Exploring the connection between legal consciousness and emotion: a study of fathers in immigration detention

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Abstract

The UK detains tens of thousands of people a year for immigration purposes, the vast majority of them men, many of whom are fathers, yet little research has focused specifically on their experience. Legal consciousness has been used by previous research as a lens to analyse the experience of people in detention. Scholars in the developing field of law and emotions, have also explored the ways in which emotions are implicated in immigration law.

This study of the experience of fathers in immigration sought to explore the connection between their legal consciousness and the emotions they experienced both because of their detention and as fathers, and as a consequence of both experienced together. In doing so brought together two previously unconnected conceptual fields.

Twelve in-depth interviews were conducted with fathers who were in detention or had been released from detention. Three further interviews were conducted with professionals who worked with people in detention. The fathers were recruited with the assistance of gatekeepers in advocacy and support organisations. Interviews were conducted both face-to-face and by telephone. They were all recorded subsequently fully transcribed. Data was analysed thematically, using a combination of theoretical and inductive approaches.

The findings offer new insights into the experience of fathers in detention, including their understandings of fatherhood and fathering and how these are affected by their detention. Further, the study finds that the emotions fathers experience through their detention are inextricably linked with their legal consciousness in a co-productive relationship.

Contents

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Many people have helped and supported me as I conducted this research.

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Lots of friends have encouraged me throughout, but I have to single out Lynda Shentall, who trod the PhD road as a mature student before me, and had lots of advice on the process. But it was really the laughter, wine and occasional dancing that helped, as they have for nearly 40 years.

Finally, I would like to thank my parents, Morag and Alan, for their unwavering support and to whom this thesis is dedicated.

Author's Declaration

I declare that, except where explicit reference is made to the contribution of others, that this thesis is the result of my own work and has not been submitted for any other degree at the University of Glasgow or any other institution.

Kate Alexander

Chapter 1: Introduction

Several years ago, on a visit to Dungavel immigration detention centre, I met a man who, to his great surprise and distress, had been detained by the Home Office with a view to deporting him to his country of origin. A particularly acute source of his distress was the Home Office's attitude to his relationship with his British-born children. With disbelief he told me that his Home Office case worker had said that his children could visit him once he was deported. "I don't want them to visit me" he told me. "They're not my friends, they're my children. I want to look after them".

It was from this conversation, and others like it, that the idea of researching the experience of fathers in immigration detention emerged. I felt great sympathy for these men and for their children. As a non-lawyer, I was aware in general terms that international human rights law guaranteed the right to a family life and that the best interests of the child should be a primary consideration in all decisions affecting them. I was troubled that, to a lay person, it appeared that these fathers and their children were not being treated in accordance with these laws. I was interested in understanding this apparent disconnect between rights and entitlements guaranteed by the law and these fathers' experience, and in the way in which they coped in a situation in which they were separated from the children they loved.

Why a sociolegal study of fathers in detention?

Since 2003, I have been involved with Scottish Detainee Visitors (SDV), a small charity based in Glasgow. SDV visitors and staff visit Dungavel detention centre twice a week to provide social, emotional and practical support to some of the tens of thousands of people detained by the immigration service in the UK every year (Home Office, 2023a). My involvement began as a volunteer visitor but in 2005 I became the organisation's coordinator and in 2015 its director, a role I continued throughout my part-time PhD studies.

I was drawn to SDV by my anger at the political rhetoric around immigration and my desire to oppose it. As Chapter 2 shows, over the course of the last century

and the beginning of the present one, a system has been built that allows for the indefinite detention of many thousands of people. Their detention has been justified by successive governments as necessary for effective immigration control, despite there being no clear purpose for their incarceration nor convincing evidence that it achieves its policy objectives. Further, and in contrast to the criminal justice system, people are denied their liberty under immigration powers on the authority of a civil servant, not a court, and can experience significant difficulties in access to justice to challenge their detention. The injustice of this system appalled me, and volunteering to visit the people subject to it was a means of demonstrating to them that there were people in the UK who objected to it, who supported them, and who wished to see a fairer and more humane system.

Since joining SDV as a volunteer, I have met hundreds of people in immigration detention in Dungavel. I have learned about their lives in the UK and in their countries of origin. I have listened to their anger and frustration about their detention and their separation from their friends, families and communities. I have witnessed the deterioration in their mental and physical health under the stress of detention. Sometimes, I have been lucky enough to see people released from detention and have their right to remain in the UK confirmed. More often, however, the people I visited simply disappeared from Dungavel, without anyone at SDV knowing where they had gone, or they were released into the community, sometimes in Glasgow and still at risk of detention. In every case, my perception was that the experience of immigration detention had cast a profoundly dark and damaging shadow over their lives.

As the next chapter notes, immigration detention is overwhelmingly experienced by men. Although Dungavel can detain both men and women, just 12 of its 125 bedspaces are for women and so the vast majority of people I have met there have been men, many of them fathers. Concern for their children often dominated our conversations: they missed seeing them and caring for them, they worried about how the children were coping without them, and they worried about the possibility of being deported and so being separated from them forever. Disbelief at the attitude of the immigration authorities to their family lives, like that expressed by the man whose conversation with me opened this chapter, was common.

As a member of staff of SDV, I have worked, and continue to work, on campaigns to reform the system, to introduce a time limit for detention (which, uniquely in Europe, is absent in the UK) and to encourage a move to community-based alternatives. This work gave me a greater familiarity with the legal and policy frameworks relevant to detention, and with debates around access to justice, both discussed in the next chapter. At the same time, my conversations with people in detention continued. The perceived injustice of their detention, their difficulties in contacting their lawyers and in understanding what they were being told by them were frequently topics of our conversations. I wanted to know more and to develop a deeper understanding both of the legal landscape in which detention operates and of its impacts on the people affected.

Before I began my own research, I was also aware of research on children separated from their parents by immigration detention conducted by the organisation Bail for Immigration Detainees (BID) (2013). This research examined the experience of 111 parents who had used BID's family service between 2009 and 2012. These parents (48 mothers and 63 fathers) were separated from over 200 children. Detailed quantitative information was collected on a smaller sample of 27 parents (14 mothers and 13 fathers) and detailed qualitative information was gathered from 12 families, for whom demographic information was not given.

The research focused on Home Office decision-making and on the impact on families of the detention of a parent or parents. Where the impact on families was discussed, the experience of the children who were separated from their parents was the research's principal concern. It only briefly considered the impacts on parents of being separated from their children by detention and did not explicitly refer to the sex of parents when discussing these impacts. However, the majority of the examples it used were of mothers.

It seemed to me that the experience of fathers, as the parents most often detained, merited greater attention. As I began my studies, I became aware of a wider body of work exploring the experience of fathers and immigration law, both at home and abroad (e.g. Griffiths, 2017b; Griffiths, 2016; de Hart, 2015). There remained little focus, however, on the specific experience of detained

fathers. I hoped by conducting my own research to go some way to addressing that gap.

SDV is part of Glasgow Refugee, Asylum and Migration Network (GRAMnet), based at the University of Glasgow, which brings together researchers and practitioners, NGOs and policy makers working with migrants, refugees and asylum seekers in Scotland. As my thoughts about researching the experience of fathers in detention emerged, I had conversations with academics, including legal academics, who I knew through SDV's involvement in the network. I wished to understand more fully how the law could lead to their detention, how the law is experienced by fathers in detention and whether the law could potentially be used to improve their situations. Ultimately, my discussion with Sarah Craig at the University of Glasgow School of Law, who also had a background as an immigration law practitioner and was interested in supervising my proposed PhD confirmed my decision to apply to the School of Law.

Given both the topic of interest and my own academic background in the social sciences, I was drawn to sociolegal approaches, particularly as my focus on fathers implied a connection with sociological questions concerning gender, men and masculinities, parenting and families. I developed this interest as I began my studies by participating in a reading group with other PhD students who were using sociolegal approaches in their research. This introduced me to a broad literature about the types of sociolegal research (e.g. Cane and Kritzer, 2010; Leeuw, Schmeets and Edward Elgar, 2016; Epstein and Martin, 2014; Feenan, 2013) and some of the areas of enquiry to which sociolegal approaches have been applied.

Research questions

The earliest iteration of the overall question for my research was: "What does immigration detention mean for men in terms of fatherhood and fathering?". Under this general question were several sub-questions concerning the understandings of fatherhood and fathering and how those understandings are affected by detention, the extent to which men's status as fathers is taken into account in decisions to detain them and to maintain their detention, how fathers

in detention maintain their relationships with their children through their detention, and renegotiate them if they are released from detention.

In order to address these questions, I began reading some of the broad sociological literature on men, masculinities and fatherhood (e.g. Connell, 2000; Hobson, 2002; Popay, Hearn and Edwards, 1998). I also explored the literature on men, masculinities and the law (e.g. Collier, 2010; Collier, 2015), especially where there was particular focus on immigration law (e.g. Wray, 2015; Charsley and Wray, 2015; Charsley and Liversage, 2015), and specifically immigration law and fatherhood (e.g. de Hart, 2015). I also read literature that focused on and analysed the legal frameworks relevant to detention (e.g. Costello, 2012; Lindley, 2017; Wilsher, 2011; Bosworth, 2019).

As I began my fieldwork, my interviews with my participants often revealed their confusion about the legal processes that had led to their detention. I found that I struggled to apply the understanding of the law I had gained to their experience and to comprehend the specific legal issues they faced and the legal options available to them. In discussing this dilemma with my supervisors, I was introduced to the concept of legal consciousness, discussed in detail in Chapter 3. I realised that approaching their experience through this lens freed me to consider their understandings and experiences of the law, rather than the law itself. At the same time, the very emotional content of my interviews, both in terms of the distress associated with life in detention and in terms of my participants relationships with and separation from their children, led me to explore law and emotions scholarship, also discussed in Chapter 3.

Increasingly I saw that my study of fathers in detention had the potential to explore a possible connection between legal consciousness and the developing scholarly field of law and emotions. In doing so, I ultimately articulated the overarching research question as:

“What can a study of fathers who experience immigration detention teach us about the relationship between legal consciousness and emotion?”

I further identified a number of sub-questions to be explored through my research:

- How does immigration detention impact men as fathers?

- What patterns of legal consciousness are evident among fathers who experience immigration detention?

- How do the experiences of detention interact with the emotions associated with fatherhood and fathering.

Structure of the thesis

The next chapter (Chapter 2) introduces the context in which immigration detention operates in the UK. I explore its origins, purposes and the people subject to it. The chapter also introduces the legal frameworks relevant to detention, with particular reference to those that affect family life. I also explore two aspects of life in detention that have a particular and specific impact on the way in which fathers in detention experience the law: indefinite detention and access to justice.

Chapter 3 introduces the theoretical lenses through which I examined the experience of my participants: legal consciousness and law and emotion. It discusses the development of both conceptual fields and discusses the legal settings and actors to which these lenses have been applied. Using two exemplar studies, on legal consciousness in immigration detention (Singer, 2019) and on emotions in immigration control (Griffiths, 2023) it posits a hitherto unexplored link between the two conceptual fields.

Chapter 4 describes the research methods I used in my study. It explores the practical, ethical and logistical challenges of researching a hard-to-reach research population, particularly in the context of the COVID-19 pandemic, which began while I was conducting my fieldwork. My approach to data collection and analysis are also outlined. Importantly, given the nature of my research questions, it discusses the way in which emotions shaped, permeated, and sometimes disrupted the research process.

Chapter 5 introduces the fathers who participated in my research. It traces their routes into detention and outlines their often complex family structures,

observing the ways in which their immigration status further complicated the choices and decisions they made about their intimate and family lives. Drawing on previous research, the chapter discusses the fathers' understandings of fatherhood and fathering and how these understandings of fatherhood and fathering were affected by detention. Using insights from studies on the experience of fathers in prison, it also explores the accommodations and adaptations fathers made in their relationships with their children through their detention and beyond.

Chapters 6-8 directly address the connection between legal consciousness and emotion, using the three patterns of legal consciousness identified by Ewick and Silbey (1998) as a broad analytical framework. Chapter 6 discusses 'before the law', showing that this pattern was rarely experienced by my participants. With the exception of the participant whose story opens the chapter, where it was evident, it was experienced fleetingly with emotions, specifically those experienced as fathers, acting as a bridge to the other patterns. Chapter 7 focuses on 'with the law', analysing the ways in which some of my participants attempted to use the law as a tool to advance their interests. It argues that their 'with the law' consciousness was closely entwined with 'against the law' consciousness. Often it was an expression of it: they took the law into their own hands because of their anger and frustration at the failure of the law to improve their situations in a way that took account of their emotional lives as fathers. Chapter 8 explores 'against the law', the most common pattern of legal consciousness among my participants. It discusses the way in the emotional experiences of missing their children, being unable to do the work of being a father and being denied family life drove their 'against the law' consciousness.

Chapter 9 draws together the themes from the earlier chapters, highlights the original contributions my research has made, and suggests some policy implications arising from it. In doing so it argues for a more emotionally intelligent approach to immigration law as it affects fathers.

Chapter 2: Immigration detention in the UK: The context

Introduction

My research examines the experience of fathers who have been in immigration detention in the UK. Fathers in detention, or who have been detained, are a subset of a larger group of people who have been detained, but it is still an experience that affects only a small proportion of people resident in the UK and it takes place largely hidden from public view, only occasionally emerging from the shadows when a scandal, such as the one that unfolded at Brook House IRC (Taylor, 2023) makes headlines. In this chapter, I introduce immigration detention in the UK, discuss its purposes and the legal and policy frameworks governing its use, and the people subject to it.

The UK detains over 20,000 people a year for immigration purposes. Detention is usually seen as an administrative process to assist in the achievement of broader border control goals (Silverman, 2014). It has its roots in 1905 Aliens Act, which allowed for the inspection of aliens seeking to land in the UK and for the expulsion of aliens who had committed felonies or who had no means of support. The Act allowed for the detention of those awaiting both inspection and expulsion. It was rarely used and was viewed as ancillary to a streamlined system designed to control and limit access (Wilsher, 2011).

The Aliens Act of 1905, identified by both Bosworth (2014) and Wilsher as the beginning of modern immigration control, exemplified a pattern that has persisted since. That is the reactive nature of legislation and policy on immigration control: Governments do not decide upon the shape of the immigration system they want to see, they respond to political events both at home and abroad (Bosworth, 2014 p. 25). The passage of the Aliens Act 1905 followed debates in parliament that used rhetoric familiar from more recent times, raising fears of ‘unrestricted immigration of what is often an evil class’ (Wilsher, 2011 p. 38). The Alien Restriction Act of 1914 responded to a rise in anti-alien feeling in the run up to the First World War and linked immigration control with national security aims. It created powers to deport with no reason

given and powers to detain indefinitely until expulsion (Wilsher, 2011 p. 45). This Act marked a change in focus from people seeking to enter the country in the Aliens Act to people already resident (Bosworth, 2014 p. 29). These powers, introduced as a specific wartime measure, were in fact continually renewed until they were incorporated into the 1971 Immigration Act (Bosworth, 2014; Mainwaring and Silverman, 2017; Wilsher, 2011), which normalised detention as a tool of immigration control (Wilsher, 2011).

Nevertheless, detention was used sparingly, though increasingly, in the 1970s and 1980s. Ninety-five people were detained in 1973, rising to 2,166 in 1987 (Wilsher, 2011 p. 88). It was the election of the Labour Government in 1997 that saw the greatest rise in the use of immigration detention. Labour Governments passed seven Acts related to immigration between 1999 and 2009 in response to perceived political crises such as a rise in applications from people seeking asylum around 2000 and the 'foreign national offenders scandal' of 2006 (Wilsher, 2011). By 2009, the number of people entering detention in a year had reached 28,000 (Home Office, 2011).

Purpose of detention in the UK

The paragraphs above trace, very briefly, the development of a system that allows for the incarceration of tens of thousands of people every year, at a cost to the exchequer of over £100m a year (Joint Committee on Human Rights, 2019). It has developed incrementally and, perhaps because of its origins as ancillary to a process for restricting access to the country, there remains no clear statement of its purpose (Bosworth, 2014).

The 1998 White Paper "Fairer, Faster and Firmer – A Modern Approach to Immigration and Asylum"(Home Office, 1998), which laid the policy groundwork for the greater use of detention ushered in by the Immigration and Asylum Act 1999, argued that "[e]ffective enforcement of immigration control requires some immigration offenders to be detained" (Home Office, 1998 p. 48). It went on to outline the circumstances in which detention is "normally justified". These are: "where there is a reasonable belief that the individual will fail to keep the terms of temporary admission or temporary release; initially, to clarify a person's identity and the basis of their claim; or where removal is imminent".

These statements of necessity for effective immigration control locate it within an overall function of government but fall short of the sort of statement of 'purpose', 'mission' or 'values' for detention itself that is common in other areas of Government (Bosworth, 2014). Little help is provided by the Detention Centre Rules, which tell us that the purpose of detention centres is to detain people:

> "The purpose of detention centres shall be to provide for the secure but humane accommodation of detained persons in a relaxed regime with as much freedom of movement and association as possible, consistent with maintaining a safe and secure environment, and to encourage and assist detained persons to make the most productive use of their time, whilst respecting in particular their dignity and the right to individual expression."
> (The Detention Centre Rules, 2001, Part II rule 3)

At an operational level, Bosworth found that staff in detention centres found it hard to describe the purpose of their work and used comparisons with prison work, community work and care work. One described it as being a "professional friend" to people in detention (Bosworth, 2014 p. 153). Confusion about job purpose was exacerbated by the different routes from which people enter detention, and the different populations within detention centres, explored in more detail later in this chapter.

Estrangement

Bosworth concludes that the real purpose of detention is 'estrangement': separating people subject to it from their lives outside of detention and making them easier to remove from the country (Bosworth, 2014), although it is worth noting that most people leaving detention are not removed from the country but are released back into the community (Yeo, 2020; Home Office, 2023a; Joint Committee on Human Rights, 2019). A key component of the process of estrangement is the lack of a time limit on detention, a situation unique to the UK in Europe (Bosworth and Vannier, 2016; Yeo, 2020). This means that nobody, when entering detention has any idea how long they will remain there. This is in stark contrast to the situation in prison, where people know their release date on arrival and prisoners count the days down until their release (Gashi, Pedersen and Ugelvik, 2019). The impacts of indefinite detention on the people subject to it are discussed later in this chapter.

For people (mainly men) separated from their families, the process of estrangement involves extreme difficulty in maintaining intimate and family life. Griffiths describes the painful experience of Martin, detained for years, and his efforts to maintain contact with his young daughter. Moves around the detention estate, bureaucratic indifference, difficulties in his relationship with his ex-partner and, crucially, the uncertainty about how long his detention would last and how it would end, all impacted on his ability to be an active father to his daughter, to the extent that he thought breaking contact with her would be best for both of them (Griffiths, 2017b). This brief insight into the particular impacts of detention for fathers and their relationships with their children was part of what prompted my research. My findings and the testimony of participants resonate with and extend this aspect of Griffiths' study.

Spectacle

Detention also has a symbolic purpose. Noting that most people who are detained are released and not deported or removed, and that there is no evidence that detention deters migration or is necessary for national security reasons as governments sometimes claim, Mainwaring and Silverman argue that detention is a spectacle that projects an image of law and order (Mainwaring and Silverman, 2017). “Symbolically it signals that the state is responding to the ‘crisis’ of migration, creating order through punishment, containment, and exile in the face of uncontrollable flows of migrants.” (p 30). They argue that there are four audiences for this spectacle: (i) the migrant population living inside the state, for whom it serves as a reminder of the precarity of their situation and their vulnerability to detention and deportation; (ii) people living outside the state who might choose or be forced to migrate, who the spectacle aims to deter from approaching a particular border; (iii) the general population of the state who it seeks to assure that the Government is in control of its borders; and (iv) other states and international organisations, to whom it also signals this control over borders and movements of people (Mainwaring and Silverman, 2017, p.33).

The Illegal Migration Act, which received Royal Assent in July 2023, provides a contemporary example of this use of detention as spectacle. The Act removes the right to claim asylum in the UK from anyone who arrives by irregular means,

and aims to detain and swiftly remove people who do. In a press statement announcing the introduction of the legislation in March 2023, the Prime Minister, Rishi Sunak, said its intention was to "stop the boats" and addressed all four of the audiences identified by Mainwaring and Silverman. To would-be migrants in other countries he said: "People must know that if they come here illegally it will result in their detention and swift removal". To people already living in the UK, he announced that the provisions of the bill would be retrospective. He specifically addressed the general public of the UK, saying: "Today we are introducing new legislation to keep my promise to you – to stop the boats." Finally, in referring to deals struck with France and Albania on returns, he addressed other states, emphasising the UK Government's intentions to work to secure its borders (Sunak, 2023).

Throughout the passage of the bill, questions were raised by parliamentarians and others about the legality, morality and workability of the proposals. Specifically on detention, it was argued that the UK did not have the capacity to detain the number of irregular arrivals that could be anticipated. The Refugee Council calculated that if everyone who crossed the channel in small boats in 2022 had been detained for 28 days, detention capacity would have to increase fourfold (Refugee Council, 2023). However, as Mainwaring and Silverman argue, detention as spectacle is about projecting an image of control, regardless of whether the evidence shows that it achieves it or not.

Punishment

Although detention is an administrative, not a criminal, process (Silverman, 2014), Bosworth (2019) highlights the interconnectedness of immigration control, policing and the criminal justice system. She argues that immigration detention, often in sites built to prison standards, with accommodation in cells and limited natural light and patrolled by staff in uniforms who carry keys and handcuffs, shares many features with the punitive regimes in prisons (see also: Mainwaring and Silverman, 2017). Her ethnographic work in immigration detention (Bosworth, 2014) confirms that the people subject to it (and indeed some staff working in detention centres) experience it this way, as did many of my own participants.

Echoing Mainwaring and Silverman (2017), Yeo (2020) discusses the use of detention by governments wishing to project an image of being in control of the UK'S borders. Detention, successive governments have argued, is necessary to effect the removal of people from the country, as a deterrent to those wishing to migrate to the UK, or to encourage those whose residence in the UK is unauthorised to leave. Yeo argues, however, that immigration detention does not achieve any of these potential purposes, and concludes that punishment for breaking immigration law is its only plausible purpose (Yeo, 2020, p. 243-250).

The detention estate in the UK

At the end of 2020, the UK's detention estate consisted of seven Immigration Removal Centres (IRCs) and two Residential Short-Term Holding Facilities (RSTHF) (United Kingdom Visas and Immigration, n.d.), capable of holding around 3,200 people at any one time (Silverman, Griffiths and Walsh, 2020).

The centres are a mix of purpose built for immigration detention and repurposed prisons and are managed on behalf of the Home Office by private security firms. Most of them are located next to major airports: Brook House and Tinsley House at Gatwick, Colnbrook and Harmondsworth at Heathrow; and Manchester Residential Short-Term Holding Facility at Manchester airport. Of the rest, two (Dungavel and Morton Hall[1]) are in isolated rural locations; one (Yarl's Wood) is on an industrial estate in Bedfordshire and the other (Larne House Residential Short-Term Holding Facility) is located in Larne Police Station in Northern Ireland.

The locations of the centres place them away from public view, whether in the remote countryside or in places whose primary purpose is something other than detention, and therefore serve the purpose of estrangement, proposed by Bosworth (2014). The location of a majority of the centres at airports reinforces a perception of their role in facilitating removals, especially to the people incarcerated inside.

[1] Morton Hall has since been returned to the prison estate.

All of my participants were, or had been, detained in IRCs. The name 'Immigration Removal Centre' stresses one of the purported purposes of detention: to remove people from the UK. However, as noted above, in the majority of cases, detention does not result in removal. Further, as my empirical chapters show, several of my own participants had endured multiple detentions and releases, and others were detained for many months and even years, before being released. For them, although the threat of removal was ever present, as it was before their detention, it was their detention that affected them and their relationships with their children so profoundly, and was the focus of this study. For this reason, I have chosen to refer to IRCs as 'detention centres' throughout.

Legal framework for detention in the UK

National immigration legislation gives broad powers to detain, which interact with a range of human rights protections. These are backed up by increasingly complex and frequently changing administrative guidance, all of which are clarified by a wide body of case law examining the lawfulness of detention (Lindley, 2017 p. 10). The following outlines the legal and policy framework in which detention operates in the UK.

International human rights framework

Detention in the UK operates within a wider international human rights context, including the Universal Declaration on Human Rights, which protects the right to liberty and against arbitrary arrest and detention. Further, Article 5 of the European Convention on Human Rights (Council of Europe, 1950), guarantees the right to liberty and security of person, but qualifies that right at Article 5 (1) which states that "(n)o one shall be deprived of his liberty save in the *following cases* and in accordance with a procedure prescribed by law." The "following cases" cited include "the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition" (Article 5 (1) (f)).

Costello (2012) discusses this tension between universal human rights and individual states' rights to control their borders, creating the apparent paradox

in the situation that the right to liberty and the protection from arbitrary arrest are protected in human rights instruments, yet detention continues to grow and indeed to lengthen. Wray also notes that human rights instruments embody general principles rather than prescriptive rules and that in the field of immigration law, there is a tradition of respect for Government rights to control immigration through domestic legislation and policy (Wray, 2015; Wray, 2023).

Statutory basis for detention in the UK

The statutory basis for detention in the UK is the Immigration Act 1971, Schedules 2 and 3 and the Nationality, Immigration and Asylum Act 2002, s. 62. The 1971 Act provides a discretionary power to detain in three main circumstances: to allow for official to examine a person's immigration status, where there are reasonable grounds to suspect that a person is someone who may be removed, and where the Secretary of State is considering issuing a deportation order, or where such an order is in place. These powers are exercised on behalf of the Secretary of State by Home Office officials, who make the decision to detain (Joint Committee on Human Rights, 2019, p. 6).

Common law principles

The Hardial Singh principles[2] further established the general common law right to liberty (Wilsher, 2011). The principles are that: the Secretary of State must intend to deport the person and can only use the power to detain for that purpose; the person facing deportation may only be detained for a period that is reasonable in all the circumstances; if it becomes clear that the Secretary of State will not be able to effect deportation within that reasonable period, detention should end; and the Secretary of State should act with reasonable diligence and expedition to effect removal (Wilsher, 2011; Joint Committee on Human Rights, 2019). These principles should be followed in decisions to detain and to maintain detention.

[2] R (Hardial Singh) v Governor of Durham Prison [1983] EWHC 1 (QB)

Home Office policy

In order to be lawful, decisions to detain and maintain detention must also be in line with Home Office policy. The main guidance for Home Office officials' decision making, Chapter 55 Enforcement Instructions and Guidance (Home Office, no date), states that "there is a presumption in favour of temporary admission or release and, wherever possible, alternatives to detention are used" (55.1.1), and that "detention must be used sparingly, and for the shortest period necessary" (55.1.3). It also gives a range of factors that should be considered before a decision to detain is made, including the imminence of removal, likelihood of absconding and risk of offending or public harm (Lindley, 2017).

Across all the policy and legal frameworks relevant to detention the presumption is in favour of liberty, except when removal is imminent, and the expectation is that detention should be used sparingly and should be short. Nevertheless, criticisms have consistently been made that these standards are routinely not met. In 2015 an inquiry conducted by a cross-party group of parliamentarians argued that "we detain far too many people unnecessarily and for far too long" (APPG on Refugees and APPG on Migration, 2015). Subsequent inquiries have made similar criticisms (for example: Shaw, 2018; Shaw, 2016; Joint Committee on Human Rights, 2019; Home Affairs Committee, 2019). Particular criticism has focused on the fact that people continue to be detained where there is no realistic prospect of removal, and that a high proportion of people are released back into the community (Joint Committee on Human Rights, 2019, p. 13; Home Affairs Committee, 2019, p. 15). In 2022, just 21 per cent of those leaving detention were removed, and the percentage had been under 50 per cent for the preceding eight years (Home Office, 2023a).

Challenging detention

The European Convention on Human Rights Article 5(4) states that "(e)veryone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful" (Council of Europe, 1950). However, the main route to challenge detention and secure release in the UK is through a bail hearing, which does not challenge the legality

of detention. Rather, it is a way of assessing the risks of release. Bail, too, is a restriction of liberty (Lindley, 2017).

Nevertheless, in the context where the decision to detain and maintain detention is taken by a civil servant, with no scrutiny by a court, applying for bail is an important means of introducing judicial oversight. A range of issues with applying for bail have been identified. Most fundamentally, in order to apply for bail, people need to know that that they can do so, and to understand the process. In response to criticisms that some people in detention may not be aware of their right to apply for bail, the Immigration Act 2016 introduced an automatic bail hearing after four months of detention. While this is an important safeguard, four months is a long time in detention and, as is discussed below, people may experience difficulties in accessing legal advice to support them in the process (Lindley, 2017, p. 31).

In terms of the process, Lindley (2017) notes that people in detention appear at bail hearings by video link in most cases. Lawyers who participated in her research said that technical problems with the video link were commonplace but arguably of more concern is that appearing by video link distances the applicant from the proceedings (Lindley, 2017, p. 21). The Joint Committee on Human Rights also raised technical issues with bail hearings and added that video hearings could be disrupted by "noises off" from within the detention centre (Joint Committee on Human Rights, 2019, p. 27)

Lawyers who participated in Lindley's research were uniformly scathing about the quality of the 'bail summaries' produced by the Home Office, with one lawyer describing them as "appalling documents". Concerns were also expressed about Home Office Presenting Officers, who are not lawyers, but civil servants, and who according to Lindley's participants, were often unaware of key aspects of the case they were dealing with and see their role as to oppose bail in all circumstances (Lindley, 2017, pp. 21-22).

The criteria immigration judges use to determine whether to grant bail are: reasons for detention, length and likely future duration of detention, available alternatives and their suitability, effect of detention on the person and their family, and the likelihood of compliance with bail conditions (p. 24).

Lindley's research identified a range of problems with these criteria: imminence of removal is ill-defined and often exaggerated by the Home Office; assessing the likelihood of absconding is based on limited evidence and open to very varied interpretation by the courts; assessing the risk of public harm is done on limited evidence, usually presented by the Home Office; difficulties in access to bail addresses, and the need for people to provide a surety in some circumstances. In an issue of particular relevance to participants in my own research, Lindley found that factors that favour release are given limited consideration, particularly those related to supportive family relationships and children. Bail guidance requires that the best interests of the children of applicants should be considered, but lawyers reported to Lindley that this was rarely the case (pp. 24-28). Professional participants in my own research also made this point, as is discussed in the empirical chapters that follow.

In this context, judges are in a position of adjudicating on cases where there is little concrete evidence and where immigration law and guidance changes frequently. Yet there is very limited scrutiny of bail decisions. Lawyers in Lindley's study described bail as a lottery and only a minority of applications are successful (pp. 28-31).

The other route to challenge detention is through Judicial Review. Unlike a bail application, this does consider the lawfulness of detention, but it is not automatic, can take some time and often takes place when detention has already become unlawful, rather than considering the legality of the initial detention (Lindley, 2017, p. 20).

The judicial review process also presents difficulties, particularly in access to legal aid. Lawyers may have to put in considerable work before it is clear that legal aid is available, and they may, understandably, be reluctant to do so. However, Judicial Review has been useful in clarifying the law in three key areas: the rationale for detention and removal; vulnerability and suitability for detention, and procedural points and policy challenges, such as in the case of the Detained Fast Track (pp. 25-36).

Bail and judicial review both provide means to challenge detention once it has happened, but there are problems with both and they are not a substitute for

better public administration and more robust and humane safeguards against detention (Lindley, 2017, p. 38).

Lindley's research focuses closely on the detail of legal decision-making by the people who work within the system. Other researchers have taken a wider view and have examined the way in which legislation and the operation of the courts, combined with political and media discourses represent migrants, and in particular migrant men, as problematic. Wray discusses the figure of the "problematic male migrant", whose legal claims are unmeritorious, either because they are opportunistic or because they have not complied with the rules (Wray, 2015). Griffiths explores the "genuine refugee" and the "bogus corollary" (Griffiths, 2015). The first is an idealised figure, vulnerable and coerced, who claimed asylum right away, complied with all asylum processes, and is seen as 'feminised' if not actually female. The second is the opposite, deceptive and opportunistic and only claiming asylum to avoid deportation. Griffiths also points to the figure of the foreign national ex-offender, presented as a danger, despite the fact that most have committed non-violent offences relating to drugs or false documents. Both Charlsey and Liversage (2015) and de Hart (2015) note how migrant men, particularly Muslim men, are seen as patriarchal, strategising and oppressive rather than as themselves being emotionally, physically or legally vulnerable. Challenging detention takes place within these narratives about the men subject to it, discussed in more detail below.

Who is detained?

In 2019, the last year before COVID-19 changed the picture considerably, 24,480 people entered immigration detention in the UK, 86 per cent of them men (Home Office, 2020a). The number of people entering detention has fallen every year since it reached a peak in 2015 of 32,447. Still, the vast majority (between 81 per cent and 86 per cent) of people detained every year are men (Silverman, Griffiths and Walsh, 2020). Official sources provide no information about the family circumstances of the people detained. We do however know that over 90 per cent of the people entering detention in each of the years from 2015 to 2019 were aged between 18 and 49 (Grierson, 2020), so are of an age perhaps most likely to have dependent children.

Routes into detention

People enter detention from a variety of different routes. Among the categories who are subject to detention under Immigration Act powers are: new arrivals awaiting examination by an immigration officer to determine their right to enter the UK; new arrivals who have been refused permission to enter the UK and are awaiting removal; those who have either failed to leave the UK on expiry of their visas (visa overstayers), or who have not complied with the terms of their visas, or have attained their visas by deception; and people in the UK who are awaiting a decision on whether they are to be removed, or who are awaiting their removal, such as people who have been refused asylum, or foreign nationals who have completed a prison sentence and have been issued with a deportation order (Silverman, Griffiths and Walsh, 2020). Official statistics do not provide much detail on the circumstances of people entering detention. However, they do reveal that around half of them have been through the asylum system at some point. In the years between 2015 and 2019, the proportion varied between 43 per cent and 56 per cent (Home Office, 2020a).

This classification masks a great deal of complexity as people may fall into more than one category or move between them as their circumstances, or the circumstances in their countries of origin, change. In addition, people who are detained may have very long histories in the UK with settled family lives and deeper roots here than in the countries the Home Office seeks to remove them to.

