



BLACK LIVES MATTER

The Palgrave Handbook of Racial Injustice and Resistance

Edited by

Thalia Anthony · Monish Bhatia
Kathryn Pillay · Jason M. Williams

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Palgrave Studies in Race, Ethnicity, Indigeneity and
Criminal Justice

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This pioneering series brings much-needed attention to minority, excluded, and marginalised perspectives in criminology, centred on the topic of 'race' and the racialization of crime and criminal justice systems. It draws on a range of theoretical approaches including critical race theory, critical criminology, postcolonial theory, intersectional approaches and Indigenous theory. The series seeks to challenge and broaden the current discourse, debates and discussions within contemporary criminology as a whole, including drawing on the voices of Indigenous people and those from the Global South which are often silenced in favour of dominant white discourses in Criminology.

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Kathryn Pillay · Jason M. Williams
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Acknowledgements

We acknowledge the ongoing struggles of First Nations people for emancipation from the racist, colonial and criminalising systems that burden their sovereignty, self-determination and survival. We also honour the global Black Lives Matter movement that resists racial violence inherent in law enforcement and calls for the abolition of racist penal systems.

Praise for *The Palgrave Handbook of Racial Injustice and Resistance*

“Bringing together key thinkers and writers from disciplines including legal studies, criminology, and sociology, this Handbook provides comprehensive analysis of racial justice across multiple contexts. By including research from the global south and the global north, it provides a wide-ranging and compelling overview of different forms of racism and racial injustice, showing how racial injustice is systemic, global, and embedded in modernity. The volume provides a timely critique of criminology as a discipline, implicating it in racialising crime while arguing for radical criminology approaches such as abolition. I strongly endorse it.”

—Karen Farquharson, *Professor of Sociology and Chair of the Anti-Racism Hallmark Research Initiative, University of Melbourne, Australia*

“*The Palgrave Handbook of Racial Injustice and Resistance* is a required reading for all who are wondering why the racialized harms caused by patriarchal imperialist power persist around the world and what is to be done about them. The editors assembled an excellent group of international contributors to examine the historically specific concrete conditions of genocide, conquest, slavery, colonization, white supremacy, and resistance that continue to pose threats to justice with hopes of liberation everywhere. The chapters in this Handbook enrich our understanding of the extent of the harms and the promise of decolonization and abolitionism as suitable tools for organizing resistance intellectually and practically against state-sponsored social harms. I endorse this book without hesitation.”

—Biko Agozino, *Professor of Sociology, Virginia Tech., USA*

“A timely collection of important writings on radical criminology rooted in abolition and decolonisation, this Handbook offers a much-needed map of racial injustice and resistance to it in a global context.”

—Avery F. Gordon, *Visiting Professor, Birkbeck School of Law, University of London, UK, and author of The Hawthorn Archives: Letters from the Utopian Margins*

“Brilliantly edited, *The Palgrave Handbook of Racial Injustice and Resistance* provides critical insight into how global racial injustice is written into local contexts, operating through a logic that reinforces and strengthens racial hierarchies across the world. It illuminates how racial injustice has been woven into local contexts through colonization, nation-building, immigration and policing. This Handbook is essential for anyone that wants to understand and challenge racial, criminal, and global injustice.”

—Heather Dalmage, *Professor of Sociology and Director of the Mansfield Institute of Social Justice, Roosevelt University*

"The Palgrave Handbook on Racial Injustice and Resistance is an important contribution to the scholarship and teaching of contemporary derogations that seem to be on the increase everywhere. What is very welcome is the range of contributions and contributors: they give it a genuine sense of an international community of thinkers in serious conversation."

—Ari Sitas, *Sociologist and Emeritus Professor University of Cape Town and Stellenbosch, South Africa*

"This cutting-edge collection challenges Eurocentric social scientific understandings of crime, law, and social control and stimulates new, much needed ways of thinking critically about these topics. It is an essential source of reference for both undergraduate and postgraduate students of criminology, deviance and social control, criminological theory, social policy, race and ethnic relations, and criminal justice."

—Walter S. DeKeseredy, *Anna Deane Carlson Endowed Chair of Social Sciences, Director of the Research Center on Violence, and Professor of Sociology, West Virginia University, USA*

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Monish Bhatia is an academic at the University of York, Sociology Department. He researches and teaches in the areas of race, migration and state violence. Monish has published several articles and book chapters and is the co-editor of numerous books and journal issues including (and to list a few) *Racism, Violence and Harm* (Palgrave, 2023), *Critical Engagements with Gender, Race and Class in Crimmigration Controls* (*Critical Criminology*, 2024), *Media, Crime and Racism* (Palgrave, 2018), *Migration and Racist State Violence* (*State Crime Journal*, 2022), *Critical Engagements with Borders, Racisms and State Violence* (*Critical Criminology*, 2020) and *Race, Mental*

Health and State Violence (*Race and Class*, 2021). In 2021, he received the best article award from the British Criminology Society's Hate Crime Network for the article *Permission to be Cruel: Street-Level Bureaucrats and Harms Against People Seeking Asylum* (published in *Critical Criminology*, 2020). Monish runs a successful international seminar series called *Race and Justice*, part of the Race Matters Network (British Criminology Society).

Kathryn Pillay is a sociologist at the University of KwaZulu-Natal (UKZN), South Africa. She is a National Research Foundation rated researcher whose teaching, research and publications focus on issues of “race”, migration, identity and more recently compassionate pedagogy and leadership. She holds an honours degree in Industrial Psychology, a Masters in Industrial, Organisational and Labour Studies, and a Ph.D. in Sociology from UKZN. In addition to her academic publications, Dr. Pillay is also co-author of a children's book based on her research, titled “*How to stop a train: The story of how Mohandas Gandhi became the Mahatma*” (Pan Macmillan, 2024), which addresses issues of social justice and inequality. Her book exemplifies her commitment to exploring complex social justice themes in accessible and engaging ways, fostering broader conversations on pressing societal issues. Over the years, she has been approached by both national and international media to provide commentary on issues of race, diversity, and inequality, among other related concerns.

Jason M. Williams (Dr.) is a Black radical scholar whose work confronts the deep roots of racial injustice in the global carceral system. As a Professor of Justice Studies at Montclair State University, Dr. Williams centres his research on the intersections of race, class, gender, and state violence, always prioritising the voices and experiences of Black communities. His scholarship is grounded in critical and abolitionist criminology, challenging the colonial foundations of mainstream justice systems and pushing for transformative change.

Dr. Williams is the editor and author of several influential books, including *Abolish Criminology and Over-Policing Black Bodies*, which have become essential texts for those committed to dismantling oppressive structures. His peer-reviewed articles and book chapters analyse the afterlives of incarceration, the trauma of re-entry, and the global legacies of colonial policing, offering new frameworks for understanding and resisting state violence. His research has been supported by major grants, such as the Open Society Foundations, to advance harm reduction and transformative justice initiatives in Black communities.

Dr. Williams's impact extends beyond academia. He has received numerous awards for both his research and service, including the Becky Tatum Excellence Award, the New Scholar Award from the American Society of Criminology, and the Michelle Mitchell Community Service Award. His leadership in community organisations, advisory boards, and restorative justice councils reflects his unwavering commitment to collective liberation. He regularly volunteers with re-entry programs, leads harm reduction efforts and mentors the next generation of Black scholars and activists.

Dr. Williams insists that justice cannot be achieved through reform alone. He calls for radical transformation of the systems that police and punish Black life, and his work stands as a testament to the power of Black radical thought to envision and create new possibilities for global liberation.

Contributors

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Darryl Barthé earned his BA and MA in History from the University of New Orleans, with a focus on Labor History and Public History. In 2010, he relocated to Brighton, UK, where he completed his Ph.D. in History at the University of Sussex and taught courses in American politics.

In 2016, he moved to the Netherlands, teaching in the History and Memory Studies departments at the University of Amsterdam and Leiden University from 2016 to 2018. While in Amsterdam, he co-founded *Over de Muur* (<https://overdemuur.org/>), a Dutch-language public history journal. He also worked as a consultant for the Dutch public broadcasting program *Andere Tijden* and contributed to the *Woorden Doen Ertoe* project at the Rijksmuseum.

Barthé is the author of *Becoming American in Creole New Orleans: 1896–1949*, which examines shifts in ethno-linguistic identity among Louisiana Creoles in the 20th century. He is also the co-editor of *Louisiana Creole Peoplehood: Afro-Indigeneity and Community*.

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Lisa N. Billington (Dr) is an early Career Researcher and Lecturer in the University of Technology Sydney Faculty of Law. Her research focuses on the colonality of prison systems globally, and on the imperative of Indigenous self-determination for Indigenous decarceration. Writing from a critical Anglo-Australian perspective, Lisa advocates for a reframing of the right of self-determination that centres the values and interests of Indigenous peoples, rather than the values and interests of colonial states, particularly at sites of colonial carceral control.

Jon Burnett is a Senior Lecturer in Criminology at the University of Hull. His research focuses on and interrogates carcerality, political economies of work and punishment, and state violence and state racism. He has previously worked at Positive Action for Refugees and Asylum Seekers (PAFRAS), Medical Justice and the Institute of Race Relations. He has been a witness at the Permanent Peoples' Tribunal on the Human Rights of Migrant and Refugee Peoples, and is a former co-editor of the journal *Justice, Power and Resistance*. In 2023, he was awarded an ISRF political economy fellowship, expanding on themes developed in his monograph *Work and the Carceral State* (2022).

Amanda Byer is Senior Researcher in the ERC-funded Property [In]Justice project, hosted by the School of Law, University College Dublin. Originally an environmental lawyer from the Caribbean, Amanda's current research interests explore the intersections between spatial justice, land, property, and

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Eddie Cubillo is an Aboriginal man with strong family links in both the urban and rural areas throughout the Northern Territory. He is a descendant of the Larrakia, Wadjigan, and Central Arrernte peoples. Eddie is a lawyer, admitted to the Supreme Court of the Northern Territory and is recognised nationally and internationally for his experience and expertise in Indigenous governance and justice service delivery to First Nations Peoples. Eddie was the Indigenous Education Associate Dean at Melbourne Law School, prior

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Robert J. Durán is an Associate Professor of Sociology at Texas A&M University. His areas of research concern racism in the post-civil rights era and community resistance, from gang evolution and border surveillance to disproportionate minority contact and officer involved shootings. He is the author of *Gang Life in Two Cities: An Insider's Journey* (2013), *The Gang Paradox: Inequalities and Miracles on the U.S.-Mexico Border* (2018), and currently finalising a book project tentatively titled *No Justice, No Peace: Police Shootings as Legalized Violence* with Oralia Loza. All three books have been, or will be, published by Columbia University Press. In life, he is a husband, father, grandfather, and proud Chicano with familial ancestral lines from Nuevo Mexico and Colorado before this region of the country was part of the United States.

Rod Earle is a Senior Lecturer at The Open University. Prior to becoming an academic, he worked in youth justice and as a printer. With Coretta Phillips, he completed ethnographic research into men's social relations and identities in prison with a particular focus on race and ethnicity. With Coretta Phillips and Alpa Parma, he organised *Race Matters: A New Dialogue between Criminology and Sociology* at the LSE in 2018.

Lambros Fatsis is a Senior Lecturer in Criminology at City, University of London specialising in the history of police racism and the criminalisation of Black/Afro-diasporic music(s) from the era of colonial slavery to the

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His research explores the governance and regulation of sex work, with a particular focus on the Welsh context. At present, he is interested in the malleability and symbolic power of concepts such as safeguarding and vulnerability, and how these are utilised as forms of social control.

Sam runs a reading group on prison abolitionism and is a co-director of the Centre for Social Change in the Department of Criminology, Sociology and Social Policy.

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and context to research findings. In addition to her academic work, Dr. Henson is also a podcast host and YouTuber. She hosts of the “What-sJust presents Critical Conversations” podcast that features interviews with scholars and experts on a variety of topics related to justice, inequality, and social change. The podcast is widely popular and has been praised for its engaging and thought-provoking content. In addition, Dr. Henson co-hosts a YouTube series called “Office Hours with Abbie and Juwan”, where she and her colleague Juwan Bennett have deep yet casual discussions on issues related to justice and transformation. Dr. Henson’s commitment to making academic research accessible to a wider audience through her podcast and YouTube series demonstrates her dedication to bridging the gap between academia and the public. She believes in the importance of disseminating research findings and engaging with the community to promote social change and justice.

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1

Introduction: Racial Injustice and the Global Crisis of State Violence

Thalia Anthony , Monish Bhatia, Kathryn Pillay ,
and Jason M. Williams

Racial injustice is not a local aberration or a historical footnote. It is a global, systemic crisis rooted in the very formation of the modern world. Across continents, societies are grappling with the enduring legacies of colonization, the relentless violence of the state, and the persistent inequalities produced and sustained by racism and classism. The twenty-first century, far from marking the end of these injustices, has seen their intensification under new guises and through new technologies of control. In this context, criminological inquiry, especially of a radical and global character, becomes not just

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important but imperative (Agozino, 2003; Cook et al., 2023; Saleh-Hanna et al., 2023; Smith, 2012; Williams & Battle, 2017).

Mainstream criminology, shaped by Eurocentric frameworks and often entangled with the interests of the state, has historically failed to confront the foundational violence of colonialism and the structural realities of racism and class domination (Cunneen & Tauri, 2019; Smith, 2012). Rather than interrogating the roots of harm, orthodox approaches have too often pathologized marginalized communities, reinforcing the very systems of oppression they purport to study (Davis, 2003; Gilmore, 2007). As Davis (2003) and Gilmore (2007) have argued, the carceral state is not simply a response to crime. It is a mechanism for managing and containing populations deemed threatening to the racial and economic order, a continuation of colonial and capitalist projects by other means. This argument is essential to understanding how the law has functioned historically as a tool of spatial and social control, not only through incarceration but also through land dispossession and the criminalization of non-capitalist relationships to the land. As Byer demonstrates in her chapter, legal frameworks in the Caribbean have systematically erased Afro-descendant and Afro-Indigenous communities' place-based identities, presenting their cultural and communal ties to the land as illegitimate or even criminal. In contrast, development models that prioritize extraction, commodification, and environmental degradation, all rooted in colonial logic, are legitimized and protected by the state as part of the larger racial-capitalist project, and those with deep historical, cultural and environmental ties to the land are viewed as 'property outsiders'.

Crucially, the discipline of criminology itself must be interrogated for its complicity in these processes. As *Abolish Criminology* demonstrates, the very concept of crime and the discipline's academic histories have been deeply implicated in racializing, gendering, and sexualizing violence, often limiting the possibilities for justice and reinforcing the logics of exclusion and control (Saleh-Hanna et al., 2023). The book challenges criminology's role in constructing crime as a colonizing concept, weaponized through state power and the criminal legal system, and calls for emancipation-driven visions and practices that move beyond the discipline's limiting frameworks.

Williams and Battle (2017) further expose how mainstream and neoliberal criminological discourses have failed to account for the deeply racialized history of punishment in the United States. They argue that the persistent and disproportionate punishment of Black bodies is not a natural outcome of crime rates or neutral policy, but the result of an institutional ideology of disproportionate Black punishment. This ideology, rooted in slavery and perpetuated through the carceral state, is hypermanifested in contemporary

society through neoliberal logics that obscure the centrality of race in punishment discourses. The result is a system in which the lived experiences of African Americans are marginalized, and the qualitative differences in how punishment is administered are erased in favor of colorblind, rational-choice frameworks. Their critique underscores the urgent need to challenge the dominant narratives that render racialized punishment invisible and to foreground the historical and ongoing realities of anti-Black state violence. In their chapter on neoliberal risk frameworks as a tool of law enforcement, Gordon and Webb argue that they ignore historical and neo-colonial inequalities with the effect of entrenching the oppression of Indigenous peoples. They assert that such frameworks cannot be reformed and instead efforts should be directed to ‘transforming society and social conditions that enable risk frameworks and logics to thrive’. Whereas, Lambros Fatsis’s chapter draws attention to the criminalization of race/blackness through music. It shows how UK drill music, a latest rap subgenre, has become targeted as risky and criminogenic. The chapter outlines the carceral logics and tactics that turn Black artistic expression into a criminal offence—arguing that the performative violence in drill exposes the actual violence with which it is suppressed. The chapter urges the reader to rethink the relationship with ‘the law’ and ‘justice’ as critical scholars and political actors.

The modern state, as theorists like Fanon (1963) and Mbembe (2003) remind us, is inseparable from its colonial origins. Colonialism is not a historical event but an ongoing structure that continues to shape the distribution of power, resources, and violence (Wolfe, 2006). The logics of settler colonialism, for example, are evident in the dispossession of Indigenous peoples, the criminalization of racialized bodies, and the deployment of police and prisons as tools of social control (Cunneen & Tauri, 2019; Wolfe, 2006). These logics are not confined to any one nation but are global in scope, replicated and adapted across diverse contexts. Billington’s chapter acknowledges the ‘colonial present’ in the hyperincarceration of Indigenous peoples in Kanaky (New Caladonia), Kalaallit Nunaat (Greenland) and Australia as indicative of a design across the colonized world. Given that the carceral state is wedded to this design, Billington remarks that the only option is abolition and Indigenous liberation. Anthony and Pillay’s chapter in this collection traces the colonial histories and contemporary class structures that are embedded in racialized policing in Australia and South Africa. Culminating in a case study on COVID-19 policing that targeted lower class racialized groups, especially Indigenous peoples, the chapter argues that an understanding of racial capitalism illuminates sense-making of policing and directs attention to the necessary structural transformation.

Racism, in this sense, is not merely a matter of individual prejudice but a structure of power, reproduced through law, policy, and everyday practice (Smith, 2012). It is intimately bound up with class exploitation, as the global spread of neoliberalism, marked by privatization, austerity, and market rationality, has exacerbated both racial and class inequalities, shifting the burdens of social crisis onto the most vulnerable (Harvey, 2005; Wacquant, 2009). The criminalization of poverty, migration, and dissent is a worldwide phenomenon, as states turn to punitive measures to manage the fallout of dispossession and exclusion (Wacquant, 2009). The very language of crime, as *Abolish Criminology* argues, has been weaponized and enforced through the criminal legal system, shaping the boundaries of what is considered violence and what responses are deemed legitimate (Saleh-Hanna et al., 2023). The chapter by Martins explores how the Brazilian state uses legal language (like legitimate-defense) not only as a legal justification for killing Black people but also as a political tool to manage and legitimize death. This violence is a continuation of colonial structures, deeply embedded in law and policy, and serves to maintain white supremacy and state control. The result is a system where Black lives are rendered 'killable', and police officers are often acquitted based on claims of fulfilling their legal duties, claims supported by legal discourse and institutional complicity. Similarly, Baker's chapter examines the structural relations that lead to people of color being disproportionately affected by police-caused deaths in England and Wales. The chapter deploys the framework of necropolitics and structural violence, and surveys injustices in the past and present and considers the role of colonialism and imperialism in perpetuating disproportionality.

Reformist interventions such as body cameras, diversity training, and community policing have repeatedly failed to stem the tide of police violence and mass incarceration (Alexander, 2010; Vitale, 2017). These failures are not accidental but symptomatic of a deeper refusal to confront the structural roots of racial injustice. In many cases, reforms have served to legitimize and entrench the very systems they claim to ameliorate (Vitale, 2017). The limitations of these reformist strategies have led many scholars and activists to call for a more fundamental transformation of the field itself, echoing the urgent demand to abolish criminology as it is currently constituted (Saleh-Hanna et al., 2023). The chapter by Hopkins identifies the inability of 'police regulation' across Canada, England, Wales, and Australia to curb racialized policing and ensuing harms. Hopkins contends that in place of police there needs to be community-based supports (housing, basic income, transformative dispute resolution). In Australia where racialized policing is heavily targeted at Indigenous peoples, Hopkins emphasizes the need for a Treaty

between governments and First Peoples in order to reckon with the injustices of law enforcement.

Within this context, radical criminological approaches rooted in abolition, decolonization, and intersectionality are not just desirable but necessary (Davis, 2003; Gilmore, 2007; Saleh-Hanna et al., 2023; Smith, 2012). These approaches center the voices and experiences of the oppressed, challenge the legitimacy of carceral and colonial institutions, and imagine new forms of justice beyond the state. The call to abolish criminology is not simply a theoretical provocation but a practical imperative, inviting us to dismantle the epistemological and institutional foundations that have long served the interests of power rather than justice. Abolishist criminology presents not only a critique of criminology's limitations but also emancipation-driven visions and practices for new world formations, drawing on the perspectives of scholars, activists, artists, and those directly impacted by the criminal legal system. In his chapter, Tauri argues that the decolonizing potential of Criminology is constantly undermined by attempts to bring it within the mainstream that upholds the 'violence of settler-colonial crime control'. Instead, he argues, the scholarly inquiry, in conjunction with Indigenous people on the ground, needs to be directed toward furthering Indigenous self-determination in opposition to the colonial state.

At the same time, the emergence of survivor criminology has begun to transform the field by centering the lived experiences of crime survivors and those most affected by violence and institutional oppression. Survivor Criminology offers a trauma-informed, anti-racist, and intersectional approach to the study of crime and justice, grounded in the belief that the discipline must expand its theoretical and methodological roots to account for the realities of trauma, survival, and hope (Cook et al., 2023). This work highlights the necessity of listening to the voices of survivors, whose experiences are shaped by racism, heterosexism, poverty, and other forms of institutionalized oppression. Survivor criminology is a radical act of hope, insisting that the discipline must be transformed by the insights and leadership of those who have experienced harm and who are committed to building new, healing-centered approaches to justice.

This handbook takes up the challenge of mapping the global architecture of racial injustice, bringing together a diverse array of critical perspectives and case studies. Readers will encounter analyses that traverse national borders and disciplinary boundaries, united by a commitment to exposing and challenging the structures that produce and sustain racialized harm.

The volume explores how racialized social control operates in societies marked by settler colonialism, such as the United States, where the experiences of Latinos, Black, Indigenous, and other minoritized groups are shaped by complex histories of exclusion, racist stereotypes, and state violence. The heterogeneity of these populations, across lines of region, language, and ancestry, complicates simplistic racial binaries and demands nuanced theories capable of accounting for the shifting modalities of oppression. The book highlights how the refusal to count or properly categorize certain groups has enabled the state to obscure disparities and perpetuate harm, particularly through the criminal justice system and immigration enforcement. It also underscores the importance of coalition-building among marginalized communities and their allies as a strategy for dismantling systemic racist ideologies.

A central theme running through the collection is the persistent failure of police reform. Despite decades of reformist efforts, police violence, especially against Black, Indigenous and other racialized peoples, remains endemic (Alexander, 2010; Vitale, 2017). The book interrogates the skepticism and backlash that have met calls to defund and abolish the police, urging readers to critically examine the fears and misconceptions that surround abolitionist thought. Rather than accepting the limits of reform, the contributions invite us to imagine what true safety and justice might look like in a world beyond policing.

The crisis of police accountability is examined not only in the United States, but also in other settler colonial contexts, such as Australia, England, Wales, and Canada. The book scrutinizes the effectiveness of various strategies to address racial profiling and systemic discrimination, ultimately arguing that only a radical reduction in the role of police and the creation of robust community alternatives can address the intergenerational harms of colonization, slavery, dispossession, and genocide (Cunneen & Tauri, 2019).

The global reach of racialized, religious, and gendered violence is another focus of the volume. Through comparative analysis, the book reveals how gendered violence against women and children is deeply rooted in colonial state functions, serving as a strategy for displacing, subordinating, and disconnecting colonized peoples across generations. Petcharamesree in her chapter builds on this theme by examining how state recognition and privileging of religion, especially in the context of Southeast Asia, can lead to racial injustice, social exclusion, and human rights violations. She argues that when states promote religious unity as part of national identity, they often treat racial and religious minorities as politically subversive or culturally incompatible, leading to extreme forms of religious intolerance and mob violence

against minority groups. On the other hand, Burnett and Hanks demonstrate the operation of racial gaslighting through the simultaneous rationalization and materialization of state power. Using a series of interrelated case studies relating to immigration control (for instance, the violent policy of relocation of asylum seekers to Rwanda), they show how state-led victimization is articulated as the state being victimized *by* those subject to immigration control. According to the authors, the core function of racial gaslighting is to turn reality on its head, and in doing normalizing and reproducing racialized and racist social relations.

State systems of justice, far from providing redress, have often been complicit in this violence, either through neglect or through the monopolization of justice itself. The book calls for a reimagining of justice that is contextually responsive, amorphous, and fluid, moving beyond the constraints of linear, procedural, and colonial models of justice.

The struggle for political transformation in the face of reactionary backlash is also explored. The volume analyzes the rise of anti-woke propaganda as a form of counter-resistance to anti-racism, class-consciousness, and political transformation. It examines how the semantic distortion of anti-racist language has pre-empted the possibility of a radical shift in the social contract, and how reactionary politics are mobilized to restore historic supremacist and patriarchal social orders. This analysis situates contemporary backlash within a longer history of resistance and counter-resistance, reminding us that the struggle for justice is always a contested terrain. This is demonstrated in Bhat-tacharyya's chapter on the colonial Indian judiciary. His contribution traces how racial distinctions were strategically embedded in the legal system to ensure imperial domination, and how resistance by Indians, through protest and demands for reform, challenged these exclusions over time. While some reforms were introduced, often in response to protest, they did little to disrupt the deeper structures of racial hierarchy, demonstrating that resistance, while powerful, is also constrained, leading to prolonged and recurring struggles that extend over time.

The complex relationships among marginalized communities are addressed as well, including the historical and contemporary connections between Black and Native American communities in the United States. The book interrogates both the obstacles and opportunities for political unity in the face of ongoing colonial violence, reframing police violence as an expression of the same genocidal imperative to erase colonized peoples (Wolfe, 2006). It explores the history of cooperation and conflict between these communities, revealing both the tragedies of collaboration with the settler state and the possibilities for solidarity rooted in shared experiences of oppression. The

chapter by Cubillo traces the role of education in oppressing First Nations people and reproducing colonizing knowledges among lawyers and criminologists. He seeks to 'break the silence' on experiences of racism by exposing how the law, the legal profession and law schools' are complicit in the colonizing role of the criminal law system, including First Nations deaths in custody.

The crisis of Indigenous hyperincarceration is examined as a defining feature of colonial carceral systems in countries such as Canada, Australia, Aotearoa New Zealand, and the United States. The book demonstrates how Indigenous incarceration is not an aberration but an integral part of the ongoing colonial project, with the prison serving as a tool for the subjugation, dispossession, and elimination of Indigenous peoples (Cunneen & Tauri, 2019). The contributions argue that only a fundamental rupture with the structures of colonial invasion, including the abolition of the prison, can make Indigenous decarceration a reality.

The ongoing assault on Gaza is situated within a framework of racialization and dehumanization, tracing the genealogy of settler colonialism and its genocidal imperatives. The book examines the refusal of the international community to recognize the genocide against Palestinians, and the deployment of racial logics that construct some groups as superior to others. It insists on the necessity of centering race as an analytic principle and challenges the denialism that pervades mainstream discourse. Lentin draws attention to the genocide of Palestinians and the criminal constructions that assist this murderous Zionist policy. She maintains that the 'Gaza genocide epitomises the racialisation of the Palestinians and their ongoing dehumanisation by the Zionist racial colony'.

The volume also includes reflections on the Uluru Statement from the Heart, a powerful call from Aboriginal and Torres Strait Islander communities in Australia for recognition, voice, and truth. The statement foregrounds the structural nature of racism, defined as prejudice plus power, and the systemic advantages enjoyed by the dominant culture. The crisis of Indigenous incarceration, the alienation of children from their families, and the powerlessness experienced by Aboriginal peoples are all traced to the entrenched systems of privilege that shape Australian society. The call for constitutional and structural reform resonates throughout the book, underscoring the need for deep, systemic change.

Finally, the book reflects on the growing schism between mainstream criminology and Indigenous scholars, particularly in Australasia. Despite efforts to decolonize the discipline, significant barriers remain, including the persistence of authoritarian research methodologies, exclusionary peer review

processes, and the failure to engage meaningfully with Indigenous communities (Cunneen & Porter, 2017; Deckert, 2016; Tauri, 2017). The call to decolonize criminology is thus both an intellectual and a political project, one that requires a fundamental rethinking of the discipline's purpose, methods, and alliances (Blagg & Anthony, 2019). In their chapter on Aboriginal deaths in custody at the hands of the Northern Territory Police in Australia, Newhouse and Razuki reflect on the lack of change despite repeated inquiries and apologies. They recount Aboriginal perspectives on the racism they have endured and the need for Aboriginal leadership and self-determination with respect to new pathways for justice.

Readers of this handbook can expect a collection that is both theoretically rigorous and grounded in lived experience. The chapters draw on a rich array of case studies, theoretical frameworks, and community perspectives to illuminate the structures of oppression and the possibilities for resistance. Cunneen's chapter considers the nature of resistance across the globe as attending to 'structural racism underpinning policing and its violent operationalisation'. Beyond a liberal interpretation of racism, activists embrace concepts of policing that come to terms with its colonial and imperial functionality. In addition, Chikane's chapter focuses attention on the strategies of resistance emerging from those positioned as 'non-ideal'. It proposes viewing decoloniality 'as an ongoing process beyond removing a colonial administration' in order to develop new kinds of resistance that deliberately avoids repeating the same patterns that sustain oppressive systems, and calls for decolonization as not just as a metaphor, but as actionable reform, anchored in the lived realities of marginalized groups. The book does not offer easy answers or simple solutions. Instead, it insists on the complexity of racial injustice and the necessity of radical, collective action.

This is a volume that refuses the comfort of neutrality. It is unapologetically left-leaning, committed to the project of liberation, and animated by the conviction that another world is possible. The contributors do not merely diagnose the crisis of racial injustice; they chart pathways toward justice, solidarity, and collective flourishing. In doing so, they invite readers to join in the urgent work of imagining and building a world free from the violence of racism, colonialism, and carceral control.

The struggle against racial injustice is a global one, demanding solidarity across borders and the courage to imagine alternatives to the status quo. As the chapters in this handbook demonstrate, the work of radical criminology is not only to expose the violence of the present but to chart pathways toward liberation, justice, and collective flourishing. This book is both a map and a

call to action, offering critical tools for understanding and transforming the global architecture of racial injustice.

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Part I

Explanatory Frameworks for Racism



2

Genocide Is Not a Metaphor: Reflections on Gaza and the Denial of the Crime of Genocide

Ronit Lentin

Introduction

The question to be asked is... how long are we going to deny that the cries of the people of Gaza... are directly connected to the policies of the Israeli government and not to the cries of the victims of Nazism? (Said, 1994, 34).

What we are experiencing here in Gaza is not a war, but a genocide... War is between countries that have militaries, weapons, and air forces. War is not waged against 2.3 million civilians who live in an area of 360 square km and have been under siege for more than seventeen years (Amer, 2023).

Even before 7 October, controlling water and electricity supply, food and health provision by Israel meant genocide. After 7 October, the term genocide became clear. It is not only murder, it is also the disproportionate destruction of schools, hospitals, cultural centres, food supply. This is a death economy. What are you damaging when you destroy streets and universities, hospitals and everything meaning life? (Nadera Shalhoub Kevorkian, in Hason 2024).

The Zionist entity responded to the October 7 2023 act of resistance by the Gaza-based Islamic Resistance Movement—*Harakat al-Muqawama al-Islamiya*, Hamas—by launching a massive air bombardment of the besieged Gaza enclave, followed by a ground offensive. At the time of writing, the

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Israeli attack has lasted more than 19 months, resulting in killing thousands of people, most of them uninvolved civilians including children and women, flattening most of the Gaza Strip and leaving some 80% of the population homeless. The unprecedented Zionist attack was termed genocide by Palestinians and their supporters, and by international bodies, including the UN Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, Francesca Albanese (2024). The genocide accusation was insistently denied by Zionists and their supporters across the political divide. The Gaza genocide continues the ongoing Zionist resolve to eliminate the Palestinian natives, in line with the racialisation and dehumanisation of the Palestinians by the Zionist movement that constructs European Jews as a superior race compared with the alleged inferiority of Palestinians as well as non-European and Arab Jews (Lentini, 2018).

A month into the Gaza genocide, cabinet minister Amichai Eliyahu called for dropping a nuclear bomb on Gaza, stating: “Gaza has to stop existing... (Gazans) cannot live on this earth,” later withdrawing his call and saying it was “metaphorical” (Lis, 2023). However, genocide, I argue, in the spirit of Eve Tuck and Wayne Yang’s article “Decolonization is not a metaphor” (2012), is not a metaphor. Genocide is a reality. As the world has been witnessing horrible images of death, hunger, and destruction, as Gazans have been struggling to stay alive amidst bombs, destruction, starvation, disease, and critical shortages of potable water, electricity, food, hospital care and basic necessities, and although the Zionist plan to demolish what remains of Gaza’s civilian infrastructure and concentrate the Palestinian population into a tiny area would amount to what Human Rights Watch called “an abhorrent escalation of its ongoing crimes against humanity, and acts of genocide,” and “inches closer to extermination,” (Human Rights Watch, 2025), Zionist commentators kept calling to “finish the job”, “flatten Gaza” and annihilate all its inhabitants with the aim of “defeating Hamas” (Hass, 2024).

On 29 December 2023, South Africa instituted legal proceedings against the Zionist entity in the International Court of Justice in The Hague for infringing the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip. The ICJ found a plausible risk of “irreparable prejudice” to the rights of Palestinians in Gaza, and ordered the Zionist entity to “take all measures within its power” to prevent genocidal acts, prevent and punish incitement to genocide, ensure urgent humanitarian aid, and “take all necessary and effective measures to ensure... the unhindered provision of ... all needed basic services and humanitarian assistance, including food, water, electricity, fuel, shelter, clothing, hygiene and sanitation requirements, as well as medical supplies and medical care to Palestinians throughout Gaza” (ICJ,

2024). Citing warnings about “catastrophic conditions” in Gaza, as early as January 26 2024, the court ordered the Zionist entity to “take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian aid,” which, though a member of the Court and a party to the 1948 Genocide Convention, it did not do (Reidy, 2024). In March 2024, having considered South Africa’s request for the application of additional measures based on the deterioration of conditions in Gaza, and in view of the setting in of famine, and the Zionist entity’s inadequate response, the ICJ issued another order. The court observed that since January 2024 “the catastrophic living conditions of the Palestinians in the Gaza Strip have deteriorated further,” and they are “no longer facing only a risk of famine... but that famine is setting in.” The ICJ further indicated that the provisional measures published in January 2024 “do not fully address the consequences arising from the changes in the situation,... thus justifying the modification of these measures” (Ochab, 2024).

In March 2024, UN Special Rapporteur Francesca Albanese published the “Anatomy of a Genocide” report that analyses the patterns of violence and the Zionist onslaught on Gaza, concluding that there are reasonable grounds to believe that the threshold indicating the commission of genocide is met: “One of the key findings is that Israel’s executive and military leadership and soldiers have intentionally distorted *jus in bello* principles, subverting their protective functions, in an attempt to legitimize genocidal violence against the Palestinian people. More broadly, the report also indicates that Israel’s actions have been driven by a genocidal logic integral to its settler-colonial project in Palestine, signalling a tragedy foretold” (Albanese, 2024).

Despite the ICJ’s indications and the UN Special Rapporteur’s explicit statement, and in view of the live-streamed Gaza genocide, the Zionist entity argued in its defence that its conduct complies with international humanitarian law (“IHL”). However, a key finding of Albanese’s report is that it has strategically invoked the IHL framework as “humanitarian camouflage” to legitimise its genocidal violence in Gaza (Albanese, 2024). Albanese demonstrates how the three central principles of International Humanitarian Law—distinction, proportionality, and precaution—have been subverted by the Zionist entity in an attempt to obfuscate its genocidal acts and to provide a legal veil for illegal, indiscriminate acts: “This has obscured one cardinal tenet of IHL, indiscriminate attacks, which do not distinguish military targets from protected persons and objects, cannot be proportionate and are always unlawful” (Ofir, 2024). Albanese further argues that the entity has “decivilianised” Gaza’s Palestinian people, a protected group under the Genocide Convention, by using “IHL terminology to justify its systematic use of lethal

violence against Palestinian civilians as a group and the extensive destruction of life-sustaining infrastructures. It has done this by deploying IHL concepts such as human shields, collateral damage, safe zones, evacuations and medical protection in such a permissive manner so as to gut these concepts of their normative content, subverting their protective purpose and ultimately eroding the distinction between civilians and combatants in its actions in Gaza (Albanese, 2024).

However, Zionist politicians, journalists, and academics and their supporters worldwide consistently refuse to admit that what they are perpetrating in Gaza is genocide, insisting that this is a “war against Hamas,” not against Gaza’s civilians, and that it is due to the colonising state’s “right to defend itself.” As this chapter demonstrates, many defenders of the Zionist genocidal assault on Gaza, intent on naming Hamas’s October 7 act of resistance a “crime against humanity,” identify as “left wing,” even though, as Muhammad Abd Al Kader argues, one cannot be both left wing and Zionist: “After October 7 the Zionist absurd attack against the international left is conducted by people for whom 57 years of suffocating occupation, and 76 years after Palestinians were expelled from their homes, are marginalised... Some Zionists who insist hollowly they are ‘against the occupation,’ meet poor Palestinians from time to time and express false empathy with them. They cannot see the irony of returning from the encounter to their homes, built on the ruins of these Palestinians’ houses” (Abd Al Kader, 2024).

This chapter does not deal with the legal implications of the criminal Zionist attack on Gaza or of using the term genocide to describe the attack. Rather, centring race as an analytic principle, and highlighting the two seemingly contradictory building blocks of the Zionist ideology—Jewish victimhood and European-white-Jewish supremacy—the chapter surveys the debates around calling the attack on Gaza geocide. The chapter also touches on the debates regarding the accusations levelled against Hamas of systematic rapes of Israeli women. My analysis of the discourses used to prove or disprove that what the Zionists are perpetrating in Gaza must be theorised as genocide, and to prove or disprove the veracity of the rape accusations reveals a deep chasm between supporters and deniers of the assault on Gaza as genocidal and leads me to argue that there will be no way back from this divide.

Before outlining the opposition to naming the assault of Gaza genocide and the insistence, usually by the same people, that Hamas perpetrated a systematic campaign of rapes, the chapter makes a few theoretical comments about the use of race as a key analytical concept and discusses genocide as

an apt descriptor of the assault. The chapter deals with allegations by Zionists and their supporters opposing the genocide argument and insisting on the use of rapes by Hamas to explore the two main building blocks of the Zionist ideology and practice—Jewish victimhood and white Jewish supremacy. The chapter is premised on the argument that refusing to accept the assault on Gaza as genocidal and framing the Hamas act of resistance as a terror attack occlude the broader context of the colonisation of Palestine, the occupation of Palestinian lands and the expulsion of Palestinian populations during the 1948 Nakba, and the racialisation of the Palestinians. In conclusion I reiterate my claim that although some scholars have theorised Gaza as a “global metaphor for reclaiming justice” (Loshitzky, 2023), genocide itself is not a metaphor.

