

Cambridge University Press

978-1-107-41702-1 - Immigration Detention Law, History, Politics

Daniel Wilsher

Index

[More information](#)

INDEX

- A and others* (ECHR), 340
A v Australia (UNHCR), 161–2, 163, 165, 333, 336
A v Secretary of State for Home Department (*Belmarsh* decision, UK), 222–31, 248, 253, 312, 327, 332, 342
 ACLU (American Civil Liberties Union), 236
 Act to Regulate Immigration 1882 (US), 11–13
 Agamben, G., 300–1
Ahsan and others, R v Governor of Brixton Prison, ex parte (UK), 82, 83, 84
 airport detentions, 146–8, 289
Akrich (ECJ), 201
Al Kateb v Godwin (Australia), 104–7, 324, 341, 343
 Alexseev, M. A., 274
 Algerian Wars, French detentions during, 108, 109
 Aliens Act 1793 (UK), 36, 39
 Alien Act 1798 (US), 3–4, 29
 Aliens Act 1905 (UK), 36–43
 aliens power
 Australia, constitutionality of aliens power in, 98, 100, 103, 105–6
 concept of, xi, xiv
 ECHR, detention viewed as ancillary to aliens power in, 140–1
 French Constitution, status of aliens power under, 108
 historical establishment of, 6–8, 57
 modern flowering of illiberal potential of, 57
 permanent emergency power, as, 207–8, 209–12
 state sovereignty and, 224
 war power, as extension of, 57, 209, 266–9
 Aliens Restriction Act 1914 (UK), 45
 alternatives to detention, 337–8
 America. *See* United States
 American Civil Liberties Union (ACLU), 236
Amuur v France (ECHR), 147–8
 anarchists, historical fears regarding, 36, 207
 Angel Island, 19
 anti-terrorism. *See* terrorism and immigration detention
 Anti-terrorism and Effective Death Penalty Act 1996 (US), 212
 Anti-terrorism Crime and Security Act 2001 (ACSA; UK). *See under* terrorism and indefinite detention
 arbitrary power, immigration detention as residue of, xix–xx
 Arenc, French detention centre at, 109, 111
 Arendt, Hannah, 301, 303
 Asian boat people
 Australia, in. *See under* Australia
 Hong Kong, Vietnamese boat people in, 143, 158, 159
 asylum seekers. *See* refugees, asylum seekers and stateless persons

- Australia, 98–107, 116
 - Asian boat peoples crisis, 98–9
 - ICCPR, UNHCR challenges to
 - detention policies under, 158, 161–3
 - indefinite detention of, 101–3
 - Nauru and Manus, detention centres on, 103
 - non-punitive nature of detention of, 100–1, 103
- bonding bail, and parole, removal of option of, 100
- constitutionality of aliens power in, 98, 100, 103, 105–6
- detention centres, poor conditions and unrest at, 283–5
- equal liberty for aliens and citizens, rejection of, 105, 107
- extra-territorial jurisdiction over aliens in, 38
- goal of immigration detention as end in itself in, 334
- habeas corpus tradition in, 99, 107
- legislative origins of mandatory detention in, 325
- non-white alien workers, historical restrictions on, 38, 98
- political expediency, abandonment of individual liberty to, 314
- proportionality in, 333
- remoteness, effects of, 98
- segregation of aliens, *Al Kateb* decision regarding, 104–7
- UN Working Group on Arbitrary Detention, criticism of, 164
- vulnerable groups, detention of, 294, 295
- authorized aliens
 - concept of, xii
 - in EU, 182–5
 - Refugee Convention on lawfully versus unlawfully present refugees, 128–9, 138
- Azam v Secretary of State* (UK), 83
- Baban v Australia* (UNHCR), 162
- bail, bond, or parole. *See* bonding, bail, and parole
- Bakhtiyari v Australia* (UNHCR), 294
- Baumbast* (ECJ), 177
- Beatty, David, 331–2
- Bechta* case (France), 113
- Belmarsh* decision (*A v Secretary of State for Home Department*), UK, 222–31, 248, 253, 312, 327, 332, 342
- Benhabib, S., 303, 317
- ‘blame’ testing of detention cases by ECHR, 141–6, 153–5, 156, 157
- boat people
 - Australia, in. *See under* Australia
 - Cuban and Haitian flotillas arriving in US, mandatory detention for, 67–9, 77, 132, 240–2, 250, 273, 281
 - Hong Kong, Vietnamese boat people in, 143, 158, 159
- bonding, bail and parole, xxi
 - as alternatives to detention, 337–8
 - Australia, boat people crisis and, 100
 - Cold War detention and denial of, 62, 63
 - Cuban and Haitian flotillas arriving in US, adoption of mandatory detention for, 67–9
 - historical US practice of, 14, 17–18, 32
 - Immigration Act 1952 (US), range of alternatives under, 64–5
 - 9/11, refusal of bail to immigrants jailed in US after, 234
 - right to seek bail and routine bail hearings in UK, 88, 91
 - Russian Revolution, potential anarchists detained in wake of, 31
 - WW One, during, 32
- border controls
 - EU common code on border movements, 184
 - foreign relations power, as aspect of, 310
 - fundamental rights, without sacrifice of, 303–7
 - goal of immigration detention, as, 334

Cambridge University Press

978-1-107-41702-1 - Immigration Detention Law, History, Politics

Daniel Wilsher

Index

[More information](#)