The histories of the participants in this study are illustrative of this complexity and are discussed in greater detail in Chapter 5, but a brief overview here is instructive. One of them had been through both the asylum system and the criminal justice and prison system. The interaction of the two systems were key to his experience of detention. Two participants had been in the UK since childhood and one had been living and working in the UK for 30 years. Another had been granted Humanitarian Protection more than ten years before his conviction for a criminal offence led to his being issued with a deportation order. Two were EU citizens who had moved to the UK under free movement and started their families here. Their convictions, too, led ultimately to their detention and efforts to deport them. One had entered the UK as a student and

had subsequently applied for and been refused asylum. He continued to appeal the decision. One had worked in the UK for many years and was astonished to be contacted by immigration authorities as he was under the impression that his immigration status was secure. He subsequently claimed asylum. These complex stories reflect the messiness of lives that do not fit neatly into categories defined by immigration law. They also reflect lives lived without knowledge of detention. Most had no idea detention centres existed before they were themselves detained.

Foreign national offenders

Most of my participants were moved to immigration detention after being imprisoned for a criminal offence. Since the passage of the 2007 UK Borders Act, any non-citizen of the UK convicted of an offence attracting a prison sentence of 12 months or more is issued with an automatic deportation order. This was introduced after what became known as a 'scandal' in which it emerged that foreign national offenders (FNOs) had been released from prison rather than being deported. The numbers involved were small but the scandal led to the resignation of the Home Secretary and a shift in political focus, with deportations of FNOs increasingly significantly, in comparison with those of other categories of migrants (Griffiths, 2017a). Detentions of people in this category presumably also increased, although official figures do not reveal the proportion of people entering detention after a prison sentence.

Since then, through a series of policy initiatives and the passage of several Immigration Acts, the criminality of FNOs has been highlighted, their foreign-ness foregrounded and, in a circumstance of particular relevance to my own participants, their ability to challenge deportation on the basis of their Article 8 rights to a family life, discussed in more detail below, are extremely limited.

Life in detention

Impact of indefinite detention

As noted above, uniquely in Europe, there is no time limit on detention in the UK. In practice, Government figures show that for the majority of people,

detention is relatively short and has become shorter since 2015. In 2019, the last year before the COVID-19 pandemic changed the picture considerably, 74 per cent of the 24,554 people leaving detention (either through removal or release) had been detained for 28 days or fewer. This compares to 62 per cent in 2015. However, a quarter had been detained for more than a month and 2 per cent had been in detention for six months or longer, compared to 4 per cent in 2015. At the end of 2019, five people had been detained for over two years and at the end of 2015, eight people fell into that category and two of them had been detained for over three years (Home Office, 2020a). As COVID-19 restrictions eased numbers entering and leaving detention steadily rose and by the year to the end of March 2023, they were close to pre-pandemic levels and the proportion of people leaving detention who had been detained for a month or more was, at 27 per cent, a little higher than pre-pandemic. (Home Office, 2023a).

Despite the generally downward trend in length of detention since 2015, therefore, detention can still be prolonged and people arriving in a detention centre will soon meet others who have been detained for weeks, months and possibly years, and will wonder if that is a fate that awaits them. This has profound effects on the health and well-being of people subject to detention.

In the report of their inquiry on immigration detention, the All Party Parliamentary Group on Refugees and the All Party Parliamentary Group on Migration gave considerable attention to the impact of indefinite detention. People in detention and the advocacy organisations that supported them provided compelling evidence of the detrimental impacts it had on mental health (APPG on Refugees and APPG on Migration, 2015)

A year later, in his government commissioned review of vulnerable people in detention, Stephen Shaw noted that “(t)he indefinite nature of detention was almost universally raised as making people more vulnerable and for its impact on mental health” (Shaw, 2016, p. 22). Further, he highlighted the extraordinarily high use of health services by people in detention in comparison to people living in the community (Shaw, 2016; Shaw, 2018). He noted that staff reported that half the people in detention had a mental health problem that required some

intervention, and that people in detention themselves talked of how their health had deteriorated since they were detained (Shaw, 2016, pp. 164-5).

In a shocking passage in his book "Welcome to Britain", immigration barrister Colin Yeo discusses the case of MD, who was detained on arrival in the UK and detained for eleven months. She had no mental health issues before her detention but in detention she self-harmed on multiple occasions and on her release suffered depression and PTSD. In awarding her compensation for unlawful detention a judge accepted that her mental deterioration was caused by her continued detention and inadequate medical treatment (Yeo, 2020, pp. 227-228).

Other commentators have also noted that the longer people are detained, the worse they tend to feel (Bosworth and Vannier, 2016) but that at the same time, people in detention know that detention is part of the removal process and in addition to fearing endless detention, they also fear a quick end to their detention through deportation (Bosworth and Vannier, 2016; Griffiths, 2014). This 'temporal uncertainty' (Griffiths, 2014) of life in indefinite detention was a key feature of the experience of my own participants.

Access to justice

Both Lindley (2017) and the Joint Committee on Human Rights (2019) give considerable attention to the difficulties people face in getting legal help in detention, as it is crucial to effectively challenging detention. Much of this focuses on the situation in England where advice is provided by law firms under contract to the Home Office. Under this Detention Duty Advice (DDA) scheme, which operates in all detention centres, with the exception of Dungavel (where the Legal Aid regime is different as it operates under Scottish law) people in detention are entitled to 30 minutes of free legal advice, provided by legal firms under contract to the Home Office. During this session, the solicitor decides, on the merits of the case, whether they are able to continue to act for the person in detention and provide ongoing legal advice paid for by Legal Aid.

A range of problems with the operation of this scheme have been identified. First, although people in detention are supposed to be made aware of the

scheme as part of their formal induction to the detention centre, awareness and understanding of it is low, with some people confusing the DDA solicitor with a Home Office immigration officer (Lindley, 2017, p. 38). Second, there is very high demand for the service, with waits of more than two weeks not uncommon - a serious concern for people who have been detained because their removal is imminent. Third, it has been argued that a 30-minute appointment is too short to assess the merits of a case, especially as some people's circumstances are extremely complicated. In addition, the 30 minutes includes time taken to call the person in detention to the appointment, to engage an interpreter if necessary, and to locate and review relevant documentation. Fourth, after the 30-minute appointment many people do not get taken on as clients, leaving them without legal advice (Lindley, 2017, p. 39; Joint Committee on Human Rights, 2019, p. 19). Finally, concerns have also been raised that increasing the number of legal firms who are able to provide advice through the DDA scheme means that it will, in some cases, be staffed by legal advisors with limited experience and expertise in detention work (Joint Committee on Human Rights, 2019, p. 20).

Furthermore, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 reduced the availability of legal aid for many immigration matters. This means that although detention is in scope for legal aid, a person's substantive immigration case may not be. (Lindley, 2017, pp. 38-43). The situation in Scotland is different, with people in detention able to choose their own legal aid lawyer, who can act for them in certain aspects of their substantive immigration or asylum case (Evans, 2018).

In addition to these practical concerns about the availability of legal advice, Lindley (2017) raises two broad issues affecting access to justice that apply equally in both jurisdictions. The first relates to the unequal availability of immigration advice across the country and the moves within the detention estate that many people who are detained can be subjected to. Movement between legal firms happens when people are moved, particularly if they are moved between England and Scotland. Switching firms is not always straightforward and can result in delays and difficulties in claiming legal aid. Further difficulties can arise when someone is released and is sent to somewhere

far away from the place in which they encountered their immigration solicitor (Lindley, 2017, p. 44).

The second broad issue she raises is people's awareness, agency and capacity to engage with their legal case (Lindley, 2017, p. 53). She highlights language, literacy, confidence and cultural familiarity as factors in this broad area. The ongoing impacts of indefinite detention, discussed above, are also relevant here. These factors touch upon the way in which people in detention experience and act in relation to the law: their legal consciousness (Singer, 2019; Chua and Engel, 2019; Cowan, 2004; Ewick and Silbey, 1998; Silbey, 2005), and the emotions they experience in detention and in navigating the law. Reason is often considered to be pre-eminent in law, and reason and emotion are often presumed to be entirely separate spheres (Maroney, 2006; Conway and Stannard, 2016b; Abrams and Keren, 2010). But this does not reflect the way people live, or the way the law is structured and administered, as the experience of my own participants shows. Legal consciousness and law and emotion are key lenses through which their experience will be explored in this study.

Family life and human rights

The men in my study were all fathers who were in detention, or had been detained. Of those who were living in the community, only two had secure immigration status in the UK, while the rest remained at risk of further detention and of deportation. As will be explored in the empirical chapters that follow, that they were fathers was crucial to their experience of detention and to their desire to remain in the UK. Most had children who had been born in the UK, some of whom had mothers who were UK citizens. The fathers believed their separation from their children through detention and possible deportation negatively affected both themselves and their children and they struggled to understand how this could be compatible with their rights to family life, as protected by Article 8 of the European Convention on Human Rights (Council of Europe, 1950).

In practice, however, proving that these rights have been violated by the action of the immigration authorities is difficult. Article 8 is made up of two parts. Article 8 (1) guarantees the right to respect for family life, but Article 8 (2)

qualifies this right by stating that "(t)here shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".

Determining whether someone has an Article 8 claim therefore requires the establishment of the following: whether family life exists, whether there has been an interference with family life, whether any interference is in accordance with the law, and whether the interference is proportionate (Wray, 2023, p.12).

Through her analysis of European Court of Human Rights jurisprudence, Wray shows that in cases concerning immigration control, each of these is complex. Family life is construed narrowly but relationships between parents and minor children are generally assumed to meet that test, whether or not parents live with their children. However, judgements on whether expulsion of a parent constitutes an interference in family life rely on the specifics of the family's circumstances and are gendered, with the claims of mothers more likely to succeed than fathers. Most disputes hinge on the question of proportionality, in which the Court seeks to achieve a 'fair balance' between the public interest and interference in family life. In these assessments individual states' rights to manage immigration through domestic policy are given significant deference, with the claims of families only likely to succeed in limited circumstances. (Wray, 2023)

In the UK, Wray (2023) traces the way in which the principles underpinning European jurisprudence have been reflected in the domestic courts, in the context of the incorporation of European Convention rights into domestic law in the Human Rights Act 1998. Decisions of the courts take place against the continuing backdrop of government efforts to control migration, and to limit judicial discretion over Article 8 cases, through changes to legislation and the immigration rules. Although several important Supreme Court judgements between 2007 and 2011 gave family life considerations significant weight in comparison with immigration control factors, Article 8 is interpreted narrowly,

with the immigration rules considered to be compatible with it, except in exceptional circumstances.

Most of the participants in my research had been detained following a prison sentence and were therefore in the category of foreign national offender (FNO). Article 8 claims are particularly difficult to win for FNOs. Under the 2014 Immigration Act deportation of FNOs is automatically considered to be in the public interest. In this context the bar for Article 8 challenges is extremely high and requires those with a prison sentence of under four years to show that they have been in the UK for so long as to be British in all but paperwork, or that the effect of their deportation would be excessively severe on a preferably British family member. For those with sentences over four years, the bar is essentially impossible to reach (Griffiths, 2017a, p. 534).

For men seeking to remain with their children, the difficulties in making a case based on Article 8 rights are exacerbated by the fact that family migration tends to be viewed as a female category, both in the UK and in Europe (Wray, 2015; de Hart, 2015; Charsley and Liversage, 2015) with men who migrate (or seek to remain in the UK) for family reasons viewed with suspicion by governments and the courts.

This suspicion has been overlaid with an overtly racist demonisation of black men in successive immigration Acts, beginning with the Commonwealth Immigrants Act 1962, which first sought to control non-white immigration. Of particular concern to legislators was the presence in the UK of single non-white men, who were deemed to be responsible for a range of social ills. All of this relies on highly gendered (and racialised) assumptions about (black) men's lack of commitment to family and the predominance of economic motivations for migration. These assumptions permeate the legal decisions made about men navigating immigration systems (Wray, 2015).

Conclusion

This chapter has outlined immigration detention in the UK, discussing its roots, development, purposes and the legal frameworks in which it operates. It has also introduced the people who are detained and the limited legal options

available to them to challenge it. In doing so, it has discussed some of the detrimental effects of detention on people who are detained, as they have been revealed by previous research and inquiries on the topic.

The focus of my own research is on a specific group of people, fathers, and the way in which they experience this regime. The next chapter introduces the theoretical lenses through which I approached that experience: legal consciousness and law and emotions.

Chapter 3: Legal consciousness and emotion

Introduction

My work is in the sociolegal tradition of legal research. In other words, it looks at the way the law impacts on people subject to it. The sociolegal tradition developed in response to the perceived inability of black letter approaches to explain and analyse important aspects of the law. Essentially, a sociolegal approach involves the application of social science methodologies to the study of law. It does all the things that black letter law explicitly excludes in terms of situating law in its context. As Harris observed, "(e)mprically, law is a component of part of the wider social and political structure, is inextricably related to it in an infinite variety of ways, and can therefore only be properly understood if studied in that context." (Harris, 1986, p.112)

As part of this tradition of examining the law in its context, the concept of legal consciousness developed in the 1980s to explore the ways in which the law is experienced and understood by ordinary citizens (Silbey, 2005). More recently, scholars have begun to examine the interaction between law and emotion – traditionally thought of as separate spheres (Conway and Stannard, 2016b).

In this thesis, I will be using the concept of legal consciousness to understand fathers' experience of detention, and the way in which they understand the law and its capacity to change their situations. I will also be exploring the emotions fathers experience in detention and how these affect and are affected by their legal consciousness. In doing so, I will be furthering understanding of both legal consciousness and law and emotions and will be exploring the relationship between the two fields of study.

The rest of this chapter will introduce legal consciousness and law and emotions research and the ways in which each has been used to illuminate and understand the experience of people subject to immigration control.

Legal consciousness as a tool for understanding lives lived under immigration control

As a concept, legal consciousness allows us to examine and understand people's routine experiences and perceptions of law in everyday life (Cowan, 2004) and can be defined as "the ways in which people experience, understand and act in relation to the law" (Chua and Engel, 2019, p.336). Law in this context is far broader than 'law in the books' and in order to emphasise this point, some scholars have used the term 'legality' rather than 'law' in the context of legal consciousness to refer to "the meanings, sources of authority and cultural practices that are commonly recognised as legal, regardless of who employs them" (Ewick and Silbey, 1998, p.49). As such, it is subjective experiences that are the focus in studies of legal consciousness, and it is this that distinguishes them from 'law first' studies. As if to emphasise this point, or perhaps because of it, much scholarship in the field of legal consciousness has originated in the social sciences (Halliday, 2019).

The men in my study were either in immigration detention or had experienced detention. Just two of them had been able to resolve their immigration issues by the time I spoke to them. All were fathers and some had experience of the criminal justice system. Their lives were constrained by law (or legality) across a number of domains, most commonly immigration law, criminal law and family law. The way in which these laws or legal systems interact in their lives, and in the lives of others like them is complex. As a law PhD student, with no legal background, I worried that I did not understand fully the legal cases and histories of my participants or the legal options open to them.

Approaching their stories through the lens of legal consciousness freed me to consider their relationship to the law (as opposed to the law itself) by analysing their responses to the legal processes and structures they experienced. Chua and Engel propose three interconnected areas of subjectivity that are of relevance to the concept of legal consciousness. These are 'worldview', which describes people's understandings of their society, their place in it and how they act in it; 'perception' or people's interpretations of specific events; and 'decision' or

people's responses to events, which are influenced by both their worldview and their perception (Chua and Engel, 2019, p. 336-337).

While it is the patterns of legal consciousness identified by Silbey and Ewick (1998), that will be the primary analytical framework for my study (see below), Chua and Engel's typology showed me there was a way to encompass my participants' experience and understandings of both fatherhood and immigration control (and for some criminal justice) and the way in which these experiences influence and act upon one another, as part of an enquiry into their relationship with and understandings of the law. For my respondents, fatherhood was a key feature of their lives and identity. For some their understandings of their relationship to their children changed significantly through their incarceration (both in prison and in immigration detention). The importance of their fatherhood to them profoundly affected their experience of immigration control and the decisions they made in relation to their immigration status.

Patterns of legal consciousness

In their overviews of the wide variety of legal consciousness research, both Chua and Engel and Halliday refer to Ewick and Silbey's seminal text, The Commonplace of the Law (1998). For Halliday, this work, and subsequent work by Silbey is foundational in the field. In it, Ewick and Silbey examined what they argue is the hegemonic power of the law. Through long in-depth interviews with ordinary citizens, interviews that did not specifically focus on the law, Ewick and Silbey explored how "legality is recognised, resisted, and reconstituted by a wide variety of ordinary people going about their lives" (Singer, 2019, p.9). An important focus of their work was their understanding that law and legality were not separate from other structures and sources of power in society. They developed the notion of legal consciousness as a cultural practice: something that "integrates human action and structural constraint" (Ewick and Silbey, 1998, p. 38) and is understood as participation in "the production of legality" (p. 30). Through this work, they identified three patterns of legal consciousness, discussed below.

Before the law

The first pattern, ‘before the law’, views the law as objective, transcendent and rational, with an ontology and authority that is separate from the way it is enacted in society. In this pattern, the law is seen as fixed and unchanging, impervious to an individual’s actions and defined by its formal, institutional apparatus. This understanding is reached through a process described by Silbey and Ewick as “reification of legality” (Ewick and Silbey, 1998, p. 78). Quoting Berger and Pullberg they define reification as a process that “converts the concrete into the abstract, then in turn concretises the abstract”(Berger and Pullberg, 1965, p. 201). Using the example of one of their research participants, they describe how every encounter with ‘legality’ in her life, such as being stopped by the police, going to court or serving on a jury was experienced as a disruption to her everyday life rather than part of it. Everything that happened in these encounters: the testimony of various people, the deliberations of lawyers and judges, legal pronouncements and so on, were abstracted into something she called ‘law’, which she further made into a concrete ‘thing’, separate and independent from the observable activities of the people involved. Ewick and Silbey argue that this process of reification in ‘before the law’ legal consciousness is what obscures the social construction of the law and gives it a transcendent, objective quality (p.77). It means that even if people experiencing a ‘before the law’ legal consciousness talk negatively about the actions of particular lawyers or court officials, they might still conclude that the system is fair.

In the empirical chapters that follow, I will show that, in line with earlier research on legal consciousness in immigration detention (Singer, 2019), discussed below, this pattern was rarely experienced by the participants in my study. Just one showed it consistently, while others experienced it fleetingly or partially before leaving it behind altogether.

With the law

The second pattern, ‘with the law’, sees the law as a game to be manipulated or as an instrument or tool to further one’s own interests (Ewick and Silbey, 1998, p. 132). But the possibilities of using the law in this way are not infinite; they

are constrained by the rules of the game, which need to be followed by everyone involved. People who demonstrate a 'with the law' legal consciousness understand that these constraints exist and that that the law may need to settle things in a way that could be unfavourable to them, but that it is an arena in which strategic gains can be made. They also recognise that using the law in this way is not equally available to everyone, so they might only decide to proceed after a calculation of their chances of winning.

These kinds of calculations are key to the game analogy deployed by Ewick and Silbey. Describing the law as a tool to be used to one's advantage does not capture all the dimensions of this pattern of legal consciousness, which for some people is about the challenge of pitting their wits against an opponent. The game analogy implies fun, but even if there is no fun there is always an opponent in this form of legal consciousness. There is also a strong sense of contingency - people who express this form of consciousness know they might not win the game and an assessment of their chances forms part of their decision-making process. In the case of people with immigration issues, the game analogy has a particular force as it is how their 'opponent' in their legal cases sees it: the Government talks of people playing the system and changes the rules of the 'game' frequently (Lindley, 2017), which increases the difficulty of 'winning'.

Later, I will show, as Singer (2019) does, that 'with the law' legal consciousness is experienced by people in (or at risk of) immigration detention but that it coexists and alternates with the third pattern of consciousness discussed below.

Against the law

The third pattern is 'against the law', where the law is experienced as an oppressive force acting on people's lives. In this pattern, people describe the law as something powerful that they are forced to conform to (in contrast to the deference experienced in 'before the law'). The law is all pervasive, limiting and constricting. It is experienced as something people are trapped inside and struggle to escape. In this pattern, resistance is common as a respite from the power of the law (Ewick and Silbey, 1992; Ewick and Silbey, 1998; Cowan, 2004;

Chua and Engel, 2019; Singer, 2019). This is the dominant form of legal consciousness experienced by my participants, as it was for Singer (2019).

The type of resistance described by people experiencing this form of legal consciousness is not the collective action of revolutions or union organising but small actions of individuals - what Ewick and Silbey refer to as "tactical resistance" (1998, p. 184) or as the "dodges, ruses and feints" (Ewick and Silbey, 1992) that people use to resist the power of the law (1992, p. 748) that do little to address structural power in and of themselves. Cowan (2004) discusses resistance in terms of 'tactics' and 'strategies: tactics being deployed by people who are excluded from power and strategies being used by those who can exert some power in a process. All of these forms of resistance are ways in which people push against the cracks in the system as a means of exploiting vulnerabilities, and may be precursors to more organised and strategic challenges to power (Ewick and Silbey, 1998, p. 188). So, for example, the experience of people navigating, and resisting, the UK's immigration system informs the organised resistance to state power in the form of protests and campaigns against changes in legislation aimed at furthering the hostile environment.

Ewick and Silbey stress that these different patterns of legal consciousness do not map neatly on to specific actors participating in the construction of legality and that people can display all forms of legal consciousness at different times. However, they note that different resources and means of interpretation of legality are available to people depending on their position in society, so some forms of legal consciousness are more likely than others in specific actors (Ewick and Silbey, 1998). In the empirical chapters that follow, I show that although all of the patterns of legal consciousness identified by Ewick and Sibley can be discerned in the experience of my participants, 'with the law' and especially 'against the law' patterns predominate, reflecting their marginalised position in society.

Power in legal consciousness, schools of thought and methodological approaches

Power is key in legal consciousness, particularly for theorists who belong to the hegemony school of legal consciousness thought, one of three schools identified by Chua and Engel (2019). The hegemony school sees the law as an all-powerful force that shapes the world views, perceptions and decisions of people, even if they are not directly engaging with it. Silbey (2005) argues that for the public, 'law' is what happens in the courts but that this focus on litigation obscures the real source of power and hegemony of law, which comes from a habituation to legal authority that is infused in everyday life through the rules we follow. She argues that legal consciousness is about our participation in this collective production of hegemony. Hegemony is the endpoint of a continuum that begins with ideology, defined as a system of meaning linked to particular arrangements of power. When ideologies are no longer contested, she argues, they become hegemonies.

Although I will use their patterns of legal consciousness as an analytical framework, my work does not fit neatly into the hegemony school of legal consciousness thought exemplified by Ewick and Silbey, nor their methodological approach. Ewick and Sibley's work uses a critical approach in which law as structure is the focus (Halliday, 2019). Researchers using this approach, like Ewick and Silbey, are interested in the legal consciousness of ordinary citizens, often those who are working class, poor or otherwise disadvantaged.

Although my work is interested in the law as structure, it is not of hegemonic legality but of a specific population whose lives are actively constrained by a particular area of law. My work is further defined by the fact that it explores what is very much not everyday life, but a life experienced only by a specific group of people subject to or at risk of immigration detention. As such, it shares features with work by scholars who adopt an interpretative methodological approach to legal consciousness and are motivated by a straightforward desire to understand how people respond to their subjective perceptions of the law (Halliday, 2019).

I am also approaching the experience of my participants with a view to providing insights that could increase understanding of the impact of immigration law, and highlight areas for reform in law, policy and practice. Here, there are features in common with the mobilisation school of legal consciousness thought identified by Chua and Engel. Scholars in this school seek to understand the law's potential to transform society, particularly for the most disadvantaged populations. It shares with the hegemony school a view of the law as a powerful presence, but its focus is less on exploring that power than on the ways in which it can be used to advance rights claims of particular groups (Chua and Engel, 2019). My work recognises the powerful role of the law (particularly immigration law) in the lives of people subject to and at risk of immigration detention, but I am also interested in the capacity of the law to improve and change lives.

The links to power are less direct in the case of the identity school, the third school of thought identified by Chua and Engel (2019), which treats individual subjectivity in relation to the law as the issue that needs to be analysed. However, Chua and Engel note that some scholars have highlighted the tension experienced by some people of marginalised identities in using the power of the law to assert rights based on identities. Using the law to gain acceptance and inclusion might entail the construction of identities that are stigmatising (Chua and Engel, 2019), and therefore in some ways work against the political aims of such groups.

This calls to mind the work of scholars presented in a special issue on the invisible (male) migrant in the journal Men and Masculinities (Charsley and Liversage, 2015; Griffiths, 2015; Charsley and Wray, 2015; Wray, 2015; de Hart, 2015). In the collection the authors comment on the way in which legislation and the operation of the courts, combined with political and media discourses represent migrants, and in particular migrant men, as problematic, and on efforts to counter those narratives by constructing new representations. Those new representations - as feminised and coerced (Griffiths, 2015) or emotionally, physically and legally vulnerable (de Hart, 2015) - are, they argue, as much constructions as the old, and, as Chua and Engel suggest, may be just as inimical to the interests of those involved.

Legal consciousness in immigration detention

Given the wide variety of types of legal consciousness research, it is perhaps unsurprising that legal consciousness has already been used as a lens through which to examine the experience of people in immigration detention. Desert Island Detention (Singer, 2019) is a study based on the experience of LGBT people released from detention in the UK. In depth interviews were conducted with 22 people who had been subject to immigration detention for between three days and eighteen months. All of Singer's participants were seeking asylum and she interviewed both men and women.

Using Ewick and Silbey's three patterns of legal consciousness, Singer concludes that her participants' experiences fall into the 'with the law' and 'against the law' patterns. At times they were active and described learning the law and taking control, but they also described being "stuck" and "stagnant" and experiencing a lack of control over their lives.

In analysing the ways in which people in detention experience the law, Singer identifies four themes: rumour and suggestion; control and constraint; deception, and "desert island detention", which she uses to refer to being cut off from legal information and assistance. She evokes the image of Manus Island and captures the sense of the law being all pervasive in the lives of people in immigration detention – it is, after all, the reason they are detained – but also out of reach, as people in detention struggle to find information, representation and even a phone signal.

The themes she identifies highlight the ways in which her participants experience the law not as a rational system with clear rules and procedures, as lawyers might view it, but as an indeterminate fog of rumours promulgated by other people in detention and by detention staff. These rumours are overlaid with what people in detention believe to be deliberate deception on the part of the immigration authorities, which also exercise powerful control over their lives, most evident in the power to detain, but also in the rules and restrictions within detention.

In reading Singer's study, I was struck that the legal consciousness she describes is also highly emotional. The emotions that predominate in Singer's description of her participants' experience are, unsurprisingly, negative: fear, anger, suspicion and frustration. These emotions, and the experiences that engender them, lead her participants to acts of resistance. But it is clear that the resistance available to the them is the tactical resistance of individual action, taken within the experience of an 'against the law' legal consciousness: a woman's frustration leads her to go on a hunger strike in protest against the conditions in which she was held (p. 12) and a number of Singer's participants describe their fear of removal, resistance to forcible removal attempts, and the detention centre's efforts to frustrate such resistance (p. 24). Sometimes, their frustration and anger at what they saw as the deceptive behaviour of the Home Office, and on occasion their own legal representatives, leads them to seek to resist the power of the immigration authorities in a more positive way: by learning the law and representing themselves (p.28). In doing so, she argues, they are exhibiting 'against the law' and 'with the law' legal consciousness simultaneously.

Singer has not made emotion the focus of her study, but while reading it, I was aware that it is never far from the surface in the lives and narratives of her participants and can be read as an important part of their experience of detention and of navigating immigration law. Emotions are important in shaping the legal consciousness of Singer's participants and are triggers for their resistance.

Emotion is more foregrounded in the experience of the participants in my study. Loving their children, missing family life and being uncertain when, if ever, they would be able to resume it, was for most of them a defining feature of their experience of detention and therefore of immigration law. In addition to their emotions towards their families, they experienced anger at the immigration authorities who had separated them and, like Singer's participants, hopelessness, powerlessness and despair at their inability to influence their situations. It was also a key reason for their resistance. The observation that emotions were so central to my participants' experience of being detained as fathers, led me to explore how emotion has been reflected in legal scholarship and further to a consideration of its relationship with legal consciousness.

Law and Emotion

Like legal consciousness, law and emotions scholarship is a relatively new field, having emerged in the late 1980s and early 1990s. Abrams and Kerens (2010) identify three distinct phases in the history of this scholarship. The first was a challenge to legal rationality, particularly in relation to decision making. Law had historically been seen as a 'quasi science', an arena of reason, wholly separate from the world of the emotions (Grossi, 2015; Abrams and Keren, 2010; Maroney, 2006; Conway and Stannard, 2016a). Furthermore, according to this view, maintaining a scientific, rational, and detached stance prevented judges from being subject to potential improper influence in their decision making.

Two arguments were presented in early scholarship to counter this position. The first was that emotion has always been present in legal decision making even if it was unacknowledged or unrecognised (Abrams and Keren, 2010). Anger and disgust, for example have always been present in criminal law, and love in family law (Maroney, 2006; Conway and Stannard, 2016a). The second argument was a normative claim: that legal decision making is improved by emotions and that blocking emotions in decision making can lead to poor judicial decisions.

For example, in an arena of relevance to my own research, in their chapter in Conway and Stannard (2016b), Jane Herlihy and Stuart Turner, two non-lawyers, discuss emotions and assessments of credibility, focusing on survivors of torture in asylum cases and rape survivors (Herlihy and Turner, 2016). They argue that 'judicial common sense' (reason) is often flawed and leads to wrong decisions, and that there is an abundance of evidence that could be brought to bear on decision making in this area of law that would be more effective and useful than reason in assessing credibility. Much of that evidence, they argue, comes from the scholarship in the field of psychology and concerns the nature of memory and the impact of trauma and culture on the way in which people remember events (p. 166-178).

This drawing on evidence from other fields forms an important part of the second phase of law and emotions scholarship identified by Abrams and Keren (2010): a move from a focus on the legitimacy of emotions in legal decision making to the emotions themselves. A key point in this phase was the

publication of the Passions of Law (Bandes, 1991). This collection of work by scholars from various fields examined the relationship between the law and a range of emotions from disgust to romantic love. The collection aimed to convince that emotion working together with cognition leads to better and truer understanding and perception and therefore to better legal decision-making. The publication of this collection is recognised by other researchers and scholars as the point at which law and emotion marked itself out as a distinct field of study. (Abrams and Keren, 2010; Maroney, 2006; Conway and Stannard, 2016a).

The questions being asked in this phase were about the kinds of emotions that operate in specific legal contexts and what roles they play. This entailed studies not just of emotion in general but of specific emotions, and, in a feature that makes it particularly relevant to my own study, of a greater range of legal actors than decision makers, and in a range of different legal settings (Abrams and Keren, 2010). Scholars have examined fear, disgust, empathy, mercy, love and hope. They have explored the effect of such emotions on judges, juries, lawyers, witnesses and victims. Studies have looked at the impact of emotion in criminal law, family law, contract law, domestic violence law and sexual harassment law (Grossi, 2015). They have also looked at immigration law, for example: examining the role of emotions in immigration jurisprudence (Weresh, 2019); exploring vicarious trauma and emotional coping strategies in legal professionals working on asylum cases (Baillot, Cowan and Munro, 2013) and investigating the ways in which women migrants' emotions concerning their experience of domestic violence interact with Australian immigration law's requirements for proof and emotional consistency (Borges Jelinic, 2019). In exploring these emotions and settings, legal scholars have drawn on insights from psychology, anthropology, philosophy and even literature (Abrams and Keren, 2010).

The third phase in research on law and emotion identified by Abrams and Keren is a normative turn in which legal scholars began to consider the possible roles of particular emotions in law, for example how the law might be used to express societal moral norms. It is possible to think of a number of examples of this, from horror at racially motivated offenses to disgust at the impacts of drink driving. Work in this phase also examined ways in which the law could affect emotions more purposively, for example in working towards reconciliation after

mass violence (Abrams and Keren, 2010) or towards understanding and compassion in restorative justice (Grossi, 2015). It is striking that work in this area appears to integrate positive emotions with the more negative. This is a feature that has resonated strongly in relation to my own work, in which positive emotions (the love and pride my participants feel for their children, for example) are experienced alongside some profoundly negative ones (the despair, fear and hopelessness they feel about their immigration detention).

Arising from their survey of scholarship in law and emotions, Abrams and Keren propose three "dimensions of usefulness" of study in this area. The first, *illumination*, aims to analyse how emotions are implicated in a wide range of legal settings by examining legal phenomena through an affective lens. This could entail revealing where emotions have been obscured by traditional legal analysis, or exposing where emotions have been under- or un-acknowledged in legal decision making, or analysing the impact of the law on people's emotions. The second dimension, *investigation,* goes deeper. Recognising the law's traditional alienation from emotion, this dimension seeks to analyse specific emotions through interdisciplinary research, with the aim of improving legal actors' familiarity with the potential relevance of emotions to the law across a range of domains. The third dimension, *integration*, is oriented towards using information and insights gleaned through illumination and investigation to propose areas for legal reform.

The field of law and emotions is now large enough for it to be possible to discern a variety of approaches within it (Grossi, 2015). Maroney proposes a six-part taxonomy of law and emotions studies, some of which maps closely on to the phases of law and emotion scholarship and dimensions of inquiry outlined by Abrams and Keren. Five of the approaches she identifies use as their principal unit of analysis an emotion or an aspect of the law. The sixth, which she notes has the highest concentration of empirical work, is the legal actor approach. It looks at how a range of people involved in legal systems are influenced by, or should be influenced by, emotions. Much has focused on jurors, often examining their responses to emotionally charged material such as victim impact statements and gruesome crime scene photographs. But researchers have also explored the emotions of defendants, victims, lawyers, litigants, judges the police, regulators and others (Maroney, 2006).

Although the field is growing, the interplay between law and emotions remains under theorised (Grossi, 2015), and the emotional lens has been used to examine some legal fields and legal actors far more than others (Maroney, 2006; Grossi, 2015; Abrams and Keren, 2010). Emotions and criminal law dominate, as do negative emotions and, in empirical, legal actor approach studies, there has been less focus on people subject to the law than on those who practise, administer, or adjudicate on it.

Emotions in immigration control

A recent study by Griffiths (2023) addresses some of these lacunae. Drawing on many years of ethnographic work with people seeking asylum and people who have been detained, she uses a legal actor approach to explore the emotional governance of the immigration system, arguing that: "(i)mmigration systems are invariably presented as rational bureaucracies, with its agents led by law and policy in their practices, motives, and decision-making. But emotions are embedded in, and constitutive of, social worlds. Policy is necessarily emotional and emotions inherently political." (Griffiths, 2023, p. 7). Emotions are, she argues, used strategically by the state in immigration policy and law. It seeks to instil fear of the other in the general populace, as we have seen in the frequent policy announcements aimed at 'stopping the boats' and about accommodation for people seeking asylum in the UK. This messaging also aims to create fear in people subject to immigration control by, for example, instituting 'the hostile environment' and patrolling ethnically diverse areas in vans bearing messages exhorting people to 'go home or face arrest' (Griffiths, 2023; Griffiths and Yeo, 2021).