Race

Zionism’s permanent war against the Palestinians has been theorised using frames such as apartheid, ethnocracy, ethnic cleansing, occupation, state of exception, settler colonialism, and state crime (Lentin, 2018, 7). Crucially, however, relatively little has been written about the Zionist colonisation of Palestine using the analytical frame of race, even though some of the approaches listed above—already outlined many years ago by Palestinian writers such as Faye Sayegh (1965) and Edward Said (1979) and often adopted enthusiastically by current academics and activists as if they were “new paradigms”—cannot be fully understood without putting race front and centre. Though a full discussion of the relevance of a race analysis to the colonisation of Palestine is beyond the scope of this chapter, I outline a few theoretical comments to consolidate my argument.

In *Traces of Racial Exception: Racializing Israeli Settler Colonialism* (Lentin, 2018), I argue that despite being initially conceived as a socialist, secular political movement allegedly aimed at liberating European Jews from Western antisemitism, Zionism, supported by biblical discourses of Jewish racial supremacy and by the concept of Jewish victimhood, is essentially a race-making ideology and practice. Nothing to do with biology, genetics or phenotype, race, as defined by Alana Lentin (2020, 5) is “a technology for the management of human difference, the main goal of which is the production, reproduction, and maintenance of white supremacy.” From the very beginning of the late nineteenth century Zionist settlement in Palestine, chosen above other possible locations in South America and Africa because of its purported ancient link to contemporary Jews but also, as Said (1979)

argues, because it was a backward region in a backward Eastern empire, Zionism was bound with race. As the Israeli geneticist Raphael Falk (2006, 78) shows, Zionism's founding ideologues such as Max Nordau (1895) and Arthur Ruppin (1919) explicitly conceptualised Jews as a race and Zionism as a eugenic project. Explicitly racial, Zionism—a European colonial project—aimed to “regenerate” diaspora Jewry by creating a racially superior “New Jew” who would “return” to what Jews have always been told was their “old-new” land in historic Palestine. Dialectically, Zionism constructed the non-Jewish native Palestinians, as well as Arab Jews, as racially inferior.

Zionism, and its later incarnation in the state of Israel, must therefore be theorised as a racial regime, which, according to the Black Studies scholar Cedric Robinson, is a social system “in which race is proposed as a justification for the relations of power. While necessarily articulated with accruals of power, the covering conceit of a racial regime is a makeshift patchwork masquerading as memory and the immutable” (Robinson, 2007, xii-xiii). According to the Australian anthropologist Patrick Wolfe (2016, 18), regimes of race entail race as a process, not an ontology, the upmost goal of which is white supremacy, and in Zionism's case white, European Jewish supremacy (Lentin, 2024). As witnessed in the Gaza genocide, part of the process of racialisation is dehumanisation, demonstrating the centrality of race and what the Black Studies scholar Alexander Weheliye (2014) calls “racialised assemblages” to the Zionist project.

The radical Black scholar Ruth Wilson Gilmore defines race as: “the ordinary means through which dehumanization achieves ideological normality, while, at the same time, the practice of dehumanizing people produces racial categories... This culture, in turn, is based on the modern secular state's dependence on classification, with militarism as a measure through which classification maintains coherence” (Gilmore, 2007, 233–4). Indeed, Zionist racial militarism—a key measure through which racial classifications are maintained—has been displayed at its most extreme during the Gaza genocide.

Genocide

In September 2006, just a year after the Israeli disengagement from Gaza, historian Ilan Pappé, wrote about what he termed “the Gaza genocide”: “A genocide is taking place in Gaza. This morning, 2 September, another three citizens of Gaza were killed and a whole family wounded in Beit Hanoun... before the end of the day many more will be massacred. An average of eight

Palestinian die daily in the Israeli attacks on the Strip. Most of them are children. Hundreds are maimed, wounded, and paralysed.” Pappé wrote about the “incremental genocide” Israel has been committing against the Palestinians ever since 1948 Plan D for the expulsion of the Palestinians that led to the Nakba and the expulsion of 750,000 Palestinians from their homes and the destruction and depopulation of some 530 Palestinian villages and urban neighbourhoods. He ended his article by making a plea that sounds all too familiar as I write, nineteen months after the onset of the Gaza genocide: “In the name of the Holocaust memory, let us hope the world will not allow the genocide of Gaza to continue” (Pappé, 2006).

Ten years later, in his masterful study of settler colonialism, Patrick Wolfe (2016) called the elimination of native societies, integral to settler colonialism, “structured genocide,” a term illustrating the concrete links between the removal of populations from their land and mass killings. However, Wolfe declined to equate settler colonialism with genocide because, deriving from the Greek term *genos*, genocide denotes a specific group membership, and he rather suggests that settler colonialism’s logic is larger than genocide (Wolfe, 2006). Nonetheless, precisely due to the derivation of genocide from the racial concept of *genos*, the discourse of genocide is being applied to the intent to eliminate the Palestinian natives, though until the onset of the Gaza genocide, most of those supporting the genocide claim relied primarily on the Convention on the Prevention of the Crime of Genocide, ignoring the racial component.

The Gaza genocide debate began just 6 days after the Hamas act of resistance and long before the extent of the killing of Gaza’s civilian population could be envisaged, when Holocaust historian Raz Segal (2023) argued that the Zionist entity’s lethal assault on Gaza is a “textbook case of genocide.” Segal’s article outlines the explicit Zionist intentions to displace the people of Gaza and expel them to Egypt, a plan made public in an Israeli Intelligence Ministry report published in late October 2023. The report stated that of the three possible options for “dealing with the Gaza Strip” after the Israeli Genocide Forces (IGF) occupies it, the third—expelling Gaza’s 2.3 million men, women, elderly and children to Egypt—was the “option most strategically positive and long term for the state of Israel” (Avraham, 2023). Outlining early statements by Zionist politicians, Segal cites Minister of Defence Yoav Gallant as declaring on 9 October: “We are imposing a complete siege on Gaza. No electricity, no food, no water, no fuel. Everything is closed. We are fighting human animals, and we will act accordingly” (*Al Jazeera*, 2023). Leaders in the West, from former US president Biden downwards, reinforced this racist rhetoric, Segal writes, “describing Hamas’s mass murder of Israeli

citizens... as an act of sheer evil... This dehumanizing language is clearly calculated to justify the wide scale destruction of Palestinian lives... eliding the distinction between Hamas militants and Gaza civilians, and occluding the broader context of colonization and occupation.”

Segal writes that Israel is guilty of three of the five acts that fall under the UN Genocide Convention: killing members of the group; causing serious bodily or mental harm to members of the group; and deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part (United Nations, 1948). Segal argues that as early as October 2023 not only politicians but also the Zionist media used genocidal terms calling to “erase” and “flatten” Gaza, and that the genocidal Zionist assault on Gaza reflected its explicit, open, and unashamed intention to destroy Palestinian lives in Gaza.

Segal’s claim was picked up in November 2023 by UN Human Rights Office Director Craig Mokhiber who resigned his job in protests that the UN is failing in its duty to prevent genocide of Palestinian civilians in Gaza, using Segal’s article title to call the Gaza attack “a text-book case of genocide.” Mokhiber added that the US, the UK and much of Europe were not only “refusing to meet their treaty obligations” under the Geneva Conventions but were also “arming Israel’s assault and providing political and diplomatic cover for it” (Pilkington, 2003).

Unlike Segal, Mokhiber and Albanese, among many other genocide scholars (including top Israeli Holocaust scholars Daniel Blatman & Amos Goldberg, 2025), and unlike Palestinians and the pro-Palestine protest movement, genocide scholar Dirk Moses refuted the genocide charge on legal counts, positing instead the concept of “permanent security.” Moses focused on the UNGC defining genocide only when the perpetrator intends to “destroy, in whole or in part, a national, ethnical, racial or religious group *as such*”—“as such” being key—and, “despite many assertions of Palestinian collective guilt by Israeli leaders, they also insist that the IDF targets Hamas as a security threat, and not Palestinians ‘as such’.” Moses further argued that:

The protest movement’s allegation of genocide can be understood as a symptom of the “utter failure of international law in responding to war crimes and crimes against humanity (including apartheid)” ... The claim also reflects the “truth” of the victim’s perspective. Since genocide is a synonym for the destruction of peoples, whether the killing and suppression of their culture is motivated by destruction “as such” or by deterrence, the experience is the same: a destructive attack on a people, and not just random civilians. But the UNGC does not reflect the victim’s perspective. It protects the perpetrators: states that seek permanent security (Moses, 2023).

Moses focuses on the linguistic definition of a targeted population “as such” in claiming that the assault on Gaza is not genocide, but, as his title suggests, “more than genocide.” Beyond academic debates and legal definitions, and against the Zionist entity’s argument that if it wanted to commit genocide it would have killed “all Gazans” (which it allegedly chose not to do for “humanitarian reasons”), stands the Hebrew word for genocide, *retzach am*, that translates as “the murder of a nation,” and as Moses argues, the Zionist entity describes its assault as a “war against Hamas,” not the people of Gaza, despite the huge cost in civilian lives. As early as 2003, the sociologist Zygmunt Bauman called genocide “categorical murder” (Bauman, 2003), as people are killed for belonging to a category, not a “nation.” While denying Palestinian nationhood, Zionist thinking constructs Jews, but not Palestinians, as a nation or a “people”, the validity of which has been debunked by scholars such as Israeli historian Shlomo Sand (2008).

Defining genocide entails intentionality and, as Segal shows, the intention to eliminate and deport Gaza’s population and to destroy the Strip has been clearly stated since the onset of the genocide. Indeed, in addition to Defence Minister Gallant’s “human animals” statement, Israel’s President Isaac Herzog expressed his support for the attack stating that “the entire nation is responsible. This rhetoric of “unaware, uninvolved (Gaza) civilians,” is not true. They could have resisted, they could have fought this evil regime that took over Gaza” (Lis, 2024). Herzog later signed his name on bombs intended to be dropped on the Strip (The Wire Staff, 2023). Agriculture Minister and former Mossad head Avi Dichter, speaking of the expulsion of the population of the northern Gaza Strip declared: “we are rolling out the Gaza Nakba 2023” (Hauser Tov, 2023). And as early as November 2023 retired IDF Major General and former head of Israel’s National Security Council Giora Eiland made explicit recommendations to starve Gaza’s civilian population, saying that “the way to win the war faster and at a lower cost to us requires a system collapse on the other side and not the mere killing of more Hamas fighters... severe epidemics in the south of the Gaza Strip will bring victory closer” (Eiland, 2023). Eiland’s suggestion became the “generals’ plan,” the consequences of which are continuing as I write: in May 2025 UN food experts were warning that starvation was looming for one in five people in Gaza (UN News, 2025).

In addition to the Intelligence Ministry report mentioned above, essentially a cold-blooded plan for a colossal crime against humanity, another report, published by the Zionist think tank, the Misgav Institute for National Security and Zionist Strategy, argued that the Hamas insurgency provided the state with a “unique and rare opportunity to evacuate the entire Gaza Strip”

(Schwartz, 2023). Four months after launching its attack the IGF started constructing a buffer “security” zone along the Gaza fence destroying all buildings within one kilometre, an act deemed by the UN High Commissioner for Human Rights “a possible war crime” (UN News, 2024). Meanwhile, right-wing Zionist ministers were joining gatherings calling for the construction of Jewish settlements in Gaza. While Prime Minister Netanyahu said the state did not intend to maintain a permanent presence in Gaza but rather “security control for an indefinite period” (*Al Jazeera*, 2024a), by April 2025, the Zionist entity was controlling 50% of the Gaza Strip (PBS News, 2025). Intentionality, then, has been explicitly established, despite the oft-repeated absurd claims, in the face of the high number of civilian casualties, that the Zionist entity is not targeting civilians in Gaza.

The Debate: Denial and Victimhood

Explicitly stated racist discourses and genocidal intentions to “flatten Gaza” and deport its population by Zionist politicians and generals have been amply documented in the South African ICJ case and in the report by the UN Special Rapporteur. Much more surprising, because less expected, was the rush by many Israeli human rights lawyers, journalists and academics and their Zionist supporters to justify the Gaza genocide and criticise anyone who did not join in condemning the Hamas insurgency as the “real crime against humanity.” As opposed to genocidal and revengeful pronouncements by right-wing Zionists, statements by people identified with the liberal Zionist left indicate the widespread support for the Zionist entity’s military aggression due, as claimed on social and mainstream media, to the shock caused by Hamas’s act of resistance. In what follows, I cite examples of statements by Zionists which depict what Palestinian author Susan Abdulhawa called already in 2015 Israel being “in the death throes of a racist dream” (Abdulhawa, 2015).

The Zionist human rights community did not position itself firmly in opposition to the Gaza genocide. In fact, only 4 or 5 months into the relentless assault, have Zionist protesters identifying as left leaning begun to protest against what they termed “the war.” Initially, the demonstrations focused on accusing the government and the IGF of not foreseeing the Hamas insurgency and of abandoning the Jewish settlements in the Gaza envelope (PBS, 2023). Later, the protests focused on the fate of citizens and soldiers kidnapped by Hamas, who, protesters insisted, were abandoned by a government indifferent to their remaining in Hamas captivity. Only much later did

demonstrations begin to protest “the war,” through the word “genocide” was rarely used, protesters preferring milder terms such as “ceasefire” or “peace” (Barrawy, 2024), leaving the entity’s human rights community out of step with the worldwide anti-genocide pro-Palestine rallies.

Early in November 2023, human rights lawyer Eitay Mack, a relentless campaigner against Israel’s international arms trade, echoed the Zionist propaganda machine when he wrote of “false claims that Israel is committing genocide.” Mack claimed that there is no evidence of intent as “civilians in Gaza were killed, not because Israel specifically targets them, but because of the extensive Hamas military infrastructures that are located nearby, inside civilian buildings and in the tunnels beneath them” (Mack, 2023). In response, Jonathan Ofir, Yonathan Shapira and Ofer Neiman wrote that Mack’s opinion piece is not a legal document, but rather a cherry-picked broadside against the fashionable bogeyman of “the global left” (Ofir et al., 2023), a recurring theme in Zionists’ denial of the Gaza genocide.

Another human rights lawyer, Michael Sfard, goes further, clothing his refusal to name the Zionist assault genocide in concern for the human rights of occupied Palestinians. Sfard aligned himself with a joint statement by several Israeli human rights organisations that focuses on “Hamas’ horrific crimes against innocent civilians—including children, women, and the elderly” that “have shaken us all,” and does not mention genocide yet calls for humanitarian aid, medical facilities and places of refuge for Gaza’s civilian populations (Gisha, 2023). Echoing common tropes of Zionist vulnerability in the face of Palestinian acts of insurgency against the Zionist colonisation of Palestine, Sfard writes “it’s not easy for Israelis to think about Gazans’ rights in a week when Hamas committed crimes that are still impossible to digest and our whole society is mourning and crying. But Gaza’s catastrophe won’t wait for the end of our *shiva* (Jewish mourning period)” (Sfard, 2023).

As apparent from Sfard’s argument, a central aspect of Zionist left-wing post-October 7 discourses has been the consistent refusal to contextualise Hamas resistance in the Zionist colonisation of Palestine. One of the most blatant exponents of this refusal is Haifa University emerita professor of history, daughter of the late liberal Zionist author Amos Oz, Fania Oz Salzberger. In a CNN interview Oz Salzberger (2024) expressed the dual logic of Jewish victimhood and colonial aggression, saying it is difficult for the Zionist entity to conduct the Gaza war in the face of the “terrible cost in human suffering,” and admitting that the IGF failed to protect the lives of Palestinian civilians, and at the same time insisting that the “war against Hamas” was not only necessary but also “morally right.” Perhaps the most disturbing part of Oz Salzberger’s victimhood discourse was her insistence

that the Zionist “we” are “a battered nation... shocked, humiliated... terribly saddened, terribly scared... and we suffer an ongoing sense of tragic loss... we are truly victimised, hurt, injured.” Reiterating her father’s vision of the debunked “two states solution,” and his insistence that the “one state solution is a fantasy,” Oz Salzberger chooses to totally disregard the Zionist colonisation of Palestine, the 1948 Nakba, the 1967 occupation, the ongoing land theft and the racialisation of the Palestinians, stressing Jewish victimhood instead.

The constant refrain expressed by journalists writing in the liberal Zionist daily *Haaretz* is lambasting what they call “deranged leftists” throughout the world, who, in seeking to contextualise the Hamas insurgency, justify it as a legitimate Palestinian act of resistance, and “sickeningly” present Hamas’s Zionist victims as “part of the oppressive Zionist rule over the Palestinian Natives” (e.g., La’al, 2023). *Haaretz* journalist, Ofer Aderet, in an article titled “Intellectuals without empathy”, criticises Raz Segal’s article on the Gaza genocide, arguing that Segal “does not write history but rather uses his tenured job to further a political agenda... joining other Israeli and former Israeli intellectuals whose behaviour will be judged by history.” Seeking to discredit Segal’s academic credentials, Aderet questions what Segal’s Holocaust and Genocide Studies students are studying because, he claims, Segal does not teach them morality: “Anyone who argues that Israel commits genocide against the Palestinians, when almost all the civilised world’s leaders are convinced that it was Hamas that committed genocide against the Israelis, must examine their motives... and ask themselves whether they have not lost their way” (Aderet, 2023).

When it comes to self-declared left-leaning Zionist academics, the criticism of what they claim “lazy left intellectuals” are doing seems more sophisticated but much fiercer. Well beyond Oz Salzberger’s victimisation rhetoric, Israeli Sociology professor Eva Illouz (2023) attacks lefty intellectuals such as Slavoj Žižek (2024) and Judith Butler, who called the Hamas attack “an act of armed resistance” (Bherer, 2024), for “failing both morally and intellectually” in insisting on contextualising the Hamas attack in the Zionist colonisation of Palestine. First, Illouz argues sanctimoniously, contextualisation actually damages the fight against the Zionist occupation. Second, it assumes that all perpetrators—in this instance Hamas as well as the Zionist entity—are the same, an equation Illouz regards as “lazy” and ill-informed. Third, contextualising the Hamas act and accusing Israel of genocide in Gaza assumes that the only relevant narrative is that of the colonisation of Palestine. Instead, Illouz proposes absurdly that the colonial context be suspended. Finally, Illouz argues that it was Europe’s murderous antisemitism that makes

Zionism different to all other forms of settler colonialism, an argument rejected by most scholars of settler colonialism in Palestine and elsewhere (e.g. Lentin, 2018; Wolfe, 2016).

Ironically, despite being a vocal advocate for the Zionist entity's "right to defend itself" in the wake of 7 October, the Minister for Education disqualified Eva Illouz from receiving the Israel Prize, the country's highest cultural and academic award, because in 2001 she had signed a petition to the International Court of Justice in the Hague (Dodman, 2025). Ironically too, several of the people listed above who rejected the genocide tag soon after the Hamas act, changed their minds publicly as the Zionist policies of genocide and starvation intensified and were becoming increasingly untenable (see e.g. Sfar, 2025).

It is beyond the scope of this chapter to deal with the ongoing Gaza genocide debate. However, beyond political, media and academic discourses, and due to the fact that most Israelis are not exposed to the media images of death, starvation and destruction in the Gaza Strip, the Zionist *hasbara* machine seems to have succeeded in persuading most Jewish citizens that the lies told about the number of Hamas's victims and what was done to them—including the murder and beheading of babies and the systematic rapes of Jewish women—mostly total exaggerations as documented in *Al Jazeera's* documentary "October 7" (2024)—are factually true. This is evidenced by the repetitions of these lies by mainstream and social media commentators ever since October 7 2023. In the next section, I deal briefly with what has become known as the rapes debate.

Rapes: Claims and Counter Claims

Probably, the most contentious claim by Zionists and their supporters after October 7 is the accusation of Hamas of a systematic campaign of raping Israeli Jewish women. The alleged rapes seem to epitomise the Hamas act with new information being published almost every week, with Zionists using gut-wrenching details to convince the world of the alleged atrocities committed and discredit political opponents (Rosowsky, 2024). Feminists the world over were divided between those who believed the Hamas rape allegations without question and those who cast doubt and were castigated by Zionists for "following critical race theory" and being biased against Jews and Jewish women. The right-wing daily *Israel Hayom* was trenchant in its criticism of western radical feminists, who, while supposedly opposing

“gender-based violence,” remained silent in the face of the abuse of Jewish women (Haug, 2024).

My task here is not to establish whether rapes of Israeli women were perpetrated by Hamas but rather to outline the debate and its racist implications with the aim of exposing what Sophie Lewis (2024) calls the “femonationalist” gambit, or “the tried-and-true mechanism whereby western feminists are morally browbeaten into supporting an imperial cause... via heavy reference to oriental patriarchy.” Femonationalism, Lewis writes, defines the “civilisational” affect of whipped up ... military campaigns of collective punishment that *require* Islamophobic dehumanisation of the “barbarians” and which actively benefit from sowing doubt and hesitation among the allies of the colonised.

In February 2024, a report published by The Association of Rape Crisis Centres in Israel (Ministry of Foreign Affairs, 2024) stated it found evidence of “systematic and intentional” rape and sexual abuse during the Hamas incursion, claiming that “in some cases rape was conducted in front of partners, family or friends, to increase the pain and humiliation for all present,” and that the bodies of male and female rape victims were mutilated by Hamas operatives. The report, however, did not identify the victims or specify their number, nor did the first responders document any signs of sexual abuse (*The Guardian*, 2024). The rape accusation against Hamas were published in many media outlets including *The New York Times* which published its first “Hamas rape report” on December 28 2023, and updated it on March 25 2024, albeit noting that the ultra-orthodox *Zaka* first respondent volunteers failed to collect evidence and that the Israeli police had “zero evidence” of sexual abuse (Gentleman et al., 2023–4). In its detailed investigation into the events of the October 7 events *Al Jazeera* states conclusively that while rapes may have occurred, there is no visual or forensic evidence that “widespread and systematic” rapes were perpetrated by Hamas. Lisa Rosowsky (2024), while stating in *Haaretz* that there were cases of rapes and sexual assault, writes that despite the extensive police investigations, it is impossible to paint a complete picture.

Accusing Palestinian men of sexually assaulting Jewish women is an essential part not only of the Zionist rape culture but also of the desire to maintain the purity of the Jewish race (Lentin, 2025). In July 2023, the Israel parliament, the Knesset, passed an amendment to the Hate Crimes Law doubling the punishment for “nationally motivated” sexual harassment offences. According to Israeli legal scholar Orit Kamir (2023) this is a racist amendment, serving the Zionist view of women as sex objects symbolising the national honour and warning “other” men against sullyng it.

Debunking the Zionist claims regarding Hamas rapes, *Electronic Intifada* editor Ali Abunimah (2023) argued that this deceptive campaign is based not on evidence but on “emotional manipulation, outlandish claims, distortion, and an appeal to racist notions that Palestinians are inherently violent and cruel.” Abunimah reminds us that this continues the long history of colonisers portraying colonised and enslaved men as savage brutes predisposed to sexual violence against white settler women, and that the rape of white women by black men was considered by colonisers as the “most terrible crime.”

While some argue that the rape accusations serve as the engine of the Gaza genocide, Palestinians have alleged sexual violence against Palestinian women and girls while being detained in Israeli jails during the Gaza genocide (*The Conversation*, 2024). Sexual violence serves to dehumanise the civilian populations, humiliates victims and creates fear in local communities where it is committed as established by Palestinian scholars researching rapes during and after the Nakba (e.g., Abdo, 2014; Nusair, 2010). I maintain that concentrating on the rape allegations emanates from the Zionist rape culture and the racialisation of Palestinian men as sexual predators. Furthermore, regarding racialised Palestinian but also non-European Jewish men as sexual aggressors consolidates white European-Ashkenazi Jewish supremacy (Lentin, 2025).

Despite the fact that Although by January 2025 no October 7 rape victims could be identified by Israeli prosecutors and no trials have taken place (Abunimah, 2025), the Zionist entity has continued to deliberately allege accusations of widespread and systematic rapes in order to justify its genocidal attack of Gaza of which most sufferers have been women. Consequently, many Zionists continue to repeat unsubstantiated reports about “beheaded babies” and raped women.

Though some rapes may have been committed on October 7, Israeli Holocaust and genocide scholar Amos Goldberg writes that despite denials by Zionists and their supporters, and despite the fact that in most cases of genocide, from Bosnia to Namibia, from Rwanda to Armenia, the perpetrators claimed they were motivated by self-defence; “the fact that what is occurring in Gaza does not resemble the Shoah,” he argues, “does not mean that it is not genocide” (Goldberg, 2024).

Beyond metaphors: Genocide, Jewish Victimhood and White Jewish Supremacy

Anti-Zionist Israeli professor Yosepha Loshitzky (2023) describes Gaza as a metaphor for a prison, a ghetto, a refugee camp, a state of exception in the Agambenian sense (2005), and an experimental laboratory for exercising total control and a testing ground and showcase for the Israeli arms trade (e.g., Loewenstein, 2023). “Gaza as a metaphor,” she writes, “introduces the true face of the ‘clash of civilisations,’ the battle of the civilised West against the dark and barbarian forces incarnated according to the moral discourse of the ‘free world’ by asylum seekers, refugees, and the poor, the ‘criminals’ and the ‘terrorists’ in the post 9/11 planet. Gaza as a metaphor transcends the local specificity of the so-called Israeli-Palestinian conflict and becomes relevant to a broad matrix of glocal struggles for justice.”

It may well be alluring to consider the Gaza Strip, one of the world’s most densely populated regions, with a space of 365 square kilometres housing over two million Palestinians, 70% of whom are refugees or their descendants, and half of whom are under the age of eighteen, as a metaphor. I know that Loshitzky would not wish to abandon the Gazans to the metaphorical realm and would not consider the Gaza genocide as a metaphor. Writing before 7 October, Loshitzky spoke of the dehumanisation of the people of Gaza, and the deliberate cruelty expressed not merely by politicians, generals, journalists and influencers, some cited above, but also by members of the racist and Islamophobic Zionist public, which, oblivious to the privilege of the coloniser, has been calling for the actual extermination of all Gazans.

At the same time, while IGF soldiers post photographs and videos of themselves bombing and killing Palestinians, looting Palestinian homes, including Palestinian women’s underwear, and while the Zionist public brays for the “war” to continue until a “total Hamas defeat,” the parallel discourses of Jewish victimhood and post October 7 bewilderment and anger against the inadequate response by the Netanyahu-led government on the one hand, and of white Jewish supremacy on the other, leave no room for them to accept the accusation of genocide.

Evincing white Jewish supremacy, insisting they are the real victims of “Islamic terrorism,” and refusing to contextualise the Hamas act in the colonisation of Palestine, some Zionists have already laid plans to construct “the new Gaza” (see e.g., Louis Theroux’s “The Settlers”, BBC, 2025). The government’s refusal to end the genocide and broker a deal to return the people kidnapped by Hamas in return for freeing Palestinian prisoners from Israeli jails is, I propose, its way of persuading the world that it is the Zionist

entity—despite being a colonising power—that is the real victim in the so-called “Israeli-Palestinian conflict.”

Jewish victimhood and white European-Jewish racial supremacy, I further propose, motivate the Zionist refusal to abide by international law and UN conventions. The implications of this adamant refusal, ongoing since Israel’s first Prime Minister David Ben Gurion famously stated in 1955 that “Our future depends not on what the gentiles will say, but on what the Jews will do” (Jewish Virtual Library, n. d.), go beyond the Gaza genocide. On the eve of the Jewish Passover 2024, the 200th day of the Gaza genocide, Yoav Gallant, the same Defence Minister who described all Gazans as “human animals,” supported the IGF ultra-orthodox *Nezach Yehudah* battalion, threatened with unprecedented US boycott due to infringing the human rights of Palestinian civilians in the occupied West Bank, saying that “no one will teach us about morality” (Kubovich, 2024). Not a metaphor, then, the Gaza genocide epitomises the racialisation of the Palestinians and their ongoing dehumanisation by the Zionist racial colony. And when the dust settles, the chasm between those who admit the genocide and Zionists who refuse to admit it will be impossible to close.

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3

Problems of Whiteness and the Criminological Imagination

Rod Earle , Alpa Parmar, and Coretta Phillips

'Self-deception' does not do justice to the ways we each find to turn away
'Duress: Imperial Durabilities in our Times', Ann Lauren Stoler p.13
It is the innocence which constitutes the crime.
The Fire Next Time, James Baldwin, p.14

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Introduction

This chapter is based on the premise that both mainstream and critical criminology in the UK have a whiteness problem. It suggests that among other strategies for developing robust, critical currents of anti-racism in criminological work, naming the “the whiteness problem” might enlarge a vocabulary that unsettles its prevailing perspectives. Criminology is far from a unitary or singular entity. It remains a vibrant rendezvous of disciplines around which are gathered an increasing number of self-declared sub-criminologies (Bosworth and Hoyle, 2012). In this chapter I argue that establishing whiteness as a legitimate object of critical inquiry and as an appropriate heuristic is potentially a way of reframing the field’s underdeveloped relationship with race scholarship and refocussing its priorities (Earle, 2017; Phillips et al., 2020).

In focussing on aspects of whiteness there is a risk of reifying the basic concept of race rather than questioning it. It can imply acceptance of crude racial binaries based on skin colour rather than an engagement with the complex psychosocial structures of white supremacy (Smith, 2016; Ware, 2002). The dangers of this emphasis on whiteness, particularly for middle class white scholars, lie in re-centring white experiences and encouraging only solipsistic identarian reflection about what “good white people” (Sullivan, 2014) should or could be doing. Given how central the cultivation of both hatred and virtue was to the establishment of the white bourgeoisie in Europe throughout the nineteenth and early twentieth century (Gay, 1994), avoiding self-serving projection and displacement onto the perceived flaws of poor or working-class whites is crucial. Part of my intention is to develop fresh theoretical perspectives which do not depend so heavily on critical appreciation of “Black experience” or “what it means to be Black”. However, the kinds of theorisation of race that currently prevail in criminology are about as useful as theories of gender with no conceptualisation of masculinity and the work here on whiteness aspires to be a contribution addressing that conceptual shortcoming.

Whiteness is about skin colour but it is definitely not just about skin colour. It is better understood as a shifting position, a “floating signifier” as Stuart Hall (1997) argues, in a set of social relations established by colonialism. This recurring and relational positionality comes to mind in the UK where terms such as White Irish or Anglo-Irish have varying connotations of whiteness, coloniality, resistance, and privilege; i.e. various kinds of alignments with white supremacy. Whiteness in other countries and continents will have other variants and combinations that are increasingly coming

under critical scrutiny in ways that suggest potentially important shifts in the politics of race and antiracism. Ivan Kalmar (2022), for instance, examines how the illiberal political projects emerging in various Central European states, both exemplify and problematise these racial dynamics. Hans Kundnani (2023) identifies an expansive but diverse Euro-Whiteness that is consolidating the disparate and diverse colonial ambitions of the main West European states into the European Union. Rachel Shabi's (2024) *Off-White: The Truth About Antisemitism* and Pankaj Mishra's (2025) *The World After Gaza: A History* both examine how the distinctive features of antisemitism intersect with Palestinian struggles against colonialism and European racial legacies in Israel. Thus, whiteness is neither an epidermal fact nor a racial fact indicating fixed physical characteristics. Whiteness is about the way the accumulated cultural capital of certain "modern", "civilised" people, usually associated with some kind of European heritage, operates with a distinctive social dividend, sometimes referred to as "white privilege" and a specific form of blindness to its own conditions of existence: white ignorance (Mills, 2023).

Occlusion and Avoidance

In this chapter, prompted and encouraged by working with Coretta Phillips and Alpa Parmar, I try to engage with and critically examine aspects of whiteness as a definite but frequently unmarked "player" that fosters a persistent "turning away" from the racial frame among criminologist and in criminology. Sometimes this involves seeking other plausible explanations for recurring inequalities and life-limiting depredations, but this also frequently slides into complicity and evasion in which race/racism rapidly disappears and whiteness remains invisible. Working alongside racialised and minoritised scholars has shown me how "turning away" from race takes various forms of deflection, denial, disavowal, and occlusion. Each of these operate differently in different circumstances and need to be resisted in different ways. Occlusion, for example, implies an element of deliberate blockage covering or hiding something so that it remains out of sight. Stoler's (2016:10) account indicates the difficulties of these differences and how much must be done to overcome the occlusion:

that which occludes and that which is occluded have different sources, sites of intractability, forms of appearance and temporal effects. They derive from geopolitical locations as much as they do conceptual grammars that render different objects observable.

Science fiction technologies sometimes reference powerful “cloaking devices” that render objects completely invisible or untraceable, and occlusion operates in a similar fashion (Makdisi, 2022). The object disappears and is as invisible as the mechanism that rendered it invisible. Both must remain so for the occluding effect to be achieved. In the case of racism, the denial of denial so central to whiteness achieves this double disappearance. Part of the intention of focussing on whiteness is to disrupt the cloaking process by exposing the mechanism.

The political and theoretical implications of recognising race “as both a public structure and a psychic, personal experience” (hooks & Hall, 2018:21) are a constant challenge in which Black communities and individuals not only take a leading role but who also bear the heaviest consequences of failure. I begin with an example.

Misspeaking Race: Diane Abbott

In April 2023 as the original prospective authors of this chapter (Coretta Phillips, Alpa Parmar & myself) considered the editors’ invitation to contribute to this collection, the political career of the Labour MP Diane Abbott, a former Shadow Home Secretary and the first Black woman elected to the UK parliament, was almost ended after a letter she had been working on was mistakenly published in the Observer newspaper. The letter suggested that although some white people may experience prejudice, they did not experience racism: “It is true that many types of white people with points of difference, such as redheads, can experience this prejudice. But they are not all their lives subject to racism. In pre-civil rights America, Irish people, Jewish people and Travellers were not required to sit at the back of the bus. In apartheid South Africa, these groups were allowed to vote” (Abbott, 2023).

Abbott insists her published letter was a draft not intended for publication and was a work-in-progress sent in error to the newspaper, that work being her response to an earlier article by Tomiwa Owolade exploring the complications of racism and the varieties of experience associated with its different forms in the UK (Owolade, 2023). Notwithstanding Abbott’s immediate retraction of the letter and expressions of regret that it had inadvertently implied an equivalence between the experiences of white people with “ginger” coloured hair and the exterminatory persecution of Jews, she was vilified for re-opening the Labour Party’s carefully buried controversy over antisemitism and anti-Zionism (Gidley et al., 2020). Her intervention was seized upon by the new leadership of the Labour Party to consolidate its attacks on

radical sections of the party and silence their resistance to its political project (Eagleton, 2022). By drawing attention to an axis of segregationist racism that oscillates between the two national entities of the USA and South Africa, Abbot inferred intimate connections to wider global antagonisms structured by racial prejudice. These connections are anchored in Europe, Germany in particular as the site of the Holocaust, and Israel as a state established to atone for it.

Deciding what race is and is not, its fundamental elusiveness and undecidability, has always been central to racism. Abbot's letter struggled for coherence and clarity around the characteristic difficulties of racism encountered by Black people in which intensely personal experience must be made to directly correspond with global and historical racial issues and remain at all times coherent, or risk being dismissed, ignored or, not uncommonly, ridiculed. And when or if an account falls short, the repercussions kick in fast, as if feeling race in the ways described by hooks and Hall (2018:21) "as both a public structure and a psychic, personal experience" is simple and straightforward. It involves effort white people almost never have to expend and often avoid. One of the most basic impacts of racism identified by the figures from Toni Morrison (1993) in the USA to Eddo-Lodge (2018) in the UK is that haunting, energy sapping, soul destroying, self-doubt it engenders.

Just six months after Diane Abbott's letter was published and she was suspended from the Labour Party, both antisemitism and anti-Zionism were propelled onto the global stage after the attack by Hamas and other militant Palestinian groups on Israeli citizens on October 7th 2023. Over 1200 people were killed in the attack, of which 816 were Israeli civilians, including 36 children, while the remainder were Israeli military, police or emergency service workers (AOAV, 2023). A further 251 hostages, mostly Israelis, were abducted and taken back into the militarily enclosed Gaza strip by Hamas militia. By the end of December 2023, the subsequent bombardment and occupation of Gaza by the Israeli army had killed more than 23,000 civilians. Nearly a year later, in September 2024, 97 of the hostages remained unaccounted for, with 117 returned alive to Israel, while the death toll in Gaza had risen to over 41,000 with 95,000 injured. International demands for a ceasefire were persistently rejected by the Israeli government while its military bombardment of Gaza and logistic support have been consistently underwritten by the USA and the most powerful European states.

In January 2024 South Africa raised a case against Israel at the UN International Court of Justice (ICJ) to answer charges of genocide against the Palestinian people of Gaza. White Israeli politicians, led by Prime Minister Benjamin Netanyahu, reacted with outrage. How, they asked, could a state

founded as a haven for the victims of genocidal racism, now be accused of committing the very crime established by that experience—the cardinal crime against humanity: genocide? In November 2024 the UN-backed International Criminal Court (ICC) issued arrest warrants for Netanyahu, his former defence minister, Yoav Gallant, and the former, presumed dead, Hamas commander Mohammed Deif. The judges at the ICC indicated there were reasonable grounds to suspect Netanyahu and Gallant were co-perpetrators of the war crime of starvation as a method of warfare and crimes against humanity.

Some liberal commentators asked how South Africa, the state that emerged in 1990 from the victory over institutionalised racism in Africa, could find itself challenging Israel, the state the European colonial powers established to atone for the holocaust, the twentieth century's ultimate act of systematised racial violence (Mishra, 2024)? Surely, they implied, both being victims of the harshest systemic racism would prompt alliance rather than opposition. Liberals appeared surprised that significant political figures from across Africa, Asia, and the Arab world, were taking to the international stage at the International Criminal Court (ICC) in the Hague, and elsewhere, to denounce Israel's actions in Gaza as colonial violence rather than self-defence.

Outside of England's white echo-chamber politics, the answer to South Africa's leading role are relatively easily found in the longstanding political alliance between the state of Israel and the erstwhile white supremacist apartheid regime in South Africa (Mbembe, 2016). In 1975 the Organisation of African Unity conference in Kampala issued a statement "that the racist regime in occupied Palestine and the racist regimes in Zimbabwe and South Africa have a common imperialist origin, forming a whole and having the same racist structure and being organically linked in their policy aimed at repression of the dignity and integrity of the human being" (cited in Feldman, 2024). The United Nations General Assembly endorsed this position on Israel and Zionism in its 1975 statement on racial discrimination, only to revoke it in 1991 as Cold War political alliances and strategies began to unravel. As Feldman (2024) notes the period between the two votes (1975–1991) represents a significant bifurcation in how racism is theorised and understood, particularly in relation to antisemitism, Europe and wider global politics. This bifurcation and growing antagonism between the terminology of antiracism and antisemitism is anchored in a liberal post-war analysis of racism that began to unravel through the long years of decolonisation, the Cold War and the defeat of Soviet communism. In short, conceptualising racism as a kind of psychological prejudice provoked by intolerance

of difference offered a short-lived liberal alliance that could not survive the contradictions and tensions of its emergence. As Feldman notes,

in these postwar decades, support for Zionism melded with opposition to anti-semitism and racism. This union stood on three legs. First, racism was rooted in a collection of myths epitomised by the treatment of Jews under the Nazi regime. Second, equal rights held the remedy for racism. Third, Zionism was a liberal doctrine and a necessary response to endemic antisemitism: it was part of the solution, not part of the problem.

