*Faith-based sanctuary*: Outside of detention, those who are about to be deported have had similarly bad luck when complying with bureaucratic norms. Individuals who have appeared at migration offices in the United States for mandatory check-ins have suddenly been informed they will be detained and deported; U-Visa victims who have complied with all provisions in their cases have still been denied this visa if a bureaucratic agent fails to certify the case; and in certain localities (often suburbs or rural areas) random police stops can trigger deportation, even if no infraction was committed.[[59]](#endnote-59) In Australia, expiring visas can trigger detention, even as paperwork has been filed to renew status.[[60]](#endnote-60) If these individuals have the support of a religious institution and some time before they are put into removal proceedings, they can move into a faith-based institution to live there until their case is reopened and reconsidered.[[61]](#endnote-61) When individuals do anticipate deportation from the mainland, they would either face removal back to offshore detention after receiving health care under Medevac laws, in which case, they would still be treated as prisoners (including being guarded and shackled) or, like US residents who participate in this movement, risk deportation because of increased enforcement of the “character test.”[[62]](#endnote-62) Accordingly, the Australian movement has nearly identical tactics, historical references, and beliefs, but does not have a number of would-be detainee participants living in faith-based institutions.

Sanctuary participants do not merely voice their opposition but physically occupy space from an “unauthorized” subject position, like self-harming protesters. Faith-based sanctuary might not seem very much like self-harming protest of detainees but there are important commonalities. I should note that this discussion is mostly limited to the US case, while the Australian faith-based sanctuary movement bases many of its tactics on the US model, there is no systemic use of sanctuary by migrants at this moment.[[63]](#endnote-63) In the United States, those who take up residence in faith-based institutions are migrants who have been scheduled for deportation, which means that like detainees they have lost most residential claims and personhood rights. While quite a lot of migrant statuses in the United States are merely based on the “privilege” and not “the right” to reside in the US, this privilege has been revoked when they receive a notification of impending removal.[[64]](#endnote-64) This is not the case for most resident foreigners in Australia except for foreigners whose visas have expired—in this event, they have been detained and scheduled for deportation. In both countries, low-level crimes can trigger deportation, even when the individual has resided for most of their life in the host country.[[65]](#endnote-65) Many of these crimes would be classified as misdemeanors in the US if committed by a US citizen, while Australia arguably has a higher bar for what constitutes a crime.[[66]](#endnote-66) Even so, legal scholars and historians consider deportation as the legal equivalent of the death penalty, particularly for long-term residents with significant ties to these countries.[[67]](#endnote-67)

When individuals are slated for removal, they are often (but not always) detained and then deported. In the United States, those who request sanctuary from a faith-based group move into a religious structure before they can be detained or removed. They must live in the religious part of the structure and normally, they are surrounded by clergy, migrant advocates, and other supporters. Most often, months of negotiation and planning has taken place leading up to the tie when sanctuary is offered to an individual or family slated for detention—this includes convincing the faith community that sanctuary itself is worthwhile and that the particular circumstances of the individual merit this support. There is often a press release day with supporters forming a chain around the structure in order to demonstrate to ICE that the would-be deportees have a community and long-term ties to the country and to inform the public about the sorts of individuals slated for detention and deportation.[[68]](#endnote-68)

Like detainees, the legal status of the individual slated for deportation is of a “non-person” and “outlaw” in the US. This is because despite 14th Amendment rights that often include a review of the individual’s community ties, including considerations about how a family would be affected if the individual is removed, these ties are no longer under consideration when they have been put in removal proceedings. In sanctuary, participants advocate to have their cases re-opened and re-considered, while their community educates the public on nuances of their case that cast into doubt discourses on migrant illegality.[[69]](#endnote-69) The sanctuary participant describes their long-term ties to the national or local community and any harms their removal will cause.[[70]](#endnote-70) NGOs working in this area have also advocated for policy change, including foreign policy, dating back to the 1980s, often using these testimonials to illustrate the negative consequences of forcible displacement.[[71]](#endnote-71) While faith-based sanctuary allows for much more freedom than being in detention, it involves a choice to be confined and sometimes, isolated.[[72]](#endnote-72) Like hunger strikes and self-harming protest, this mode of protest is a form of *dissensus*, which importantly:

involves a mode of emancipation, [and] is inseparable from the construction of sensible frames in which bodies are torn from their assigned places, and exhibit *verbal competences and emotional capabilities they are not supposed to have by virtue of the space-time they occupy*. At the heart of dissensus, therefore, are *processes of dis-identification*, or of the undoing of the bonds tying bodies to specific places, of the various forms of privatization of speech or emotion.[[73]](#endnote-73)

Although I am focusing specifically on this form of sanctuary, informal encampments and the *Sans Papieres* movement’s occupation of churches and public buildings in Europe have drawn on the same tools as faith-based sanctuary, affirming the *importance of place* in exercising counter-sovereignty.[[74]](#endnote-74) That is, protest is not merely effective in verbal or written communication but in terms of enacting alternative geo-spatial claims.[[75]](#endnote-75) As they do this, they do not merely resist state sovereignty but reconstituting space as a site of information, power sharing, and humanizing dialogue.

It is important to note that each country’s recent sanctuary activity was inspired by a key case: Elvira Arellano’s case in the United States and the Baby Asha case in Australia. In the United States, the Elvira Arellano case spurred the New Sanctuary Movement in Chicago. Arellano moved into the Adalberto United Methodist Church in 2006 after receiving a notice of impending removal.[[76]](#endnote-76) Her history is complicated in that she had been deported in 1997 and then re-entered the country, getting a job at O’Hare airport cleaning airplanes.[[77]](#endnote-77) Arellano was a single mother with a US born son and while she had committed a criminal offense by re-entering the US after being deported in 1997, she was only targeted for deportation in the context of 9/11 workplace raids of federal sites, including airports.[[78]](#endnote-78) Arellano was advised that she could be deported because of her re-entry and because she was using a fake social security number to work, but she was granted a stay of removal because her son was sick.[[79]](#endnote-79) What this meant is that she had the privilege to stay in the United States but not the right, which is the case with all migrants who have various forms of discretionary status.[[80]](#endnote-80) Because she was already under scrutiny, she was aware that she could be deported at any moment without cause.[[81]](#endnote-81) Living in Chicago in these precarious circumstances, she recounts that she became increasingly involved with the Adalberto Church:

I met the Illinois Coalition of Immigrant and Refugee Rights and members of the Adalberto church, including my pastor Emma Lozano. Their organization was called Centro Sin Fronteras; all of them were Puerto Rican. They held a press conference at O’Hare protesting my arrest. The media learned about my case, and I remember telling the press that I was a mother who wanted my son to succeed in life.[[82]](#endnote-82)

Receiving a final order of removal in 2006, she requested sanctuary from the church and moved there with her son Saul for roughly a year (he was 8 at the time).[[83]](#endnote-83) A few months after she and Saul took refuge in the church, *Time Magazine* featured her as a “Person of the Year” in December 2006.[[84]](#endnote-84) By the next year, she was considered a prominent figure not only nationally but also throughout Mexico. Her move into the church is now viewed as the event that relaunched the faith-based sanctuary movement in the United States: The New Sanctuary Movement, centered primarily in Chicago and Philadelphia but with supportive sites throughout the United States. In 2007, Arellano and Saul left the church to fly to Los Angeles and support the re-established sanctuary movement there, as well as participating in marches. She was arrested immediately and deported to Mexico the same day with her son.

While most faith-based sanctuary cases deal with someone who has not yet been deported and is not usually as prominent, Arellano’s arrests at O’Hare and later in Los Angeles can be interpreted as politically based rather than individually.[[85]](#endnote-85) In both cases, outside circumstances motivated broad arrest sweeps of migrants with little attention to their backgrounds or prior claims. In the first case, the Bush Administration reacted to the events of 9/11/01 by changing key features of migration policy (e.g. making detention mandatory for nearly all “unauthorized” arrivals) and migration institutions (like key changes to the Board of Immigration Appeals).[[86]](#endnote-86) They relied on spectacular military raids of exploitative job sites where low-tier workers were often abused, to demonstrate to the public that they were policing the country for terrorists.[[87]](#endnote-87) This conflation of anti-terror policing and migration was something that has been remarked on by many, but Arellano was one of the earliest to identify this trend:

After 9/11, the federal government executed raids of the homes and workplaces of immigrants to find potential terrorists. They then went to airports. I was arrested on December 10, 2002, on charges related to using a fake Social Security card in a federal workplace. ICE came to my house and knocked on my door, asking me if I carried weapons. I told them to not enter. *I am not a terrorist*. I was a worker, a mom — the only thing that I did was work to survive in this country with my son. I was then detained. But my three-year-old son couldn’t come with me. While ICE was processing me, I saw more people detained...when I was arrested, my world was closing in because I wasn’t sure if I would survive in Mexico. Where would I work, especially having my young son? [[88]](#endnote-88)

Her second arrest occurred at a time when immigrant mega-marches were occurring, there was greater undocumented activism (e.g. in the Day Without a Mexican), and the New Sanctuary Movement had emerged in several key cities. The Bush Administration arrested key figures in this movement as retaliation for their activism.[[89]](#endnote-89) Arellano’s brief time living in the church relied on a provision that immigration police would not enter a house of worship (and later other “sensitive locations” were designated as off-limits if there was no civil strife or criminal activity).[[90]](#endnote-90) This provision has led to what some have called a “*de facto* acceptance” of faith-based sanctuary, even if it is not legally codified and even though some activists have been charged with human smuggling and/or harboring criminals.[[91]](#endnote-91) This makes a seemingly exceptional practice the norm, even though it is still exceptional in its relation to “normal” law. As Nicholas de Genova points out about this case, “what appeared, however tentatively, to be Arellano’s de facto immunity from deportation was indubitably a testament and a tribute to the vitality and potential volatility of the mass social movement from which her bold but desperate act of insubordination arose.”[[92]](#endnote-92) In this way, we can interpret Arellano’s case as proof of the strength of sanctuary tactics even at formal political levels as well as evidence of community support for “irregular” migrants.[[93]](#endnote-93)

Since Arellano’s participation in faith-based sanctuary, the New Sanctuary Movement has only grown. It was particularly strengthened during the Obama Administration because undocumented activists could “come out” and challenge authority more than in the previous or subsequent administrations.[[94]](#endnote-94) At the same time, it was also necessary for the movement to grow, as each of these presidential administrations adopted “totalitarian tools” to increasingly detain and deport people no matter which party controlled the executive.[[95]](#endnote-95) After Arellano’s second deportation, she faced harassment and threats in Mexico, finding it hard to work or conduct daily activities because of her notoriety as an activist and therefore, a “troublemaker.”[[96]](#endnote-96) Because of these difficulties, she re-entered the country a third time and is currently living in the United States with her son as of this writing (winter 2023).[[97]](#endnote-97) Arellano’s case is not a clear “success” by policy standards (nor a linear approach to democratization), but from the perspective of sparking an entire grassroots movement, spreading awareness about the injustice of migration policy, and confronting sovereign powers that have not provided many avenues for redress, her case was and is one of the most important successes in recent US history.[[98]](#endnote-98)

Although it is unclear what will happen to her, there are numerous instances of cases being re-opened due to sanctuary participation and agitation. In many instances, bureaucratic mistakes have led to the person’s impending detention and deportation. Like the Elvira Arellano case, the Australian sanctuary movement was sparked in 2016 by focus on a single case: the famous “Baby Asha” controversy. In the wake of 9/11, Australia increasingly excised territory for the next decade and a half, requiring that the majority of “unauthorized” arrivals were detained offshore. The government made it nearly impossible to challenge unjust or mistaken decisions. As O’Sullivan explains:

The current legal position [of the Australian High Court] is that the designation and transfer of asylum seekers to the 'Regional Processing Centre' in Nauru is supported by sections 198AB and 198AD of the Migration Act. Legal challenges to these provisions in the Migration Act have not been successful.' Indeed, the restrictive way in which the provisions are now worded make it extremely difficult for litigants to successfully utilise judicial review or constitutional arguments to invalidate transfer decisions to Nauru or Papua New Guinea.[[99]](#endnote-99)

In 2016, two hundred and sixty-seven refugees who needed medical attention were given urgent care on the Australian mainland (their care was provided for under “Medevac” provisions that have been alternately authorized and suspended[[100]](#endnote-100)). After they received this medical care, they faced deportation back to the detention centers which had most likely caused or exacerbated their physical and mental illnesses.

One of this group of refugees—a pregnant refugee woman receiving medical care in Australia—challenged her impending deportation back to an off-shore site in Australia’s High Court.[[101]](#endnote-101) The High Court affirmed the government’s right to deport Medevac refugees and the negative ruling affected all refugees receiving medical care on the mainland. More broadly, the High Court “confirmed by majority the constitutional validity of Australia’s controversial system of off-shore processing of those claiming to be refugees.”[[102]](#endnote-102) This decision sparked the grassroots response that used Baby Asha as its focal point.[[103]](#endnote-103) The #LetThemStay sanctuary movement emerged and was centered on religious institutions “offer[ing] sanctuary to the families who might otherwise be sent off-shore for processing. This reflects the reality that most asylum seekers would rather remain in Australia than be sent to an offshore processing facility.”[[104]](#endnote-104) Baby Asha who had accidentally put her hands in scalding water and needed immediate attention was one of 37 babies receiving medical care.[[105]](#endnote-105) After being treated for burns, she was slated for deportation back to Nauru as a result of the court decision. Therefore, she faced return to the dangerous conditions she had previously experienced.[[106]](#endnote-106)

The community response to her impending deportation was significant, with mass demonstrations occurring in several cities, including mass protests outside the hospital (Lady Cilento in Brisbane) where Baby Asha was receiving care for her burns.[[107]](#endnote-107) Medical personnel also communicated to the government that they would not release the baby if she were going to be deported to the same site. A number of churches also responded to the High Court ruling at this time, hosting civil disobedience training, including tactics to surround deportees and peacefully resist officers.[[108]](#endnote-108) These tactics included trainings to extract detainees from authorities’ grasp and “participants were trained in ‘body blocking.’”[[109]](#endnote-109) For example, Dr Peter Catt, the dean of St. John’s cathedral in Brisbane held a training for two hundred and fifty people and has continuously worked to offer sanctuary since that time.[[110]](#endnote-110) The goal was to offer exactly what the US faith-based movement provides, which Misha Coleman of GetUp explained:

The idea is that human rights groups and advocates will try to get those asylum seekers to a church before the border force officials come and will then surround them by joining arms in a protective, peaceful human barrier to block them off from the police and border force staff trying to detain them. (e.g. if in a hospital on the mainland)[[111]](#endnote-111)

While this movement does not revolve around a significant group of migrants moving into faith-based institutions, it has rather been established around an on-going *offer* of hospitality for these detainees and would-be detainees if it were ever needed. Key tactics include(d) interrupting arrests, blocking traffic, and attempting to physically stop migration agents from transporting migrants back to detention. During the Baby Asha controversy, congregants and secular activists joined together for civil disobedience training in the event that deportees could take sanctuary. They also used social media outlets to inform other Australians about this situation, so that the public understood that very sick young people were scheduled for detention and likely forced return to their countries of origin.