Most of her analysis, however, focuses on the emotions of the people involved in immigration control. These include the people adjudicating on and administering the law: judges, detention centre staff, people working in Home Office reporting centres etc. They also include people subject to immigration control: people applying for asylum, complying with reporting requirements, in detention and facing deportation. Based on her observations of people navigating these immigration systems, she notes that some positive emotions are evident in the interactions between the legal actors she discusses. She argues, however, that

those that dominate are anger, disgust, suspicion and fear (Griffiths, 2023, p. 6-7).

The anger she foregrounds is that of judges and people staffing reporting centres, whose angry responses to the people they are dealing are triggered by what they perceive as rule-breaking, injustice or threat. Disgust, too, is described as an emotion felt primarily by those administering the system, although its corollary is the shame and humiliation of the applicant. Suspicion of migrants is widely felt by judges, border guards and home office personnel, with a 'culture of disbelief' operating throughout the system. In relation to the emotional lives of people subject to immigration control, suspicion is most evident in the presupposition that the intimate relationships of people (particularly men) subject to immigration control are opportunistic (see also: Griffiths, 2015; de Hart, 2015; Wray, 2015). In an echo of Singer (2019), Griffiths observes that suspicion is also experienced by people navigating immigration systems, with bureaucratic errors and inconsistencies being read as efforts to deliberately deceive. Fear, she argues, saturates the system, felt primarily by migrants, but also by bureaucrats whose work is the focus of relentless political and media scrutiny.

While these and other emotions swirl round the system, the emotions of migrants within it are managed and controlled in various ways, which are both confusing and detrimental to their interests (Griffiths, 2023, p.9-16). The way in which emotions are expressed are subject to evaluations by decision makers, with different emotions and their expression being acceptable in family, work and asylum applications. At the same time, decision makers and legal representatives use their own emotions both to aid decisions, and performatively, to elicit particular responses, either from applicants or from other legal actors. Denying the emotions of people navigating immigration systems is routine, with men who have been through the criminal justice system particularly prone to having their emotional lives and family ties dismissed, denied or ignored. But even where these ties are acknowledged as genuine, they may be undervalued, with suggestions that relationships can be continued adequately after deportation and separation (see also: Griffiths, 2017b; Griffiths, 2015). As later chapters explore, the men who participated in my study often had to contend with the immigration authorities minimising and denying

their love for their children and the strength of their family ties. Further, overt demonstrations of emotion by people navigating immigration control are discouraged and prohibited in certain settings, especially in court. The extent to which some of my own participants experienced this is also explored in later chapters. More than this, however, Griffiths argues that immigration practitioners simply do not see the emotions felt by the people they are working with, appearing oblivious to the suffering people in the system experience. This selective blindness is supported by administrative systems that mean that people making decisions, such as those to detain or maintain detention, never meet the people who are the subject of those decisions (see also: Shaw, 2016; Home Affairs Committee, 2019).

Reading Griffiths study, I was struck by the extent to which emotions, both their own and those of the people administering and adjudicating on the law, shape and influence the way in which people attempting to navigate the system experience it. As she writes: "(t)he weaponizing of affect is a constitutive feature, not an accident, of the immigration system. Unrelenting disbelief, aggression, humiliation, fearmongering, and indifference affect people's mental health, relationships, legal cases, and personhood. It frustrates, worries, confuses, shames, distresses, and angers people, disarming their ability to represent themselves, argue their cases, remain engaged, think clearly, or communicate effectively and consistently. This restricts people's ability to navigate the system, trust the process, or appear 'credible' or sympathetic." (Griffiths, 2023, p. 16).

I read this study in part as a mirror image of Singer's study of legal consciousness in immigration detention (Singer, 2019), in which emotions permeate but are not the focus, and are not explicitly linked to, the legal consciousness of the participants she interviewed. In Griffiths' study, the legal consciousness of people subject to immigration control seems to hover beneath the surface of the emotions she explores and the ways in which they are experienced and instrumentalised. Exploration of this connection between the two conceptual fields of legal consciousness and law and emotion is the focus of my own study.

Conclusion

This chapter has introduced the conceptual frameworks for my study. It began by exploring the development of legal consciousness as a field of study as a means of understanding the way in which people experience and perceive their routine interactions with the law or legality. It has outlined the patterns of legal consciousness identified by Ewick and Silbey (1998), which I have used as an analytical framework for three of the empirical chapters that follow. Further, it has traced the ways in which research in the field has developed, and the range of settings to which a legal consciousness lens has been applied, including immigration detention.

The chapter has also introduced law and emotions scholarship, exploring the development of the field from its initial challenge to legal rationality, through its use of insights from other fields to examine the ways in which emotions operate in specific legal settings, to its consideration of the roles specific emotions could play in law.

Drawing on studies of legal consciousness in immigration detention (Singer, 2019) and the role of emotions in immigration control (Griffiths, 2023), it has suggested a connection between the two conceptual fields, observing the highly emotional character of legal consciousness in immigration detention, and the salience of emotions to the ways in which people experience immigration control. In the empirical chapters that follow I use the experience of fathers in immigration detention to explore this relationship, and the ways in which legal consciousness and emotion are linked in a (co)productive relationship.

Chapter 4: Methodology

Introduction

My PhD illuminates the experience of an under researched and hard to reach population – fathers who are in or have experienced immigration detention. My main research participants were a highly marginalised group of men whose experience of fatherhood is often ignored or minimised in their journeys through immigration systems (Griffiths, 2015; Griffiths, 2016). I also interviewed a small number of professionals, who have expertise in working within the complex legal frameworks relevant to immigration detention. However, because of their experience navigating immigration systems, the fathers themselves have an expertise that is rarely sought. Through participation in this research, I hoped to give them the opportunity to tell their stories and describe their experiences in a way that was meaningful to them.

My research takes a constructivist position that there is no single objective reality but multiple realities which are created as people act (Bryman, 2016; Slevitch, 2011; Nowell *et al.*, 2017). Further, as discussed in the previous chapter, using legal consciousness as a theoretical lens, foregrounds the subjectivities of my research participants and their experiences, understandings and actions in relation to the law and makes their realities the focus of my study. My role as a researcher is therefore to seek to understand and interpret the way in which these realities are constructed. In other words, my epistemology is interpretivist (Creswell and Miller, 2000; Nowell *et al.*, 2017).

In taking these positions, I recognise that my own positionality affects and contributes to the understandings and meanings created through the research process. (Nowell *et al.*, 2017). Later in this chapter I consider aspects of my positionality that impacted my recruitment, fieldwork and analysis.

Research participants were recruited for interview using through personal contacts with men I had met through my work and with the assistance of gatekeepers in organisations working with people with immigration issues. In terms of the selection of specific participants, the approach I adopted was best described as convenience sampling: I was prepared to interview any father

whose detention had separated him from his children and who was willing to take part in my research (Abrams, 2010). Given the hard-to-reach nature of the population I was interested in, I anticipated achieving a small sample of 20-25 participants. As I explain below, challenges in the recruitment process and in particular the intervention of COVID-19 lockdowns and restrictions meant that I ended my fieldwork having completed interviews with fewer participants than expected: 12 fathers and three professionals.

Despite the small number of interviews, the richness of the data produced has brought new insights into the experience of an under-researched population. It is from this empirically grounded account that I have been able to develop the link between legal consciousness and emotion, introduced in the previous chapter, and so bring an original theoretical contribution. The rest of this chapter discusses the approach I took to my research fieldwork and analysis, and explores some of the practical, logistical and ethical challenges the study presented.

Recruitment of participants: challenges and dilemmas.

My work as director of Scottish Detainee Visitors (SDV), discussed in Chapter 1 and which I continued to do throughout my part-time PhD studies, regularly brings me into contact with fathers who are separated from their children. Meeting them and hearing their accounts of missing their children and attempting to maintain a relationship with them through their detention was the reason I originally became interested in researching fathers' experience more broadly. My first three participants, Jambu, Jimmy and Abdul[3], were all men who had been supported by SDV when they were detained in Dungavel and who I had met in the course of my work. The table in Appendix 1 gives some key information about them and the rest of the fathers in my sample as well as the type of interview (telephone or face-to-face) conducted with each. These first three interviews clarified a number of issues about the recruitment of participants, which influenced the progress of the rest of my fieldwork and are discussed below.

[3] All names used in the research are pseudonyms, discussed in more detail later in this chapter.

I have known Jambu since 2006/7 when I visited him in Dungavel, where he was detained for more than a year. After his release I met him from time to time both socially and through my work. At the time of our interview, he was living in Glasgow on cashless support and had made a new claim for asylum. Jimmy had been detained in Dungavel for three years, where he was visited by SDV regularly, although I had never met him there. I met him shortly after his release and he subsequently assisted the organisation in our training for new volunteers and in some work we undertook on the experience of life after detention. When I approached him about being involved in the research he too had been living on cashless support in Glasgow since his release several years before. I met Abdul in detention and a couple of times since his release. By the time of our interview, his immigration status was secure, and he had resumed the employment he had before his detention, making his circumstances very different from Jambu's and Jimmy's.

There were challenges in the recruitment of these participants related to my positionality as a researcher. My prior contact with them was in my role as a service provider. This brought with it both advantages and disadvantages (Finlay, 2002). All three participants knew me and knew that I had a professional understanding of the issues around immigration detention. I had also met them while they were in detention or shortly after their release and I was aware of some of the personal challenges they had faced. I believe this provided them with reassurance about my motivations for conducting the research. However, all had spoken about the positive impact SDV had had on their lives which raised some concerns regarding any sense of obligation they might feel in being involved.

The previous service provider relationship introduced a further power imbalance between me as a researcher and Jambu and Jimmy, whose immigration status was insecure at the time of our interview. Relationships formed with people in detention or at risk of detention have the potential to be ended by the forcible removal of one party from the country. SDV encourages all staff and volunteers to think about their own emotional wellbeing in this context. My approach to this has always been to maintain a professional distance. I am friendly and open to discussion, but I do not share personal information with people I encounter through my work. At the same time, providing a service means finding out about

the circumstances of the service beneficiary. This means that I knew a lot about the personal lives of these participants, and they knew virtually nothing about mine. The research relationship continued this imbalance to a great extent, although I took a conscious decision to give them my personal mobile number, as a small means of demonstrating that I was entering into a relationship of trust with them.

By the time I interviewed these men, however, the service provider relationship was over as they were no longer detained in Dungavel. I contacted them as a researcher and provided them with participant information explaining the aims of the research, my role and the nature of the involvement that was being asked of them. There was no confusion between my role as director of SDV and my role as researcher, although I was aware that both Jimmy and Jambu could be detained at any point. In the case of other men who were in detention in Dungavel, the possibility of confusion of roles remained a concern, and the question of whether participants might feel obligated to participate became more fraught. After interviewing these three men, I took the decision, therefore, not to conduct interviews with men when they were still in Dungavel, but to seek participants who were detained in other detention centres. I remained open to interviewing men who had been released from Dungavel, including those who had received a service from SDV. In the event, however, I did not interview any other men with whom I had a prior relationship.

Working with gatekeepers

Working with gatekeepers was essential to recruiting participants to my research, even more so after I had taken the decision described above. Fathers in detention are incarcerated, with little access to the outside world, and fathers who have been released from detention do not form a coherent group: they could be living in any part of the UK; they could be part of any minority ethnic group; they could be people who have entered the UK from a variety of different routes; they could be living with their children and partner or separated from them, and they could have resolved their immigration issues and now have secure status or they could still be at risk of detention. All of these features made the populations my research is concerned with hard to access.

Working with gatekeepers to reach certain populations raises challenges that have been discussed in previous research (Ellard-Gray *et al.*, 2015; McAreavey and Das, 2013). I contacted 13 organisations across the UK to assist me in reaching participants, providing information about my research (Appendix 3). I had a professional or personal connection with all of them, although the extent of that connection varied. This was helpful as it gave me an 'insider' status (McAreavey and Das, 2013). Most people I contacted knew my background, knew I work in the field and understood what had motivated me to conduct this study. This no doubt contributed to the fact that some responses I received to my original requests for help in recruiting participants were interested, engaged and helpful. In some cases, people asked for further clarification and I had telephone and email discussions about my study with gatekeepers, with some organisations suggesting other people who might be able to assist recruitment.

Where people knew me less well, my approach was to seek to develop a rapport with the organisation (Ellard-Gray *et al.*, 2015), stressing the fact that I have worked with people in detention for many years, that I understand the policy environment in which detention operates and by drawing on my connections with mutual colleagues.

Recruitment was relatively slow. There were a number of contributing factors to this. In the first place, there are few organisations with a specific focus on detention. I contacted the largest: Detention Action and Gatwick Detainee Welfare Group, who between them work in five of the UK's detention centres, including the largest. But for the others, detention was just one of the multitude of issues that affect the people they provide services to. As a result, they may not be in contact with many people who have experienced detention and still fewer who are fathers, so they may only have met someone who met my research criteria infrequently. When they did, and this applied equally to organisations with a specific focus on detention, they would have been meeting the person to provide a service, often to someone in difficult circumstances, and my research was unlikely to be in the forefront of their minds.

I struggled a little with the question of whether, when, and how frequently I should remind gatekeepers of my research. I felt a certain discomfort in doing so. This is located in the tension I sometimes felt between my role as a

practitioner in an organisation providing services to people in detention and my role as a researcher. As director of SDV, I am frequently contacted by students and researchers wishing to recruit people with experience of detention to their research studies. I always try to be polite and helpful, but I very rarely agree to put people in touch with potential participants. This is for two reasons. First because I make judgements about the quality of the proposals and about the experience, commitment and knowledge of the researcher, and second because I simply do not have the time. I was aware as I contacted gatekeepers that if I were to receive my request for assistance, I would have scored well on the first of these reasons. However, I was acutely aware that the organisations I was contacting are all very busy and I had no desire to add to their workload. Early in my fieldwork, I was not too concerned about the slow pace of recruitment. It gave me an opportunity to devote time to transcription, reflection on the process and initial analysis. However, I was aware that I might need to adopt a more persistent approach.

One issue that emerged may have been partly explained by my limited previous relationship with a gatekeeper. I established contact with Prentice via an organisation suggested to me by a colleague at Greater Manchester Immigration Aid Unit. He contacted me himself, after having been passed my participant information sheet by that organisation, and expressed his interest in being involved. Prentice's story was shocking, and he was very keen to tell it. When he contacted me, he told me he had previously described it to journalists, to support agencies and to his MP. He had been involved in public events describing his experiences and videos of these events were available on YouTube. He wanted to use any means to publicise his experiences and this was his motivation to be involved in my study, although in our initial discussions, I made clear to him that, while I hoped my research would provide important insights into the experience of fathers in detention that could possibly have some influence on policy in the future, talking to me would be unlikely to assist him in his own case. Nevertheless, he remained keen to take part.

The interview was rather difficult to conduct. Prentice was very practiced in telling his story and wanted to tell it in his own way, rather than respond to my specific questions. I took a decision just to go with it and let him talk. However, it emerged during the interview that he had never been separated from his son

by detention. His son was an adult dependent at the time of his detention and was detained with him and his wife in Yarl's Wood. This only became clear to me about 20 minutes into the interview.

This episode was unexpected. I had thought that the information I had provided to both gatekeepers and participants was clear. It had not occurred to me that a participant would be so keen to tell his story that he would not realise that my research was specifically interested in fathers whose detention had separated them from their children. However, going back to both information sheets I realised that this was implied rather than explicitly stated and I altered both to make this aspect of my research explicit.

I decided, however, that I should include Prentice in my study. While it is true that I was not specifically looking for fathers of dependent adult children, his case provides interesting comparisons with other participants. Furthermore, Prentice's son was in his early twenties, had severe learning disabilities and had never lived independently from his parents, and although Prentice was not separated from him by detention, his relationship with his child was profoundly affected during detention and after it.

COVID-19 intervenes

Before I had to take a decision about adopting a more persistent approach with gatekeepers, fieldwork was interrupted by the COVID-19 pandemic. It goes without saying that this caused a significant disruption. Initially, Glasgow University required a halt to all fieldwork involving face-to-face contact with human participants and students who wished to continue were required to complete ethics amendments forms to ensure it was possible to complete their research safely.

At the same time, the detention landscape changed considerably. From March 2020, large numbers of people were released from detention (Home Office, 2020b), and for several months, detention centres were completely locked down. SDV, my own organisation, struggled to access any information about what was happening inside Dungavel, and this experience was replicated in the organisations supporting people detained in other detention centres. We held

regular online meetings to share whatever information we had been able to glean from staff working in detention centres and from the people we were supporting in detention, at that time only possible by phone. We were all concerned about the people who remained in detention, living in close quarters with others when an extremely contagious and potentially deadly virus was circulating. It was not until August 2020 that some visits were permitted inside detention centres, but they were subject to repeated lockdowns, both as a result of national restrictions and because of local outbreaks, a situation that persisted into 2022.

All the organisations providing support to people in detention had to make hasty arrangements for staff to work at home and had to reconfigure their services to adjust to a situation where face-to-face services were not possible. Some also added post-detention support to their repertoire because of the large number of people released from the centres they worked in.

In addition to all these practical issues, everyone was adjusting to the emotional impact of being in the grip of a global pandemic. Like everyone, I found this hard. Isolated at home, both working and studying in an environment that was designed for neither, worrying about my family and friends, who I was unable to see for months. The university recognised that these issues could have an impact on PhD students and offered the option of applying for extensions. I applied for, and was granted, a three-month extension to my part-time studies.

As we all began to adjust to what became known as ‘the new normal’, it became clear that the impact on my fieldwork was less dramatic than it might be for others. I had already been conducting some interviews by phone and a decision not to do any more face-to-face interviews was disappointing but did not significantly alter the nature of my research fieldwork. However, I took the decision that, for the duration of the public health crisis, I would only seek to interview men who had been released from detention. Those who remained in detention were likely to be experiencing considerable extra stress and I had no wish to add to it.

This had the impact of further reducing the pool of potential participants in my research. Furthermore, I was aware that the issues described above in dealing

with gatekeepers were intensified as the gatekeepers also needed to grapple with the impact of COVID-19 on their organisations and their service beneficiaries. Partly to mitigate this, I sought, and was granted, ethical approval to add interviews with professionals to my research. Particularly in a context where recruitment of people with lived experience was more difficult, I believed the perspective of professionals could provide valuable additional insights into the experience of my other participants. Following this decision, I completed three interviews with professionals working in organisations supporting people in detention (one solicitor and two case workers in advocacy and support organisations) in addition to the 12 fathers.

Comparing the 12 fathers to the broader detained population

Chapter 5 introduces the 12 fathers who participated in my study in detail and Appendix 1 presents some key information about them in table form. I noted in Chapter 2 that official figures provide only limited information on the circumstances of people who are detained. The figures give the nationality, age and sex of people entering detention and the length of detention of both people in detention and people leaving detention. In terms of routes into detention, the figures are split into those who are classified as "asylum" and "non-asylum", but provide no further details on the circumstances of people classified as "non-asylum" (Home Office, 2023b). This group includes people who entered detention through a variety of routes including visa overstayers and foreign nationals who have completed a prison sentence and have been issued with a deportation order (Silverman, Griffiths and Walsh, 2020).

Comparing my convenience sample to the broader detained male population shows some differences. In terms of nationality, none of my sample were from the Middle East, the region of origin for the largest proportion (25 per cent) of men entering detention in 2020, the year in which most of my fieldwork was conducted (Home Office, 2023a). Most of my sample were from Sub-Saharan Africa, which also accounted for a large proportion of men entering detention in 2020 (11 per cent), and men from the European Union and from Central and South America were also represented. These groups, accounted for 16 per cent and 5 per cent respectively of the detained population in 2020. The vast majority (89 per cent) of men entering detention in that year were aged

between 18 and 49, the age group into which most of my participants fell, although two participants (William and Richard) were in their early 50s. Men aged between 50 and 69 accounted for just 3 per cent of all men entering detention in 2020. In that year, 77 per cent of men leaving detention had been detained for 28 days or fewer. Most of the men in my sample had been detained for considerably longer, with just Prentice's detention lasting for under 28 days.

However, the greatest area of divergence is in the proportion of men in my sample who fell into the "asylum" population. In 2020, 65 per cent of men entering detention were categorised as asylum detainees. Just three of my participants had claimed asylum in the UK, most were foreign national offenders, who had entered detention following a prison sentence, a population not disaggregated in the detention data.

It is not the aim of qualitative research of this kind to produce a sample that is fully representative of the broader population studied. Rather, the sample should be capable of producing rich information on the topic under consideration, and enhance the generalisability of the findings (Abrams, 2010, p. 540). I am confident that the data generated from my sample has produced rich new insights into the experience of fathers in detention. In most areas the generalisability of these findings is not impacted by the difference between the characteristics of the men in my sample and the wider detained population. However, a limitation of my sample is in its greater representation of men who fall into the category of foreign national offenders. As discussed in Chapter 2, fathers in these circumstances face particular difficulties in challenging efforts to deport them on the basis of their article 8 rights to family life, that are not faced by other fathers in detention.

Ethical concerns in recruitment and fieldwork

In planning my study, I followed the standard ethics approval procedures at Glasgow University, but understood the ethical questions it posed as more complex. Both the populations of fathers I was interested in had limited access to money. People in detention may be able to work for around £1 an hour while they are detained, but those who are living in the community are likely to be living on asylum support or with no access to public funds or permission to work.

Some may be receiving cashless support from the Home Office, others may be completely destitute and relying on the support of family, friends and charitable organisations.

I decided therefore, to offer a voucher payment of £20 to the fathers who participated in the research. This recognised the fact that their financial circumstances are difficult, but also aimed to encourage participation and to recognise the time and effort of participants in taking part in the study (Head, 2009).

Some of the areas explored in the interviews with fathers were personal and may have caused distress to some participants. The definition of a sensitive topic for research articulated by Lee and Renzetti (1990) is helpful here: "a sensitive topic is one which potentially poses for those involved a substantial threat, the emergence of which renders problematic for the researcher and/or the researched the collection, holding and/or dissemination of research data" (Lee and Renzetti, 1990 p. 512). The potential relevance of this to fathers in immigration detention is clear. People who experience immigration detention may have been through traumatic life events and in the case of fathers this is compounded by separation from their children, in addition to the concerns they may have about their immigration cases and fear of removal, deportation and continued or repeated detention. Asking them to recall these events had the potential to retraumatise them. I was aware of this risk and minimised it by providing participants with clear written information about the nature of the research and the topics it covered before they agreed to take part (Appendix 2). I also made it clear that participants did not have to answer any questions they did not want to answer and could withdraw from participation at any point. Throughout the interviews, I aimed to establish a relationally safe space, which allowed for control by the participant but also for the responsibility of the researcher to actively listen, to be aware of signs of distress and to be prepared to halt the interview or take a break (Hydén, 2014) and I discuss below interviews in which I had to consider this.

In terms of confidentiality, I offered all participants anonymity and I asked fathers to provide pseudonyms for use in quotes, both for themselves and for people, such as children and other family members, who they mentioned in their

interviews. There remains a risk that someone who knows participants' circumstances will be able to recognise them. In order to mitigate this risk, I offered all participants the opportunity to review the transcript of their interview and remove any parts of it they were uncomfortable with sharing, or to remove the whole transcript from the research.

One participant, Prentice, was clear at the outset that he did not want me to use a pseudonym in my research:

> "I also consent that if you want, you can use my real name and I don't mind. I want that my real name should be used so they know it." Prentice

Despite this, I have taken the decision not to use Prentice's real first name, and also to use a pseudonym for his son, Edward, despite his specific request. His story has features that could make it easily recognisable to others involved in his case and, despite the fact that he has been public about it in the past, I am aware that he might not always feel the same way, particularly since his immigration case was not resolved at the time of our interview. Further, although Prentice was able to consent to his own name being used, he was not able to do that for Edward. Using Prentice's real name, even if Edward was pseudonymised, coupled with other details about their story could risk breaching Edward's confidentiality.

I recorded and fully transcribed the interviews, which lasted approximately one hour and no more than two hours. An additional time commitment was required from participants in reviewing the transcript of their interview, where they wished to take up this opportunity. I sent transcripts to each of my participants. One father asked that small portions of his interview be removed and another filled in a few gaps where the recording had been unclear. None of the other fathers got back to me with any comments. One professional participant asked for a small portion of her transcript to be removed from the analysis.

Data collection

Data was collected using individual semi-structured interviews, based on topic guides. The questions for fathers were open and broad ensuring that, as much as

possible, the issues covered reflected the experiences, perspectives and concerns of the participants, rather than being pre-defined by me as the researcher (Bryman, 2016). The broad areas covered were based on an early iteration of my research questions and included: family life and structure, routes into detention, views about the extent to which their fatherhood was taken into account in decisions to detain and how they negotiated their relationships with their children through their detention and (if relevant) after it (Appendix 5). The topic guide for professionals was developed later and covered much of the same ground but more directly addressed legal consciousness and emotions, which, by then, had become the focus of my research questions (Appendix 8). I explore the development of my research questions in more detail in the analysis section below.

The fathers I interviewed were located across the UK, both in detention and living in the community. As a result, interviews were conducted both face to face and by phone. Face-to-face interviews were conducted with participants who were located in Glasgow and were living in the community, and phone interviews were used for those who were further away, in detention, and later for everyone because of COVID-19. Had I been able to reach any potential participants who were located in other parts of the central belt of Scotland, I would have discussed with them whether they wished to meet in person or talk on the phone. I was also open to interviewing using Skype or Zoom, although in the event, none were conducted this way.

Face to face and telephone interviews compared

As described above, telephone interviews became the primary mode of data collection in my research, with just two interviews conducted face to face. Previous research has indicated that the two modes produce similar results (Vogl, 2013; Sturges and Hanrahan, 2004) but that there are advantages and disadvantages to each for both the researcher and the participant (Oltmann, 2016; Opdenakker, 2006; Sturges and Hanrahan, 2004; Vogl, 2013). Conducting both types of interview during my fieldwork enabled me to compare the two modes and test my own experience against the literature.

There were some additional advantages to telephone interviews with this particular group of participants that are not reflected in the literature. Recording devices are not allowed in detention centres so had I been interviewing people in detention face-to-face, I would have had to take detailed notes, rather than record and transcribe fully later. Further, I would have had to conduct them in the visit room, where at least one member of staff is always present. As someone who has regularly been in the visit room in a detention centre, I know staff frequently listen to, and sometimes interject in, conversations. Whether this is for sinister reasons of surveillance or, in my assessment, more often simple boredom, the fact is that it is impossible to guarantee even the appearance of a private conversation in a visit room.

By contrast, all people in detention have a mobile phone and have some freedom of movement around the centre in which they are detained. In arranging the interviews, I was able to ask participants to move to a private area where they felt as comfortable as possible speaking to me. It gave them a measure of control over the process that would not have been possible face-to-face in the visits room.

Conducting telephone interviews raised questions about informed consent. I sent participant information sheets to all participants by email but, in contrast to interviews conducted face to face, we were not sitting together for the interview. I could not show participants the information and be clear that they had read it (Varnhagen *et al.*, 2005). In order to address this, I spent a little time before I began each recording explaining the research and soliciting any questions participants might have. There was, however, a delicate balance to be struck, as in some cases I sensed the participant losing interest as I explained the research. I recorded consent by reading out and seeking agreement for each element listed on the consent form (Appendix 4), which provided further reassurance that the process was understood.

In the actual conduct of the interviews, there were some issues with the quality of the phone reception, particularly with men who were in detention at the time of our interview. It was sometimes difficult to hear what was said, but in the event, in most cases the sound quality of my recording was good and, on transcription, there were actually few gaps. I was aware in transcribing,

however, that there were sometimes issues I failed to follow up in the interview because I was unable to hear well at the time and all my attention was devoted to trying to hear the words rather than focusing on their meaning.

Another key difference between the modes of interview was the availability or otherwise of visual cues. (Opdenakker, 2006; Oltmann, 2016; Sturges and Hanrahan, 2004). During telephone interviews participants and I spoke over one another more than was the case in the face-to-face interviews as we both lacked the non-verbal cues that the other had finished speaking. This was exacerbated in some cases by the poor quality of the phone signal, which sometimes made conversational flow even more tricky.

Of greater significance perhaps was the availability of such cues in the two face-to-face interviews. For example, Jambu spoke with great anger about some of the experiences he had in his interactions with the immigration authorities. His anger was apparent in his words and was noticeable in his tone of voice, but it was far more apparent in his demeanour. At one point in our interview, he leaned forward, held my gaze intently and pressed his fists into the table. It was a very tense moment. I wondered about asking if he wanted to stop, but in the event, some supportive words of agreement from me and a pause seemed sufficient (Hydén, 2014, p. 800). We each drank our coffee for a few moments and resumed. Listening to the recording and reading my transcript, I think that had I not been in the room with him, the level of his anger would not have been as clear to me, and I might have been unlikely to respond in the same way.

The above highlights an advantage of the face-to-face interview over a telephone interview in terms of the ability to 'read' a participant's mood and respond accordingly but also raises further issues for me about power relations between interviewer and participant (Finlay, 2002). Holt (2010) observes that a telephone interview can give the participant a greater degree of control over the interview process than a face-to-face situation – the interviewee can, after all, simply put the phone down. The greater distance between interviewer and interviewee can also give the participant more control. In my interview with Prentice, he became upset and a little tearful at one stage when recounting a difficult experience. He apologised: "sorry, all my wounds are open again". I expressed some concern and there was a slight pause as he gathered himself and

resumed. I reflected after the interview that the distance created by a telephone interview may have made it easier for Prentice to continue. Becoming upset in the company of a stranger and witnessing their concern can increase feelings of discomfort, but with me on the other end of a phone line, Prentice was perhaps able to concentrate on managing his own feelings, without that process being diluted by additional worries about managing his responses to my concern.

Emotions in the research process

Emotions in the research process have become the focus of methodological debate with scholars arguing that emotions are an inevitable, though perhaps under-acknowledged, part of the process. (Bondi, 2007; Bennett, 2004; Widdowfield, 2000; Kay and Oldfield, 2011). My own decision to explore the experience of fathers in detention arose from my emotional responses to meeting fathers in Dungavel in the course of my work with SDV (Bennett, 2004, p. 416). As my research progressed, the emotions of my research participants increasingly became the focus of our interviews and my thoughts about the final shape of my thesis. I always knew there would be an emotional component to this work because of its focus on family relationships, and even more so because those family relationships were being lived under the stress of detention (and the threat of detention), itself a site of emotional upheaval and distress. Other researchers have written movingly and persuasively about the experience of fathers navigating these systems while trying to maintain their relationships with their children (Griffiths, 2016; Griffiths, 2015; de Hart, 2015).

As I progressed with my research, I developed my interest in legal consciousness and law and emotions as the theoretical lenses through which I would analyse the experience of my participants. This led to a refocusing of my research questions (discussed below) to allow scope for the more direct exploration of the wide range of emotions experienced by the men I spoke to: emotions experienced as fathers and because of their detention and, more broadly their relationship to immigration law, and as a consequence of both experienced together.

The data generated through my interviews is a product of the interactions between me and my research participants (Bondi, 2007, p. 236) and, particularly because of the topic of discussion, those interactions were emotional in content. I was asking them to talk about personal matters, related to their intimate relationships with their children and partners, and, given their immigration statuses, to contemplate the possibility of being permanently separated from them. But the emotions were not only experienced by my participants. Through the conduct of the interviews both of us were affected emotionally (Widdowfield, 2000, p. 200; Bennett, 2004, p.419). Some of those effects were expected and in some ways unremarkable. In this respect, they followed 'feeling rules' (Bondi, 2007; Bennett, 2004): the emotions people understand, through social rules, that they are expected to express in given circumstances (Bennett, 2004, p. 416). Others, however, were more unexpected, and for me, disruptive, and I explore them below.

I knew some of the men I interviewed personally and even those, the majority, who were strangers to me had stories that had echoes in the experiences of men I had met through my work. I was prepared to feel sadness at their plight and to feel anger at their treatment by the state. I expected to hear about their love for and pride in their children and their anguish at being separated from them. I was also prepared to feel empathy for their feelings of hopelessness and despair. For the most part, I did not find these feelings too difficult. They were familiar to me from my work, and I have learned to process and deal with them.

In the cases of Jambu and Jimmy, however, my own emotional response was stronger and more challenging. I had known both these men for many years, had visited Jambu in detention for a long time, and had worked with Jimmy for several years after his release. At the time that I interviewed them, I had not seen either of them for at least a year and I was shocked that they remained stuck in the immigration system in the same situation that they were in the last time I had seen them. Both were despairing at times in their interviews and could see no way out of their situation. These interviews made me deeply uncomfortable. I felt terribly sad for the situation they were in but also felt guilt at mining their distress for my research and for asking them to describe it for my benefit. I felt ghoulish. Bondi reminds us that people taking part in research have chosen to do so, and also that sharing and telling stories about one's life

and family is an important part of being a social being (Bondi, 2007, p. 241). Nevertheless, I found these interviews hard to listen to and to transcribe, but the emotions they engendered were those I expected. Only their intensity was a surprise.

Three other interviews brought up more difficult emotions for me. Richard, William and Jacob all described being involved in violent incidents with the women in their lives. In the cases of both Richard and William, these incidents were the reason for their imprisonment, which led to their detention. William had been sentenced to four years for an assault on his ex-wife and Richard to 14 months for assaulting his wife. Jacob's story was less straightforward and he was rather confusing to listen to throughout, but it was clear that a violent incident between him and his wife led to the police being called which, in turn, brought him to the attention of the immigration authorities. These circumstances upset me anyway, but also upsetting was the extent to which the men minimised them as "domestic incidents", blamed their partners for the violence, and made themselves the victims by foregrounding in their testimony injuries they sustained in their attacks on their wives.

Following the feeling rules, all these men spoke warmly about their children and their devotion to them. In the case of Jacob, this was fairly cursory and quickly led to anger about his wife. Both Richard and William spoke of their good relationships with their younger children, but both had difficulties, which they said they were trying to resolve, with the older ones. My impression, and Richard certainly hinted at this, was that the violence towards their mothers had upset and angered the adult children, who were in a better position to understand what had taken place than their younger siblings.