As anti-colonial struggles gathered pace in Africa, anti-racism became less aligned with aspirational cosmopolitanism and more central to struggles against European and US ambitions to structure the wider world to their advantage. As Mbembe (2017) notes “the fundamental experience of our era” is that “Europe is no longer the centre of gravity of the world”. The reverberations of this provincialisation and decentring has deep and far-reaching consequences, not least in relations to how antisemitism and antiracism are understood. As Feldman (2024) argues, the error, well-intentioned or otherwise, of equating antisemitism with the generics of racism and antiracism only served to eclipse its distinctive features. The exclusive and divergent path presented by Zionism as a resolution to the challenge of antisemitism has slowly eroded the alliance with an antiracism that can broker no peace with colonialism. Israel may have presented itself as the ultimate guarantor of safety to Jews but only at the price of abandoning struggles for Black liberation anchored more firmly and unavoidably in struggles against European colonialism.

The accompanying complexities of conceptualising shifting characteristics of racism and accounting for its institutional and personal presence is a challenge that has largely eluded mainstream criminology. For a discipline determined to insist on its utility to governments and politics, it is an oversight of dramatic proportions. The global implications alluded to by Mbembe (2016), such as his prediction that “the transformation of the political into business raises the risk of the elimination of the very possibility of politics”, may have sounded hyperbolic in 2016 but now seems merely prescient in the face of the re-election of Donald Trump in the USA, accompanied by the increasingly interventionist multi-billionaire Elon Musk. Trump’s obscene offer to “buy” Gaza from the Israeli’s and deport its Palestinian population in order to develop an exclusive and elite tourist resort, a “riviera of the Middle East” are only banalised by describing his approach as “transactional”.

Insularity, Criminality, and White England

The questions about racism that originally propelled the development of this chapter were raised months before “everything changed” (Mishra, 2024) on October 7th 2023, but have only become more urgent, more tangled and more fractious. Unusually, and perhaps only briefly, questions about race, racism, violence and resistance, defining crime and seeking justice assumed international and national prominence. On an international scale, conventional criminological categories of personal culpability are presented as suitable, indeed pivotal, receptacles for the resolution of epochal conflicts that have defined the Euro-Anglo-American world for centuries.

Meanwhile, on the more local, national scale the first overtly racist and anti-migrant rioting in the UK for almost a century swept English cities in July/August 2024 and were “dealt with” primarily by recourse to the mechanisms of criminal justice: policing and prison. These events in which whiteness operates so silently, are a symptomatic warning of the cruel optimism (Meer, 2022) that surrounds thinking about racism in the UK. The comforts of an illusory post-racial harmony that characterise racism as gently disappearing from public and personal life may have been endorsed by the Conservative government’s report on multiracial Britain (CRED, 2021), but beyond its selective and self-serving horizons, the prospects do not seem so promising (Meer, 2022; Solomos, 2024).

It is worth recalling, briefly, some manifestations of the depth of the confusion and self-deception around race in the UK and some of their disorienting permutations. A dramatic example was provided in March 2024 when it was revealed that a white businessman, Frank Hester, one of the biggest donors to the UK Conservative party, had declared to colleagues in a meeting that for him merely seeing Diane Abbott on television “makes you want to hate all black women” and that he thought the Labour MP “should be shot” (Guardian, 2024). The UK Conservative party is not a fringe concern. It is the most successful political party in Europe and one of its oldest political institutions. It has dominated political power in the UK for most of the nineteenth and twentieth centuries in a way that is unprecedented elsewhere in Europe (Earle, 2023). As leading Conservative party figures hesitated to characterise Hester’s remarks as racist, he vehemently denied they were and released a statement saying he abhorred racism “not least because he experienced it as the child of Irish immigrants in the 1970s” (Guardian, 2024). His Irish whiteness in this context was deployed as a mark of racial victimisation cancelling his capacity for racism and privileging his capacity to innocently “misspeak” (Chouliaraki, 2024). The Conservative party eventually conceded

the remarks were racist after one of its rising stars, Kemi Badenoch, whose parents are Nigerian, called it out. The party remained silent about his further substantial contributions to the party and in November 2024 proceeded to elect Kemi Badenoch as its leader, the first Black woman ever to lead a major European political party. Her replacement of Rishi Sunak, the first non-white Prime Minister of the UK, allowed the Conservative Party to publicly burnish its cherished non-racial post-racial reputation.

Further conceptual confusions and institutional inadequacies over racism were manifest in the prosecution in 2024 of Marieha Hussain, a teacher of British Asian heritage, for carrying a placard on a peaceful demonstration in November 2023 against the destruction of Gaza by the Israeli Defence Force (IDF). The prosecution's case that her placard depicting the Conservative MPs Suella Braverman and Rishi Sunak as coconuts was racist was eventually rejected by the court but in bringing a charge of racially aggravated public disorder against her the Crown Prosecution Service (CPS) demonstrated its profound ignorance of the way racism works. The decision by the CPS, also in 2024, to prosecute the Australian mixed-race footballer Sam Kerr for racially aggravated assault after she called a police officer "stupid and white" demonstrated similar misconceptions: racial distinctions are merely ahistorical lateral symmetries that operate equally in both directions rather than antagonistic hierarchies animated by cultural legacies. The jury were less confused and quickly acquitted her.

How have anti-Black racism, anti-Irish racism, anti-Zionism and anti-semitism come to be embroiled in such perversely convoluted denials of racism and competitions of victimhood. The idea of "Oppression Olympics", coined in the 1990s, now seems a wholly inadequate, almost quaint, description of a resurgent and deadly contestation of how human life is devalued (Mbembe, 2019). Of course, racism is never stable and never equitable but in the white imagination it has become largely a relic of the past, inert and receding, an unfortunate historical accident easily left behind and abandoned. The post-racial consensus is a complex convolution of denial and erasure:

"Structurally, postraciality maintains prevailing conditions of historically produced racial arrangement and power, both domestically and globally, now stripped of their historically inherited terms of recognisability, address and redress" (Goldberg, 2015:100).

Goldberg points to a profound "denial of denial" that "wipes away" both the potentials and the need to challenge racism by rendering it marginal, atavistic and vestigial, a minor issue of concern only to minorities. Criminology cannot be complicit in this fiction.

White Criminology in UK Universities?

In the UK, criminology and the criminal justice system are historically made up of white people who do not feel race, are not racialised and appear to have no racial status (the invisibility of ascendancy). Criminology and criminal justice are also constitutive of institutions that have not only spectacularly failed Black people, they have also delivered an excessive abundance of pain, punishment and injustice, alongside a radical paucity of protection. Whiteness is particularly important to criminology because the key institutions around which it is structured as a discipline; the police, the courts, the law-making process, prisons and punishment, have been almost exclusively run by white people and have been central to their colonial projects (Agozino, 2003). As James Baldwin (1963:28) observes, “They had the judges, the juries, the shotguns, the law—in a word, power”. As a result, criminology is sometimes referred to, disparagingly, as “the truncheon and turn-key discipline” because of its tendency towards a kind of authoritarian utility centred around law enforcement and the maintenance of order, the order and borders of racial capitalism (Garner, 2015; Glynn & Breen, 2024; Moore, 2023; Moosavi, 2019; Saleh-Hanna et al., 2023).

Evers since criminology began to expand and develop a growing presence in UK universities, it has argued with itself over its radical potentials and the extent to which it simply serves the State apparatus by reifying the construction of crime by the state (Matthews & Young, 1992). Critics of criminology’s radical potential claim the unintended impact of studying criminology is to socialise students and the wider public ever more thoroughly into accepting prisons, police, criminal law, and criminal courts as legitimate. The criminal law and criminal justice system are seen as the fundamental pillars of modern society, *de facto* guarantors of its stability. Students are encouraged to embrace criminal justice agencies as the primary underwriters of civilisation without which barbarism would overwhelm society (Catello, 2024).

As universities have increasingly promoted employability as the key to the future success of both their students and their departments, leaving university to become a police, prison or probation officer have become highly prized and predicted outcomes of completing a criminology degree. Often this is how they are promoted to students. It is assumed that well informed criminology students will help develop criminal justice institutions and practice based on sound research evidence as the essential pillars of a liberal social order. The discipline maintains close affiliations with the various agencies of the criminal justice system. At times these are consolidated in substantial and highly sought after contractual arrangements between universities

and criminology frameworks such as the recently established Police Constable Degree Apprenticeship. This is a three-year, BSc (Hons) degree programme offered by a range of UK universities with substantial financial input from police training budgets. Similar contracts and institutional partnerships exist for prison and probation services. Anecdotally and incidentally, it appears that there are also increased numbers of people from policing and prison backgrounds transferring to work in criminology, creating an occupational revolving door between criminology and criminal justice institutions. The new career coinage of “lived experience” often operates favourably in the interests of former police or prison officers as they are presumed to be uniquely qualified to anchor theoretical abstraction in their personal experience of life “on the front line of law and order”. By contrast, convict criminologists approaching the discipline from the “back door” may be less enthusiastically embraced (Schreeche-Powell, 2025).

The fact that in the UK in 2024 only 14% of criminology graduates were employed in the criminal justice sector within 15 months of completing their degree indicates the limits of this direct and instrumental utility. Even so, over 80% of criminology graduates can expect to be employed within 15 months of completing their degree, with nearly 17% being registered in “Clerical, secretarial and administrative” roles, and 14% in the category of “Retail, catering and customer service” (Prospect, 2024).

Of the forty HEIs responding to a British Society of Criminology survey about how criminology is taught and researched, all but two reported the overwhelming number of students were women, with two thirds indicating that women outnumbered men on their criminology courses by more than 3 to 1 (Harris et al., 2019). As criminology has grown over the last 50 years it has been transformed from a discipline characterised in the 1980s and 90 s by critical and feminist scholars as resolutely “malestream”. For many feminist academics it was locked into an androcentric vortex of masculine deviancy studies and ruled by a fraternal clique of male scholars (Smart, 1976) but today it has become a discipline largely populated in the UK by women scholars and women students, even if reading lists and “the canon” remain stubbornly “white and male” (Stockdale & Sweeney, 2022). Notwithstanding the limited ways in which the changing gender composition of staff and students in criminology has shifted, there has been very little evidence of any corresponding set of transformations around race and racism (Lynch, 2025; Stockdale & Sweeney, 2022; O’Sullivan et al., 2025). Race continues to occupy a largely passive position in criminology while remaining silently constitutive of its primary concerns. Figures in the same BSC survey relating to the number of criminology undergraduates with BAME origins showed

wide variation. Approximately a quarter of respondents suggested fewer than 10% of their course members were from BAME backgrounds whereas a further quarter of the responses revealed BAME student course membership ratios exceeding 40%. High rates of BAME students were found in HEIs “in major cities and conurbations, London especially and the West Midlands” (Harris et al., 2019:123).

Perhaps more significant than student ratios is the less immediately measurable extent to which studying criminology and cultivating interests in criminal justice fosters the development of liberal criticism that supports and sustains the imperfect but eminently reformable systems of criminal justice (Agozino, 2003; Catello, 2025). Harris et al. (2019) report nearly all the university criminology centres responding to their survey stating they have “excellent links and connections” with local police constabularies and Police and Crime Commissioners, Youth Offending Services, Crown Prosecution Services and Courts (Magistrate & Crown). Among the same sample of UK criminologists over a third (37%) described their approach as being shaped primarily by “critical criminology” while just under a third (31%) said it was focussed “primarily on the criminal justice system”. The survey makes no claims to being a definitive or comprehensive statement of the characteristics of criminological teaching in the UK, but it does reveal suggestive anomalies, absences and emphases. For example, the self-declared alignment with critical criminology may corresponds with the fact that almost a quarter (24%) of respondents indicated that their focus on Race and Crime was a “strength and unique selling point” of their criminology programme. It sits uneasily with the review of curricula undertaken by Stockdale and Sweeney and with Wicks (2023) research at a post-92 university. Wicks’s (2023) research reveals students’ frustrations at the promotion of white, male, Western theory in first year criminology modules and the awkward silences around racism which arise in classroom discussions of “race”. This is suggestive of Rayner’s (2012) analysis of “uncomfortable knowledge” where something is known intellectually but ignored in daily practical action, not least the different ways in which white and non-white students encounter race/racism in the university, the curriculum and their wider lives. As Wicks’s research demonstrates, degrees of discomfort, frustration, anger, and incomprehension are likely to vary considerably according to personal experience and racialised positionality. At the organisational level Rayner’s typology of the ways in which uncomfortable knowledge is avoided by institutions is also instructive:

- Denial: an outright inability or refusal to accept information contrary to the organisational narrative.

- Dismissal: a recognition that there is information available that contradicts accepted narratives, while reasons are found to downplay or denigrate it.
- Diversion: the construction of decoy activities aimed at drawing attention away from the uncomfortable subject; and
- Displacement: where an organisation puts efforts into superficial alternatives to effective action that may appear superficially, to address the uncomfortable subject, but are ultimately ineffective.

(cited in Fenton-O'Creevy et al., 2024:2).

Fenton-O'Creevy et al's (2024) work demonstrates how this framework operates in policing in relation to misogyny and sexism. This research is suggestive of the ways in which race/racism becomes a functional, "usable ignorance" (Rayner, 2012, 1986, Mills, 2023).

Even in a discipline as omnivorous and voracious as criminology, engagement with the depth and range of Black scholarship remains a marginal concern, confined to a critical fringe among the proliferating sub-fields generated by the conventional appetite of the mainstream. The occasional engagements with race and racism often seem to function as tokenistic gestures surfacing in the backwash of dynamic social movements like Rhodes Must Fall in South Africa and Black Lives Matter in the USA and the UK (Phillips et al., 2020). At times this resembles a kind of citation-washing that implies engagement but severs criminology from genuine immersion in wider Black and anti-racist critique (Solomos, 2024). The result is that mainstream criminology consistently underestimates the intellectual resources, hinterlands and lineages of scholarship around race in general and Black scholarship in particular (Alagraa, 2023). In a direct provocation to the conventions of white criminology Phillips (2023) presents her argument for Black criminology by citing only Black scholars.

What these isolated, fragmentary inclusions demonstrate is the discipline's inability to properly attend to the fullness of Black life. Criminological engagements with race often revolve around what Katherine McKittrick (2014, p.18) calls the "mathematics of the unliving", which is when researchers reduce black people to bits and pieces of data illustrative of some broader argument about some wider topic. Perhaps unintentionally, this affirms black dispossession and masks the complicated, messy undulations of Black life in Britain that always extend so far beyond Britain (Gilroy, 1993) and the peculiarities of the white optics it maintains. Some of these white optics are considered next.

Unpacking Whiteness and Whiteness Studies

A full quarter of a century has passed since Roediger (1997:‘x’) pointed out that “the tendency of many [white] writers to believe that ‘whiteness studies’ is a recent creation in which white scholars have pioneered runs directly counter to [the evidence]”. Black people have been thinking and writing about white people and whiteness for a very, very long time, but the exclusive arrogance of whiteness is to dismiss this fact because it does not correspond with the image of blackness they hold in their imagination. The fact is Black people have always needed to “read” whiteness and white people’s behaviour not least to navigate its terrors more safely. Bel hooks describes the ability and preference of white people to imagine “that black people cannot see them” as an illusion that is at once durable, powerful and fragile, indicative of a profound fear of actually being seen, of knowing there is something to be seen—a racial frame that constructs their whiteness as something other than an unmarked norm.

Drawing from Du Bois’s lifelong project of confronting racial injustice, Lisa McCleod (2024) presents a concise summary of the “consequences of white supremacy for white folk” and how the harms it inflicts on people of colour are compounded by a corresponding but not equivalent degradation of human potential among white people. According to McCleod the devastating consequences for white people can be sorted roughly into five categories:

- (1) complicity with injustice and moral failure,
- (2) inauthentic relationships, especially with people of colour,
- (3) the inability to accurately perceive themselves, others, or relevant circumstances,
- (4) material costs, especially as regards class solidarity, and.
- (5) existential fear prompted by the suspicion that white supremacy is fraudulent.

For McCleod, these insights provide an essential basis for building an effective struggle against racism. Dismantling whiteness cannot be accomplished if it isn’t seen and recognised for what it is, a central structure of racial capitalism (see Go, 2024, for an overview of recent argumentation on the viability of racial capitalism as a theoretical entity). The establishment of the white race is a foundational feature of racism. It established a novel hierarchical conceptualisation of humanity, effectively inventing an exclusive and excluding concept of the individual, “the white man” at the expense of a wider humanity. As Fanon (1967) points out race offers an unprecedented conceptual unification of the self and the social, the body and the world that underpinned the colonial project. According to Mbembe

(2017:45) it provided “an unequalled capacity for the subjection and exploitation of foreign peoples”. Whiteness was the primary ontological vehicle for achieving this state of affairs by presenting “a way of being in the world” that corresponds with a sense of self (an identity), the body (physicality) and a whole new world—the entirety of planet Earth. This religion, as Du Bois phrased it, has no equivalent and can have no alternative. It simply needs not to be. Displacing whiteness involves more than the promise of equality within its racial framing because this simply invites non-white people “to occupy the past of which the white man is the future” (Homi Bhabha, 1991). Developing more effective anti-racist struggles involves aligning those struggles with affirmations of another humanity, an alter-politics as well as an anti-politics (Goldberg, 2015; Hage, 2022; Solomos, 2024). Challenging race involves knowing it rather than simply dismissing it.

Getting to know more about the history and effects of various aspects of whiteness can contribute to such an approach. Some of these are examined next.

White Here, White Now? The Ethnic Invisibility of the English

For several centuries white identities in Britain have been anchored in a sense of superiority derived from power exercised over racialised others, both in Britain and abroad. In the, eighteenth, nineteenth, and twentieth centuries this whiteness was openly talked about, accepted as “a fact of life” and comprehensively theorised. It became the defining motif for the language of race in which referring to “the white man” and “the white race” was commonplace and functional. It was part of a widespread vernacular and popular usage around which ideas of human difference were elaborated (Turda & Quine, 2018). The ebbing of martial and economic power which accompanies the recognition that Britain is likely to become a relatively minor player in the global reconfigurations of the twenty first century, coincides with its declining use. The open assertion of white supremacy and pride in white identity is now the preserve of neo-Nazis and proto-fascists but the various legacies and institutions established in the name of whiteness still prevail.

Both the dominant political parties of the UK, the Conservative Party and the Labour Party, have signalled in various ways and with varying degrees of reluctance, that they can tolerate the post-war immigration of Black and brown populations, but only up to a point. For the last quarter of the twenty first century this was usually on the basis that they become culturally

British, but as the Empire fades its racial logics and national institutions are unravelling to expose the archaic foundations of a much less united “Kingdom”. Becoming English might be more problematic than becoming British because while Britain has always been a multi-ethnic nation, the hegemony of England and its pre-eminent political institutions (e.g. the Tory party, the monarchy, the Church of England, the Bank of England) has obscured, avoided, and denied the open question of its own ethnicity in general, and specifically its alignments with the racial project of whiteness (Young, 2008). This is signified by the historic marginalisation of the “Celtic fringes” and the energy in them for devolution or independence from the United Kingdom. It also indicates an appetite for separation from some of the Imperial legacies of the past.

For much of the nineteenth century in the heyday of racial thinking and as racial typographies became part of popular vernaculars for human difference, the English were more invested than anyone else in distinguishing themselves not just from others but, crucially and essentially, as being above others, and better than everyone else, at everything. As Robert Young’s (2008) work reveals from a meticulous trawl through various forms of documentary evidence, in the nineteenth century the English were noisily obsessed with their ethnicity, thinking hard and aloud about how it might be best described and the provenance of its “gene pool”. What fascinated them was the extent to which competing forms of white “tribal” ascendancy could be adduced from various historical records. The competing claims and potential characteristic virtues of Teutonic, Saxon or Celtic origins tumbled around the ethnic kaleidoscope being developed around racial optics. Eventually, Englishness became synonymous not so much with an exclusionary and primordial Teutonism aligned with Germanic idealisation of racial and ethnic purity than with an expansive transnational brotherhood bound together by whiteness and the English language. The English opted for the virtues of being simultaneously an exceptional island race and a uniquely globalised race. With the growing salience of nationalism to white racial categorisation in the nineteenth century (Valluvan, 2019) the simple Saxon morphed into the Anglo-Saxon. This provided convenient recognition that while the English conceded themselves to be a composite race, they represented the ascendent amalgamated whiteness of those most suited to rule the world.

In Germany preferences for racial purity and ethnic distinction settled around the idea of an exclusive white Aryan nationalism, the consequences of which the world is very familiar. Somewhat at odds with this emphasis on the purity of “blood and soil” in a white Fatherland, was the emerging English identification of “proximate” white races (Celts, Saxons etc.) capable

of limited mixing and cultural fusion. This Englishness was less about purity of “blood”, more about producing the best hybrids, hence the English enthusiasm for eugenics and its white aristocracy’s obsessions with “breeding stock”. Heavily invested in Darwinian science as validation for Empires, for the English the best in all the white races became fused into the one, quietly supreme white race, the Anglo-Saxon.

Anglo-Saxon was originally a term most commonly used in North America where it identified white “people out of place” for whom the involuntary dispersions of diaspora did not seem to apply. As Robert Young (2008) suggests, one unfortunate consequence of this was the non-emergence of “double consciousness” that Du Bois recognised as a kind of psychic defence mechanism among the racialised. Double-consciousness is necessary for handling the ontological contradictions of being human but being made to feel less than human by other humans. It fosters an existential self-awareness more suited to genuine human cohabitation than the white vanguardism of the racial order (Alcoff, 2015).

The racial dynamics of England’s emerging ideas of white supremacy are evoked in a description provided by the Times newspaper in 1844. These editorial commentaries formed part of the vigorous public conversation about the ethnicity of the English and their growing mission to “overspread the world”:

“The Anglo-Saxon is naturally multiplying and spreading. It is always producing the physical materials of new empires and is not less fertile in the virtues and capacities necessary to found and govern them” (cited in Young, 2008:206).

In the mid-twenty first century it might be tempting to dismiss the significance of these mid-nineteenth century delusions as the archaic rhetoric of an Empire-building class. Among Robert Young’s trawl through the liberal journals, books and newspapers of the day the familiar racial rhetoric of Cecil Rhodes is easily found and widely quoted. Less familiar are the racial obsessions, for which read “white supremacy”, of John Ruskin, a major protagonist of the labour movement in England. In his inaugural lecture at Oxford in 1870 he extolled the virtues of whiteness and the obligations of white supremacy to the assembled undergraduates:

“There is a destiny now possible to us—the highest ever set before a nation to be accepted or refused. We are still undegenerate in race; a race mingled of the best northern blood.... We have had the laws of natural science opened to us.... And the means of transit and communication given to us, which have made but one kingdom of the habitable globe. One kingdom—but who is to be its king? It must be—it is—with us, now, ‘Reign or Die’. [This country]

must found colonies as fast and as far as she is able, formed of her most energetic and worthiest men to seizing every piece of fruitful waste ground she can set her foot on....”(Ruskin, cited in Young, 2008:208).

A hundred and fifty years ago these words from one of the pioneers of the working-class education movement in the UK vividly recall that the convergence between projects of empire and emancipation was not a simple accident of history but a supremacist racial endeavour. Explicitly Christian, the Empire’s civilising mission was quickly called out as a religion by one of America’s most influential and belatedly acknowledged Black intellectuals, W.E.B. Du Bois, whose remarkable essay “The Souls of White Folk” (DuBois, 1920/1920) identified the central objective of the “religion of whiteness sweeping the world”. It was the “the ownership of the earth forever and ever, Amen!”.

It also essential to recall how widespread and acceptable antisemitism was in the UK throughout the imperial ascendancy, even though antisemitism is not straightforwardly analogous to anti-Black racism. Key figures of the English literary establishment, such as T.S. Eliot and D.H. Lawrence, were openly and frequently antisemitic. Lawrence is the source of the phrase “Jews of the wrong sort” which expresses the ways in which Jewish communities were divided by and divided into opposing camps according to their perceived efforts at assimilation and/or passing as white.

Anti-Black racism and antisemitism are equally abhorrent forms of discrimination that share some specific characteristics, but they are not entirely congruent. It is important to acknowledge their different genealogies and historical effects. Notwithstanding the extensive and virulent antisemitism within the Conservative Party and British society more generally, it did not prevent Benjamin Disraeli from twice becoming Prime Minister in the second half of the nineteenth century and playing a central role in defining the Party’s programmes of government. Kemi Badenoch may follow him through this paradoxical intersection of class and race. It seems likely that virulent anti-Black racism will survive her tenure, much as antisemitism survived Disraeli’s.

Englishness often came to function as a coded term for the doctrine of whiteness, for the invisible norm against which other ethnicities are measured and defined: “Englishness was transformed into an ethnicity unlike any other; because it was no single ethnicity but an amalgamation of many, it became a cosmopolitan ethnicity that comprised a transcendence of individual ethnicity or nation....”(Young, 2008:232). This imperial (in the sense of universal) identity, is presented and understood to be benign, uniquely suited to the modern, globalised world, a virtue for all white people to

emulate or aspire to. The racial imagination that was so outspoken in the various formulations of English ethnicity for three centuries are now muted and reclusive. However, the proprietary relationship it fostered towards the planet as a whole and towards its “darker peoples” (Du Bois, 1967) in particular, remains largely sovereign. Acknowledging the force and legacies of whiteness in this foundational relationship is crucial to understanding how race is reproduced and how it can be challenged. As Ruth Frankenberg (1997:2) insists, critical scholarship focussing on whiteness “helps make it evident that the formation of specifically white subject positions has in fact been key to the sociopolitical processes inherent in taking land and making nations”. And, it might be added, making crime and criminals (Agozino, 2003; Saleh-Hanna et al., 2023).

Ressentiment and the Colour Line

The persistent enigma of Nigel Farage and Boris Johnson’s popularity and the success of their Brexit strategy may be found in widespread but submerged identifications with the myth-history/fantasies of English exceptionality (O’Toole, 2018). For both individuals, the white supremacist global ambitions of Empire are heavily cloaked in disavowals of race and class that foreground a colourless sense of meritocratic destiny shrouded in imperial nostalgia (Gilroy, 2005; Mitchell, 2021). Just as Ta Nehisi Coates argues that it is “impossible to imagine Trump without the force of whiteness” (cited in McCormack, 2022), so it is impossible for these English counterparts to operate so cheerfully in parliamentary politics this side of the Atlantic without the invisible buoyancy aide of whiteness. Robert Young suggests Englishness has been “etherised” to evoke the way it appears to operate “not in the world” but in the background strangely unattached to any actual place. He suggests “it was never really here, it was always there, delocalised, somewhere else” (Young, 2008:236). Conventional attachments and ascriptions associated with ethnicity, to place, to a sense of origin, place of birth, have been dissolved in a mendacious universalism, a con-trick cosmopolitanism, but the chickens are coming home to roost. Their “common touch”, like Trump’s, rests on the strange contradiction of being able to tell lies as if speaking truth to power. In the USA it is hard to imagine a more anti-Christ-like figure than Donald Trump, yet he has marshalled the Christian right behind him because he so effectively embodies the white religion they are part of (McCormack, 2022). As such, Trump’s supporters operate more as an active congregation than a passive electorate and need to be confronted as such.

In the UK, Johnson and Farage mobilise a similar white alchemy across class boundaries but without the religious fundamentalism, by animating English insularity with unapologetic imperial grandeur. Trump, Johnson, and Farage are able to perform their permutations of whiteness to such powerful effect partly because of the depth of popular disbelief in the power of whiteness. To white people these performances implicitly signal a sense of personal impunity while affirming their sense of beleaguered, unjustified persecution and potential humiliation. They tap into what Mishra (2017) describes as the defining feature of our age, Nietzschean resentment. This is a need to blame some collective body of people for the intensely experienced pains and humiliations unjustly distributed through society. It is commonly accompanied by fanatical identification with a singular figure of salvation (see also Ware, 2008).

These demagogues play to a suspicion that if white people were to accept the facts of whiteness they would have to accept themselves to be an example of “history’s greatest monster”: “the white man” (Coates, 2017). Thus, rejecting a personal identification with whiteness is ironically central to white identities (except Nazis/racial fascists). It is justified by needing to register the distance between the ideology of white supremacy and their own innocent life as a life that rejects racial classification. This disavowal of whiteness is similar in some ways to the way men will distance themselves from rape and other specific acts of sexual violence but remain complicit in hegemonic masculinity and beneficiaries of its enduring patriarchal dividends. It sometimes feels as if suggesting to white people that they need to recognise white supremacy makes as much sense as asking men to identify themselves as potential rapists. Most men do not rape women but patriarchal dividends and misogyny are part of systems that reproduce men’s preferential position in the gender order. The performance of people like Johnson, Farage and Trump rides on the back of a caricature of “identity politics” as a politics designed for an Oppression Olympics, a competitive, advantage-seeking politics of simple winners and losers, detached from its complex roots in liberation struggles, egalitarianism and revolutionary uprisings (Táíwò, 2022). The identity politics they parody as “woke” are a more general and widespread form of politics of how to live decent lives of equity, sustainability and fairness, a politics they really fear. It is a politics in which the question and place of race is not isolated, simplified and personalised. As Coates (2017) puts it: “the politics of race are, themselves, never attributable ‘just to the politics of race.’ The history of slavery is also about the growth of international capitalism; the

history of lynching must be seen in light of anxiety over the growing independence of women; the civil-rights movement can't be disentangled from the Cold War".

Criminology and Criminal Justice Without Whiteness

A major problem within criminology is a misrecognition or denial of the ways that whiteness suffuses the very environment in which we live and work—universities (Anderson, 2021; Bhambra et al., 2018). For Black or brown scholars this is frequently self-evident, obvious and, if not unremarkable, almost always unavoidable. Whiteness is not just a feature of material structures and the ideologies on which they are based, but the stuff of everyday interaction. The general silence around whiteness in criminology fortifies the hegemonic power that an unmarked norm accrues, and which constitutes the “unseen”/ “unheard” dynamics that characterise and enable its reproduction. In relation to gender, challenging criminology's androcentrism has begun to transform the discipline, particularly in the UK where [white] women hold prominent organisational positions, fill conference halls and are starting to reshape the discipline.

One of the problems of whiteness in Anglophone and European criminology is the presentation of whiteness as contingent on essentialised Black or colonised identities rather than being propelled by its logics of hierarchy, exclusivity and supremacy. This mis-presentation leaves criminology locked within unproductive and simplistic binaries or dichotomies. It fuels a misperception of whiteness as a discrete category or property created by proximity with a racial other. While this may be part of the story, it is the innocent part, the part devoid of hierarchy, history, and power.

Rather than existing as a monolithic but capacious sense of identity, whiteness is a process of racialization that continuously intersects with formations of gender, class, sexuality, nationality, religion and dis/ability. Adapting Walter Mignolo and Anibal Quijano's contention that modernity can only be apprehended as a feature of the racial dynamics of coloniality, the argument made here is that there is no whiteness that makes sense outside colonialism and patriarchy's relationship to the emergence of racial capitalism across the eighteenth, nineteenth, and twentieth centuries (Santos & Meneses, 2020).

It is important to recognise how questions of legibility, visibility, and positionality for analysing whiteness are different from those that criminology has customarily used in addressing race as an issue of visible evidence of

difference, discrimination, marginality or exclusion. This the kind of criminological practice that emerges from the optics of whiteness, the “white gaze/white glaze” that propels the miscarriage of justice in Ava Du Vernay’s (2019) “When They See Us” docu-drama. In place of this blinkered vision of racialisation, criminologists need to explore the contingencies and heterogeneities of whiteness, how they manifest in the experiences of becoming-white. We need to keep asking how can we account for the way the ideology of race that operated on us as children now operates through us as adults. These can sometimes be more readily discernible among Irish and Jewish identities in the UK, in Ireland, the United States and across Europe and a focus on these can help orientate a more critical engagement with the variable dynamics of whiteness (Hunter & Westhuizen, 2022).

In the various ways in which white criminologists elide, deflect, or obscure their own investments in whiteness, scholars tend to replicate ingrained rituals of white innocence and white ignorance. Perhaps new criminological projects in the sub-divisions of criminology (Bosworth, 2012) will beckon these criminologists. In such projects there will be mistakes and missteps, the consequences of which are unlikely to be as severe as those visited on Diane Abbott. Where white criminologists are involved, we must maintain a vigilant but critical generosity that engages with rather than ignores the difficulties of race (e.g. Glynn & Breen, 2024; O’Sullivan et al., 2025). The tensions and contradictions of simultaneously recognising and refusing race contains awkward, difficult onto-epistemic struggles but none of them are as fatal as avoiding the struggle altogether. As the pace of ethno-nationalist assertion and racial populism increases in various parts of the planet, but especially in Israel and the USA, the urgency of “grasping the nettle of whiteness” (Hunter & Westhuizen, 2022:3) becomes more intense. Criminology has no part to play in the reproduction of racial ignorance and must develop a more pro-active challenge to the wilful, disingenuous innocence of whiteness. To paraphrase Baldwin, it is the innocence which constitutes the criminology and it must end. Four centuries of cumulative rationalisations of race through religion, biology, nationalism and culture cannot be undone in a day, but each day counts. Whether twenty-first century analyses of whiteness can move on to dismantling racism, help constitute anti-racist efforts or decolonize criminology remains an open question, an invitation for responses. By clearly locating and localising such positionalities but refusing to essentialise them, the affirmative deconstruction of criminology can continue.

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4

Racial Inequality and the Judicial System in Colonial India: Resistance and Abolition

Harihar Bhattacharyya

Racial Inequality and the Judicial System in Colonial India

‘But we in India have known racism in all its forms ever since the commencement of British rule. The whole ideology of this rule was that of the *herrenfolk* i.e., the master race, and the structure of government was based upon it; indeed, the idea of a master race is inherent in imperialism.’ (Nehru, 1980/1946: 326). This is to inform you that as the institutional email address of the corresponding author is not available in the manuscript, we are displaying the private email address in the pdf and SpringerLink. Do you agree with the inclusion of your private e-mail address in the final publication?

‘The foundation of our empire in India rests on the principle of justice, and England retains its supremacy in India by justice. Without justice we could not hold India for a moment.’ Sir Robert Fulton (1929).

It was ironic that when there was pervasive racial inequality and discrimination in all walks of life in India under colonial rule, only a die-hard imperialist could make such a (false) claim that the empire was based on justice (Fulton, 1929). In one sense, of course, Fulton could be right if

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he wanted to mean racial justice (or more appropriately, and worse injustice). Lord Rosebery (1900) is quoted to have said: 'What is Empire but the predominance of Race.' The assertions of racial superiority of the White Britons and Europeans were the *sine qua non* of British colonialism in India, and elsewhere too. Racial inequality or discrimination was widely institutionalized and practiced in the British colonial judicial system in India for long. Racial discrimination was based on presumed inequality among races. The hypothesis of racial inequality was flawed because, biologically and sociologically, it is untenable. By birth, no race can claim superiority. Therefore, like other forms of inequality, racial inequality was, and is, constructed in this case, politically with its roots in a certain kind of understanding of the Orient derived from the European Enlightenment. Given the comprehensive character of colonial domination in India this essay has utilized the insights of multiple disciplines: Law and juridical sciences; political science, sociology and anthropology, history, and Orientalism and neo-Orientalism.

The British colonial rule in India was in force for over two hundred years ending in 1947. While the British East India Company with a Charter from the Crown set foot in India as a trading company on and from 24 August 1608 in Surat (port) in Gujarat, with the victory of the Battle of Plassey in Bengal in 1757 it began to rein and spread its rule over all parts of India until 1858 when the British Crown took it over and began to govern India directly. Racism was often considered as the *sine quo none* of the imperial rule in India, and the sole justification of colonial rule—widely propagated as the 'Whiteman's burden' to civilize the natives, or niggards, i.e., the Indians. Racial discrimination was legalized for the penal system, but also widely and routinely practiced in the railways, and other public transports, and in public administration, and public spaces. In the penal system, the British or European offenders were exempted from trial in Court which was meant for the Indians and where the judges were Indians. In other words, the British/European offenders were tried only in the Supreme Court in which the judges were exclusively British; not infrequently, in such cases, the punishment was much lighter than that of the Indian offenders in the subordinate courts. In short, there was one law for the British crimes, while another law for the Indians. This discriminatory legal system was abolished not until 1949 when the Indian Parliament after independence (1947) passed a law to abolish racism. The Constitution of India under Fundamental Rights (Part III) prohibits any kind of discrimination in the country.

India has most often been described as a society of manifold discrimination—caste, gender, tribal non-tribal, communal etc. But these are not racial discrimination, but socio-cultural, social status difference and discrimination.

These are not to be construed as racial because both the higher and the lower castes people, the Hindus and the Muslims and other faiths, have the same skin color. It requires, however, to be stressed that there is in society some preference for fair skin color for the bride selection in the marriages arranged by the parents. But racial discrimination in administration and justice was somewhat unknown to Indians, historically speaking before the rise of colonialism in India. Many Hindus serving in the Moghul Court/*Darbar* with a good knowledge of Persian, Arabic, and Hindi was quite common. Also, the kind of racial categories that Indian sociologists and anthropologists have made under the heavy influence of British anthropologists (Ghurye, 1986) were of no concern for the colonial authorities. The same was true for the investigation of Rishley (1891: XXLX) whose 'race basis of caste' with reference to the so-called Aryans and the Dravidians is suspect. All that mattered to the colonial rulers was the simple ideological consideration that they i.e., the White men, were superior to the Indians, or for that matter anybody else in the world who are non-White., and that they were suspicious that the Indians, if employed in administration and justice, would harm their interests. Although in their home country that is England or Britain, they believed in the Rule of Law that ensured liberty, justice and equality for everyone before the law, this English law could not be applied in India, or to the Indians; only the Englishmen would derive benefits from this law even in India through trial by the Crown Court and later the Supreme Court in the three Presidency cities of Calcutta, Bombay and Madras. In India, ironically, the colonial rulers thought that racial difference structured in the legal justice system, which was placed at the forefront of official discussion could go along with the rule of law (Singha, 1998: 289).