It is important to note that the explosion of sanctuary activity did not emerge in a vacuum in that faith-based and secular groups had been protesting Australia’s mandatory detention policies for years.[[112]](#endnote-112) This activism included offers of sanctuary to East Timorese individuals in 1995. Other types of activism and advocacy have included gathering and publishing testimonials by detainees; visiting detainees when possible; advocating for legislative change; educating the broader public; and sometimes, traveling to rural areas where detention centers like Woomera were built, to cut through fencing and help refugees escape.[[113]](#endnote-113) Baby Asha and her family were put into family detention on the Australian mainland because of these protests, which was considered a victory at the time.

Since then, the Australian government has increasingly moved to deport long-term residents for reasons related to “character” and/or poverty.[[114]](#endnote-114) To be clear, this does not involve the sort of mass deportation that has been put into motion in the United States.[[115]](#endnote-115) Nevertheless, the same key figures and groups from the #LetThemStay movement have mobilized to offer sanctuary to these individuals if they do receive notification of impending detention and deportation. Clergy and activists have also worked with some local governments to refuse cooperation with migration authorities to detain and deport people, much like US sanctuary localities. Alternatively, as Peter Hodge points out, the near-permanent presence of these protesters in key sites throughout Australia has created *informal sanctuary localities*.[[116]](#endnote-116) Rev. Catt of the #LetThemStay movement also recognized how sanctuary locality practices were emerging to support the faith-based movement: "We were grateful to the state and territory governments who offered their territories as sanctuaries as well — as did schools and hospitals," he said. "We are calling on the Government to reverse its decision to cut support to these vulnerable people.”[[117]](#endnote-117) Thus, like the US sanctuary movement, faith-based activism might have been at the center of effective protest activity, but sanctuary locality practices aided these efforts.[[118]](#endnote-118) All these developments are evidence of broad public support for migrants in these circumstances, standing in contrast to the government’s policies.

The “Home to Bilo” campaign (#hometobilo) is an important example of what protesters can achieve. Protesters interrupted the government’s deportation of a couple and their two small children to Sri Lanka. Both parents had expressed a fear of future persecution if forcibly returned to Sri Lanka: the parents each experienced threats and witnessed violence in their country before seeking refuge. After the mother’s visa expired, the family was put into detention. When the government attempted to deport the family in 2019, protesters intervened:

Supporters arrived at Melbourne Airport to protest the imminent deportation, with some gaining access to the tarmac. An injunction to prevent them from being removed from the country was granted while the plane was en route to Darwin.[[119]](#endnote-119)

The government then re-detained the family, but state authorities have recently allowed them to return to their home in the Bilo community in the spring of 2022.[[120]](#endnote-120) This case demonstrates how sanctuary protest can work to interrupt and alter the government’s process of arbitrary confinement and forced removal. At the same time, the family had to withstand quite a lot to achieve this victory as a headline indicated: the youngest daughter had spent every birthday in detention.[[121]](#endnote-121)

Reactions to sanctuary in Australia have largely hinged on whether faith-based sanctuary is legal or not, in contrast to the more complex responses in the United States, which involves conflating sanctuary localities and faith-based sanctuary.[[122]](#endnote-122) What is interesting in understanding broad reactions to faith-based sanctuary is the focus on the practice as a problem, rather than the extra-constitutionality of detention.[[123]](#endnote-123) Sanctuary practices—from cultural to legal to faith-based—are analyzed outside of the broader context and viewed as either too “liberal” (i.e., insufficiently radical) or as a new form of criminal activity.[[124]](#endnote-124) Below, I contextualize these practices as forms of counter-sovereignty that are not only “fugitive democracy” but perhaps the best instances of democratic activity in each country.[[125]](#endnote-125)

*~understanding the theoretical significance of these protest methods*

I investigate these forms of protest because they are the specific, dominant methods that detainees and would-be detainees use, in contrast to protest marches, strategic litigation, or self-immolations. Both protest forms emerge directly from captive or would-be captive circumstances and mirror the precise forms of state control that are exercised (or potentially deployed): food withdrawal and silence confronting a state that rigidly controls life-sustaining activities; self-confinement in a faith-based institution to challenge arbitrary, indefinite imprisonment; and self-harm to stop forcible displacement. They also symbolize their formal powerlessness—each protest form is exercised by individuals who are not legally recognized as rights-bearing individuals. These are the weapons of those who have been formally marginalized but nevertheless can wield a sort of sovereign power—the power of their own life and death, confinement and exile, exercising informal autonomy in near-total circumstances.

These protests produce a *democratic state of exception*: *“fugitive democracy,” dissensus*, and *counter-sovereignty*. These are theoretical concepts with which we can understand democratic activity by an illegible or unauthorized demos, using methods that do not harm others, but which are considered outside of the realm of everyday civil disobedience. In these protests, they reclaim bodily autonomy and space as a direct challenge to state sovereignty. Wolin has characterized “fugitive democracy” as activism that exposes democratic deficits in formal politics but the “fugitive” element also indicates something other democratic theorists have argued: truly democratic activity ebbs and flows, depending on the issues at hand.[[126]](#endnote-126) These ebbs and flows do not just mark successes and failures that end movements but also the fluctuating nature of the “demos” as some individuals commit their time to different issues, often based on interest. With regard to the more critical sense of this term, “fugitive democracy” indicates a “popular distrust of government” which “exposes the shallowness” of totalizing, undemocratic forms of government.[[127]](#endnote-127) Hunger strikes, lip-sewing, and faith-based sanctuary are rooted in this necessarily critical stance towards their home government, as protesters explain why they fear being forcibly returned to their country and what key elements of their cases the US or Australian governments have missed. The degree to which there is often a relationship between the persecuting country of origin and the host country makes this a *transnational* form of “fugitive democracy.”

For all these reasons, fugitive democracy is often fluid in meaning and tactics, (again) interest-based, and indicates a shifting political community. In this way, it is “fugitive” reflecting how modern power is fluid, with multiple sites of power, and because there are appeals to formal *and* informal agents.[[128]](#endnote-128) Wolin notes that fugitive democracy is a break from “the modern and classical conception that ascribes to democracy ‘a’ proper or settled form” and that the ephemeral element of civic participation, resistance, and dissent ensures that democracy is not “tamed” through institutionalization.[[129]](#endnote-129) Chantal Mouffe, Saskia Sassen, Naomi Klein, and others have argued that more complex, sometimes sporadic forms of protest, often involving acts of micro-resistance logically mirror today’s fragmented forms of power, both informal and formal, economic and political.[[130]](#endnote-130) This fugitive quality—i.e. specifically oriented to the individual or group circumstance—is particularly important when resisting not only the state’s attempts at achieving a monopoly on power and violence, but also homogenizing discourses about migrants.[[131]](#endnote-131)

These protest forms are literally and figuratively “weapons of the weak,” but also challenge the notion of absolute victimhood, abjection, and/or powerlessness.[[132]](#endnote-132) They claim space (through occupying a faith-based institution) or assert rights (through hunger strikes) for gendered and minoritized individuals whose embodiment is policed—as Hodge argues, these protesters “perform the sociality being asserted in powerful ways to affirm bodies that matter.”[[133]](#endnote-133) Detainee protest also aims at *dissensus*, producing a constructive but uncomfortable set of visceral and epistemological circumstances. [[134]](#endnote-134) Dissensus involves “processes that effect a suspension of the logic that institutes politics,” and it can be contrasted to an easy consensus that is achieved among friends—rather, dissensus identifies a community that does not want to or has yet to be identified.[[135]](#endnote-135) This could be called a moral community because it calls for action on behalf of others; it invokes interpersonal connections that some members of the public have not yet made; and as Hodge argues, creates a “body politic of ‘being-in-common’ contrasting this to the logic of national body politics and governmentality characteristic of administrative interview processes and categorisations.”[[136]](#endnote-136) In this way, these protests do not claim rights or political powers to preserve the status quo but to pose an *alternative* to nation-state affiliations.[[137]](#endnote-137)

As Rancière contends, dissensus involves destabilizing what is taken to be “self-evident” through “counter-narratives” challenging pathologizing interpretations.[[138]](#endnote-138) This is something Australian researcher Lucy Fiske has found in working with detainees who have practiced self-harming protest: protesters believed it was very important to tell their truth.[[139]](#endnote-139)Creating dissensus through protest invokes a public despite attempts by political leaders to discursively individualize what happens to detainees, including their illnesses, malnutrition, and captive circumstances.[[140]](#endnote-140) In contrast to assumptions and literature that ignores or pathologizes self-harming protest (even if empathetically), detainees who have engaged in self-harming protest report feeling better once they have acted—they felt “human” and a connection with other displaced suffering foreigners.[[141]](#endnote-141) As Sayed, a refugee in Australia, argues:

You gain self-confidence because in the environment you are in, you are depending for everything and you abide by the rules, so you have to like they tell you to do. They set the time for food, you don’t have control on anything. When we do something like that [self-harm]…it’s like a self-independence type of thing. That’s what happens. That’s why we protest like, because you are achieving something, even though you’re not, in the short term, yes you are, but in the long run you won’t, but still you will say, you will gain the self-confidence.[[142]](#endnote-142)

As indicated by Sayed’s words, detainee protesters report feeling like actors who (sometimes) finally received the attention they needed.[[143]](#endnote-143) Behrouz Boochani has noted that Australian leaders and conventional media outlets portray these protests as simply trying to improve conditions in detention, misunderstanding protesters’ broader aims:

The issue is plain and simple. We did not come to Australia to live in a prison. The peaceful protest by refugees is not because we want to remain in this prison. We are resisting because we want freedom in a safe environment. The core concern is freedom … only freedom. The rest of what you hear are just peripheral issues.[[144]](#endnote-144)

This might not mean success in terms of formal policy change or border abolition, but as Michael Feola argues, “from this vantage point, the deepest work of political agency is not necessarily to present a specific, delimited claim that would give rise to policy outcomes; rather, it is to destabilize the economies of appearance according to which some are viewed as legitimate claimants to social goods and others are not.”[[145]](#endnote-145) Dissensus, creative tension, and disseminating counter-narratives are key goals of these two forms of migrant protest.

Perhaps surprisingly, hunger strikes, lip-sewing and faith-based sanctuary often lead to files being opened, cases reconsidered, and delays in deportation.[[146]](#endnote-146) They have also led to improvements in detention conditions, and in one case, shortened times in detention.[[147]](#endnote-147) They also bring attention to circumstances invisible to the public, educating the demos about undemocratic state policies. Some famously abusive centers have been shut down because of protests—from Artesia in New Mexico to Nauru and Woomera centre closures run by or in partnership with Australia—and they have also led to positive policy change.[[148]](#endnote-148) However, the degree of sacrifice required to effect change should not be necessary: people should not have to starve themselves, cut themselves, or sew their lips and ears together to finally get the medicine they needed, the legal help they requested, or to have their case reviewed.[[149]](#endnote-149) However, absent of meaningful rights, even the right to exist, these methods are their tools to dissent, stage demands, and communicate with others. This is particularly true in two countries that view themselves not merely as democracies but leaders of “the free world.”

Through research and participation, I have found that the two protest forms I explore reveal quite a lot about democratic agency and community formation, even in repressive circumstances. There are two important modalities of these migrant protests to consider. First, self-harming tactics are thanatic—that is, injurious, even lethal—but also self-regarding and they reveal state violence and the pain of forced displacement to others. Second, protesters create a democratic state of exception within the legal state of exception: they expose injustice, act on behalf of causes affecting significant numbers of people, and assert the equal human worth of all foreigners. Resistance is a dynamic and kinetic activity that cannot be founded on a static notion of freedom or rights.[[150]](#endnote-150) It involves a “deconstructive episteme” that does not merely critique but provides alternatives: alternative spaces, communities, and relations to the law.[[151]](#endnote-151) To argue that this resistance is a form of counter-sovereignty is to recognize its deeply political nature, which involves an assertion of bodily agency as a challenge to powers aiming at docility. The sovereign element is not tied to life and death per se but autonomy, which involves bodily and spatial control over one’s circumstances.[[152]](#endnote-152) While this control has been conceived of as *preconditional* to civil liberties by modern theorists such as Locke, Rousseau, and de Tocqueville,[[153]](#endnote-153) in circumstances of captivity and near-total control, these elements of biological life have been politicized and cannot be taken for granted. [[154]](#endnote-154) Unsurprisingly, life and death are at stake in the contexts that detainees and would-be detainees encounter, and accordingly the political power these individuals exercise is *counter*-agency in response to a state that wields its tools of violence over foreigners as if they were on foreign soil. [[155]](#endnote-155)

Any migrant protest in a context of near-total power (particularly if already detained) should be viewed as a direct response to attempts to control these foreigners’ lives at a bodily level. For example, when detainees sew their lips together while also refusing food, their actions symbolize the voicelessness and powerlessness they feel when encountering state authorities. At the same time, this is an assertion of agency outside of the rigid control over bodily movements, food access, and other life-sustaining activities. Alternatively, when a would-be detainee moves into a faith-based institution so that federal authorities cannot detain and deport them, they interrupt a sovereign process that seeks to define and appropriate them.[[156]](#endnote-156) These moves do bring the detainee closer to death or lead to self-confinement in the case of sanctuary, but on the individual’s terms and within a context in which the person is being confronted by the warfare state—that is, a state prepared to deploy violence.