The emotions I felt with these men were anger and disgust. And, in stark contrast to my other interviews, these emotions were directed towards the participants and not the immigration system. These emotions were strongest with Jacob. When transcribing his interview, I could clearly hear the irritation in my voice and at one point I was audibly sighing in frustration as he went off on another tangent in which his wife was blamed for everything that had gone wrong in his life. I remember gritting my teeth, clenching my fists and digging my nails into my palms when I was speaking to him.

I did not find either Richard or William as difficult to talk to, but that made me angry with myself, particularly when I listened to and transcribed the interviews. Both these men were smooth and calm when they spoke. William had a lovely voice and a warm manner, and we had struck up quite a rapport in our chat about the research before I began the interview. I remember laughing with him about the Shakespearean pseudonyms he chose for himself and his children (Romeo and Juliet) for me to use in my research. I actually felt betrayed by him when he revealed the violence that had led to his imprisonment and subsequent detention. Richard was conversational and matter of fact and related the violence as if it were unimportant and trivial. He talked about it as a routine part of family life. In the process of transcribing these men's interviews, I was angry with myself for not feeling angrier with them when I was talking to them. I felt angry about their treatment of their wives, which though they minimised it, neither completely denied, and it coloured the way I thought about the rest of their testimony. Domestic abuse is rarely an isolated incident and I do not think men who are violent to their partners are good fathers (Heward-Belle, 2016).

Throughout the research process, I struggled to put my emotions about these men aside. At times I felt paralysed by them (Widdowfield, 2000) and beset by worries about how to deal with these issues in my analysis. In some ways I was pleased this issue emerged. Knowles (2006) notes that researchers can have a tendency to present their participants in a flattering light (p. 395) and I have in the past felt a little frustration that some researchers in this field, whose work I admire a great deal, sometimes present fathers caught up in the immigration system as almost saintly figures who are slavishly devoted to their children (eg. Griffiths, 2016). I have wondered when reading it if they ever met any slightly inadequate fathers, let alone some who were abusive. Drawing on her own emotional response to a participant who she disliked intensely and whose testimony she had considered excluding from her analysis, Knowles urges us to embrace antagonistic research relationships as they can help us to explore issues more broadly (Knowles, 2006). Similarly, I considered deciding not to write about these men's violence, taking the view that it was not relevant to my research. But that would be dishonest: the violence is highly relevant to their roles as fathers, their relationships with their children, and their routes into detention. It gives important context to their own detention experience and

reminds us that the law protects and penalises bad (or compromised) people as well as good ones.

Analysis

My fieldwork produced 15 detailed interviews about which I had to make certain analytical decisions. Although this is a relatively small number of interviews, when transcribed, it produced more than 160 pages of qualitative data. Thematic analysis is an appropriate method for analysing such datasets (Nowell *et al.*, 2017) and is a method for 'identifying, analysing and reporting patterns (themes) within data' (Braun and Clarke, 2006 p. 79). It is a flexible method which can be applied across a range of theoretical and epistemological approaches (Braun and Clarke, 2006) and can provide a rich and detailed account of the data analysed. Its structured approach to data handling makes it particularly useful in summarizing key features of a large and diverse dataset (Nowell *et al.*, 2017). It is also a useful method for exploring the perspectives of different research participants.

At the outset of my PhD, I anticipated using Nvivo to assist in my analysis. Using such a programme can help in sorting and organising large amounts of data efficiently (Nowell *et al.*, 2017). I have used Nvivo before and found that, while it was obviously not able to interpret data, it was helpful in enforcing a sort of discipline on the process of coding qualitative data, especially in a project that included more than one researcher, and sought to analyse different kinds of qualitative data.

This is quite different from the situation with my PhD. I am the sole analyst and each father's transcript tells the story, or part of the story, of his life and while I was interested in themes and patterns across the dataset as a whole, I also wanted to be aware throughout of the lives, stories and experiences of each of the individuals who made up the dataset. I decided, ultimately, that analysing the transcripts by hand would better enable me to maintain that balance, than using Nvivo.

As a guide to my thematic analysis, I used the six steps outlined by Braun and Clarke (2006): familiarisation with the data, coding, searching for themes,

reviewing themes, defining and naming themes and writing up. The first part of this process was crucial to refining and clarifying my research questions. As my fieldwork progressed, I chose to fully transcribe my interviews myself. I knew that I would not have a large number, and the gaps between them, as I waited for responses from gatekeepers allowed time in the research process for it. At the same time, through my wider reading and engagement with concepts, my interest in legal consciousness and law and emotions developed and began to shape how I looked at my data and how I wished to interrogate it. Throughout the process of interviewing and transcription, I drafted and redrafted my research questions, refocusing them on legal consciousness and its connection to emotion. The process was iterative and ultimately arrived at the questions outlined in the introductory chapter.

As the above implies, I saw transcription as an important early phase of my analysis. Although it is often presented as a separate and discrete phase of research, analysis begins early (in my case as soon as I started interviewing) requiring ongoing reflexivity on the part of the researcher (Mauthner and Doucet, 2003). The close concentration required to transcribe assisted in my becoming familiar with my data as a whole – the first stage in Braun and Clarke's process outlined above (p.87). Once transcribed, I read through all the transcripts several times and made marginal notes about interesting features, sometimes noting connections between transcripts where I found them.

The next phase was coding. Braun and Clarke (2006) discuss two broad approaches to thematic analysis: inductive and theoretical . An inductive approach is bottom up and like grounded analysis, is data-driven. It starts with the data and does not try and fit it into a predetermined coding frame. By contrast, a theoretical approach is driven by the researcher's analytic interests and is more explicitly analyst driven. This is closer to the approach I adopted to coding. My first pass over the data used Ewick and Silbey's (1998) patterns of legal consciousness as a very broad initial coding frame. Subsequent coding focused on other aspects relevant to my research questions: meanings of fatherhood and practices of fathering; fathering from detention; emotions associated with fathering and detained fathering and so on. I was open, too, to coding at a more inductive level and generated some codes that did not emerge from the specific questions for my research. Some extracts were assigned to

multiple codes, with others being assigned to just one or two. Some transcripts were tricky to code as the participants' testimony was confusing and confused. Others, by contrast, were full of incredibly eloquent and vivid language. I found therefore that sometimes I was coding for the mood and atmosphere conveyed by the data, and sometimes explicitly for the words.

I made separate word documents for each code and included the pseudonym of the particpant with each extract of text assigned to the code, as a means of, as far as possible, keeping the totality of the story of the the individual told in the transcript in mind. Once complete, I printed each code document and began mapping connections between them as a means of developing the themes that would shape the empirical chapters of my thesis (Braun and Clarke, 2006).

This process of developing, reviewing and naming themes was not linear. Examining both the codes that made up the theme, and the data extracts allocated to the codes, led to both recoding and reworking of themes throughout. Indeed the analysis process continued as I drafted and redrafted my empirical chapters.

Some of my initial codes (for example the patterns of legal consciousness) became overarching themes within the data, with subthemes related to emotions and to aspects of fathering linked to them. It was through this process that I was able to identify the participants whose experience would make up the exemplars of each pattern of legal consciousness that begin three of the chapters. Separate themes emerged that were more concerned with the biographies of my participants, their family histories and the routes they had taken into and through detention, which less directly addressed questions of legal consciousness but provided context, background and a fuller picture of their emotional lives and formed the basis of the first of my empirical chapters.

Limitations

This study was conducted during the COVID-19 pandemic and it is that circumstance that largely determined its limitations. The population it studied could only be reached with the cooperation of gatekeepers who, as explored above, were operating under conditions of considerable stress at the time I was

conducting my fieldwork. The final number of interviews achieved with fathers was just 12, far smaller than the 20-25 I had anticipated at the outset of my research. Three interviews with professionals were added to the study as a means of partly mitigating this issue. Their perspectives provided valuable additional insights into the broader experience of fathers in detention.

A further limitation is that the characteristics of the fathers in my sample mean that the findings explored in the empirical chapters that follow foreground the particular experience of a subset of detained fathers – those who had been detained following their conviction for a criminal offence. As a result, the extent to which my findings are generalisable to fathers with different routes into detention may be limited. This includes those detained after their claims for asylum had been refused, who account for a large proportion of men detained. Without the impact of the pandemic, it might have been possible to work more closely with gatekeepers to achieve interviews with a group of fathers with more varied routes into detention.

The population I was studying was drawn from across the UK and I had, therefore, always intended to use a mix of face-to-face and telephone interviews. The intervention of the pandemic prevented me from conducting more than two face-to-face interviews with fathers. This means that, to a large extent, I lost the advantages of face-to-face interviewing in terms of the enhanced ability to be clear about informed consent, and the availability of visual cues to facilitate conversational flow and reading a participants' reactions to questions. There were some advantages to telephone interviews but a better balance between the two modes would have spread the advantages and disadvantages.

Despite these limitations the interviews produced remarkably rich data on the experience of the fathers and have enabled me to develop the new insights that are explored in the empirical chapters that follow.

Conclusion

This chapter has discussed the methodological approach I adopted for my study and the practical, logistical and ethical challenges and decisions involved in

conducting a study of a marginalised, under-researched and hard to reach population, particularly in the context of the COVID-19 pandemic. It has also explored my positionality as a researcher, and how that influenced some of the decisions I took, particularly when my role as a researcher came into conflict with my experience as a practitioner.

Importantly, it has also reflected on emotions in the research process - my own and my participants – and explored how emotions permeated, shaped, and sometimes disrupted the research process. The emotions of my participants, experienced both as fathers and as men who have been detained by the immigration, and how these emotions affect and are affected by the legal consciousness they experience, are the subject of the empirical chapters that follow.

Chapter 5: Introducing the detained fathers

Introduction

In this chapter, I introduce the fathers who participated in my study. In doing so, I draw on a broad sociological literature on fatherhood and fathering and on the specific literature on incarcerated fathers. I look briefly at their routes into the UK and into detention and I go on to explore their family circumstances, their understandings of fathering and fatherhood and the impact their detention and, more generally, their relationship to immigration law, had on those understandings.

Fathers, fatherhood and fathering

Discussing fathers and their relationship with their children involves a discussion of the concepts of fathers, fatherhood and fathering and the distinctions and overlaps between the three (Hobson, 2002; Popay, Hearn and Edwards, 1998; Dermott, 2008). They are considered in turn below.

'Father' refers to the connection between a particular man and a particular child (Dermott, 2008, p. 7) but the literature makes distinction between different types of father: biological fathers and social (or household) fathers i.e. fathers who live with children who are not their biological children. (Hobson, 2002; Popay, Hearn and Edwards, 1998). There is also a focus on non-resident fathers, sometimes more pejoratively referred to as absent fathers, i.e. fathers who do not live with their biological children. This focus shows that biology remains very prominent in the narratives in the sociological literature; also reflected in policy and law in the UK, where biological fathers are expected to show an ongoing commitment to their children following separation and divorce and the expectation that this should entail financial support is enshrined in law (Lewis, in Hobson, 2002).

Further, legislation around adoption and children conceived through sperm donation now supports the view that it is important for children to be able to find out about their biological roots. But there is an increasing acceptance that while biology might be important in terms of identity for a child, it need not be

related to doing the work of being a parent, and the status of 'father' can be assigned to a man based on the work he does (Dermott, 2008). For Dermott, this leads to questions not about whether biological or social fatherhood is more important, but how biology is brought into accounts of the practice of being a father (p. 16). These distinctions between biological and social fathers are useful in delineating the experiences of families formed following the breakdown of relationships and the formation of others, but, as the chapter will explore, take on a different significance in the context of fathers who are detained under immigration powers. Fathers in these circumstances are all unable to live with their children, which can have lasting repercussions on their relationships with their children, even if they are released from detention. Further, their ties to them, both biological and social, are often minimised and denied by the immigration authorities (Griffiths, 2015; Griffiths, 2016; Griffiths, 2017b; Griffiths, 2023).

'Fatherhood' in the literature refers to the cultural coding of men as fathers or the public meanings associated with being a father, often discussed in terms of a distinction between cash and care (Hobson, 2002; Popay, Hearn and Edwards, 1998; Dermott, 2008). These meanings change over time and across cultures. For example, in an echo of Connell's (2000) account of the role of institutions in constructing masculinities, writers in a collection edited by Hobson (2002) discuss the ways in which the welfare regimes in in the different countries they explore are key to the way in which fatherhood is constructed in those societies. There has been a tendency, particularly in the global north, to move from systems that prioritise cash and breadwinning to those that emphasise fathers' active participation in the care of their children (Bergman and Hobson, in Hobson, 2002). Writers in a collection edited by Shwalb et al., (2012) clarify, however, that there is an absence of social policies designed to influence the construction of fatherhood in some cultures (for example Arab societies and some African societies), but that where they exist (for example in Sweden and in the UK) they reflect a widespread assumption that fatherhood should be active and involved. Dermott (2008) discusses how the current view of fatherhood in such societies as active, nurturing and involved is both bolstered and disseminated through media representations of fatherhood (p. 16). The men in my study, although most had been in the UK for many years, had been exposed

to different cultural codings of fatherhood from their home countries, but as is explored later, their views about what it meant to be a father emphasised active involvement with their children.

Examining 'fathering' as a concept allows us to explore the extent to which these cultural codings and public understandings of fatherhood are reflected in the lived experience of fathers and their families. It refers to the actual work of being a male parent, and is used as a parallel term to 'mothering' both of which make a distinction between identity as a parent and a set of practices (Dermott, 2008; Hobson, 2002). Examining this set of practices rather than public meanings associated with fatherhood can expose the gap between culture and conduct (Dermott, 2008).

For example, if we consider the shift from breadwinning towards active, caring and involved fatherhood, we can see that in practice the distinction between the two is not sharp. Tronto in her work, discusses caring as both a mental disposition of concern and a set of practices (Tronto, 1998). She identifies four phases of care: caring about, caring for, caregiving and care receiving, which recognise that caring involves resources and accepting responsibility as well as emotional and physical labour involved in caring tasks. Similarly, Dermott notes that caring for someone sometimes involves financial assistance and that breadwinning is a form of 'monetary care' that empirical evidence suggests fathers see as an important part of their fathering work. (Dermott, 2008).

Moving beyond notions of cash and care, Clarke et al. (2005) and Dermott (2008) refer to Lamb et al's 1987 'classic tripartite typology of father involvement' consisting of: engagement (caretaking, shared activities, direct contact); accessibility (presence and availability); and responsibility (planning child welfare and providing resources) as a way of capturing the work of involved fathering. Dermott develops a further five-part typology of fathering activities, based on the way in which fathers describe them, that drills down further into the actual tasks and time involved. She describes routine childcare tasks, day to day chores or housework, time spent together as a family, being present at activities involving children or 'being there', and intensive time with children. This final element, which involves engaging in activities that foster conversations and deep communication with children, was seen as especially

significant by fathers, while more routine tasks, and in particular the housework that supports childcare were less likely to be highlighted as part of fathering and more likely to be seen as the mother's domain (Dermott, 2008). Both these typologies emphasise time spent with children as an important part of fathering, and as a way of developing an emotional and loving bond with children. Emotional openness and displaying emotion are now considered significant in our ideas of how to do fathering (Dermott, 2008, p. 64). The extent to which these ideas about fatherhood are shared by, or available to, fathers who are incarcerated, either in immigration detention or in prison, is considered later in this chapter.

Incarcerated fatherhood

Fathers in immigration detention are 'non-resident' fathers, even if outside of detention they are social and household fathers. Their enforced physical absence undermines their ability to provide for their children financially, to care for them practically and emotionally and to be 'responsible' for them – all markers of 'good' fathering in the literature. A growing body of literature examines the experience of parents and families subject to immigration control and in places this touches on the experience of fathers who are at risk of detention or have experienced detention (for example: Bail for Immigration Detainees, 2013; Griffiths, 2015; Griffiths, 2016; Griffiths, 2017b). However, the focus of this work is not explicitly on what it means to be a father in detention and on how the work of being a father is impacted by incarceration, so I turned to the wider literature on fathers in prison for insight into these issues.

The studies I reviewed used the views and experiences of imprisoned fathers to explore what makes a good father and found that fathers had an internalised standard of a good father against which they measured themselves (Arditti, Smock and Parkman, 2005; Chui, 2016). That standard had some features in common with the typologies described above. Good fathers are 'available' to their children and 'pay attention' to them (Arditti, Smock and Parkman, 2005), they both provide economically for their children and care for them (Hairston, 1998; Clarke *et al.*, 2005; Arditti, Smock and Parkman, 2005; Day *et al.*, 2005; Chui, 2016). But they also control and discipline their children (Arditti, Smock

and Parkman, 2005). Often for men in prison good fathering was defined negatively, by what they were not doing for their children (Arditti, Smock and Parkman, 2005; Chui, 2016; Clarke *et al.*, 2005; Ugelvik, 2014; Hairston, 1998). Incarcerated fatherhood was equated with abandonment and neglect (Arditti, Smock and Parkman, 2005), not 'being there'(Clarke *et al.*, 2005) and being incompetent in the duties of father, husband and partner (Chui, 2016). The extent to which these findings are replicated in the experience of fathers who are detained is explored later in the chapter.

There are, however, significant limitations to the usefulness of the studies of prison in illuminating the experience of fathers in immigration detention. First, with the exception of Ugelvik (2014), whose study focused on the experience of foreign national prisoners in Norway, all of the studies reviewed examined men incarcerated in the country of which they were citizens, so their incarceration did not come with the threat of deportation or removal and permanent separation from their children. They were all able to look forward to a future in which they would be released from prison, with the possibility of rebuilding their relationships with their children. For fathers in immigration detention, this outcome is far from certain. Second, again with the exception of Ugelvik (2014) who explored the experience of men on remand, all of the studies reviewed considered fathers who knew when they were going to be released (Clarke *et al.*, 2005; Secret, 2012; Arditti, Smock and Parkman, 2005; Chui, 2016). As such, they are unable to reflect a key component of life in immigration detention: the fact that there is no time limit to detention in the UK (Bosworth and Vannier, 2016; Bosworth, 2019). This means that fathers in detention have no idea when their detention will end, and when, if ever, they will be able to resume family life with their children.

In addition, a number of the studies refer to evidence that shows that active involvement in family life helps to rehabilitate prisoners and prevents recidivism (Hairston, 1998; Dyer, Pleck and McBride, 2012; Dyer, 2005; Clarke *et al.*, 2005). These studies argue that supporting fathers to father well serves policy aims, and the studies are oriented towards the design and development of parenting programmes to support those aims. This policy goal is absent in immigration detention, whose aim is to remove fathers from the country and therefore has arguably no interest in promoting positive fatherhood. Indeed, as Griffiths (2016)

suggests, promoting positive relationships between fathers in detention and their children can militate against the policy aims of detention. The impact of this key difference was very much apparent in my participants' testimony, as I will show later, after a brief introduction to the fathers who participated in my study.

Introducing the fathers

All of the twelve fathers I spoke to had been detained for immigration purposes in the UK, but apart from this shared experience, they were a varied group in terms of their nationalities, their routes into the UK, their family relationships and structures, and their current relationship to immigration law.

The fathers had arrived in the UK by various routes and most had been living in the UK for many years, some since childhood. Jimmy and Ochuko had both been in the UK since they were 14. Jimmy came from Gambia to live with his aunt In South London, and Ochuko was brought to the UK by a family friend on the death of his grandmother, who had raised him in Nigeria. Both completed their secondary education and went to college in the UK. All the other fathers had come to the UK as adults, but for some, their residence here had been very longstanding. Richard, for example, arrived in the UK 30 years ago.

Three of the fathers had sought asylum in the UK but Jambu was the only one who had entered the UK with that intention. He arrived in 2005, fleeing the threat of violence in Ghana, having paid an agent to assist him, but as he explained, and in common with other participants, his migration history was complex, including earlier migration for work and study:

> "I went to Denmark in 1999 to 2001 to do a civil engineering degree in Denmark and I went back with this certificate and everyone was happy to give me a job because I'd been to study in Europe. And I never, never wanted to stay in Europe because there's so much to do in Africa and I knew how to go about being a ... establishing myself. And I did that, to the extent that I even registered two more companies and had three companies I was running and I could employ over 200 casual workers, so I was doing very well. As a young man, before all this happened and I had to run for my life. So when I came here, at that time, I still had a Swedish resident's permit so I could have travelled to

> Sweden because I was travelling, any time I wanted to travel, I travelled. So there was no point for me coming to the UK seeking asylum if I didn't have this issue where I had to run for my life."
> Jambu

Prentice had also claimed asylum in the UK, but this was after having entered the country as a student. Subsequently, the situation in his home country of Pakistan became dangerous for him, as a result of a dispute with a family member, which had escalated. Armand, from Cameroon, entered the UK as a visitor when he was working in Germany, having completed a degree there. He met and fell in love with his former partner and their daughter was born in the UK. Although he arrived and stayed as a visitor, he too later claimed asylum while he was in detention, alongside other legal options he was pursuing.

All but three participants (Armand, Roberto and Prentice) had been convicted of crimes and imprisoned before being detained under deportation orders. Griffiths (2017a) reminds us that the category of 'foreign national offender' (FNO) is broad and includes people who have relatively minor convictions, often for immigration offences that have been criminalised, as well as some people with serious convictions, who become the focus of disproportionate media and political attention. The nature of my participants' crimes was not the focus of the interviews but where they were disclosed, they emphasise the heterogeneity of 'foreign national offenders'. Their stories also demonstrate the way in which a person's relationship to immigration law can compound and magnify the impact of a criminal conviction.

Jambu, Jacob and Ochuko were all convicted of offences directly related to their immigration status having used false documents, Jambu to enter the country, and Ochuko and Jacob to seek work in the UK. Abdul's conviction was also for an immigration related offence. Originally from Somalia, he had been granted asylum in a European country as a child. As an adult, he exercised his right to free movement and moved to the UK where he worked, married and had his children. Later, he assisted his aunt to enter the UK illegally and was convicted of human trafficking.

Where disclosed, other participants' convictions were not specific immigration offences but could have specific consequences because of their immigration

status. Two participants, William and Richard, had been convicted for assaults on their wives, an issue I discussed in some detail in the previous chapter. William been granted Humanitarian Protection twenty years ago, in recognition of the danger he faced in Jamaica, his country of origin. This status was at risk of revocation, as a result of his conviction, despite his claims that the danger to his life remained:

> "And they want to strip it away to deport me, but my life would still be in danger . . . I wouldn't last a week if I go back home." William

Bernard also had a conviction for assault, from nearly 20 years before I interviewed him, which had brought him to the attention of the immigration authorities and led to his having to report regularly and ultimately to his detention.

None of the other participants disclosed convictions for crimes of violence. Tomasz, having exercised his right to freedom of movement to migrate from Poland, disclosed the almost comically minor offence that led to his imprisonment and subsequent detention:

> "Um, so basically, I committed trespassing but the judge raised the charges to commercial burglary because I took a bottle of water for 65p.[…] Yeah, and I got a 10 month sentence, where I had to stay in prison for 5 months and nobody came to tell me you're going to be holded (sic) by Home Office." Tomasz

Jimmy, having been in the UK since he was 14, had a series of convictions as a young man, some of which had led to short prison sentences. He had ultimately received a sentence of more than 12 months, which attracted an automatic deportation order. After his prison sentence, he was detained for nearly three years, longer than his prison sentences combined. Tomasz eloquently expressed the distress some of these men felt at the disproportionate impact their relatively minor criminality had had on their lives:

> "Yes. so, basically, Home Office made me feel like I'm so unwelcome here. Like I'm some kind of monster. I just took a bottle of water from an office building and I can lose everything." Tomasz

Only Abdul and Armand had secure immigration status at the time of our interview, while the others still had unresolved immigration cases. Roberto, Bernard and Ochuko were in detention when I spoke to them and were acutely aware of the precarity of their situation. Their detention was taking them away from their children, time was passing, important milestones were being missed – I spoke to Ochuko in Brook House on his older son's birthday - and yet the future was so uncertain, they could not predict or plan anything: a feature of the 'temporal uncertainty' of life in immigration detention explored in previous research (Griffiths, 2014). Bernard described how difficult that experience was, both for him and for his children:

> "Because I know they miss me, they want me to be there. And I know when I was there, I was so helpful to them, and they always think of me. My daughter, she has turned two years old, and this is the time I'm missing, which I need to be enjoying more with her. And I'm kind of stuck, without knowing what's going to happen in the next two minutes. So everything is just painful."
> Bernard

The rest of the participants were living in the community but still at risk of detention. For most, their release had been quite recent and in the wake of the COVID-19 pandemic. But both Jimmy and Jambu had been out of detention for years and were no closer to a resolution of their immigration cases.

The sense of temporal uncertainty experienced by Bernard while in detention was also felt by fathers living in the community under threat of detention and deportation. Jimmy explained vividly the impact it could have. Already unable to live with his son because of the breakdown of his relationship with his former partner, he contemplated a future in which he would not be given time to collect important mementos of his son: gifts he had been given by his child and others he had bought to give to his son would be left in his accommodation:

> "Not at the moment no, but I could just go in one day. We're going to take you to London for an interview and [unclear] get your papers. And if that happens, you have to think like that as well. If that happens, they'll just take you away. It's not like they'll say pack some stuff. They'll take you to England. What will they do? They'll lock the door. So, if you're not capable of getting your stuff out of the house, you end up with nothing you know. And what I have in my house right now are a lot of things that mean a lot to me. Valuables, gifts from my son, little things that

I've been putting together, buy him stuff, and you know, you lose all of that so it's like not easy." Jimmy

This ever-present fear, of both further detention and possible deportation, cast a shadow over my participants' relationships with their children and impacted the way they experienced their family lives.

Family life

Biological, social and non-resident fathers

The distinctions between biological, social and non-resident fathers as delineated in the literature were evident in the experience of the fathers I interviewed, who had a variety of family circumstances and backgrounds that influenced the way in which they understood themselves as fathers. Most had complex family arrangements, with their immigration issues frequently acting as a complicating factor. Further, their immigration issues sometimes disrupted our understanding of the categories of father outlined in the literature. They also influenced the decisions the men made about their family lives.

For example, Bernard, from Zimbabwe, had been in the UK since 1999 and considered himself to be a father to two children with his partner. One was his partner's biological son from a previous relationship, and the other was a daughter to whom they were both biological parents. He was clear that he made no distinction between the two of them: his son was as much his child, and equally loved, as his daughter who was his biological child. Although he and his partner were still together as a couple, he was not living with her or their children and had never lived with them. When I interviewed him in detention he explained:

"No, I was living with my sister but I'd call in to check her, because she got into a council flat and I didn't want to register there, with my situation, to register to stay with her because I didn't know whether they allow it or not, with the council rules." Bernard

In the quote above, Bernard reveals that he was unsure of the legal position in relation to sharing a tenancy with his partner while he had insecure immigration status, and that this affected the choices he made about his family life. The way

in which he and other participants understand, experience and act in relation to the law will be explored in greater depth in later chapters on legal consciousness. Here, however, it is important to note that, even before his detention, Bernard's uncertainties regarding his immigration status had led him to choose to live separately from his children, despite no breakdown of his relationship with their mother.

Tomasz was also living in unusual and difficult circumstances because of his relationship with immigration (and criminal) law. He had been living with his partner and their six-month-old son when he went to prison and was subsequently detained. His relationship with his partner broke down under the stress of his imprisonment and detention. Despite this, she was willing to provide him with a bail address when he was released and so they lived together, despite no longer being in a romantic relationship. He welcomed this arrangement because it enabled him to be involved in caring for his son, and when we spoke, he told me his son was sleeping beside him. Nevertheless, unsurprisingly, the arrangement was not without its difficulties:

> "It's one big argument to be honest. Mary is that kind of person to be honest ... she can hate really bad and she can love really ... nothing in between. So we just argue all the time." Tomasz

In order to make the situation as manageable as possible, when Tomasz was looking after their son, he often took him out and to visit his father and sister, who lived locally. As a consequence of his legal issues, Tomasz's experience of fatherhood was a combination of all the types described in the literature: he was his son's biological father and was non-resident in the sense that the relationship with his partner was over, being in the same house was uncomfortable and he avoided being there as much as possible, although his time outside the house was often time spent with his son. However, he had no option but to live under the same roof, and therefore was also a social or household father. Roberto, too, spent some time living in an arrangement with his former spouse that blurred the distinctions between biological, household and non-resident fathers, because of the difficulties caused by his immigration status.

Like Bernard, Jambu was a father to two children, only one of whom was his biological child. He was even more highly invested than Bernard in notions of social fatherhood. This was related to his personal history. He was 17 when he learned that he had been adopted by the family he had thought of as his biological family. His lack of biological connections to others led him to seek to create a family for himself by adopting four children, a family he was forced to leave when he fled his country:

> "[W]hen I wanted to marry and started having the issues and needed to run away from the country, I took them back to the orphanage, which was the most evil thing I've ever done in my life - taking those children back to the orphanage because it's not a good place. And I kind of brought them up telling they've got family, they've got me, and then all of a sudden, I'd got to take them back and they've got nobody. It was very difficult." Jambu

In the above quotation, Jambu describes the commitment he made as a social father to those children and the pain he felt in being forced to abandon that commitment. This decision, and this early experience of loss profoundly influenced his attitudes to his children in the UK, one of whom was his ex-partner's from a previous relationship. He made no distinction between his children, explaining that for him being a father was about emotional connection with his children:

> "I know what it feels like not to have biological connections. And so it doesn't mean anything to me, but it's the psychological and emotional connections" Jambu

After his relationship with his children's mother broke down, he remained committed to continuing to be an active father to both children, as he explained:

> "I am determined to do that because of my personal history and my background. I know what it is not to have a man or someone in your life and I don't want the children to experience that." Jambu

The other fathers I spoke to also expressed deep commitment to their children and to continuing to be in their lives. All experienced their detention, and their relationship to immigration law more generally, as a major disruption to their ability to fulfil this commitment.

Identity and detained fatherhood

In their work on imprisoned fathers, Dyer (2005) and Dyer et al. (2012) provide an outline of Burke's identity theory, which argues that people are motivated to act in ways that verify their identities. This entails having an internalised standard for the identity and behaving in ways that are meaningful to that identity. If they are unable to behave in ways that meet their internal standard, they will experience stress and, if they can, will respond by adjusting their behaviour to meet the standard. If this is not possible, other possible responses include weakening their own internalised identity standard and reducing their commitment to the identity.

Imprisonment, they argue, is a major interruption to the verification process for fathers and reduces their ability to make meaningful adjustments to their behaviour. The parallels with detention are clear, but there is an important difference, referred to earlier. The policy aims of detention are to remove people from the country so there is no interest, as there is in prison, in fostering good relationships between fathers and their children that are expected to endure on release. The fathers I spoke to frequently spoke of the ways in which they were prevented from being the fathers they wanted to be by their detention and life after detention.

"Am I really a dad"

This was perhaps most vividly explained by Jimmy. He had previously been incarcerated for nearly five years (including his time in prison) and had been out of detention for five years by the time we met for our interview. Nevertheless, his immigration situation remained unresolved, and he was living in the community on cashless support, under bail conditions that required him to live in Glasgow, 50 miles from his son in Edinburgh. His views on what made a dad echoed some of the literature explored at the beginning of this chapter, invoking notions of involvement and 'being there':

> "The role of a dad is, for me personally, I say security. I wanna be there. I wanna be there for him so that he feels safe, and he can talk to me. And somebody to look up to. Because I look up to my dad. I love my mum, but I look up to my dad. So if there's not even that chance to replicate what I feel about my dad. It's like I

> will fulfil what he wants in life, you know. So, it's kind of tough because if you look at it that way, am I really a dad?" Jimmy

Most striking in Jimmy's comment above is his question to himself about whether he is "really a dad", if he is unable to match his standard of what a father is. Some of this was explained by his difficult relationship with his son's mother. The literature on fathers in prison notes that gate-keeping by mothers could hamper fathers' efforts at co-parenting from prison. (Arditti, Smock and Parkman, 2005). Clarke et al (2005) also found that prison aggravated or provoked a worsening relationship between the mother and the imprisoned father. For Jimmy, living in the community after detention had similar impacts. Although his son's mum had brought him to see Jimmy in prison and in detention, many years of his unresolved immigration case had taken its toll and by the time of our interview, she had become far less willing to facilitate their contact. He explained:

> "I know if Oscar goes and sees me, he gets upset. He wants to talk to me on the phone and he's not allowed. A lot of things have been cut off between me and him. Because I used to buy him a phone, and say, listen I'll call you on your phone when I miss you, and you can call me when you miss me, so I don't have to be coming back and forth all the time, we can just have a chat. But now the mum's not letting him phone. He's got a phone, but he's not got my number. And it's not like me and the mum are in a beef, we're not arguing or nothing. She's just cut it off, because of my situation." Jimmy.

His quote above shows the efforts he had made to maintain his identity as a father and keep a functioning relationship with his son, and his mother. Elsewhere in our interview he explained how difficult it was to maintain regular contact with no income and with bail conditions that required him to be in a different city from him. The only option he felt was left to him to maintain his identity as a father was regular phone calls. But his former partner, also ground down by his immigration status and its impact on their son, was increasingly unwilling to facilitate this.

Being unable to do the work of fathering

Jimmy's experience was born of many years of living under immigration control and was especially challenging to his understanding of himself as a father. But

other fathers spoke about specific aspects of the work of being a father and how they were adversely impacted by detention. Tomasz, for example, highlighted the role of the father as a breadwinner. Being unable to perform this role in detention made him feel like he had failed his family, who were on the outside, struggling to buy basic necessities:

> "Provider. I felt like, in the detention centre, like I'd failed him [his son]. Like I can't even .. because when I'm in here, I'm a man of many talents. I'm a tattoo artist, I'm a painter. I'm a DJ. I really have a lot of talents, and I can make money like that. And every single time when my missus used to say, 'Oh my god I have to go buy nappies, can you call your dad because I don't have money?' or something like that. I was like, that's my fault." Tomasz.

Prentice, uniquely among my participants, was detained with his adult son. His detention was short-lived but very traumatic and is discussed in greater depth in subsequent chapters. When we spoke, he was back in the community, still at risk of detention and living in asylum accommodation under the restrictions on working imposed on people seeking asylum. He reflected on the role of the father and the difficulties of performing that role while living under immigration control:

> "The father in every family is the person who is responsible of providing every kind of need for their children. It's their right, it's their duty … Whatever is a reasonable thing, he has to provide it. We are not allowed to do work, we are helpless, we want to do work. We are living worse than a beggar, only given the house and not paying the bills. We are worse than a beggar. Our egos are hurting." Prentice.