INDEX

379

- historical development of, 1, 6–8
- state sovereignty encouraging, 258
- Bosniak, L., 350
- Boumediene* (US Supreme Court), 246–9
- Britain. *See* United Kingdom
- Buchanan, A., 259
- bureaucratic process, immigration
 - detention as, xiii–xiv, xix–xx, 57, 79
- Burlingame Treaty, 20, 119
- C v Australia* (UNHCR), 162, 165, 166, 296, 336
- Cain, Attorney General for Canada v* (UK), 38
- Cambodian boat people in Australia. *See under* Australia
- Canada, historical restrictions on
 - non-white alien workers in, 38
- Caprino v United Kingdom* (ECHR), 142, 150, 176
- Carens, J., 260
- Carlson v Landon* (US Supreme Court), 62–3
- Carpenter* (ECJ), 201
- Casati* (ECJ), 177
- Castles, S., 269
- CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women), 167
- centres for detention. *See* detention centres
- Cesarani, D., 45
- Chae Chan Ping v United States* (US Supreme Court), 24, 120
- Chahal* (ECHR), xvi, 144, 148–50, 156, 198, 214, 219, 320
- children, detention of, 290–6
- Chinese migrant labourers to US, 18–29, 119
- Churchill, Winston, 39, 43
- civil unrest in detention centres, 279–87
- Claghorn, K. H., 31
- Clark v Martinez* (US Supreme Court), 77–9, 154, 326
- Clinton, William Jefferson, 241
- Cold War
 - Communists, US detention of, 59–64, 207
 - Refugee Convention and, 127
 - Refugee Convention (1951) and, 298
 - refugees, asylum seekers and stateless persons during, 125
- Cole, D., 239, 341
- Commonwealth citizens, UK
 - immigration controls aimed at, 79, 80–5
- Communist subversion, US detentions
 - due to fear of, 59–64, 207
- communities of character, 264
- Constitution, Australian, aliens power
 - under, 98, 100, 103, 105–6
- Constitution, French
 - equal liberty of aliens and citizens
 - ensured under, 110–12
 - extension of detention period and, 114–15
 - international transit zones,
 - extra-legal detention in, 112
 - status of aliens power under, 108
- Constitution, US
 - Mariel* boat peoples' right to parole
 - consideration, 68
 - unadmitted aliens viewed as beyond constitutional protection, 60–2, 77
- constitutional right to liberty
 - in Britain, 91
 - in EU, 195, 197–201
 - judicial review and, 326
 - unauthorized persons generally, of, 313
- constitutional status of aliens, lack of
 - clarity regarding, 323–4
- constitutional traditions, immigration
 - detention in conflict with, xii, xiii–xiv
- Contract Labour Act of 1885 (US), 13
- control order regime in UK replacing
 - indefinite detention of
 - suspected terrorists, 231–3
- Convention Against Torture, 167

- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 167
- Convention on the Protection of Civilian Persons in Time of War (1949), 127
- Convention on the Rights of Migrant Workers, 122
- Convention on the Rights of Migrants Workers and their Families, 123
- Convention on the Rights of the Child, 167, 291, 292–3, 294, 295
- Council of Europe
 - anti-terrorism and non-discrimination standards, 224
 - detention, interpretation of rules regarding, 187–9, 191
 - duration of detention, on, 194
 - ECHR. *See* European Convention on/Commission/Court of Human Rights
 - on interpretation of rules regarding detention, 187–9, 191
- counter-terrorism. *See* terrorism and immigration detention
- courts. *See* judicial review, and *specific international courts*
- CPT (European Committee on the Prevention of Torture), 145, 287
- crime and criminals
 - administrative detention, criminal sanctions as alternative to, 349–50
- EU citizens, detention within EU, 175–8
- failure to comply with removal process, US criminalization of, 65–7
- French due process requirements, immigrants, association of moral panic with, 207
- legal status of detainees
 - approximating, xvii
- nationality, criminal law applicable without regard to, 210
- political visibility of criminal immigrants, 277
- proportionality in treatment of, 340–2
- security concerns as political tool, 271–2
- UK foreign prisoners emergency, 95–7
- UN on criminalization of unauthorized aliens, 167–8
- undesirable aliens, early detention of, x–xi
- Cuban American Bar Association and others v Christopher* (US), 241
- Cuban and Haitian flotillas arriving in US, mandatory detention for, 67–9, 77, 132, 240–2, 250, 273, 281
- D and E v Australia* (UNHCR), 163
- damages
 - for detention of suspected terrorists after 9/11 in US, 236
 - for mistaken detention of EU citizens, 179
 - for unlawful imprisonment in UK, 93, 94–5
- Danyal Safiq v Australia* (UNHCR), 163
- Dauvergne, C., 253, 318
- defence powers applied to enemy aliens in wartime, 210
- Demore v Kim* (US Supreme Court), 75–7, 327
- deportation
 - continuing link between detention and, 6, 28
 - EU citizens requiring social assistance, of, 178
 - EU Returns Directive, 185, 190–7
 - non-compliance with. *See* non-compliance with removal process
 - possibility of, detention as conditional upon, 194
 - security-based detention divorced from, 208
 - torture, aliens at risk of, 214, 317
- detention as means of immigration control. *See* immigration detention

Cambridge University Press

978-1-107-41702-1 - Immigration Detention Law, History, Politics

Daniel Wilsher

Index

[More information](#)

INDEX

381

- detention centres
 - conditions at, 278–9, 282–3, 285–7, 288–90
 - extra-legal spaces, as. *See* extra-legal spaces, detention centres as
 - unrest in, 279–87
- Dicey, A. V., 37
- Dublin Convention (1990), 189
- due diligence test, ECHR, 141–6, 152–4, 156, 230
- due process
 - British proposals around time of French Revolution to restrict alien entry without, 5
 - equal right to liberty and access to, 342–3
 - French requirements for arrest and detention of immigrants,
 - ICCPR requirements, 319–20
 - in United States
 - Alien Act 1798, 4
 - Cold War concerns about Communist aliens, 62
 - Demore v Kim* on, 76
- Dummett, A., 36
- duration of immigration detention. *See also* indefinite detention
 - EU member states, in, 191
 - EU Returns Directive, under, 193–6
 - fair balance between community and individual interests, striking, 338–40
 - in United States
 - Chinese immigrant labourers, 21–3
 - East Coast, limited duration of historical detentions on, 15–17
 - Immigration Act 1952, time limits imposed by, 65
 - unauthorized aliens under mandatory detention, 70
- Dworkin, R., 248, 253, 323, 328
- Dyzenhaus, D., 315, 322, 329, 348
- ECHR. *See* European Convention on/Commission/Court of Human Rights
- ECJ. *See* European Court of Justice
- economic migration
 - EU citizens within EU, of, 174–9
 - free movement, liberal principle of, ix–x, 1, 257
 - legal aliens, concept of, xii
 - migrant workers, defined, 122
 - modern international trade
 - liberalization mostly not applicable to, xiv
 - post-WW Two encouragement of, 57, 58, 121
 - Refugee Convention delegates on, 129
 - restrictions from 1970s, 121
 - Russian Revolution, immigration fears related to, 30–1
 - unauthorized aliens and, xi
- Elias, A., 40
- Ellis Island, 15, 16, 30, 36, 60, 64
- emergency powers, xvii, 207–8, 209–12, 347–8
- enemy aliens. *See* war and immigration detention
- England. *See* United Kingdom
- ‘entry fiction,’ in US Immigration Act 1891, 13
- equal liberty for aliens and citizens, 124
 - Australian rejection of, 105, 107
 - border control administration without sacrifice of, 303–7
 - disabilities imposable upon unauthorized persons, 350
- due process rights for all
 - deprivations of liberty, 342–3
- ECHR on, 149–55, 319
- EU, in, 195, 197–201
- France, in, 110–12
- human right, as, 123
- ICCPR, under, 319
- other fundamental rights apart from those relating to detention, 253
- ‘prison with three walls’ argument, 112–13, 146–8, 155, 227
- proportionality in treatment of genuinely dangerous detainees and, 340–2
- security-based detention and denial of, 208–9, 252–5