Some very good work has been done on migrant agency, particularly the agency of the stateless when they are encountering state authorities charged with deploying powers of the warfare state.[[157]](#endnote-157) The point of studies highlighting the possibility of foreigners’ agency in dealing with the warfare state is to explain how and why forced migrants are not abject, mute victims even if the power dynamic is highly asymmetrical. The ability to exercise agency at all when confronting the warfare state is politically noteworthy and a precondition for these migrant protests.[[158]](#endnote-158) However, I believe it is important to distinguish between stateless individuals’ agency and their political protest: I am not suggesting a definitional opposition but rather that one is the precondition for the other.[[159]](#endnote-159) Agency exercised at border sites while attempting to enter a country surreptitiously, the negotiations of camp dwellers with state agents, and the demands for concessions while drifting on the high seas are all important instances of individual power.[[160]](#endnote-160) Understanding that migrants can exercise agency at these moments exposes how the sort of sovereign power deployed by the warfare state still has gaps and openings that could become sites of contestation, resistance, and protest. Protests are not merely exercises of individual autonomy but are *political* because they invoke an ethical community asked to effect broad structural change.[[161]](#endnote-161) They are democratic because they rely on persuasive methods to convince a plural community that conventional beliefs and narratives are dehumanizing and destructive; they aim at greater political inclusion; and they invoke justice-oriented notions of duties and responsibilities.

Detainee and would-be detainee protest differs by degrees from the exercise of agency, including: a different legal context (these individuals have been marked as non-persons and removeable), their invocation of a political community (versus the individual agency of a border crosser), and their concerted political efforts to defiantly and explicitly resist displacement, bodily control, and limitations on free expression.[[162]](#endnote-162) It is important to note the constraints on any individual as they face deportation or when they are detained—agency cannot be defined by “choice or free will, but rather how even on the edges of states and societies, faced with formidable levels of marginalization, people continue to resist, find room for negotiation, and exploit these narrow margins,” as Mainwaring states.[[163]](#endnote-163) As James Scott, Akhil Gupta, Achille Mbembé, and Frantz Fanon have explored, protest in thoroughly coercive, rightless circumstances occurs but involves more injurious methods and higher stakes.[[164]](#endnote-164) On the one hand, Gupta and Scott conceive of acts that Foucault would call tactics of micro-resistance, which entail protest methods that are more secretive, but which serve to enact non-compliance and demonstrate that individuals have not internalized dehumanizing narratives. Fanon and Mbembé consider resistance at the necro-level, which is relevant to hunger strikes, lip-sewing and other self-harming acts that can weaken the body. It is important to emphasize that these protest methods are thanatic or necro because of the political context and not due to the individual acts. While faith-based sanctuary cannot be characterized as necro because the practice is tolerated by the state, non-intervention is not guaranteed: state agents *could* legally use lethal force against individuals resisting arrest.[[165]](#endnote-165) In all cases, the stakes are very high and therefore do not correspond to fights for civil rights by citizens. This is not to discount the history of lethal force used against civil disobedients, but rather to note that non-personhood at the border or excised spaces that are “constitution free” alter the political context in important ways.[[166]](#endnote-166) These protests occur in geographical locations in which the state can and often has used military power and/or agents unconstrained by constitutional scrutiny. As the state deploys sovereign powers, protesters deploy forms of counter-sovereignty.

In the sense I have used this term to characterize migrant protests, the word *sovereign* can be defined as the self-governance of a political community, conferring legitimate political authority over migrants’ existence. As Daniel Philpott explains, a standard global north definition of sovereignty entails a notion of supremacy over other laws and authorities—in this case, migrant protest asserts the rights of migrants to define their modes of bodily and spatial existence themselves over and above the warfare state.[[167]](#endnote-167) The fact that it is *counter-*sovereignty indicates a relationship with a power source attempting to assert its total control and supremacy.[[168]](#endnote-168) Counter-sovereign agency does not merely react or challenge this authority but destabilizes its territorial claims and exposes the fiction of universal democratic citizenship.[[169]](#endnote-169)

More broadly these protests expose the excess of meaning that these systems have wrought and the long-term damage of punitive policies. One example of this is forcing foreigners to wait months, if not years, to find out about their legal status, which increases their “precaritisation and serves to enforce the disposability of migrant life.”[[170]](#endnote-170) The production of uncertainty and terror is purposeful and is a totalitarian tactic: “’Absolute power is the power to make oneself unpredictable and deny other people any reasonable anticipation, to place them in total uncertainty.’”[[171]](#endnote-171)At the same time, states’ desire for total control over foreigners and foreignness is a fantasy of the modern bureaucratic state that power can be whole and seamless just as a monarch’s power was purported to be. In the gaps in state power, individuals can tell their stories, reversing dehumanizing narratives, or through occupying space in unexpected ways.[[172]](#endnote-172)

Interpreting self-harming protest and faith-based sanctuary as a form of sovereignty is to emphasize the *public* nature of these protests, their reliance on a pre-existing political community or a community that is yet-to-be-formed, and the political reversals at which they are aiming. It is also to recognize the deeply political nature of the context in which they find themselves—we cannot choose to see acts of agency and protest as individual or apolitical.[[173]](#endnote-173) Most importantly, each protest form involves individual choice and self-definition but requires solidarity with others in some way—this is true even when the aim is dissensus. We could conceive of the resultant community as one formed by democratic agonism aiming at reaching agreement on shared vocabulary, issues, and solutions.[[174]](#endnote-174)

~*what those who care about democracy should appreciate about these protests (the import for political theory)*

Migration itself is not an “ethical” issue nor an individual choice—trade policies, foreign policy, and migration policies overwhelmingly set a complex structural context in which poorer, unauthorized migrants can act but not freely.[[175]](#endnote-175) A profound mistake is made in failing to recognize the political context of unauthorized migration and migrant protests; that is, in not accounting for the history of migration policies and the geo-spatial effects of “constitution-free” zones. Added to this is the absence of awareness about where the rule of law is in effect and where military force is or can be used to round up refugees in boats and/or to forcibly transport sick migrants “home.”[[176]](#endnote-176) The importance of these protest forms is first to bring awareness about the forms of total power, totalizing surveillance, and absence of “rights” in any meaningful sense involved in daily migration enforcement in both of these countries. Second, absent a historical account of these policies, we fail to understand highly selective enforcement rooted in older processes of imperialism and eugenics.[[177]](#endnote-177) These protests are important instances of “fugitive democracy” (Wolin) as they invoke a “plural” political community (Arendt). They engage in a “deconstructive episteme” (Westoby) challenging damaging narratives to explode the concept of refugee and expose the fiction of an “original.”

Detainee protest and faith-based sanctuary each draw on older protest forms to respond to relatively new policies that involve mass roundups of migrants (US), mass detention (Australia and the US), and mass deportation (Australia and the US). Protests demonstrate the significance of space, silence, and expressing allostatic load. While space is taken as a background factor, sit-ins (e.g. refusal to leave a cell or recreational space) and occupation of a faith-based institution highlight the importance of claiming space and spatial autonomy. Similarly, while silence and expressions of pain can be viewed as a withdrawal from politics rooted in depression, this trauma has been intentionally and politically produced. It can be interpreted as a form of “political trauma” and unresolved mourning as KM Fierke has theorized rather than individual grief.[[178]](#endnote-178) While in the past, public grief signified consensus about tragic events, seeking closure through discussions, rites, or symbols, *political trauma* signifies denial, lack of resolution, and the possibility of on-going harm. Fierke suggests that understanding this trauma as part of a political and societal fabric should lead to *political* solutions and attempts at societal healing—rather than treating merely individual symptoms or simply ending harmful policies.[[179]](#endnote-179)

Although the political mainstream—especially political leaders—often focuses on physical injury as authentic harm, recent public health studies indicate that hostile or alienating rhetoric towards foreigners (particularly detainees) can lead to psychological stress, unrelenting fear, and depression.[[180]](#endnote-180) For this reason, correcting damaging assumptions and narratives is a key goal of protesters. Protests call attention to material effects on people (trauma, illness, injury) that cannot be characterized as mere inconveniences or short-term political losses.[[181]](#endnote-181) Importantly, accounting for illness and trauma helps us to understand that individuals are not merely inconvenienced by punitive policies for a brief moment in time but in a way that can affect them in the future, if not the rest of their lives. Furthermore, each protest method challenges the “epistemic injustice” of being characterized as criminal, dysfunctional, or barbaric in their own way.[[182]](#endnote-182) Through self-harming activism, detainees “enact a democratic politics of the part-taking of those with no part.”[[183]](#endnote-183)

Press conferences, petitions, and sermons (e.g.) similarly create alternative visions of who migrants are and their specific circumstances. These efforts, in turn, create a democratic state of exception—producing democracy where it is not authorized nor officially legible. In contrast, “epistemic injustice” involves a “series of images and tropes that center on themes of deviance and aberrant behavior” as detainees’ reports of their experiences and hopes are “discounted,” thereby producing a *“credibility deficit*.”[[184]](#endnote-184) These forms of migrant protest do not aim at mere recognition but to reconfigure sovereign arrangements to purposefully create uncertainty through “improper” acts and inject “democracy” where it purportedly does not belong.[[185]](#endnote-185) Challenging damaging narratives is not attacking what is merely epiphenomenal to other, more material practices but rather attacks images of existential illegality, guilt before innocence, and imperial assumptions based on country of origin (rather than proof). Collette Guillaumin has pointed out that deep-rooted, historical prejudice based on pseudo-science cannot merely be argued away or rationalized—rather, protesters use space, silence, self-harm, and sacrificial acts to provoke discomfort, visceral instability, and to unsettle apparently natural truths.[[186]](#endnote-186) The import of this “creative tension,” in Martin Luther King’s words, should not be underestimated.[[187]](#endnote-187) In brief, these protests do not just seek material change nor policy revision but epistemic transformation.

It is vital to consider that protest confronting a sovereign state wielding the tools of warfare must be “fugitive,” interest- or issue-based, and heterogeneous in demography, tactics, and foci. That is, these forms of protest rely on a notion of plural politics in the broadest sense.[[188]](#endnote-188) They call forth a democratic community—from witnesses to local citizens to journalists or other detainees—forming around this specific situation and aiming at deconstructing powers seeking to dominate and disappear. Plurality involves convincing strangers to join a cause—not just “preaching to the converted.”[[189]](#endnote-189) As Arendt has argued, this involves introducing one’s dissenting ideas and future proposals into the “marketplace of ideas” and forming a community of interest.[[190]](#endnote-190) Importantly, these two protest forms—because they have been flexible, situation-based, and deeply sophisticated in terms of understanding the distinctive nature of sovereign power—resist institutionalization, stasis, and the status quo.[[191]](#endnote-191) This draws on a “deconstructive episteme,” which Westoby explains as:

pulling apart or destabilizing simplistic ways of thinking about community development praxis that are expressed in particular ways. For example, a splitting of body and mind, theory and practice, local and global, or the human and environment. Derrida’s deconstructive episteme suggests that not only are phenomena often reduced to simplistic binaries, but often within those binaries there is an explicit, or usually implicit, hierarchy.[[192]](#endnote-192)

Migrant protesters clearly draw on a “deconstructive episteme” that challenges the artificial opposition of mind and body; inside and outside; resident and foreigner; legitimate and illegitimate. Protesters know the risks they are taking, including the risk that their efforts will be discursively manipulated and portrayed as backwards, irrational, or pathological.[[193]](#endnote-193) While each protest form is different, each responds to state attempts at total control in importantly similar ways. Each type of protest utilizes forms of bodily protest, the claiming of certain spaces as their own, and a combination of communication and silence to block, disable, and otherwise resist sovereign tactics that seek to control, make docile, and displace.

Although embodied communication does not necessarily transcend written communication in its effectiveness, what is important is the role the body plays in these protests, the importance of claiming space through physical occupation, and how protesters’ emotions can provide energy and spirit to their campaigns (rather than resignation and depression). Arguably, it is the emotions of migrant advocates, guards, medical and therapeutic personnel, and many others that moves them to care about these protesters and sometimes to mobilize others to act as a community.[[194]](#endnote-194) Even feelings of repulsion, irritation, and inconvenience are crucial to motivating change. These tactics demonstrate a sophisticated awareness that just as bio-political discourse relies on visceral stimuli to convince people of the “truth” of foreign illegality, plural, democratic debate can also harness affective tactics that work at cognitive and visceral levels, indicated by Westoby’s “deconstructive episteme.” This deconstructive approach aligns with Arendt’s notion of plurality as well as Wolin’s idea of fugitive democracy as it involves critical thinking with others; dialogue; and seeking a justice that doesn’t oppose law *per se*, but which does not accept it as self-evidently good or fair.

Whether successful or not, self-harming protest has been reported by detainees to give them a feeling of strength, autonomy, and political agency.[[195]](#endnote-195) Accordingly, we should view detainee self-harm, no matter how mentally destabilized the person is, as a reflection of their political, captive circumstances and implicated in neo-imperial relations but also as self-willed and agentic. Harsh reactions to these protests—from relocating the individuals to other centers to “punish” them to solitary confinement and/or esophogal force feeding of conscious individuals—clearly aim at reasserting sovereignty at the bodily and mental level. That is, they aim at producing docility and/or “learned helplessness.”[[196]](#endnote-196) If nothing else changes, we must view self-harming protest as relying on the freedom of expression provided for by human rights—in short, we must stop retaliatory practices in the short-run but dismantle the system entirely in the long-run. Detainee protest is not just an individual cry for help but a broad expression of the government-induced trauma that forced migrants experience. As democracies, the US and Australia must end mass detention and deportation.[[197]](#endnote-197)

As I have suggested, each of these forms of protest occurs in the sphere of foreign relations and legal non-personhood but the fact that they can occur demonstrates that even sovereign power is a relationship and not something one person possesses, and another does not. Importantly, protest occurs in sovereign, sometimes total circumstances in which the state deploys or can potentially deploy its warfare powers. Sovereignty in this sphere is highly unequal, aiming at total power, and decisionistic, but also fragmented, diffuse, and open to contestation. This is why even this type of power is a *relationship* rather than merely imposed on mute, absolutely victimized subjects.