Like Tomasz, Prentice's inability to provide for his family was experienced as a failure. But he went further. His reference to ego speaks of how important doing the work of being a father was to his self-esteem and to his understanding of himself. Doing that work was, for Prentice, a "duty" and a "right" and being prevented from doing it was experienced as an existential wound.

Jambu, who like Prentice, was living in the community when we spoke, also discussed the need to provide basic necessities for his children. He described the hard work involved in providing for his family, the time it took, and the institutional barriers that were put in his way:

> “I've been sidelined and blacklisted from many food banks. I went all the way to Kirkintilloch to get food for my children. Went all the way to Motherwell to get food for my children because all the Glasgow food banks know me and say no, you've been coming here for too long” Jambu

But providing materially in this way, though arduous, was only part of the work of being a father. Jambu also described some of the detailed caring work involved in being a father to his son and in supporting his ex-partner after a difficult birth and her post-natal depression:

> “When he was born the mum had a caesarean section and broke down so could not move so was in hospital. So when I took him from the hospital, he was with me. We go to the hospital and I would get the mum's milk, kept in the fridge for him, so he grew up with me. And then the mum had post-natal depression and she couldn't do anything for him. So he was always with me.” Jambu

This quotation shows his recognition of his responsibility for his new-born child and his willingness, as a father, to care for him. Detention had a devastating impact on this relationship, as he explained:

> “The person he's used to was not there and he was looking for me every time. We eat together, bath together, sleep together, do everything together. And for the first time, I had this sharp pain, you know every time I remember him, I have this sharp pain in the lower part of my abdomen. , As if someone is squeezing my heart whenever I remember him. I mean I had this horrible feeling of, you know .... I wish I had known that something of this nature would happen, I wouldn't have been too close and attached to him. You know. And so we were not prepared.” Jambu

Jambu’s reflection that he wished he had not become so emotionally connected to his child is a means of thinking about an alternative life where he and his son might have been spared the emotional pain caused by their enforced separation. But it can also be read as a heart-breaking example of the process of weakening the internalised standard of good fatherhood (Dyer, 2005; Dyer, Pleck and McBride, 2012). Unable to live up to the standard of involved, providing and caring fathering he had followed before his detention, he contemplated a more distant, less emotional model, one that could withstand the separation caused by detention and even, possibly, deportation.

Absent role models

Several fathers argued that modelling a positive, responsible form of masculinity was an important part of the role of a father. For Armand, this was linked to what he saw as a history of "black parents abandoning their kids". In his case, living up to this understanding of what it means to be a dad was made particularly difficult as throughout his detention, in a vivid demonstration of a key difference between detention and imprisonment, the Home Office denied he had a daughter, despite the fact that his daughter had visited him:

> "Not only am I whipped away from my daughter's life, the Home Office refuses to acknowledge that I have a daughter, but worst of all, they keep insulting me on a daily basis that I'm not in contact with my daughter - they're challenging my parental skills. They're telling me I'm not a good father." Armand

His sense of hurt at this denial of his identity is evident in the quotation above and he was not alone in this experience – the Home Office also failed to acknowledge that Tomasz was a father. These examples are extreme, but most of the fathers felt strongly that the fact that they were fathers was not considered by the immigration authorities, who were determined to separate them from their children through both detention and deportation, an experience reflected in earlier research on fathers subject to immigration control (Griffiths, 2017b; Griffiths, 2023).

The fathers felt strongly that this could have implications for the future of their children, particularly sons. Here, for example, Ochuko describes the particular importance of being a male role model where fathers, like him, no longer live with the mothers of their children. He was aware that, because of his immigration status, this was a role he might be prevented from performing, and he used arresting, gendered language to describe it:

> "Because obviously, it's not easy to be a single mum. A single mum needs.... Especially when he's a boy, he needs his dad around him. If he don't have his dad around him, that's when you see he becomes a spoiled brat, he starts carrying a knife, he starts carrying a gun, he starts destroying the whole street, it becomes a nuisance. Because the government has deported his daddy, the lion in the house, the king of the jungle, the king of the house, deported the dad in the house, so how do you expect

> the mother to be able to cope with the boy? It's not easy."
> Ochuko.

Jimmy was also concerned about the impact on young boys, particularly young boys of colour, of growing up without a father and about the state's role in creating that situation through immigration law:

> "If you look at the kids down in England and all these places, running around the streets causing havoc, stabbing each other, they've got no dads. They've got no dads in their lives. Some of their dads have been sent back home. Most of them. Because they're Jamaicans, Africans. So they're growing up with no dads. So they're causing the trouble, but they don't see it, because these kids are fatherless and who's making those decisions?"
> Jimmy

The language these fathers used to describe the importance of male role models to boys is striking in the way in which it generalises the issue. They did not talk explicitly about their own futures or their sons' futures but of hypothetical fathers and sons. Speaking in that way may have been a means of distancing themselves from a future they feared. In other interviews, however, looking forward was more explicitly personal.

Painful past, precarious present, uncertain future

For Bernard, in detention and still living with the immediate threat of deportation and potential permanent separation from his children, looking forward was in no way hypothetical. He knew what he wanted for his family, but also knew that his family's future was not his to secure:

> "So what I'm looking forward to is just to have a relationship together all of us and stay together. Which is the only thing which I'm looking forward for. But with the immigration issues we do not know what is going to happen let alone … it can be painful".
> Bernard

Roberto, also in detention, worried about being forced to leave his children and the impact it could have on them, and his worries focused closely on how the work of parenting could be achieved by their mother on her own, without the support he was committed to providing:

> “How would the mother manage? To support two kids and all they need. How? It's not fair for her. It’s not fair on the kids, you know.” Roberto

Doing that work was for Roberto what made him a father and being detained, and possibly deported, deprived him of that. Other fathers, like Jimmy, who earlier had reflected on how being present in his son’s life was what made him a father, felt the same way. His life lived under immigration control was one that challenged his understanding of himself as a father.

> “Me for me personally, if I can't be a dad, there's no purpose for me living. That's just what it is. I'd be the biggest failure in my head. That would affect me for the rest of my life. No doubt about that. No doubt about it. And I'm sitting here with you, talking about being a dad, and I can't even see my son” Jimmy.

Jambu, who was also living in extremely difficult circumstances, but was able to see his children more frequently, expressed similar feelings:

> “For the past 13 years since arriving in this country I've been the same. The Home Office [is] saying because I'm from Ghana, they don't recognise individual cases and so my situation is deemed null and void. I am not going to be allowed to stay in this country and so I'm still here. Thirteen years of my life is lost. I lose my children back home in Ghana. I lost my property, my job. I have basically no life. The only life I have now is these children I have and they make me feel like I'm still a human and that I belong to this planet.” Jambu

These men’s identities as fathers were crucial to their sense of self, and even to their humanity. Fatherhood provided them with ontological security (Giddens, 1991) in a life characterised by insecurity and loss of control. The loss, or weakening, of their identities of fathers, through the action of the immigration authorities was a source of profound distress.

Accommodations and adaptations

Despite their distress, the men I spoke to made a range of accommodations and adaptations in their fathering to maintain their relationship with their children while they were detained, and seek to verify their identities as fathers. In an echo of some of the literature on imprisoned fathers, this sometimes meant choosing not to see their children, who they feared might be upset by seeing

their father in a secure environment (Arditti, Smock and Parkman, 2005). This sometimes depended on the age of the children, as Bernard explained:

> "No, I didn't want the big boy to come because he can see. He knows. I don't want him to think oh, where is daddy? What is this place? You know, because he's seven years old. He's very smart, you know." Bernard

And it sometimes involved an element of deception to avoid revealing that they were in detention (Chui, 2016). For example, Bernard told his son that he was unable to attend his mum's birthday party because he was at work, and Jambu told his children that he was away at a conference. Jambu recognised, however, that this subterfuge was less effective with his older child and became harder to sustain the longer his detention continued.

For other fathers, receiving visits in detention was an important means of maintaining and developing their relationship with their children. Tomasz's son was just six months old when he went to prison. Visiting in prison can be physically and psychologically demanding for families, involving a great deal of waiting, being searched and often being treated rudely by prison staff (Hairston, 1998), and neither Tomasz, nor his partner, wanted their baby to experience it. Tomasz's subsequent move to immigration detention, with its more relaxed regime, was therefore an opportunity for him to see his son and rebuild his relationship with him, particularly as his partner was able to bring him to the centre frequently:

> "After, like, two or three visits, he recognised me like, I wear glasses, so when he saw my glasses, he was like 'da, da, da!' … we could hug each other and could have proper, maybe not proper, but pretending family time". Tomasz

While Tomasz appreciated that the environment in detention allowed him to spend some intensive time with his son (Dermott, 2008), as is clear from his quote above, he was very aware of its limitations.

Negotiating with his daughter about visiting was an important part of fathering from detention for Armand. He described how his excitement in looking forward to her visiting him in detention at Heathrow gave way to concern at her distress at seeing him detained and how this overrode his desire to see her:

> “That's why the first time she came to visit me I told her no I don't want you to see me in this place, I don't want you coming here, because it's going to create memories that are going to haunt you in the nearby future. Detention is not a place you want to be taking a child to.” Armand

Despite this, he allowed her to come a second time because she was accompanied by her uncle. However, when he was moved to the Verne detention centre in Dorset, much further from her home in suburban Hampshire, he put his foot down, when he believed that her physical safety and wellbeing could be compromised:

> “No. I wouldn't let that happen. She even a few times tried to ask friends who were coming to visit me if she could jump in the car and come and see her dad. And I said no. Two, two and a half hour drive, both ways that's five hours, and I didn't want her to do that. She gets car sick and I had to take all that into consideration.” Armand

In the absence of visits, and in common with other fathers I spoke to, he found alternative ways to maintain the routines and rituals of family life while he was detained. The literature on imprisoned fathers explores a variety of ways in which families adapt in this way. Clarke et al. (2005) found that the routines of letter writing and phone calls were important to some of the families they studied. They noted that letters and phone calls provided a way to experience ‘normal’ contact in an abnormal environment. For example, prisoners used letters and phone calls to discuss family business and progress at school. They could also be used to provide guidance to family members and exhortations to children to ‘be good’. Letters and phone calls also provided the opportunity to share regular expressions of love and of ‘missing you’. (Dyer, Pleck and McBride, 2012; Clarke et al., 2005).

The fathers I spoke to communicated in all these ways. Abdul did not want anyone to visit him in detention because he did not want to be seen in a “bad situation”. Being detained, however, gave him time to reflect on his role as a father and what he came to see as the inadequacies of his former uninvolved and remote fathering style, an experience highlighted in some of the literature on imprisoned fathers (Arditti, Smock and Parkman, 2005; Chui, 2016). He spent time in detention reading and speaking to people from other cultures, which

challenged his previous understandings. He used daily phone calls to his children to encourage them to talk to him about their lives. This focus on intensive time (Dermott, 2008) was a significant change from how he had related to his children before his detention and he described how it built a relationship of greater trust with them:

> "That detention time it's built a lot of relationship between me and my children. It allowed them to tell me everything they do, even when they do something wrong, they come and tell me". Abdul

As one of just two men who had secure immigration status when I spoke to them, he was able to reflect in this surprisingly positive way on the impact detention had on his relationship with his children, an impact he continued to enjoy:

> "To be honest, I thank the Home Office for what they've done to me because they've transformed my life. So otherwise, I would continue what I was before and my children will grow up without love." Abdul

Armand, looking back on his time in detention, described both regular day to day contact by phone and email, and making gifts that he saw as a way of cementing his relationship with his daughter in the future:

> "I was always in contact with my daughter, I spoke to her every day. I sent her emails and I spent a lot of time in the art class, trying to create things that would ... like making a frame from scratch, a mask, writing poetry, painting. Just to make sure some day she realises that she was never forgotten. But if I'm being honest, it was more for me. To try and keep myself from being mentally damaged. The place is a torture, so I needed some positive distraction to keep me going." Armand

He recognised that these adaptations were important for him as well as his daughter. They reminded him of his identity as a father and, like Jambu and Jimmy, this reaffirmation helped him to focus on a world beyond detention as a way of surviving it.

Some detained fathers adapted their fathering in ways that included their children's mothers. For Roberto, this was an extension of the cooperative approach he had to childcare with his children's mother but also a reaction to

the inadequacy of the methods of communication with his children. They did not like speaking on the phone and access to Skype from detention required booking and was time limited. Talking to their mother every day, after the children had gone to bed was a way of giving him access to the mechanics of family life and making his fragile connection to his family more concrete throughout his detention (Dermott, 2008).

> "Big routine here. … Every day, every day. 9 o'clock when they close the cell, I call her. Then we talk for about one hour. Then she goes to bed. You know that helps me to sleep as well, to take me out of the thoughts of here. So she tells me what happens, what the kids been doing, if they've been out, what they've been doing." Roberto

Other fathers were called on by their partners and former partners for support. Bernard spoke about how his partner was very stressed about his detention and would phone him during the night for support and to ask for his help with household matters and correspondence. Jambu, who was uncomfortable talking to his children from detention, because he did not want them to know where he was, would do so when his ex-partner sought his support. This enabled him to offer some comfort to his upset son but also, as he explained, to mimic a bedtime routine of storytelling.:

> "Once in a while I phoned, cos the little one would be crying, and mum would say, no you need to talk to him. And I'd tell him I travel and I would be coming back. It got worse and I had to look for other children's books and I would read to him from the detention centre." Jambu

These adaptations and accommodations were necessary to fathers to maintain their relationships with their children and to continue to do some of the work of being a father while they were detained.

Conclusion

This chapter has introduced the twelve fathers who participated in my study. It has briefly traced their various routes into the UK and into immigration detention, and has examined their family relationships. Most importantly it has explored their understandings of fatherhood and fathering, and considered how

these understandings were affected by their detention, and for most, by their continued risk of detention.

The challenges the men faced in maintaining their relationships with their children from detention, in holding on to their identities as fathers, in adapting their fathering to preserve some of the routines and rituals of family life, and in preparing for an uncertain future were experienced emotionally. Further, these challenges were part of the story about how the fathers understand, experience and act in relation to the law – their legal consciousness.

The following three chapters look more closely at the legal consciousness of these fathers. They use the patterns of legal consciousness identified by Ewick and Silbey (1998) as an analytical framework, and explore the ways in which the emotions experienced by fathers in detention affect, and are affected by, their legal consciousness.

Chapter 6: A fleeting consciousness. Fathers in detention 'before the law'

Introduction

This is the first of three chapters in which I use the patterns of legal consciousness described by Ewick and Silbey (1998) as an analytical framework to explore the ways in which my participants understood, experienced and acted in relation to the law (Chua and Engel, 2019; Cowan, 2004; Singer, 2019; Ewick and Silbey, 1998). This chapter will focus on 'before the law' where the law is seen as objective, transcendent and rational. Later chapters will focus on 'with the law' legal consciousness, where the law is treated as a game to be manipulated, and 'against the law' legal consciousness, where the law is experienced as an oppressive force.

Before I began to analyse my data, my expectation was that these two patterns, especially 'against the law', would be the dominant patterns experienced by the men I spoke to. Most of them had lived in the UK for a long time and their stories were of struggling to remain in the country to stay in their children's lives. They had, it seemed to me, little reason ever to experience the law in the way it is experienced in before the law legal consciousness as rational, objective and transcendent (Chua and Engel, 2019; Ewick and Silbey, 1992; Ewick and Silbey, 1998; Singer, 2019; Cowan, 2004). Further, in her study of people in detention, Singer (2019) found no evidence among her participants of this pattern of legal consciousness, with her participants switching between 'against' and 'with the law' patterns.

As I noted in Chapter 3, I was struck in reading Singer's study that the legal consciousness she described in her participants was often highly emotional, even though emotion was not the focus of her study. The emotions on display were often anger, fear and despair. In my own study, these emotions could be seen as both cause and consequence of their 'with' and 'against the law' legal consciousness. For example, as will be explored in subsequent chapters, anger was frequently a galvanising force that caused a shift to a 'with the law' legal consciousness and led fathers to become more active and involved in their legal

cases. However, sometimes in conjunction with other emotions, it was a response to the difficulties and setbacks they experienced in accessing a 'with the law' consciousness, which in turn became a cause of a turn to (or back to) 'against the law' consciousness.

Although 'with the law' and 'against the law' pattens of consciousness predominated, I was surprised to find some limited evidence of 'before the law' consciousness among my participants. One of the fathers I spoke to, Richard, experienced this pattern consistently, although other patterns were occasionally evident throughout our discussion. His testimony was also, as explored below, much less emotional than that of the other fathers I interviewed. Other fathers, too, showed, albeit more briefly, a 'before the law' consciousness. For them, it was a short resting place on the way to the other patterns. Below I argue that the bridge to those patterns was emotion, and specifically the emotions felt as a father.

Richard: faith in the law

Richard was the only father I spoke to who consistently displayed a 'before the law' legal consciousness, although at a couple of points in our interview he briefly described experiencing other forms. His worldview (Chua and Engel, 2019) included an image of himself as a hardworking, respectable taxpayer who had come to the UK more than 30 years ago. A year after he arrived in the UK from Uganda, his wife and oldest child had joined him. He worked hard and the family eventually settled in south London, where they had lived for 25 years, and where he and his wife had three more children. As a father, Richard considered that his role was to provide for his children, and to protect and guide them:

> "In the family, the role of the father is to protect your family, provide for your family and guide your family. You guide them spiritually, psychologically." Richard

Throughout his interview, he stressed his "good character and conduct". He was someone who followed the rules and led an ordered and orderly life. He did not generally see the law as something that impinged on his life. His only direct encounter with it was the "predicament" that led to his prison sentence and

subsequent detention. As I discussed in Chapter 4, Richard's conviction, his only one, was for violence against his wife. This experience was described very much as a disruption to his normal life (Ewick and Silbey, 1998) and something that need not have involved the law at all. To him, it was just a "domestic issue which we could have resolved ourselves", something that took place in a private rather than public sphere and should not have been a criminal or legal issue at all.

He continued to deal with the consequences of this "domestic issue". While he expressed love for his children, telling me he had their names tattooed on his shoulders, his interview contained little of the detailed work of being an active, involved father described by other fathers in the previous chapter and in the literature (Hobson, 2002; Dermott, 2008; Clarke *et al.*, 2005; Hairston, 1998; Hairston, 2001). By contrast, he described a somewhat distant emotional relationship with his children, particularly the older ones, which he implied was a result of his offending. He spoke of apologising to them for his "mistake" and of looking forward and not thinking of the past. This rather unemotional approach to fathering was consistent with his discussion of his relationship with immigration law, which, as developed below, was framed mostly in rational, unemotional terms, despite its potential to have serious implications for himself and his family.

In common with other participants whose immigration detention followed a prison sentence, Richard's conviction had potentially extremely serious consequences for him. Alone in his family, he had not pursued UK citizenship, which had left him vulnerable to detention and, at the time of our interview, he had just been released from detention on immigration bail in the wake of COVID-19, but remained at risk of being detained for a second time and of deportation. He explained his perception of his situation with regard to his citizenship and the decision he took (Chua and Engel, 2019):

> "And I was kind of lazy in getting my British passport because of the financial bit of it because they wanted more than £1,700 to get a passport processed. It's extortionate, exorbitant money and I said to myself 'I can't be bothered, I'll do it whenever I've got enough cash'. Because my son was going to uni and I wanted to make sure he has everything, like a good laptop - you know teenagers they want good things. So, I had priorities, and my

> priorities were my children, make sure they go on holiday, rather than getting a British passport." Richard

UK fees for non-EU applicants to apply for citizenship are amongst the highest in the developed world. Lawyers have highlighted them as a cause for concern, and have argued that they pose a significant deterrent to people pursuing a regularisation of their stay in the UK (Fernández-Reino and Sumption, 2022). The way in which Richard talked about a process about which such concerns have been raised, and that had such serious consequences for him, was striking. He spoke with little anger and almost without regret. Although he described the fees involved in applying for citizenship as "extortionate" and "exorbitant", it was in the context of other potential calls on his finances, which were also expensive. He described it as if it were a straightforward budgeting decision, that involved a rational process of weighing up of options. That his immigration status meant that the options he was choosing between were providing for his son by ensuring he had a laptop to support his university studies, or securing his own future in the country was not a source of anger. Richard described himself as "lazy" and as having made the wrong choices rather than viewing the law as an oppressive force limiting his options, as someone experiencing 'against the law' legal consciousness might have done. To Richard, while the operation of the law created some difficult choices, it was not the law that was wrong, but him.

Just a week after being sentenced, Richard learned he was liable for deportation. While he was aware that prison sentences of a certain length attracted an automatic deportation order, the fact that his sentence fell into that category came as a surprise to him:

> "I knew about it, but I thought it was, I knew it was sentences over two years and a half, but they had reduced it and I didn't know about it. I would have …. Basically, I put my hands up in court straight away so I saved the taxpayers money because I know I work and I pay a lot of tax. […] I put up my hands, and I'm guilty and I'm sorry and the judge just said, OK I give you one year and four months, and he knew I didn't have a British passport, because straight away after a week I got a deportation order while I was in Belmarsh." Richard

In the quote above, Richard implies that he might have made different choices in his trial had he been aware that the threshold for an automatic deportation

order was lower than he thought. He also implies that the judge sentenced him knowing that he was doubly punishing Richard for his crime. This reaction was one of just a couple of instances of 'against the law' legal consciousness that Richard demonstrated: he was willing to admit his guilt and assumed this would work in his favour, but he subsequently came to believe that this had trapped him further, and that, in common with some of Singer's participants he had been deliberately deceived by the Home Office and the court (Singer, 2019).

Nevertheless, although the law had, as he saw it, intruded unnecessarily on his life and with extremely negative consequences for him, Richard showed a great deal of faith in the law and a confidence that he was dealing with a rational system, which had rules that, if followed, would ensure a fair and just outcome, as is implied in the quote below. It was, however, a system that was outside of his usual experience and therefore he appreciated the guidance and support of advocacy organisations to assist him in navigating the separate realm of the law. The importance of advocacy and support organisations in supporting a 'with the law' legal consciousness will be explored in the next chapter, but Richard's attitude was different from this. He did not seek the support of these organisations to help him to use the law to advance his legal interests but to understand the rules of a system whose fairness he had faith in:

> "K [from a detention support and advocacy organisation] kept advising me on steps to take, like filling in the forms, she advised me quite a lot and then once I'd submitted my documents to the legal aid solicitor and he took on the case, deep inside me I knew in my spirit [that he would be released soon]" Richard

Key to his 'before the law' legal consciousness was his respect for the law and demonstrating this by his own good behaviour within the system. This was something he returned to several times in his interview:

> "I served six months and then they said we're going to deport you and I ended up in Belmarsh prison for one and a half months, two months, very very bad prison. And then because of my good character and conduct I was transferred to Maidstone Prison, which is called the foreigners prison, foreign nationals prison". Richard

> "And my character was good there as well because I was taken to a detention centre in about two weeks, I think on the 17th December". Richard

He described an incident in detention where he prevented a fight escalating and was given a certificate and a reward of £15 from the manager of the detention centre. He believed this evidence of his good character was central to his being granted bail, even in the absence of people to provide surety for him:

> "I had two sureties. One of them didn't turn up. And the one who turned up didn't have enough money in his account. But the judge, the lady, I think she was already briefed, she was briefed about my character in prison, in both prison and in the detention centre. Because the manager of the detention centre in Gatwick came to say thank you to me on Sunday night and the Monday morning I had my interview with the judge and she just said OK I'll give him bail, let him go." Richard

Research suggests that general evidence of good character is unlikely to influence decisions to grant bail, although more specific evidence about a stable address and a supportive family might, as the court might view this as proof that the applicant was less likely to abscond (Lindley, 2017). However, more frequently, decisions to grant bail are described by lawyers as a lottery (Lindley, 2017, p. 29). Further, during the COVID-19 pandemic, when Richard was applying for bail, immigration judges were generally taking a more lenient attitude towards applications for bail (Bail for Immigration Detainees, 2020). Richard's faith that the judge would be aware of his personal qualities, his good behaviour and his compliance with all the requirements placed upon him by the law, and that this knowledge would influence her decisions was based, subjectively, on his worldview and perceptions rather than evidence (Chua and Engel, 2019). His faith in the law was strengthened by the fact that he was granted bail on his first application.

Richard's experience was in stark contrast to other participants, who described strict compliance with often difficult requirements placed on them, with very different outcomes. It was also at odds with the experience of the lawyers in Lindley's research (2017). The experience from both these sources suggests that Richard might have witnessed other people in detention having negative decisions despite similar good behaviour and compliance. Nevertheless, his faith in the system continued, largely unshaken, throughout our discussion, demonstrating the high degree of subjectivity in legal consciousness (Chua and Engel, 2019).

Towards the end of his interview, we discussed the future. He was looking forward to a court hearing at which he anticipated that his deportation order would be revoked. He had followed advice from an advocacy organisation and had been able, on his second attempt, to secure exceptional case funding to provide legal advice on his case:

> "I've got a hearing on the 14th of April, to revoke my deportation and. I know it's going to go alright, because the other thing that K helped me … you know what they call exceptional case funding? She told me about it and I applied for it. The first time they refused it. The second time they authorised it. So I've got exceptional case funding for legal aid on my case for deportation." Richard

His success in securing funding was evidence to him that the system was working. Moreover, for Richard, the success in securing funding on the second attempt was an indication that his case was likely to be successful too – a rational system, he maintained, would not grant funding for him to pursue a claim that had no chance of success.

As discussed before, Richard was unusual in his persistence in his 'before the law' consciousness. He was also unusual in his emotionally distant approach to fathering. This was linked to the domestic violence that ultimately led to his detention, and which he viewed as a private issue that should not have been a matter for the law. This view of the separation of the private, domestic (and emotional) sphere from the public sphere of the law, may have supported his understanding of the law as a rational entity and therefore his 'before the law' consciousness. But in the stories of other participants, elements of this pattern also emerged, particularly in their understanding of the law as an arena entirely separate from their own lives, until its unwelcome intrusion because of their immigration status. As I explore below, this intrusion was experienced emotionally, and specifically as fathers.

A separate sphere

One of the key features of a before the law legal consciousness is an understanding of the law as a separate sphere – something that happens away from normal life (Ewick and Silbey, 1998). By the time I spoke to the men who

participated in my study they had all been enmeshed in the law for months and even years and had left behind that understanding some time ago, but most recounted the point at which that changed. It usually came with an enormous sense of surprise and shock. Even those who had experience of the law across other domains than immigration, especially criminal law, could find the sudden encroachment of immigration law into their lives bewildering.

Armand, for example, had lived in the UK for years, and was under the impression that he had the legal right to stay in the country, having been through a number of bureaucratic processes at around the time his daughter was born, and having taken advice from "immigration" over the phone. He was working and paying tax, had registered to vote and had lived together with his partner and daughter for the first six years of his daughter's life. Any contact with the immigration authorities and the law more generally was, he thought, over as he and his family got on with their work and their lives.

Shortly after he split from his daughter's mother, he was contacted by the Home Office to be told his immigration status in the UK was "not OK":

> "So I was arrested for having no legal right to stay in the UK and I was taken into a police station. Now one of the Home Office's representatives came over, had an interview with me and said oh sorry, you're released, but try and regularise your stay. For the time being you will be signing. I still didn't understand what that was but as I was released, I got a solicitor, paid £1700 to a solicitor to get [unclear] regularised." Armand

From that point, immigration law was no longer in a separate sphere. Armand was in a position where he was on immigration bail and reporting regularly to 'sign' as part of his bail conditions. His whole life became about regularising his status and battling with a system he knew very little about - he was one of several of the fathers I spoke to who had no idea that detention centres existed in the UK before he was detained. As will be explored further in later chapters, his love for his daughter and his desire to stay in her life was the driving force in his efforts to stay in the country.

For European Union citizens/European Economic Area nationals, the shock at immigration law moving from a separate sphere to take centre stage in their

lives could be even greater. They had moved to the UK under free movement and had lived and worked for years without issue and with no reason to question their right to be in the country. The professionals I interviewed specifically highlighted their experience:

> "EEA nationals in my experience have no idea what's going on because the EEA nationals think they have the right to be here, which they do, but they don't really understand that they could be deported." Professional 1

The two European citizens who participated in my research, Abdul and Tomasz, had both been convicted of crimes and had been to prison, but neither was aware that this was the gateway to immigration detention, deportation and separation from their children. Abdul, who had no idea that he was liable for detention, described his shock at learning that the Home Office was aiming to deport him and at their callousness towards his children:

> "No, no they didn't pay any attention. They said you can take your children with you. I say but they are British. They are British citizens. How can they? They can't change their lives and start again. They don't speak the language. They can't. And their mother, she will not accept that. I told them that. They didn't pay any attention. They just want to deport you." Abdul

He had anticipated that he would be released at the end of his sentence to resume his former life with his family and learning that the Home Office wished to prevent that was met with disbelief and a sense of betrayal of his British children.

In the previous chapter, Tomasz disclosed the very minor offence for which he was imprisoned and his shock at the disproportionate consequences this had on his life. Like Abdul, he approached the end of his sentence expecting to be reunited with his son and was left waiting in prison for two days before being told he was to be detained:

> "I was happy I was going to go to my son and erm, just, they just left me there. After two days someone came, I had started to really be ... I just wanted to go home. Then someone came from Home Office saying you'll be holded [sic] by Home Office." Tomasz

These men, even where they had experienced the criminal law, understood immigration law as something separate from their day to day lives. Their contact with it, they believed, was over. Armand understood that, as a foreign national, he needed to be sure that he had the legal right to be in the UK and he believed he had established that. Both Abdul and Tomasz had, until their convictions and subsequent detention, experienced immigration law as benign and permissive - it allowed them to settle in the UK, work, and start a family here – but once they had made their moves, immigration law retreated to its separate sphere.

It was not that they experienced immigration law as rational, objective and fair as Richard, with his consistent 'before the law' consciousness did. They simply did not understand it as relevant to their lives any more. As will be explored in later chapters, once they encountered immigration law again when they were detained, the disruption it caused to their lives was understood and experienced in a way that had nothing in common with 'before the law' consciousness.

Prentice and Jambu: faith destroyed

Prentice's story most clearly demonstrates the fleeting nature of before the law legal consciousness in my participants, and the way in which close engagement with immigration law, combined with a desire to be a loving father provokes a strong emotional reaction that can form the bridge from a 'before the law' legal consciousness to other patterns.

As discussed in the previous chapter, Prentice had an adult dependent son with very complex needs including learning disabilities and epilepsy. Prentice had come to the UK from Pakistan as a Masters student, with his wife and son who was then 16, but a change of circumstances in Pakistan led him to claim asylum. His description of the process of making the claim, which entailed his no longer being allowed to work and having to move from his home to housing allocated by the Home Office in another part of the country was neutral and matter of fact. Prentice described himself as "part of the legal community" in Pakistan and was familiar with the process of gathering evidence, keeping records and making applications, and although claiming asylum involved some inconvenience, in particular relocating his son's medical records, and some "struggling" with the

application, he did not describe a process that he considered to be unfair or irrational.

When his application for asylum was refused, Prentice's response was to consider the decision and compare it to what he understood to be the law:

> "So my asylum claim was refused by the Home Office, and it's very ironical, I have all the evidences, they accepted each and everything. They accepted that I'm a credible person, I come across the five tests of the Home Office. They accepted that I'm credible, that I have a life threat, they accepted that my adopted brother is a middle man of a senator. They accepted each and every thing, they didn't deny it. But they only said that if I have a fear in Karachi that I could [unclear] in the remote areas. The only problem with me is, that I can't relocate in the remote areas because of my son's medical condition. And it's the home office policy and law that when this kind of a thing they have to decide to relocate, the dependent children and the medical condition should be considered - their health and wellbeing and everything and in my case it was not" Prentice

In the quote above, Prentice implied that had it not been for his son's circumstances, he would have been able to accept the Home Office's decision. He saw the decision on his asylum case primarily through the lens of his fatherhood and as it affected his role providing for his son, doing the caring work of fathering, especially in the light of his son's medical needs (Dermott, 2008; Hobson, 2002; Popay, Hearn and Edwards, 1998). But his concern was that a mistake had been made and the Home Office had failed to follow its own policy, not that the entire system was unfair, and so he made an appeal on that basis.

The appeal was the point at which Prentice's legal consciousness began to change:

> "And can you imagine, in 2017, 28th February, I was lastly refused by the court of appeal with no right of appeal. So the complex needs case worker in [advocacy agency], he's highly qualified, he's a specialist in these kind of cases, with disabilities. He was helping me. He gathered all the medical evidence of my son and sent it to the Home Office, so the section 4 should be granted. But the Home Office refused, refused refused. And from March til September it was refused, refused, with silly questions." Prentice

Not only was his appeal unsuccessful, but despite the evidence he provided, with the support of an expert from an advocacy agency, the Home Office refused to award section 4 support [4]. The quote above, with its repetition of the word "refused, refused, refused" shows the anger and frustration Prentice felt at the failure to recognise the special needs of his son. In the previous chapter, Prentice spoke of the profound existential importance of doing the work of fathering. His compliance with this appeal process was part of that work for him. His diligent production of evidence, which clearly showed that his son needed medical attention and the constant care of his parents, had apparently been ignored and this shocked him deeply, and shook his 'before the law' confidence in a rational system.

At a later appeal, the judge considered the evidence of his son's special needs and overturned the Home Office's decision:

> "And I told the judge that during the journey he had two fits and plus he had a fit in the waiting area and your staff member was a witness and he looked at the staff member and she said yes, he had a fit in front of me. And the judge didn't listen to the Home Office and he said this case is a very fit case to be granted section 4. So he granted me section 4 there and then." Prentice

This, for Prentice, was evidence of the system working as it should and went some way to restoring his 'before the law' faith in a rational system. Further, being granted section 4 support allowed Prentice the space he needed to work with lawyers and advocacy agencies to prepare a fresh asylum claim.

It was Prentice's detention with his wife and son that finally destroyed any faith he had in the law as an objective and rational entity. Despite his protestations that detaining a person with his son's vulnerabilities was against Home Office policy, the entire family were placed in a holding room when they arrived to comply with their reporting requirements and were told they would be detained. Prentice's son was deeply distressed and suffered a panic attack. Prentice described the response of immigration staff:

[4] Section 4 support is a form of support for some people whose asylum claims have been refused and are considered to be "appeal rights exhausted". It consists of accommodation and cashless financial support through an 'Aspen card'.