- equal liberty for aliens (*cont.*)
 - terrorist threat, indefinite detention
 - for purposes of, 252–5
 - UK, in, 222, 224–6, 228
 - US, in, 243, 246–9
 - UK assertion of, 86–8, 222, 224–6, 228
- EU. *See* European Union
- European Charter of Fundamental Rights, 198
- European Commission
 - asylum detention, interpretation of, 187–9
 - on duration of detention, 193
- European Committee on the Prevention of Torture (CPT), 145, 287
- European Convention
 - on/Commission/Court of Human Rights (ECHR), 140–57, 319–20
- ACSA (UK), indefinite detention of suspected terrorists under, 216–17, 218, 219, 220, 222, 230–1
- airport detentions, on, 146–8, 289
- aliens power, detention viewed as ancillary to, 140–1
- Belmarsh* decision, confirmation of, 230–1
- ‘blame’ testing, on, 141–6, 153–5, 156, 157
- deportation, detention as
 - conditional on possibility of, 194
- due diligence test, 141–6, 152–4, 156, 230
- emergency powers, Court on, 347
- equal right to liberty, on, 149–55, 319
- EU legislation’s compliance with fundamental rights under, 197, 199
- ICCPR compared to Convention, 158, 159
- judicial review requirements, 331
- necessity test, 148–50, 153, 155
- on non-compliance with removal process, 153–5
- Parliamentary Assembly
 - Recommendation of 2002, 155
- proportionality in, 332
- purely administrative detention, restraints on, 150–6
- torture, Convention forbidding of deportation of aliens at risk of, 214, 317
- UK incorporation of Convention, 80
- vulnerable groups, detention of, 292–3
- European Court of Justice (ECJ)
 - asylum seekers, case law on detention of, 186
 - on free movement rights of EU citizens, 176–8
 - principles of EU law evolved by, 171
 - proportionality in, 332
 - review of EU legislation for compliance with fundamental rights by, 197–201
 - rights of non-citizens, failure to address, 195
- European Parliament
 - on duration of detention, 193
 - on interpretation of rules regarding detention, 187–9, 191
- Parliamentary Assembly
 - Recommendation of 2002, 155
- European Union (EU), 171–206 *See also* specific Member States
 - free movement and non-detention of EU citizens, 172–3, 174–9, 317
- Member State control of
 - immigration and detention, loss of, 202–4
- non-EU citizens, control over movement of, 173–4, 182
- asylum seekers, 182, 185–9
- authorized alien immigration left to Member States, 182–5
- constitutional right to liberty, 195, 197–201
- divergence between EU Member States as to detention practices, 187, 191

- duration of detention, 193–6
- evolution of supranational EU powers, 179–82
- non-compliance with removal process, 193, 196, 350
- rule of law, avoidance of, 196–7
- security concerns as key feature of, 180, 181
- unauthorized aliens, 182, 185, 190–3, 199–201
- Schengen Treaty (1985) and system, 180
- security concerns, 171, 172, 173
 - EU citizens, 174–9
 - non-EU citizens, 180, 181
 - unauthorized aliens, 185
- social assistance, expulsion of EU citizens requiring, 178
- state sovereignty and, 171, 172, 173
- European Union (EU) Asylum Procedures Directive, 185, 187–9
- European Union (EU) border agency, creation of, 203
- European Union (EU) common code on border movements, 184
- European Union (EU) Directive on Long-Term Residents, 183
- European Union (EU) Directive on Temporary Protection, 183
- European Union (EU) Family Reunification Directive, 183, 199
- European Union (EU) Reception Conditions Directive, 185–7, 189, 196
- European Union (EU) Returns Directive, 185, 190–7, 313, 333, 350
- European Union (EU) Students Directive, 184
- Ewing, K., 53
- Executive Committee Conclusion 44, 134–6, 139, 148, 151, 188
- executive versus legislative detention, judicial review of, 79, 325–6
- expulsion. *See* deportation
- extra-legal space, detention centres as, xviii–xix, 299–303. *See also* outsourcing/offshoring of detainees
- airport detentions, 146–8, 289
- civil and criminal protections available to detainees, 301
- disembarked detained passengers under UK Aliens Act 1905, 41
- ‘entry fiction’, US Immigration Act 1891, 13
- French law on international transit zones, 112–13
- judicial review, detention outside of, 302
- ‘prisons with three walls’, 112–13, 146–8
- security-based detentions, 209
- extra-territorial jurisdiction, 302
 - Australia, in, 38
 - Cubans and Haitians detained at Guantanamo Bay, challenges to, 241–2
- facilities for detention. *See* detention centres
- Fallon, R. H., 249
- Federal Bureau of Investigation (FBI), US, 233–6
- Finnis, J., 228
- Fletcher, G. P., 248
- Fong Yue Ting v United States* (US Supreme Court), 26
- Ford Committee, 12
- foreign relations power, immigration control viewed as aspect of, 310
- France, 107–16, 117–18
 - aliens power, constitutional status of, 108
 - Article 120, internments under, 108–10
 - criminal due process requirements for arrest and detention of immigrants, deportation targets, adoption of, 115
 - duration of detention, limits on, 191

Cambridge University Press

978-1-107-41702-1 - Immigration Detention Law, History, Politics

Daniel Wilsher

Index

[More information](#)

384

INDEX

- France (*cont.*)
 equal liberty for aliens and citizens,
 constitutional safeguards for,
 110–12
 extension of constitutional detention
 period, 114–15
 international transit zones,
 extra-legal detention in,
 112–13
 number of unauthorized aliens,
 asylum seekers and detainees
 in, 115
 police powers, immigration
 detention viewed as exercise of,
 58, 108
 pre-legislative scrutiny of detention
 policy in, 108–10, 325
 free movement
 EU citizens, of, 172–3, 174–9, 317
 liberal tradition of, ix–x, 1, 257
 French Revolution, immigration fears
 related to, 3, 5
- Galloway, D., 264–6, 307, 322
 Gearty, C., 53
 Geary Act of 1892 (US), 26
 Geneva Conventions, 210, 240
 Germans during WW One and WW
 Two, UK and US detention of,
 29, 45–8, 50, 211
- Germany
 duration of detention, limits on,
 191
 UNCHR criticism of detention in
 West Germany, 133
- Gibney, M. J., 259
 Global Commission on International
 Migration, 167
 Global Detention Project, 257
 Golove, D., 245
 Goodwin-Gill, G., 133
 Great Britain. *See* United Kingdom
 Great War. *See* World War One
 Gross, O., 229
 ‘group’ detention
 individualized detention decisions,
 importance of, 336
 modern tendency toward, 58
- political visibility of large influxes,
 277, 278
 UK, in, 93, 279
 US, in, 59, 63
- Guantanamo Bay, 209, 213, 239–50,
 302, 312, 327, 330, 343
 Guild, E., 198, 200
 Guiraudon, V., 275
 Gulf War detentions in UK, 212
- habeas corpus tradition
 Australia, in, 99, 107
 citizens and aliens not distinguished
 in, ix
 criminal law, detention under, 210
 historical guarantee against unlawful
 immigration measures, loss of,
 2, 5, 55
 judicial reconciliation of migration
 controls with, 322
 politicization of immigration
 detention eroding, 57, 58
 UN concern over adequacy of,
 159
- United Kingdom, in
 citizens detained under Reg. 14B
 of Defence of the Realm
 Regulations during WW One,
 50
 detainees without status, right to
 liberty of, 91
 equal liberty for aliens and
 citizens, assertion of, 86
- United States, in
 Chinese immigrant labourers,
 19–21, 24
 East Coast, immigration
 applications on, 17
 Guantanamo detainees,
 jurisdiction over, 243, 246,
 330
 plenary powers undermining,
 25
 Russian Revolution, detention of
 potential anarchists in wake of,
 31
 unlimited/indefinite detention,
 challenges to, 71–5