As discussed in the previous section, what is most interesting is that these forms of protest often work, despite the context.[[198]](#endnote-198) This is not proof that somehow, somewhere protesters have rights *but that important political reversals do not always operate along an axis of rights and liberty*.[[199]](#endnote-199) Forms of counter-sovereignty challenge and disrupt what Zerilli calls the “fantasy” of sovereignty as it is currently conceived: as total control, characterized by significant biases, and opposed to democratic action.[[200]](#endnote-200) They are developed in a context of domination and are politically meaningful.

As a former participant in the New Sanctuary Movement in Chicago, I can attest that faith-based sanctuary instantiates the practices, relations, and aims of “fugitive democracy,” “plurality,” and “dissensus.” The lengthy negotiations, educational media interventions, petitions, and inclusion of a broad range of figures makes this protest method one of the most exciting and democratic in each country. Even more interestingly, the key agents in these protests are considered legally non-existent and do not confront a state operating according to the rule of law. Protesters do not draw on existing rights or even legal status and cannot draw on human rights since each country made detention mandatory, effectively denying that individuals seeking asylum are refugees. These protest forms democratize a sphere of law—the plenary power of foreign relations—that was initiated in the late 1800s in order to establish white supremacy.[[201]](#endnote-201) As plenary powers are not only discretionary but arbitrary, extra-constitutional, and undergirded by a state’s warfare powers, these two forms of migrant protest create a democratic state of exception.

In the end these protests are worth our attention—as scholars, democrats, and members of political communities. We should be open to subversive knowledge forms, seek migrants’ hidden transcripts where they can be found, and respond to the demands of those in need. This is because we are part of their political community only to the degree that we act on behalf of others when they are in need. Taking cues from migrant protesters, those of us with the privilege of a secure citizenship need to remember the value of the struggle for democracy itself—not just the endgame.

1. Brittany Renee Mayes, Marcia Sacchetti, “They Moved into Churches to Avoid Deportation. Now They’re Asking: Is it Safe to Leave?” *The Washington Post*, April 5, 2021, <https://www.washingtonpost.com/dc-md-va/2021/04/05/trump-immigration-sanctuary/> [↑](#endnote-ref-1)
2. Seth Freed Wessler, “Immigrant Detainees Stage Protest For More COVID-19 Protections: ‘WE ARE NOT SAFE,’” *Huffington Post*, April 14, 2020,

   <https://www.huffpost.com/entry/immigrants-detained-protest-coronavirus_n_5e94b015c5b6ff1965993e87>. Two detained Cuban doctors most likely wrote the petition. [↑](#endnote-ref-2)
3. Kathy Marks, “Refugee Camp Children Sew Their Lips Together in Protest,” *The Independent*, January 22, 2002,

   https://www.independent.co.uk/news/world/australasia/refugee-camp-children-sew-their-lips-in-protest-5362577.html [↑](#endnote-ref-3)
4. Sarah Mares, Jon Jureidini, “Psychiatric Assessment of Children and Families in Immigration Detention—clinical, administrative, and ethical issues,” *Australian and New Zealand Journal of Public Health* (2004): 520-526 [↑](#endnote-ref-4)
5. This includes the length of time individuals are detained, which averages roughly two years in Australia and a little over a year in the United States. [↑](#endnote-ref-5)
6. I use the term “rightless” as a simple way to express de facto, informal power dynamics even if these individuals technically have rights to file grievances, limited forms of appeal, and some hope that discretionary decisions will be concluded positively. One can point to minimal due process rights but what I’m arguing is that these are largely meaningless and trumped by other power dynamics. Moreover, depending on governmental administration in each country, there have been some chances to appeal cases—as I argue in other work, this is not due to “rights” but mercy and discretion. To argue otherwise is to conflate the immigrant judicial system with (ideally) normal civil and criminal procedures based on the same constitutional guarantees, protections, or rights that someone born in the country would have. [↑](#endnote-ref-6)
7. “Warfare state” is Sheldon Wolin’s term in Sheldon Wolin, “Democracy and the Welfare State: the Political and Theoretical Connections Between Staatsräson and Wohlfahrsstaatsräson,” *The Presence of the Past: Essays on the State and the Constitution* (Baltimore: Johns Hopkins Press, 1989). For an explanation of why these migrants are “non-persons” per the 14th Amendment, see Monica Varsanyi, “Rescaling the ‘Alien,’ Rescaling Personhood: Neoliberalism, Immigration and the State,” *Annals of the Association of American Geographers* 98, no. 4 (2008): 877—896. While Australian law is not identical to US law, this term fits migration policy and enforcement de facto. See Michelle Foster, “An ‘Alien’ By the Barest of Threads’—The Legality of the Deportation of Long-Term Residents from Australia,” *Melbourne University Law Review* 33 (2009) : 483—541; Francesco P. Motta, “Between a Rock and A Hard Place: Australia’s Mandatory Detention System,” *Refuge* 20, no. 3 (2002): 12-43. [↑](#endnote-ref-7)
8. For these reasons, I characterize detention as a “camp” but not a prison, nor an encampment. Detention is a guarded structure that holds civilians (non-combatants) who have not been arrested on criminal charges nor been given access to a meaningful trial. Individuals in these sorts of camps—from detention centers to “welcoming centers” to “shelters” for children—are not free to leave. Detention is not an encampment—for example the “Jungle” in Calais and various Roma encampments are not detention centers and therefore not “camps” as I am defining the term. See Kim Rygiel, “Bordering Solidarities: Migrant Activism and the Politics of Movement and Camps at Calais,” *Citizenship Studies* 15 (2011): 1—19; Miriam Ticktin “Calais: Containment Politics in the ‘Jungle’” *The Funambulist: Politics of Space and Bodies* 05 (May—June, 2016): 28—33. [↑](#endnote-ref-8)
9. A key example is childhood status, which is supposed to supersede all other legal categories, based on the “best interest of the child” principle. [↑](#endnote-ref-9)
10. In Australia, foreigners who are “designated persons” are from countries sanctioned by the international community and/or which are viewed as harboring terrorists. In the United States, individuals from countries associated with terrorism are subject to greater scrutiny, detained more often, and often viewed as supporting the repressive circumstances they are fleeing. [↑](#endnote-ref-10)
11. See Patrick Wolfe, “Settler Colonialism and the Elimination of the Native,” *Journal of Genocide Research* 8, no. 4 (2006), 387-409; Joseph Pugliese, “The Incommensurability of Law to Justice: Refugees and Australia’s Temporary Protection Visa,” *Law and Literature* 16, no. 3 (Fall 2004): 285-311. [↑](#endnote-ref-11)
12. See Ayelet Shachar, “Beyond Open and Closed Borders: the Grand Transformation of Citizenship,” *Jurisprudence* (2020) 11, no. 1: 1—27; Hannah Newlin, “’Constitution Free Zone’ Questions Border Patrol Security & Search and Seizure Laws,” McCuistion TV Show website, June 16, 2010; <https://frtv.org/2010/06/constitution-free-zone-border-patrol-security-search-and-seizure-laws/>; Pugliese, “The Incommensurability of Law.” [↑](#endnote-ref-12)
13. Kathleen Arnold, *Arendt, Agamben, and the Issue of Hyper-Legality*, (New York: Routledge, 2018); Fiske, “Human Rights and Refugee Protest”; see US-based Freedom For Immigrants, an advocacy group that monitors conditions in immigration detention centers: <https://www.freedomforimmigrants.org/>; McAlister et al. "I See Nothing but a Fence of Tears”; Andrea Gittleman, “The Need for Transparency in US Detention and Interrogation Practices,” Physicians for Human Rights, January 1, 2014, <https://phr.org/our-work/resources/the-need-for-transparency-in-u-s-detention-and-interrogation-practices/>; Tsion Gurmu, Emily Creighton, “Groups Call for Transparency Regarding Abuse and Mistreatment of Black Immigrants in Detention,” *The Immigration Today*, November 14, 2021, <https://www.theimmigrationtoday.com/united-states/groups-call-for-transparency-regarding-abuse-and-mistreatment-of-black-immigrants-in-detention-2/>; International Detention Coalition, “Transparency and Oversight Essential in Immigration Detention,” August 10, 2016, <https://idcoalition.org/news/transparency-and-oversight-essential-in-immigration-detention/> [↑](#endnote-ref-13)
14. Australia employs similar if not identical tactics. See David Isaacs, “Are Healthcare Professionals Working in Australia’s Immigration Detention Centres Condoning Torture?” *Journal of Medical Ethics* 42, no. 7 (July 2017): 413-415. In particular, he argues: “In the past, some Australian healthcare professionals have helped force-feed detainees who go on hunger strike and helped chemically restrain people for deportation, acts that collude with significant infringements of autonomy and human rights.” (413). Motta remarks that hunger strikes among asylum seekers date back to at least the 1980s and in 1992, three Cambodian women at Villawood were subjected to force-feeding. Francesco P. Motta, “Between a Rock and A Hard Place: Australia’s Mandatory Detention System,” *Refuge* 20, no. 3 (2002): 30 n6. There are credible reports from the NILC and the Young Center that the Biden Administration continues to separate children from families. See for example, Clara Long, Elora Mukherjee, “Biden Has Not Done Enough to End Family Separations at the Border,” The Hill, February 13, 2021, <https://thehill.com/opinion/immigration/538153-biden-has-not-done-enough-to-end-family-separations-at-the/> Title 42 is serving as a pretext to separate families as of this writing (March 2023) as parents are stopped at the border but their children are allowed in, if they agree to separation. [↑](#endnote-ref-14)
15. In the Australian context, see Lucy Fiske, “Human Rights and Refugee Protest Against Immigration Detention: Refugees’ Struggles for Recognition as Human,” *Refuge* 32, no. 1 (2016): 18—27. [↑](#endnote-ref-15)
16. See Carlos Ballesteros, “Chicago Police Denied Scores of Undocumented Crime Victims a Path to Citizenship,” *Injustice Watch*, December 8, 2022, <https://www.injusticewatch.org/news/immigration/2022/chicago-police-u-visa-denials/?utm_source=Newsletter_Daily-Rundown-Non-Member&utm_medium=WBEZEmail&utm_campaign=Daily_Newsletter_Daily-Rundown_Sponsored_20221209&utm_content=12/9/2022&DE=WBEZEmail>  [↑](#endnote-ref-16)
17. On the character test, see The Monthly, “Morrison’s Plan to Deport Thousands of Migrants,” 7am podcast, *The Monthly*, March 3, 2022,

    <https://www.themonthly.com.au/podcast/morrisons-plan-deport-thousands-migrants>; Tory Shepherd, “Deported to a Land They Barely Know: Anger Rises over Australia’s ‘Character Test’ for Non-Citizens,” *The Guardian*, March 12, 2022, <https://www.theguardian.com/australia-news/2022/mar/13/deported-to-a-land-they-barely-know-anger-rises-over-australias-character-test-for-non-citizens.> Nevertheless, the movement has similar tactics, principles, and aims—see for example Ben Doherty, “Churches Offer Sanctuary to Asylum Seekers Left Homeless by Coalition Cuts,” *The Guardian*, August 29, 2017, <https://www.theguardian.com/australia-news/2017/aug/30/churches-offer-sanctuary-to-asylum-seekers-left-homeless-by-coalition-cuts>; see also the website for St. John’s Cathedral, which is at the center of this movement:  <https://www.stjohnscathedral.com.au/contact-us/>  [↑](#endnote-ref-17)
18. See Kathleen R. Arnold, “Sanctuary in a Trumpist Context: Creating Spaces of Democratic Exception,” *Political Research Quarterly*, October 22, 2021,