> "The first time in our life that he [his son] was out of control and he started hitting the chairs and tables, and they [immigration staff] both left the room and locked from outside. And he was so panicked that we were both trying, husband and wife to calm him down but he was out of control. They both were looking but no medical aid or nothing was called. After 30, 40 minutes, another person came, and he was just watching from the window and didn't enter the room." Prentice

This experience of the power of the law exercised to inflict cruelty rather than to act rationally and objectively was terribly shocking and, in the quote above, Prentice describes the upset of both his wife and himself at the failure to respond compassionately to his son, and his sense of powerlessness 'against the law'. In the following chapter, I will explore how this emerging 'against the law' consciousness, triggered by the emotions stirred up by the treatment of this son, was the catalyst for 'with the law' action, and how Prentice switched between the two forms of legal consciousness, which continued to be influenced by his emotions.

Here, however, it is important to note that this was the point at which Prentice left his 'before the law' legal consciousness behind. Prentice had trusted the law to be rational, fair and objective. He had engaged with it as he was required to do, providing evidence, appearing in court, complying with restrictions imposed upon him as an asylum seeker, and attending regularly to 'sign'. Despite this, Prentice, along with his wife and vulnerable son, was detained and, as the quote above shows, the shock of this was experienced primarily as a father who loved his son and was prevented from performing his role in "providing every kind of need" for his family. The emotions of paternal love, powerlessness, and a strong sense of betrayal by the immigration authorities combined to shift Prentice's legal consciousness irrevocably away from 'before the law'.

Like Prentice's, Jambu's story exemplifies the transient nature of 'before the law' legal consciousness among my participants, where they experience it at all. When I met Jambu to interview him, he had been in the UK for 13 years and his immigration status was still insecure. His story will be discussed much more in Chapter 8 as by the time we spoke, his experience had become one of constant resistance to efforts to remove him from the country as he struggled to stay in

his children's lives. But he described himself as having begun his life in the UK as an obedient, patriotic and religious person, someone who liked to follow the rules and not cause any trouble.

It was with this world view (Chua and Engel, 2019) that he came to the UK. He had fled the threat of violence in his home country and paid an agent to help him enter. The agent advised him that he should immediately say that he wanted to claim asylum on arrival at the airport. He attempted to follow this advice, but he was arrested and taken to a police station, where he spoke to a duty solicitor. He explained what happened:

> "I asked him, 'what's going to happen?' and he told me if I pled guilty it's possible the judge would say, just take him back to Ghana, and I thought that's better than going to prison or something for travelling on a forged passport. So he explained to me that I might go to prison but if I pled guilty, I may attract the judge's leniency and mercy. So I did that, stupidly. I went to court and said I was guilty for using a forged passport so I was sentenced to prison. And it didn't happen that I was going to be taken back to Ghana. And I was distraught. I was very very sad. It was bad. Cos I didn't know anything. I was so naive." Jambu

At no point during this stressful and frightening experience did anyone in the police station discuss his wish to claim asylum with him. With the hindsight of 13 years' experience of the UK immigration system, Jambu remembered the shock and sadness of his sentence but was most struck by his naivete in trusting the advice he was given. His experience was different from Prentice's in that Jambu did not have a background working in the law and, having just arrived in the UK, had not acquired the knowledge and experience of the system that Prentice had. Nevertheless, Prentice's sense of betrayal is echoed in Jambu's experience. This was an immediate challenge to his world view and to his 'before the law' legal consciousness, as were the six months in prison and the two years in immigration detention that followed it.

By the time of his second detention, Jambu had a family, and was much more wary about the law and its capacity for fairness and rationality, having already experienced its capacity for the reverse. Nevertheless, he retained his very respectful and obedient position in relation to the law. He had been living in the community for a number of years after his release from detention and had been

complying with reporting requirements. At the time of his detention he had been hospitalised following a freak accident, and he was so committed to abiding by the requirements placed on him by the immigration authorities that he left the hospital against medical advice to sign:

> "Yeah, and I was taken to hospital and I left the hospital to go and sign and then I was detained. And I was telling them, the only reason I came to sign is because I am obedient and patriotic and I believe I should do the right thing, even though I am struggling. The doctor said to me 'we will write a letter for you to give to the Home Office'. But I went there and the Home Office detained me." Jambu

He described how because of his injuries, he was unable to sit in the van that took him to detention. He had to kneel on the floor. In a response that was similar to Prentice's, this experience of cruelty, coupled with the Home Office's failure to take account his family circumstances led to anger, which overcame his 'before the law' impulses:

> "They don't give a damn … You're a number and they need to meet their targets and add it to their tally and they will do that irrespective of the children or the family setting, the family, whatever connections you have. They don't care. The Home Office ... And I'm confident and I can speak about this, and not only because I have been detained or been through the system. But I've heard a lot of stories and experiences and witnessed a lot of this happening for the past 13 years. And I can kind of say I am a force in this area and I can easily and boldly speak about these things." Jambu

Striking in Jambu's quote above is his conviction that the Home Office do not consider children at all in their decision making – "they don't care". Their lack of care for children is contrasted with his own care for his children, and his desire to be a present, active, involved father (Dermott, 2008; Hobson, 2002; Clarke *et al.*, 2005). Although, unlike Prentice, Jambu's children were not detained with him, his anger at the immigration authorities' lack of care for his children, at the point of his detention mirrors Prentice's. And for both fathers the emotions they experienced *as fathers* in detention, were key to their shift in legal consciousness.

Conclusion

This chapter has shown that, in common with the findings of Singer (2019), fathers in immigration detention are unlikely to experience 'before the law' legal consciousness. Just one of the participants in this study consistently showed this pattern of legal consciousness. Others experienced a 'before the law' legal consciousness early in their immigration histories but their consciousness changed as they moved through detention and fought to remain in the UK to stay in their children's lives. The emotions of anger, hurt and shock (at what they saw as the injustice they experienced and the callousness, deceit and duplicity of the Home Office) and frustration (at their inability to understand their situations and to influence them) were the cause of this switch of legal consciousness and the bridge to the other patterns. Crucially, for the men in my study, these emotions were experienced as fathers, who felt strongly that they were being prevented from fathering by the action of the immigration authorities. Paternal love intensified and was inseparable from the other emotions.

Once they had moved from a before the law consciousness, it did not return: trust and faith in a rational and objective system has gone. By contrast, as I will explore in the subsequent chapters, fathers experiencing 'with the law' and 'against the law' legal consciousness experienced both, switching between the two as their circumstances, and their emotions, changed.

Chapter 7: Using the tools of the trade. Fathers in detention 'with the law'

Introduction

In this chapter, I consider the second pattern of legal consciousness delineated by Ewick and Silbey (1998): 'with the law', In Ewick and Silbey's formation of this pattern, the law is seen as a game to be manipulated and can be used as a tool to further one's interests. In her study of the legal consciousness of LGBT people in immigration detention, Singer (2019), found that some of her participants experienced 'with the law' consciousness, sometimes being active and engaged in their legal cases, learning the law and taking control. This form of consciousness, however, alternated with 'against the law' consciousness, with her participants also reporting feeling stuck and stagnant and unable to progress with their legal cases (p. 26). Singer's findings here were in line with Ewick and Silbey's thesis that the patterns of legal consciousness were not necessarily discrete and people can experience all patterns of legal consciousness at different times (Ewick and Silbey, 1992; Ewick and Silbey, 1998; Silbey, 2005), depending on the their position in society and their interactions with the bureaucracy of the law (Cowan, 2004). None of what Singer reported in her participants' experience was fun or entered into for the purpose of an intellectual challenge, as Ewick and Silbey's game analogy implies. Even when her participants were taking control, this was in the context of desperation, or being abandoned by a lawyer and finding themselves with very limited options, but in learning the law they recognised its potential as a tool.

In analysing my own participants' interviews, I expected to find a similar experience to Singer's. Several of my participants had been in the UK a long time and had been fighting to stay with their children for much of that. Although I anticipated that they would have experienced this as oppressive ('against the law'), I expected some of them to have gained an understanding of aspects of the law and how they might be able to use it to their own advantage. As the rest of this chapter will show, this proved to be a fair assumption. 'Against the law' and 'with the law' legal consciousness were closely entwined for my participants, as they were for Singer's. Despite emotions not being a focus of

Singer's analysis, they appeared to be a galvanising force for some of her participants. This was true for my own participants, too, but for them, those emotions were felt as fathers, with paternal love, loss, and the fear of permanent separation as a constant and intensifying emotional backdrop.

Prentice: with the law and with support

Amongst my participants, Prentice demonstrated the most consistent 'with the law' legal consciousness. He appeared most at ease with the bureaucracy surrounding the immigration system because of his background as "part of the legal community" in Pakistan. This gave him a familiarity with the operation of the law and the language used. Prentice also provided the clearest example of the importance of advocacy agencies in supporting fathers to use the law and fostering and supporting a 'with the law' legal consciousness, which emerged as a strong theme in my study and is explored further below.

Prentice's testimony demonstrated the close connection between emotion and legal consciousness, with his love for his son, distress at his treatment and anger at the failure of the authorities to care for him playing a significant role in shaping his 'with the law' legal consciousness. Uniquely amongst my participants, these emotions and his relationship with his child were witnessed by 'the law' at close quarters because Prentice was detained with his wife and his adult dependent son as a family group. However, like other fathers his efforts to take control 'with the law' existed alongside his 'against the law' consciousness.

As discussed before, Prentice arrived in the UK as a student and later claimed asylum. As an asylum seeker he was no longer able to work and so began volunteering regularly with an asylum advocacy organisation, which provided support to him and his family. This connection proved to be vital in the development and maintenance of his 'with the law' consciousness.

Perhaps because of his background in the legal community, Prentice's interview testimony was detailed and specific, including dates, times and references to immigration law and policy. Even before his detention, he described being active and involved in his case. The previous chapter discussed his initial faith in the

law to act rationally and his willing compliance with the bureaucratic demands it placed on him as he made his claim for asylum. He gathered evidence, acquainted himself with Home Office policy, and sought to understand the law as it pertained to him and his disabled son. He had also approached his elected representatives and took up speaking opportunities to publicise his case and wider issues concerning asylum and immigration, in order to garner support. Indeed, this was part of his motivation to participate in my research. At the outset of our interview, he waived my offer of using a pseudonym[5] in reporting because discussing his case in public was important in his self-advocacy and was the way in which he had become accustomed to navigating his asylum claim.

As explored in the previous chapter, Prentice and his family had been refused asylum and, with the support of the advocacy organisation, made a successful claim for Section 4 support. They were preparing a fresh claim for asylum when the family was unexpectedly detained on reporting to the Home Office as required. As explored in the previous chapter, the experience was an enormous shock and Prentice described the family's treatment by Home Office staff as "very rude, unethical, inhuman".

However, that they were embedded in a network that included politicians, immigration and (because of his son's special needs) learning disability advocacy agencies meant that Prentice was able immediately to call upon that network to press his family's case:

> "And in the meantime, from the outside, Asylum Aid was trying from the day one to get Edward out from the detention centre. And Mencap, he's a member of Mencap, and the chief executive of [the] branch, she was also trying and my MP, my church, they were all trying to get, as soon as possible, Edward out from the detention centre." Prentice

Prentice recounted the lack of care the institutions of the state showed for his son when they detained the family. He described uniformed officers at the reporting centre with body cameras, handcuffs and other gadgets that signified control and surveillance, attempting to search Edward, who was panicking and "out of control". When the search proved impossible, the officers left the room,

[5] I took the decision to use pseudonyms for Prentice and his son Edward. The reasons for this were explored in Chapter 4

locking the door behind them. From the outside, and to Prentice's great distress, they watched Edward's panic through a window. Prentice experienced this treatment emotionally and explicitly as a father who was prevented from protecting and caring for his son – crucial aspects of the role of the father, as explored in Chapter 5 and highlighted in the literature (Clarke *et al.*, 2005; Hobson, 2002; Dermott, 2008; Popay, Hearn and Edwards, 1998; Hairston, 1998):

> "Can you imagine? A father, whose son is like this? Totally dependent, can't walk properly, can't eat properly, so how can it be like this?" Prentice

His disbelief and horror found expression in action ('with the law'). For Prentice, that action was a reassertion of his role as a father, denied him in the holding room at the reporting centre above. His focus was on protecting and caring for his vulnerable son. He advocated fiercely for Edward, demanding sight of the decision to detain, and using the policy and legal knowledge he had acquired in his earlier work on his family's asylum claim:

> "I told her that please can we see the order from the court, that even the secretary of state can't breach the human rights of Edward and he's epileptic and learning difficulties and all these things are in his favour and the court order is [unclear] and by law you can't detain him, and it's your policy that you can't detain anyone who has mental health problems." Prentice

He continued to use his network to advise and support him once the family was moved to Yarls Wood detention centre. They urged him to record everything that happened to him and his family in detention. Further, Prentice argued his family's case with detention staff at Yarls Wood, demanding meetings with senior management and medical staff, and ensuring that notes were taken and reports were distributed for every interaction, all of which could be retained and possibly used in further legal action.

He was also ready to take advantage of any encounter or opportunity that had the potential to advance the interests of his family:

> "I was going for my ciggie outside, and one gentleman came, and he was Indian, so I spoke to him in Urdu, but he replied to me in English. He said no, I am not a detainee, I am chairman of the Independent Monitoring Board, and I started telling him about

> everything. He said, do you have any evidence, I said yes. I show him each and every evidence, the court order, his medical report and everything, and he was shocked. He was shocked. He said I'm here to listen to other people's complaints, but due to the severity of the case, I'm going straight to the immigration department and requesting that this person should not be here for a single moment. He should be released immediately." Prentice

As the quote above shows, Prentice was always ready to provide evidence of his family's circumstances and his son's vulnerabilities that others could use to advocate on his behalf. This readiness was born of Prentice's highly emotional and at times desperate state in detention. He described tears, inability to sleep, and being on constant alert to the needs of his son. In addition to his passionate advocacy aimed at ending the family's detention, Prentice and his wife were also attending to Edward's acute distress in detention and attempting to comfort him as he experienced frequent panic attacks. Further, Prentice used a father's detailed understanding of his son's conditions and responses to unfamiliar and stressful situations to encourage Edward to accept assistance from medical staff in detention, and to advise medical staff on how best to approach Edward's distress. Prentice's deep emotional connections with, and knowledge of, his son formed the landscape of his experience of detention and shaped his 'with the law' consciousness.

Prentice expressed his horror at what his son was expected to endure, his shock at the extent to which Home Office practice deviated from its written policies, and, more broadly, his dismay at the UK's approach to human rights:

> "You can't believe that this is the UK, and this is human rights, and we are treating human beings like this, and especially a person who is epileptic, they are treating them like this." Prentice

And while these emotions galvanised him into action ('with the law'), as with other men I spoke to, and in common with Singer's participants, Prentice switched frequently between 'with the law' and 'against the law' consciousness. His descriptions of intense activity in advocating for his family were interspersed with expressions of defeat and a sense of the oppressiveness of the law. His testimony was peppered with sentences like: "it's inhuman but we are helpless", "but nobody was there to listen" and "how can it be like this?", often

followed quickly by a description of meeting with medical staff or a phone call with one of the advocacy agencies supporting him outside, which supported him back to ‘with the law’, as I develop further below.

After nearly a week in detention, Prentice and his family were released, and able to resume their lives at home, and to continue to work on their asylum claim, still with the support of advocacy organisations and politicians.

The role of advocacy and support organisations

Prentice’s distressing experience in detention, supporting his vulnerable son was such that, at times, his emotional response pushed him to a sense of powerlessness ‘against the law’ that made him feel trapped and hopeless. Key to (re-)accessing the ‘with the law’ consciousness that characterised his approach outside of detention, was the support network of advocacy agencies he had built around his family. Their support undergirded his ‘with the law’ consciousness so that when his emotions were such that an ‘against the law’ consciousness took over, his network was there, able to maintain focus on the ways in which the law could be used to support him. Professionals working in advocacy agencies recognised this support of ‘with the law’ consciousness as part of their function, particularly when the emotions experienced in detention could be overwhelming:

> “Or it might be that people, yeah, are caught up in the stress of the situation, the emotional impact of detention and they just don’t feel like they're able to cope with, you know, take charge of their case at that moment in time and they find it all very stressful […] and so we would be more involved and kind of liaising with them on their behalf. But as much as possible we try to encourage it so that it's the person in detention who's speaking to their ... you know they're involved with their solicitor as much as possible because that's the most important thing. It's much better if they can have the updates directly from their solicitor and be engaged and involved in their own case. So that's what we try to promote.” Professional 1

The importance of advocacy organisations in assisting people to use the law and supporting a ‘with the law’ consciousness was a theme that emerged in other interviews. Tomasz, for example, sought legal advice from the Detention Duty Advice scheme (DDA) surgery in one of the detention centres he was detained in.

The DDA, and the problems that have been identified with it are discussed in Chapter 2.

At his appointment, Tomasz was told that he would be as well to represent himself: “they said everything that we can do, you can do too”. He followed this advice and began to collect evidence of his work history in Poland, contacting friends to assist him with tracing documents to support his case. Despite his willingness to be active in pursuing his legal options, it was through his involvement with advocacy organisations Detention Action and Medical Justice that things began to properly move. They assisted him in finding a solicitor who would represent him and in four weeks he was out of detention.

Richard whose unusually consistent ‘before the law’ legal consciousness was discussed in Chapter 6, occasionally displayed other forms, notably when he bemoaned his lack of knowledge about legal processes and how to challenge Home Office decisions (‘against the law’). He praised the support of the advocacy and support agency who assisted him to apply for Exceptional Case Funding, allowing him to more effectively use the law as a tool to further his interests (‘with the law’) and challenge Home Office efforts to deport him.

Professionals interviewed for my research discussed how difficult it could be for a lay person to use the law as a tool to advance their own interests. Confirming the experience of lawyers who participated in Lindley’s research on injustice in immigration detention (Lindley, 2017), one spoke of how interpretation of the law required experience and skills that people in detention might not have:

> “I think people don't fully grasp the legal framework sometimes, and that's not because they're incapable of understanding. It's not worded in a way that's clear. It's not accessible. There's nowhere you can ... I mean there are some organisations that have produced excellent resources on what your rights are but if you didn't know about that and didn't have access to those, if you were to, like, just read the law, you wouldn't really necessarily understand what that means to you”. Professional 1

She argued that the role of her organisation was to ensure people were aware of their rights and to support them in advocating for these. As in Richard’s case, above, this often meant assisting them to apply for Exceptional Case Funding to support access to specialist legal advice. This was an area that advocacy

organisations had engaged in because they became aware that legal aid surgeries in detention centres sometimes failed to advise clients that this was an option, and because lawyers had limited capacity to assist clients in making applications. In this way, advocacy agencies were providing a vital and practical means of bolstering their clients' 'with the law' consciousness.

Two of the professionals I spoke to worked for organisations that offered a visiting service to people in detention. They argued that as well as providing advocacy support, speaking to visitors could help fathers to manage the emotions of being in detention and separated from their children:

> "I think it's incredibly difficult to be managing those emotions, I think, I guess that's one of the roles that we provid. Because often, it might be that the father pretends to be much better, to be fine, especially when he's talking to his children, but maybe even to their partner as well, the rest of their family - they're pretending to hold it together so as not to cause their family any more stress and I think one of the roles that we can do is provide somewhere that people can talk honestly and openly about what they're going through and letting out some of those emotions so they're not keeping it all in." Professional 1

In this way, by allowing fathers to explore and share their own emotions, emotions they might wish to conceal from their families who were struggling outside, these advocacy and visiting organisations arguably helped build resilience to give them the emotional space they needed to focus on their legal position.

Acting for yourself

In Desert Island Detention, Singer (2019) describes how a number of her participants became actively involved in their legal cases and "presented themselves as knowledgeable legal subjects, appropriating for themselves a sense of control over their own cases and attempted to reassert their own autonomy and power" (p. 28). In one example, her participant, Romy, was told she would not be able to find a barrister to represent her in court, so she asked for the paperwork and represented herself. The difficulties in accessing appropriate legal advice in detention has been highlighted elsewhere (Lindley, 2017; Joint Committee on Human Rights, 2019; APPG on Refugees and APPG on

Migration, 2015; Home Affairs Committee, 2019). Failure to secure, or loss of, legal representation was an experience shared by a number of my participants, and one that led them to become more active in their legal cases.

Armand, who had been surprised to discover after living and working in the UK for several years that his immigration status in the UK was not secure, had sought legal advice to assist him in regularising his status. He described the difficulty of finding reliable legal representation, even before he was detained:

> "I got a solicitor, paid £1700 to a solicitor to get regularised. That money went down the drain because after paying the guy, I never heard anything. I went through four solicitors all through." Armand.

Once in detention, his family paid for further legal representation, but this was unsustainable for them, and Armand later represented himself:

> "I'd exhausted all the funds my family had put together, I didn't have money to get any legal representation, I had to become a lawyer by myself." Armand

So, while Armand became active in his case ('with the law'), this position was driven by a situation in which the law was seeking to remove him from the country and in which he was also unable to secure expert help ('against the law'). This decision was certainly not a game for Armand and the driving force behind it was his love for his daughter and his anger at this relationship being denied and undermined by the Home Office. Here, he described his experience at a bail hearing at which he represented himself:

> "My bail hearing was based on the fact that my daughter's holiday was coming. If I'm not there, her mum would have to take off work to be with her. If I'm not there, her mum would take off work and that would mean her mum would lose her job. That would mean they wouldn't have enough finances to support them. I didn't have the finances where I was to help out, so it could render my daughter and her mother homeless. I walk into the court, when the judge asked me why I wanted to be released, I told the judge [unclear], I mentioned my daughter. The judge said he had no idea I had a daughter". Armand

Armand's desire to remain in the country and regularise his status was to a very great extent based on his wish to remain an active part of his daughter's life.

Earlier in our interview he had described how all his priorities changed when he learned that his former partner was pregnant, and professionals I interviewed spoke of how having children could provide fathers with an additional motivation to be active in their legal cases, compared with men who were not fathers. This view is supported by Griffiths, who has written persuasively of how wishing to support, care for and remain present in the lives of their children are primary motivations for fathers seeking to be released from detention and to resist deportation (Griffiths, 2016; Griffiths, 2017b). Similarly, the quote above demonstrates how closely Armand's legal battle with the Home Office, both to get out of detention and to stay in the country, was connected to his continued commitment to his daughter. His quote shows that he saw this commitment as encompassing both routine and quotidian childcare tasks and the responsibility of financial support - key components of fathering outlined by my participants explored in Chapter 5 and supported by research (Dermott, 2008; Clarke *et al.*, 2005; Popay, Hearn and Edwards, 1998; Hobson, 2002). Armand's anger that his love for his daughter and his efforts to be an active and responsible father were ignored to the extent that his having a daughter was consistently either not recorded or actively denied by the Home Office in his interactions with them, was palpable throughout his interview. His experience echoed that of fathers in Griffiths' research, who found that correspondence from the Home Office routinely described them as having "no close ties" in the UK, and arguing that deportation would not substantially disrupt family life as paternal relationship could be continued adequately by phone (Griffiths, 2015, p. 479). The slightly dry language of Armand's quote above fails to convey the astonishment and anger in his tone of voice that the judge appeared not to be aware of the fact that he was a father. He believed that Home Office documentation did not record it and that the judge had not read Armand's own submissions. This denial of men's fatherhood is a theme picked up in the subsequent chapter as a key feature of men's 'against the law' legal consciousness.

Ochuko, who I spoke to while he was in Brook House detention centre, had been in the UK since childhood, and, following a prison sentence, had been detained five times in as many years. Like Armand, he expressed distrust about the skills and motivations of lawyers. He had had two solicitors in the past but explained

“they are not being active so I’m fighting it myself”. Echoing some of Armand’s concerns about lawyers, Ochuko elaborated:

> “Lawyers, they're just money makers. They're just about their money. They don't care about your case. They're just about their money. Know what I mean?” Ochuko

Ochuko’s response to this ‘against the law’ consciousness, expressed in his cynicism about lawyers, was to attempt to reclaim some power and control over his case by representing himself. As he spoke to me, by phone from detention, he told me he had a legal textbook in front of him and he described applying for bail himself and for a judicial review of Home Office decisions. He was also active in soliciting and collecting supportive evidence from his family:

> “I have got a strong case. A strong case. So obviously, because my family are standing behind me, my sons wrote a letter four times, my baby mums, they both wrote a letter, my partner wrote a letter.” Ochuko

Like Prentice, these bursts of ‘with the law’ activity, were punctuated in Ochuko’s narrative with frequent expressions of frustration, anger and powerlessness against the law. His perception (Chua and Engel, 2019) that he had a “strong case” was because he had been in the UK since childhood, previous attempts to deport him had failed, and crucially, he had children, other family and deep emotional connections in the country. That none of these appeared to matter to the Home Office and that he continued to be detained with ongoing efforts to deport him, was a source of great stress and anger for him and his family and one that left him stuck and unable to continue with his life:

> “Like once a year [being detained], which is not healthy. It's not healthy for my family. It's not healthy for my partner. Everybody is stressed. Everybody is not happy.” Ochuko

At one point in our interview, after explaining that he had been released from detention at Christmas, only to be detained again a few months later, he cried out in frustration “grant me a bail!”, venting his powerlessness in the face of the Home Office’s capriciousness.

Roberto, who also spoke to me from detention, was unusual in my participants in that his family was the sole reason for his being in the UK. As was explored in Chapter 5, he met and married his English wife in his home country of Brazil and later joined her in the UK on a spouse visa. Their separation complicated his efforts to secure leave to remain in the country. He was angry throughout his interview at his treatment by the Home Office, and very clear that he could have a much better life in Brazil, but he wanted to stay in his children's lives in the UK. They were the reason he was here and the only reason he was fighting to stay. For him, this struggle had included physically resisting an attempt to deport him. He had no legal advice and like others, expressed cynicism about lawyers, their motivations, and the time it took to apply for and be granted Exceptional Case Funding. In common with Armand and Ochuko he represented himself, researching judicial review from detention in the week after the deportation attempt and putting the application in himself. His transformation into an active 'with the law' agent in his legal case was an act of 'against the law' resistance, aimed at maintaining his family life.

Playing games

As described by Ewick and Silbey, 'with the law' legal consciousness implies that people understand the rules of the game and take a conscious decision to play, having calculated the risks that are involved, and knowing that they might lose. Ewick and Silby argue that for some people 'with the law' legal consciousness entails deriving a certain satisfaction from pitting their wits against a legal opponent.

Roberto and the others feeling forced into becoming more active in their cases and attempting to use the law as a tool to free themselves from detention had little in common with this type of 'with the law' legal consciousness. Theirs were not calculated decisions to use the law, but instead can be viewed as an expression of their 'against the law' legal consciousness. They took the action because, in their subjective experience, the law had failed them – lawyers had been unable or unwilling to help them and they felt that 'the law' did not take sufficient account of the importance of both their identities as fathers and their work in fathering their children. Nor was it a game from which they derived

satisfaction. They argued, however, that a game was being played against them by the Home Office, but in their cases they felt that only the Home Office was privy to the rules of the game. For the men I spoke to, legal games were a tool that was used against them and one that they could not use in the same way. Using the law was not something they entered into in a spirit of sporting competition.

Here, in an echo of the experience of Singer's participants, who found the Home Office to be duplicitous and deceptive, Ochuko expressed his dismay that despite following the rules as he understood them, he was penalised. The Home Office was playing a game with different rules from the ones he had understood and that were not made clear to him:

> "And I'm back in again! I've never absconded, I always comply with the conditions, whatever conditions that they give me. I've never absconded, so I don't know why they're playing games." Ochuko

Roberto described active deception by the Home Office as playing with people's lives. Here, he discussed the way in which he believed the Home Office applied pressure on people in a bid to make them change their behaviour:

> "The Home Office really plays with people's lives in here. I can give you an example of the Home Office gave a ticket for a Romanian guy and they lasted five days. The guy was ... he knew he was going, he was saying goodbye to everyone, the last day he spoke to me in the night. 4 o'clock in the morning the officer come and say 'oh, your flight was cancelled'. The guy had to [unclear] to go to the Home Office. And then the Home Office say, oh, it's because you have an appeal in May. If you withdraw the appeal we'll give you another ticket and that's a blackmail. That's a blackmail. The guy didn't withdraw the appeal and said if you do not make my ticket, I will start to cut myself, and the guy got to stay here. But it's kind of blackmail, let's try it and see what happens, you know. Send people to the airport when they know people cannot be removed, people don't have travel documents, they have no passport. How are you talking a guy to the airport? Just to make pressure.". Roberto

But the game playing was not always so overt. Simply applying different expectations in terms of compliance with the rules could be enough to put the participants in my research at a disadvantage in the game. The suffocating and impenetrable bureaucracy of the law around immigration and detention was

raised frequently and was overwhelmingly experienced as oppressive and as a contributing factor to an 'against the law' legal consciousness, as will be explored in greater detail in the next chapter.

Limits of the law

For most of these men, the decision to take some control of their situation and advocate for themselves ('with the law') was born of an 'against the law' legal consciousness. In the case of Prentice, the interaction between the two patterns of consciousness was less linear, as his familiarity with legal structures, language and argumentation gave him a greater ease with complex policies and procedures around immigration generally, and, as discussed above, he had been active and engaged in his immigration case before his detention. Nevertheless, for Prentice as well as the other fathers in my study, the law, in the form of the Home Office, had failed them. They struggled to understand how the law could treat them this way, when they felt it was clear that they loved their children and that their children's lives would be better with their father in the country and out of detention. Further, in their understanding, international human rights law seemed to support their position. They argued that Home Office decision-making denied their human rights, with some fathers specifically citing the European Convention on Human Rights, particularly article 8:

> "They didn't take any consideration the kids, I have a relationship with the kids. They are still violating the article 8. The European Convention on Human Rights". Roberto

> "Afterward, after all my efforts to apply for an article 8 were refused, it became obvious to me that the Home Office was not looking, or not trying to check the merits of my evidence, was not trying to validate evidence." Armand

> "They keep refusing me. Under my human rights and under my family life … private and family life." Ochuko

The professionals I spoke to understood their confusion and stressed that there could often be a disconnect between people's expectations and understandings of the law and what could actually be achieved by using it, particularly when that concerned the interaction between international human rights law and UK immigration law (Costello, 2012; Wray, 2023).

This was even more likely to be the case if someone was detained having served a prison sentence, with professionals confirming research evidence that the Home Office rarely conducted assessments of the best interests of the child in such cases (Lindley, 2017). Where they did, professionals claimed, the assessments could be used to imply that because a father had been in prison or was reliant on benefits, it was in the child's best interests that he be removed. In this context, a professional's role was to manage expectations of what could be achieved:

> "When I'm advising about deportation law, I do explain that it is very, very difficult to win because the law is against them, so I'm advising it's oppressive. I don't know if people know it's a tool that they can use. I do try and say that explain people's rights, explain the arguments that can be made and how we can use the law."
> Professional 2

Discovering the limits of the law as a tool to address their predicaments as these men did could be challenging. Even though most had been driven to greater activity in their cases because they had been let down by lawyers, some still retained hope that the law could be used to their advantage.

The lack of space for them to express their emotions about the process exacerbated that challenge. Prentice was unusual in that, throughout his detention, the strength of his emotions as a father was so viscerally on display to people involved in the enforcement of immigration law. As discussed above, this meant that he was able to point directly to his child's experience in his interactions with staff in detention and to insist upon that distress being recorded so that it could be referred to and used elsewhere. The other fathers' interactions with their children were confined to the visit room in the detention centre and some men, as I explored in Chapter 5, chose not to allow their children to visit to avoid them having to see their father in a place of incarceration.

This physical distance, part of the process of estrangement posited by Mary Bosworth as the purpose of detention (Bosworth, 2014), made it possible for the Home Office to an imply emotional distance between fathers and children, and like Armand above, several fathers had to deal with the law denying they had children or played an active role in their lives if they did. Appearances in court

were few and far between, with little opportunity for a father to tell the court what his children meant to him, and to demonstrate his involvement in their lives. Griffiths has written of how the way in which demonstrations of emotion are discouraged in bureaucratic and legal settings (Griffiths, 2023) and recounts the experience of her participant Martin, whose little daughter ran towards him crying “Daddy!” when he was brought into court for an appeal. The response of the judge was to order her to be removed from the room (Griffiths, 2017b, p. 155). Professionals I spoke to confirmed that such emotion was not welcomed by the court, and where such evidence was heard, it was mediated through professionals rather than in the voice of the father or his children:

> “I mean I guess that you would be talking about the emotional impact it's having on you and separation from your children is likely to have and that should be considered as part of the legal case. But I think it's rare that people ... people often want to be able to go into their hearing and speak for themselves and talk about the impact it's going to have on them. And there often isn't really a space for that. And if they were too emotive, that might get shut down even, in the hearing. Yeah, I mean, it's more based on reports isn't it? You might have a social worker's report that says what the impact on the children is, but that wouldn't necessarily be read out in the hearing.” Professional 2

In this way, the etiquette of the court and its reliance on the written reports of professionals rather than the spoken testimony of fathers and their children, combined with fathers’ confinement in detention to make fathers’ love for their children and the fathering work they did invisible to the law. This invisibilisation of their emotional lives as fathers further undermined the ‘with the law’ legal consciousness.

Conclusion

This chapter has argued that fathers in detention sometimes experience ‘with the law’ legal consciousness, using the law as a tool to further their interests. For my participants, as for participants in Singer’s earlier study of legal consciousness in detention, their ‘with the law’ consciousness was inextricably linked with an ‘against the law’ consciousness. Often it was an expression of it, as their anger and frustration with what they perceived as failure of the law to

resolve their situations in a way that respected and recognised their emotional lives as fathers, led them to take the law into their own hands.

The involvement of advocacy organisations was crucial in supporting fathers' 'with the law' consciousness. They provided knowledge and experience in navigating the complexity of immigration law, but also support in managing the emotions that sometimes overwhelmed the fathers, particularly as they dealt with a system which they felt was playing games with them. Advocacy organisations also played a role in managing fathers' expectations about what could be achieved in their efforts to use the law to their advantage, as fathers struggled with the disconnect between their understanding of the law and its practical application to their own circumstances.

As these fathers learned the limits of law, which they had hoped could be used to enable them to stay with their families, and as they were confronted with the law's lack of interest in their emotional lives as fathers to children living in the UK, so their 'against the law' legal consciousness was further entrenched and the 'with the law' consciousness that had co-existed with it was pushed out. The next chapter will focus on 'against the law' legal consciousness, which, as with Singer, was the dominant pattern in my participants. It will explore the emotions that both lead to it, and result from it, and will discuss the ways in which, trapped and unable to escape from the law, resistance was often their only response.