Race and Racism

The concept of race has attracted considerable academic attention, and the debates on the subject are ongoing (e.g., Taylor, 2013 & 2016; Rex, 1982 & 2000). In this essay, we have very little to add to that. Our purpose here is to examine one specific application of racial discrimination among others in India during the British colonial rule to its application in the penal system, and its effects. What is of special interest here though is that although the category of race was used in the English language in the sixteenth century, its widespread use since the eighteenth century coincided with the European colonial expansion in Asia and Africa where the former made a peculiar ranking: the European people/rulers were free people while the rest

were slaves, or primitive (Smedley, 2024). Awfully, many eighteenth century Enlightenment thinkers such as Kant, Voltaire, David Hume, and Jefferson were accused of endorsing racism, for many of them had investment in slave trade (Smedley). Some post-Enlightenment thinkers such as Alex de Tocqueville, who otherwise was a defender of liberty and democracy, are said to have endorsed colonialism. (hence racism) (Said, 1978). Like gender, intellectual inferiority of the non-White was also socially, culturally, and politically constructed. Paradoxically, in origin, the superiority of the White race ideology was not there in respect of English colonialism over the Irish because the latter were also White. The point was the 'inferior other'—the Irish were the inferior others for the English colonial rulers. With effective resistance from the Irish, the non-White in the rest of the world became the inferior others. Partha Chatterjee (1986) in his critique of the post-Enlightenment philosophy and science showed that if science has emerged from the post-Enlightenment intellectual tradition to mean the control of nature, and as initially this control of nature applied in Europe as control of human beings in the service of capitalism, the same perspective was later extended to the control of the other, that is, of the non-Western countries, the colonies. The so-called universality of their science assumed an ominous meaning in the colonies, which in effect meant the control of the colonies for a universality to spread Western culture and civilization as the universality—a civilizing mission indeed of the Whiteman!

Edward Said (1978) made a trenchant critique of Orientalism (old and new) for it indulged in an imperialist/racist perspective in its approach to the so-called Orient. Said did not spare such nineteenth century intellectual giants as James Mill, J S. Mill, Arnold Toynbee, Thomas Carlyle, J. H. Newman, and T. B. Macaulay who shared much of the racist/imperialist views. J S Mill, for example, held that Indians were civilizationally, if not racially, inferior (Said, 1978: 14). Pointing his finger at a whole galaxy of thinkers from Renan to Marx, he showed that the common image of the Orient was of 'backwardness, degeneration, inequalities' compared to the West as a symbol of progress, science, arts, and commerce (Said, 1978: 206).

As a sociological category, the term 'race' has remained problematic. Is skin color, a biological fact, a factor in how one behaves? The relation between class and race has remained specifically problematic for Marxist sociologists in the classical vein. As Rex (1983: 405–07) argues, classical Marxists were preoccupied with capitalism and its transformation in Europe/in the West so apart from class categories and perspective, race as a category did not attract their attention. A 'homogeneity hypothesis' predominated the classical Marxist scholarship. Marxists' interest in race is of recent vintage

connected with class and ethnicity particularly in the countries of what is called nowadays the Global South. The Marxist understanding of colonialism paid no attention to racial discrimination as the dominant ideological tool—economic determinism was the central hypothesis in understanding colonial rule (Taylor, 1983: 83–85).

Globally, now, there is some consensus that racial discrimination, or racism, and European colonialism/imperialism are closely connected. Racial attitude and prejudices in many Western countries are, however, not to be equated with colonialism and imperialism. In a more serious sense, it was associated with the need of the metropolitan capitalism for raw materials from Asia and Africa—by violence, plunder, and warfare—, (Max Weber called it ‘booty capitalism’) and the need for labor to do the job who were enslaved whether Black or Indians, or Afro-Caribbean. The colonial rule was based on various segregation and exclusion: racial segregation (e.g., Apartheid in South Africa) from the colonized who were to be hated, to be treated contemptuously, and very often killed on flimsy grounds. Etienne Balibar (1991: 6) argued that racism was inherently connected with world capitalism and imperialism, because the ‘politics of exclusion’ provided the imperialists the legitimacy needed. Its ingredients were many: name, skin color, religious practices and so on (Balibar, 1997: 18). Racialism is still a running theme in the post-colonial thought inaugurated by Edward Said and before him Franz Fanon. The master race hypothesis or prejudice had often crossed the color limitations when the culture of non-Western societies, and people inhabiting there were simply ridiculed and considered primitive. Even Karl Marx was not completely free from this prejudice in his writings on India originally written for the *New York Daily Tribune* in the mid-1850s. Later days’ modernization theory based as it was on the central hypothesis of ‘tradition-modernity’ dichotomy, and its negative image of the cultures of the non-West continued in different guises a racially motivated understanding that had presumed a prior superiority of the West over the rest. In the Western countries, racism served as an analytical category in occupations when the Black workers were paid less than that of the White workers for the same length of time spent on work (Wright, 1982: 52–55).

Pervasive Racial Discrimination in India

In India during the Raj, racial discrimination was rampant in institutions, administration, and daily practices. Bose (1981: 3) aptly summed up the helplessness of the common rural folks of India in the face of racial discrimination and the system of privileges enjoyed by the Europeans and the British in India:

To the millions of poor Indians living in the rural areas, special privileges and the exemptions enjoyed by the European planters, traders, officials, and other individuals were questions of life, property, and honor. Prevailing racial discrimination in the law courts left them helpless and unprotected against the frequent depredations of malicious and over-bearing Europeans (Bose, 1981: 3).

Bose also recorded that even the upper class and affluent Indians living in Calcutta were not spared because they felt the pinch of racism in different forms and lived a life of segregation in the same city of Calcutta (Bose, 1981: 3). Chris Bailey, a leading Cambridge historian, noted racial exclusion in Bengal in particular, and recorded public protest and discontent too (Bailey, 2012: 163–65). He offered a new historically based argument: as ‘a new generation of British expatriates tried to dominate over Calcutta’ and limit the power of the natives, which added to racial exclusion and tensions. He also pointed out how race also became an issue of historical debate of *long durée*. Chandrachud’s (2015) research on the history of the Bombay High Court contains a lot of instances of racial discrimination and segregation in India during the Raj, although his central hypothesis somewhat underemphasized racial discrimination in the Bombay High Court where the judiciary enjoyed ‘independence’ and the judges (both British and Indians) were more united by their class background. He said:

The Bombay High Court had two racially distinguishable categories of judges on it: British judges and Indian judges. However, it was not only their race which set them apart, but their class and comparative status in their respective societies (Chandrachud, 2015: 119).

He argues that given the very elite social background of the Indian judges in the Bombay High Court—in that their education from schools onwards was taken in posh schools in India and abroad, and their legal education in Britain—they were ‘as British as the British judges’ (Chandrachud, 2015: 120). Very often, their social backgrounds were higher off than their British counterparts. He noted, though, that initially, the two components of the Bombay High Court were exclusively racially staffed: the court was staffed exclusively by the British, and ‘the prestigious and well-remunerated *Original*

Side Bar was overwhelmingly British too' (Chandrachud, 2015: 211–12). Things changed, he says, after the British Crown took over India from the Company in 1858. If that be the case, it raises the question of whether one could claim a lesser role of racial discrimination in the Bombay High Court for the entirety of the period since the late eighteenth century. Also, the fact that all thirteen Chief Justices of the Bombay High Court were British was not to be overestimated.

The detailed historical accounts of the experience of racism in different regions of India showed how racial abuse of the Indians by the White British was a daily affair. The sense of racial supremacy among the Whites in India was oppressive to the Indians who saw the cost too high if they entered a reserved (for the British) compartment in the railways or steamer. In 1878, one Tamil M. Iyer was appointed a judge of the Madras High Court, which was opposed by *Madras Mail*, an organ of White businessmen, on the ground that the native officials should not draw the same salary as the Europeans (Sarkar, 1983: 22). The crude forms of racism included: kicks and blows; shooting 'accidentally'; between 1888 and 1900 some 81 shooting 'accidentally' cases occurred in South India (Sarkar, 1983: 22). Sarkar said that the White dominated courts regularly awarded ridiculously light sentences for such crimes (Sarkar, 1983: 22). The crude economic dimensions of such racist attacks and prejudices have been highlighted by economic historians of India (e.g., Bagchi, 1972). The chief beneficiaries in this respect were European businessmen and traders in mining, tea plantations, and jute trade. Lord Curzon is quoted to have said in a speech to the mine owners in 1903: 'My work lies in administration, yours is exploitation' (McLane, 1977: 37). Such an approach was emblematic of the organic link between colonial rule and 'businesses.' To call such activities 'businesses' seemed a misnomer. It was a crude and naked form of colonial plunder at the base; the racial abuses were only the ideological weapons to keep any voice of criticism and protest, if any, by the Indians, at bay. The propagation of the hypothesis of racial supremacy and plunder of the resources of India reinforced each other, and the colonial administration was geared to that goal.

There is evidence of racial inequality in the realm of science. As Kumar (1980) pointed out, with much evidence, how the Indians were thought to be unscientific and not allowed complete freedom to take part in scientific experiments. Racial prejudice and policy were predominant. For example, Colonel De Pree, the Surveyor General, is quoted to have said to the Public Service Commission in 1891:

It is suicidal for the Europeans to admit that the natives can do any one thing better than themselves. They should claim to be superior in everything and only allow a native to take a secondary or subordinate part. In my old parties I never permitted a native to teach a theodolite or an original computation, on the principle that triangulation or scientific work was the prerogative of the highly paid Europeans (quoted in Kumar: 749).

While the colonial authorities could not carry on their exploitation and plunder absolutely on their own (they were a small minority compared to the vast population of India) but had to depend on the Indians to do certain jobs for them, for manual as well as white collar jobs. In the police as well as the army, they continued to maintain strict racial segregation. A famous British historian Ballhatchet (1980), in his detailed study of 'Race, Sex and Class under the Raj,' said:

Racial feeling among the British became more explicit and more aggressive in course of the nineteenth century and reached its peak during Lord Curzon's Vice-Royalty between 1899 and 1905 (Ballhatchet, 1980: 6).

Even after the famous revolt of 1857 and the takeover of India by the Crown, there was little sensitivity displayed on the part of the British, and their offensive on the rebellious as well as innocent Indians to the extent of massacring them were unforgettable events. The infamous Jallianwala Bagh massacre on April 13, 1919, is a blot on the British rule in India where British troops fired on a large crowd of unarmed Indians in an open space known as the Jallianwala Bagh in Amritsar in Punjab of India, killing several hundred people and wounding many hundreds more. This massacre, under the direction of General Dyer, was a manifestation of very aggressive racial hatred of the Indians.

With the spread of Western education and some limited opportunities in the coveted jobs in the higher civil service, administration, and judiciary, many talented Indians aspired to join those services by competing with their British counterparts. Those with a modicum of British education sought jobs in the Company's lower echelon of administration, such as clerks. All that was required initially was some knowledge of English, but the remuneration was paltry. For the very talented youth aspiring to join the Indian Civil Service, a compelling and prestigious post, racial prejudice was a stumbling block exemplified by Sir Surendra Nath Banerjea, who was unjustly disqualified on flimsy grounds two years after he had joined the service; he was also expelled from both the Bengal Legislative Council and the Indian Imperial Legislative Council although he was duly elected (Banerjea, 1925). His protest and subsequent imprisonment served as the basis of the anti-colonial nationalist movements in India.

Racial inequality in colonial India was not just constructed, but any attempt to equalize in such trivial matters in the judicial system was resisted. As recorded in Singha (1998), the 'adoption of European etiquettes by Indians was viewed as presumptuous claim to equality' (Singha, 1998: 291). The public spaces in the Municipal areas of the Presidencies were also segregated between the White men and the Indians.

The Racial Difference

The ideology of racial supremacy during the Raj was evidently connected with colonial plunder and exploitation of India's resources. The ideology was to pre-legitimatize British domination, and to keep the Indians mute and docile by creating fear and oppression. As Metcalfe (1998) shows, in greater detail, the so-called 'difference' on which this racial supremacy hypothesis was built was 'created' based on various, often biased, accounts of India offered by colonial officials returned from India, and other pro-colonial scholars such as James Mill and Henry Maine (Metcalfe, 1998, 66–112). This construction, Metcalfe argues, was rather complex because it entailed the issues of similarity and difference—the former in terms of understanding that India conquered and ruled over by the British apparently shared its past with the past of Britain, as if India's Aryan past was Britain's past too. The difference consisted in India's current situation of 'barbarism' and backwardness scaled on a 'scientific approach' of classification in the post-Victorian age to fit India into the global understanding of history (Metcalfe, 1998: 67). Thus 'race' like history and gender was a category in understanding India, but race was given preference to gender, for gender was deeply rooted in the English society; and India could be described as a 'racially declined' society. The ordering of India's 'difference' (Metcalfe, 1998: 113–59) was based on the prior construction of difference. But, as Metcalfe shows, the so-called understanding of India's difference got intermingled during the colonial rule in India and was pressed into the service of colonial domination in terms of categories 'fundamentally different from Europe' (Metcalfe, 1998: 113).

The idea of racial difference as the most appropriate colonial approach came to inform the systems of colonial administration and judiciary from the late eighteenth century, when legislative enactments, orders, regulations, and directives were passed to legalize the deep-seated racial ideology. In the colonial judiciary, especially during the rule of the East India Company, racial injustice and discrimination were rampant.

Legalizing Racial Discrimination

From the late eighteenth to the middle of the nineteenth century—i.e., for half a century—the judicial system in colonial India was based on legislations that made exceptions for the British-born subjects, offered them privileges over the Indian subjects, and even made special reservations for the White British-born subjects to the exclusion of the Indian subjects. Things began to change toward equality from 1843 onwards, not in full measure, but only to some extent.

The Regulating Act of 1773 passed in British Parliament provided for the establishment of a Supreme Court of Adjudicature in Calcutta at Fort Williams to be composed of the Chief Justice and three other judges—all Barristers in England or Ireland (Char, 1983:112–13). By this Regulation, the British-born subjects were only to be heard and tried in the Crown Court and then the Supreme Court, which meant that the English Law would be applied in such cases. The Indian-born subjects would be tried in the Company's Court, and in such cases, the Indian laws and regulations should be applied. Certainly, the latter was not based on the principle of equality but on inequality. In other words, British-born subjects committing a crime in India would not be subject to the Company's Court to which he/she would be immune. Awfully, such persons can be tried in the Company's Court provided they signed a bond to be so executed. There is further discrimination in favor of the British-born subject (in this case primarily traders and merchants) who resided in Bengal, Bihar, or Orissa (now Odisha) but outside of Calcutta could recover their claims against the native inhabitants easily by resorting to local Dewani Adalats. Yet, the Indian inhabitants were not as lucky: they could make claims against the British subjects by filing a case only at the Supreme Court, which was expensive and in which all the judges were White men (Sharma, 1922). By the Regulation of 1793, an Indian could, at best, be allowed to occupy the post of Munsiff on the presumption that the Indians were not worthy of any high position and could not be trusted. An Indian could try as a Munsiff a civil case up to Rs 50.00, and that too, in matters of the Hindu and Muslim laws for the Company's officials were unable to understand the latter. The Indian judicial officials were also discriminated against in matters of pay. Lord Cornwallis, the then Governor-General, increased the remuneration of British officials while the Indian officials had none. The story of discrimination had had other forms. According to the provisions of the Regulating Act of 1793, matters above Rs 500.00 could only be filed in the Supreme Court. Lord Cornwallis prohibited the British subjects from residing beyond 10 miles of Calcutta unless a bond was executed that they

agreed to be under the jurisdiction of the local Dewanti Adalat in case of Rs 500.00. However, cases involving a sum above Rs 500.00 were to be subject to the Supreme Court of Calcutta. The Indians were deprived of this privilege (Sharma, 1922). It was a calculated strategy to block any Indian to move the Supreme Court: it was costly, and second, the judges were all British-born (White) subjects. Such discrimination against the Indian subjects and in favor of the British-born subjects, including the Americans and the other Europeans in different forms went on for the next half century. This did not stop even after the British Crown had taken over India and governed it directly.

In a note dated 5 August 1813, Warren Hastings, the then Governor-General, rather strongly cautioned against the free settlement of Europeans in India. He said that 'if the Europeans are admitted generally to get into the country to mix with the inhabitants and to form establishments among them, the consequences most certainly and inevitably prove the ruin of the country; they will insult, plunder, and oppress the natives because they can do it with impunity...' (Char, 1983: 137). Hastings explicates his concern in the following: In India, at a distance from the capital settlements, the name of an Englishman is his protection, and sanction for many offenses he would not dare to commit at home (quoted in Char, 1983:137).

In twenty years, the Charter Act of 1833 did just the opposite. This Act, as it were, unsealed the doors for British subjects to live in and acquire property in India. Many British subjects came to India, engaged in trade and commerce, began to mistreat the Indians, and exploit them, assuming they would be safe from legal repercussions if sued, given that the bench would be presided over by Englishmen. This Act was passed when the Whigs were in power in Britain and the first Governor-General of India William Bentick was intent on introducing liberal reforms in India. This Act prohibited all forms of slavery in India and paved the way for the centralization of administration in India as well as bringing under the control of the Crown the East India Company (Leen). Nonetheless, the privileges to be enjoyed by the British-born subjects were retained by Sect. 46 of the Act. The Act made specific reservations for the British-born subjects. It said that the Government of India could not pass a law without the prior sanction of the company's Board of Directors to sentence British subjects or their children to death, empowering any courts other than the Supreme Court (Jain, 2006: 210). The Directors also urged upon the Government of India 'to move towards eliminating discrimination from the sphere of law and justice' (Jain, 2006: 211).

In this connection, the opinion of T B Macaulay (1800–56), a British politician, historian, educationist, and administrator in India as the President of the Supreme Council of India was of relevance. He was also made the First Law member of the Government of India. His opinion regarding prevailing discrimination in the judicial system in India was a pathfinder. As a liberal politician, he believed in liberty and equality. He opined that the judicial system should be uniform as far as possible. He argued that there should be no distinction between one class of people and another; he suggested that all subjects (British-born and Indian) should be amenable to the same Company's Courts in civil cases (Jain, 2006: 211). Macaulay's proposals to be considered in an enactment came in for vehement opposition by the British subjects in Calcutta who called it 'the Black Act' (Jain, 2006). Ironically, the Act to be passed in 1836 would not affect them for their right to appeal to the Supreme Court was not curled but retained. It would affect the Englishman of the *mofussil* who did not protest against the so-called 'Black Act.'

The Government of India did not succumb to the pressure and went ahead with the passage of the Act of 1836. This Act did away with the system of exemption enjoyed then by the British-born subjects from the Company's courts. Second, it was stated in the act that no person by reason of birth, or descent, be exempted from the Company's Courts. Jain argued that the Act made some progress toward equitable steps not witnessed until then (Jain, 2006: 212). The Act of 1839 took a further step along the same line by stating that no person by reason of the place of birth, or of descent shall enjoy any privileges, and that all subjects should be subject to all kinds of court down the scale. The Act of 1843 moved it further ahead. It said that all persons irrespective of color, caste or creed to be subject to mofussil courts in all civil cases in Bengal, The Madras Act of 1893 made the same provision applicable in the Presidency (Jain, 2006: 212). Thus, by the middle of the ninth century considerable progress toward equality was made in the judicial system in civil cases. It was not until 1850 that all racial discrimination in civil matters, legally speaking, in India and other areas of the British Indian empire ended (Jayshree, 2007). Such legislative measures reflected the ideological predilections of the party in power in Britain. The Liberal regimes in Britain meant more liberal reforms in administration and adjudication in India. The various reform efforts undertaken by different Governor-Generals in India are a testimony to it. But at the same time one ought to exercise caution in not overestimating the judicial reforms, for discrimination continued to stay in the sphere of criminal justice.

In criminal justice, however, things were still discriminatory, and even worse. The East India Company employed only the White people as magistrates and judges. The Indians who were appointed in the lower echelons of the judiciary had very limited power. Like civil justice, the Englishmen were also exempted from the jurisdiction of the Company's Courts. In matters of salary and other benefits too, discrimination prevailed. The Regulating Act of 1793 provided for exemption of the British-born subjects from the authority of the Company's Courts. The Englishmen were amenable only to the courts at the Presidency town. Such special privileges and exemption for the Englishmen went well until 1843 when a space was provided for more equal treatment of the Indian subjects. The move toward equality in the judiciary in criminal cases was visible in the Act of 1833. The Board of Directors of the East India Company noted, following the provision of the above Act: 'There can be no equality of protection when justice is not equally and on equal terms, accessible to all' (quoted in Jain, 2006: 214). It was further stressed:

Even in criminal cases where distinctions are least desirable, there may be sometimes necessary since it is conceivable that what would operate as a severe penalty to a Hindu would be felt as none by an Englishman. But variances like these would not affect the main principle. The maxim remains that justice is to be distributed to the men of every race, creed and color, according to its essence, and with as little diversity of circumstances as possible (Jain, 2006: 214). As a further move to lessen, if not, to remove any discrimination, the Act of 1843—being backed by the proposals of the First Law Commission—cleared more space of equality, but the Englishman continued to enjoy a certain privilege in the sense that for offences of a serious nature he could be tried only by the Supreme Court (Jain, 2006: 215). *The Criminal Procedure Code* (1872) continued the racial 'disability' regarding the Indian officials holding high judicial positions by denying the Indian judges in the mofussil from trying the English wrong doers. The revised CPC in 1923 moved further toward equality by allowing both the British and the Indian subjects to reclaim trial by jury—consisting of most Europeans or Americans, and of most of the Indians respectively.

The Indian Jury Act of 1826 and Public Protest

As the preceding section shows, nearly all Acts passed during the British colonial rule in India until about 1935 were racially discriminatory for the Indians. In one way or the other, they were aimed at excluding the Indians

from the judicial system and other areas of administration, police, and military. The Indian nationalists especially after the foundation of the Indian National Congress in 1885 took them up for protest and mobilization against the colonial regime. In this section, we will take up one Act which created considerable public outcry and discontent, and protest before the rise of the Congress led nationalist movements, and after: Indian Jury Act (1826).

The concept of jury, or trial by jury, refers to a legal institution in which a group of laypersons participate in deciding cases brought to trial. Its legal status and role vary from country to country. There are differing opinions about its historical origin. The jurors are recruited at random from the wide population for the trial of a particular case. How does the system work? The jurors conduct business in secrecy, so the proceedings are not to be made public. However, they decide by a vote, and let their decision be made known without giving any reason (Editors Encyclopedia Britannica). The British brought the system to their colonies in Asia and Africa but with a difference. The difference lay in its restricted use that excluded the native people.

The Indian Jury Act was passed in 1826, and it came into effect at the beginning of 1827. The Act was the manifestation of the idea of religious superiority of the British government that introduced the notion of religious distinctions in the judicial system of the country. According to the Act, only Christians had the right to sit as jurors involving trials of Christians. On the other hand, Christian jurors had all the right to see the cases involving Hindus and Muslims. This Act made the Anglo-Indians and the White settlers in India jubilant but gravely hurt the sentiment of the Indians (Hindus and Muslims) who were officially condemned once more. The latter would vehemently protest it, led by Raja Ram Mohun Roy (see below), but the debates that took place in the House of Lords in the wake of an amendment bill in 1932 strongly suggest that the Act was ill-intentioned. The Lord Chancellor, arguing against the Duke of Wellington, who was opposed to the amendment for removing racially discriminatory provisions, expressed his anguish that the Act put 'a stigma against a substantial portion of his Majesty's Indian subjects.' He also added that 'in India, the natives of respectability were already discharging various functions connected with the administration of justice'. Pointing his finger at the Anglo-Indians (Christians), he argued that they might have lost their caste in becoming Christians but did not simply qualify them to sit in judgment on property affecting their masters 'while those masters were excluded from sitting jury' (HL Deb, 1832). The Jury Act of 1926 was amended in 1832 following protests against it from many quarters.

Raja Rammohun Roy (1774–1833) was most vocal against the Act although he held a distinct view of the British rule in India considering it a blessing in terms of education and technology (Bose, 1981: 15), and in contrast to the preceding Muslim rule in India. But he was not prepared to concede to the concept of racial supremacy. He believed in the intrinsic value of Indian culture and was not ready to accept any lasting inherent superiority of the European race over the Asiatic people (Bose, 1981: 16). At the initiative of Roy, a petition against the Act was sent to the British Parliament voicing the injured feeling of the educated and respectable people of Bengal and India. Roy said:

The consequence of this act is that in matters where a man's life at stake, or where banishment, imprisonment and severe punishment are awarded, we Hindoos and Musalmans, must submit to the verdict of Christians, whether the natives of Britain or the offspring of British father by Indian mothers, whether they be the common Portuguese Armenians or the 'rice Christians' of Serampore. These persons shall have the privilege of joining in cases where our lives are concerned, whereas we, although live in the same country or in the same hamlet with them and partaking in their virtues and vices, shall have no power of judging or respecting them. In like manner, our descendants must also submit their lives to the decisions of the sons of Christians (Quoted in Kolsky, 2010: 218).

Nonetheless, the White District Magistrate went on to believe that the Indians becoming jurors were less qualified than the rural schoolgirl (Kolsky, 2010: 218). Roy's statement above was an illustration of an articulate critique of the colonial institutionalization of racial discrimination and protest in no uncertain terms against this practice in the realms of justice. Interestingly, Roy spoke of both the Hindus and the Muslims at a time when the leader of the so-called Bengal Renaissance Roy was at pains to read how the system of colonial justice was highly prejudiced against the Indians and their next generations. He considered it a folly that the Christian neighbors because they were Christians possessed an inherent superiority to sit on judgment in a jury and delivered a verdict against the Indians.

Rammohun Roy's Specific Response on the Indian Judicial system During the Company Rule

The racial segregation and discrimination in the judicial system under the Company rule was receiving a lot of public criticisms, and public discontent shown in public meetings and newspapers. The then Labour governments in Britain often tried to pay heed to them. The Crown seemed to improve the existing system of judiciary. The Select Committee of British Parliament when the Prime Minister Ramsay MacDonald was in office sent out a questionnaire to Rammohun Roy (1772–1833), an employee of Fort William, Calcutta, and scholar- reformer and educationist, and the first modern man of India, seeking answers to many questions titled 'Questions and Answers on the Judicial System in India' in 1830.

The first question was: *Have you observed the judicial system in India?* Answer: *I have long turned my attention toward the subject possess a general acquittance with the operation of the system more particularly from the personal experience of the Bengal Presidency where I reside* (Roy, 1947: 11) In his answers to many questions, Roy was unsparing of the hiatus between the white judges and the 'native' Indian judges and legal portioners. Consider this question. *Will you inform us what evils arise from the want of due qualifications in the judges?* Roy's answer was long but the salient points merit attention. Roy, first, acknowledged the high talent, qualifications, and integrity of the British judges but pointed out their limitations too; they are 'not familiar with the laws of the people over whom they are called to administer justice', Roy, of course, did not raise the issue of racism as prevalent in the judiciary, but the way he argued smacked of it: 'decision formed on conjecture must be very liable to error' (Roy, 1947: 12) while referring to the British judges. To the question: *To what do you think attributes it the bar is not treated with respect?* Roy's answer also hinted at the issue when he said that the native pleaders are 'treated as inferior caste of persons' Roy, 1947: 13). Roy also did not forget to stress that the subordinate native judicial officials were paid very poor salaries ranging from Rs 20, 30, Or 40 to a maximum of Rs 100 a month, which could not meet both ends (Roy, 1947: 16). Not that Roy was particularly concerned about racial exclusion, but his answers to the questions reflected the ground reality. To the question on how to improve the defects in the system, Roy's response was candid:

As European judges in India are not generally expected to discharge judicial duties satisfactorily, independently of the native assistant, for not possessing a knowledge of the language, manners, customs, habits, and practices of the

people, and as the natives who possess this knowledge have been long accustomed to subordination and indifferent treatment, and consequently have not the power of commanding respect from others, unless joined by the Europeans, the only remedy which exists is to combine the knowledge and experience of the native with the dignity and firmness of the Europeans (Roy, 1947: 17).

Roy's protest against the Jury Act (1826) as well as his responses above was the precursor to the first generation of Indian nationalists' constitutional method of protest although for long Roy was thought, wrongly, to have been an unqualified supporter of colonialism (Guha, 2010). Public protest against racial discrimination took place in other Presidencies, especially Madras: in the form of public meetings; newspaper criticisms, and petitions against higher authorities. The jury system of trial in India was abolished by the First law Commission in 1958 but there was specific application of it until 1972 when the Supreme Court of India put a final seal of ban on it.

Conclusion

Paradoxically, racial discrimination or inequality in the judicial system in colonial India was not based on color, but it was used as a technique of power and domination. It was crafted with the ill-motive of subjugating the Indians. The gradual lessening of the magnitude of racial discrimination, as we have seen above, related to the change of government in Britain; the Liberal as well as Labour governments in Britain, promoted 'reforms' in favor of more equality, but the interest of the White British-born subjects and the Anglo-Indians were never sacrificed in favor of the Indian subjects. Any move to adversely affect the British-born subjects was met with protest by the Englishmen and the Anglo-Indians. The legal move to do away with racial discrimination was slow and halting. The Indians had to wait until after independence (1947) when the Indian Parliament passed the *Criminal Law (Removal of Racial Discrimination) Act* in 1949, and abolished racial discrimination. Ironically, racially discriminatory practices especially in jails remained until 1972 when the Supreme Court of India in a case (Madhu Limaye vs. Supt. Tihar Jail (1972) condemned the 'obnoxious' practices that offered differential treatment to the European convicts as 'smacking of colonial hangover' (Jain, 2006: 217) and abolished such practices.

The racial discrimination preoccupied the minds of nationalist thinkers who condemned it in no uncertain terms and defended the principle of

equality. Swami Vivekananda 1861–1902), a Hindu monk, and great nationalist, condemned not only racial inequality but also class inequality, and defended equality on religious/spiritual grounds that man was the incarnation of the Absolute, and God resides in every soul so there could no higher caste or lower caste, and no master and slave (Bose, 1981, 235). Aurobindo Ghose also protested the so-called principle of racial superiority and argued that the Indians were a conquered race, and the British were the conquerors, but that did not explain that the Indians were racially inferior. He rightly termed racialism in India as an inevitable evil of foreign domination (Bose, 1981: 234). The first generation of Congress leaders fought against racial discrimination and brought to the fore the demand for Indianization of administration, civil and judicial, by following the peaceful, constitutional method of protest. But the extremists in the nationalist movements such as Aurobindo Ghose and Bipin Chandra Pal thought that the leaders associated with the constitutional method of struggle were not completely free from the idea of superiority of the Europeans due their schooling in the same system of education in Britain.

Finally, even if racial discrimination was forbidden in the judicial system by early 1920s, the anti-Indian approach remained, and with the growth of the anti-British colonial nationalist movements by the Indian National Congress and other groups and parties, repressive laws were passed galore, and their implementation continued so that large sections of the nationalists were put behind bars for long periods without trials. As argued in greater detail by Bose (1981), racial discrimination and injustice, and the protest against it paved the way for the demand for equality in the various phases of the Indian anti-colonial movement in a society which knew of hierarchies and social discrimination. If racial discrimination, as I have argued above, was a technique of imperial domination, it went on till the passage of the Criminal Law (Removal of Racial Discrimination) Act 1949. The *Constituent Assembly of India* (1946–49) put a final seal on it and the Indian Constitution (1950) in the chapter on Fundamental Rights (Article 14–30) prohibits all kinds of discrimination based on race, color, caste or creed. However, although the Constitution of India (1950) adopted the principle of equality before the law (Article 14) and the equal protection of the law, the establishment of equality ever since has not been easy even in a democracy. Why it has not so happened belongs to further inquiry. Finally, it is beyond doubt that a critical understanding of the structure and operations of the judiciary in colonial India remains indispensable for better understanding the nature and depth of colonialism, and its ideological hegemonic control.

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5

Displacement as Racial Injustice: Slow Violence in Caribbean Landscapes

Amanda Byer

Introduction: Property Outsiders

When John Mussington, ecologist and schoolteacher approached the project manager at the construction site for a new airport on his island of Barbuda, he was curious about planning permission approval for the project, and whether an environmental impact assessment had been carried out, given his knowledge of the Barbudan environment and his work as a consultant on similar projects. The project manager did not give him a clear answer, and a few days later Mr Mussington was visited by police officers, who delivered a warning from the Commissioner of Police not to trespass on the construction site or to return to it without permission.

Conflicts over development and land use in the Caribbean between the state and communities reflect recurring themes concerning race and access to land. Criminalising Black bodies in the Caribbean landscape is as old as slavery itself. As the former slave colonies of the British Empire, the English-speaking Caribbean, which includes the state of Antigua and Barbuda, remains part of the common law world. Concerns over 'loitering', public disorder, trespass and vagrancy reflect an uneasy relationship between race and protection of property that is upheld in the law in this region. In

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particular, vagrants were classified as poor, immoral, criminally suspicious and itinerant. They were unstable in space. Vagrancy laws served a range of purposes: to control labour and limit workers' bargaining positions following the abolition of slavery; to define the boundaries of civilised, industrious and moral society; and to 'clean up the streets' and reinforce urban boundaries. Even where explicit vagrancy laws have been abolished, vagrancy-type laws—laws that have granted the police discretionary authority to commit arbitrary detention, of the poor in particular—are an intrinsic aspect of the criminal law regimes of all former British jurisdictions (Roberts, 2023). Surveilling and policing powers are embedded in the common law legal order introduced during empire to create and maintain the slave colonies, and highlight concerns about Black communities moving within and accessing public space.

The colonisation of nature as well as its relevance to international law has been the subject of academic investigation (Crosby, 1986; Jiménez Fonseca, 2010), but more recently, scholarly attention to the colonial relationship between race and ecology in an age of environmental polycrisis has enriched understandings of the role of the Caribbean in the environmental imaginary and environmental justice movements (Ferdinand, 2021). Sustainable land use is key to addressing food security, climate change and environmental degradation. In fact, land destruction is a human rights issue, as Indigenous and marginalised groups can attest. Resource conflicts involving indigenous and marginalised communities lead to human rights violations, which have generated jurisprudence at the Inter-American Court of Human Rights. Criminalising access to land is part of a wider conflict involving race, environment and place. Scholars in green criminology have drawn attention to the ways in which racial justice is complicated when analysis is extended beyond what is officially defined as a crime, to include the manifold sources of injustice and harms that preserve and reinforce inequitable distributions of power and means of subsistence, such as environmentally harmful human acts that are legally approved and advanced by the law (Goyes, 2022).

The criminalisation or threat of criminalising Black bodies in space exposes the structural violence at the heart of a legal system concerned with maintaining and protecting property rights. From the moment Afro-descendant communities ceased to be property themselves, their existence in the landscape has been an anomaly and therefore a challenge to the logic of property. Mr Mussington, whose community has argued that they have a communal right to land important to livelihoods, identity and environmental sustainability—represented a threat to investor projects for luxury property developments that the new airstrip was intended to support. Other approaches to

land not built on ownership, such as Maroon ecologies, Afro-indigenous and creole community interests in land, exist throughout the region, but either do not find formal recognition in the common law or are in continuous tension with the law to maintain those rights.

That John Mussington's conduct was immediately linked to criminality underscores the ways in which landlessness is linked to lawlessness in Caribbean societies and can be seen in the creation of categories of undesired individuals and groups, such as 'vagrants', 'loiterers', 'busybodies' and uninformed communities who espouse NIMBYism in opposition to progress—narrowly defined as development projects for luxury hotel or real estate ventures (McKinlay et al., 2025). What many of these people have in common is that they do not own contested property and are therefore property outsiders (Fox O'Mahony, 2014). *Mussington v Development Control Authority*, decided in March 2024, illuminates the inherent tensions between property and the cultural dimension of land, otherwise known as landscape or place. Though no explicit mention was made of landscape, the judgment made clear that property is not the only basis for bringing a claim to protect the environment before the court. Other relations with land, beyond ownership, are potentially worthy of protection. This expands the legal convention that requires demonstrating personal property has been affected in order to show a legal interest (*locus standi*).

Landscape or place is, therefore, an important variable for parsing the relationships between communities and their environs, as these unique interactions characterise customary practices, livelihoods and identity. As landscape represents the cultural dimension of land, its delegitimisation aligns with the dehumanisation of locally embedded cultures and communities. This includes but extends beyond Indigenous communities, as local communities in the Caribbean are not predominantly Indigenous. Landscape destruction in the Caribbean may be further distinguished from the extractive violence experienced by Indigenous communities in neighbouring Latin America, where logging, hydroelectricity and industrial projects disrupt, contaminate and impact the health and way of life of Indigenous communities. Instead, the Caribbean region is subject to (eco)tourism and real estate projects that purport to support carbon emissions targets, protect the environment and meet sustainable development goals. Physical ejection from the environment as well as health and human rights violations are not as clear-cut in these instances, but spatial violence (violence to landscape or place) is occurring.

The violence of racial injustice is thus not only spectacular and immediate, but long-term and emplaced. While the structural foundations of criminal justice and law enforcement have been explored in the scholarship,

this chapter uses a spatial justice lens to expose the place-based nuances of slow violence (Nixon, 2011). The spatial justice paradigm advances in many ways the call to address the materially embedded aspects of decolonisation by attending to 'grounded struggles' to avoid dilution of its meaning (Noxolo, 2017; Tuck & Yang, 2012). The following section explains the interlinkages between slow violence and spatial injustice. The Caribbean experience with slow violence and spatial injustice is then presented through an analysis of the destruction of its landscapes during colonialism, which has legal geographical implications for the international legal framework concerning race, nature and property. The penultimate section discusses the contemporary experiences of displacement which reinforce the existence of slow violence in the region today. The chapter concludes with a discussion of the relevance of landscapes to racial injustice in an age of environmental polycrisis.

Slow Violence and Legal Geography in Dialogue: Emplacing Racial Injustice

Slow violence refers to 'a violence that is neither spectacular nor instantaneous, but rather incremental and accretive, its calamitous repercussions playing out across a range of temporal scales' (Nixon, 2011, p. 2). Recognition of such diffuse harms is meant to counter approaches to violence that emphasise the spectacular and immediate, such as a one-off event or action. More recently, slow violence has been applied to harms that do not conform to conventional definitions of violence, paying attention to cumulative impacts of harms that are camouflaged and left to metastasise, out of sight (Wakeham, 2021). This is relevant to the violence of racial injustice, which requires an interrogation of space.

The law plays a crucial role in slow violence because of its universalising and abstract logic, which resists engagement with space. Space is any geographical location, while place or landscape is a culturally inscribed space, given meaning through human interactions with the material environs. Today, landscape can describe any public space and functions as an umbrella term for non-proprietary interests in land (Strecker, 2018). The loss of landscapes can lead to spatial injustice, whereby local peoples are displaced, either physically or through imposed constraints that impair their constitutive relationships with place. Without these constitutive relationships, communities can be dehumanised and rendered disposable.

The aim of legal geography is to expose the 'concealed, forgotten or prohibited connections between peoples and places' (Bartel et al., 2013, p. 343).