Cambridge University Press

978-1-107-41702-1 - Immigration Detention Law, History, Politics

Daniel Wilsher

Index

[More information](#)

INDEX

385

- Haddad, E., 126, 139, 269
- Haitian and Cuban flotillas arriving in
US, mandatory detention for,
67–9, 77, 132, 240–2, 250, 273,
281
- Halliday, R v* (UK), 50
- Hamdan v Rumsfeld* (US Supreme
Court), 246, 247, 248
- Hamdi v Rumsfeld* (US Supreme
Court), 244–6, 248
- Hardial Singh, R v Governor of Durham
Prison ex parte* (UK), 89, 96, 103
- Hassan, R v Governor of Risley ex
parte* (UK), 84–5
- Hathaway, J. C., 128
- Held, D., 288
- Henderson v Mayor of New York*
(US Supreme Court), 9
- Hill Maher, K., 317
- historical development of immigration
detention, 1–56
- border as site of regulation, 1, 6–8
- centralized state control over aliens,
development of, 6–8
- in UK, 36–54. *See also under*
United Kingdom
- in US, 8–36. *See also under* United
States
- expulsion and detention, continuing
link between, 6, 28
- French Revolution, immigration
fears related to, 3, 5
- in international law, 119–21, 124–6
- liberal tradition of free movement of
aliens, ix–x, 1, 257
- undesirable aliens, early detention
of, x–xi
- WW One and WW Two. *See* World
War One; World War Two
- Hobbes, Thomas, 266, 268, 314
- Hong Kong, Vietnamese boat people
in, 143, 158, 159
- human rights, 121–4
- border control administration
without sacrifice of, 303–7
- ECHR. *See* European Convention
on/Court/Commission of
Human Rights
- liberty, right to, 123
- migration, qualified right of, 124
- of refugees, asylum seekers and
stateless persons, xvi, 121–3
- sovereignty concept in conflict with,
121
- unauthorized aliens, of, xv–xvii,
121–4
- UNHRC (UN Human Rights
Committee) and ICCPR. *See*
International Covenant on Civil
and Political Rights
- universality of. *See* equal liberty for
aliens and citizens
- Hutchinson, E. P., 17
- Hutto, In Re* (US), 293
- ICCPR. *See* International Covenant on
Civil and Political Rights
- ID and others v Home Office* (UK), 95
- illegal aliens. *See* unauthorized aliens
- Immigration Act 1891 (US), 13–14
- Immigration Act 1893 (US), 14–15
- Immigration Act 1917 (US), 32
- Immigration Act 1952 (US), 64–5
- Immigration Act 1971 (UK), 81, 83,
84–5, 88
- Immigration and Nationality Act, US,
238
- Immigration and Naturalization
Service (INS), US, 234, 235
- immigration detention, ix–xxiii
- aliens power, concept of, xi, xiv. *See
also* aliens power
- arbitrary power, as residue of,
xix–xx
- as bureaucratic process, xiii–xiv,
xix–xx, 57, 79
- constitutional traditions in conflict
with, xii, xiii–xiv
- EU, in, 171–206. *See also* European
Union
- expulsion never unhinged from, 6
- extra-legal nature of detention
centres, xviii–xix. *See also*
extra-legal space, detention
centres as
- goals of, determining, 333–6

- immigration detention (*cont.*)
 - growth in scope and scale of, ix, xii, 116
 - historical development of, 1–56. *See also* historical development of immigration detention
 - international law and, 119–70. *See also* international law and immigration detention
 - judicial system and. *See* judicial system
 - legal status of detained foreigners, xvii–xviii, xix–xx
 - liberal tradition of free movement of aliens and, ix–x, 1, 257
 - modern practice of, 57–118. *See also* modern immigration detention practice since WW Two
 - political issue, as, xix–xxi. *See also* political issue, immigration detention as
 - rule of law and, xxii–xxiii, 310–53. *See also* rule of law and immigration detention
 - security measure, as, 207–55. *See also* security and immigration detention
 - unauthorized aliens, of. *See* unauthorized aliens
- impartialists, 259–62
- indefinite detention
 - Australia, modern policy of mandatory indefinite detention in, 98–107
 - ECHR due diligence approach to and ‘blame’ testing of, 141–6
 - terrorism, as means of combating. *See* terrorism and indefinite detention
 - UN Working Group on Arbitrary Detention on, 165
 - United Kingdom, in
 - as counter-terrorist measure. *See under* terrorism and indefinite detention
 - damages for unlawful imprisonment, 93, 94–5
 - foreign prisoners emergency, 95–7
 - historical development during WW One and post-war period, 45–54
 - restrictions on, 88–91
 - United States, in
 - as counter-terrorist measure. *See under* terrorism and indefinite detention
 - current practice, effect of *Zadvydas* and *Martinez* cases on, 77–9
 - historical development during WW One and post-war period, 33–4
 - of *Maríel* boat people, 68
 - modern challenges to, 71–5
 - Supreme Court’s Cold War deference to government on, 62
- individualized detention decisions, importance of, 336
- INS (Immigration and Naturalization Service), US, 234, 235
- international cooperation on immigration controls, ix
- International Convention on the Elimination of All Forms of Racial Discrimination, 167, 224
- International Covenant on Civil and Political Rights (ICCPR), 157–66
- ACSA (UK), indefinite detention of suspected terrorists under, 222, 224
- Article 9 prohibiting arbitrary detention, 159–61
- due process requirements, 319
- ECHR compared, 158, 159
- equal right to liberty under, 319
- EU legislation’s compliance with fundamental rights under, 197
- extreme nature of cases handled by, 320
- growing concerns from mid-1990s and, 158–9, 163–5
- proportionality under, 161–3