    <https://journals.sagepub.com/doi/10.1177/10659129211052493?fbclid=IwAR3sB4DmwBgHKXPixdGuSCmpEAb1WWhIk2AH902yuChmeC7ncZ1O4C2JPZA&>  [↑](#endnote-ref-18)
19. Lucy Fiske, Mary Anne Kenny, Nicholas Procter, “Manus Island Hunger Strikes are a Call to Australia’s Conscience,” *The Conversation*, January 18, 2015, <https://theconversation.com/manus-island-hunger-strikes-are-a-call-to-australias-conscience-36419> [↑](#endnote-ref-19)
20. See Suzan Ilcan, “The Borderization of Waiting: Negotiating Borders and Migration in the 2011 Syrian Civil Conflict,” *Environment and Planning C: Politics and Space* 35, no. 1, July 22, 2020; Nicholas de Genova, “’Doin’ Hard Time on Planet Earth’: Migrant Detainability, Disciplinary Power and the Disposability of Life,” ch 11, in *Waiting and the Temporalities of Irregular Migration* ed.s Christine M Jacobsen et al. (Routledge, 2021), 186—201 [↑](#endnote-ref-20)
21. I make two claims based on inferences from research (but not statistics, e.g.): self-harming protest occurs at a higher rate inside detention rather outside of it; second, that detainees often begin self-harming after spending some time in detention. See Fiske, et al. “Manus Island Hunger Strikes”; Fiske, “Human Rights and Refugee Protest Against Immigration Detention”; Dani McAlister, Harriot Beazley, Wynonna Raha, "I See Nothing but a Fence of Tears": The Impact of Australia's Immigration Detention and Border Protection Policies on the Asylum Seeker Child's Geographies of Hope and Hopelessness, *Jeunesse Young People Texts Cultures* 11, no. 2 (February 2020), https://www.researchgate.net/publication/339600517\_I\_See\_Nothing\_but\_a\_Fence\_of\_Tears\_The\_Impact\_of\_Australia%27s\_Immigration\_Detention\_and\_Border\_Protection\_Policies\_on\_the\_Asylum\_Seeker\_Child%27s\_Geographies\_of\_Hope\_and\_Hopelessness [↑](#endnote-ref-21)
22. Frantz Fanon, *The Wretched of the Earth*, (New York: Grove Press, 2005); Ralph Armbruster-Sandoval, *Starving for Justice* (Tucson: University of Arizona Press, 2017), 3. [↑](#endnote-ref-22)
23. See Jenny Edkins and Véronique Pin-Fat, “Through the Wire: Relations of Power and Relations of Violence” *Millennium: Journal of International Studies* 34, no. 1 (2005): 1-26. [↑](#endnote-ref-23)
24. On this notion of “care” invoked in deterrent policies, see Miriam Ticktin “Calais: Containment Politics in the ‘Jungle.’” [↑](#endnote-ref-24)
25. See in particular, Edward D. Vargas, et al “Fear by Association: Perceptions of Anti-Immigrant Policy and Health Outcomes,” *Journal of Health Politics, Policy and Law* 42, no. 3 (June 2017): 459-483; Janet Cleveland, et al., “The Harmful Effects of Detention and Family Separation on Asylum Seekers’ Mental Health in the Context of Bill C-31. Brief submitted to the House of Commons Standing Committee on Citizenship and Immigration concerning Bill C-31, the Protecting Canada’s Immigration System Act,” April 2012, <https://refugeeresearch.net/wp-content/uploads/2016/11/Cleveland-et-al-2012-Detention-and-asylum-seekers_mental-health.pdf>; Juliet Cohen, “Safe In Our Hands?: A Study of Suicide and Self-Harm in Asylum Seekers,” *Journal of Forensic and Legal Medicine* 15, no. 4 (May 2008): 235—244; and Pugliese’s analysis of a refugee’s death due to “fear” in “The Incommensurability of Law.” [↑](#endnote-ref-25)
26. This statement is based on an extensive review of the literature but not statistics, as both governments refuse full transparency about detainee conditions, especially when they self-harm. See the brief but important Isaacs, “Are Healthcare Professionals Working in Australia’s Immigration Detention Centres Condoning Torture?” In 2015, Australia passed the Border Force Act, which prohibits all offshore detention center personnel, including medical professionals and teachers, from sharing any information about detention center conditions, stories, and/or experiences. [↑](#endnote-ref-26)
27. Amie Thurber, James Fraser, “Disrupting the Order of Things,” *Cities* 57 (2016): 55—61. See for example: Julie Cox and Stella Minahan, “Unravelling Woomera: Lip Sewing, Morphology and Dystopia,” Journal of Organizational Change 17, no. 3 (2004): 292—301; Ayten Gündoğdu *Rightlessness in an Age of Rights* (New York: Oxford University Press, 2015); Nithya Rajan, “What do Refugees Want? Reading Refugee Lip-Sewing Protests Through a Critical Lens,” International Feminist Journal of Politics, 21 no. 4 (2019): 527—543. [↑](#endnote-ref-27)
28. Bio-political: racist, sexist, and other biologically deterministic categories. For analyses of these negative views of protests see: Banu Bargu, “The Silent Exception: Hunger Striking and Lip-Sewing,” *Law, Culture and the Humanities*, (May 24, 2017): 1—28; Patricia Owens, “Reclaiming ‘Bare Life’?: Against Agamben on Refugees,” *International Relations* 23, no. 4 (2009): 567—582; Edkins and Pin-Fat, “Through the Wire”; Rajan, “What do Refugees Want?” [↑](#endnote-ref-28)
29. Regarding the view that these acts are largely the product of individual mental illness and only cause repulsion but not empathy, see Gündoğdu *Rightlessness in an Age of Rights*; Rajan, “What do Refugees Want?” Regarding the implications of individualized, therapeutized views of migrants versus a public health perspective, see Seth Holmes, *Fresh Fruit, Broken Bodies: Migrant Farmworkers in the United States* (U of CA Press, 2014); Peter Westoby, “Developing a Community-Development Approach Through Engaging Resettling Southern Sudanese Refugees Within Australia”, *Community Development Journal* 43, no. 4, October 2008, 483-495. [↑](#endnote-ref-29)
30. This does not mean that detainees are never released. They are, very infrequently but this occurs through informal negotiations. This is not due to “right” as Arendt has put but “charity” or privilege. Hannah Arendt *The Origins of Totalitarianism*, (New York: Harcourt Brace Jovanovich, 1979). See Kanstroom’s discussion of mercy and/or grace in waiving removal as well as Heeren’s analysis of statuses based on privilege rather than rights: Daniel Kanstroom, *Deportation Nation* (Cambridge: Harvard University Press, 2007); Geoffrey Heeren, “The Status of Nonstatus,” *American University Law Review* 64 (May 11, 2015), 1115—1181. [↑](#endnote-ref-30)
31. On the success of detainee protests see: Rozina Ali, “A Hunger Strike in ICE Detention,” *The New Yorker*, October 29, 2019, <https://www.newyorker.com/news/as-told-to/a-hunger-strike-in-ice-detention>; Lucy Fiske, “Human Rights and Refugee Protest Against Immigration Detention: Refugees’ Struggles for Recognition as Human,” *Refuge* 32, no. 1 (2016): 18—27. [↑](#endnote-ref-31)
32. See also Raffaella Puggioni “Speaking Through the Body: Detention and Bodily Resistance in Italy,” *Citizenship Studies* 18, no. 5 (2014): 562–577. [↑](#endnote-ref-32)
33. Michael Feola “The Body Politic: Bodily Spectacle and Democratic Agency,” *Political Theory* 26 no. 2 (2018): 207. Muller argues that lip-sewing is a form of bio-agency: Benjamin Muller, “(Dis)Qualified Bodies: Securitization, Citizenship and ‘Identity Management,’” *Citizenship Studies* 8 no. 3 (2004): 292. [↑](#endnote-ref-33)
34. See Armbruster-Sandoval, *Starving for Justice*; Fiske, “Human Rights and Refugee Protest”; Alfonso Gonzales “*Derechos en Crisis*: Central American Asylum Claims in the Age of Authoritarian Neoliberalism,” *Politics, Groups and Identities*, (May 2018): 1—19. [↑](#endnote-ref-34)
35. See Ċetta Mainwaring, “Migrant Agency: Negotiating Borders and Migration Controls,” *Migration Studies* 4, no. 3 (Nov 2016): 289—308; Liisa H. Malkki, “Speechless Emissaries: Refugees, Humanitarianism, and Dehistoricization,” *Cultural Anthropology*, 11, no. 3, Aug 1996: 377—404. [↑](#endnote-ref-35)
36. Thank you to Veronica Zebadua-Yañez for suggesting this term. [↑](#endnote-ref-36)
37. There is a small but excellent body of literature on this subject, mostly focused on the meaning of self-harming protest in and of itself. See Bargu, “The Silent Exception”; Mary S. Corcoran, “Spectacular Suffering: Transgressive Performance in Penal Activism,” *Theoretical Criminology* 24, no. 4 (2020): 651-668; Edkins and Pin-Fat, “Through the Wire”; Feola, “The Body Politic”; Gündoğdu *Rightlessness in an Age of Rights*; Patricia Owens, “Reclaiming ‘Bare Life’?: Against Agamben on Refugees,” *International Relations* 23, no. 4 (2009): 567—582; Joseph Pugliese, ‘Penal Asylum: Refugees, Ethics, Hospitality’, borderlands e-journal 1, no. 1 (2002), <http://www.borderlandsejournal.adelaide.edu.au>; Rajan, “What do Refugees Want?” [↑](#endnote-ref-37)
38. See Mainwaring, “Migrant Agency”; Jenna M. Loyd, et al. *Beyond Walls and Cages: Prisons, Borders, and global Crisis*—part 5, “Speaking up! Standing Up! Local Struggles against Walls and Cages” (Univ of GA Press, 2012); Colin Dayan, *The Law is a White Dog* (Princeton: Princeton University Press, 2011); Malkki, “Speechless Emissaries.” Some authors do explore the meaning of these protests in relation to sovereign authority but conclude that the protests are largely invisible and futile, which I dispute below (e.g. Gundogdu; Rajan) [↑](#endnote-ref-38)
39. On dissensus, see Davidé Panagia, “The Improper Event: On Jacques Rancière’s Mannerism,” *Citizenship Studies* 13, no. 3 (2009): 297-308; on dissensus in this context, see Rajan, “What do Refugees Want?” [↑](#endnote-ref-39)
40. On the relationship of civil disobedience to self-harming protest and/or a broader context of violence, see Karuna Mantena, “Another Realism: the Politics of Gandhian Nonviolence,” *American Political Science Review* 106, no. 2 (May 2012): 455—470. [↑](#endnote-ref-40)
41. See Feola’s critique of democratic theory and communications-based theories for the same reasons in Feola “The Body Politic”; Fanon, *Wretched of the Earth*; Achille Mbembe, “Necropolitics,” trans. Libby Meintjes, *Public Culture* 15, no. 1 (2003): 11-40; James Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (New Haven: Yale University Press, 1987). [↑](#endnote-ref-41)
42. Colin Dayan, “Barbarous Confinement,” *New York Times*, July 17, 2011, <https://www.nytimes.com/2011/07/18/opinion/18dayan.html>, A19; Feola, “The Body Politic,” 204. See also: Jack Herrera, “Immigrants Stage a Hunger Strike for Black Lives Inside ICE Detention Facility,” *Prism Reports*, June 12, 2020, <https://prismreports.org/2020/06/12/immigrants-stage-a-hunger-strike-for-black-lives-inside-ice-detention-facility/> [↑](#endnote-ref-42)
43. Dayan, *The Law is a White Dog*, 86—87. See Ronald Schmidt’s discussion of torture and the aim of “cultivated debilitation” in Ronald J. Schmidt, Jr. *Reading Politics with Machiavelli*, (Oxford University Press, 2018). [↑](#endnote-ref-43)
44. Ali, “A Hunger Strike in ICE Detention.” [↑](#endnote-ref-44)
45. Ali, “A Hunger Strike in ICE Detention.” [↑](#endnote-ref-45)
46. Ali, “Hunger Strike”: Kumar was released and he appealed his case. See also Rajan, “What do Refugees Want?” 536. [↑](#endnote-ref-46)
47. Caitlin Dickerson, et al., “U.S. Deported Thousands Amid Covid-19 Outbreak. Some Proved to be Sick,” *New York Times*, April 18, 2020, https://www.nytimes.com/2020/04/18/us/deportations-coronavirus-guatemala.html. [↑](#endnote-ref-47)
48. Tina Vásquez, “ICE Ordered to End Contract with Facility Where Detained Women were Sterilized,” *Prism*, May 20, 2021, <https://prismreports.org/2021/05/20/ice-ordered-to-end-contract-with-facility-where-detained-women-were-sterilized/> [↑](#endnote-ref-48)
49. Vásquez, “ICE Ordered to End Contract.” [↑](#endnote-ref-49)
50. As Peter Hodge argues, this community challenges notions of political community centered on the nation-state. Peter Hodge, “#LetThemStay #BringThemHere: Embodied Politics, Asylum Seeking, and Performativities of Protest Opposing Australia’s *Operation Sovereign Borders*,” *Politics and Space* 37, no. 3 (2019): 390. [↑](#endnote-ref-50)
51. On “allostatic load,” see Holmes, *Fresh Fruit, Broken Bodies*; Sarah Willen ed. “Migration, ‘Illegality,’ and Health: Mapping Embodied Vulnerability and Debating Health-Related Deservingness,” special issue, *Social Science & Medicine* 74, no. 6 (2012), 808-810 (she uses the term “embodiment” but also critically analyzes the term’s limitations); see also Pugliese, “The Incommensurability of Law.” Pitzer helps us to understand the important connections between government sponsored disappearance campaigns and ordinary detention centers for status violations: Andrea Pitzer, *One Long Night*: *A Global History of Concentration Camps*, (Hachette/Little Brown, 2018); Vargas, et al “Fear by Association.” [↑](#endnote-ref-51)
52. See Holmes, *Fresh Fruit, Broken Bodies* [↑](#endnote-ref-52)
53. Peter Westoby, “’A Community Development Yet-to-Come’: Jacques Derrida and Re-constructing Community Development Praxis,” *Community Development Journal* 56, no. 3 (2021): 379. [↑](#endnote-ref-53)
54. K.M. Fierke, “Whereof We Can Speak, Thereof We Must not be Silent: Trauma, Political Solipsism and War,” *Review of International Studies* 30 (2004): 472; see Edkins and Pin-fat on the idea of theatricalizing embodied circumstances in “Through the Wire.” See also Owens’ reminder not to celebrate this in “Reclaiming ‘Bare Life’?” [↑](#endnote-ref-54)
55. See Feola “The Body Politic.” [↑](#endnote-ref-55)
56. Panagia “Improper Event,” 300; Jacques Rancière “Who is the Subject of the Rights of Man?” *South Atlantic Quarterly* 103 no. 23 (Spring/Summer, 2004): 297—310. See also Rajan, “What do Refugees Want?” [↑](#endnote-ref-56)
57. Westoby, “’A Community Development Yet-to-Come,’” 383, 384. [↑](#endnote-ref-57)
58. See Daniel Kanstroom, “Deportation as a Global Phenomenon: Reflections on the Draft Articles on the Expulsion of Aliens,” " *Harvard Human Rights Journal* ILC Forum Essays (March 1, 2016), available at: <https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=2038&context=lsfp>; Kanstroom, *Deportation Nation*, introduction and conclusion (e.g.); Genova, “’Doin’ Hard Time on Planet Earth’” [↑](#endnote-ref-58)
59. Regarding failure to properly certify U-Visas, see Ballesteros, “Chicago Police Denied Scores of Undocumented Crime Victims a Path to Citizenship.” [↑](#endnote-ref-59)
60. As with the #hometobilo case, which I discuss below. [↑](#endnote-ref-60)
61. Please note that the word “faith” is open ended and include synagogues and mosques, granted that the latter group is newer to this form of organizing—see for example, Dora Ballew, “The Man Trying to Turn Mosques Into Places of Sanctuary,” *Ozy*, February 7, 2017, <https://www.ozy.com/the-new-and-the-next/the-man-trying-to-turn-mosques-into-places-of-sanctuary/75559/>; Renee Montagne, “Mosques Consider Sanctuary For Immigrants,” NPR, March 4, 2018, <https://www.npr.org/2018/03/04/590670163/mosques-consider-sanctuary-for-immigrants>; Sean Rehaag, "Bordering on Legality: Canadian Church Sanctuary and the Rule of Law," *Refuge: Canada's Journal on Refugees* 26, no. 1 (Spring 2009): 43-56 (see p 53 n 6); Imam Omar Suleiman’s website: <https://imamomar.com/about/>; Kimberly Winston, “First to Join Sanctuary Movement,” *Sojourners*, January 23, 2017, <https://sojo.net/articles/ohio-mosque-first-join-sanctuary-movement> [↑](#endnote-ref-61)
62. On the character test, see The Monthly, “Morrison’s Plan to Deport Thousands of Migrants,” 7am podcast, *The Monthly*, March 3, 2022,