Legal geography asks whether law's perceived abstract and neutral character is, in fact, evidence of the law dismissing place (Layard & Bennett, 2015). This 'spatial blindness', or at the very least spatial selectiveness, means that established legal categories may need to be reconciled with the reality of geography (Layard, 2019). By challenging this putative universality of concepts, legal geography emphasises the need for localisation of the law—law must make room for local conditions, or forms of regulation must be embedded in local conditions of existence, in order to be effective (Holder & Harrison, 2003). Localising the law, it can be argued, is a means of addressing slow violence by checking its invisible impacts through responsiveness to localised harms.

Legal geographical analysis involves the identification of fixed legal and spatial representations, demonstrating the underlying social motives of these representations which are not objective by nature and using these contradictions to explore new pathways to justice (Blomley & Bakan, 1992). Legal geography thus examines systemic asymmetries of power—domination, exploitation and marginalisation both in the world and with respect to access to law. Contexts can include racism, colonialism, homelessness and environmental justice (Delaney, 2016). In exposing the aspatiality of the law, legal geography aligns with slow violence perspectives in that it is concerned with how harms are invisibilised. The nuances of geography, however, remind us that harms and experiences are not interchangeable, and manifest in a multiplicity of ways around the world. Legal geography is therefore cognisant of the historical context of large-scale landscape change, examining material conditions, limits and connections over time (Bartel et al., 2013).

The following section therefore examines the Caribbean experience with slow violence, in particular the destruction of constitutive relationships with place that were also foundational to the construction of the international legal order, its core concepts and mechanisms and the resulting racialisation and minoritisation of communities as placeless.

People, Place and Property: The Legal Geographical Foundations of Racial Injustice in the Caribbean

The Caribbean has been described as the oldest colonial region in the world (Mintz, 1989, 1996; Besson & Momsen, 2007). It was first conquered by the Spanish in the fifteenth century and thereafter subject to Dutch, French, British, Scandinavian and U.S. control. The region includes the

Antilles or islands of the Caribbean Sea and certain neighbouring mainland territories of the Americas that share a common colonial history, namely the Guianas and Belize (located in South America and Central America, respectively). As a result of imperial control, common and civil law jurisdictions exist as part of the colonial inheritance. The exchange of colonies between empires also means that hybridisation can be found within the legal system, such as civil law retentions within the common law in Saint Lucia, and the Romano-Dutch elements in Guyanese common law. Culturally colonisation by various empires manifests in the creolisation of societies and languages. Distinctions such as the Anglophone or Commonwealth (English-speaking) Caribbean, French-speaking, Dutch-speaking and Spanish-speaking Caribbean are not hermetically sealed. Not all countries are independent, as there are sub-national jurisdictions such as the overseas departments of France, the Netherlands Antilles, which are constituent parts of the Kingdom of the Netherlands, and the overseas territories of the United Kingdom. This chapter focuses on the former colonies of the British Empire, namely the Caribbean islands (British West Indies).

The English developed the islands as major economies in their own right and as part of the Atlantic trading system. The islands were valuable to the economic viability of the mainland colonies, with commodity trade between the two being of vital importance to English merchants. Trading connections in rum, foodstuffs, construction materials, sugar and slaves contributed to the perception of the islands as the 'hub of Empire' (Beckles, 1998; Williams, 1994). While English merchants had established global trading networks, the West Indies were central to the operations of the English (after 1702, the British) empire in America. The islands absorbed more slaves over time and produced a more lucrative commodity than any other region in colonial America. The West Indies thus occupied a special place in the development of what ultimately became the British Empire.

In constructing this new order, ideas about land, environment and race were foundational. These conceptual developments were inspired by the processes of enclosure, colonisation and chattel slavery, which would facilitate the conversion of pluralistic understandings of land into malleable space. What was accomplished was a systematic dismantling of place in the law via the creation of property rights in land. Places or landscapes predate property, as they represented embedded ontologies throughout the world, governing people-place relations that were as diverse as the ecosystems that supported them (Borrows, 1997; Dunbar-Ortiz, 2014; Graham, 2010; Olwig, 2002).

The common law conceptualisation of property required the dissolution of working landscapes, and by extension, people-place relations as functioning

communities on communal land presented an obstacle to exclusive land ownership (Byer, 2023). The taming of 'unruly' wildernesses was justification for the genocide of Amerindian peoples, whose clan-based and semi-nomadic lifeways conflicted with the 'improvement' philosophy advocated for by English colonists to maximise agrarian commerce. Declaring them 'savage' outlaws who haunted the forests and spread disease, facilitated the clearing of the land in the name of public health and public safety, and ensured their elimination from 'civilised' society (Grove, 1996). The scale of environmental destruction during the colonial period was such that Caribbean ecosystems never fully recovered (Richardson, 1998; Watts, 1990). The 'spatial cleansing' of Amerindian landscapes facilitated the creation of colonial reserves in which plants could be studied to maximise crop yields for plantation agriculture (Drayton, 2000; Grove, 1996; Herzfeld, 2006; Schiebinger, 2004).

However, the purpose of this 'exclusive conservation' was not to conserve nature as lived-in, or to recognise alternative understandings of nature as conceptualised by Amerindian peoples. These reserves, though formalised in colonial reserve legislation thus had no local relevance, sensitive neither to the cultures of local peoples nor the material limits of these ecosystems (Beinart & Hughes, 2009). Instead, they were developed to enhance economic exploitation through plantation agriculture and protect the investments of British planters. Conservation therefore went hand in hand with environmental destruction and human atrocities.

Following the acquisition of new colonies in the Caribbean as the result of the end of the Seven Years' War, Britain ramped up the development of its sugar colonies in the Eastern Caribbean. Barbados, its first economically significant sugar colony, was both template and cautionary tale in this endeavour. The collapse of Barbados' environment given the unrestrained deforestation and resulting soil exhaustion to create sugar estates required the development of botanical and timber reserves to shore up the plantation apparatus.

Besides colonial reserve legislation, other legal and policy developments ensured spatial injustice for local communities. The introduction of Irish indentured servants and enslaved African labour created new legal categories for displaced populations whose relation to land would be controlled by the law. These populations were distinguished in the law when the chattel slave legal status was established for enslaved African peoples. Irish servants who completed a period of servitude, could gain employment on the estates and, in some cases, acquire property themselves. This was not permitted under the law for enslaved Africans, who as chattel property formed part of the contents of the estate (Handler & Reilly, 2017; Hogan, 2018; Zacek, 2023).

This racialisation of access to space, and existence within space reshaped the Caribbean landscape. Enslaved Africans could never belong to the land, as they were 'naturally alienated' from their homelands, and could never formalise their relations with land in the Caribbean as property themselves (Brion Davis, 2008; Patterson, 1982). This has been termed the 'double injustice' of the slavery experience, leading to a persistent myth that Afro-descendants have no enduring relations with nature (Ferdinand, 2016, 2022). The history of the Caribbean is thus a history of displacement, beginning with the enslavement, removal and genocide of Amerindian peoples from the landscape and continuing with the creation of the chattel slave as a legal category that is intrinsically placeless.

The plantation system in the New World initially was established by grants of land from the imperial crowns to European citizens. This was bestowed directly to individuals or indirectly through charter companies. As noted earlier, this facilitated the overpowering of Amerindian peoples, who could not withstand the onslaught of European colonisers given their numbers and style of semi-nomadic shifting cultivation (Valcárcel Rojas, 2016). Enclosing land for plantations transformed the local ecology, upended a communal resource system and entrenched a system of law that relied upon private property and slave labour (Hicks et al., 2007).

The philosophy that cultivating land improves it, underpinned England's instrumentalist approach to land value, and so provided justification for taking untitled fields in the New World from native peoples, who were letting land go to 'waste'. Private property was thus introduced with colonisation of the Caribbean, as the entrenched land laws and succession practices in African countries stymied attempts to establish plantations on that continent. European elites exercised power over the European masses by means of private, revenue-producing land—exemplified by the landlord-tenant relationship. By contrast, West African land was owned by the state as a corporation, and thus the main symbols of private wealth and success were large numbers of slaves (Brion Davis, 2008). However, the nature of slavery in the Caribbean islands was unique with regard to its relationship with the land and the law and diverged substantially from African practices.

The plantation is a core instrument of colonisation, where colonisation is a process of consolidating people and territory under the control of a singular power (Beckford, 1972). In a plantation society or economy, several plantations monopolise the arable land in a country that is predominantly agricultural. Plantations are established for external trade, hence their location on or near coastal land. The plantation is designed for pure exploitation, which distinguishes it from other agricultural settlement institutions such as

manors or haciendas that adopt a pastoral and patriarchal image (Beckford, 1972). Religion, family, social status are irrelevant for the enslaved. When the slave population in a given colony exceeds ninety percent or more, this can blur the usual boundaries of human society, as the society becomes oriented to the twin goals of lowering production costs and increasing output. In most of the Caribbean, there were no sectors of society that were truly independent from sugar production (Brion Davis, 2008; Browne, 2017). The plantation and the island merged into one, and the landscape was now a 'plantationscape'.

Plantations had been attempted in West Africa, the preferred location, as the region was suitable for growing tropical commodities. However, European settlement and supervision was greatly hampered by high rates of death due to mosquito-borne diseases such as yellow fever and malaria. Attempts were then made to acquire land and make use of local African labour, but local populations could not be controlled and local political authorities prevented the alienation of land (Beinart & Hughes, 2009). African political orders were well-established and militarily formidable, making it difficult for British and European colonists to infiltrate and transform societies they found on the continent. Negotiations to acquire slave labour did not produce successful results in the long term. Although African labourers were an improvement on European labour they could easily escape; an alternative location was necessary for isolating and stranding a captive labour force. The tiny Caribbean islands, whose land masses could be overwhelmed and completely reduced to plantation agriculture, where slaves were essentially trapped, and full colonial political control could be established, proved ideal for the purposes of the British Empire. With the potential for sugar plantations in the Americas amply demonstrated by the Portuguese in Brazil in the sixteenth century along with a ready supply of slaves from Africa, the two poles of the triangular Atlantic trade became established, in no way hampered by an alternative geographic location for plantations (Beinart & Hughes, 2009).

The Caribbean's material attractions were also relevant: it was an appealing alternate location because climatic, geographical and environmental conditions were ideal for sugar cultivation (Hauser, 2017). The Caribbean colonies, as islands, were surrounded by sea, and also had surface water such as rivers, so plantations could be sited very near water, which was the cheapest way of moving goods (Beinart & Hughes, 2009). The environmental factors necessary for establishing a sugar plantation, such as soil not prone to flooding, and a hot dry climate with regular sunlight, were present. Plantations require extensive land, and the sparsely inhabited coastal tropical lowlands where

Amerindians practiced shifting cultivation were not permanently settled in the sense that Europeans were accustomed to (Beckford, 1972).

The Caribbean slave colonies were therefore uniquely positioned as nodes in the Atlantic trading system as well as zones of dehumanisation and displacement that compounded harms in small island locations. Slavery in the Caribbean was both place-based and race-based; slaves were imported and brought to small islands where they could not escape. Planters and white people dominated and moved freely within the same space that Amerindians and Africans could not—they possessed spatial privilege. While colonised populations did remain in Africa and Asia, the eventual loss of Amerindian peoples signified a demographic replacement in the Caribbean. However, unlike settler societies where British and other European immigrants became demographically dominant, enslaved African peoples brought to the region in great numbers were disempowered in land and in law.

In Caribbean slave colonies, the entire land mass was dedicated to the plantation economy, driven by African slave labour. This was not the case in Brazil or the American South. Although British Caribbean planters initially borrowed their sugar-making technology from Dutch and Portuguese Brazilians, the political culture of their slave plantations was wholly different from that in Brazil, where the wealthiest mill owners at least maintained the façade of being patriarchs and community leaders. Instead, the British plantation system evolved into a unique system of exploitation ‘a purely capitalistic enterprise, not a quasi-seigneurial community with religious and social services that stimulated a surrounding economy’ (Beckford, 1972, p. 116).

However, the population disparities concerned the white elite, who were surrounded by captive Black labour. These underlying fears were responsible for the most successful planters practicing absenteeism in the eighteenth and early nineteenth centuries. In their place they hired estate managers and overseers to manage their estates, who were determined to maximise plantation profits in order to escape the region and retire home to Britain (Hicks, 2007). This reinforced the perception that the region was ‘uninhabitable’, as there were no ‘reassuring social and psychological boundaries of traditional societies’ (Brion Davis, 2008, p. 115).

Public authorities entrenched the power of the plantocracy, because their sole function was to perpetuate the plantation system, which included regulation of life and work on the estates, and to ensure above all else that the enslaved population never challenged the status quo. Legislation could not maximise profitability of plantation production and ensure the welfare of plantation labour at the same time (Beckford, 1972). It was thus antithetical to the survival of the slave colonies for legislation to recognise the humanity

of the slaves. 'The common law of England is the common law of the plantations', wrote the Admiralty's legal counsel, Richard West, in 1720 (Gould, 2003, p. 497).

Plantation economies are stunted because these societies were strictly for exploitation. It was in the plantocracy's interest to keep the slave population from forming any semblance of a civilised society. Rigid control of the labour supply was essential and involved control over the movement of slaves in space and status—illiteracy was thus strictly enforced because it was believed that education would encourage insurrection. This was due to the increased supply of enslaved Africans, who outnumbered Europeans on the islands, making the latter rely on increasingly inhumane means to maintain control of their plantations and slave societies. Slaves were herded together as an undifferentiated mass in compounds of a village character. As slaves came from different cultures, a lingua franca was necessary to facilitate chain of command, and creoles were born as African language speakers adopted the English language. Plantation culture was built around the production of the crop, and this was the chief bond governing interaction between the enslaved labourers. The only skills acquired and disseminated were generally related to the requirements of plantation production, and so considerable technical knowledge was amassed but in relation to one crop only. Common cultural features in the Caribbean related to similar peasant crops, production techniques and marketing arrangements; cuisine, music and dance, folklore, religious cults and a series of traditions, attitudes and beliefs derived from the common experiences of enslaved ancestors and the pervasive influence of the plantation at the centre of their existence (Beckford, 1972).

From a spatial justice perspective, the Caribbean's landscapes as embedded ontologies reflecting diverse ways of knowing and being in the world were completely erased as the region became placeless in the law. This was entrenched when new populations were imported as slave labour and denied a place in the land, reflecting a lost cultural identity and inability to form a new one. The vacuity of space (Layard, 2019) was implicit in the creation of the Caribbean plantation economy and society and is reflected in the masking of violence against communities through the protection of property and protected areas which in fact required surveillance of local communities, and the continued discrediting of their relations with land as lawless, and in need of policing. Other ways in which vulnerability and precarity for communities have been entrenched in the law can be seen in colonial disaster management. Exposure to hurricanes, landslides and other natural disasters was exacerbated by plantation agriculture, which emphasised profit for the overseas markets at the expense of recovery efforts and deprioritised food

and adequate shelter for enslaved populations (Webber, 2018). The region's disposability was, therefore, critical to its functioning in the wider legal order.

Elite interests in land, as represented by the plantocracy monopolised spatial privileges, as landowners had access to all land (often multiple plantations across several islands) and voted in the colonial legislatures to determine laws passed in the slave colonies. Absentee slave-owners therefore were not even required to be in place or protect place while they owned land. They held total control over the land, and the privileges that came with ownership, while living in England. It was to their benefit as property owners that these slave colonies were not functioning places, and this dynamic was maintained to accrue and entrench their wealth. At the same time, enslaved Africans, though physically emplaced in the colonies, were chattel property in the eyes of the law. Curtailed in space, physically and economically, with no rights to the land they developed enduring relations with, and for which they were also exploited, their people–place relations were not translatable in the law—they were not people, and they did not live in a place. This dynamic of physically emplaced local communities being disempowered in the landscape set the stage for investor-state practices, specifically modern capitalism's affinity with abstract property rights, often at the expense of lived-in landscapes and their inhabitants (Byer, 2022, 2023).

This speculative investment architecture emerged from the needs of the slave colony. Plantations were speculative land ventures—thousands of acres controlled by oligarchs to whom vast sums of credit had been extended from investors and banking institutions, and this required the protection of property ownership, through clear property delineation via surveying and mapping to impose a sense of order, and provide security and defence (Quintanilla, 2004). The pace of development was 'frantic' as planters constructed aqueducts, dams and mills and other ancillary infrastructure but ignorance of island ecosystems and topography as well as sugarcane agriculture meant that many of these plantations were operating at a loss, and often faced financial ruin (Murdoch, 1984).

Caribbean slavery was, therefore, uniquely place-based; restricted to the plantation for the duration of their lives, and hemmed in on all sides by the ocean, slaves were physically, legally and socially limited in their mobility and in their access to space. This demonstrates that colonialism in the Caribbean was a form of spatial injustice, because it aimed to prevent the establishment of communities, access to community resources and denied people a sense of belonging, which is spatially located. Ultimately, those closest to nature had very little access to it, even in the post-independence era, due to the

upholding of colonial-era laws concerning nature and land (Richardson et al., 2006).

Defining crime often involved crimes against property, and property itself eliminated people from land, as only a handful of the planter elite could actually own land. Property's evolution as an anti-social and white supremacist institution is influenced by large-scale landscape change. By converting both people and place to property, they could be optimally exploited. Crimes against property were therefore always racially and spatially coded, implicating the law and place. The propertisation of the landscape thus demonstrates the intersection of racial injustice and spatial injustice.

Green Grabs, Ecotourism and Disaster Recovery: Contemporary Displacement-in-Place

The Caribbean has experienced displacement of its Indigenous population, and received displaced peoples, mainly enslaved Africans, who were prevented from formally developing communal bonds with land. Imposing restrictions on those who live in and engage with nature is also possible through 'displacement in place' (Mollett, 2014). This originated in plantation agriculture for Afro-descendant communities, as explicated in the previous section. Today, exclusionary conservation can result in spatial violence when communities are constrained in their livelihoods and cultural practices; they may not be physically ejected from land, but their communities are unmade in the process of depriving them of full enjoyment of land through development and conservation projects that create parks and protected areas, or luxury tourism developments, as has been the case for the Garifuna, an Afro-indigenous community originating in the Caribbean (Mollett, 2014).

Most recently, John Mussington's experience in Barbuda exemplifies the slow violence of displacement, since the Barbudan people have had a 300-year-old relationship with land, beginning with the first enslaved Barbudans who repeatedly challenged and asserted communal land rights against colonial landowners. Communal land rights are not recognised in the common law, despite Barbudans' attempts over the centuries to maintain these practices as an extension of their community, way of life and identity (Berleant-Schiller, 1977, 2017; Lowenthal & Clarke, 2007; Perdikaris et al., 2021; Phillips, 2020).

The central government of Antigua and Barbuda has promoted luxury real estate development in the aftermath of hurricane impacts in Barbuda and granted permission for infrastructure to be established (such as the airstrip

Mussington inquired about) to facilitate this project. Jobs and economic growth are cited as positive outcomes of the development. At the same time, Barbuda, which is a separate island from Antigua, is sparsely populated with delicate ecosystems such as wetlands and lagoons and thin soil cover. Its community has worked with these challenges and is concerned about large-scale changes to the landscape, as these have failed in the past, and caused environmental degradation (Berleant-Schiller, 1978; Boger et al., 2014).

The central government's proposal is based on legitimate arguments concerning economic development and has gone through the legal processes of planning and the sale of property. However, the consideration of land as cultural nature and the impact of its degradation on local communities and their human rights can only be fully appreciated through the spatial justice lens. Demand for land, not in the sense of the colonial engrossment for plantation agriculture but for investment continues apace, sparking a 'global land rush' or land grabs (Cotula, 2012; Özsu, 2019). But another species of the land grab is the 'green grab', which is not extractive of minerals, fuels or agriculture but continues the accretion of property through large-scale landscape change.

In the green grabs process, communities are often framed as 'environmentally destructive, backward and disordered, needing reconstruction to conform with modernist visions of sustainable development or naturalised and romanticised as green primitives, part of increasingly globalised media spectacles' (Fairhead et al., 2012, p. 251). These framings echo the colonisers' approach to Amerindian and enslaved African communities, providing the pretext for enclosing and withholding land but in the name of environmental protection, not improvement. This masking facilitates the spatial disconnect between the Global North and the Global South, exploiting geographic disparities that exacerbate local impacts and ultimately undermine sustainable people-place relations.

It has been suggested that the colonial disaster management dynamic has been replicated by the focus on the tourism industry, which generates much-needed foreign revenue for Caribbean economies (Webber, 2018). According to low priority to community interests in favour of accelerated development funded by international investors can be concerning where local vulnerabilities are not addressed. Tourism has been driven by investors and other global capital interests who are not resident in the region and are insulated from its effects on the natural environment. Nevertheless, the strategy consistently adopted for meeting debt obligations has been the expansion of the tourism

industry and luxury villa developments, which will ostensibly address sustainable development goals, yet increase vulnerabilisation of land (Algoed & Torrales, 2019; Perry, 2022).

Linking race to a lack of stewardship ethic emphasises these communities' putative lack of care for their environments, their opposition to progress and development. However, lack of care for place has been stimulated through the law's dismissal of working landscapes to create property, as it is property that has no concept of care (Graham, 2010). The Caribbean thus illustrates the relevance of displacement as a conceptual and theoretical framework for assessing contemporary law and its dismissal of place-protective behaviour as threatening public order and property. The phenomena of development and disaster, though seemingly diametrically opposed, in fact deploy similar legal mechanisms to ensure space is evacuated of 'property outsiders' in order to 'safeguard' land rights. Restrictive interpretations of standing also ensure these outsiders, usually Afro-descendant and/or Afro-indigenous communities, have no recourse to the courts. A spatial justice analysis thus yields insights into the way communities are criminalised and policed, in direct proportion to the securitisation of the landscape.

Conclusion: Landscape Insiders

Law can unmake place, and this has implications for racial justice. This chapter explored the broader underlying context in which conflict over land use and access in the Caribbean reflects racial and colonial undertones, paying attention to the place-specific nuances that inform the region as a zone of displacement, through persistent deactivation of functioning communities that relate to land beyond ownership. This is not identical to Indigenous experiences in the Americas or around the world where extractive violence leads to human rights violations. Instead, a landscape and spatial justice lens was employed to demonstrate that racial harms are also attritional harms, linked to place destruction so that property rights will prevail, first during colonisation, and later for economic development projects.

The dissolving of people–place relations was fundamental to constructing ideas around race, nature and land, which in turn informed the international legal order and drives racial injustice today. Situating the analysis in the Caribbean expands beyond genocide and settler colonialism approaches in colonial legal history, as well as American scholarship on slavery in the American South. These formative developments that coalesced around the Caribbean region include the removal of Amerindians from their landscapes

to create colonial nature reserves to support economic botany; the removal of African and Irish peoples from their homelands and legalising their alienation within the Caribbean landscape via racial distinctions between servants and slaves; the delegitimisation of Afro-descendant community bonds with the landscapes that they toiled in as a means of protecting English landowners' property rights; and an economic model that relied on the disposability of these landscapes to maximise profit.

Property outsiders are thus often framed in the law as vagrants, loiterers, busybodies and trespassers, yet it is property insiders who have increased the vulnerabilisation of land, leading to the slow violence inherent in the Caribbean environment. A legal geographical framing of racial injustice demonstrates the spatial impacts on Afro-descendant communities' ability to thrive. These communities have been historically land-insecure and experience precarity of place, but are demonstrating potentially place-protective behaviour essential to environmental sustainability and the maintenance of livelihoods (Bartel & Graham, 2016). They are property outsiders because they are landscape insiders.

Increased surveillance of the landscape is therefore entrenching colonial approaches to land that ignore its cultural dimension in favour of alienability and extractability. The homogeneity of property that extinguished diverse Caribbean landscapes upholds colonial understandings of space. Criminalising property outsiders ensures the system recognises property as the only sanctioned relationship with land. Non-proprietary interests, such as those defended by John Mussington and the Barbudan community, threaten the control of land. Relationships that prioritise attachment to land are subject to monitoring, threats of arrest, and criminalising the behaviour of the Afro-descendant population reinforces the illegitimacy of Black presence in space, Blackness as violence or criminal threat to property rights and the inability of Afro-descendant and creole communities to have and maintain their own complex and enduring relationships with land. The continued denial of unique people-place relations throughout the region is a lacuna in the law with implications for environmental sustainability, food security, public health and human rights.

The denial of such relations through the dismissal of functioning landscapes in the Caribbean does not necessarily require that people are physically ejected en masse. Communities can be restricted in their access and use of land, and this has implications for human flourishing when the landscape is securitised to maintain property at the expense of these relations. This leads indirectly to dehumanisation, and the vulnerability of these communities to the criminal justice system is advanced through the creation of

spatial precarity – homelessness, public protest and disorder are collective behaviours or states that result. Colonialism reoriented understandings of land away from community, connection and place to an individual power to exclude others from property that is owned and can be exchanged at any time. Landscape is thus the gradient across which racial injustice has occurred in the *longue durée*. The law facilitates the slow violence of displacement, masked as a process that deploys property rights, protected areas and planning permission for speculative investment projects in (eco-)tourism to prevent landscapes from functioning. The legal authorisation of development projects is therefore driving displacement, which is an issue of racial injustice.

These laws implicitly uphold Afro-descendant communities as not belonging and therefore inherently precarious in the landscape. Spatial critiques of the law and legal system can yield important insights into the unfolding and deployment of racist ideologies and their uptake and effectiveness in the law. They also situate policing and enforcement within a wider context in order to understand these roles in the creation and upholding of place and the implications for society today.

Alternative understandings of land (beyond the exception of Indigenous communal property in international law) present a challenge to property, which is why Afro-descendant communities, their situated knowledges as cultural heritage and local environmental expertise have been repeatedly destabilised over time. As landscape insiders, they are place-makers, and place-makers threaten property, which deploys its place-rejecting technology through exclusion and alienability. The unmaking of place is thus central to the protection of property rights. Denying a place in the landscape is denying Afro-descendant communities their humanity, given that landscape is essential to a collective cultural identity.

Recognition of landscapes (and their relationship to property) restores agency and humanity to communities rendered invisible in the law on account of their non-ownership interests in land. Who gets to make place, and belong to that place, is racially coded. Placemaking is crucial for decolonisation, the alleviation of racial harms and the enjoyment of fundamental freedoms. The slow violence of landscape destruction via displacement demonstrates that place-property tensions have racial connotations, upheld by the law, and that an embedded relationship with land is an important element of racial justice. The spatial justice/racial justice nexus therefore warrants further scholarly attention.

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6

The Discourse of Legitimate Defense and the Black Body as a Strategic Field of State Intervention

Rosângela Cristina Martins

Introduction

A reflection on the impact of the advancement of “necropolitics” as a state policy defining the value of life and consequently its hierarchization is the subject of this present discussion. The term “necropolitics”, used and popularized by Cameroonian philosopher Achille Mbembe, refers to a political management of death and life, which systematically affects the processes of subjectivation of racialized bodies considered marginalized, surplus, and disposable in modern society, or which serve as instruments for the production of capital. Mbembe employs conceptual tools such as biopolitics, sovereign power, state of exception, and politics of death when analyzing colonization.

To approach the Brazilian political experience, investigate to what extent violence perpetrated by state agents goes beyond the use of force and the

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established legal limit, and how this occurs through the use of the legal institution of “legitimate-defense”, diffused and disseminated in the name of state self-preservation. In other words, from an analytical perspective on what lies behind the discourse of legitimate-defense, established and typified in law, which extends and ensures the violent actions of the state, either through its public agents or through a militarized policy (or even the politicization of policing), always aiming to guarantee the privileges of a minority, particularly in modern democracies, and how it relates to the continuity of the genocide of Black people.

Referring to the body as a strategic field of state intervention, the racialization of the Black body and how this Black body is socially and politically read as the target of anti-Black racism. Both male and female bodies are subjugated and are marked for death. Hence, it is the body that must be annihilated, killed, erased by the state itself. Charles Mills’ argument criticising the racial contract model will be used as a reference, in which he examines in thesis form the idea that “the racial state, or white supremacist state, functions to safeguard the political regime as a white regime, using two traditional weapons of coercion: physical violence and ideological conditioning” (Mills, 2023).

In Brazil, violent police interventions are catalogued as operations that presuppose opposition and confrontation in their approaches. It is worth noting that the theme encompasses ambiguities, and there is no talk of “resistance” but rather of “opposition” to police intervention. The fact is that this type of procedure seems to be based on skin color and territory, which directly influences the likelihood of a person being killed for being Black and from a marginalized community. In short, attributing the high death rate of Black people solely to confrontations with the police in abusive and arbitrary operations is a disguised way of naming the structurally racist reality. The connection between the continuity of the genocide of the black population, as a policy of death management, and the very necropolitics used by Mbembe, one of whose strategies is the discourse of self-defence, serves as a shield even for the justice system, where there are summary acquittals of public agents when they are defendants in court cases, on the grounds that their actions are backed by the strict fulfilment of legal duty.

The Brazilian political experience, rooted in structural racism and colonial violence, presents a veritable scenario of civil war, where certain aspects become indistinguishable between the political regimes of dictatorship or democracy, because democracy harbors authoritarian and securitarian elements that the state of exception itself presents.

Thus, to understand what a management of politics of death signifies, the present research is based on the theoretical propositions proposed by Achille Mbembe regarding necropolitics, with one of the main conceptual tools being that of the state of exception and its relation to the notions of sovereignty. Therefore, for an approach to the Brazilian experience, we start from the premise that the state of exception prevailing in Brazil is part of a permanent political-juridical structure. As the Italian philosopher Giorgio Agamben clarifies, the state of exception “presents itself as a level of indeterminacy between democracy and absolutism” (Agamben, 2004).

On the idea of an apparatus for thinking about race in the Brazilian context, built in the post-abolition period, the Brazilian philosopher Sueli Carneiro notes:

Raciality is understood as a productive notion of an ontological field, an epistemological field in a field of power, thus shaping knowledge, powers, and modes of subjectivation whose articulation establishes a power apparatus. To understand how this happens in Brazil, it is necessary to remember that slavery corrupted the value of labor: compulsory for the slave, it could not be considered positive by the white master (...) in the transition from an economy based on slave labor to free labor. It is this new status that the rationality apparatus, as a device of emerging disciplinary power, will have to demarcate in theoretical actions of subjection. (Carneiro, 2023, p. 44)

Carneiro understanding, articulating the notion of raciality apparatus in the Brazilian experience, connects with a “coordinated dynamic of disciplinary techniques derived from the raciality apparatus and elimination informed by biopower” (Carneiro, 2023).

Notions of Necropolitics for Thinking About the Racial Question in Brazil

Achille Mbembe, in developing his thought on necropolitics, starts from the idea that “the ultimate expression of sovereignty lies in the power and capacity to dictate who can live and who must die” (Mbembe, 2018a, 2018b, p. 5). Mbembe seeks to demonstrate that the notion of biopower, in Michael Foucault, is insufficient to account for the contemporary forms of subjecting life to the power of death. He begins his investigation with the following questions:

Under what practical conditions is the power to kill, let live, or expose to death exercised? Who is the subject of this law? What does the implementation of such a right tell us about the person who is therefore condemned to death and about the relationship that opposes this person to his or her killer? Is the notion of biopower sufficient to account for the contemporary forms in which the political, through war, resistance, or the struggle against terror, makes the murder of the enemy its first and absolute objective? (Mbembe, 2018a, 2018b)

Mbembe, based on these questions, not only dedicates himself to exploring the concept of biopower and its relation to the notions of sovereignty and state of exception, as we have previously analyzed, but also broadens the debate by thinking about life and death from colonial and neocolonial contexts. For this purpose, the author proposes the notion of necropolitics and necropower to account for the various ways in which, in the contemporary world, they are arranged with the aim of causing the maximum destruction of people and creating “worlds of death” (Mbembe, 2018a, 2018b, p. 71). Mbembe investigates the relationship between the notion of biopower and the way in which the “state of exception and the relation of enmity have become the normative basis of the right to kill”. And he questions what is the relationship between politics and death that could only function in a state of emergency.

In this perspective, regarding necropolitics, the role that the colony represents is the place where sovereignty consists fundamentally in the exercise of a power outside the law and in which peace tends to take on the face of endless war, that is, the state will always exercise the sovereign power to kill, even outside the law (Mbembe, 2018b, pp. 32–33).

Mbembe questions whether the idea of biopower is sufficient to understand the various productions of death in contemporaneity, founded on war policies and relations of enmity. In one of his most important works, Mbembe explains that “race functions as a security apparatus based on what we could call the principle of biological anchoring by species. Race is both ideology and technology of government” (Mbembe, 2018a, 2018b, p. 75). And to support his analyses and discussions related to the racialized management of life and death by the State, Mbembe resorts to conceptual tools on contemporary technologies of subjugation of life to the power of death. In his approaches, he engages with Michel Foucault’s thoughts regarding racism as defining the divide between who should live and who should die, with the State as the main distributor of these deaths:

However, it happened that, amidst the slave trade and colonialism, there was a displacement and a unique alliance of two discourses - the discourse about race

in the biological sense of the term (even if this biological sense was far from stable) and the discourse about race as a metaphor for a broader proposition about the old question of division and subjection, of resistance and the fragility of the political, of the link, by definition always weak and yet inseparable, between politics and life, the political and the power to kill; power and the thousand ways of killing or letting (sur)vive. (Mbembe, 2018a, 2018b)

There is a proper understanding that Mbembe's work is directly influenced by the thought of Frantz Fanon and Aimé Césaire and the idea that colonization would be indefensible rationally, culturally, and morally:

(...) there is a legacy of civilization that imposes itself with its dead weight, a universal regression that takes place, a gangrene that sets in, an infectious focus that spreads, and that, at the tip of all these violated treaties, of all these lies propagated, of all these tolerated punitive expeditions, of all these chained and "interrogated" prisoners, of all these tortured patriots, at the tip of this encouraged racial pride, of this ostensive arrogance, there is the poison instilled in the veins of Europe and the slow but complete progress of the savaging of the continent. (Césaire, 2022)

Colonization is the opposite of civilization; it is barbarism. What for Césaire would be the cursed part of the colony and had its source in the sacrificial reason "to see the other as an animal, exercises treating him as an animal". Mbembe further complements that the deep roots of the colony must be sought in the unrestrained experience of death or in the expenditure of life (Mbembe, 2018a, 2018b, p. 190). For Mbembe, neoliberal governmentality is guided by exception, the mode of government, typical of peripheral countries. This statement is paramount for a careful approach to the Brazilian experience, in the way the legal-political apparatus operates and has the sign of death as blackness. This will lead us to the idea that anti-black racism is the strategic field of state intervention in the annihilation of the black body.

The Black Body and the Strategic Field of State Intervention

Why do the deaths of Black people, authorized or committed by the State, not cause an ethical crisis? This is the question that provokes and guides Denise Ferreira da Silva's investigations her work in *Homo Modernus*:

Examine how race, combined with other social categories (gender, class, sexuality, culture, etc.), produces modern subjects who can be excluded from universality (legal) without causing any kind of ethical crisis. (Ferreira da Silva, 2023)

Ferreira da Silva excavates the post-Enlightenment philosophical thought that carved out a conception of the modern subject—white, European, considered the bearer of universal reason—and, alongside nineteenth-century science, produced a representation of “racial others”—Asians, Blacks, Indigenous peoples—seen as endowed with inferior minds and bound to nature. The author asserts that racial violence has never been a deviation from modernity but its cornerstone, and thus capitalism, state institutions, and canonical thought have a colonial root.

For a better understanding of the socio-historical exclusion and how race operates as a power strategy, within what Ferreira da Silva terms as philosophical formulations on legal universality and humanity that exclude the “others from Europe”, the author questions how exactly race (re)produces the universality of law; how race can reconcile with self-determination, the ethical privilege that historicity guarantees within the idea of humanity. Ferreira da Silva starts from the understanding that the “question of how race operates as a power strategy” is buried in the founding texts of modern thought (Ferreira da Silva, 2023, p. 83).

And she does not arrive at this conclusion without basing it on the thought of other racial theorists like Charles W. Mills, for example, against the idea that race contradicts liberal principles. In “The Racial Contract” Mills introduces the “racial contract theory” to describe how a contract among whites established “white supremacy” as a system of “racial domination”:

The racial contract can be thought of as a black philosophical intervention that takes the eminently respectable political apparatus of social contract theory and tries to adapt it radically to bring race into the discussion. (...) Yes, race really exists, if not biologically, at least as a social construct with a social reality; and yes, race in general and white domination in particular have been fundamental in building the modern world, so yes, we can - and should - develop a political philosophy informed by these realities and, of course, that avoids racism. (Mills, 2023)

Every police operation with characteristics of slaughter or massacre prompts us to look at the racialized body more closely in research, precisely because it composes the everyday scenario of the peripheral black population. Cases that fit the theory, the debate, the reflection proposed in this study continue to

occur in Brazil. These are not isolated cases, even during so-called progressive governments, which worsened during the period of normative resurgence and minimal intervention in the protection and guarantee of human rights during the government of Jair Messias Bolsonaro. By way of example, to the case of the Guarujá Massacre, which occurred in 2023, based on which question in the same way:

How did we get here? In what "mirror was lost Antigone's face," Mr. President? (...) Meanwhile, black mothers age while fighting against legal and legalized violence that makes their sons and daughters enemies of the State. The label of criminal, in the police report, in investigative agencies and in courts, defines justice. Perhaps we are too pessimistic and should just wait and see, but the truth, President Lula, is that, being Your Excellency a victim of the uses of the law to politically kill opponents, a commitment against the institutional revenge organized by the legal-police dictatorship against the poor was expected. After all, the fight against lawfare cannot serve only to protect those who dedicate their lives to the noble art of fighting the good fight in the representative arena. You know, black, trans, poor, favela youth are murdered because of their political status as poor, black, trans, and favela residents.¹

What bodies are we referring to and which are strictly prohibited? This is the sophisticated aspect of racism, which occurs not through physical violence but through no less violent and symbolic interdiction.