Cambridge University Press

978-1-107-41702-1 - Immigration Detention Law, History, Politics

Daniel Wilsher

Index

[More information](#)

INDEX

387

- US detention of aliens after 9/11 as violation of, 237
- Working Group on Arbitrary Detention, 159, 163–5
- International Covenant on Economic, Social, and Cultural Rights, 167, 224
- international law and immigration detention, 119–70
 - absence of legal framework for migration and migrant rights, xiv–xv
 - bureaucratic rather than judicial process, immigration detention as, xiii
 - criminalization of unauthorized aliens, on, 167–8
 - ECHR. *See* European Convention on/Court/Commission of Human Rights
 - Executive Committee Conclusion* 44 on, 134–6, 139, 148, 151, 188
 - historical development of, 119–21, 124–6
 - human rights. *See* human rights
 - ICCPR and. *See* International Covenant on Civil and Political Rights
 - ‘outlaw’ status of detainees in international law, 296–9
 - political pressure for accountability, 287–90
 - proportionality guidelines. *See* proportionality
 - Refugee Convention (1951). *See* Refugee Convention
 - rule of law, limits on guardianship of, 316–21
 - state sovereignty, concept of, 120. *See also* state sovereignty
 - UK Royal Commission of 1905 on, 36, 38
 - UNHCR on, 131–8
 - WW Two and Cold War refugee crisis, 124–6
- International Refugee Organization, 125
- Ireland, no limits on duration of detention in, 191
- irregular aliens. *See* unauthorized aliens
- Italy
 - conditions for detainees in, 286
 - outsourcing of detainees to Libya, 287
- Jackson, J., 313, 330
- Japan, UN criticism of detention policies under, 158
- Jean v Nelson* (US Supreme Court), 67, 73, 272
- Jews
 - French detentions during WW Two, 108
 - UK immigrants, nineteenth and early twentieth centuries, 36, 43, 44
- Johnson v Eisentrager* (US Supreme Court), 242, 243
- Joppke, C., 275
- Ju Toy, United States v* (US Supreme Court), 25
- judicial review, 321–31. *See also* habeas corpus tradition
 - Australia, exclusion of judicial review of detention of boat people in, 101
 - damages for unlawful imprisonment, UK cases seeking, 93, 94–5
 - ECHR on judicial review of detention decisions, 155–6
 - equality of protection for aliens and citizens by UK courts, 86–8
 - EU, detention of non-EU citizens in, 192–3
 - extra-judicial treatment of immigration detention, xiii–xiv, 55, 79
 - France, prompt judicial approval of detention required in, 110
 - global tendency toward requiring, 330–1
 - involvement in rights of entry and stay, xix–xx

- judicial review (*cont.*)
 - legal entitlements of aliens, scrutiny of, xxi
 - of legislative versus executive detention, 325–6
 - outline of statutory system for, 343–7
 - plenary powers of Congress to control immigration in US, 23–7, 75–7
 - proportionality as basis for, 331–3
 - refugees, asylum seekers and stateless persons, rights of, xiii
 - UN consideration of need for, 159, 164, 165
- Kadzoev* (ECJ), 195, 201, 202, 204
- Kansas v Hendricks* (US Supreme Court), 72
- Kanstroom, D., 4, 28, 326
- Kant, Immanuel, 261
- Kaoru Yamataya v Fisher* (US Supreme Court), 27
- Khawaja* case (UK), 86–8, 90, 95, 105, 219
- Kolompar* (ECHR), 144
- Kosopud, In Re* (US), 33
- Kurds detained in UK, 279
- labour migration. *See* economic migration
- legal aliens. *See* authorized aliens
- legislative versus executive detention, judicial review of, 325–6
- liberalism
 - free movement of aliens as tradition of, ix–x, 1, 257
 - fundamental rights, border control administration without sacrifice of, 303–7
 - illiberal outcomes in relation to detention produced by, 257–66
 - impartialists, 259–62
 - partialists, 259, 262–6
- liberty, right to. *See* equal liberty for aliens and citizens; free movement
- Libya, Italian detainees outsourced to, 287
- Liebmann, R v Superintendent of Vine Street Police Station ex parte* (UK), 48
- Lim* case (*Chu Kheng Lim and others v Minister for Immigration, Local Government and Ethnic Affairs and another*; Australia), 103, 106
- Lubbers, Ruud, 137
- Lusitania*, sinking of, 46, 50
- Lynas v Switzerland* (ECHR), 141
- Maastricht Treaty, 177
- Madafferi v Australia* (UNHCR), 295
- Madison, James, 3–4, 6, 27, 314
- Magna Carta, 1
- Malta
 - conditions for detainees in, 286
 - duration of detention, no limits on, 191
- mandatory detention
 - in Australia, 98–107, 117
 - in EU, 192
 - political and psychological effects of, 302
 - US, in, 116
 - for Cuban and Haitian flotillas, 67–9, 77, 132, 240–2, 250, 273, 281
 - historical development of, 14–15
 - legislative origins of, 325
 - suspected terrorists, 238–9
 - unauthorized aliens, as tool to control, 69–71
- Marief* boat people, 67–9, 77, 241, 250, 273, 281
- Martin, David, 236
- Maurus Island, Australian asylum camps on, 103, 302
- May, Erskine, 5, 6, 37
- Meltzer, D. J., 249
- membership, migration issues viewed as problem of, 303
- mental health, effects of detention on, 286, 290, 294, 295, 338