    <https://www.themonthly.com.au/podcast/morrisons-plan-deport-thousands-migrants>; Shepherd, “Deported to a Land They Barely Know.” Nevertheless, the movement has similar tactics, principles, and aims—see for example Ben Doherty, “Churches Offer Sanctuary to Asylum Seekers Left Homeless by Coalition Cuts,” *The Guardian*, August 29, 2017, <https://www.theguardian.com/australia-news/2017/aug/30/churches-offer-sanctuary-to-asylum-seekers-left-homeless-by-coalition-cuts>; see also the website for St. John’s Cathedral, which is at the center of this movement: https://www.stjohnscathedral.com.au/contact-us/ [↑](#endnote-ref-62)
63. Nevertheless, the Baby Asha case and the #hometobilo case demonstrate that the faith-based sanctuary movement is successful in stopping detention, blocking deportation, and reinstating residency status. [↑](#endnote-ref-63)
64. See Foster, “An ‘Alien’ By the Barest of Threads.’” [↑](#endnote-ref-64)
65. Again, this occurs far more in the US but/and see Foster, “An ‘Alien’ By the Barest of Threads’ [↑](#endnote-ref-65)
66. This is debatable in that the Australian “character test” provides a somewhat arbitrary basis to judge crimes that would trigger forced removal. While Australia has not deported the same number of resident foreigners that the US has, they could. Those with expiring bridging visas have also been put into detention after years of residency as the #hometobilo case demonstrates: <https://www.hometobilo.com/> See Foster, “’An ‘Alien’ By the Barest of Threads’”; Shepherd, “Deported to a Land They Barely Know.” [↑](#endnote-ref-66)
67. Daniel Kanstroom, “Deportation as a Global Phenomenon: Reflections on the Draft Articles on the Expulsion of Aliens,” " *Harvard Human Rights Journal* ILC Forum Essays (March 1, 2016), ): 49-75. See also Kanstroom, *Deportation Nation*. [↑](#endnote-ref-67)
68. An example of press releases is: Michelle Reyf, “A Win for Beatriz and Her Family,” Groundswell website, November 6, 2014, <http://www.groundswell-mvmt.org/a-win-for-beatriz-and-her-family/>; “Sanctuary Victory: Suyapa and Children,” New Sanctuary Movement of Philadelphia website, n.d. <https://www.sanctuaryphiladelphia.org/campaigns/sanctuary-suyapa-and-children/--Suyapa> [↑](#endnote-ref-68)
69. Elvira Arellano’s case, the case that spurred the US New Sanctuary Movement in 2006, is more complex and her situation has not been rectified as of this writing. See Philip Marcelo et al., “Immigrants in Sanctuary in Churches Hope Biden Offers Relief,” AP news, Feb 4, 2021, <https://apnews.com/article/immigration-churches-sanctuary-biden-9904b23125e3db6fa0844be34982438c> [↑](#endnote-ref-69)
70. This occurs through petitions (e.g. through Groundswell); blogs on church websites; and press releases. [↑](#endnote-ref-70)
71. See Susan Bibler Coutin, Hector Perla, “Legacies and origins of the 1980s US-Central American Sanctuary Movement,” *Refuge* 26, no. 1 (Spring 2009): 7—19; McAndrews, *Refuge in the Lord*. [↑](#endnote-ref-71)
72. See De Genova’s critique of faith-based sanctuary in Nicholas de Genova, “The Deportation Regime: Sovereignty, Space, and the Freedom of Movement” in *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement* (Duke University Press, 2010), 35-36; 59—60 n3. After this, several church leaders met in DC on Jan 29, 2007, to establish a new sanctuary movement for migrants seeking refuge from unjust deportations—see their website: <http://www.newsanctuarymovement.org> [↑](#endnote-ref-72)
73. Corcoran 4-5 in *Dissensus*, my emphasis. [↑](#endnote-ref-73)
74. See Teresa Hayter’s detailed accounts of French, UK and Irish detention conditions, protests, and building occupations: Teresa Hayter, *Open Borders: The Case Against Immigration Controls*, (Pluto Press, 2004). See especially ch. 4: “Resistance—Resistance in Britain + the *Sans-Papiers* Movement” (134-148). Again, encampments are not detention or refugee camps although Rygiel equates them: Rygiel, “Bordering Solidarities.” [↑](#endnote-ref-74)
75. This is related to the importance of Occupy Wallstreet and other occupy movements in their claiming of space once viewed as “public.” [↑](#endnote-ref-75)
76. On this case, see Genova, “The Deportation Regime,” pp 33-68, see 8. [↑](#endnote-ref-76)
77. Most of the cases I discuss (in this paper and in my broader work) involve civil infractions but re-entering the country after being deported by the US is a criminal offense. [↑](#endnote-ref-77)
78. As she recounts in Leslie Hurtado, “Keeping the Faith: the Woman Who Started the Sanctuary Movement,” *Borderless*, February 15, 2022, <https://borderlessmag.org/2022/02/15/keeping-the-faith-the-woman-who-started-the-sanctuary-movement/> (this article was dictated by Arellano to Hurtado). [↑](#endnote-ref-78)
79. When someone is deported from the US by the government (rather than agreeing to self-deport) they are barred from the country for ten years. Due to a second re-entry after 2002, she would be hypothetically barred from the country for twenty years if/when she is deported in 2022. Second, Arellano’s use of a fake social security number to get work was considered identity theft at this time but according to the majority decision in *Flores-Figueroa*—taking work is not “stealing.” Arellano’s activism and “unauthorized” residence during this time was precisely when the US government was just implementing a mass detention and deportation system. In the same time under the Bush Administration, raids became a key tool of migration policy, but were again challenged in the *Flores-Figueroa v. United States*, 556 U.S. 646 (2009) case. [↑](#endnote-ref-79)
80. See Geoffrey Heeren, “The Status of Nonstatus,” *American University Law Review* 64 (May 11, 2015), http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2560931. [↑](#endnote-ref-80)
81. Hurtado, “Keeping the Faith: the Woman Who Started the Sanctuary Movement.” [↑](#endnote-ref-81)
82. Hurtado, “Keeping the Faith: the Woman Who Started the Sanctuary Movement.” [↑](#endnote-ref-82)
83. See Hurtado, “Keeping the Faith: the Woman Who Started the Sanctuary Movement”; de Genova, “The Deportation Regime.” [↑](#endnote-ref-83)
84. Wendy Cole, “Person of the Year 2006: Elvira Arellano,” *Time*, December 25, 2006, https://content.time.com/time/specials/packages/article/0,28804,2019341\_2017328\_2017183,00.html [↑](#endnote-ref-84)
85. That is, even though there was a criminal case against her for re-entry after deportation, she would not have been a high-priority criminal before the events of 9/11/2001. [↑](#endnote-ref-85)
86. See Eleanor Acer, Tara Magner, “Restoring America’s Commitment to Refugees and Humanitarian Commitment,” *Georgetown Immigration Law Journal* 27 (Spring 2013): 445—481; Andrew I. Schoenholtz, “Refugee Protection in the United States Post-September 11,” *Columbia Human Rights Law Review* 36, no. 2 (2005): 323—364. [↑](#endnote-ref-86)
87. I have written about this at length in Kathleen Arnold, *America’s New Working Class* and *American Immigration After 1996* (College Station: Penn State University Press, 2008). See Erik Camayd-Freixas, Statement of Dr. Erik Camayd-Freixas, Federally Certified Interpreter at the U.S. District Court for the Northern District of Iowa Regarding a Hearing on “the Arrest, Prosecution, and Conviction of 297 Undocumented Workers in Postville, Iowa, from May 12 to 22, 2008.” Before the Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law. July 24, 2008 at 11:00am, 1310 Longworth House Office Building. http://judiciary.house.gov/hearings/pdf/Camayd-Freixas080724.pdf. [↑](#endnote-ref-87)
88. Hurtado, “Keeping the Faith.” [↑](#endnote-ref-88)
89. See Ruth Gomberg-Muñoz, *Becoming Legal: Immigration Law and Mixed-Status Families*, (OUP, 2016); Alfonso Gonzales, *Reform Without Justice: Latino Migrant Politics and the Homeland Security State* (New York: Oxford, 2014). [↑](#endnote-ref-89)
90. As various panelists and reviewers have remarked, the irony is that faith-based institutions have been respected above all other “sensitive” locations due to conservative religious beliefs, but this does not mean that the same conservatives support undocumented migrants’ resistance to detention and deportation. Nor does it mean that sanctuary leaders are conservative just because they are religious (to the contrary, I would argue that all are radical). [↑](#endnote-ref-90)
91. In Gray’s words: Gray, “The Status of Sanctuary in Australian Law,” 703. On community building through leaving water, food, and blankets in the desert (among other things), see Abby C. Wheatley and Ruth Gomberg-Muñoz, “Keep Moving: Collective Agency Along the Migrant Trail,” *Citizenship Studies* 20, no.s 3-4 (2016): 396-410. [↑](#endnote-ref-91)
92. De Genova, “The Deportation Regime,” 36. [↑](#endnote-ref-92)
93. Similar to Arellano, José Antonio Vargas is a nationally recognized public figure who often gives public talks, interviews, and writes about his undocumented status but has not yet been detained or deported (to the Philippines). See his personal website: https://joseantoniovargas.com/about/ [↑](#endnote-ref-93)
94. The was because Morton Memo guidelines mostly ensured that ICE only policed people with a criminal warrant, leaving those with civil infractions alone. See the history of Undocuqueer at this time (Undocuqueer, “Equality Archive,” n.d. https://equalityarchive.com/history/); see Eithne Luibhéid, Lionel Cantú ed.s *Queer Migrations* (University of Minnesota Press, 2005); Karma R. Chávez, *Queer Migration Politics: Activist Rhetoric and Coalitional Possibilities* (Univ of IL Press, 2013), [↑](#endnote-ref-94)
95. I derive the term “totalitarian tools” from Hannah Arendt’s work in *The Origins of Totalitarianism* (New York: Harcourt Brace Jovanovich, 1979). [↑](#endnote-ref-95)
96. As she (Elvira Arellano) states in *Borderless* magazine: prospective Mexican employers “would say, ‘No, we don’t want her here because she’s going to assemble workers to join her protests.’ I was fired because of my activism. I was no longer eligible to work. I didn’t finish high school in Mexico and didn’t have a document that said I had the skills to work at these jobs. So I decided to return, and I graduated.” Hurtado, “Keeping the Faith.” [↑](#endnote-ref-96)
97. See: https://www.americanpost.news/elvira-arellano-20-years-of-fighting-against-deportations/ [↑](#endnote-ref-97)
98. De Genova argues that: “in the face of imminent deportation, Arellano effectively exchanged the life of an undocumented migrant worker (for whom onerous exploitation was the quotidian price of her routinized legal vulnerability as an ‘illegal alien’) for one of self-selected captivity and a heightened and unrelenting exposure to the unfathomable caprices of the state…” The next year, she decided to leave sanctuary to take part in an immigrants’ rights protest in Los Angeles and was apprehended about which de Genova argues that “Arellano’s deportation came, notably, only once she had violated the tacit terms of her voluntary internment.” De Genova, “The Deportation Regime,” 36 [↑](#endnote-ref-98)
99. Maria O’Sullivan, “The Sanctity of Asylum: The Legality of Church Sanctuary in Australia,” *Alternative Law Journal* 41, (2016): 254. [↑](#endnote-ref-99)
100. See Ben Doherty, “’Time Can Break Your Heart’: the Harsh Toll of Eight Years in Australian Immigration Detention,” *The Guardian*, October 31, 2021, https://www.theguardian.com/australia-news/2021/nov/01/time-can-break-your-heart-the-harsh-toll-of-eight-years-in-australian-immigration-detention [↑](#endnote-ref-100)
101. There were five major decisions upholding the legality of offshore detention. For analyses of these decisions, see: Jeremy Gans, “News Summarising High Court Judgments,” High Court Blog/University of Melbourne Law School, February 5, 2016, <https://blogs.unimelb.edu.au/opinionsonhigh/2016/02/05/news-summarising-high-court-judgments/>; Claire Toner, HRLC (Human Rights Law Centre), “High Court Rejects Challenge to Offshore Detention,” HRLC website, February 3, 2016, <https://www.hrlc.org.au/human-rights-case-summaries/high-court-rejects-challenge-to-offshore-detention>; Mike Head, “Australian High Court Sanctions Indefinite Offshore Detention of Refugees,” WSW (World Socialist Website), Feb 4, 2016, <https://www.wsws.org/en/articles/2016/02/04/aust-f04.html> [↑](#endnote-ref-101)
102. Gray, “The Status of Sanctuary in Australian Law,” 685. [↑](#endnote-ref-102)
103. On this decision, see: see: Gans, “News Summarising High Court Judgments,”; Toner, “High Court Rejects Challenge to Offshore Detention,” (HRLC is the group that defended the Bangladeshi pregnant woman); Head, “Australian High Court Sanctions Indefinite Offshore Detention of Refugees.” [↑](#endnote-ref-103)
104. Gray, “The Status of Sanctuary in Australian Law,” 685. See #LetThemStay’s petition to the government here: <https://actionnetwork.org/petitions/letthemstay?amp>. The Human Rights Law Centre dates the emergence of this movement as Feb 2, 2016 (see <https://www.hrlc.org.au/timeline-offshore-detention>). For a more in-depth discussion of important groups, slogans, and actions, see Hodge, “#LetThemStay.” Among these groups were/are: GetUp, RISE, and Grandmothers against Detention of Refugee Children in Newcastle. Key slogans: get in the way; #BringThemHere [↑](#endnote-ref-104)
105. O’Sullivan notes: “Significantly, the group of 267 asylum seekers affected by this decision were comprised of a large number of children, including 37 babies.” O’Sullivan “The Sanctity of Asylum,” 254; Davey, “’The Whole Nation is on Board’” [↑](#endnote-ref-105)
106. As Tonkiss explains (150): “Asha was born on mainland Australian soil to parents who had arrived to seek asylum in the country from Nepal, but shortly afterwards was transferred to Nauru. The area in which she lived was infested with rats and tents leaked. Asha was hospitalised at five months old, suffering from gastroenteritis. Her mother’s milk had failed due to the stress of the transfer to the offshore facility and she did not respond well to the formula milk provided. She was returned to detention, despite warnings from Save the Children that this would be a ‘potentially catastrophic’ move. Then, in February 2016, at 12 months of age, she was once again hospitalised after suffering accidental burns when hot water was spilt on her,” Katherine Tonkiss, “’A Baby is a Baby’: The Asha Protests and the Sociology of Affective Post-Nationalism,” *Sociology* 55, no. 1 (2021): 146—162. [↑](#endnote-ref-106)
107. For example, (e.g.): Tonkiss, “’A Baby is a Baby’”; Joshua Robertson et al., “Baby Asha: Protest Swells at Hospital Amid Fears of Imminent Removal,” *The Guardian*, February 20, 2016, <https://www.theguardian.com/australia-news/2016/feb/20/baby-asha-protest-swells-at-hospital-amid-fears-of-imminent-removal>. These protests show the “rebirth of compassion” in Australia (see the cartoon in this source, also) Alex McKean, “Lady Cilento, Baby Asha and the Rebirth of Reason,” *Independent Australia*, February 21, 2016,<https://independentaustralia.net/australia/australia-display/lady-cilento-baby-asha-and-the-rebirth-of-reason,8702>. Others think that Asha’s parents were “rewarded” and more will harm their kids (etc) to try to get out of off-shore detention. See this article, which reviews the different perspectives on this case: Binoy Kampmark, “Manipulating Child Refugees: The Baby Asha Scandal in Australia,” *Counterpunch*, February 24, 2016,https://www.counterpunch.org/2016/02/24/manipulating-child-refugees-the-baby-asha-scandal-in-australia/ [↑](#endnote-ref-107)
108. O’Sullivan, “The Sanctity of Asylum,” 257-8. [↑](#endnote-ref-108)
109. Hodge, #LetThemStay, 395. See Tonkiss, “’A Baby is a Baby.’”. [↑](#endnote-ref-109)
110. Davey, “’The Whole Nation is on Board.’” [↑](#endnote-ref-110)
111. Davey, “’The Whole Nation is on Board’ [↑](#endnote-ref-111)
112. See Hodge, “#LetThemStay”; Susan Maira, “Freedom to Move, Freedom to Stay, Freedom to Return: A Transnational Roundtable on Sanctuary Activism”; RISE refugee group: <https://www.riserefugee.org/topic/sanction-australia/> [↑](#endnote-ref-112)
113. While numerous articles and youtube videos document this activity, the Netflix short series *Stateless* provides an excellent portrayal of the multifaceted activities of these progressive activists. Emma Freeman, Jocelyn Moorhouse (directors), “Stateless” short series, Matchbox Pictures/Dirty Films (ABC Australia/Netflix), Australia, March-July, 2020, As examples of all these activities, see (e.g.) the RISE website (Refugees, Survivors and Ex-Detainees), <https://www.riserefugee.org/topic/sanction-australia/>; Robertson et al., “Baby Asha: Protest Swells at Hospital Amid Fears”; Davey, “’The Whole Nation is on Board’”; Stacks Law Firm: Anneka Frayne, “Sanctuary—Does it Exist?” Feb 17, 2016,