Brazilian philosopher Denise Ferreira da Silva (2023) presents in her work "Homo Modernus—Toward a Global Idea of Race" a detailed study of race as a tool of productive reason, which produces both the "Transparent Self" and its "others" as modern political subjects. For this, the author uses the available critical arsenal to delimit the analytical position and seeks as a source Foucault's critique of power, precisely because the author proposes an explanation about the political and the idea of race war potentiated to disciplinary power and sovereignty theory, thus highlighting another moment of modern power:

Although Foucault's "race war" is often read as an immediate reference to the racial notion unfolded in the 19th century - and he does suggest that -, I prefer to read it as a metaphor that allows Foucault to rescue a conception of power as a relationship of force, and thus recover the possibility of violence as a dimension of the concept of the political (...). This mode of analysis understands

¹ Regarding Operation Escudo, there is an article authored by me along with Jaime Alves. Available at: <https://www.brasildefato.com.br/2023/08/09/os-oito-de-janeiro-do-povo-negro-ou-uma-carta-aberta-ao-presidente-lula>, Accessed on: September 19, 2023.

violence as a dimension of power that goes beyond the liberal formulation of the political, which restricts the use of force to the State and only considers as political acts of violence those that target the State. (Ferreira da Silva, 2023)

It demonstrates how universal reason institutes the subjects within the contemporary global configuration, using Foucault's own critique of power as a source. In this perspective, the argument presented by the author is as follows:

Following the logic of socio-historical exclusion, critical racial theory writes the racial subaltern as excluded from universality and the conception of humanity (the self-determined subject of history) that the transparency thesis sustains. This would not be a problem if, as Fanon taught us, the position that this subject inhabits could be captured in the ontological narratives that the transparency thesis authorizes. Even so, in writings about the black subject, a consistently transparent Self is found buried under historical (cultural or ideological) ruins, awaiting critical strategies that would remove the negative self-representations that it absorbs from prevailing racist discourse. Undoubtedly, symbolic and concrete violence (enslavement, lynchings, police brutality) marks our trajectory as modern subaltern subjects. (Ferreira da Silva, 2023)

As happens in Brazil, in the article "Nobody: Law, Raciality, and Violence", Denise Ferreira da Silva discusses a political scenario in which the arms of the State employ total violence as a regulation tactic. Her inquiries provoke reflection and indignation when we think about the racial division of territory:

When did it become a triviality - more than a foresight, but not yet an obvious "truth" - the fact that a considerable number of young men and women succumb as subjects of violence inflicted to preserve the law? (...) The dead bodies of black teenagers count as signs of the death horizon, as the existence of racial subaltern subjects resulting from raciality tools is revealed in territories where the State acts only in the name of its own preservation. (Ferreira da Silva, 2014)

Ferreira da Silva exposes a formulation of difference, understood in raciality, the ontoepistemological framework constituted by the concepts of the racial and the cultural and their signifiers "those who produce persons and entities (ethical-juridical) not understood by universality, the moral descriptor chosen for post-Enlightenment political configurations" (Ferreira da Silva, 2014, p. 69). From this perspective, we can see that the black body was negatively racialized, giving rise to anti-black racism. And about state intervention

on vulnerable bodies. Ferreira da Silva provokes reflection on how the State positions itself in command of racial subjugation, as in the case of the occupations of Rio de Janeiro's favelas, thinking of a formulation of racial violence that captures how raciality justifies the State's decision to kill some people, mostly composed of young colored people, in the name of self-preservation:

The reason is that these occupations are an example, I argue, of a moment in political space marked by the (dis)appearance of the distinction between Law (as legality) and the State (as authority) - (dis)appearance that supports claims of the legitimacy of the Nation-State. Before the black subject, signified in bodies and territories, the separation between the mandates of protection and punishment of the State crumbles, as, in this case, the administration of Justice (judgment) and the application of law (punishment) converge in the self-preservation force of the State. (Ferreira da Silva, 2014, p. 70).

Ferreira da Silva refers to the political-juridical power relationship that the State and the Law have and how it is operationalized in the dual task of protecting and punishing its subjects. She takes as a reference the critique of classical contractualists about the origin of the State as well as the need for its creation in the name of "peace and security", individual protection, collective self-preservation, lawmaking, the transition from the state of nature to civil society, in order to regulate and preserve property. For Ferreira da Silva, this conception of juridical-political power inscribes Law and the State in violence, specifically to bodies not inserted by universality.

Subjectification Process of the Other

The devices are modernized, genetic techniques begin to be used, to manage population varieties and discard undesirable races—the transformations of the capitalist mode of production, in the second half of the twentieth century, the domains of technology and biology, the strengthening of the security ideology—and here is the point—the great movement of digitization, the idea of an ideal securitization—devices for controlling individuals and the very idea of society no longer belong solely to the realm of law, but to biopolitics (or, as Mbembe would say, to necropolitics).

If it is necessary to think about the production of the subjectivity of subjected bodies and minorities, from here it is worth approaching Achille Mbembe's thought, in the work *Critique of Black Reason* regarding the violent regime of subjectivation of bodies, stemming from the colonial

matrix, through the regime of the see, which in some points resembles the Brazilian reality, anchored in the myth of racial democracy:

At the heart of this tragedy lies race. To a large extent, race is an iconic coin. It appears on occasion of a trade - that of glances. It is a coin whose function is to convert what is seen (or what one prefers not to see) into kind or into a symbol within a general economy of signs and images that are exchanged, that circulate, to which value is attributed or not, and which authorize a series of judgments and practical attitudes. It can be said that race is simultaneously an image, body, and enigmatic mirror within an economy of shadows, whose principal attribute consists in making life itself a spectral reality. (Mbembe, 2018b, p. 197)

Mbembe refers to “the lived experience of the black person” presented in Frantz Fanon’s work (Fanon, 2005) as essential for understanding the process of objectification and dehumanization of the black body through the violent regime of the see:

Exposing what he called “the lived experience of the black person,” he analyzed how a certain mode of distribution of sight ends up creating, fixing, and destroying its object, or then restoring it to the world, but under the sign of disfigurement or, at least, of “another self,” an object self or a separate being. A certain way of looking indeed has the power to block the appearance of the third and its inclusion in the sphere of the human: “I just wanted to be a human person like the others.” “[A] nd here I find myself an object among other objects,” he wrote. How is it that, from the desire to be a human person like the others, we come to the realization that we are only what the other made of us - its object? “Then we had to face the white gaze. An unusual weight oppressed us. The real world invaded our bit of humanity,” he continued. (Fanon, 2008, p. 103, cited by Mbembe, 2018a, 2018b, p. 197).

The author demonstrates the inherent tension of colonial racism by stating that “the first object of fixation of this dispute is the body” (Mbembe, 2018a, 2018b). And for this black body to be seen and identified as such, a veil is placed over its face, so that “without this veil, there is no black person. The black person is a shadow in the midst of a trade of looks” (Mbembe, 2018a, 2018b).

The gaze can be violent, and the gaze can hide the violent gaze—the one that destroys but that can produce the way it will be seen. Mbembe (2018a, 2018b) speaks of a structure of how the black person sees himself and how the other sees him—follows an everydayness of this existence—in which there is always a possibility of recognizing what I am seeing: the gaze that hides the

violent gaze, the sovereign power or the one who holds the legitimacy of the use of violence. Linked to the legal and political order, whiteness does not want to be seen as violent but wants to be seen as universal and does not care to see what would not fit into normality (Mbembe, 2018a, 2018b).

Although Mbembe does not refer directly to an inverted epistemology, some authors consider it necessary for the functioning of dehumanisation. Charles Mills calls it inverted epistemology or the epistemology of ignorance²:

(...) it can be said, there is an agreement to misinterpret the world. It is necessary to learn to see the world in the wrong way, but with the assurance that this set of mistaken perceptions will be validated by white epistemic authority, whether religious or secular. Thus, in matters related to race, the racial contract prescribes for its signatories an inverted epistemology, an epistemology of ignorance, a particular pattern of localized and global cognitive dysfunctions (which are psychologically and socially functional) producing the ironic result that whites, in general, will not be able to understand the world they themselves created. Part of what it means to be constructed as "white" (the metamorphosis of the sociopolitical contract), part of what is necessary to achieve Whiteness (...) is a cognitive model that prevents self-transparency and genuine understanding of social realities. (Mills, 2023, p. 52)

Charles Mills develops arguments based on the theses that the racial contract consists of several contracts in one, in the moral, political, epistemological, and historical fields, with race as the central element to justify the implementation and maintenance of the white political regime:

(...) to a significant degree, then, white signatories will live in a delirious, invented world, a land of racial fantasy, a 'consensual hallucination' (...). It can be said, then, as a general rule, that white misunderstanding, distortion, evasion, and self-deception regarding race issues are among the most widespread mental phenomena of the past few hundred years, a cognitively and morally necessary economy for conquest, colonization, and enslavement.

² Cf. Charles Mills discusses what he calls "white ignorance", elaborating on one of the main themes of his 1997 book, *The Racial Contract*. His discussion revolves around an idea of cognitive disadvantage based on belonging to a social group, which is not unfamiliar to the radical philosophical tradition and has been explored more forcefully in recent Social Epistemology, in debates about epistemic injustices, silencings, intentional ignorances, cognitive biases, epistemological standpoints, etc. Mills develops an "Epistemology of white ignorance", a socially and racially situated epistemology, which largely opposes the individualistic tendencies of traditional epistemological work, even without abandoning the interests in objectivity and truth contained in that work. As per the article "White Ignorance", translated by Breno Santos, *Griot: Journal of Philosophy, Amargosa/Bahia*, v.17, n.1, p.413-438, June 2018. Available at: <https://www3.ufrb.edu.br/seer/index.php/griot/article/view/785/500>, Accessed on: October 29, 2023.

And these phenomena are by no means Western but prescribed by the terms of the racial contract, which requires a certain scheme of structured blindness and opacities to establish and maintain the white political regime. (Mills, 2023, pp. 53–54)

According to Mills, this assertion supports the argument that the legitimacy of the nation-state codifies morality and law within its limits on a global scale. This contributes to an ethical-legal shift of the planet as a whole, by configuring a rupture of the world between people and sub-people. This means that Europeans emerge as masters of the whole world. In this perspective, a series of acts configure the applicability of this racial contract through papal bulls, treaty pacts, and legal decisions:

(...) establishment of formalized legal structures of differential treatment; and routinization of illegal or quasi-legal practices effectively sanctioned by complicity of silence and governmental failure to intervene and punish perpetrators. (Mills, 2023)

In this sense, as Sueli Carneiro affirms, in Brazil raciality is constructed within a device, that is, “race is understood as a notion that produces an ontological field, an epistemological field, and a field of power, thus shaping knowledge, powers, and modes of subjectivation whose articulation establishes a positivized power device” (Carneiro, 2023, p. 44).

Sueli Carneiro meets the analysis of the racial contract in the moral, political, and epistemological spheres, based on an inverted epistemology (the dissemination of the idea of falsification of the Other):

For this reason, some perceive racism and discriminatory practices as the result of ignorance, since the epistemological inversion it operates is nothing more than a perversion. The racial contract informed by this inverted epistemology leads to epistemicide, after all, the contract requires that epistemic authority sanction a series of myths and false representations about non-whites and their political, moral, and cognitive capacities. (...) Thus, with the destruction or disqualification of the culture of the dominated, epistemicide supports the supposed epistemological legitimacy of the culture of the dominator, justifying the cultural hegemonization of Western modernity. (...) This is one of the irremediable consequences of the epistemological dimension of the racial contract. In this sense, colonialism and racism constituted themselves as a global apparatus of destruction of bodies, minds, and spirits, by linking and subordinating the cognitive survival of the dominated to the parameters of Western epistemology. (Carneiro, 2023, pp. 94–95)

Abdias Nascimento drew attention to the ideology of racial democracy in Brazil, as a very specific racism because it is “diffuse, evasive, camouflaged, asymmetrical, masked, yet so relentless and persistent”, for liquidating Afro-descendants as if it were a massacre. Otherwise, this collective destruction could only pass unscathed through its structure in a technical and strategic manner of crushing and completely erasing the black from the demographic map. The logic of this strategy consists in internally numbing, concealing, and confusing Afro-Brazilian people, resulting in a subjective process of frustration that blocks the possibilities of “self-affirmation with integrity, identity, and pride” (Nascimento, 2019, p. 35).

The ideology of the myth of racial democracy imposed silence. Using this reflection to break free from alienation, denial of their humanity, and confronting this narrative was one of the great challenges the author set out to do. The way Brazilian history was conceived, cultural expression marginalized by law, inculcated as criminal activity, since colonial times, reflects as a consequence of colonial violence, to this day:

The history of Brazil is a version conceived by whites and for whites, just as its entire economic, sociocultural, political, and military structure has been usurped from the majority of the population for the exclusive benefit of a minority whiteoid elite, presumably of European origin. (Nascimento, 2019)

It is important to consider that Abdias Nascimento’s analysis is decisive in understanding how the monopoly of media, exclusive control of economic resources, educational and cultural institutions relegated black people to symbolic silencing, to non-protagonism, to non-place within this structure of racism and discrimination. In other words, racial condition is still a contradiction in Brazilian society, as if it were a phenomenon of natural order, or of perennial “democratic” right.

So why are certain bodies considered recipients of the state of exception? As the author elucidates, regarding the annihilation of blacks in Brazil, “whether by the compulsory force of miscegenation and assimilation, or through the direct action of pure and simple death (...) this fatal dynamic of eradication has been cutting short black lives, uninterruptedly, for four centuries” (Nascimento, 2019, p. 42).

In Brazil, the process of subjectivation called “racial democracy” ensured the invisibilization of racial relations:

Why would written legislation be necessary when, in the social practice, the existential routine of the dominant classes resulted in a sort of customary law that subtly became part of the basic instruments of the country’s politics?

The example of racial confrontation in the United States advised our ruling classes to take another path; instead of a frontal clash between blacks and whites, the Brazilian solution would be to deny the existence of the problem, deny, and always deny, that in Brazil there was any kind of racial prejudice or discrimination problem. (Nascimento, 2019)

The denial of the racial issue to which the author refers would not only make the racialized body invisible, but would propose to sanitize society through a forced process of creating historical fiction:

Among the executing mechanisms of social lynching of Afro-Brazilians, white supremacism handles various tools of social control over black people, including constant brainwashing aimed at numbing or castrating their capacity for reasoning. This task finds almost no obstacles in its way, due to the maintenance of the Afro-Brazilian population in a situation of permanent destitution, hunger, physical and moral degradation. Florestan Fernandes delves deep into the subject of the 'complex,' warning us about this 'reactive psychodynamic and sociodynamic formation, through which whites invade the deep personality of blacks and weaken their psychic balance, their character, and their will. (Nascimento, 2019)

Could say that it is a process of subjectivation of subalternity within Brazilian race relations, based on the governance of individuals' bodies, or as Sueli Carneiro aptly puts it, "epistemicide as one of the constitutive elements of the race/racality/biopower device":

For us, however, epistemicide is, beyond the annulment and disqualification of the knowledge of subjugated peoples, a persistent process of producing cultural indigence: through denial of access to education, especially of quality; through the production of intellectual inferiorization; through different mechanisms of delegitimization of blacks as carriers and producers of knowledge and of lowering cognitive capacity due to material scarcity and/or compromised self-esteem through prevalent discrimination in the educational process. This is because it is not possible to disqualify the forms of knowledge of dominated peoples without also disqualifying them, individually and collectively, as knowing subjects. And, in doing so, it deprives them of reason, the condition to attain 'legitimate' or legitimized knowledge. Therefore, epistemicide fatally wounds the rationality of the subjugated or kidnaps it, mutilates the capacity to learn, etc. (Carneiro, 2023)

For a better understanding of the subjectivation process of racially targetable bodies in the Brazilian experience, both the idea of genocide that permeates

much of Abdias Nascimento's research and the use of the concept of epistemicide by Sueli Carneiro serve as pillars for approaches to violence since the colonial process. The causal relationship between genocide and epistemicide itself in the construction of the black political subject leads us to what anthropologist João Vargas presents through a reflection on the analytical category of racism as something that does not fully analyze the experience of black people, since non-being underlies the non-black subjectivities of the modern world and that the "logic of antinegitude would be the very foundation of Humanity" (Vargas, 2020, p. 18). He explains:

We can think of racism (such as anti-black racism, which is not the same as antinegitude, as I explain below) as values, feelings, and social effects that, long with everyday and institutional practices (which in turn impact values and feelings, in a relationship of constant feedback), produce structural, ubiquitous, transhistorical, and contemporary disadvantages for black people. Since many of these disadvantages are linked to the distribution of finite social resources, they are also linked to advantages for non-black people. (Vargas, 2020)

The construction of this narrative, often through the media, as it presents, contributes to the stigmatization of the racialized subject as the intimate enemy to be fought, overthrown, and eliminated. This, to some extent, would bring a sense of cleanliness and security. The fewer of them there are, the cleaner the community, the condominium, the territories. The way the media portrays scenes of violence targeting subalternized and dehumanized bodies, as presented at the beginning of the paper, is internalized by an audience that often only consumes this type of content without any discursive selectivity. There is an impact on the formation of public opinion that is reflected in social relations. The category of device used here is the articulation of a network of elements, emphasising an idea or aspect that is strengthened each time it is disseminated. In other words, every time a news program or social media repeatedly and naturalistically reproduces the scene of a state agent violating the physical integrity of a body, most often a racialized black body, it does not generate commotion or ethical crisis. And if it does, it is almost instantaneous and fleeting because another similar or worse case soon emerges.

In "Politiques de l'Ennemi", Mbembe moves towards defining the subjectivation of the enemy by stating that what defines politics is the difference between friend and enemy. "He refers to a supreme antagonism" (Mbembe, 2020, p. 86). And he continues:

(...) he is in his body as in his flesh, one whose physical death can be provoked because he existentially denies our being. It gives us the idea of the intimate enemy, at the moment when to differentiate the friend from the enemy, the latter still needs to be identified with some certainty. A disconcerting figure of ubiquity, he now becomes even more dangerous because he is everywhere: faceless, nameless, and placeless. (Mbembe, 2020)

In the Brazilian political experience, reflecting on the scene of the woman suffocated brutally by the police led her to feel afraid to leave her home, she preferred not to have her identity disclosed. About the wounds that racism causes, these painful blows that are difficult to forget because they affect self-esteem, dignity, lead to illness or psychosocial suffering.

According to anthropologist Jaime Alves, studies on the social construction of black masculinity should question how black men position themselves within the paradigm of masculinity and how they respond to the challenges imposed by such a paradigm. Is it a social problem or a political issue? He notes that in Brazil, little attention is paid to the political economy of racism and, therefore, white supremacy. The relationship focuses on masculinity and violence:

In fact, the dominant image of the black body as a source of danger and fear legitimizes relations of domination, which this article conceives as a strategy of dehumanization. This strategy produces results far beyond pathological representation, as indicated by statistics on premature black death, unemployment, incarceration rates, and residential segregation, among other vulnerabilities produced by the racial state. (Alves, 2016)

The racial contract is at the heart of this reflection as it is a fundamental part of how discourse and narratives have been constructed from the language of European expansion or conquest expeditions in Latin America.

The Discourse of Legitimate-Defense in Police Approaches as a Continued Strategy of Genocide

The applicability of the legitimate-defense discourse is based on the legal-political support for the self-preservation of the State and in defense of those who live under a white supremacy pact, whether as signatories or beneficiaries of the racial contract. In the words of Charles Mills, in the name of a racial contract applied through violence and ideological conditioning to “protect its rights and safeguard the well-being of its citizens” (Mills, 2023, p. 127).

Achille Mbembe, in “Politics of Enmity”, indicates a form of securitarian mobilization founded on the idea that exceptional measures could overcome enemies upon whom State violence should be unleashed. Saying that law cannot be protected by law, and protecting the rule of law against terror would require violating the rule of law itself, and any initiative to defend the rule of law would imply an absolute use of sovereign violence (Mbembe, 2020). Mbembe does not refer to Brazil but to the production of widespread death based on an instrumental calculation of life and the political.

In the Brazilian experience, investigative procedures that led to requests for the closure of homicide inquiries originating from resistance records indicated the existence of a permanent state of exception (Agamben, 2004), in which deaths caused by police activity were covered by a cloak of legality by the Public Prosecutor’s Office and the Judiciary. As per the monitoring and conclusion of delegate Orlando Zaccone:

The police’s legitimate defense requires the disqualification of the victim, in the sense of identifying the deceased as a criminal and the dangerousness of their life in the social environment. The power to define self-defense by the victim’s way of life ends up engendering a truth that dispenses with producing evidence regarding the legitimacy of police action. (Zaccone, 2015)

Although the term “resistance records” has been removed from occurrence bulletins and police inquiries, the assumption that any police victim is acting in “opposition” and “resistance” to police operations, the misuse of the legitimate-defense argument by security agents based on the victim’s biography or the deceased’s life condition, prevails.

Therefore, the claim of self-defense in these cases is vague and contradicts the principle of legality, which can lead to violations of the right to life and the State’s obligation to adequately investigate and sanction cases of arbitrary deprivation of life.

The discourse of social defense persists, now based on psychologism, defining a criminal as someone whose personality is highlighted as deviant or morally unacceptable and outside the standard of accepted morality. It is an individual who must be transformed using all possible tools. As Foucault points out about what would be an architecture for transforming individuals, their behavior, and leading them to the effects of power, in a process of disciplining bodies.

In this way, grounded in fear, social defense continues to reform people to be like the good ones. It is not possible to maintain such discourse because the paradigm of comprehensive protection does not tolerate the same oppressive practices of prevention, correction, moralization, and normalization. It is

necessary to recognize the “enemy” as a subject subjectively, in the name of political and social order. Otherwise, it is better to admit that society has opted for authoritarianism to contain the poverty revolt.

Elaboration of the Discourse

The police discourse around legitimate defense is based on the idea that society must be defended. It is imperative to recognize the importance of this text with all the institutional legal apparatus for producing truth around the idea that society will be defended at all costs, and mainly from a punitive perspective.

In Brazil’s political experience, the main question to be raised is: Who is being defended in this pact? The life of the police officer in the legal exercise of their profession? Or is this just a sign, an index of a much larger pact to preserve white order? According to Sueli Carneiro:

(...) biopower technologies mark different forms of assumption of the target body according to gender. As we have seen previously, control over black female gender occurs fundamentally through ‘letting die’ or through control of reproductive capacity. In the biopower dimension where the aforementioned study is situated, the target of the strategy is the body of the black man, and violence becomes the constitutive ground of the production of black male gender. (...) ‘Letting die’ is realized, in this case, by abandoning young blacks in the drug trafficking war, in which they appear as soldiers destined to die and kill. (Carneiro, 2023)

According to Michel Foucault (2004), the construction of discourse originates from social practice, stemming from points of power where “discourse is not simply that which translates struggles or systems of domination, but that for which, by which one struggles, the power that one wants to seize”:

It is the discourses themselves that exercise their own control; procedures that function, above all, as principles of classification, ordering, distribution, as if it were a matter, this time, of subjecting another dimension of discourse: that of event and chance. (Foucault, 2004)

The necro-governing management of death can be seen in the numbers from São Paulo, where there was a 26% increase in deaths resulting from police

intervention during the first six months of the current government's administration.³ The results of the 2022 state elections already indicated a resurgence in police operations and interventions, specifically for the state of São Paulo. If the backdrop is always the defense of order, the combat in the war on drugs, the discursive selectivity within the scope of penal populism is not surprising and remains serious.

The governor of São Paulo claims to be satisfied with the operation carried out in Baixada Santista and Guarujá: "there are no battles against organized crime without collateral effects". The issue is that there was an increase in the rate of deaths resulting from police intervention during his necro-governing administration—this is the collateral effect. The formation of discourse is intertwined with politics, as representatives take on the role of political agents, appropriating and claiming the agenda of Public Security based on the advancement of a conservative discourse anchored in the politicization of politics. The impact is immediate, considering projects of a more repressive, conservative bias come from lawmakers originating from the São Paulo Military Police.

The arbitrariness used by state agents to impose order exceeds the use of force. Violent police interventions are cataloged as operations that presume opposition and confrontation in approaches. It is worth noting that the theme encompasses ambiguities and does not speak of "resistance" but rather "opposition" to police intervention. The issue is that this type of procedure is based on skin color and territory, which directly influences the likelihood of a person being killed for being Black and peripheral. In short, attributing the high death rate of Black people solely to confrontation with the police in abusive and arbitrary operations is a disguised way of naming structurally racist reality, in other words, it is a matter of anti-Black racism.

In order to observe the narrative composed from the perspective of alternative media, we gathered articles and news from these outlets covering human rights violations and pointing out the *modus operandi* of state agents' operations.

In what sense is it possible to affirm the extent of the media's influence on the construction of the country's violent reality? There is no consensus on this. Mass media, especially television journalism, sustains a selective diffusion of representation about crime, justice, and public security. In analyzing some reports, based on different news outlets, some news is repeated, precisely so that it is possible to observe the construction of the narrative depending on

³ Available at: Sob Tarcisio mortes provocadas pela PM sobem 26% em São Paulo <https://oglobo.globo.com/brasil/sao-paulo/noticia/2023/07/31/sob-tarcisio-mortes-provocadas-pelapm-sobem-26percent.ghml>, Accessed on: March 29, 2024.

the outlet and the audience it reaches, meaning whether alternative with a more progressive content or mainstream with a more conservative tendency.

And, furthermore, a subjective question with room for observation regarding the content of the news indicating whether it tends to criminalize a certain racialized group; if it praises police action through operations in the outskirts, creating an atmosphere of insecurity with a call to combat crime, to understand the discourse circulating on social networks and on the channels of the selected communication outlets.

The mainstream media as a privileged space constructs a hegemonic discourse about Black masculinity. We are referring to the role of the media in the production of violence. The dominant image of the Black body represented as a source of danger and fear legitimizes relations of domination and functions as a strategy of dehumanization. Subordination materialized in precarity in the realm of work, in lack of access to health care, in denial of access to education, makes the Black body the space for the constitution of the anti-Black project.

Not only the media but also the cultural industry, internalizes in the collective imagination its racial rhetoric in terms of “poverty”, “criminality”, “ugliness”, “slum”, “drug trafficking”, a discourse that invites everyone to wage war against the “criminal”, the “trafficker”, the “enemy”. The public enemy, *par excellence*, in the war against urban violence in Brazil (Alves, 2016, p. 71). This generates a kind of Brazilian cultural neurosis, in the words of Lélia Gonzalez, like a compulsive obsession with the Black body as a spectacle of entertainment and as an object of white racial terror “the neurotic constructs modes of hiding the symptom because it brings certain benefits. This construction frees him from the anguish of facing repression” (Gonzalez, 2020, p. 84).

According to anthropologist Jaime Alves, the annihilation of the public image of Black men goes far beyond the subjective dimension of racist individuals. It concerns strategies for maintaining white supremacy. He also argues that studies on the social construction of Black masculinity should inquire how Black men position themselves within the paradigm of masculinity and how they respond to the challenges imposed by such a paradigm. “It’s a social problem or a political issue? He notes that in Brazil, little attention is paid to the political economy of racism and therefore of white supremacy” (Alves, 2016, p. 70).

In order for the idea of the “good citizen” to persist and legitimize its defense, the subjective production of an enemy is what will validate it. There must be a recipient for the consolidation of this discourse. Very directly,

Cida Bento, in the Pact of Whiteness, highlights the need for “authoritarian personality requires an enemy because it always needs to project ‘outwards,’ onto groups considered ‘minorities’ and peripheral, social anger and resentment” (Bento, 2022, p. 44).

Language plays a preponderant role. Institutions operationalize this narrative of crime fighting and gain strength at the moment they impact consumers of this content. The image of a body being immobilized, nationally broadcast, with police in rough and violent approaches, shows part of the story. And it is part of this structure:

He defines himself by the difference in relation to the other, the one constructed negatively to affirm the positive dynamics of being a point, that is, the other founded by the apparatus presents itself in a static way, opposing the variation that is ensured to being. (Carneiro, 2023).

Returning to Foucault when he precepts that an apparatus serves to affirm the idea of a discourse in a network of elements linked to power as a “bundle of more or less organized relationships” (Foucault, 1979, p. 248). In this perspective, even with counter-hegemonic narratives, the image of the subjective construction of the dehumanized subject, the Black body is naked before the Law. The relationship of discourse formation is intertwined with politics, since representatives assume the role of political agents and claim the agenda of Public Security based on the advancement of a conservative discourse anchored in the political management of death. The “racial state of the unethical relation of blackness and Brazilian nation” (Alves, 2016, p. 60). The white imaginary constructs Black masculinity based on the idea of the “public enemy”, according to Alves:

I analyze how the social construction of Black male identity occurs from an urban imaginary that articulates race, poverty, and urban space as political resources to construct certain racial alterities. In this regime of representation, I argue, the discursive dehumanization practiced by mass media must be read as a form of symbolic violence that legitimizes and informs the practices carried out by the police must be understood in the context of the strategies of creating a “controlling image” (apud Collins, 2005), of bodies and geographies seen as a threat to the white order. Helicopters, sophisticated weapons, police officers, cameras, reporters... are devices that produce not only the narratives of state sovereignty but also punishable bodies and geographies. (Alves, 2016)

The extermination of vulnerable Black bodies is part of a continued political project of genocide. There is an endorsement, a political and normative liberality. Among the theses elaborated on the racial contract, by Charles

Mills, there is the conception that the contract normalizes and racializes the individual, thus establishing personhood and subpersonhood within political theory, as in a fundamental partition in social ontology, so that:

In the disembodied political theory of orthodox social contract, the body disappears, theoretically unimportant, just as the physical space inhabited by that body, in appearance, is theoretically unimportant. (...) The reality is that one can pretend that the body does not matter only because a certain body (the white male body) is presupposed as the somatic norm. (...) Likewise, the racial contract is explicitly based on a body politic policy that is related to the political body through restrictions on which bodies are "political." There are impolitic bodies, whose owners are deemed incapable of forming or fully entering into a political body. (Mills, 2023)

Regarding Black territorial alterity, as a strategic field of state intervention, Mills (2023) leads us to understand that the racial contract links space to race and race to personhood, the white racialized space of the political regime is, in a way, the geographical locus of the regime itself, which is close to Brazilian reality:

At the local level of spatialization, normalization manifests itself in the presumption that certain spaces (for example, those of the old city center) are inherently condemned to rely on social assistance, high street crime, subclass status, because of the characteristics of their inhabitants, so that the economic system, in general, plays no role in creating these problems. Thus, one of the interesting consequences of the racial contract is that the political space of the regime is not coextensive with its geographical space. By entering these (dark) spaces, one enters a normatively discontinuous region with white political space, where the rules are different, from differential funding (school resources, garbage collection, infrastructure repair) to the absence of police protection. (Mills, 2023)

Police presence in both spaces has preponderant and distinct roles. If in the white space its function is to protect, the action and approach in the racialized Black space is to suppress, violate, intimidate, and arrest. The systematic police repression, given its racist character, aims at establishing psychological submission through fear (...) the dominant discourse justifies the action of this repressive apparatus, speaking of order and national security (Gonzalez, 2020, p. 85).

Viewed under this parameter, the legitimacy of the State's social control power, in the structuring of stereotypes and subjectivities, crosses the Brazilian social imaginary since its formation in colonization. Because it is observed

that in the racial-penal State there are developing strategies of wars incorporated into public policies in urban centers, where case studies and data allow the understanding of the specific targets to be the Black population residing in the peripheries. The political management of death as well as the racial contract in its contemporary ideals in Brazil, has as a tool of exploitation and intensive oppression of the Black population, subjugating a portion of the population to the power of exclusion and death.

The discourse that anchors the juridical-political normativity and its functioning among peers works very well, as a kind of collective legitimate defense. The legal system plays a preponderant role in the operationalization of this apparatus, a term already presented throughout the work. In the legal sense of the term, it is worth discussing what it means. We are interested in looking at legitimate defense as a device? Legitimate defense ends up being a device for the application of necropolitics. The discourse of legitimate defense is a practice.

According to Charles Mills (2023), the idea of global white supremacy appears as a political system, a particular power that structures formal and informal rules, socioeconomic privilege, norms of wealth and opportunity distribution, benefits and penalties, rights and duties. Which is applied through violence and ideological conditioning. As much as the one present in the debate spread by Sueli Carneiro that the “racial contract is what structures the device of race” (Mills, 2023, p. 33).

Brazilian Genocide as a Continued Political Project

Abdias Nascimento's reflection (Nascimento, 2016) goes through the myth of racial democracy, the whitening of culture, as a strategy of genocide, which in one of its aspects relates to the idea of epistemicide from the perspective of Sueli (Carneiro, 2023). In the work “The Genocide of the Brazilian Black—Process of a Masked Racism”, he begins from two concepts:

The use of deliberate and systematic measures (such as death, bodily and mental injury, impossible living conditions, prevention of birth), calculated for the extermination of a racial, political or cultural group or to destroy the language, religion or culture of a group." Genocide n. (neol.). Denial of the right to existence to entire human groups, by the extermination of their individuals, disintegration of their political, social, cultural, linguistic institutions and of their national and religious sentiments. Ex.: Nazi persecution of Jews, racial segregation, etc. (Nascimento, 2016)

It is worth noting, within Brazilian norms, Law nº 2.889/56, the Genocide Law, which provides as a crime the conduct of whoever, with the intention of destroying, in whole or in part, a national, ethnic, racial, or religious group, as such kills members of the group, causes serious injury to the physical or mental integrity of members of the group, intentionally subjects the group to conditions of existence capable of causing its total or partial physical destruction; adopts measures aimed at preventing births within the group; carries out the forced transfer of children from the group to another group.

The state of exception becomes a frequently used device for maintaining order against everything that, from the point of view of the state federation that is sovereign in the country's democracy, threatens: the immigrant, the terrorist, the criminal, the bandit, etc.

The social control of the Black population is its death. That is to say, let's put it this way: I kill in various ways, but that type preferably identified as the reaction, which would be the young male more predisposed to action, reaction, at the age of rebellion, of the possibility of confrontation... the control is: "this one cannot continue living," that is the control. (Carneiro, [2023](#)).

It can be concluded from the approach presented here that the discourse of legitimate defense, in the Brazilian experience, is based on the preservation of the positively racialized structure, represented by the universal subject, the "transparent self", or as Denise Ferreira da Silva presents criticism of racial theories "the transcendental shroud of the Subject and the immanent (naturalized) experience of its subordinates are woven with the same 'essentialist' thread, as the dominant critical strategies produce the subaltern as a sample of the 'individual', that is, of the historical-liberal being" (Ferreira da Silva, [2023](#), p. 50).

Final Considerations

The place of invisibility that almost every Black person knows and the experience that can manifest in countless ways, whether in the invalidation of their achievements, the silencing of their voices, the erasure of their cultural expression and intellectual production, the restriction of access to fundamental rights, or the dehumanization of existence. Above all, in the way control mechanisms are instituted in the relationships of subordination between power structures and socially deprived groups, within the logic of capital accumulation. All of this helps us understand how racial violence perpetrated by the State, under the guise of self-defense, blurs the lines between the rule

of law and the state of exception and, consequently, produces a victim body, the killable body, most often racialized in peripheral territories.

The discussion presented throughout this work highlights the questioning of the discourse of legitimate defense, not only as a legal institution codified in law, but also about the defense of the society upon which it materializes through institutional politics. The way society, particularly the “white” society, is defended and human life absorbed by politics.

Correlated to Charles W. Mills’ racial contract, which draws attention to the fact that the organization of power in modernity, the control of this hierarchy of populations for the functioning of the State, was structured by race and racism, and mentions that we are living in an era of massive global protests against racism.

Final Thought, however, it is concluded that in the police discourse regarding legitimate defense, the society being defended is that of the law-abiding citizen. The entire legal, institutional apparatus, the production of truth around the idea that society must be defended. In this pact around the discourse of legitimate defense, who is being defended? Is it the life of the police officer or the life of society? Public security institutions are part of a racial pact to preserve public order. The present approach leads us to conclude that legitimate defense is a mechanism for defending white supremacy.

This chapter does not aim to exhaust the debate, on the contrary. The idea is to shed light on the necessary and inherent reflections in discussions about State violence perpetrated against racialized bodies and the fight against anti-Black racism (terror).

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7

‘One Tragedy After Another: Structural Violence, Necropolitics, People of Colour and Police Caused Deaths.’

David Baker

The Essential Doesn’t Change

The starting point for this chapter is Samuel Beckett’s assertion: the essential doesn’t change. I have been researching Police-Caused Deaths (PCDs) for what feels like a long time. I have grown tired of doing empirical research on this issue. I have sat in too many inquests and misconduct hearings in which officers have not been held to account; have watched too much appalling video footage. I have come to the conclusion that the essential doesn’t change—but what is the essential in PCDs? It has become common knowledge that police the world over are able to kill with impunity. For a long time, People of Colour knew this to be a truth, but it has now become common knowledge. It has also become common knowledge that People of Colour are disproportionately more likely to die after contact with police than White people (Baker, 2021). All of this being common knowledge does not mean, of course, that there is any realistic likelihood that the numbers of PCDs will decrease; that officers will be prosecuted; or that lessons will be learned that prevent future deaths, because the essential, after all, doesn’t change. This chapter uses the concepts of structural violence and necropolitics to examine how and why the essential doesn’t change about PCDs and

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how and why this is manifest in the disproportionate number of People of Colour who die after contact with police.

I am writing this chapter in Liverpool, a city Moody (2020) termed ‘the slaving capital of the world.’ The city was a principal gateway facilitating the Transatlantic slave trade, enabling the brutal murder, torture, and subjugation of millions of Black people. Liverpool used to promote itself as the ‘Second City of the Empire,’ as if its capacity to produce human misery and destruction was something to celebrate. Today, the city has rebranded itself—there is one of the few Slavery museums in the UK that acknowledges the city’s enthusiastic participation in the trade of human flesh for more than two centuries. Baltimore was a key port in the slave trade and received enslaved human cargo from Liverpool (Moody, 2020). On my way to work, I pass by Baltimore Street and remember doing interviews with relatives whose loved ones had been killed by police in Baltimore (Baker, 2021). I arrive at the building where I am based, knowing it is five minutes’ walk from what was the frontline during the Toxteth uprising in 1981 against racist policing practices.

Temporally and spatially, all of these things are connected, but as a society, we appear to be in denial about these connections; about connecting the past to the present; the local to the global; the individual case to systemic and structural issues. In this chapter, then, the essential is the structural racism embedded in organisational practices fundamentally grounded in socio-historical, socio-political, and socio-legal norms and principles. These practices, norms, and principles are examined by interrogating the concepts of structural violence and necropolitics (both of which are defined and contextualised in due course); the chapter also considers the role of imperialism and colonialism in relation to PCDs.

The Angiolini (2017) report into deaths and serious harms in police custody is the most comprehensive official review to date on this issue in England and Wales. It noted that: ‘Every death in police custody is a tragedy’ (Angiolini, 2017: 28). The governmental response to this review repeated this sentiment, verbatim: ‘Every death in police custody is a tragedy’ (HM Government, 2017: 4). The Oxford English Dictionary defines tragedy as: ‘an event causing great suffering, destruction, and distress, such as a serious accident, crime, or natural catastrophe.’ It typically refers to the death of an individual, or in the case of catastrophes, the deaths of groups of people. We do not think of tragic deaths as being systemic, because if we did, it would imply they were to some extent predictable, and thus preventable.

Tragedy suggests inexplicable and unforeseen events. The regularity with which PCDs occur, and the repetitive nature of events that occur leading to

such deaths tells us that tragedy is not an accurate word to describe them. But it could be a useful word for the state to use as a distraction technique. What would the state wish to distract us from? Writing about healthcare emergencies, Berlant (2007) argues that issues constructed as crises or catastrophes are better understood as mundane everyday issues that are inextricably woven into the social structures of our lives, and that People of Colour are disproportionately affected, leading to preventable deaths. This chapter argues PCDs are not tragic, they are predictable. They are predictable because structural conditions in society enable and facilitate such deaths, and also ensure that mechanisms tasked with investigating PCDs do not learn lessons that prevent future deaths, meaning that both police and regulators combine to construct PCDs as legally justified, legitimate aspects of policing. In order to understand how the essential doesn't change, we need to understand how structural and systemic factors lead to disproportionate numbers of People of Colour dying in PCDs.