- mental health problems, detention of persons with, 290–6
- Mexican immigrants to US, mandatory detention of, 70
- Mezei, Ignatz, and *Mezei* case (US Supreme Court), 60–2, 64, 68, 73, 74, 112, 227, 250, 330, 343
- migrant workers, defined, 122 n20. *See also* economic migration
- migration, qualified right of, 124
- Mikolenko v Estonia* (ECHR), 153, 333
- Miller, M. J., 269
- modern immigration detention
- practice since WW Two, 57–118. *See also* World War Two
 - Australia, in, 98–107, 117. *See also* Australia
 - bureaucratic control of immigration process, 57
 - France, in, 107–16, 117–18. *See also* France
 - political issue, as, 57, 58, 114, 116
 - political issue, detention as, 57, 58
 - security, aliens as permanent threat to, 57
 - UK, in, 79–97, 117. *See also* United Kingdom
 - US, in, 58–79, 116. *See also* United States
- Mubilanzila Mayeka and Kaniki Mitunga v Belgium* (ECHR), 292
- Muskhadziyeva v Belgium* (ECHR), 293
- Nafziger, James, 120
- Nauru, Australian asylum camps in, 103, 302
- necessity test
- ECHR on, 148–50, 153, 155
 - individualized detention decisions, importance of, 336
 - UN Working Group on Arbitrary Detention on, 164
- Netherlands
- conditions for detainees in, 286
 - duration of detention, no limits on, 191
- Neuman, G., 4, 243, 315
- New Zealand, interpretation of Refugee Convention by, 138
- Nicol, A., 36
- 9/11, 212–13, 215–18, 233–7. *See also* terrorism and immigration detention
- Nishimura Ekiu v United States* (US Supreme Court), 25, 120
- non-compliance with removal process
- ECHR on, 153–5
 - in EU, 193, 196, 350
 - UK criminalization of, 350
 - US criminalization of, 65–7, 350
- non-immigration objectives, use of
- aliens powers to achieve, 207–8
- Office of the Inspector General (OIG), US, 235–6
- Ogata, Sadako, 135
- Oklahoma bombings, 238
- Oulane* (ECJ), 177–9, 184
- ‘outlaws,’ detainees as, xviii, xix–xx, xxi, 209, 296–9
- outsourcing/off-shoring of detainees
- by Australia, 103
 - EU proposals, 203, 287
 - Guantanamo Bay, 209, 213, 239–50, 302, 312, 327, 330, 343
 - Italy, by, 287
 - legal position of detainees weakened by, 302
- Panayi, P., 52
- Papua New Guinea, Australian asylum camps in, 103, 302
- parole, bail, or bond. *See* bonding, bail, and parole
- partialists, 259, 262–6
- pathogenic nature of detention, 286
- Peers, S., 200
- PENTTBOM, 233, 235, 236
- physical detention facilities. *See* detention centres
- plenary powers doctrine, US
- development of, 23–7
 - modern retention of, 75–7
- Plyer v Doe* (US Supreme Court), 351

Cambridge University Press

978-1-107-41702-1 - Immigration Detention Law, History, Politics

Daniel Wilsher

Index

[More information](#)

390

INDEX

- police powers, immigration detention
 - in France viewed as exercise of, 58, 108
- political activists, detention of
 - anarchists, 36, 207
 - Communist subversion, 59–64, 207
 - French Revolution, 3, 5
 - Russian Revolution, 30–1
- political issue, immigration detention
 - as, xix–xxi, 256–309. *See also* liberalism
 - Belmarsh* decision (UK) on
 - indefinite detention of terrorists and, 228–30
- conditions in detention centres, 278–9, 282–3, 285–7, 288–90
- ECHR and, 153
- extra-legal political spaces, detention centres as. *See* extra-legal space, detention centres as
- free movement of aliens, liberal tradition of, ix–x, 1, 257
- fundamental rights, border control
 - administration without sacrifice of, 303–7
- impartialists, 259–62
- international pressure and
 - accountability, 287–90
- in modern detention regimes, 57, 58, 114, 116
- non-immigration objectives, use of
 - aliens powers to achieve, 207–8
- non-liberal political theory, 266–9
- ‘outlaw’ status of detainees, 296–9
- partialists, 259, 262–6
- security-based detention, political
 - problems arising from, 251, 255
- security concerns as political tool, 269–75
- traditional left/right groupings,
 - migration issues cutting across, 276
- unrest in detention centres, 279–87
- visibility of problem and controls, 275–8
- vulnerable groups, detention of, 290–6
- ‘prisons with three walls’ argument, 112–13, 146–8, 155, 227
- proportionality
 - disabilities imposed upon unauthorized persons, of, 350–2
 - ECHR on, 155
 - fair balance between community and individual interests, striking, 338–40
 - genuinely dangerous detainees, treatment of, 340–2
 - ICCPR, under, 161–3
 - Refugee Convention on, 136–8
 - rule of law and, 331–3
- psychological problems, detention of
 - persons with, 290–6
- psychological stresses of detention, 286, 290, 294, 295, 338
- punishment, status of immigration
 - detention as
 - Australia, in, 100–1, 103
 - Chinese immigrant labourers in US, 20
 - criminal sanctions as alternative to administrative detention, 349–50
 - deterrent effect of detention, 278
 - ECHR on, 153, 154
 - in EU Returns Directive, 196
 - Madison and Alien Act 1798 (US) on, 3–4
 - security-based detention and, 209
 - US Supreme Court rulings that detention is not legally imprisonment, 27–9, 60
- racism and immigration
 - Australian and Canadian historical restrictions on non-white alien workers, 38, 98
 - Chinese migrant labourers to US, 18–29
 - Commonwealth citizens, UK
 - immigration controls aimed at, 81
 - detention, racist abuses during, 289

Cambridge University Press

978-1-107-41702-1 - Immigration Detention Law, History, Politics

Daniel Wilsher

Index

[More information](#)

INDEX

391

- Jewish immigrants to UK in 19th century, 36
- partialist view of, 265
- Rasul v Bush* (US Supreme Court), 243, 244, 245, 246, 247, 248, 249
- Rawls, John, 258
- Refugee Convention (1951)
 - criminal punishment, exemptions from, 349
 - emergency situations, on, 348
 - EU, movement of non-EU citizens within, 181, 187
 - international law and immigration detention, xvi, 122, 126–31, 138–40, 317
 - post-WW Two/Cold War and, 298
 - US detention of Cuban refugees at Guantanamo as violation of, 241
- refugees, asylum seekers and stateless persons
 - Australian boat people crisis. *See under* Australia
 - criminalization of failure to comply with removal process in US and, 65–7
 - EU detention powers aimed at, 182, 185–9
 - Executive Committee Conclusion* 44 on, 134–6, 139, 148, 151, 188
 - growth in British use of detention for, 91–4
 - Haitian and Cuban flotillas arriving in US, mandatory detention for, 67–9, 77, 132, 240–2, 250, 273, 281
 - human rights of, xvi, 121–3
 - international law, under, xiv
 - judicial rights of, xxi
 - lawfully versus unlawfully present, 128–9, 138
 - political visibility of, 277
 - proportionality guidelines for. *See* proportionality
 - unauthorized aliens as, xi
 - UNHCR on detention of, 131–8, 288
 - WW One and post-war period, 33–4, 56
 - WW Two and Cold War, 124–6
 - release on bail, bond, or parole. *See* bonding, bail, and parole
 - remote controls on immigration, 277
 - removal. *See* deportation
 - Riad and Idiab v Belgium* (ECHR), 289
 - Richard, Alain, 109
 - Rubio-Marín, R., 306
 - rule of law and immigration detention, xxii–xxiii, 310–53
 - alternatives to detention, 337–8
 - constitutional status of aliens, lack of clarity regarding, 323–4
 - criminal sanctions as alternative to administrative detention, 349–50
 - disabilities imposable upon unauthorized persons, 350–2
 - due process rights for all deprivations of liberty, 342–3
 - emergency powers and, 347–8
 - EU Returns Directive avoiding, 196–7
 - fair balance between community and individual interests, striking, 338–40
 - general principles of, 343
 - genuinely dangerous detainees, treatment of, 340–2
 - goals of detention, determining, 333–6
 - individualized detention decisions, 336
 - international law, limitations of, 316–21
 - judicial review of government power of detention, 321–31, 343–7
 - proportionality requirements, 331–3
 - security concerns and, 207, 311–16
 - Russian Revolution, immigration fears related to, 30–1
 - Saadi and Others, Secretary of State for the Home Department ex parte* (UK), 93