     <https://www.mondaq.com/australia/human-rights/467450/church-sanctuary--does-it-exist-under-australian-law>; Glenda Kwek, “Australia Churches to Offer Sanctuary to Asylum-Seekers,” Feb 4, 2016, <https://news.yahoo.com/australia-churches-offer-sanctuary-asylum-seekers-050017315.html> [↑](#endnote-ref-113)
114. See Michelle Foster, “An ‘Alien’ By the Barest of Threads’—The Legality of the Deportation of Long-Term Residents from Australia,” *Melbourne University Law Review* 33 (2009) : 483—541; Lexy Hamilton-Smith, “Churches Offer Sanctuary to Asylum Seekers Affected by Welfare Crackdown,” August 28, 2017, <https://www.abc.net.au/news/2017-08-29/aust-church-sanctuary-offer-asylum-seekers-welfare-crackdown/8852172>. See also The Monthly, “Morrison’s Plan to Deport Thousands of Migrants” [↑](#endnote-ref-114)
115. See Foster, “An ‘Alien’ By the Barest of Threads” [↑](#endnote-ref-115)
116. Hodge, #LetThemStay, 309: “The vigil has become a place where personal lives are shared, along with stories of grief and hope occasionally interrupted by sounds of car horns in support. As an unavoidable part of contemporary inner city Newcastle, the vigil has become a rally point for support and advocacy groups and has led to an allied monthly gathering – the #CantStandBy Newcastle – a block down from the vigil location at Wheeler place. Initiated by a number of groups, #CantStandBy Newcastle has incorporated dance and other choreographed public displays of demonstration. #CantStandBy rallies have sprung up across Australia as groups extend their networks and engage the public in opposition to Operation Sovereign Borders” [↑](#endnote-ref-116)
117. Hamilton-Smith, “Churches Offer Sanctuary to Asylum Seekers Affected by Welfare Crackdown” [↑](#endnote-ref-117)
118. Very briefly, sanctuary locality provisions refuse to cooperate with extra-constitutional migration policing. Their chief tactic is non-compliance. Due to space limitations, I cannot explain this difference in-depth but see Arnold, “Sanctuary in a Trumpist Context: Creating Spaces of Democratic Exception”; Christopher N. Lasch, et al., “Understanding ‘Sanctuary Cities,’” *Boston College Law Review* 59 no. 5, Article 5 (2018): 1702—1775. [↑](#endnote-ref-118)
119. ABC News (Australia), “The Girl from Biloela who has Spent Every Birthday in Detention with her Tamil Family,” ABC News (Australia), June 11, 2021, <https://www.abc.net.au/news/2021-06-12/biloela-tamil-family-christmas-island-detention-tharnicaa/100207676>; see also the #hometobilo website: https://www.hometobilo.com/ [↑](#endnote-ref-119)
120. Meredith Wright, “Essay: Home to Bilo…at Last?” *Sight Magazine*, June 8, 2022, <https://www.sightmagazine.com.au/25343-essay-home-to-bilo-at-last> [↑](#endnote-ref-120)
121. ABC, “The Girl from Biloela who has Spent Every Birthday in Detention with her Tamil Family.” [↑](#endnote-ref-121)
122. See Anneka Frayne, “Sanctuary—Does it Exist?; Gray, “The Status of Sanctuary in Australian Law”; O’Sullivan “The Sanctity of Asylum.” On the conflation of sanctuary localities and faith-based sanctuary (and an explanation of the important differences between them), please see Kathleen R. Arnold, “Sanctuary in a Trumpist Context: Creating Spaces of Democratic Exception,” *Political Research Quarterly* 75, no. 4, December, 2022: 1173—1185, <https://doi.org/10.1177/10659129211052493> [↑](#endnote-ref-122)
123. See for example Gray, “The Status of Sanctuary in Australian Law”; O’Sullivan “The Sanctity of Asylum.” [↑](#endnote-ref-123)
124. Linda Bosniak criticizes US sanctuary movements as being too liberal (i.e. maintaining the status quo) in Linda Bosniak, “Sanctuary and the Contested Ethics of Presence in the United States,” ed. Didier Fassin, *Borders and Boundaries: Mapping Out Contemporary* Societies, (U California Press, 2018), Ch. 10. Prominent US Republicans argue that sanctuary is criminal although they do not often define their terms, explain their arguments, or provide evidence for this claim. As of September 2022, Gov. Abbott of Texas has forcibly transported some Venezuelan refugees to Chicago and Massachusetts because he argues that both states have encouraged migration through sanctuary practices. These sorts of claims misunderstand what a sanctuary locality is as well as a number of other things related to refugees and migration policy. [↑](#endnote-ref-124)
125. On the concept of fugitive democracy see: Sheldon Wolin, *Politics and Vision* expanded edition (Princeton: Princeton University Press, 2004), 602; Sheldon Wolin, *Fugitive Democracy and Other Essays* ed. Nicholas Xenos (Princeton University Press, 2016). [↑](#endnote-ref-125)
126. Wolin, *Politics and Vision* expanded, 602; Wolin, *Fugitive Democracy and Other Essays* [↑](#endnote-ref-126)
127. Wolin, *Politics and Vision*, 601. [↑](#endnote-ref-127)
128. In this way, Wolin’s analysis is very similar to Foucault’s analytics of power, especially in *History of Sexuality vol. 1*. [↑](#endnote-ref-128)
129. Wolin, *Politics and Vision*, 606. [↑](#endnote-ref-129)
130. See Mouffe, “Feminism, Citizenship, and Radical Democratic Politics”; Sassen, *Globalization and Its Discontents*; Naomi Klein, "Does Protest Need a Vision?" *New Statesman*, July 3, 2000, <https://www.newstatesman.com/politics/2013/05/3-july-2000-does-protest-need-vision>; Naomi Klein, "Reclaiming the Commons" *New Left Review* 9 (2001): 81-89, https://newleftreview.org/issues/ii9/articles/naomi-klein-reclaiming-the-commons [↑](#endnote-ref-130)
131. To put it differently, if the state is a site of contestation, it achieves wholeness through its attempts at monopolizing violence—that is, through its assertion of its warfare powers. [↑](#endnote-ref-131)
132. See Mantena’s brief discussion of these issues in: Emily Gruber, “Summary of Karuna Mantena’s Remarks on Bargu *Starve and Immolate*,” *Critique and Praxis*, April 20, 2019, <https://blogs.law.columbia.edu/praxis1313/karuna-mantena-abjection-and-agency/> [↑](#endnote-ref-132)
133. Hodge, “#LetThemStay #BringThemHere,” 389. [↑](#endnote-ref-133)
134. Martin Luther King, “Letter from a Birmingham Jail.” On dissensus, see Rancière, *Dissensus*;see Feola’s discussion of protest and dissensus in “The Body Politic”; Panagia, “The Improper Event.” See also Raffaella Puggioni, “Border Politics, Right to Life and Acts of Dissensus: Voices from the Lampedusa Borderland,” *Third World Quarterly*, 2015 Vol. 36, No. 6, 1145–1159. [↑](#endnote-ref-134)
135. Steven Corcoran ed of Ranciere’s *Dissensus*, p 3; on plurality.Hannah Arendt has characterized a plurality of voices in which strangers must be convinced (not friends) as the necessary condition for a truly political community. See Hannah Arendt, “Civil Disobedience” ch. 2 in *Crises of the Republic: Lying in Politics; Civil Disobedience; On Violence; Thoughts on Politics and Revolution* (New York: Harvest Books, 1972). See also Westoby on Derrida and hospitality and/or a community yet to come: Westoby, “’A Community Development Yet-to-Come.’” On Rancière’s critique of Agamben, see this article for an interesting interpretation of the relationship between the two authors: Jessica Whyte, “Particular Rights and Absolute Wrongs: Giorgio Agamben on Life and Politics,” *Law and Critique* 20 (2009): 147—161, <https://link.springer.com/article/10.1007/s10978-009-9045-2> [↑](#endnote-ref-135)
136. Hodge, “#LetThemStay,” 390. See also Tonkiss, “’A Baby is a Baby’” [↑](#endnote-ref-136)
137. In contrast to Tonkiss, I believe this is true even if this is not the intention of various protesters. Tonkiss, “’A Baby is a Baby.’” [↑](#endnote-ref-137)
138. Rancière, *Dissensus*. [↑](#endnote-ref-138)
139. Rancière, *Dissensus*; Fiske, “Human Rights and Refugee Protest.” [↑](#endnote-ref-139)
140. On the individualizing nature of the deportation regime, see Genova, “The Deportation Regime: Sovereignty,” 34-35. [↑](#endnote-ref-140)
141. Examples of pathologization are portraying the protester(s) as entirely depressed and irrational; as mute victims who futilely self-harm; and as individuals who commit repulsive acts. See Fiske regarding detainee self-reports. Fiske, “Human Rights and Refugee Protest.” [↑](#endnote-ref-141)
142. Fiske, “Human Rights and Refugee Protest,” 25. [↑](#endnote-ref-142)
143. See Fiske, “Human Rights and Refugee Protest”; Mares, et al. “Seeking Refuge, Losing Hope.” [↑](#endnote-ref-143)
144. Behrouz Boochani, “All We Want is Freedom—Not Another Prison Camp,” *The Guardian*, November 12, 2017, https://www.theguardian.com/commentisfree/2017/nov/13/all-we-want-is-freedom-not-another-prison-camp. [↑](#endnote-ref-144)
145. Feola “The Body Politic” 205. Puggioni argues something similar about detainee protests in Italy: “Success is not evaluated here according to immediate outcomes, and thus according to policy changes. Simply the recognition that acts of dissent contest dominant politics of aliens should already be considered as a success.” Raffaela Puggioni, “Against Camps’ Violence: Some Voices on Italian Holding Centres,” Political Studies 62 (2014): 953. [↑](#endnote-ref-145)
146. This has even been true of protest in extreme captivity, including Guantánamo protests and hunger strikes in supermax prisons. [↑](#endnote-ref-146)
147. With regard to shortened times in detention-this was when migrant mothers staged a hunger strike at the end of Obama’s presidency and this briefly led to shorter detention times for mothers. On the success of Pelican Bay hunger strikers, see Alex Zamalin, “Angela Davis, Prison Abolition, and the end of the American Carceral State,” ch. 4, in *Struggle on Their Minds: the Political Thought of African American Resistance*, (Columbia UP), 119—149. [↑](#endnote-ref-147)
148. The Nauru Files would never have been compiled or released without detainee information, protest, and aid. [↑](#endnote-ref-148)
149. On the asymmetric expectation of sacrifice by minoritized individuals see for example: Juliet Hooker, “Black Lives Matter and the Paradoxes of U.S. Black Politics: From Democratic Sacrifice to Democratic Repair,” *Political Theory* 44, no. 4 (2016): 1—22. [↑](#endnote-ref-149)
150. This is something Patricia Williams elucidates in her Alchemical writings. I conceive of these writes claims as post-national rather than national, even if there is no state to guarantee them. Patricia J Williams, “Alchemical Notes: Reconstructing Ideals from Deconstructed Rights,” *Harvard Civil Rights-Civil Liberties Law Review* 22, no. 2 (Spring 1987): 401-434. See Yasemin Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago: University of Chicago, 1994); Saskia Sassen, *Globalization and Its Discontents: Essays on the New Mobility of People and Money* (New York: New Press, 1998). See also Benjamin Lewis Robinson’s (NYU) forthcoming work on conceiving of politics beyond individual agency. [↑](#endnote-ref-150)
151. As Westoby elucidates in “’A Community Development Yet-to-Come.’” [↑](#endnote-ref-151)
152. My definition adheres to some elements of the modern, global north definition of sovereignty but is not territorially delimited; nor do I define sovereignty in terms of its absoluteness. For excellent references on definitions, history, and debates about global north sovereignty, see: Philpott, “Sovereignty,” *Stanford Encyclopedia*; Daniel Philpott, “Sovereignty: An Introduction and Brief History,” *Journal of International Affairs* 48, no. 2 (Winter 1995): 353—368; Daniel Philpott, “Usurping the Sovereignty of Sovereignty,” *World Politics* book review 53, no. 2 (January 2001): 297-324. [↑](#endnote-ref-152)
153. That is: their work engages in a hierarchy of what counts as political and what provides the means or foundation for truly political activity. Locke, *Second Treatise of Government*; John Stuart Mill, *On Liberty*, ed. Elizabeth Rapaport, (Indianopolis: Hackett Publishing Co., 1978); Jean Jacques Rousseau, *First and Second Discourses*, ed. Masters (Bedford St. Martin’s Press, 1964); Alexis De Tocqueville, *Democracy in America*, ed. J.P. Mayer, trans. George Lawrence (New York: Perennial Classics, 2000) [↑](#endnote-ref-153)