Police Caused Deaths in Context

The systemic and repetitive nature of PCDs and the disproportionate representation of People of Colour in PCDs is most succinctly expressed statistically. Black citizens are twice as likely to die than White citizens in PCDs in England and Wales (IOPC, 2020). If restraint is used prior to the death then Black citizens are seven times more likely than White citizens to die (INQUEST, 2023). According to the Independent Office for Police Conduct (IOPC), on average during the ten-year period 2014–2023, 210 people died annually after contact with police (Baker, 2024). Both the scale of PCDs and their disproportionate impact on People of Colour led the then Home Secretary, Theresa May, to commission an extensive inquiry into how and why people die after contact with police, and how and why lessons are not learned that prevent future deaths (Angiolini, 2017). May was drawn to this issue after meeting the families of Sean Rigg and Olaseni Lewis, both of whom were Black men who died after restraint by multiple police officers, both of whom were mentally unwell. This highlights intersectionality in these deaths—there has long been concern over the disproportionate number of People of Colour who die after contact with police who are mentally unwell (Bruce-Jones, 2021; Baker & Pillinger, 2020; IAPDC, 2023).

Although the Home Secretary instigated the Angiolini review, she was simultaneously promoting a 'hostile environment,' predominantly focused on

People of Colour, which focused on deporting ‘undesirable aliens.’ Concomitant with this was the scandal of Windrush, in which it emerged that significant numbers of People of Colour had been illegally deported largely to Caribbean countries due to policies driven by none other than Theresa May. The death of Joy Gardner in 1993 is but one example that serves to illustrate the nexus between PCDs, People of Colour, and the legacies of imperial power. Mrs Gardner died as a result of being restrained by multiple officers, handcuffed and bound with electrical tape (Williams et al., 2023). Officers arrived unannounced in the very early hours of the morning to deport her and her five-year-old son to Jamaica. They entered the family home with a restraint belt akin to ‘slave manacles’ and wadding to gag Mrs Gardner. Benjamin Zephaniah (2023) captures this in his poem, ‘The Death of Joy Gardner’:

They put a leather belt around her
13 feet of tape and bound her
Handcuffs to secure her
And only God knows what else,
She’s illegal, so deport her
Said the Empire that brought her.

PCDs are intimately rooted in aspects of colonialism and imperialism, and manifest in police practices that subjugate and oppress People of Colour. Policing as both organisation and practice represents a history that is bound up in imperialist and colonial legacies.

Brogden and Ellison (2013: 13) view the police as an ‘antiquated early nineteenth-century idea’ that was intimately connected to empire-building and remains relatively unchanged in the twenty-first century. Since their formation, the focus of police has fallen predominantly on marginalised groups within society (Reiner, 2010). I wish I did not have to restate, yet again, how this works, but it is still necessary to begin any examination of PCDs with this unequivocal assertion. The police focus on enforcing order means ensuring the dominant societal majority’s vision of order is maintained, and by extension, that means identifying and othering marginalised groups (Baker, 2016; Reiner, 2010; Vitale, 2017). The disproportionate focus on marginalised groups as a general feature of policing produces specific consequences. A disproportionate amount of force is used on those groups and consequently a disproportionate number of people from those groups die. The best available data on the use of force in England and Wales tells us that Black people are nearly six times more likely to have restraint used on them, nine times more likely to have a Taser drawn on them, and three times

more likely to have a spit hood/bite guard used on them than White people (HMICFRS, 2021).

A prerequisite in a PCD is that contact occurs—and for marginalised groups, contact with police is disproportionately more likely than any other population group. My 2016 research, using Coroner data from PCDs in England and Wales over a ten-year period established that the great majority of people who die after contact with police are from marginalised groups: People of Colour; people who are mentally unwell; are dependent upon substances; or are homeless (Baker, 2016). There is no official denial of these facts (see IAPDC, 2018), and the Angiolini (2017) review outlined concern over the deaths of these population groups in some detail. My 2016 research also identified that a significant number of deaths do not involve the use of force but are the result of omissions by officers; and that nearly half of the deaths occur at least partly because other public services (usually health-care) have failed in their duty of care, leaving police as the organisation of last resort. PCDs are therefore not purely defined by explicit and direct uses of violence; they can also result from indirect forms of violence, as will be addressed in more detail later in the sections on structural violence and necropolitics.

Police typically manifest their symbolic presence in public, so contact most frequently occurs in these scenarios. Stop and search is identified by academic researchers and police regulators as being the practice most commonly used disproportionately against People of Colour. There are decades worth of data demonstrating this, but I will limit myself to enumerating statistics from a recent review by the principal official inspectorate of policing. Black people are nine times more likely to be stopped and searched than White. Under s60 of the 1994 Criminal Justice and Public Order Act that rises to eighteen times more likely (HMICFRS, 2021). The idea that officers are effectively policing domestic colonies is by no means fanciful. Brogden (1987) drew direct comparisons between Metropolitan police tactics and early colonial police forces that deployed officers to locales in which they did not live. This was a way of enforcing central control on subordinate populations as distinct from policing consensually with the local populace.

That remains the case today, with Metropolitan police officers typically not living in or near the areas they police (Gaskarth, 2016). White officers predominantly police areas that are mainly populated by People of Colour, in communities they have no experience living in. It is not difficult to see how othering occurs, or how a vision of what order should be is distributed from a central locus rather than reflecting local considerations—a key tenet of

imperialism (Lamble & McElhone, 2023). In this sense, the colony is transplanted to the ‘mother country’ and exists in areas predominantly populated by Persons of Colour. This systematic, oppressive and discriminatory practice has led some to observe that marginalised groups exist in a form of ‘social death,’ meaning that their de facto rights do not match with their de jure rights—they are marked out as different by the practices of state agents, marked as not enjoying full legal rights (see, for example Cacho, 2012; Flacks, 2020; Linneman et al., 2014). These observations connect directly to a statement in the recent Casey (2023: 17) review into various crises in the Metropolitan police: ‘The Met under-protects and over-polices Black Londoners.’

The persistence of hugely disproportionate statistics on stop and search over decades of data gathering is apparently ‘unexplainable’ by police (HMICFRS, 2021). Referencing Reiner’s (2010) work, Flacks (2020: 391) notes that policing in the twenty-first century focuses on ‘domestic colonies,’ whilst Azarmandi (2016: 160) observes that policing reduces People of Colour to outsiders within their own countries, a fact also noted by Fassin (2019). Similarly, data demonstrating the disproportionate use of force against People of Colour is also ‘unexplainable’ by police forces (HMICFRS, 2021). That People of Colour are disproportionately more likely to die after contact with the police shows that there is a continuum of activity that links social death to literal death. The inexplicability of the data, is, apparently, unproblematic for the state, because there is ultimately no requirement for it to explain how these disproportionalities might be rectified. Lessons are not learned that prevent future deaths; the same systemic factors that lead to such deaths recur with predictable frequency; the data does not change; inquiries reach similar findings and make similar recommendations but still change does not occur. Either the system is broken, or the system is doing exactly what it is intended to do. In order to critically interrogate this question, the concepts of structural violence and necropolitics are now explored as a way of understanding systemic issues underpinning PCDs.

Structural Violence

The concept of structural violence was first proposed by Johan Galtung (1969). He argued that violence is not only manifest in direct, physical ways, but can also affect individuals in indirect and invisible ways. Structural violence restricts one’s ability to achieve life goals by blocking them via unseen structural restraints. Obvious examples of this are poor quality education,

housing, and employment—any or all of which could prevent individuals reaching their potential. If someone living in a society with a modern health-care system dies from TB, then clearly that is preventable (Galtung, 1969: 168–171). Farmer et al., (2006: 1686) define structural violence as being manifest in 'social arrangements that put individuals and populations in harm's way.' The previous section of this chapter clearly outlined a variety of these 'social arrangements' manifest as police practices that put People of Colour in harm's way.

Literature on structural violence typically focuses on inequality in specific societal groups and seeks to explain how disproportionate outcomes persistently occur in society (Farmer, 2004). Writing about nursing practice in the US and how People of Colour are disproportionately likely to receive inadequate care, Burton et al., (2021: 384) state that 'there is perhaps no greater impediment to health than the persistent and credible threat of death.' From this perspective, violence can also be latent—the threat of it occurring is enough for it to create an atmosphere of malevolence and affect peoples' behaviour and outlook on society. The combination of direct and indirect violence leads to groups within society being systematically excluded from fully participating in social life (Kelly, 2005). Structural violence disables the right to life and also the right to safety, both of which are *de jure* expectations of UK citizens, but undone by *de facto* structural practices and outcomes of which the use of force and PCDs are but two examples. Another *de facto* structural practice is stop and search, which Joseph-Salisbury et al., (2020: 23) term the: 'state sanctioned harassment of Black communities,' and can be seen as being part of a continuum of structural violence that includes PCDs.

Salmi's (2004) research asserts that violence by omission is a form of indirect violence that can be represented as types of 'social violence.' One example Salmi gives is the tens of thousands of deaths each year due to the absence of gun control laws in the US—hence omission leads to avoidable deaths. In England and Wales, omission in relation to PCDs can be seen in the lack of adequate healthcare in custody and the inability of NHS services to attend to people having psychotic episodes, leaving them instead to come into contact with police (Baker, 2016). Both Galtung and Salmi make clear that violence exists on a continuum of visibility. Explicit violence can be captured on film, but structural, indirect, or alienating violence cannot. For both authors, any harm that can be reasonably avoided can be considered to be a form of violence, and clearly PCDs fall into this category.

Much of the literature available on structural violence is about health-care and unsurprisingly focuses on preventable death and harms. Medical researchers Deivanayagam et al. (2020) argue that police are a threat to

human rights and a structural producer of inequalities and harms. According to Farmer (1999), the nexus between healthcare and human rights has been insufficiently explored and structural violence is the concept that can enable them to be connected. I am not alone in arguing that we should reconsider PCDs as a public health emergency rather than a criminal justice issue (Baker, 2021). As these deaths are predictable, they are preventable, they are not individual ‘tragedies.’ We are seven years on from Angiolini (2017) making a significant number of recommendations about PCDs and their disproportionate effects on People of Colour, and the great majority of those recommendations have been ignored by the government (Bruce-Jones, 2021). Structural violence is enacted on populations through a variety of organisational means. It exists on a continuum that incorporates direct and indirect actions and omissions, some of which are visible and some of which are not.

Omission and Invisibility

The erasure of history enables the nation-state to make imperialism invisible despite structural violence repeatedly producing manifest inequalities and disproportionate outcomes (Farmer, 2004). As such, the denial of structural disadvantages on one hand, and past atrocities on the other, supports the myth of *de jure* equality. It also explains the lack of an effective system of death investigation and regulation that could learn lessons to prevent future deaths. Because each PCD is investigated as an individual death by both the IOPC and Coroners in England and Wales, from the outset, structural and systemic factors take a backseat in these proceedings (Baker, 2016). Beyond this, there is no national body gathering the data and findings generated by these investigations, meaning that there is no national oversight of trends and patterns about these deaths (Baker, 2022). Of the many recommendations that Angiolini (2017) made for improving police and regulatory practice to reduce the number of PCDs, one was to establish such an office and make public its annual analyses—this has not been adopted by the government, and there is no sign whatsoever that this will occur (Baker, 2024). In this reading, structural violence is not simply about omission, but wilful omission that disregards the possibility of learning lessons that could prevent future deaths.

Neither the IOPC nor Coroners explicitly acknowledge the role of ethnicity when investigating each individual PCD (INQUEST, 2023). Coroners do not record the ethnicity of the deceased on death certification, meaning that there is no data on ethnicity available at either a regional or national level (Baker, 2016). Until 2017, police were not required to record

instances where force was used in England and Wales, another example of violence by omission—if force isn't being recorded, that is surely a tacit statement that force is being used in a way that is acceptable. Farmer et al. and and's (2006: 1690) assertion that 'structural violence is perpetuated through analytic omission' appears to be strikingly relevant. A key aspect of structural violence is the withholding or denial of resources, which might explain the lack of accurate data on police use of force. Since 2017 there has been a statutory requirement for each police force to record use of force data, but that data is so poor that the official inspectorate of policing deems it unreliable (HMICFRS, 2021; Rappert et al. 2020). This is an example of the *de jure/de facto* tension outlined previously in this chapter. In this case, however, it applies not to People of Colour, but to police—by law they should record this data, but in fact they do not. In the sphere of policing, practice takes precedence over law, or as Reiner (2010) famously has it: the law is the servant of the police.

Further examples of omission illustrating indirect violence in the aftermath of PCDs are not limited to the activities of the IOPC or Coroners. The asymmetry of legal representation is a striking example, whereby families of the deceased are either denied legal aid, or have a single legal representative compared to the state's multiple legal representatives (Bundey, 2015). Angiolini (2017) noted that in some cases, the families of people who died in PCDs had to remortgage their homes in order to be able to meaningfully participate in processes that investigated their loved one's death (see also Bruce-Jones, 2021). Omission can also be seen in the lack of successful prosecutions in PCDs, despite a great deal of governmental, societal, and media focus on them. Rappert et al.'s (2020) research examined PCDs and accountability in four European nation-states, all of which had legacies of empire and colonialism: the UK, France, the Netherlands, and Belgium. It found that there were no prosecutions of officers in relation to PCDs in any of the countries over a ten-year period prior to the report's publication. PCDs thus become legally justifiable and normalised purely through the lack of indictments—another form of omission (Azarmandi, 2016; Baker, 2021; Loader, 2020).

The only example of an officer being successfully prosecuted after a PCD in England and Wales since the 1970s occurred in 2021. Dalian Atkinson, a Black man who was experiencing a psychotic episode died after being confronted by two officers. PC Benjamin Monk tasered Mr Atkinson three times and kicked him in the head twice. In the month that Monk was convicted of manslaughter and sentenced to eight years in prison, the Home Secretary addressed the Police Federation conference and told them to 'get

back to zapping the bad guys' (Baker, 2022). Thus the exceptionally rare prosecution was followed by a clear and direct exhortation to police to carry on with their usual practices—structural violence exists on a continuum that includes visible and invisible acts, and direct and indirect forms of violence. The essential doesn't change, and People of Colour are disproportionately affected as a result.

Imperialism: Processes of Control and Ordering

I now pivot to connect the structural violence continuum more specifically to the deaths of People of Colour after contact with police by considering the concept of necropolitics, and how this connects to imperialism and colonialism. Arendt (1973) noted that imperialism was predicated on the indigenous populations of colonies by considering those groups as literally separate from the nation-state that subjugated them. Unsurprisingly, consent was rarely granted by conquered peoples, so violence was necessary for both the expansion of nation state's territories and the suppression of indigenous populations. Arendt (*ibid*) believed that the capitalist imperative drove the nation state's desire for expansion, overriding political imperatives and leaving governments to codify laws focused on the needs of capital rather than the rights of people. The seeds of the *de jure/de facto* experience of People of Colour today are rooted in the imperialist history of the UK.

The codification of law necessarily affected the role of police, who were principally deployed to protect capitalist enterprises both at home and in the colonies (Broghden, 1987). In the rush for capitalist expansion, control and coercion existed not only in the colonies but within the nation-state that wrested control of them. For Arendt (1973: 127, *italics as original*) the UK was principally colonial, because although it claimed to be a Commonwealth, it was actually '*one* nation dispersed throughout the world' which depended upon assimilation. Once different values are ascribed to individual lives there is by extension a calculation about the relative worth of life. Some must be deemed more worthy than others, and clearly in the case of colonies, the lives of indigenous people were considered to be of less worth than those of the settler colonisers (Azarmandi, 2016).

At the same time as the nation-state expanded beyond its borders, it also deepened and broadened its reach into and over society at home. A new type of population management emerged which Foucault (1978) termed 'biopolitics.' For economy and society (in that respective order of priority) to prosper materially depended upon the health of the most productive (and

thus valued) sections of society. This marked a change in the model of population management which had hitherto seen the power of the sovereign to 'kill and let live,' but now, under biopolitics became a sovereign power to 'make live and let die' (Foucault, 1978). Thus, although Foucault's focus is on the living and their relative worth, it incorporates in its thesis the role of death.

Building on Foucault's concept of biopolitics, Mbembe (2003) sets out to examine in more detail the social function of death and how specific populations are constructed as more disposable than others. He begins by considering the fundamental conceit that we are all *de jure* equal, terming this 'the romance of sovereignty' (Mbembe, 2003: 13). His focus on sovereignty is to understand how it destroys bodies and populations as a way of understanding 'who may live and who must die' (Mbembe, 2003: 11). Necropolitics considers how and why specific groups appear destined to die due a variety of structural conditions in society that negatively affect them.

Necropolitics: Who May Live and Who Must Die

When considering necropower, death is not necessarily literal for Mbembe, just as it was not for Arendt (1973). The latter identified the diminished juridical status of Jews in Nazi Germany as a key facilitator to their eventual literal death in the Holocaust. Death can also exist as a socio-political fact, through imprisonment, segregation, and social exclusion (Flacks, 2020). For Sandset (2021) it extended to deaths during the COVID-19 pandemic when there was an expectation that certain groups of people (often People of Colour) would die. In this reading, the pandemic was a crisis which exposed underlying inequalities in society through preventable deaths. Policing in the UK during the pandemic demonstrated practices such as the issuing of fixed penalty notices that further exacerbated structural inequalities through a disproportionate focus on People of Colour, largely due to the discretion afforded to police to 'proactively enforce' lockdown (Turner et al., 2022). There is a clear and direct link, then, with definitions of structural violence, and the principle of events/omissions existing on a continuum. The difference between structural violence and necropolitics being that the latter principally focuses on death.

Misra (2018: 15) views necropolitics as the principle that literal death is regularly manifest in interactions with state agents, whilst necropower is: 'the force that sustains such a scaffold of interaction.' The use of necropower across a continuum has been focused on by a number of authors (see, for

example Lamble, 2013; Misra, 2018; O'Donnell, 2022). The earlier part of this chapter established a variety of practices that illustrate the continuum of structural harms. Stop and search focuses on specific geographic areas, disproportionately focusing on People of Colour and maintaining the reality that, in particular, Black men are 'police property' (Reiner, 2010). The over-representation of People of Colour in general use of force data (HMICFRS, 2021); and the disproportionate use of both physical and mechanical restraint on People of Colour (Baker & Pillinger, 2020) illustrates another aspect of the 'scaffold' that Misra (2018) refers to. It points to People of Colour being dehumanised, which for both Arendt (1973) and Mbembe (2003) is both a function of imperialism and a prerequisite for specific population groups being defined as disposable.

Writing about prisons and incarcerated persons, Le Marcis (2019) states that necropolitics can be understood in terms of abandonment, neglect, and ultimately death. For Mbembe (2003: 27) 'sovereignty means the capacity to define who matters and who does not, who is disposable and who is not.' This is a zero-sum game, because the rights and security of certain groups in society rely upon the suffering of other groups marked as disposable due to governmental practices (see Azarmandi, 2016; Montenegro et al., 2017). The hierarchy of grievability fits with this thesis because if People of Colour are already constructed as police property, then they are by definition of less value than other groups in society. If People of Colour subsequently die after contact with the police then that might well be constructed as a 'tragedy' but is not necessarily a surprise, or something that could be learned from because society has constructed that group as having less relative worth than others, and are therefore more disposable (see Baker, 2021; Razack, 2015).

Much of the examination of necropolitics focuses on space and place. In particular, the colony or the enclave is commonly referred to by researchers (see, for example Jackson, 2013; O'Donnell, 2022; Misra, 2018). In this sense, the connection to racist practices is fixed on places—what Misra (2018: 17) terms 'necrospace'—where death is ever present. The argument can be made for this existing in the UK today by over-policing of areas which have majority Black populations (Lamble & McElhone, 2023). Reiner's (2010) assertion that specific groups of people in society are 'police property' reflects Mbembe's (2003: 23) observation that: 'the colony represents the site where sovereignty consists fundamentally in the exercise of a power outside the law.'

The reality that officers use extrajudicial methods when policing People of Colour is long established in policing literature (Brogden, 1987; Fassin, 2019; Flacks, 2020; Vitale, 2017). Fassin (2019: 555) unequivocally asserts: 'the trivialisation and normalisation of extrajudicial punishment by the police

are a major unrecognised fact in contemporary societies.' The stated intention in Linneman et al., (2014: 509) paper is to 'confront the fetishistic disavowal of subjective violence and everyday state killing.' That extrajudicial methods remain so embedded in police practice underline how normal and systemic they are, illustrating how invisible structural violence and necropolitics is to the dominant majority, who apparently find it preferable to deny the connection between past and present, local and global, the individual and the systemic.

Necropower: Constructing Narratives and Bodies

Once structural conditions are erased from the narrative of PCDs they can be discounted as being causal factors in PCDs. It then becomes easier to account for these deaths by primarily considering the deceased's lifestyle, behaviour, or 'pre-existing conditions' (Baker, 2019; Sandset, 2021). Focusing on people who die rather than the police and other state agencies involved in the death is one way in which society is encouraged to overlook systemic issues related to each 'tragic' death. It also enables police to portray the person who died as somehow causing their own death, albeit in a way that is ultimately 'tragic' (Baker, 2019). Typically this is done by constructing the deceased as any combination of being violent, unpredictable, having a criminal record, being mentally unwell, or dependent on substances (Baker, 2021; Williams et al., 2023).

By implication, then, the police, as enforcers of order, have been reasonable, rational, and proportionate in their response, thus absolving them from blame in relation to the death. Above all, their response was *necessary* to ensure societal order due to the behaviour and/or character of the deceased (Baker, 2019). In the case of Joy Gardner, examined earlier in this chapter, the media constructed her as a 'shanty town girl who bent rules for a better life' whereas Detective Sergeant Evans, who was unsuccessfully prosecuted for the death of Mrs Gardner was 'a superb detective' (Erfani-Ghettani, 2015: 109). In the criminal trial, the three officers charged with her death stated that Mrs Gardner was the 'most violent woman they had ever encountered' (Williams et al., 2023: 256).

A variety of literature notes how police construct Black men, in particular, as being dangerous, powerful, unpredictable, and possessed of almost superhuman physical powers—these atavistic constructions enable the dehumanisation of the deceased (Baker, 2019, 2021; Long, 2018). The state

justifies its coercive powers by constructing itself as a protector of populations—as per Foucault's (1978) biopolitics thesis. As the use of these powers falls disproportionately on People of Colour, clearly the protection for some comes as a result of the subjugation of others. The reproduction of police and state power occurs through legitimised violence exercised against the dispossessed and 'socially dead' (Linneman et al., 2014: 508). This perhaps explains how the dead and their killers are essentially an amorphous group, the former reduced to numbers, the latter faceless agents of the state (see, for example Arendt, 1973; Misra, 2018).

The use of undercover officers to spy on families is another example of extrajudicial processes that underline not only the relative worth of the people who die, but also the family members who are left behind. It has been established beyond doubt that the families of Christopher Alder, Shiji Lapite, Joy Gardner, Ibrahima Sey, and Brian Douglas (all of whom were People of Colour) were under surveillance at various points following the deaths of their loved one at the hands of police (Evans & Lewis, 2013). The carceral state reaches beyond the deceased in PCDs to underline its control over populations via literal necropower. The control and coercion that undergirded the power of the nation-state at 'home' was exported to its colonies 'abroad,' and in this case extended beyond the literal dead to encompass their families as a reminder of who is the coloniser and who are the colonised (Lamble, 2013: 242). The relative social lack of worth inscribed on the bodies of those who die in PCDs can also be understood in a literal sense. Shalhoub-Kerkovian's (2020) research on necropolitics focuses on the retention of dead bodies to delay burials in East Jerusalem by Israeli security forces as commodities used by the carceral state to inflict trauma and harm on the families of the deceased. Until the 2010s there were plenty of examples of People of Colour being denied access to the bodies of their loved ones in England and Wales, and their funerals being delayed as a result (Baker, 2016).

The death of Christopher Alder is salutary. A Black man who was unlawfully killed in Hull police station in 1998, Mr Alder's body was kept for more than a decade in the mortuary deep-freeze whilst his relatives mistakenly believed he had been buried. Upon exhumation of what was thought to be his grave in 2011, it became obvious that a woman's body that had been buried in his stead (Campbell, 2019). In my research in the US (Baker, 2021), People of Colour whose loved ones had died in PCDs routinely told me of delays accessing the body of their loved one after their death; and of vital organs retained indefinitely by authorities; similar issues are noted by Bruce-Jones (2021) in England and Wales. The symbolic power of the state to enact

and inscribe who is disposable and who is grievable is brutally manifest in these examples.

Relative Value: Disposability and Valorisation

So far, the chapter has dealt with police as an institution within the carceral state; by which I mean the police are manifest both corporally, but also in terms of policy and practice. In addition to these considerations, we must acknowledge that policing is highly symbolic. It is not just a noun, but also a verb. For Loader (2020) society projects its hopes, fears, and values about the world onto policing, however flawed and inaccurate they may be. The relative worth, therefore, ascribed to police officers and to People of Colour reflects a system of wider societal values than those that come into focus after a PCD. Loader (2020) asserts that the deceased in PCDs are symbolic sacrifices in a system of order rather than victims.

Loader's (2020) view that PCDs prove the principle that equality is a myth overlaps with the reasoning underpinning Mbembe's (2003) necropolitics and Farmer's (2004) structural violence theses. Although PCDs create significant societal concern, they do not result in significant changes to policing or the regulatory system that investigates them. This is because of broad and deep-seated illiberal sentiments within society that see police as symbolic protectors of order, and accepts the sacrifice of citizens as 'collateral damage' if necessary to reinforce the myth of police as 'heroic guarantors of social order' (Loader, 2020: 414–415). Thus, the regulatory regime that investigates PCDs represents a set of liberal rituals whose ultimate goal is not to uncover the truth and learn lessons that might produce change, but to assuage and distract concerned citizens whilst the fundamental aspects of policing continue unchanged.

The valorisation of police by the dominant majority in society represents the flip side of the denigration of victims in PCDs—except, of course, the deceased are not entitled to victim status. Those they leave behind are not eligible for victim support services such as counselling. Instead, police are constructed as victims, worthy of support (Loader, 2020; Shiner, 2010). In 2024, the Deputy Prime Minister announced the introduction of the 'Elizabeth Emblem'—an award for officers who die whilst in the line of duty (UK Parliament, 2024), echoing Loader's (2020) view that it is the police 'family' that is most valued in matters of life and death. In 2023, six officers died in such circumstances (Police Remembrance Trust, 2024) whilst one hundred

and ninety four people died after contact with police (IOPC, 2023). Citizens who die after contact with police are not commemorated, nor is there a monument to them. The relative lack of worth in this regard is literal as well as symbolic.

Structural violence and symbolism also extend to what is held to be true and what is false in legal proceedings into PCDs. Researching the inquest into the death of Sean Rigg, Cole Arthur (2023) focuses on PS White's testimony regarding Mr Rigg's death, which clearly contradicts his actions on CCTV. His defence is that he does not dispute the evidence of the CCTV, but that he did not lie, rather, his memory 'was mistaken.' Cole Arthur (2023: 367) notes that this construction evades objective facts, because memory is not objective. It is not only police, then, who represent wider manifestations of symbolic power and order in society when citizens die in PCDs. Symbolism is also fundamentally constitutive of the legal and regulatory system that investigates such deaths; it constructs and restricts the parameters about what truths can be said (Baker, 2019). For Cole Arthur (2023: 366) it is nothing less than an epistemological project in which: 'the symbolic order of truth and fiction undergirds political symbolic values, such as legitimacy, authority, and consent.'

Marginalised groups bear witness to the continuum of structural violence they live in and on. The sense that a lifetime of oppression and subjugation by police can end in death has been noted by various researchers on PCDs in England, France, and the US (see, respectively, Baker, 2021; Fassin, 2021; Williams et al., 2023). The longer reach of these effects is manifest in intergenerational trauma transmitted through families and communities, reminding them of their relative worth to society and reinforcing their place in the social hierarchy. One aspect of this trauma is to render the death of loved ones ungrievable and consequently disenfranchise families and communities from wider society (Baker et al., 2019).

Conclusion

The UK is 'not innocent' when it comes to policing and disproportionate deaths of People of Colour (Joseph-Salisbury et al., 2020). It was deeply embedded in the Transatlantic slave trade; the criminal justice system disproportionately impacts People of Colour; its political leaders have a long history of oppressing People of Colour; the inability to bring about changes in practice merely underlines that words do not equate to actions, and that the system is doing what it is meant to do—if that were not the case, then its

practice would have altered some time ago. The repetitive and unchanged nature of PCDs over time; and the impunity with which police continue to act clearly demonstrates that these deaths are not 'tragic,' they are utterly normal when considered within the system in which they occur.

PCDs result from systemic and organisational practices that have their roots in imperialist and colonialist practices. The role of police has always been to disproportionately focus on People of Colour, giving lie to the myth that all citizens in England and Wales have *de jure* rights to life and safety. The widespread and long-term use of extrajudicial practices by police ensure that the *de facto* rights of People of Colour render them 'police property.' Increased societal awareness of these issues has driven movements pushing to either defund or abolish the police (see, respectively Joseph-Salisbury et al., 2020; Purnell, 2021). The relative worth and disposability of People of Colour have been illustrated in this chapter in both a literal and symbolic sense. A direct line can be traced from 'social death' to actual death; from disproportionality in stop and search and the use of force through to disproportionality in PCDs, because the essential, after all, doesn't change.

Structural violence and necropolitics both recognise that violence and harms exist on a continuum. Violence exists in ways that are both direct and indirect; encompass omissions as well as actions; and can be rendered in both visible and invisible ways. Violence extends beyond simply the people who die in PCDs to include the families and friends left behind; but also the wider community in terms of collective trauma. Violence can be visited upon bodies both alive and dead; and in both literal and symbolic ways. Violence is manifest in practices which wilfully ignore lesson learning; and systems of regulation that are constructed not to learn lessons, or prosecute officers. Underpinning all of this is a political and societal will to maintain the status quo that remains unspoken, largely invisible and generally unacknowledged.

Nor should this system of oppression be seen as being exceptional to the police. Levels of disproportionate death and harms for People of Colour have long been recorded in connection with childbirth, healthcare, education, and housing, most recently coming into sharp focus in the COVID-19 pandemic (Sandset, 2021). We should not be lured into thinking that police alone manufacture processes that disadvantage People of Colour. Grenfell Tower and the midwifery scandals at NHS trusts uncovered by Ockenden are but two major examples of disproportionate numbers of People of Colour dying avoidable deaths, both of which had regulatory regimes that patently failed, and both of which have produced inquiries that so far have held no-one substantively to account (see, respectively Apps, 2022; Ockenden, 2020). In light of the observations made in this chapter, the persistent and widespread

resistance of anti-racist groups continues to represent one beacon of hope that change can occur (Elliott-Cooper, 2021).

Using concepts such as structural violence and necropolitics can inform a holistic understanding of deaths and harms that transcends individual service provision and enables an understanding of the systemic, structural and organisational factors that coalesce to disproportionately affect People of Colour in a country that professes a de jure recognition of their rights, but a de facto acceptance of the apparently interminable, endless, and ultimately numbing quantity of ‘tragic’ deaths. The essential doesn’t change because it largely remains unspoken, unremarked upon, and unremarkable.

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8

Zemiology and Epistemological Justice: Reconstructing the Study of Social Harm to Adequately Account for Race

Edward J. Wright

Introduction

Zemiology is the study of social harm. Over the last three decades it has gathered significant traction within and beyond criminology. It emerged from and arguably against criminology, due to a dissatisfaction with crime as an analytical category (see Hillyard & Tombs, 2007 for an overview): ‘crime’, for instance ‘serves to maintain power relations’ (Hillyard & Tombs, 2007: 15) and ‘excludes many serious harms’ (Hillyard & Tombs, 2007: 12). The potential for zemiology to contribute to analyses of and efforts to ameliorate racial injustices should be apparent just from this brief description: various criminal justice systems globally being institutionally racist, and many racialised harms not being criminalised, for instance. This potential is variously recognised in the field (e.g. Choak, 2020; Hillyard & Tombs, 2007; Tombs, 2018). However, as this chapter discusses, zemiology generally does not fulfil this potential, and does not incorporate race into its analyses sufficiently. The peculiarity of the need for the significant intervention that this chapter represents therefore is that whilst *prima facie*, zemiology overtly wishes to address racial inequality and racialised harms, it remains inattentive to race, and does not contribute to such discussions. This chapter explains why this is the case,

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whilst also reconstructing zemiological theory, so that the discipline gains the means for racialised harms to be adequately explained.

To do this, I analyse the zemiological canon in terms of its understanding of modernity, to explain why there is a deficient understanding of race within it, to then work towards a zemiology better capable of addressing racial justice. I draw on various post-colonial thinkers and scholars of race, but primarily on Gurinder Bhambra, who, sometimes in collaboration with John Holmwood, has excavated and reconstructed modern social theory to better account for race in the production of modernity and its problems. For Bhambra and Holmwood (2021), modernity is usually rehearsed within social theory as deriving from capitalism and patriarchy, whereas colonialism is elided, unduly, from such grand narratives. This produces a situation in which it is impossible to recognise race as a structural issue. Zemiology, in being Marxist in its foundations, is located within this general approach to theorisation, and accordingly does not adequately address race in these terms. The result in zemiology is that race is either not discussed at all, or where it is discussed becomes mislocated as a problem of capitalism or relegated to a matter of cultural identity for which there is no structural target for reform. Unusually, though it is not the focus of this chapter overall, unlike the tendency of social theory that Bhambra and Holmwood articulate, patriarchy and gender are also (though not to the same degree) insufficiently recognised within zemiology in a similar way to race and colonialism. This is discussed in this chapter to further demonstrate that zemiology operates in an unduly narrow political economy of class, though, overall, here the discussion remains on race. Possibilities for future excavations of zemiology in terms of patriarchy and gender are, however, addressed in the concluding discussion.

As already mentioned, zemiology is indebted to Marx. It is therefore worth noting here that Marx was ‘a fierce critic of colonialism’ (Bhambra & Holmwood, 2021: 83), and did write on the subject. His thought here has also been extended by contemporary scholars working towards racial justice (*e.g.* Anthony, 2021). However, this version of Marxism is not one widely adopted in western social theory (Bhambra & Holmwood, 2021). Rather, the Marx inherited within much social science is a Marx concerned with capitalism and class struggle in isolation. In zemiology being essentially blind to colonialism and race, whilst also being highly occupied by an analysis of state-market relations on a national level (see Wright, 2023), a Marxism attentive to the colonial is certainly not one that it has inherited. Beyond this, though, Marx’s conceptualisation of colonialism and its relation to capitalism is at odds with the conceptualisation of the relationship between colonialism and capitalism recently put forth by Bhambra and Holmwood (2021, 2023) and adopted in

this chapter. Bhambra and Holmwood (2021, 2023) have at length argued that ‘each of the stages of the history of capitalism is determined by colonial processes and practices. There is no underlying logic of capitalism that can be separated from colonialism and no underlying logic through which colonial relations are filtered’ (Bhambra & Holmwood, 2023: 171), meaning that in order to understand the formation of modernity, it is necessary to ground analysis ultimately in relation to colonialism, and then capitalism. This is discussed further in this chapter, but from the outset it should be noted that it is to Bhambra and Holmwood’s account that this analysis of zemiology subscribes.

The central argument of this chapter is that zemiology, in adopting a narrow political economy of class, impedes itself from promoting racial justice. This chapter, though, overcomes this by rendering race a structural category within zemiology. This works significantly towards ‘epistemological justice’ (Bhambra, 2021a) within the field. For Bhambra (2021a: 76) epistemological justice ‘should be understood in terms of the adequacy of the “grand narratives” that structure the contexts within which we come to understand ourselves and others’. The grand narrative underpinning how zemiology understands social relations is capitalism, which is informed by a broader tendency of social theory that obscures colonialism and race as foundational features for analysis of the social, including social harm. To this extent, reflecting on the relation between theory and material redress in relation to European empires, Bhambra and Holmwood (2021: 6) argue that there are two aspects for consideration: the first relates to the introduction of ‘policies that mitigate the inequalities that colonialism bequeathed’. The second ‘consists in a reconstruction of the categories and concepts through which modern inequalities are understood’ (Bhambra & Holmwood, 2021: 7). Whilst the first of these is most important materially, ‘a major obstacle to its realisation is the failure to make the legacies of colonialism central to our understanding of modern society and its problems’ (Bhambra & Holmwood, 2021: 7). Accordingly, Bhambra and Holmwood focus on the second aspect. This chapter follows suit. Prior to changing the world materially, it is necessary to have an adequate understanding of that world, which zemiology does not, particularly in terms of race. Its understanding of modernity is bereft of colonialism as an organising structure, and thereby race as a structural phenomenon, which this chapter amends.

To produce such theorisation, this chapter locates the origins of zemiology within Europe in the late twentieth century. The Marxist foundations of zemiology are established, through which the production of social harm is understood in relation to the dynamics of varieties of capitalism. The chapter

then identifies and discusses the unrealised impetus within zemiology to address racial justice and asks how this remains unrealised. This is addressed through an interrogation of the mode of theorisation in which zemiology is situated, via the work of Bhambra. In short, modern social theory, in which zemiology can be located, has a deficient understanding of modernity, in which race—the structural identity produced in and through colonialism—does not feature, because of the erasure of colonialism from its canon. This theorisation is then applied to zemiology. Finally, a reformulation of zemiological typologisations of harm is provided, partly via a discussion of the 2010 earthquake in Haiti, so that racialised harms can be better understood through zemiology, and to create a zemiology that is more epistemologically just.

The Origins of Zemiology in Marxism and Its Unrealised Analysis of Race

Zemiology formed ‘during the late 1990s’ (Boukli & Kotzé, 2018: 1) via a disparate group of scholars, all dissatisfied with the lens of crime, who ‘began to think’ in ‘a concentrated way’ (Canning et al., 2023: 502) about how social harm could be developed as an alternative lens. The word zemiology (relating to the Greek word *xemia*—in brief meaning social harm) was adopted in 1998 (Canning et al., 2023), during the Annual Conference of the European Group for the Study of Deviance and Social Control, and ‘[i]nterest in forms of social harm grew steadily during the first two decades of the twenty-first century’ (Winlow in Raymen, 2023: X) within and through this school of thought.

The exact relationship between criminology and zemiology is debated (see Tombs, 2018). Whilst zemiology sought to escape the strictures of orthodox criminological analysis, it does reflect some criminological thinking, and moreover is imbricated with ultra-realist criminology (see Hall & Winlow, 2018). Ultra-realism will be discussed later in this chapter, though for now—rather than contribute to debates on the relationship between criminology and zemiology—it is necessary to recognise the influence that critical criminology has on zemiology.