Cambridge University Press

978-1-107-41702-1 - Immigration Detention Law, History, Politics

Daniel Wilsher

Index

[More information](#)

392

INDEX

- Saadi and Others v United Kingdom* (ECHR), 151, 164, 333, 347
- Sale v Haitian Centers Council v US* (US Supreme Court), 241
- Sarno, R v Governor of Brixton Prison ex parte* (UK), 48
- Sassen, S., 55, 316
- Schengen Treaty (1985) and system, 180
- Schmitt, Carl, 262, 266–8, 296, 300, 314, 315
- Schuck, P., 304
- security and immigration detention, 207–55. *See also* terrorism and immigration detention
- aliens power as permanent emergency power for purposes of, 207–8, 209–12
- ASCA (UK) as security rather than immigration measure, 223–4
- de-legitimation of all aliens for security purposes, xx–xxi
- deportation, security-based detention divorced from, 208
- equal liberty for aliens and citizens, denial of, 208–9, 252–5
- EU, in. *See under* European Union
- extra-legal space, detention centres as, 209
- fundamental rights, border control administration without sacrifice of, 303–7
- modern permanent sense of aliens as security threats, 57
- political problems arising from security-based detention, 251, 255
- political tool, security concerns as, 269–75
- proportionality in treatment of genuinely dangerous detainees, 340–2
- Refugee Convention delegates on refugees as security threats, 129
- rule of law and, 207, 311–16
- undesirable aliens, early detention of, x–xi
- segregation of aliens in Australia, *Al Kateb* decision regarding, 104–7
- Sen, Amartya, 305
- September 11, 2001, 212–13, 215–18, 233–7. *See also* terrorism and immigration detention
- Shamsa v Poland* (ECHR), 156, 331
- Sharpe, R. J., 51
- Sibley, N. W., 40
- Simpson, B., 50, 51, 211
- Singer, P., 260
- Singh v Czech Republic* (ECHR), 145
- social assistance, expulsion of EU citizens requiring, 178
- Somerset's Case* (UK), 86
- sovereignty. *See* state sovereignty
- Spanish Civil War refugees, French internment of, 108, 129
- Special Immigration Appeals Commission (SIAC), UK, 219–20
- state sovereignty
- aliens power and, 224
- border control as manifestation of, 258
- concept of, 120
- EU and, 171, 172, 173
- free movement tradition affected by rise of, 258
- globalized world, in, 318
- goal of immigration detention, as, 335
- human rights and migration controls, conflict between, 121
- justification of immigration detention, as, 169
- political pressure for accountability and, 287–90
- stateless persons. *See* refugees, asylum seekers and stateless persons
- Steel, Z., 338
- Sunstein, C., 313
- Switzerland, UN criticism of detention policies of, 158
- Tamil asylum seekers in UK, 135, 279
- Tampere European Council meeting of 1999, 181

- Tan Te Lam v Superintendent of Tai A Chau Detention Centre* (British Hong Kong), 90
- territorial sovereignty. *See* state sovereignty
- terrorism and indefinite detention, xi, 212–13
- emergency powers, 348
- equal liberty for aliens and citizens, 252–5
- UK assertion of, 222, 224–6, 228
- US assertion of, 243, 246–9
- EU concerns regarding non-EU citizens, 181
- political problems arising from, 251, 255
- political tool, security concerns as, 274
- September 11, 2001, 212–13, 215–18, 233–7
- UK, in
- Belmarsh* decision (*A v Secretary of State for the Home Department*), 222–31, 248, 253, 312, 327, 332, 342
- control order regime replacing detention, 231–3
- drafting and passage of ACSA, 215–18
- equal liberty for aliens and citizens, assertion of, 222, 224–6, 228
- first detentions and litigation under ACSA, 219–22
- Gulf War detentions, 212
- provisions of ASCA, 218–19
- security rather than immigration measure, ACSA as, 223–4
- torture, aliens undeportable due to threat of, 213–15
- US, in
- citizens, detention of, 244–6
- equal liberty for aliens and citizens, assertion of, 243, 246–9
- Guantanamo Bay, 209, 213, 239–50
- initial detention of immigrants after 9/11, 233–7
- Oklahoma bombings, 238
- removable aliens, mandatory indefinite detention of, 238–9
- Supreme Court rulings on, 243–9
- US PATRIOT Act, 233, 238
- three walls, prisons with, 112–13, 146–8, 155, 227
- Torpey, J., 7
- torture
- Convention Against Torture, 167
- CPT, 145, 287
- detention of aliens undeportable due to threat of, 213–15, 317
- Tudor period, alien rights during, 1
- Turkish Kurds detained in UK, 279, 280
- UN Commission on Human Rights (UNCHR), 167
- UN Conventions and Covenants. *See* entries at *Convention*; *International Convention*; *International Covenant*
- UN High Commissioner for Refugees (UNHCR), 131–8, 284, 288, 337
- UN Human Rights Committee (UNHRC) and ICCPR. *See* International Covenant on Civil and Political Rights
- UN Relief and Rehabilitation Agency, 125
- UN Special Rapporteur on the Human Rights of Migrants, 123, 167–8, 288, 289, 291, 299
- UN standards on anti-terrorism and non-discrimination, 224
- UN Working Group on Arbitrary Detention (WGAD), 159, 163–5, 236, 252
- unauthorized aliens
- Australian boat people crisis. *See* under Australia
- authorized/unauthorized divide replacing citizen/alien divide, xii–xiii
- concept of, xi–xii