Chapter 8: “Still here, fighting”. Fathers in detention ‘against the law’

Introduction

This chapter considers the third pattern of legal consciousness identified by Ewick and Silbey: against the law. In this pattern, the law is experienced as an oppressive force acting on people’s lives. The law is all pervasive, limiting and constricting. It is experienced as something people are trapped inside and struggle to escape. In this pattern, resistance is common as a respite from the power of the law.

In her study of the legal consciousness of LGBT people in immigration detention, Singer (2019) found this to be the dominant pattern of legal consciousness, and this is hardly surprising. As explored in Chapter 3, Ewick and Silbey’s patterns were identified through their analysis of detailed interviews with the general public, and they found considerable variety in the legal consciousness of the population they studied. In the case of Singer’s research, and my own, the population studied is a specific one: people who are in, or have been in, immigration detention. Their lives are therefore not those of the general public; they are lives that are actively constrained by the law, making it unsurprising that they most often demonstrated an against the law legal consciousness. It is what I expected to find in my participants, and indeed all of them demonstrated this pattern of consciousness, while the other patterns appeared fleetingly (‘before the law’) or sometimes as an expression of, or adjunct to, ‘against the law’ consciousness (with the law).

The previous chapter explored how emotion (often anger) could be the galvanising force that caused a shift to a ‘with the law’ legal consciousness and led fathers to be more active and engaged in their legal cases. But emotion, too, was a response to the difficulties they experienced in using the law, which became a cause of a turn to (or back to) ‘against the law’ consciousness. In addition to the emotions associated with the tribulations of navigating immigration law, and giving a very specific character to the ‘against the law’

consciousness shown by my participants, was the love for their children and strong desire to stay in their lives, which both intensified the other emotions and drove their resistance.

Jimmy: "In a dark hole without a ladder"

All of my participants demonstrated against the law legal consciousness in their interviews, but there was one participant who particularly exemplified this pattern: Jimmy never deviated from it throughout our interview. In his story there was no trace of either 'before the law' or 'with the law' patterns of legal consciousness.

As explored in Chapter 5, Jimmy came to the UK to live with his aunt and uncle when he was 14. He formed a relationship with a woman in Edinburgh in his 20s and his son was born. He was sent to detention after serving time in prison and, after being detained under immigration powers for three years was, at the time of our interview, living on cashless support in Glasgow for several years, with the threat of further detention and deportation ever present. His relationship with his son's mother, who he had lived with along with his son before his imprisonment, collapsed while he was detained. When we spoke, he had been out of detention for five years, and although he and his ex-partner communicated about their son, the relationship was increasingly strained.

Jimmy's testimony was highly emotional: flashes of anger about his experiences under immigration law punctuated his story, but the twin emotions that were threaded through it from beginning to end were paternal love and despair, and both were constitutive of his 'against the law' legal consciousness. Paternal love was the cause of his determination to stay in the UK to remain in his son's life, and the source of his resistance to efforts to remove him. And despair was the consequence of the injustice of his situation and his powerlessness to influence it.

In common with other fathers like Abdul and Tomasz, the fact that he could be detained after completing his prison sentence came as a shock to Jimmy. This was his first encounter with immigration law enforcement and the power it could exert over his life. He had no idea where he was being taken when he was

moved from prison in Edinburgh to Dungavel detention centre. In their decision to detain him, and later to maintain his detention he believed that the Home Office took no account of the fact that he was a father. His sense of being doubly punished by being detained after his prison sentence was magnified by the impact on his ability to be a father to his child:

> "You need two parents in a kid's life. You know you can't just decide OK one is good enough, you know, for whatever reason. I've done something in the past, I've done my time for it, but I don't have to be punished again. And telling people like me that you can't be a dad, it's like you've failed in life. It's something like you're going to have to live with for the rest of your life. So it's another sentence. It's like never-ending. And then if you end up being sent home, that's even worse. Because you might not see your child for ever and ever, you know what I mean. Because I don't think anybody's got that right, you know, to take a child from a parent." Jimmy

Detention for Jimmy, as a father, with its threat of deportation from the country represented a triple punishment, one that, unlike a prison sentence, had no end and that challenged a vital part of his identity and cast him as a failure in what he considered to be the most important role in his life.

Further, it involved him in repeated bail hearings in an effort to end his detention to resume his role as his son's father. He described the stress this caused both him in preparing for a hearing, and his family in travelling to support him in court:

> "They always turned up, and then I'd get refused and then they'd have to make the journey back and emotionally, it was draining for them, but more draining for me as well." Jimmy.

Previous research has observed that men seeking to remain in the UK with their children are portrayed as "problematic male migrants" whose claims about wishing to remain as fathers to their children were to be denied, both because they were likely to be opportunistic and because they had not complied with the rules (Wray, 2015). Further, their failure to comply with the rules is proved by their status as a foreign national ex-offenders (Griffiths, 2015). Griffiths also notes the "ambiguous approach to migrant fathers" (2015, p. 479), implying their irresponsibility as fathers but, by detaining them and imposing draconian bail restrictions on them on their release, giving them little opportunity to be

responsible. Jimmy's experience echoed these findings. His three year detention following a prison sentence (the triple punishment described above) followed by bail conditions imposed upon him on his eventual release prevented him from being the active, involved father he wanted to be. In the light of these experiences, he described his sense of deep injustice at Home Office officials implying that he was unable to support his child. And crucially, for Jimmy, none of this took any account of his love for his son or his son's love for him. As he said, "I think they're trying to take the emotions out of it".

Throughout our interview, Jimmy made several references to what he perceived as the power differential between him and his ex-partner who was a UK citizen. He said that her citizenship gave her "the upper hand" and that the decisions taken about his situation were influenced by this power differential. At times, he linked this to complaints that she was acting as a gatekeeper in relation to access to their son, a perception shared by some men in the literature on fathering from prison (Clarke *et al.*, 2005; Arditti, Smock and Parkman, 2005). However, he also recognised that this was too simplistic a view of the relationships involved. Immigration enforcement had a negative impact on his ex-partner, as well as on himself and their son:

> "To their own citizen, I think, it's not fair, if you look at it. Because they're taking someone's dad away and you've broken up a family. That's going to have a big impact on their life because a family's not something you can go and pick up at the supermarket. It's blood." Jimmy

As he said, in a phrase that calls to mind the game analogy used by Ewick and Silbey to describe 'with the law' legal consciousness: "there's not really a winner". In Jimmy's case, his being trapped 'against the law', was a legal consciousness that was experienced not only by him but also by his family.

He recognised, too, that his ex-partner's 'gatekeeping' was not solely a personal response to him, or antipathy to his maintaining a relationship with their son. Her actions took place within the context of the restrictions imposed on him by immigration law. Reporting that he had only seen his son five or six times in the year before our interview, he reflected that the situation used to be better, and

that its deterioration was not because he and his ex-partner were “in a beef”, but that she had cut him off because of his circumstances:

> “Yeah, before it was a bit better, but before I was getting a little support, you know. And I was out from detention, and I was you know, wanna go here, wanna go there, wanna do everything because of the amount of time that I've given up, you know what I mean? But as time goes on, there's less and less things to do, less and less places to go to, less and less excitement, because where you live you've seen it all already. But now, what do you do? You just sit at home doing nothing. So basically, I'm not being a dad, and I'm not being myself and who am I? I don't know. Because I'm not a dad.” Jimmy

In the quote above, Jimmy describes how the excitement of being out of detention after three years soon gave way to depression, despondency and despair as the promise of freedom was revealed to be a new form of confinement. With no money, no right to work and bail conditions that meant he was expected to be in his flat every night, his world was limited to the extent he no longer recognised himself. Seeing his son became difficult and his ex-partner became unwilling to facilitate it, so he no longer even felt like a dad. Later her elaborated on this point:

> “So it's hard. It's not easy. And you get to a stage when, I am a dad to my kid, but I'm not being a dad, so what's the difference, you know, from being back home and being here? Because I'm here and I still can't be a dad, you know. Because if I go to them and say, look, my son is in Edinburgh and I want to be closer to my son, they cannot help me. But you're the one who put me in Glasgow. I cannot leave Glasgow, because this is where my bail address is. If I go to Edinburgh, according to them, I have to come back the same day. I have to be in my house.” Jimmy.

In one of his brief flashes of anger in an interview that was characterised by quiet, thoughtful despair, he revealed that the restrictions that limited his life came not only from the Home Office and the courts but also from the rules enforced by his housing provider, who had told him he was not allowed to have his son to stay with him:

> “And I said so you're telling me that if my son was in the house and you came in, you're going to have to tell me to tell my son to leave, and he's like yeah. And I went crazy! He never came back to my house. I went mad. I went totally mad on him.” Jimmy.

As well as anger, the quote above shows a spark of resistance. Powerless to influence the government, the Home Office or the courts, Jimmy was at least able to prevent his housing officer from ever returning to his flat. This small act of "tactical resistance" did nothing to address the structural power of the law acting upon him but was one of the few ways he was able to resist that had some impact on the way he experienced it (Ewick and Silbey, 1992; Cowan, 2004).

Jimmy's life was characterised by restrictions imposed by people and institutions operating at every level of it: the Home Office, the courts, his landlord, his ex-partner all limited his ability to move about society as a person he recognised and, crucially, to be a father to the son he loved. A sense of powerlessness in the face of this imbued everything he spoke about in our interview. Even his being in the UK was not something of his own choosing and he saw everything that was happening to him now as something out of his own control:

> "I didn't get up at 14 and say what, you know what, I want to go to England, pack my stuff and leave. No, it was a decision that was made for me by grown-ups. And I have grown-ups again, making decisions for me again." Jimmy

In his view, even the fact that he had played by the rules for five years, since his release from detention had made no difference. He was caught in a terrible bind: he did not want to break the law because that could mean a further conviction which could mean losing his son forever, but to his mind, unable to work to earn money, criminality was his only option to access an income which would enable him to be the father to his son that he wanted to be:

> "I've been in prison altogether, all my sentences, about two years, so that's five years of my life I've been incarcerated, so that's five years I've not been breaking the law. And now I've been sitting down for another five years not being in trouble. I'm behaving myself; I'm struggling more than when I never used to behave myself. Because I can go out and do something and make money for myself and look after myself. But I don't want to do that any more. Because I want to be a dad. You know because I don't want to end up back in jail. Even when people trouble me, that's what I say to them. I say listen, I don't want to end up back in jail because who's going to lose?" Jimmy.

In the quote above Jimmy refers to former associates who “trouble him”, but while resisting efforts to involve him in crime, he also discussed a kinder, gentler pull from his former life. Friends wanted to spend time with him, to go out with him, but this was made difficult by his situation because he could never reciprocate if they bought him a drink. But more than that, he feared he would be unable to control his emotions and that he would be placing his friends in a difficult position by talking about things they would be unable to understand:

> “Even if I go out, I want to go and have a drink and you know, that's not the way forward, because when you drink, the emotions change too and that's when I start blabbering, it's like I've found my tongue. And the people you're sitting with, they cannot understand it, your emotions are coming out and it’s not like in an aggressive way but that's what I'm saying, the people that you're sitting with they cannot understand it. It's not something that you can sit in a pub and have a conversation about. Because you've been labelled, and you've been put in a certain category but I've got friends in this country from 20 years that know me very well but I cannot even talk to them about it” Jimmy

Further, he was prevented, not only from being a proper father to his son but also from being a caring son to his mother, who remained in Gambia, his country of origin. His concern for her appeared several times in his interview, and at one point he said that if it were not for his son: “I'd rather be next to my mum. She's getting old. I cannot travel to get to see her”. He described having to reassure his mum that he was not homeless or in trouble because she had heard rumours from other relatives and friends about his life:

> “So you're not only dealing with not being a dad, you're also dealing with these external family issues as well. So basically you're getting it from left right and centre. You're getting it from everywhere.” Jimmy

Everything Jimmy described about his life was difficult and stressful, and cemented his ‘against the law’ legal consciousness. He was not in detention when we spoke but his life in Glasgow was one that also served the purpose of “estrangement” that Mary Bosworth (2014) posits for detention: a process of separating people from the lives they lead in the UK to make removing them easier. He was unable to be a father, son or friend in any way that made sense to him, he had no money but was unable to work and he was expected to be in

his home in Glasgow. His life had been like this for five years. He was, like Singer's participants, "stuck", but he used a far more vivid metaphor:

> "It's like living in a dark hole and you know, there's no ladder. No-one's throwing you a ladder to get out of it. You just have to hope and pray that one day the sun will just pass through so that you can see a bit of light. But it's dark. It's really really, dark." Jimmy.

Jimmy knew that, although no effort had yet been made to implement the deportation order against him, it could happen at any time, and this contributed to his feelings of despair 'against the law'. But despite being stuck in this "dark hole", and his thoughts of returning home to be with his mum, he was determined to stay in the UK. His resistance to attempts both to deport him and to drive him from the country by confining him in a "dark hole" was a powerful expression of love for his son:

> "If they took me away from my son, that would break his heart. That would break his heart. And the other thing is, why should my son jump on a plane, because I don't want him to die before me, I want to die before him, so why should my son travel miles from Scotland to wherever I'm going to be buried […] to come and visit my grave? If you explain that to any dad, they'll understand. Even the police, if they ask me where you're from, I say I'm Scottish, my son is Scottish. If I'm dead, I'm getting buried here. Why should my son travel half the world to come and lay flowers on my grave? He's got every right to come and talk to me whenever he wants. So for me, when I'm dead, I'm getting buried here. That's just the way it is. This is his country, so it's mine as well, you know? I'm not going nowhere". Jimmy

Jimmy's identity as a father and love for his son had connected him in a deeply emotional and visceral sense to Scotland, in spite of the profound difficulties of his life here. And he was determined to resist, to the death, attempts to separate them, so that his son would be able to lay flowers on his grave throughout his life.

Time against the law

Jimmy's story was the one that most clearly exemplified 'against the law' legal consciousness among my participants. A key component of his experience was the length of time he had experienced being "stuck" or in "a dark hole". He had spent close to 10 years constrained in this way. He was first incarcerated in

prison and when his sentenced ended, he was taken to immigration detention, where he remained for three years, during which time he had no idea when his detention would end (Bosworth and Vannier, 2016; Bosworth, 2019). This was followed by a life in the community that shared many features with his incarceration, especially detention: in both cases he experienced the temporal uncertainty of not knowing how or when this confinement would end. (Griffiths, 2014).

Many of my other participants had also been living with this temporal uncertainty for years and Chapter 5, explored some of the ways in which this negatively impacted their ability to do the work of being a father. Jambu, for example, had come to the UK in 2005 and I spoke to him 14 years later. His first detention occurred before he had children in the UK, although he had left an adopted family behind when he fled his country of origin, and he reflected on the emotional impact of seeing children detained in Dungavel, before the practice was stopped in 2010: As he said "that's how long I've been in the system. I've seen things change".

By the time we spoke, like Jimmy, he was living on cashless support in Glasgow, with his immigration status still unresolved. He spoke, with anger, about time spent in this state of uncertainty and linked it specifically to the impact it on his ability to care for his children, and provide for them the same opportunities as their peers:

> "The system doesn't give a damn about children. Sorry about my language, but the system doesn't care about the children. My children, the elder one was born here and he never had any support at all, just because the mum was not a British citizen, so he didn't get any support at all until he was 10 years. Yeah. And the law says seven years. When he was 7 years, we applied. It was rejected. And we had to wait. The lawyer told us to wait. Just wait. Play the waiting game until he is 9, 10. […] This is why I don't like the British establishment mindset and how they are treating innocent children, children born in this country, and I really don't know what to tell my children, why they can't go out and also partake in the things that they see their friends do. My little one he comes to me and say, 'my school mates said they went here on the weekend, they went to do this, they went to this playground' and I can't take them because I have no means of taking them, but I cannot explain to them" Jambu

He felt himself even more trapped than Jimmy as neither of his children's parents were UK citizens. But he made the same connection between the action of the authorities, in his words, "the British establishment" and his ability to be a proper father to his children. And, like Jimmy, this was not only about time already spent; it was also about the future. Where Jimmy spoke of his son being able to visit his grave, Jambu spoke of the future psychological health of his children:

> "If it is true as a counsellor and psychotherapist know, if it is true that the principles are right, that children can remember the memories they have, the horrible memories, even as far as two and a half years, they can remember and in their 40s it will come back and haunt them, then I don't want them to have those experiences. Because then when they are 40 and they are going through all this, I will not be there, and I cannot explain to them that it's because when they were younger the Home Office treated me this way and that's why this happened to them and that's why they're going through this. I don't want my children to be institutionalised. I don't want that. I don't want them to be living on donations or benefits. I don't want my children to be on medications and be .... I don't want that." Jambu.

Jambu's love for his children was the cause of his feelings of powerlessness and they in turn were both cause and consequence of his 'against the law' legal consciousness, and are painfully expressed here in his frequent repetitions of the phrase "I don't want that".

Like Jimmy, Ochuko, who I spoke to when he was in detention, had been in the UK since childhood, having been brought to the country by a family friend after the death of his grandmother, who had brought him up. He had experienced multiple detentions since 2014 when he was first detained following a prison sentence. His interview fizzed with impatience to get on with his life, with frustration that time was passing and that he was confined in detention, trying to get out and trying to resolve his immigration issues. This frustration was also felt by his partner, whose life was similarly on hold because of Ochuko's circumstances:

> "My partner, she's giving up on me already. Like she says she can't carry on. It's not that she doesn't love me, she still loves me. She's getting tired, she's stressed, she wants to make a plan with her

> man, she wants to travel with her man, she wants us to have a family and have a better life. You know what I mean?" Ochuko.

Sometimes, his frustration focused on his immediate circumstances – he was speaking to me on the birthday of one of his sons and was angry and upset that he was not able to be with him – and being in detention intensified the feelings of stuckness 'against the law' that he had been experiencing for years:

> "19 years I've been in this country. I've worked, I've studied, I've paid my taxes, I've never robbed, you know ... so why do they keep refusing my application form. I want to know what is wrong with this law. I want to know what is going on. I'm tired of it." Ochuko

Bernard was also in detention when I spoke to him. As was discussed in Chapter 5, he had been required to report to the Home Office since 2001/2002, following his release from prison and his uncertainty about the impact of his immigration status on his family had led him to decide to live separately from them. Like Ochuko, despite long residence in the UK, living in circumstances that made family life difficult to maintain, the more immediate future was also Bernard's focus, and both were a source of hopelessness and despair:

> "I don't even know what's going to happen in the next 10 seconds. I'm just hoping ... because I've lost everything for a long time because all these 16/17 years when I've been reporting to the Home Office, I was thinking that something was going to turn up. But regardless, now I'm here, there's no hope for me. It's just only prayers give you hope." Bernard

Like the others, the impact on his family life, his ability to be a parent and the pain that caused was the lens through which he viewed his experience, and they drove his 'against the law' legal consciousness:

> "My daughter, she has turned two years old and this is the time I'm missing, which I need to be enjoying more with her. And I'm kind of stuck, without knowing what's going to happen in the next two minutes. So everything is just painful. Because I woke up today, I just woke up, I don't even know ... no appetite to eat, nothing. Just thinking oh, what's going to happen next." Bernard

For Bernard, and for other fathers the way they experienced time: missing important family milestones, not being there for their children, being aware of the passage of many years, but also fearing an immediate and unknowable

change, trapped them ‘against the law’, leaving them “stuck”, in emotional pain, and with no ability or resources to influence their situation.

Caught in impenetrable bureaucracy against the law

Chapter 6 discussed how some fathers believed that the Home Office was “playing games” with them, and how their anger about the game drove them to elements of a ‘with the law’ legal consciousness. Much of this was about the impenetrable bureaucratic systems they found themselves trapped in. Learning about the law and trying to act for themselves was, as explored in Chapter 6, for some, a means of channelling their anger and feeling more in control of their lives.

The professionals I spoke to argued that, while it was important for their clients to have agency and to be involved in legal challenges, it was extremely difficult for fathers in detention to use the law in a way that worked in their interests. One reason for this was the complexity of the law and its associated bureaucracy, particularly the potentially serious consequences of failure to follow it correctly:

> “EEA nationals think they have the right to be here, which they do, but they don't really understand that they could be deported. Some of them try to say, yeah I'll go back to my country, because that means I'll get a shorter prison sentence and then they get deported and then they just come back, because you can come back fairly easily as a European national and they just don't realise. I've had clients do that and then be redetained. Well first re-arrested to complete their prison sentence and then detained and then I see them ... So one client I had in that exact situation, he was served with his deportation decision last summer, 2019. He was told if you sign to go back you get shorter time and you’re going to get deported either way. So he was told this without any legal advice, so wasn’t told that he could appeal. So he was told you're going to be deported at the end anyway, you might as well go now. So, yeah, he went and then re-entered, was re-arrested, finished his sentence, redetained. He'd got three kids here and a partner. He just had no idea, no idea what to do, didn't understand the process at all. Some people have been fighting the system for a long time. They're a bit more clued up, they kind of ... they know a bit more but they don't feel like they're in control. I've not heard anybody say, 'I know what I'm doing, this is all right, I just need to do this and then ... sorted'” Professional 2

The professional above recognised that some people were able to access elements of a ‘with the law’ legal consciousness and were “a bit more clued up” but that being genuinely in control was an impossibility in the context of the complexity of immigration law and the bureaucracy surrounding it.

Less complex aspects of legality could also be demanding. Simply applying for Exceptional Case Funding from the Legal Aid Agency could prove challenging to the uninitiated, even when they seemed capable and engaged:

> “But even people .... often I’ll be like, there's this guy, you know he speaks enough English, I reckon he could probably have a go at this himself, so I’ll send people the form or send people questions from the form and afterwards I put it into the format of the form, but then that's often way more challenging for the person than I expect it to be. Like I had someone last week and I was like, oh he'll be all right, he can do the form. He said he got it, it made him furious, it made his head hurt, he screwed it up and he put it in the bin.” Professional 1

The client of the professional quoted here experienced intense emotions of anger, even to the point of physical pain in the face of the law and its bureaucracy. These emotions turned a capable person who the professional had anticipated would be able to access a ‘with the law’ legal consciousness into someone explicitly experiencing ‘against the law’ consciousness, finding the law oppressive, painful and impossible to engage with. This experience, she argued, could be magnified by the emotional turmoil caused to fathers by separation from their families:

> “They're often very confused and quite distraught, but a lot of our ... especially recently, most of our clients have got criminal convictions so they appreciate they've committed an offence, they feel they've been punished and then they're detained under immigration powers, and they don't know when they're going to be released, so they really ... that has a really negative impact on them. They often say I can't sleep, I'm really stressed, I don't know when I'm going to see my children, I haven't seen them ... especially in these Covid times as well, they've not even been ... they've not seen them for months and months on end, and yeah, it does take quite a heavy toll on them. They don't understand, often they don't understand why they've been detained and when it’s going to end.” Professional 2

Not understanding the systems that confined them, feeling trapped by bureaucracy that was incomprehensible to them and feeling stressed and upset by them was a common experience for the men I spoke to. Even where they tried to do the right thing to regularise their status, they found themselves caught in what felt like a maze of contradictory messages, all of which trapped them further:

> "My main point of focus was regularising my stay. So, I contacted the Home Office myself saying what do I need to do to get this done. And suddenly I get an email saying my appeals have exhausted all my rights to appeal. And I said how have I exhausted all my rights to appeal? So far, I've not even made an appeal, I've not even had a decision from yourselves. All I get is a letter saying send these documents, send these documents, send these documents, you're telling me I've lost all my rights to appeal."
> Armand

Others, like William, believed they had been deliberately tricked by the Home Office into taking a course of action that was against their interests. This perception that the Home Office was deliberately deceptive and duplicitous was a key theme emerging from Singer's research on legal consciousness in immigration detention (Singer, 2019). Nearing the end of his prison sentence, William was visited by immigration officers who asked him to sign a document. He understood from them that they were asking him to certify that he was being well looked after and was not harming himself, and he signed it without reading it. Later he says the Home Office argued that he had signed a document agreeing to being deported, something he says he would never have done.

Bernard, speaking to me from detention, was stressed and agitated for much of our interview. Chapter 5 discussed his concern for his partner, who was struggling with caring for their children on the outside and who he tried to support by phone. His concern for her and for their children coloured and shaped the way he experienced detention. The day we spoke, he had received a call from someone he believed was from Social Services who wished to do "an assessment". He did not understand the purpose of this assessment, but his partner had also been contacted about it and he suspected that it had been ordered by the Home Office to bolster their efforts to remove him from the country. In keeping with the findings of other research, these efforts included

the implication that his relationship with his partner and children was not genuine or stable (Wray, 2015; Griffiths, 2015; Griffiths, 2017b; de Hart, 2015):

> "So first of all, when they sent the email to my partner, she asked them, what is it about? They said, oh it was about the offence to see if it was against children or not. And then they found out no, nothing like that. So they came with something else again. They keep coming with something else again, which is not good. They are trying to push her to say 'oh no I don't want to be with him'. That's what they do." Bernard

The quotation above is a short extract from a long, confused, and confusing passage in our interview, interspersed with phrases such as: "so I'm thinking, how does this work?", "I'm not sure exactly what they are planning", "they are trying to go against me". Nothing that was happening made sense to Bernard. The opacity of Home Office decision making, which has been highlighted by many researchers and commentators (for example: Lindley, 2017; Shaw, 2016; Shaw, 2018; Yeo, 2020) angered him. In common with all people in detention, Bernard received a monthly report, intended to explain his continued detention to him. These reports have been criticised for being little but tick-box exercises, including material cut and pasted from other cases and previous reviews (Shaw, 2016; Yeo, 2020). They certainly failed to make anything clearer to Bernard:

> "And the only thing is why they are doing this is beyond me. Everything when it comes to monthly reports, they should put everything what they are doing, what they are processing, or what I'm waiting to hear. But they are not doing anything." Bernard

This confusion about the situation he was in turned to pain when he considered the impact of his situation on his family and his ability to be with them:

> "The only thing that I'm hurting myself is that I'm punishing my family, I'm punishing my children. So they don't deserve to have a father like me who's not very close to them for some reason, which they don't know." Bernard

In the absence of clear information about what was happening to him, and in echoes of Singer's work (2019), Bernard was susceptible to rumours circulating in detention. These only served to cement his 'against the law' legal consciousness as he heard stories of other people being released from detention despite having

numerous serious criminal convictions. These kinds of rumours about other people in detention being treated more favourably than them were mentioned by other participants as a source of further frustration, anger and stress. These emotions contributed to a powerful sense of injustice and a sense of being further trapped in an all-pervasive system from which they struggled to escape, key features of an 'against the law' legal consciousness.

Administrative incompetence on the part of the Home Office and the courts could further entrench this 'against the law' legal consciousness. Roberto, for example, missed an important hearing that concerned his appeal against a refusal to grant him indefinite leave to remain:

> "in 2015 or 16, I appeal for the first tier tribunal. And then I moved house. I sent a letter to the first tier tribunal, they sent the letter back. They got the letter, the letter ... the first tier tribunal said I was not living in the house and they did not try another type of communication. And the form had the email, the phone and the address. So they tried to send me a letter, they knew I was not living in the house and they didn't care to look for another way to communicate with me. So I did not know when was the court so I missed my case. […] But I had sent a letter saying I had moved the address. Then they said to me they had not received this letter. And asked me for evidence!" Roberto

In a bizarre reversal, better administrative procedures were expected of an applicant than of the court. Roberto was following the rules that needed to be followed in order to make his case, and provided a range of methods of contact, yet the court chose to use one which he had told them was no longer current, offering no apology, and blaming him for the error. And, of course, the consequences of such administrative failings were potentially devastating for Roberto, but of little consequence to the court, and served the purposes of the Home Office, who could point to his non-compliance with court proceedings as a means of justifying their decision not to grant him indefinite leave to remain. His anger at this injustice was clear as he spoke to me and helped to cement his 'against the law' perception that the law was an oppressive force working against him.

The men I spoke to were frequently attempting to navigate these systems with limited legal help. William, for example, had a criminal lawyer who had worked

on his case but until he reached detention, after serving his sentence, he had never spoken to an immigration lawyer, and he spoke to the immigration officers who visited him without legal advice. Others, like Tomasz, struggled to access legal help in detention, or their efforts to do so were disrupted by arbitrary moves around the detention estate (Lindley, 2017), leading to broken appointments or an interruption in an existing relationship with a solicitor. But, as discussed in Chapter 6, both inside and out of detention, being without a lawyer was also because these men were distrustful and cynical about the legal profession, itself an expression of their 'against the law' legal consciousness.

Denial of fatherhood and paternal love

In Chapter 5, Armand and Tomasz described their hurt and anger that, throughout their detention, the Home Office denied that they had children, and other fathers spoke of their conviction that the fact that they were fathers had no bearing on Home Office decisions to detain them and maintain their detention. In that chapter, they spoke of this experience as a challenge to their identities as fathers. But this experience, and the emotional distress it caused, was also a key component of their 'against the law' legal consciousness.

The professionals I spoke to referred to Home Office policy that the best interests of the child should be a primary consideration in any decision made. This policy is derived from section 55 of the Borders, Citizenship and Immigration Act 2009, which "places a duty on the Secretary of State to make arrangements for ensuring that immigration, asylum, nationality and customs functions are discharged having regard to the need to safeguard and promote the welfare of children in the UK" (Home Office and DCFS, 2009). Further Home Office guidance on family life and criminality restates the importance of best interests assessments and places them within the context of Article 8 rights to family life, which involve judgements on the extent to which a parent's relationship with his child is genuine and subsisting (Home Office, 2019). Professionals' experience was that although best interests assessments were usually made in substantive immigration decisions, they had hardly ever seen them in the case of decisions to detain, or to maintain detention. One said, for example, that she had never seen any best interests assessments on the monthly

reports whose purpose is to explain to people in detention why their detention is being maintained.

Abdul, originally from Somalia but a citizen of the European country that had granted him asylum, had exercised his free movement within the EU to settle in London, where he married and had his children, who were British citizens. He had been detained after a prison sentence and was as shocked as some of the other participants to find he was to be further punished for his offence by being detained under the threat of deportation. He challenged the decision by explaining that he had a family but was angered by the callous response he received:

> "No, no they didn't pay any attention. They said you can take your children with you. I say but they are British. They are British citizens. How can they? They can't change their lives and start again. They don't speak the language. They can't. And their mother, she will not accept that. I told them that. They didn't pay any attention. They just want to deport you." Abdul

Abdul was unusual among my participants in that at the time of his conviction, he was living in a family unit with his wife and children and had expected to return to the family home at the end of his sentence. His genuine and subsisting relationship with his children was therefore most obvious amongst my participants, but still did not prevent his detention, or efforts to deport him. For other men, proving a relationship with their children to a Home Office that had an interest in there not being a genuine and subsisting relationship was virtually impossible, when, in Abdul's words "they just want to deport you". Professionals confirmed this:

> "I think people are often surprised by how harsh the law is. Because it seems very unfair, especially these tests, the tests that they use for separating fathers from their children, the threshold is really high, much higher than you think it is. You know, I'll meet someone who's like, you know, got a baby in the country, and they're getting deported and they're like, well I've got a baby, so they can't deport me. And like actually, no, that's not how it works and like, how old is the baby, how involved have you been in its life so far? The baby was born when I was in prison. OK, well, that's going to mean that you've got a much less ... it might not have much bearing at all on your right to stay in the UK. So, I think there's a bit of a disconnect between what people's

> expectations are and what the reality of the legal system is." Professional 1

Both Armand and Roberto were separated from their children's mothers and no longer lived in a family unit with them. Both, however, still maintained loving relationships with their children and saw them regularly before their detention. Armand described in Chapter 5 how the Home Office's denial of his daughter's existence felt like a negative comment on his capabilities as a father. But in common with other fathers, this denial and its emotional impact also shaped his legal consciousness. He was arguing that removing him would be in breach of his Article 8 rights to respect for his private and family life, already a difficult legal case to pursue (Wray, 2023), but if the Home Office refused to recognise her existence, it became impossible to argue. So, while he had attempted to take some 'with the law' control over his case by using the law as a tool to further his interests, the consistent denial of the Home Office that he had a child pushed him 'against the law', trapped, with no means of extricating himself:

> "After all my efforts to apply for an article 8 were refused, it became obvious to me that the Home Office was not looking, or not trying to check the merits of my evidence, was not trying to validate evidence. They even refused, I was locked in there for nine months, with the excuse that I had no contact with my own daughter. My daughter had been to the same detention centre to visit me, more than one time. My daughter was in constant contact. I spoke to my daughter every day for the nine months I was in detention. This still didn't help. They've had all documentations about my daughter, her school records and everything sent to them. They put all this evidence aside and totally ignored it." Armand

Roberto, experienced similar issues, with the Home Office arguing that the evidence of his active fathering provided by his children's school and nursery were not sufficient. He also maintained a good relationship with his wife, from whom he was separated, and she, too, had provided evidence of the genuineness and quality of his relationship with his children.

Both these men encountered this denial of both their paternity and their active fathering of their children despite the fact that they had never been in prison. They were not dangerous foreign national offenders but, to their distress and anger, they could still be cast as problematic male migrants, opportunistically

using family ties as a means of gaming the system (Wray, 2015; Griffiths, 2015; Griffiths, 2017b; Griffiths, 2023).

Where fathers had convictions, demonstrating the strength and validity of their paternal bonds was even more problematic. Jacob, who had both a prison record and a very difficult relationship with his children's mother, told me that the Home Office had told him that his children did not need him and would be better without him. He and his lawyers were challenging this assertion although Jacob was unclear and confused about the process. It seemed to some of the men I spoke to that the Home Office would go to bizarre lengths to deny that they had a relationship with their children. In Tomasz's case:

> "They give me like 20 days to write a letter, with the reasons why I want to stay. Because I'm in prison so in my eyes, I have to write a letter, nothing else. But basically the Home Office said after a few weeks, when I get a refusal letter from them, they said I didn't show any evidence about my son, but if someone is in prison, to get even a pencil from the canteen is like a two week period of time, so how I can do it in 20 days like produce my son's birth certificate, my own, my certificate, evidence, that's impossible So, yeah, Home Office were saying all the time I didn't show any proof of my family so I don't have a son,." Tomasz

Tomasz's inability, through circumstances the Home Office was aware of, to provide documentary proof of his paternity, proof that he would be able to provide once released, was used to continue to deny that he had a family once he was moved from prison to immigration detention, even though, like Armand, his son visited him several times when he was detained. The unfairness of this treatment was a source of frustration and anger, which triggered their 'against the law' consciousness.