154. I do not disagree with Agamben that bio-power characterizes quite a lot of politics for all residents of a given territory but do want to highlight how actual or threatened detention and deportation are the most explicit and restrictive of this control outside of prisons. [↑](#endnote-ref-154)
155. My analysis challenges rational choice models as well as a great deal of analytical philosophy on this subject by exposing the political nature of trauma in these circumstances; the historical development of policies that precisely made migration policies bio-political, thus effacing all individual characteristics of flight and identity; and the more recent move to making arbitrary confinement and forced exile *mass* policies, which entail an impersonal, rote removal of foreigners from the border and the interior of these countries. In this respect, analytical and rational choice studies that focus on the “morality” of migration or individual calculations of self-interest are ideological in their effects. They deny historical context, public health findings, and the empirical data of mass persecution through confinement and deportation. See also Holmes’ excellent critique of the same analyses of migration in *Fresh Fruit, Broken Bodies* [↑](#endnote-ref-155)
156. See Colette Guillaumin on “appropriation” which can be interpreted as bodily confinement and/or hyper-exploitation. Colette Guillaumin, *Racism, Sexism, Power and Ideology* (New York: Routledge, 1995). [↑](#endnote-ref-156)
157. Suzan Ilcan, Kim Rygiel, “’Resiliency Humanitarianism’: Responsibilizing Refugees through Humanitarian Emergency Governance in the Camp,” *International Political Sociology* 9, no. 4 (December 1, 2015): 333-35; Mainwaring, “Migrant Agency”; Malkki, “Speechless Emissaries”; Westoby, “Developing a Community-Development Approach.” See also William Arrocha, “Expanding the Geographies of ‘Sanctuary’ and the Deepening and Contentious Nature of Immigration Federalism: the Case of California’s SB 54” *Globalizations*, March 2021, 1—18. He argues that sanctuary practices are “counter-hegemonic”; Bargu on hunger strikes and lip-sewing as forms of counter-sovereignty: Bargu, “The Silent Exception.” [↑](#endnote-ref-157)
158. See, e.g., Roberta Villalón, “Passage to Citizenship and the Nuances of Agency: Latina Battered Immigrants,” *Women’s Studies International Forum* 33 (October 12, 2010): 552—560. [↑](#endnote-ref-158)
159. Please see Puggioni “Speaking Through the Body.” Puggioni makes the important point that: “more attention should be given to the way in which acts of open dissent blend with coping strategies, to the point of making some dissenting acts almost imperceptible.” (562) [↑](#endnote-ref-159)
160. I am referring to the work of Ilcan and Rygiel, “’Resiliency Humanitarianism’; Malkki, “Speechless Emissaries: Refugees, Humanitarianism, and Dehistoricization,”; Mainwaring, “Migrant Agency” [↑](#endnote-ref-160)
161. Accordingly, I reject any political use of the term “sovereignty of the self” even if I understand that it can be used in a non-political, perhaps colloquial sense to indicate individual autonomy. See Bargu, “The Silent Exception,” on self-sovereignty. [↑](#endnote-ref-161)
162. Bargu has helpfully elucidated a key difference between the agency of unauthorized border crossers, refugees drifting on the high seas, and those who create value and meaning even as they are forced to languish in refugee camps versus the sorts of migrant protest that defiantly resists displacement, bodily control, and limitations on free expression: “I reserve the meaning of resistance to purposeful, politically motivated acts of protest staged by migrants and refugees.” (Bargu, “Silent Exception,” 5 n22) This is only evident if we view these protesters, she argues, not merely as subjects produced by an “effect of domination” but as individuals endowed with the capacity to make independent decisions and conduct life-sustaining activities (or life-ending ones, as the case may be) independently. See 7, 9. [↑](#endnote-ref-162)
163. Mainwaring, “Migrant Agency: Negotiating Borders,” 292-3. [↑](#endnote-ref-163)
164. Frantz Fanon, *The Wretched of the Earth*, (New York: Grove Press, 2005); Akhil Gupta, *Red Tape: Bureaucracy, Structural Violence, and Poverty in India* (Duke University Press, 2012); Achille Mbembe, “Necropolitics,” trans. Libby Meintjes, *Public Culture* 15, no. 1 (2003): 11-40; James Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (New Haven: Yale University Press, 1987). [↑](#endnote-ref-164)
165. This would and has included arresting people for aiding these foreigners, often on “harboring” or “human trafficking” charges. [↑](#endnote-ref-165)
166. US border sites and migration facilities are considered “Constitution free”; Australia has achieved the same legal situation by excising most of its territory. [↑](#endnote-ref-166)
167. See Philpott, “Sovereignty,” *Stanford Encyclopedia*  [↑](#endnote-ref-167)
168. See also Edkins and Pin-Fat, “Through the Wire.” [↑](#endnote-ref-168)
169. See Bargu, “Silent Exception”; Genova, “’Doin’ Hard Time on Planet Earth.’” [↑](#endnote-ref-169)
170. Genova, “’Doin’ Hard Time on Planet Earth,’” 187. UNHCR reports about Australia that “Asylum-seekers who arrive in Australia without a visa are subjected to a number of punitive measures that can significantly impair their mental health and general well-being.” This includes: “Waiting up to four years to be granted permission by the Government to apply for protection” and “The inability to apply for permanent residency.” UNHCR, “Monitoring Asylum in Australia,” https://www.unhcr.org/asylum-in-australia.html [↑](#endnote-ref-170)
171. Quoted in De Genova, “’Doin’ Hard Time on Planet Earth’” 186. [↑](#endnote-ref-171)
172. See also De Genova, “’Doin’ Hard Time on Planet Earth,’” 194, who notes: “Such precaritisations of time tend to be productive, if for no other reason than that the human persons subjected to them stubbornly persist in seeking ways to prevail in spite of them.” [↑](#endnote-ref-172)
173. See also Bargu, “The Silent Exception” [↑](#endnote-ref-173)
174. As Bill Connolly explains in William Connolly, *Identity/Difference*, (Cornell University Press, 1992). See also Bonnie Honig, *Antigone, Interrupted*, (Cambridge University Press, 2013). [↑](#endnote-ref-174)
175. For these reasons, quite a lot of analytical philosophy on migration is irresponsibly apolitical and ahistorical. To suggest that migration is an (un)ethical act is to use unethical methodologies to individualize, dehistoricize, and otherwise ignore structural factors shaping “choice” and protest. See Holmes, *Fresh Fruit, Broken Bodies* for an excellent critique of push-pull, rational choice models which are very similar to analytical claims. [↑](#endnote-ref-175)
176. As Linda Bosniak notes, foreign and border policies (noting that migration policy is considered foreign policy in both countries) are often assumed to flow from a constitutional order and liberal representative government. Bosniak, “Sanctuary and the Contested Ethics of Presence.” [↑](#endnote-ref-176)
177. This is not only true of accounts that fail to provide any historical account at all as well as accounts of sanctuary that only focus on sanctuary cities, taking biased, incorrect claims as the frame of reference (as an example, see Collingwood). [↑](#endnote-ref-177)
178. On trauma and grief, see Fierke, “Whereof we Can Speak” [↑](#endnote-ref-178)
179. Fierke, “Whereof we Can Speak” [↑](#endnote-ref-179)
180. See Holmes, *Fresh Fruit, Broken Bodies*; Isaacs, “Are Healthcare Professionals Working in Australia’s Immigration Detention Centres Condoning Torture?”; Mares et al.“Psychiatric Assessment of Children and Families”; Mares, et al. “Seeking Refuge, Losing Hope”; McAlister, et al. "I See Nothing but a Fence of Tears"; and see “What’s It Like in Australian Detention Centres?” Institute of Sisters of Mercy of Australia and Papua New Guinea, December12, 2007, https://institute.mercy.org.au/what-it-s-like-in-australia-s-detention-centres/ [↑](#endnote-ref-180)
181. As Holmes urges, we can see illness and injury as markers of “symbolic violence” in Holmes, *Fresh Fruit, Broken Bodies* [↑](#endnote-ref-181)
182. Fraser and Thurber’s term: Thurber et al., “Disrupting the Order,” [↑](#endnote-ref-182)
183. Thurber et al., “Disrupting the Order,” 56. [↑](#endnote-ref-183)
184. Thurber et al., “Disrupting the Order,” 56. [↑](#endnote-ref-184)
185. Panagia “Improper Event,” 304. [↑](#endnote-ref-185)
186. Guillaumin, on anti-racist strategies in *Racism, Sexism, Power and Ideology* [↑](#endnote-ref-186)
187. MLK, “Letter from a Birmingham Jail.” [↑](#endnote-ref-187)
188. My reference points are Arendt’s analysis of a plural political community in “Civil Disobedience” and Linda Zerilli’s more recent treatment of the same concept in Linda M.G. Zerilli, *Feminism and the Abyss of Freedom* (University of Chicago Press, 2005) [↑](#endnote-ref-188)
189. Hannah Arendt, “Civil Disobedience” in *Crises of the Republic: Lying in Politics; Civil Disobedience; On Violence; Thoughts on Politics and Revolution*, (New York: Mariner Books/Houghton Mifflin Harcourt, 1972). [↑](#endnote-ref-189)
190. Arendt, “Civil Disobedience” [↑](#endnote-ref-190)
191. Concerns of Westoby in “’A Community Development Yet-to-Come’”; Wolin, *Politics and Vision*. [↑](#endnote-ref-191)
192. Westoby, “’A Community Development Yet-to-Come,’” 383. [↑](#endnote-ref-192)
193. The US government treats migrant protest as an administrative infraction with consequences including solitary confinement, suspension of “privileges,” and/or being transferred to another location (away from the detainee’s community); Australia has similarly punished migrant protest through the use of force on protesters, esophogal forcefeeding, or removal to black sites or solitary confinement. See Fiske on leaders’ negative views of detainee protests: Fiske, “Human Rights and Refugee Protest. On US “punishment” of hunger strikers, see (.e.g.): Roque Planas, “Some Hunger-Striking Mothers Were Put In Isolation At Karnes Immigrant Detention Center,” Lawyers Say, *Huffington Post*, April 2, 2015, https://www.huffpost.com/entry/karnes-hunger-strike\_n\_6994436 [↑](#endnote-ref-193)
194. On this, see Fiske, et al., “Manus Island Hunger Strikes are a Call to Australia’s Conscience” [↑](#endnote-ref-194)
195. See, in particular, Fiske, “Human Rights and Refugee Protest.” [↑](#endnote-ref-195)
196. See Ronald J. Schmidt, Jr. *Reading Politics with Machiavelli*, (Oxford University Press, 2018); Dayan, *The Law is a White Dog* [↑](#endnote-ref-196)
197. As Mares et al note, after working with detained families: “clinicians report …feelings of impotence, anger, hopelessness, avoidance, numbing, sadness and despair, feelings resonating with those experienced by detainees… Because Australian immigration law takes precedence over State health and child protection jurisdictions, the clinician is unable to effect significant change. Some clinicians felt that their expertise had been denigrated; others felt impotence and guilt that so little was achieved to protect patients from the effects of ongoing incarceration that occurs in our name, apparently with majority public support” – S Mares et al. “Psychiatric Assessment of Children and Families,” 525. [↑](#endnote-ref-197)
198. See Susan Bibler Coutin, Hector Perla, “Legacies and origins of the 1980s US-Central American Sanctuary Movement,” *Refuge* 26, no. 1 (Spring 2009): 7—19; Fiske, “Human Rights and Refugee Protest”; Randy Lippert, *Sanctuary, Sovereignty, Sacrifice: Canadian Sanctuary Incidents, Power, and Law* (UBC Press, 2005). [↑](#endnote-ref-198)
199. As I have indicated, when I argue that migrant protesters are exercising “rights,” these rights are post-national—that is, not conferred by the nation-state. [↑](#endnote-ref-199)
200. Zerilli, *Feminism and the Abyss of Freedom*, 10. [↑](#endnote-ref-200)
201. As I discuss in my forthcoming book *Migrant Protest and Democratic States of Exception* (Routledge, 2023). [↑](#endnote-ref-201)