- unauthorized aliens (*cont.*)
 - constitutional right to liberty of, 313
 - EU, in, 182, 185, 190–3, 199–201
 - human rights of, xv–xvii, 121–4
 - in international law, 167–8
 - legal entitlements of, xxi
 - legal status of, xviii, xix–xx
 - ‘outlaws’, as, xviii, xix–xx, xxi, 209, 296–9
 - proportionality of disabilities imposed upon, 350–2
 - re-authorization of, xx–xxi
 - Refugee Convention on lawfully versus unlawfully present refugees, 128–9, 138
 - US concerns regarding, 69–71
- undocumented aliens. *See* unauthorized aliens
- United Kingdom
 - bonding, bail and parole, right to seek, 88, 91
 - children, detention of, 291
 - Commonwealth citizens, immigration controls aimed at, 79, 80–5
 - criminalization of failure to comply with removal process, 350
 - damages for unlawful imprisonment, cases seeking, 93, 94–5
 - deportation, detention as conditional on possibility of, 194
 - detention centres, poor conditions and unrest at, 279–81
 - disabilities imposable upon unauthorized persons in, 351
 - duration of detention, no limits on, 191
 - equal liberty for aliens and citizens, assertion of, 86–8, 222, 224–6, 228
 - European Convention on Human Rights, incorporation of, 80
 - executive rather than legislative control of detention matters in, 79, 325
 - foreign prisoners emergency, 95–7
 - ‘group’ detention in, 93, 279
 - growing use of detention in, 86
 - habeas corpus tradition in. *See under* habeas corpus tradition
 - historical development of
 - centralized state control over aliens, 5–6, 36–54
 - Aliens Act 1793, 36, 39
 - anarchists, fears regarding, 36, 207
 - burden of justification placed on alien rather than state, 52
 - citizens detained under 14B of Defence of the Realm Regulations, 49–51
 - immigrant receiving house, establishment of, 43–4
 - Jewish immigrants, 36, 43, 44
 - Magna Carta, 1
 - mid-nineteenth century, 5–6, 36
 - Royal Commission, Bill and Aliens Act 1905, 36–43
 - Tudor period, in, 1
 - WW One and post-war period, 45–54, 212
- Hong Kong, Vietnamese boat people in, 143, 158, 159
- Immigration Act 1971, effects of, 81, 83, 84–5, 88
- indefinite detention in. *See under* indefinite detention
- modern detention practice since WW Two, 79–97, 117
- refugees, asylum seekers and stateless persons in, 187
- terrorism and detention in. *See under* terrorism and indefinite detention
- UN Working Group on Arbitrary Detention, criticism of, 107, 163
- United States
 - children, detention of, 293
 - Communists, Cold War detentions of, 59–64, 207
 - constitutional protection, unadmitted aliens viewed as beyond, 60–2

- criminalization of failure to comply with removal process, 65–7, 350
- Cuban and Haitian flotillas, adoption of mandatory detention for, 67–9, 77, 132, 240–2, 250, 273, 281
- deportation, detention as conditional on possibility of, 194
- detention centres, poor conditions and unrest at, 281–3
- disabilities impossible upon unauthorized persons in, 350
- due process in. *See under* due process
- duration of detention in. *See* duration of detention
- ‘group’ detention in, 59, 63
- Guantanamo Bay detainees, 209, 213, 239–50, 302, 312, 327, 330, 343
- habeas corpus tradition in. *See under* habeas corpus tradition
- historical development of centralized state control over aliens, 8–36
- Act to Regulate Immigration 1882, no detention in, 11–13
- Alien Act 1798, 3–4, 29
- bonding of immigrants, 14, 17–18
- Chinese migrant labourers, 18–29, 119
- detention centres, institution of, 13–14
- East coast, limited duration of detentions on, 15–17
- imprisonment, Supreme Court ruling that detention not legally regarded as, 27–9
- mandatory detention, 14–15
- plenary powers doctrine, development of, 23–7
- unlimited detention, allowance of, 33–4
- WW One and post-war period, 29–34
- Immigration Act 1952, 64–5
- indefinite detention in. *See under* indefinite detention
- mandatory detention in. *See under* mandatory detention
- modern detention practice since WW Two, 58–79, 116
- paradox of massive immigration with tough detention policy, 58–9
- plenary powers doctrine development of, 23–7 modern retention of, 75–7 proportionality in, 332, 333 security concerns as political tool in, 270–4
- terrorism and detention in. *See under* terrorism and indefinite detention
- unauthorized aliens, mandatory detention as tool to control, 69–71
- Universal Declaration of Human Rights (1948), 124, 224
- universality of human rights. *See* equal liberty for aliens and citizens
- unrest in detention centres, 279–87
- US PATRIOT Act, 233, 238
- utilitarianism, 260
- Van Alphen v Netherlands* (UNHCR), 160, 161
- Vattel, Emmerich de, 4, 261
- Venicoff, R v Inspector of Leman Street Police Station ex parte* (UK), 53
- Vienna Convention on the Law of Treaties, 160
- Vietnamese boat people in Australia. *See under* Australia in Hong Kong, 143, 158, 159
- V.M.R.B. v Canada* (UNHCR), 160
- vulnerable groups, detention of, 290–6
- Waldron, J., 291, 305
- Walzer, M., 263
- war and immigration detention. *See also* specific wars and conflicts
- aliens power as extension of war power, 57, 209, 266–9

Cambridge University Press

978-1-107-41702-1 - Immigration Detention Law, History, Politics

Daniel Wilsher

Index

[More information](#)

396

INDEX

- war and immigration detention (*cont.*)
 defence powers applied to enemy
 aliens in wartime, 210
 historical distinction between
 ‘enemy’ and ‘friend’, 1
 international immigration treated as
 inherently equivalent to armed
 conflict, 24
 legal status of detainees as enemy
 aliens, xvii
 non-liberal political theory, links
 between view of aliens and war
 powers in, 266–9
 prisoner of war status and
 protections contrasted with
 detainees, 296
 undesirable aliens, early detention
 of, xi
Weber, ex parte (UK), 47, 48
 Weber, Max, 7
 Weiler, J. H. H., 202
 Weis, Paul, 130
 Welch, M., 270, 273
 West Germany, UNCHR criticism of
 detention in, 133
 WGAD (UN Working Group on
 Arbitrary Detention), 159,
 163–5, 236, 252
Wong Wing v United States
 (US Supreme Court), 27–9
 Working Group on Arbitrary
 Detention (WGAD), 159,
 163–5, 236, 252
 World War One and post-war period,
 55
 Germans, UK and US detention of,
 29, 45–8, 50
 Refugee Convention (1951) and,
 298
 refugees, asylum seekers and
 stateless persons, 33–4, 56
 UK, in, 45–54, 212
 US, in, 29–34
 World War Two
 economic migration encouraged
 following, 57, 58
 French detention of Jews during,
 108
 Germans, UK and US detention of,
 211
 Refugee Convention and, 127
 refugees, asylum seekers and
 stateless persons after, 124–6
X v United Kingdom (ECHR), 142
 Zadig, Arthur, 50
Zadvydas v Davis (US Supreme Court),
 71–5, 76, 77–9, 89, 103, 104,
 154, 209, 233, 238, 254, 325,
 326, 341, 342
 Zaireans detained in UK, 279
Zamir v Secretary of State for the Home
 Department (UK), 85, 86
 Zimbabweans detained in UK, 280
 Zolberg, A., 26