Like Singer's (2019) participants, these men's experience of the law was not of a rational system, as might be understood by lawyers or by people who exhibited a 'before the law' legal consciousness. Rather it was of a system whose rules were impenetrable and enforced by officials who made impossible demands and sometimes used deliberate deception. Most importantly to these fathers, they ignored, denied and minimised their love for their children. In the face of this experience 'against the law', driven and intensified by love, they resisted.

Resistance

As explored in Chapter 3, resistance is a feature of 'against the law' legal consciousness, as a means of providing some respite from the power of the law acting on people's lives (Ewick and Silbey, 1992; Ewick and Silbey, 1998; Cowan, 2004; Chua and Engel, 2019; Singer, 2019). In the men I spoke to, it took various forms. As with Jimmy's despatch of his housing officer who never returned to his flat, their resistance was often of the kind that Ewick and Silbey (1992) describe as "tactical resistance" – the individual acts of resistance available to people without access to power (Cowan, 2004).

Roberto, for example, was the only one of my participants who described an active attempt by the Home Office to remove him from the UK. He had been detained, for the first time, for four weeks when we spoke. He had attended the Detention Duty Advice service and was applying for Exceptional Case funding, but by the time we spoke, he did not have any legal representation and, in common with several fathers, expressed great cynicism about lawyers, telling me: "all the solicitors' offices and companies who come here, they try to get the government money. They're not about the people". The deportation attempt had taken place about a week before we spoke, with Roberto only having received 30 minutes of legal advice. He had physically resisted, refusing to be moved, and the deportation had not gone ahead. It was, however, the springboard to his applying for a judicial review of his detention and deportation. Without legal representation, he completed the paperwork himself, determined to use everything at his disposal to resist further efforts to remove him. As I noted in Chapter 6, this 'with the law' taking control and attempting to use the law as a tool to advance his interests, was an expression of his resistance 'against the law'.

For Roberto, the sole reason for his resistance was his love for his family. He explained:

> "But it's not about me, it's about my kids. I can have a beautiful life in Brazil but I wouldn't leave my kids here without a father. … My life in Brazil ... oh you don't have any impediment! No, I don't have any impediment, I was a mathematics teacher in Brazil, they still have low numbers of teachers in mathematics. I can get a job

> straight away in Brazil. … I didn't come here for work as many people come here. No. I came here to make a family. To have a family. If not, I would not get out of Brazil". Roberto.

The life Roberto described before his detention was difficult. Separation from his wife had led to his application for leave to remain being denied. The bureaucratic errors described above had further complicated his efforts to remain in the country with his children. He had lost his job as he no longer had permission to work in the UK and, unable to afford to rent a property, he was living in a hostel in a room with 21 other men. With some weariness he explained to me: "everything is about immigration issues". His immigration status had trapped him in a way of life he did not want, and which was far less comfortable than he could have expected at home in Brazil as the quote above shows, yet still he resisted, telling me: "it's about my family". He could have escaped the trap the law had placed him in but that would have meant losing his family and so, paternal love was ultimately the cause of his 'against the law' legal consciousness and the driver of his resistance.

While Roberto, was still trying to use legal means to resist attempts to divide him from his children, the dominant form of resistance shown by the men in my study, was a declarative resistance, closely connected to their emotional lives as fathers. The chapter began with Jimmy who vowed to resist efforts to deport him in a powerful expression of his love for his son. This may not have been a clear statement of intent to physically resist immigration enforcement. Indeed, elsewhere he spoke almost of the inevitability of his deportation and his fears of being expected to leave with no time to collect important mementos of his son. However, making this statement of resistance gave him a purpose, made sense of a life lived 'against the law', and served to reaffirm his identity as a father.

Resistance of this kind could be seen in the stories of a number of the men I spoke to. Armand, for example also found the multiple ways in which he was trapped 'against the law', led him to declaration of resistance based on his love for his daughter and a determination to stay in her life. He was resisting not only the Home Office's efforts to remove him, but also their construction of him as an inadequate father:

> “Not only are you sitting in a detention centre when you have no idea how long you are going to be there, you have no idea if you are going to be deported. The situation back in Cameroon is unbearable, a situation I cannot go to. They are insulting me again that I'm not a good parent. […] That said, the biggest resilience I had, the biggest strength I had, the biggest point of motivation and incentive was that I knew I had to win them back to continue being a dad.” Armand

Jambu spoke, movingly, of the emotional and psychological impacts a life lived under immigration control had had on him and his determination that it would not cast a shadow on the lives of his children. Resolving to continue to be an active father, caring for his children, ensuring their future, was his resistance in the face of his his ‘against the law’ consciousness:

> “I'm trying so hard to protect my children from the shame or the pain or the fear or the negative effects and impacts. I want to, you know, kind of serve like their shock absorber and receive that on their behalf and not let anything get to them. So that's why I'm still here, fighting. And it's for them [….] So it worries me, at my age now, 47, it's been destroyed already but I can do something to help my children deal with their own lives without me. Or even if they grow up in the future and saw me destroyed they can feel pity for me but they will have their own life to lead. So I am determined to help them grow emotionally stable, psychologically sound, adults growing up and that's the reason why I wake up every morning, take my medication and fight.” Jambu

Jambu’s determination to be his children’s “shock absorber” was a reaffirmation of his identity as a father, and specifically as a father whose life was lived under immigration control and continued threat of detention: the shocks he needed to absorb were those they might feel because of his insecure immigration status. He perceived that his own life had been “destroyed” by his experiences in detention and by the hardships he had endured since being released, particularly those relating to his efforts to be a good father. These experiences, of immigration control and as a father were constitutive of his ‘against the law’ legal consciousness. And it was his emotional life as a father and his paternal desire to be a protector, provider and carer for his children that drove his resistance ‘against the law’.

Conclusion

This chapter has discussed the most common form of legal consciousness among my participants: ‘against the law’. Beginning with the powerful story of Jimmy, and its exposition of the way in which the emotions of paternal love and despair were both the cause and consequence of his legal consciousness, it has explored the way in which detention and the threat of it on release, are experienced emotionally and specifically as fathers. Missing their children, being unable to perform their roles as fathers and being denied the routines and rituals of family life drove their ‘against the law’ consciousness.

The temporal uncertainty of life in detention and with insecure immigration status out of it, were experienced as fathers impatient to resume family life and further entrenched their ‘against the law’ consciousness. Being trapped in impenetrable bureaucracy, often with no legal support, intensified their feeling that the law was an oppressive force acting on their lives. The backdrop to all of this was the minimisation, and sometimes outright denial, of their loving relationships with their children, causing further anger and a sense of powerlessness against the law.

Trapped as they were ‘against the law’ they resisted. Occasionally, their resistance found expression in ‘with the law’ activity, using the law to challenge their detention or efforts to deport them. More commonly, however, with no legal support, and with little remaining faith in the law’s ability to help them, their resistance was declarative and found expression in passionate statements of their intent to remain in the country to continue to be in the lives of the children they loved.

Chapter 9: Conclusion

This final chapter draws together themes from the preceding chapters, highlights the original contributions my research has made and suggests some policy implications that have emerged from my study.

New insights into fathers in detention

Building on earlier sociological literature on fatherhood and fathering, on literature on fathers in prison and on studies of families subject to immigration control, my study has brought new insights into the experience of fathers in immigration detention. Chapter 5 introduced the twelve fathers who participated in my study and the way in which their immigration issues acted as a complicating factor to already complex family structures, and influenced the choices they made about their family lives. It explored their emotional lives as fathers and their understandings of fatherhood and fathering. It also considered how these understandings were affected by their detention, and for most of them, by their continued risk of detention. Regardless of whether they were biological, social or non-resident fathers to their children, it was doing the work of fathering – providing, caring and spending intensive time with their children – that they believed made them fathers. That detention prevented them doing that work challenged their identities as fathers.

To maintain their identities, they made a range of accommodations and adaptations to their fathering. Some of this had echoes of earlier work on the experience of fathers in prison in the ways in which fathers found means of maintaining some of the routines and rituals of family life through their incarceration. However, unlike fathers in prison, whose roles as fathers are viewed as important in preventing recidivism, these fathers had to make their accommodations and adaptations unsupported by such a policy aim.

In this context, my research has extended insights from previous research about the way in which fatherhood is understood by the immigration system. The importance of my participants' fatherly relationships was consistently ignored, minimised and undervalued, and even the fact that they were fathers was

denied. Their desire to remain in their children's lives was cast by the immigration authorities as an attempt to game the system (Wray, 2015; Griffiths, 2015; Griffiths, 2017b; Griffiths, 2023), rather than as means of actualising their human rights. Armand, for example, was pursuing an Article 8 claim to challenge his detention and removal, but the Home Office consistently denied his daughter's existence, making that case impossible to argue. I return to the theme of denial of fatherhood in the discussion of policy implications below.

The indefinite nature of immigration detention in the UK also marked the experience of my participants as different from fathers in prison. Other research has noted the temporal uncertainty experienced by people in immigration detention. My study has shown how this is experienced emotionally by fathers in detention. The painful past experiences that separated them from their children, their precarious lives in detention with the ever-present threat of both deportation and of endless incarceration, and their unknown and unknowable futures were all contemplated through the emotional lens of their paternity.

Theorising the connection between legal consciousness and emotion

Their fatherhood profoundly affected the way in which my participants experienced, understood and acted in relation to the law. In focusing on this specific population, my study has used the legal consciousness framing of Ewick and Silbey (1998) to examine their experience and has so added to and enriched the literature through the scope of my empirical research.

My study has also added to both the empirical and conceptual dimensions of the developing scholarly field of law and emotions. It has used a legal actor approach (Maroney, 2006) to explore the way in which emotions are experienced by a particular group affected by the law. Chapter 3 noted that relatively few studies had explored the emotions of people subject to the law (as opposed to those who practice, administer or adjudicate on it) and fewer still in fields other than criminal law (Grossi, 2015). By exploring the emotions of fathers in immigration detention my study has added to a less developed area of law and emotions scholarship.

Further, it has made a contribution to the illumination dimension of usefulness of law and emotions research proposed by Abrams and Keren (2010). This dimension aims to analyse how emotions are involved in legal settings by examining legal phenomena through an affective lens. My research has achieved this by analysing the link between the emotions of fathers in detention and their legal consciousness and so has connected these hitherto distinct sociolegal approaches. It has argued that emotions, experienced because of their detention and as fathers, are both cause and consequence of their legal consciousness.

Chapters 6 to 8 showed, that fathers in detention can experience all the patterns of legal consciousness identified by Ewick and Silbey (1998). However, they do not experience them equally and shift between them through their detention. 'Before the law' legal consciousness was rare in my participants, with just one experiencing it consistently. Where it was present in others it was experienced fleetingly and early in their interactions with the power the law exercised over their lives. The negative emotions of shock and bewilderment they experienced at the disregard of the law for their emotional lives as fathers triggered a shift to the other patterns. The dominant pattern was 'against the law', which sometimes coexisted with, and found expression through, 'with the law' activity aimed at using the law as a tool to advance their interests. But even where they were able to access a 'with the law' consciousness, the paucity of legal advice available to them, the complexity of the legal and policy frameworks that acted on their lives and the intensity of the emotions they experienced as they struggled with both the law and their separation from their families, inhibited their ability to influence their situations, again provoking an emotional response which shifted their consciousness back to 'against the law'.

It was learning the limits of the law, as a means to improve their situations, particularly in relation to their desire to remain as loving fathers, present in the lives of their children that cemented 'against the law' as the dominant pattern. This in turn trigged a further emotional response of despair and powerlessness. In this way, the emotions my participants experienced as fathers were inextricably linked in a co-productive relationship with their legal consciousness.

Opportunities for further exploration of the relationship between legal consciousness and emotions

There are opportunities to develop this work further by extending the exploration of the way in which legal consciousness and emotions are linked to other legal actors and other legal settings. My research focused on my participants as fathers, and because of that, I was aware that there would be a strong emotional component to the experiences I aimed to explore. Chapter 1 discussed my early professional engagement with the emotions of fathers in detention and Chapter 3 explored the ways in which emotions were suffused throughout the research process.

However, the fathers had other identities and experiences that intersected with their fatherhood, which are less obviously emotional in content and are shared with a wider population of people in detention. Most of them, for example, were also foreign national offenders (FNOs). We know that FNOs are most likely to be detained for long periods (Shaw, 2016; Joint Committee on Human Rights, 2019). Further, around 20 per cent of people begin their immigration detention in prison (Home Office, 2023b), having completed their prison sentence, where they can experience particular difficulties in access to justice, especially in relation to their immigration case (Joint Committee on Human Rights, 2019, p. 21-22). A study of the relationship between the legal consciousness and emotions of this population may be a fruitful area of enquiry and would further test the link between the two that has been explored by my study.

There are also opportunities to move the exploration of emotions and their connection to legal consciousness beyond the illumination dimension achieved by my study, towards the investigation dimension identified by Abrams and Keren (2010). This dimension seeks to analyse specific emotions through interdisciplinary research, with the aim of improving legal actors' familiarity with the potential relevance of emotions to the law. Further investigation of the role of the specific emotions implicated in the legal consciousness of fathers in detention (and potentially other populations in detention) both individually and in combination with each other, would provide more insights into the mechanisms involved in the co-productive relationship revealed by my research.

Policy implications

A range of official inquiries and reports have made considerable criticisms of the system of immigration detention, and many recommendations for policy change (e.g. APPG on Refugees and APPG on Migration, 2015; Shaw, 2016; Shaw, 2018; Joint Committee on Human Rights, 2019; Home Affairs Committee, 2019; Brook House Inquiry, 2023). All of these reports and inquiries sought the evidence of people in detention or who have been detained, and the organisations that advocate for them, to understand how immigration detention is experienced by the people who are subject to it. They are remarkably consistent in their recommendations for reducing the use of detention in favour of community-based alternatives and for the introduction of a time limit. Additional, more specific, recommendations in each report combine with these overarching proposals to create a blueprint for policy changes that would, if implemented, improve the experience of everyone subject to detention.

My own research has added to the knowledge about a specific and under-researched population in detention and has implications for policy at a more granular level. Fathers are rarely mentioned in these reports and inquiries, although the experience of families with children more generally is sometimes referenced. My study suggests that the emotional experience of fathers should be more consistently integrated into decisions taken about detention and deportation.

Such an approach implies a (re)consideration of the 'fair balance' between Article 8 rights to private and family life and the demands of immigration control, and in particular the extent to which expulsion of fathers is a proportionate interference in family life (Wray, 2023). As Chapter 2 discussed Article 8 is interpreted narrowly by the courts, with the immigration rules considered to be compatible with it, except in exceptional circumstances. In other words, immigration control factors are given more weight than family life. Wray (2023) argues that family life should carry the same weight as immigration control. Such an approach would accept that the public has an interest in *both* immigration control and in supporting stable families, and allow for all relevant

factors to be taken into consideration to reach a decision on proportionality in each case (p.186).

While Wray's argument concerns the way in which the courts operate, its principles could be applied at a policy level, giving consideration to the individual family circumstances of the father concerned, as well as their immigration case. Most fundamentally, this would entail greater recognition that fathers who end up in detention may have legal route to regularise their immigration status and remain in the UK, with positive implications for them and their children. This was true of two of my participants, Armand and Abdul, both of whom had had their right to remain in the UK confirmed and were in the process of rebuilding their lives and their relationships with their children when I spoke to them. In their cases, however, they were detained and separated from their children before this was established. There is potential to support fathers to understand these options, and so to access a 'with the law' legal consciousness, before they reach detention.

Building on the recommendations about Alternatives to Detention in the reports cited above, evidence from the recent evaluation of a Home Office commissioned pilot scheme - the Refugee and Migrant Advice Service - suggests that supporting people in the community through the provision of one-to-one support from a support worker and legal counselling from a qualified legal professional yields promising results (UNHCR, 2023). Of the 84 men and women who participated in the pilot, six were granted leave to remain in the UK during the lifetime of the two-year pilot. Fifty-two further participants made applications for leave to remain on the basis of the legal counselling that they received. The involvement of the support worker was crucial in providing stability to participants in other areas of their lives, to ensure that they were best placed to understand the complexity of the law and the legal options they explored with the solicitor. The development of further Alternatives to Detention schemes, with input from a support worker oriented towards the specific needs of fathers, would be a means of enabling fathers to explore their options in the community without detaining them.

The Home Affairs Committee (2019) recommended that immigration officials should meet every person for whom detention was being considered before the

final decision was taken (p. 90). The intention of their recommendation was to move decisions to detain away from a wholly paper-based exercise, which contributed to what they describe at several points in their report as a "cavalier" attitude towards the deprivation of liberty through detention. Making consideration of the family circumstances of the person concerned a key component of a meeting like this would give fathers an opportunity to discuss their relationships with their children before a final decision was made, and allow for the proper consideration of alternatives to detention in each case. It would also allow for greater consideration of the best interests of the child, another area of decision-making criticised by the Committee (p. 40). Perhaps most importantly, it would halt the routine minimisation and denial of paternal relationships experienced by the fathers in my study, and allow them to bring their emotional lives as fathers into active consideration in the decision-making process.

The initial Shaw Review (2016) included criticism of the quality of the monthly progress reports intended to explain the reasons for an individual's continued detention and recommended that officials undertaking the reviews should meet the person concerned (p. 85). Subsequent inquiries and reports have continued to criticise the quality of the detention reviews (Shaw, 2018; Home Affairs Committee, 2019), and in Chapter 5, my participant, Bernard, described his frustration with the failure of his monthly report to reflect his circumstances. A monthly review meeting could also provide an opportunity to consider the family circumstances of a father in detention and any changes that had occurred since the initial decision to detain. In Bernard's case, for example, it would have given him the opportunity to discuss the "assessment" he had been asked to participate in, which he understood to be by Social Services, and explore its relevance to his immigration case.

In Chapter 2, I explored the issue of FNOs who are subject to automatic deportation orders, an issue that affected the majority of my own participants. Both of the Shaw Reviews (Shaw, 2016; Shaw, 2018) discussed FNOs who have spent most of their lives in the UK and are to all intents and purposes British, but who are detained with a view to deporting them. The 2018 review specifically recommended that the Home Office should no longer routinely seek to remove those who were born in the UK or have been brought up here from an

early age (Shaw, 2018, p. 90). Shaw used a proportionality argument to argue against tearing low-risk offenders from their lives, families and friends in the UK to deport them to a country where they had no ties and often could not speak the language. He further argued that in the case of those who had committed more serious offences, there were ethical concerns about deporting them to another country when their offending followed an upbringing in the UK. His reasoning implies a more individualised assessment of the specific circumstances of each case, one that weighs immigration control against family and social factors.

In making his recommendation, Shaw did not specifically consider men who were fathers, but spoke in general terms about family ties. However, Wray's principle of giving equal weight to family and immigration control factors could be applied to fathers in these circumstances, allowing for an assessment of the proportionality of deportation, even where there is a criminal record. Such an approach would have had particular relevance for two of my participants.

Jimmy and Ochuko had both arrived in the UK at the age of 14, and therefore may have been among the group referred to in Shaw's recommendation, although he did not specify what he meant by "early age". Both had completed their secondary education, attended college and had their children here. Both had convictions for relatively minor offences. Ochuko had endured multiple detentions and Jimmy had been detained for three years consecutively. In both cases, their detention disrupted loving relationships with their children, and they both made efforts to maintain them throughout their detention and beyond. Both remained at risk of detention and permanent separation from their UK-born children. Earlier chapters discussed their very great distress at the prospect of this separation, both because of its impacts on themselves and on their children.

Several of the other fathers in my study who fell into the FNO category had arrived in the UK as adults, but their residence had lasted for more than 15 years and in some cases, far longer. Richard had arrived in the UK 30 years before I spoke to him, Bernard had arrived in the late 1990s and Jacob and Mark in the early to mid 2000s and all had British-born children. These men's cases raise more complex questions as their histories involve convictions for crimes of

violence, and in the case of three of them violence towards their partners, as I discussed in Chapter 4. Nevertheless, I would argue that the combination of their long residence in the UK and the fact that they were fathers to children born here requires a more nuanced assessment of the risks they pose than automatic detention and deportation allows. Giving equal weight to family and immigration control factors would entail consideration of the violence that led to the conviction and its relevance to both family life *and* the safety of the general public in coming to a decision.

The situation of another of my participants makes the case for the balancing of immigration control and family life factors in FNO deportation cases, even where a father's residence in the UK is not longstanding. Tomasz had exercised his right to free movement to come the UK from Poland three years before I spoke to him. He and his British partner had their son about a year later and he was actively involved in caring for him, even after the breakdown of his relationship with his son's mother. When I spoke to him, he was at home, looking after his sleeping son. Tomasz was convicted of an extremely minor offence and his distress at the disproportionate impact this had had on his life was recorded in Chapter 5. It is extremely difficult to understand what purpose is served by separating an active, engaged father like Tomasz from his child by detaining and deporting him. Giving equal weight to immigration control and family life factors would allow for consideration of the best interests of the child to be weighed against the severity (or otherwise) of a father's offending history to determine whether deportation is proportionate.

Even if the Home Office intends to continue to pursue deportation, it makes sense to consider alternatives to detention for fathers who are FNOs. The second Shaw Review (2018) gives significant attention to an Alternative to Detention project operated by Detention Action, which works with male FNOs who have been released from detention into Section 4 accommodation provided by the Home Office or their own accommodation (p. 120-122). The men are referred to the project by the Home Office and they are provided with outreach support by Detention Action. Even men who had committed serious offences have been supported through the project to live in the community, with very low rates of re-offending. Shaw recommended an expansion of this project. I would argue that there is scope to adapt the support it provides to the reflect the specific

needs and experiences of fathers. This would entail applying knowledge from research on fathers in prison about the importance of family relationships in preventing reoffending (Hairston, 1998; Dyer, Pleck and McBride, 2012; Dyer, 2005; Clarke et al., 2005), harnessing fathers' emotional attachments to their children to support them to live in the community successfully without further involvement in crime.

Implementing changes like these, which reflect the particular experience of the fathers in my study, would help to shift the emotional register of immigration detention away from one dominated by anger, fear and suspicion. They offer the prospect of a more emotionally intelligent approach that supports fathers to navigate to a more positive legal consciousness. More generally, using the findings of this research to understand how law is experienced by the people subject to it, and the central role emotions play in that experience, will inform how laws can be shaped, reshaped and enforced.

Appendices

Appendix 1: Interviews with fathers in detention

Pseudonym	Interview type	In/out of detention at interview	Asylum or other	Secure immigration status at	Experience of prison	Known to me	In UK since childhood	Multiple detentions
Jambu	Face-to-face	Out	Asylum	No	Yes	Yes	No	Yes
Abdul	Telephone	Out	Other	Yes	Yes	Yes	No	No
Ochuko	Telephone	In	Other	No	Yes	No	Yes	Yes
Armand	Telephone	Out	Asylum	Yes	No	No	No	No
Prentice	Telephone	Out	Asylum	No	No	No	No	No
Jimmy	Face-to-face	Out	Other	No	Yes	Yes	Yes	Yes
Bernard	Telephone	In	Other	No	Yes	No	No	No
Richard	Telephone	Out	Other	No	Yes	No	No	No
Roberto	Telephone	In	Other	No	No	No	No	No
Jacob	Telephone	Out	Other	No	Yes	No	No	Yes
Tomasz	Telephone	Out	Other	No	Yes	No	No	No
William	Telephone	Out	Other	No	Yes	No	No	Yes

Appendix 2: Participant information sheet for fathers

University of Glasgow

College of Social Sciences

Research study: Fathers and Immigration Detention
Researcher: Kate Alexander

Participant Information

You are being invited to take part in a research study. Before you decide whether to take part it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully and discuss it with other people if you wish. Ask me if there is anything that is not clear or if you would like more information. Take time to decide whether or not you wish to take part.

Thank you for reading this.

Introduction
My name is Kate Alexander. I am a post-graduate student at the University of Glasgow. I also work part time for Scottish Detainee Visitors (SDV), an independent charity that provides support to people detained in Dungavel.

My PhD study involves talking to fathers who are in immigration detention or who have been detained and released. I am interested in finding out what being detained means for fathers, how it affects their relationships with their children, and what their relationships with their children are like once they are released.

I have no connection with the Home Office and taking part will not affect your immigration case.

Taking part in the study is entirely voluntary: it is up to you if you want to talk to me. It will not affect any relationship you have with SDV.

The interview
If you agree to take part, it will mean I will interview you about being in detention and about your family. This will take about an hour and no more than two hours. I may ask if I can record our discussion but you do not have to agree to this.

You do not have to answer any questions you do not want to answer and you can stop the interview at any time.

At the beginning of the interview, you will receive a voucher payment of £20 to thank you for giving up your time.

Soon after the interview, I will write a report/transcript of what we have discussed and you will be able to read it. If there is anything you do not want to be included you can tell me and I will remove it.

Your name and the names of anyone you mention in your interview will be removed from the record of your interview and be replaced with other names so you will not be identifiable. Please note everything you say will be confidential, unless during our conversation I hear anything which makes me worried that someone might be in danger of harm. If I do, I might have to inform relevant agencies of this.

What will happen to the information you provide?

I will use the information you provide in the interview in writing my thesis. I might also use it to write articles or conference papers.

While I am using the information you have provided, it will be stored securely in locked cabinets or on secure computers. Once I have completed my research (in October 2022) all personal information will be destroyed.

With your permission, at the end of my research the transcript of your interview will be kept in secure storage for use in future academic research by other people, but your name, the names of people you mention in your interview and other identifying information will be changed. You do not have to agree to this.

This project has been considered and approved by the University of Glasgow College of Social Sciences Research Ethics Committee.

You can contact me at: k.alexander.1@research.gla.ac.uk.

You may also wish to contact my supervisors, Sarah Craig (sarah.craig@glasgow.ac.uk) and Rebecca Kay (rebecca.kay@glasgow.ac.uk).

If you would like to complain about me or about this research, you should contact the College of Social Sciences Ethics Officer, **Dr Muir Houston, email: Muir.Houston@glasgow.ac.uk**

_____End of Participant Information Sheet_____

Appendix 3: Information sheet for gatekeeper organisations

University of Glasgow
College of Social Sciences

PhD research study: Fathers and Immigration Detention
Researcher: Kate Alexander
Request for assistance

Introduction
I am a part time post-graduate student at the University of Glasgow. I also work part time for Scottish Detainee Visitors (SDV), an independent charity that provides support to people detained in Dungavel.

My PhD study involves talking to fathers who are in immigration detention or who have been detained and subsequently released and deported. I am interested in exploring:

- How do fathers understand the concepts of 'fatherhood' and 'fathering'?
- How does detention affect these understandings?
- How do fathers maintain and/or adapt their relationships with their children during their detention?
- How do fathers seek to rebuild their relationships with their children after they leave detention (either through removal or deportation or release into the community)?
- To what extent do fathers believe that their status as fathers affected Home Office decisions to detain them or maintain their detention.

I'm looking for your help in contacting fathers who are, or have been, detained who might be interested in taking part in the study. I will not be seeking to interview fathers who are currently in Dungavel.

What participation would involve for fathers
If fathers agree to be interviewed, I would arrange to do so either in person or by phone or skype. The interview will discuss their time in detention, their views on fatherhood, their family life and relationships with their children. With their permission, I will record the interview, which should take around an hour. Fathers who agree to take part do not have to answer any question they don't want to, and they can withdraw from the interview at any time.

After the interview, I will fully transcribe it, and share the transcript with the participant. If there is anything they are uncomfortable with including in my research, I will remove that from the transcript. I will ask participants to provide pseudonyms for themselves and anyone they mention in the interview and these will replace the names in the transcript so they are not identifiable.

I can provide a gift of £20 to thank fathers for agreeing to take part in the study.

Ethical approval
This project has been considered and approved by the University of Glasgow College of Social Sciences Research Ethics Committee.

You can contact me at: k.alexander.1@research.gla.ac.uk.

You may also wish to contact my supervisors, Sarah Craig (sarah.craig@glasgow.ac.uk) and Rebecca Kay (rebecca.kay@glasgow.ac.uk).

Appendix 4: Consent form for participants (fathers)

University of Glasgow

College of Social Sciences

Title of Project: **Fathers and immigration detention**

Name of Researcher: **Kate Alexander**

Names of supervisors: **Ms Sarah Craig, Professor Rebecca Kay.**

I confirm that I have read and understood the Participant Information Sheet for the above study and have had the opportunity to ask questions.

I understand that my participation is voluntary and that I am free to withdraw at any time, without giving any reason.

I consent / do not consent (delete as applicable) to interviews being audio-recorded.

I understand that I will be able to review the transcript of my interview and ask for any part of it or all of it to be removed from the research.

I acknowledge that:

- All participants will be referred to by pseudonym.
- All names and other material likely to identify individuals will be anonymised.
- The material will be treated as confidential and kept in secure storage at all times.
- The material may be used in future publications, both print and online

  I consent / do not consent (delete as applicable) to the material from my interview being retained in secure storage for use in future academic research

I agree to take part in this research study
I do not agree to take part in this research study Name of Participant ..... Date .....
Signature .....

Name of Researcher ..... Date .....

Signature .....

Date .....
Signature .....

Appendix 5: Topic guide for interviews with fathers

Tell me about your family

Probe for: where they live, how many children, do they all live with interviewee, if some/all don't, have they ever lived with him, relationship with mother (or mothers) of children etc.

Tell me about how you came to be in the UK

Probe for: migration history, country of origin, length of time in the UK etc. Also route of entry to UK – asylum/student/work/other etc.

Tell me about how you came to be in detention

Probe for: How long in detention? Where detained? How many times detained? Any legal representation? Any evidence of fatherhood being taken into account in decisions to detain?

What does being a father mean to you?

Probe for: Role of father in family? Thoughts about cultural differences? (I am interested in exploring through their responses their understandings of biological/social fatherhood)

How does/did being in detention affect your relationship/s with your child/ren?

Do/did children visit? If not why? If so, what was it like? Etc. Probe for the extent to which he is/was able to live up to his conception of fatherhood & any accommodations made.

Tell me about your relationship with your children since you've been out of detention.

Explore different periods outside of detention if he's been detained more than once. Different relationships with different children? Relationships with mother/s.

Appendix 6: Participant information sheet for interviews with professionals

University of Glasgow

College of Social Sciences

PhD research study: Fathers and Immigration Detention
Researcher: Kate Alexander
Information for participants (professionals).

Introduction
I am a part time post-graduate student at the University of Glasgow. I also work part time for Scottish Detainee Visitors (SDV), an independent charity that provides support to people detained in Dungavel.

My PhD study involves talking to fathers who are in immigration detention or who have been detained and subsequently released and deported. I am interested in finding out what being detained means for fathers, how it affects their relationships with their children, and what their relationships with their children are like once they are released.

In addition to interviewing fathers themselves I am also keen to interview professionals who work with men who are, or have been, detained by the immigration service.
Taking part in the study is entirely voluntary: it is up to you if you want to talk to me. It will not affect any relationship you have with SDV.

The interview
If you agree to take part, it will mean I will interview you about your work with people in detention and your experience of dealing with fathers who have been detained. This will take about an hour and no more than two hours. I will ask if I can record our discussion but you do not have to agree to this.

Soon after the interview, I will write a report/transcript of what we have discussed and send it to you. If there is anything you do not want to be included you can tell me and I will remove it.

Your name and the names of anyone you mention in your interview will be removed from the record of your interview and I will discuss with you how you wish to be described in any outputs from my research.

What will happen to the information you provide?

I will use the information you provide in the interview in writing my thesis. I might also use it to write articles or conference papers.

While I am using the information you have provided, it will be stored securely in locked cabinets or on secure computers. Once I have completed my research (in October 2022) all personal information will be destroyed.

With your permission, at the end of my research the transcript of your interview will be kept in secure storage for use in future academic research by other people, but your name, the names of people you mention in your interview and other identifying information will be changed. You do not have to agree to this.

This project has been considered and approved by the University of Glasgow College of Social Sciences Research Ethics Committee.

You can contact me at: k.alexander.1@research.gla.ac.uk.

You may also wish to contact my supervisors, Sarah Craig (sarah.craig@glasgow.ac.uk) and Rebecca Kay (rebecca.kay@glasgow.ac.uk).

If you would like to complain about me or about this research, you should contact the College of Social Sciences Ethics Officer, **Dr Muir Houston, email: Muir.Houston@glasgow.ac.uk**

Appendix 7: Consent form for participants (professionals)

University of Glasgow
College of Social Sciences

Title of Project: **Fathers and immigration detention**

Name of Researcher: **Kate Alexander**

Names of supervisors: **Ms Sarah Craig, Professor Rebecca Kay.**

I confirm that I have read and understood the Participant Information Sheet for the above study and have had the opportunity to ask questions.

I understand that my participation is voluntary and that I am free to withdraw at any time, without giving any reason.

I consent / do not consent (delete as applicable) to interviews being audio-recorded.

I understand that I will be able to review the transcript of my interview and ask for any part of it or all of it to be removed from the research.

I acknowledge that:

- All participants will be referred to by pseudonym.
- All names and other material likely to identify individuals will be anonymised.
- The material will be treated as confidential and kept in secure storage at all times.
- The material may be used in future publications, both print and online

I consent / do not consent (delete as applicable) to the material from my interview being retained in secure storage for use in future academic research

I agree to take part in this research study ☐

I do not agree to take part in this research study ☐

Name of Participant …… Signature ……..

Date ……

Signature …….. Date ……

Name of Researcher …… Signature ……..

Date ……

Appendix 8: Topic guide for interviews with professionals

Professional background and experience with people in detention, and specifically fathers.

Can you tell me about your work with people in detention?
(Possible prompts: how long have you worked in this field? What is the role/purpose of the organisation you work for? What is your role at work?)

Can you tell me about the people you work with?
(Possible prompts: Number of people per year? Demographic characteristics? How frequently do you work with detained fathers?)

Perceptions of the emotions experienced by detained fathers

What is the emotional impact of detention on fathers who experience it?
(Possible prompts: Are there both positive and negative emotions? Are there particular triggers for emotions?)

How do fathers in detention manage their emotions?
(Possible prompts: Sources of support in detention? Contact with family/children vs no contact?)

Understanding of the legal frameworks of relevance to fathers in detention

How involved are you in the legal cases of the people you work with?
What are the legal frameworks of relevance to fathers in detention?

Can you comment on specific legal issues faced by fathers in detention in contrast to men with no children?

What is the place of emotion in the legal cases of fathers in detention?

Perceptions of the legal consciousness experienced by people in detention, and specifically fathers.

How do the fathers you work with experience, understand and act in relation to the law?

(Possible prompts: do they understand the law as it pertains to them? Are they active in their legal cases? Do they feel in control? If so, how is the control exercised?)

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