Critical criminology is heavily indebted to Marxism and likewise zemiology largely operates in a Marxist frame. As Canning and Tombs (2021: 49) note: ‘Both critical criminology and zemiology share similar epistemological foundations. Both are influenced to some degree by Marxian analyses of capitalism’. For Marx, quite famously, there are structural causes of action which

are immiserating, and lie within capitalist economic structure, and this serves as a guiding principle for both zemiology and critical criminology. In an early zemiological statement in this respect, Tombs and Hillyard note:

As Marx so cogently showed, harm production is a necessary and essential part of the [capitalist economic] system. The state... is often complicit in the processes of capitalism's harms whilst at the same time producing its own forms of harms in a variety of different ways.... The production and control of harm, therefore, involves a complex interrelationship both between states and the corporations that operate within the capitalist system, and between different elements of the state itself. (Tombs & Hillyard, 2004: 43)

This statement is indicative of the general style of theorisation undertaken by zemiologists (Wright, 2023). Between myriad circumstances, the cause of harm is located within the dynamics of capitalism. Canning et al. (2023) have recently provided an exemplary statement on this, noting that the dimensions of harm production between and across contexts are locatable within these dynamics. The entire discussion of harm production in their text designed to provide an overview of zemiology is grounded in state-market relations, with 'neoliberal forms of capitalism' being 'qualitatively and quantitatively more harmful than other forms' (Canning et al., 2023: 508). There are, of course, exceptions to this (e.g. Boukli & Copson, 2019), though generally 'zemiology grew from the critique that "crime" represents a small fraction of the harms endemic to capitalism' (Telford & Lloyd, 2020: 599) and operates within this mode of theorisation.

Even though zemiology is predominantly concerned with critique of capitalism, which does not tend towards an articulate account of race (Bhambra & Holmwood, 2021), there is the—largely unrealised—impetus to gear zemiology towards racial justice from within the field. For Canning and Tombs, for instance, zemiology should provide a lens through which it is possible to see afresh matters of control and domination, from a variety of perspectives, including race. As they note, a zemiological lens:

moves us away from many toxic aspects of the histories of criminology ... it is an outright rejection of dominant language which has served to control those who are most economically, politically and structurally powerless in society, specifically working classes, *Black communities*, women, LGBTQI people and communities, people with disabilities and those of lower caste. (Canning & Tombs, 2021: 5, emphasis added)

Similarly, for Hillyard and Tombs harms are disproportionately experienced depending on these social divisions. As they note: ‘it is clear that various forms of harms are not distributed randomly, but fall upon people of different social classes, genders, degrees of able-bodiedness, *racial and ethnic groups*, different ages, sexual preferences, and so on’ (Hillyard & Tombs, 2007: 16, emphasis added). Indeed, recently, Canning et al., (2023: 517, emphasis added) have noted that zemiology should be about revealing, challenging and eradicating harm ‘as a result of state, corporate or pro-capitalist, *racialized*, gendered practices, processes, institutions and sentiments ... thereby furthering social justice’. Collectively, these statements signal that zemiology emerged with the intention of promoting racial justice and that it retains this intention. However, beyond such statements, zemiology has surprisingly been all but silent on matters of race (Canning & Tombs, 2021). The question is, how has this unusual arrangement emerged?

Race and Modern Social Theory

Zemiology is locatable within orthodox Western/European Social Theory (Wright, 2023). To address the lack of zemiological theorisation of race, it is necessary to understand how race features within that wider body of theory. Race is a category of social organisation brought into being in and through colonialism and is foundational to modernity. However, this understanding of race falls outside of standard social scientific explanations (Bhambra, 2023). Rather, stadial accounts of the development of modernity centre on the development of capitalism, according to various stages: mercantile capitalism, liberal capitalism, state-managed capitalism, and financialised capitalism, without recognition of the colonial foundations of this development. These stages, as Bhambra (2021b: 320) notes, are accepted by ‘most scholars of capitalism’ and accordingly ‘Social science ... has, for the most part, established its understandings of capitalism on the basis of agreement upon a standard account of history that does not regard colonialism as significant’ (Bhambra, 2021b: 308). It is, however, significant—and beyond social science this is recognised (Bhambra, 2016)—in that colonialism was the historical precedent for capitalism in all of its stages.

For instance, the standardly narrated first phase of the history of capitalism, mercantile capitalism, is better understood as ‘colonialism through private property’ (Bhambra, 2021b: 309) through:

the transformation of land and labour into property, into commodities, through processes of appropriation, possession and enslavement ... through

the process of taking land into private ownership, whether by individuals, companies, or through the extension of the Crown's dominion. It also occurs by making others into property through the institution of slavery. (Bhambra, 2021b: 309)

As Bhambra (2021b: 311) summarises, a capitalist economy is not possible 'without the preceding colonial appropriation that constitutes the ground for it'. Likewise, European states that formed through liberal capitalism, and are commonly rehearsed as nation-states with empires, are better understood as imperial states. The disaggregation of nation-state from empire obscures the economic unity of these arrangements: the capitalist economies of European states cannot be disentangled from those of their colonies. Indeed, the wealth extracted from colonies propelled metropolitan wealth. Colonialism is here fundamentally constitutive of modern capitalism. Similar is also for instance the case in relation to the stage referred to as 'financialised capitalism'. Here, the production of class becomes a matter of race, rather than vice versa. This is apparent, for example, in 'the neo-liberal retrenchment of social rights... following de-segregation in the USA' (Bhambra & Holmwood, 2018: 582 see also Bhambra, 2021b). Rather than welfare rights being extended to all as a mitigation to class inequality, they were diminished on a general basis. Here, 'race...' explains the re-emergence of 'class' (Bhambra & Holmwood, 2018: 582), and following this the structures which order these identities share a similar relationship: colonialism precedes and produces capitalism.¹

¹ A contrasting perspective here would be racial capitalism. The theoretical frame deployed in this chapter is not one of racial capitalism (see Bhambra and Holmwood, 2023), though this does not stem from current critique levied against it as a theory (e.g. Wacquant, 2023). Indeed, against this, this chapter could be said to share some affinities with accounts of racial capitalism, depending on the version of racial capitalism one subscribes to. There is current debate over the meaning of the term (e.g. Subrahmanyam, 2023). It can be taken to mean, for instance, 'the process of deriving social or economic value from the racial identity of another person' (Leong, 2013: 2153) but can also refer to 'the interconnected systems of racialized and capitalist formations' (Hall, 2022: 5), or that 'racism is core to capitalist accumulation' (Anthony, 2021: 55). Of these, it would be the last perhaps that this chapter is most similar to, in as much as I argue that capitalism develops as a result of colonialism. However, what these definitions share, despite their differences, is a focus on capitalism. My argument, following Bhambra and Holmwood (2023), though, is that the focus on capitalism within racial capitalism subscribes to a stadial account of modernity that takes capitalism as its ultimate frame of reference. For instance, whilst Cedric Robinson 'gives up the universalism of class' in his account of racial capitalism, he retains 'class as the underlying mechanism producing the injustice that he is concerned with rectifying' (Bhambra and Holmwood, 2023: 167). This fails to systematically reckon with the ways in which modern capitalism develops as a result of European colonialism, and occupies the space as underlying mechanism often attributed to capitalism. So, what is shared by both critics and proponents of racial capitalism, and what this chapter does not subscribe to, is that capitalism is the foundational feature of modernity. None of this means, though, that this chapter works within a dichotomous, or 'either/or' understanding of capitalism and colonialism. There is a relationship explained between the two in this account, it is just not one of contingency

Regardless of tradition within Western social theory, though, the obfuscation of such dynamics is commonplace.

Capitalist economy is not the only structure that features in this standard theory of modernity. As Bhambra and Holmwood (2021: 209) note: ‘structures of patriarchy’ have been ‘examined in detail’ within such theory (though the incorporation of gender and patriarchy into this was achieved only through feminist reconstruction e.g. Nelson, 1990). A focus on capitalist production cannot fully explain the emergence of modernity, in that this cannot account adequately for social *reproduction*. To account for the latter, an expanded understanding of systems of social relations is required, that goes beyond an economic reductionist account, and recognises patriarchy. Laslett and Brenner (1989: 400) provide a classic statement on this, which articulates that ‘gender and the organisation of social reproduction shape political and economic institutions as well as being shaped by them’, meaning that gender is a ‘fundamental’ dimension of modernity not reducible to capitalist dynamics.

Crucially, whilst class and gender are rendered structural categories through this ‘standard’ frame, race is not. As Bhambra notes:

For the most part, race and ethnicity have been addressed in sociology as issues of *stratification* (that is, the differential distribution of rewards and resources according to ethnicity) or as issues of *identity* (that is, as expressed in cultural difference and hybridity). Whilst both are, of course, of fundamental importance, they do not necessarily address the underlying processes by which race and ethnic differences are produced. Instead, they are usually understood as ascriptive identities, which may modify or inflect the social orders and processes of modernity, but are not themselves regarded as central to, or constitutive of, those orders and processes. (Bhambra, 2016: 961)

That is, race is not understood in the same way as class or gender within much social science. Class is seen within western social theory as ‘integral’ (Bhambra, 2016: 961)—systemic, in Habermasian terms (see Bhambra, 2016; see also discussion later in this chapter)—to modernity and discussed in relation to its corresponding structure (capitalism), as is gender identifiable in relation to its corresponding structure (patriarchy). Race, however, is not understood as internal to the formation of modernity, for elision of its corresponding structure (colonialism). That is, whereas class and gender are understood as structural issues within much social science, race has tended

or association. Rather, the relationship between capitalism and colonialism understood here is one of precedence i.e. colonialism precedes and provides the conditions for the development of capitalism.

to be theorised as a cultural—as opposed to a structural—phenomenon. This, though, is to misrecognise what race is. Indeed, race itself is reliant on misrecognition. As Cunneen notes: “The modern idea of ‘race’ was founded in the colonial encounter which codified the differences between the colonised and the coloniser into ‘a natural situation’ of biological inferiority and superiority” (Cunneen, 2023: 20). It is the production of this moral economy of personhood, which is entirely false (O’Connell Davidson, 2024), premised on a misrecognition of human worth according typically to skin colour, that facilitates material extraction which promulgated the development of capitalism (Bhambra, 2021b). In this way, race is foundational to modernity as a structural phenomenon.

However, due to the erasure of colonialism from its canon, as extensively analysed by Bhambra and Holmwood (2021), race tends not to be understood in this way within social theory. Rather, race largely emerges within social theory as a modern *social* (as opposed to systemic, or structural) issue of identity arising in post-war migration from (former) colonies to Europe *i.e.* as ‘a later impingement’ (Bhambra, 2023: X) on the structures of modernity, and not structurally integral to it. Race, though, ‘cannot be treated as a secondary and derived phenomenon’ (Bhambra, 2021b: 320) once it is recognised as the justification for colonialism, and indeed that colonialism precedes the development of capitalism. *Without* an understanding of race as a structural phenomenon—as is the case for zemiology, and also much social theory—race becomes a matter of culture (or a secondary or derived phenomenon, in Bhambra’s terms), with class becoming elevated to the fundamental structural element of social order.

Zemiology developed through a version of this standard social scientific framing, in being a discipline formed through a narrowly Marxist understanding of modernity. In being rooted in such a Marxist understanding of modernity, the general zemiological approach is more economically reductionist than the ‘standard’ framing of modernity outlined above, in that gender and patriarchy are not always adequately recognised either, alongside race. I will demonstrate this further below, through analysis of texts within the zemiological canon. As I will argue, race is largely absent altogether from zemiological discussion. Where discussions of race are present, they fall into thinking about race in terms of identity—and therefore from a Marxist perspective, of lesser fundamental importance to the amelioration of social harm than class—in a way that does not see race as a structural phenomenon, rooted in colonial modernity.

Zemiological Understandings of Race

There are general statements on the absence of race from zemiology. As Canning and Tombs (2021: 108) note: ‘zemiology risks failing to address structural racism which is inherent to colonialities of power and thus the institutions and organisations within which we live and work’. There is not an *absolute* lack of mention of race within zemiology, though even brief mentions of race are sparse. For instance, in a major edited collection on zemiology (Boukli & Kotzé, 2018), amassing 296 pages, there are only two instances where the word race is used. There is one use of the word racism. There are four uses of the word ethnicity. Where race is discussed in this volume, and elsewhere in the field, its treatment can be understood as insufficient, as per theorisation presented here (see Wright, 2023 for further discussion of how race is insufficiently conceptualised in, for instance, ‘border zemiology’). That is, it is precisely because zemiology fails to recognise race as a structure that zemiology fails to adequately comprehend structural racism.

This is the case in Hall and Winlow’s (2018) contribution to the aforementioned edited collection. They locate harm production within neoliberal capitalism and locate the proliferation of this system within the ideology of capitalist realism, which promulgates the idea there are no viable alternatives, and that any alternative socio-economic arrangement would be even more harmful than neoliberal capitalism. Left-wing liberals abscond from intervention in accepting this ideology, and do not offer a systemic alternative. What follows, for Hall and Winlow, is that ‘the left’ offer ‘arguments about how to construct more just and equal social relations within the system as it stands’ (Hall & Winlow, 2018: 122). For Hall and Winlow, in conceding to capitalist realism ‘the left’ birthed identity politics in which race becomes a feature, detracting from the more fundamental issue of class. As they note, because of this arrangement:

Social harms tend to be conceptualised in intersectional terms of identity: usually race, ethnicity, age and gender [...] Where class is included, it is viewed as a stratified yet potentially fluid relation that with the aid of some legislation and attitudinal change can easily be made more meritocratic. It is no longer the antagonistic structural relation to be abolished. (Hall & Winlow, 2018: 122)

What is strange about this statement is that Hall and Winlow argue that the conceptualisation of social harm tends to be in relation to phenomena other than capitalism and class, whereas other scholars within the field, as discussed, recognise the opposite to be the case. This aside, and more importantly, Hall

and Winlow reproduce here the standard style of social scientific thinking on race diagnosed by Bhambra and Holmwood (2021), in which race is reduced to an identity, less fundamental to social order than class. They reproduce what Bhambra (2016) refers to as the ‘the standard Habermasian division between the system and social’. In this division: ‘race and ethnicity are taken as social, and not as aspects of the system; that is, they are not seen as integral to the market, bureaucracy, and state, but are understood as located in the lifeworld of social meanings and values’ (Bhambra, 2016: 961). Hall and Winlow, locate race as not integral to social structure and render it to the lifeworld of social meanings and values (i.e. identity).

Importantly, here, Hall and Winlow imply that class is of a different order to other social divisions (e.g. race, gender). For them, class is not reducible only to an identity, but is produced through *structural* antagonism, so can be understood as a fundamental issue to be addressed for the amelioration of harm. In this context, ‘identities’ are seen as an obstacle to the development of an appropriate understanding of a common, immanent class position. Whereas class as an identity corresponds with capitalism, the other identities Hall and Winlow discuss are deemed matters of culture. The implication is that addressing them cannot fundamentally produce a less harmful reality, as such action cannot produce any *structural* change. However, gender can be understood as a structural issue too, in broadly the same way as class, via recognition of patriarchy as a structure (Bhambra & Holmwood, 2021). Likewise, *race can also be understood as a structural issue in this way*. Class is the identity formed through position in relation to the means of production, or through economy more broadly, but similarly, race can be understood as the identity formed through colonialism (Bhambra, 2016). The difference is that within much social science, whilst the structure productive of the class system has received a great deal of attention ‘the structures of colonialism associated with racialised difference have not received the same attention’ (Bhambra & Holmwood, 2021: 209). Without an understanding of modernity as colonial, race becomes seen *only* as an identity, and unattached from a fundamental system. From the perspective drawn out in this chapter, though, it is possible to recognise race as not merely belonging to a discussion of intersectional identities, or culture, and itself being derived from a fundamental structure.

Hall and Winlow represent a cross-fertilisation of criminology and zemiology, particularly in the creation of their ‘ultra-realist’ approach to criminology (see Hall & Winlow, 2018). They are concerned with challenging the notion of crime, opening analyses up to non-criminalised, ignored, misperceived harms. An aim of ultra-realist criminology is to ‘open up *parallax views*, or new perspectives from previously obscured angles that create changes in

the observational positions and displacements of the objects in view' (Hall & Winlow, 2015: 2). Their aim is to relocate capitalism as a structure generative of social harm, against a liberal orthodoxy in which this is disavowed. In doing so, though, race is mislocated as a cultural phenomenon.

This ultra-realist zemiological approach is taken forward by Raymen (2023), who is indebted to Hall and Winlow. Like Hall and Winlow, Raymen (2023)—which as Lloyd (in Raymen, 2023: back matter) notes 'is a landmark in the study of zemiology and social harm'—expresses frustration with the so-called identity politics that Hall and Winlow describe. Overall, Raymen is not concerned with analysing race—he is concerned with outlining a philosophically-informed zemiology which seeks to define harm in relation to Aristotelian virtue (see also Canning & Tombs, 2021: 105–107 for a brief introduction to Raymen's zemiology)—though he does discuss cases relating to race in this respect. For Raymen, discussion of identity is an obstruction to the definition of harm, as 'what is experienced as a perfectly normal or innocuous interaction for a white male may be experienced as a deeply traumatising and damaging "harm of misrecognition" for an individual from a different intersectional background' (Raymen, 2023: 204). That is, focussing on identity becomes an impediment to the amelioration of harm, for Raymen. As per Hall and Winlow, though, in the course of his discussion, Raymen misrecognises what race is.

Raymen discusses the English Defence League (EDL): 'a collective of largely marginalised, white, working-class men' (Garland & Treadwell, 2012: 123) mobilised against what they term militant Islam. Unlike many far-right groups, the EDL overtly denounces various forms of racism, and presents itself as a single-issue group. However, 'scholars examining the EDL have located the movement's rhetoric as rooted in racist ideology and practice' (Rhodes & Hall, 2020: 288). Crucially, Raymen directly locates the charge of the EDL in capitalist economy:

in the absence of a mainstream leftist-political narrative which locates the decline of post-industrial communities within such political economic processes, their political desire is rooted in the reclaiming of a lost object, a golden era of bountiful prosperity... which, despite never truly existing the way they imagine, they perceive as having been taken away from them by particular others ... sometimes resulting in ethno-nationalist politics. (Raymen, 2023: 90)

Here, for Raymen, the grievances held by the EDL are an issue of class, rather than race. For Raymen 'it is perfectly legitimate [for EDL members] to be nostalgic for a time of greater economic and cultural security, a time of shared

ethics, and a time in which they and their communities felt valued for the role they played in a shared political, social and economic project' (Raymen, 2023: 89). It is that their frustration is mislocated in the politics of race, rather than class struggle.

Raymen's account of the EDL is only possible through an impoverished understanding of the formation of race. An adequate account of the formation of race is to be found in the colonial foundation of modernity. Recognising this more adequately explains why 'ethno-nationalism' is a feature of EDL politics than the vague claim that sometimes class inequality produces racism. Understood via a colonial lens, the past economic security of Britain was dependent on the immiseration of imperial subjects outside of the metropole, to whom 'shared ethics' (Raymen, 2023: 89) did not extend. The political, social and economic project of industrial Britain past becomes recognisable as one of global domination, ultimately premised upon whiteness. EDL nostalgia thereby becomes recognisable as 'postcolonial melancholia' (Gilroy, 2001): the yearning for an ontologically secure imagined past, in which a colonial, racial hierarchy is restored, the colonial other denigrated, and an industrial Britain—dependent on colonial extraction—revived.

Unlike ultra-realist inflected zemiologists, Canning and Tombs (2021) are receptive to including race in zemiological analyses. They recognise that zemiology has been inattentive to race and move towards correcting this. They do so, primarily, through a short discussion (Canning & Tombs, 2021: 93–94) of the emergence of Black Lives Matter through the killing of Trayvon Martin, and its resurgence after the killing of George Floyd. They then link this to racialised disparities in exposure to COVID-19 in the UK. Their conclusion to this short section is that '[r]acialised harm can ... be understood as relational' (Canning & Tombs, 2021: 94). What follows is a similar statement on gendered harms (Canning & Tombs, 2021: 94–95), which similarly attempts to address the shortcomings of zemiological theorisation on gender. Both sections are situated in a chapter concerning 'relational harms', their overall argument being that 'harms are relational—they have spatial and temporal dimensions' (Canning & Tombs, 2021: 89). In other words, racialised harms are embedded in and produced through particular social contexts, as the result of people interacting and organising social life into a racialised hierarchy.

What is repeated here, though—and this is where there is similarity between Canning and Tombs, and ultra-realists—is that class is demarcated as a different form of social division to race and gender. There is no statement in their chapter on relational harms on how class-based harms—which

much of zemiology focuses on—are relational, and this absence is telling. Class-based harms *are* relational—they are entirely dependent on economy, which is ultimately a system of social relations, and this is well-rehearsed within zemiology. In being ‘relational’ in this way, though, these harms are recognised widely within the field as structural, and a fundamental antagonism of modernity. To this extent, the closing statement of Canning and Tombs’s section on gendered harms discusses how ‘structural decisions may have gendered implications’ (Canning & Tombs, 2021: 95) such as the cutting of welfare entitlements for women. This posits capitalism as *structure*, which then has implications in terms of gendered *stratification*. Rather than gender being formed of a structure itself, gender becomes a result of capitalist economy (and its relation to the state). Overtly discussing racialised and gendered harms as relational without grounding these relations in matters of social structure, differentiates them from class-based harms: noting them as relational—and implying that class should be understood differently to this—effectively posits them as belonging to culture rather than structure. Overall, then, the aetiology of race in colonialism is lacking in this discussion of racialised harm (just as in the section on gendered harms, the structure underpinning gender is not discussed *i.e.* patriarchy).

There are initial differences between Canning and Tombs and Raymen. For Raymen, racism is a misdirected byproduct of class struggle. For Canning and Tombs, on the other hand, ‘racialised harms are relational—racial injustice and the harms which are experienced by people of colour are only explicable *in the context of white privilege*’ (Canning & Tombs, 2021: 94, emphasis added). This statement, that racialised harms can only be explained in the context of white privilege, however, amounts to saying racial inequality is only explicable in the context of racial inequality, or even that race is only explicable in the context of race. This inadequately accounts for the emergence and endurance of race as a social structure. Limiting discussion of race to discussion of white privilege reduces race to a matter of stratification and identity, and does not recognise race as centrally constitutive of modernity and amenable to structural redress (Bhambra, 2016: 961). Race is not ‘only explicable in the context of white privilege’ as Canning and Tombs argue; white privilege itself—an issue of *stratification*—is explicable through recognising its origins in colonialism (through which whiteness became privileged). Whilst Canning and Tombs work towards addressing the absence of race within zemiology, their work reproduces a tendency in social theory to relegate race to lesser fundamental importance than class, which ultimately impedes the possibility of redress in Bhambra and Holmwood’s (2021)

terms: it does not work towards epistemological justice in terms of properly accounting for race in grand narratives of modernity.

Overall, there is a lack of discussion of race within zemiology. Where discussion of race is present it is inadequately understood. This can all be located within the Marxist foundations of zemiology, which are likewise founded within a conceptualisation of modernity symptomatic of orthodox social theory more broadly. This impacts on the very possibility of zemiologists adequately identifying the causes of racialised harms—the discipline has no aetiological account of race itself. Within the field, race—where it is conceptualised at all—is conceptualised as an issue of stratification and/or identity, but not as fundamental to modernity, via its causative structure: colonialism. The possibility of ameliorating racial injustice, or racialised harm, is hampered through this, and for the possibility to do so to arise within zemiology, there must first be a further recognition of what race is and how it is produced. This chapter, in locating race as produced through colonialism and injecting this into zemiology provides the means to do so, which builds the foundations for a zemiology attentive to racial justice. The following section furthers this, by considering how existing zemiological typologies can be reconstructed for this purpose.

Typologies of Harm and the Primacy of Misrecognition

So far, this chapter might be read as disparaging towards zemiology, for its inadequate conceptualisation of race. However, as an area of study that dissects harm, and provides frameworks for its analysis, zemiology should be seen as important for providing tools which could be used for racial justice. Zemiology provides frames to understand that harm comes in different forms, which can be applied to such matters, in such a way that for instance transcends orthodox criminal justice approaches. There are different typologies of harm within zemiology, which often develop on and overlap with one another, and provide the means to assess different scenarios in terms of harm. Canning and Tombs (2021: 66–67) have recently synthesised these typologies. Here, I discuss how this typology can be reconstructed to analyse racial injustice zemiologically. Importantly, Canning and Tombs's typology does not achieve an explanatory frame. Rather, it provides a variety of categories for identifying different harms. The aetiological dimension of zemiology comes from outside of this typology. As a reminder, such explanatory frames within

current zemiology centre on the dynamics of capitalism. It must be recognised that this aetiology is partial, and that it cannot be expected that this manner of explanation is sufficient for explaining harm in terms of race. Rather, a sufficient explanation of race, grounded in the conceptualisation of modernity as colonial, needs to be present to adequately account for racial harms. My argument here is that it is possible to inject explanatory power into this framework by recognising that misrecognition underpins the production of other forms of harm. This works towards overcoming the reductive explanatory frame within which much zemiology works.

The typology outlined by Canning and Tombs comprises physical harms, emotional and psychological harms, financial and economic harms, cultural harms, harms of misrecognition, and autonomy harms. As Canning and Tombs note, *physical harms* are often deemed to be the easiest form to identify and measure: 'death, illness and injury are the obvious forms' (Canning & Tombs, 2021: 67). Some of these fit within the realm of criminal justice: homicide, for instance. However, as Canning and Tombs note, not all instances of physical harm are the result of deliberate physical violence to individuals. Premature death through quality of living conditions, for instance, can be understood as physical harm. Likewise, the consequences of 'so-called natural disasters' (Canning & Tombs, 2021: 68) can be understood in terms of physical harm.

Emotional and psychological harms (Canning & Tombs, 2021: 71) are related but not identical: psychological harm 'requires psychological diagnosis' whilst emotional harm is 'broader but still strongly related'. Canning and Tombs do not provide a discrete definition of these harms—they recognise that the 'spectrum' here is 'vast' (71)—though, through their general description, it can be noted that these relate to feelings and the mind. Examples range between sleeplessness, anxiety, depression, the emotional uncertainty whole societies feel in relation to terrorism, and the collective trauma that specific, local populations experience in relation to fracking. Between these examples, there is the implication that the causes of these emotional and psychological harms are social.

Canning and Tombs differentiate between *financial and economic harms* via scale. The former pertains to monetary harm felt by individuals or households. The latter 'are also monetary harms but affecting wider communities, or significant portions of them, and, in a global sense, whole societies and nation states' (Canning & Tombs, 2021: 73). However, they also recognise that they are both monetary in their foundation, thus grouping these harms together.

In including *cultural harm* within their typology, Canning and Tombs draw on Boukli and Copson (2019), who set out three forms of cultural harm: (1) harms to culture, (2) harms by culture and (3) harms of recognition. These relate respectively to (1) the undermining or destruction of a particular way of collectively being (2) the imposition of ways of collectively being on those who would otherwise not live that way and (3) harms that arise from having one's identity challenged. These clearly relate to one another and overlap with others. As Canning and Tombs note, the final form of cultural harm discussed above relates closely to the *harms of recognition*. For Canning and Tombs (2021: 78), harms of recognition relate to 'enforced exclusion from social networks or personal relationships' which can often lead to 'daily and micro- level impacts—taking part in social activities, inability to secure childcare and ensuring longer- term maintenance of human relationships which may support one's own self- actualisation'. In differentiating this from cultural harm, they emphasise that such scenarios emphasise 'a peculiar form of relational and/ or cultural harm' that is worthy of separate inclusion in a typology as a specific type of harm. They draw on Fraser's work on misrecognition to define this further, referring to this as 'institutionalised subordination' (Fraser, 2000 in Canning & Tombs, 2021: 79).

Fundamentally, the notion of autonomy here relates to the capacity 'lead the life of one's own choosing' (Canning & Tombs, 2021: 79). *Autonomy harms* relate to those things that remove or hinder the possibility of doing so. These can be other forms of harm, such as those discussed above. As Canning and Tombs (2021: 81) note: 'autonomy harms ... are associated with relative and absolute poverty, lack of access to education, employment or training, or precarious working'.

This typology has its uses. It allows for 'social harm' to be recognised as comprising different phenomena. This may become useful in describing harms caused along the lines of race on a pedestrian level, and it perhaps has a practical use in this respect. It is necessary to recognise, though, that the flatness of this typology is insufficient for explaining racialised harms. In brief, colonialism requires misrecognition/cultural harm in order to operate and produce race as a mode of social organisation. This therefore requires that the above typology is reconstructed, to recognise these harms do not sit alongside other types of harm in a flat, descriptive typology, but hold explanatory power over other forms of harm.

Consider, for example, the 2010 Haitian earthquake. It is describable via the typology above as an example of physical harm, 'natural disasters' being an example given here. Indeed, over 220,000 people died in this earthquake (Pierre-Louis, 2011). The earthquake also had a significant impact on Haitian

economy (Joseph, 2022), meaning that it can also be understood in terms of economic harm. Moreover, those who survived the earthquake were at increased risk of anxiety and depression, with this more likely the case for those survivors whose family members died (Guimaro et al., 2013), meaning that it can be understood in terms of emotional/psychological harm. The question is, though, what caused this natural disaster and these harms?

On a basic level, these were harms caused by a natural disaster through seismic activity, but were Haiti entirely uninhabited, the earthquake that hit it in 2010 would not be a disaster, merely a geological phenomenon. It became a disaster at the point that people were implicated in this, and the social structure of Haiti was both impacted and formed the possibility to mitigate it as a disaster. And as Lundahl (2013: xvi) notes: 'the plight of Haiti can be understood only in the historical perspective of the forces that shaped the economic and social development of the country'. Haiti was once the most profitable slave colony globally—Saint Domingue—under French rule. It became Haiti through revolution in 1804, though in succeeding in revolution became 'isolated by the international community under pressure from Napoleon and the French colonialists' (Pierre-Louis, 2011: 188). Following this, in 1825 the Haitian government agreed to pay an indemnity to France in return for the opening of 'diplomatic and economic relations' (Dubois, 2005: 303) *i.e.* to end the imposed isolation from the international community. As Dubois (2005: 303) notes: this indemnity was meant to repay the French 'for what they had lost in Saint-Domingue, including the money invested in their slaves, and amounted to a fine for revolution'. The French demand was for 150 million Francs, which in today's terms is 21 billion US Dollars (Pierre-Louis, 2011). Being unable to pay this, the Haitian government borrowed from French banks, and the debt owed for this spanned into the twentieth century, and continues to shape Haiti's economy (Oosterlinck et al., 2022). This circumstance led to Haiti being unable to cope with an earthquake in the way that other states might be (Pierre-Louis, 2011). There was a similar scale earthquake in San Francisco in 1993, and under 100 people died (Pierre-Louis, 2011). The 'so-called natural disaster' (Canning & Tombs, 2021: 68) of the Haitian earthquake is produced through its colonial history, which is justified through race, which is reliant on misrecognition.

The harms of misrecognition can be extended upon here, in relation to Fraser, whom the above typology draws upon for its definition. Famously, Fraser has debated with Honneth (Fraser & Honneth, 2003) on the relationship between the material and symbolic in addressing social justice, in terms of redistribution and recognition, the former effectively concerning economic redistribution, with the latter concerning identity or status. For

Fraser, social justice requires both recognition and redistribution, whereas for Honneth, moral economy undergirds monetary economy *i.e.* recognition precedes material redress. Within such discussions, Fraser (e.g. Fraser et al., 2004) has claimed that the politics of recognition have succeeded the politics of redistribution, whilst still calling for their practical intertwining.

Bhambra enters this debate in relation to this latter claim, noting that it is a pervasive presumption within social theory (a derivative of which is presented earlier in this chapter in relation to ultra-realism, for instance) that the 'demise of the welfare state and the rise of neoliberalism' can be understood as a consequence of 'the rise of a politics of recognition' which is deemed to have contributed to the 'breakdown of the national and class solidarities necessary to the maintenance of social democracy' (Bhambra, 2021b: 319). Fraser is included here, in locating a rise in the politics of recognition as detracting from the possibility of a redistributive politics (e.g. Fraser et al., 2004). As Bhambra (2021b: 319) notes, though, such a conclusion is only possible 'if the colonial histories of the development of capitalism are removed from active consideration'. Recognising these histories brings into the frame a dimension otherwise lacking, that is, the function of race in the constitution of modernity. The construction of race is reliant on misrecognition, in that it relies upon the 'institutionalised insubordination' (Fraser, 2000 in Canning & Tombs, 2021) of those being colonised, typically along the lines of skin colour. This precedes and facilitates the development of capitalism. In this way, it is possible to recognise that the currently flat typology that spans zemiology—synthesised by Canning and Tombs—requires reformulation so that misrecognition can be understood as preceding and facilitating other forms of harm.

To return to Haiti, then: it is possible to recognise that the various forms of social harm that were produced through the earthquake are ultimately caused through a form of misrecognition: they depend on Haiti's history as a French slave colony. Accordingly, the physical harms of the Haitian earthquake are predicated upon the economic harms of Haiti's history of debt to the French, in that Haiti did not have the material resources to mitigate the disaster, for instance, but the history of the debt of Haiti is located within a history of colonialism and race. There is no more obvious example of the master–slave dialectic than literal slavery, which is dependent on a lack of mutual recognition (Fanon, 2008, see also Villet, 2011), and it is out of this dialectic that Haiti emerged, carrying with it the material consequences of this.

This is not limited to the zemiological analysis of natural disasters, though: the example that Canning and Tombs provide in outlining economic harm, in terms of distribution of wealth on a global level, can be understood as being

informed by the wealth of former empires, in which wealth and resource were extracted from colonies and retained by metropolises (see Wright, 2023). This economic dynamic was facilitated by the construction of those dominated as inferior. Cultural harm is defined by Canning and Tombs as the undermining or destruction of a particular way of collectively being, and the imposition of ways of collectively being on those who would otherwise not live that way. This is precisely what occurred in the process of colonisation, and it is that which facilitated economic extraction, which ultimately produced the global disparity today between global north and global south. As Fanon (1963: 102) notes, ‘Europe is literally the creation of the Third World. The wealth which smothers her is that which was stolen from the underdeveloped peoples’. Likewise, the physical harms very often produced through colonialism are necessarily preceded by a misrecognition. This applies to contemporary racialised harms, as much as it does those harms endured around the time of colonial conquest, *in that racialised harms rely on the notion of race*, which fundamentally involves misrecognition. And as thinkers such as Fanon (2008) extensively argue, there are severe emotional and psychological harms produced through the cultural imposition of colonialism and the categorisation of people according to race.

Wherever harm—in whatever form—can be understood as racialised, in being underpinned by race as a colonial construction, it is underpinned by a ‘moral economy of personhood’ (Wright, 2023: 136), meaning the harms of misrecognition precede these other forms of harm. Without such a moral economy premised upon misrecognition along the lines of race, in which some people are valued less than others, harm towards them becomes unthinkable, or where unavoidable is sought to be mitigated (consider for instance the difference in the dominant construction between those white people fleeing Ukraine and those non-white people fleeing Syria—see for instance, Salas, 2023). To explain racial injustices or racialised harms through a zemiological lens, the historically grounded moral economy of personhood, produced through colonialism, needs to be recognised.

Concluding Discussion

This chapter outlines how a reconstruction of the foundational presumptions of zemiology is necessary in order to produce a study of social harm capable of adequately grasping race. It provides zemiology with a new understanding of race that operates counter to canonical orthodoxy and opens up the possibility of an adequate account of race and racialised harms within the field.

To do so, I have excavated the foundational tenets of zemiology, locating its emergence within modern European Social Theory, which itself promulgates an erasure of the colonial.

This is important to consider in relation to the following. Paddy Hillyard, the person who created the word zemiology, has recently stated:

When I coined the name “zemiology”, combining the Greek word for harm, “zemia”, with “ology”, I wanted to construct a totally new word, which would have no meaning other than that developed through its usage. The aim was to develop new thinking about social harm without the baggage of meanings associated with commonly used words learnt from the moment a child learns to speak English and to challenge traditional ways of seeing, talking about, analysing and responding to social harm. (Hillyard in Canning & Tombs, 2021: xvi)

However, from the analysis undertaken here, it can be said that zemiology has not escaped tradition entirely. Theory is always located within a tradition. As Bhambra and Holmwood (2021: 1) note: theorising is always ‘historically located and subject to change. It reflects its social circumstances, including the social relationships in which it is produced’. This chapter has temporally and geographically located the emergence of zemiology within a particular European movement, which gathered traction at the end of the twentieth century. On an epistemological level, the production of the zemiological toolkit is symptomatic of a broader tendency within Western social theory: the erasure of the colonial from theorisation of modernity. With this, race cannot be adequately conceptualised within zemiology. This explains the peculiar situation of zemiology, where there is an expressed desire to contribute to understanding and ameliorating racial injustice which never materialises. This chapter provides the new theorisation necessary to move beyond this situation—to reconcile the disjuncture between desire and practice within zemiology surrounding its analyses of race—and to bring zemiological analyses of racial injustice to fruition.

Put another way: zemiology is perspectival. It is grounded in Western social theory—particularly Marxism—which finds a version of capitalism bereft of its colonial foundations to be the productive structure of modernity, which leads to class being the fundamental condition of modern life and producer of social harm. Colonialism, in and beyond zemiology, is not recognised as foundational to modernity, and accordingly race is not recognised as fundamental to modern social order. This is why there is a lack of discussion of race within zemiology. Representing modernity, though, as being colonial in

its foundation, allows for a recognition of race as being structural. Racialised harms thereby become amenable to structural redress.

Though this has not been the overall focus here, similar could be argued about gender in relation to zemiology. Zemiology has developed a framework for analysis centred around varieties of capitalism in the production of social harm, and in doing so does not tend to discuss other social structures. This is not quite as stark in terms of gender as is the case in terms of race. For instance, Canning (2017) does discuss patriarchy as important in the construction of border harms (though, without adequately discussing colonialism or race, Green, 2020; Wright, 2023). As discussed in this chapter, however, Hall and Winlow and Canning and Tombs discuss both gender and race without reference to their productive structures. Rather, here gender and race are discussed as 'relational'. The question is though, relational to what? The answer of course, in relation to gender, is patriarchy, but in their discussion Canning and Tombs only refer to capitalism in grounding gendered harms to a social structure via a discussion of welfare. Interestingly, Bhambra and Holmwood (2021), in outlining their understanding of how modernity tends to be theorised in social theory, recognise that gender/patriarchy *are* conceptualised as internal to the production of modernity, unlike race and colonialism which are seen to be external to modernity. Zemiology, though, entails a canon which often only reflects the capitalist constitution of modernity, and the relative absence of gender from zemiological analyses is further evidence of this, as well as the erasure of race. A similar excavation towards a gendered zemiology could be undertaken to further work towards the gendered social justice that many zemiologists make statements on. This would further disrupt the undue primacy afforded to class and capitalism within the field.

Zemiology should be concerned with racialised harm, and indeed there are statements from within the field expressing a desire to do so. The way in which harm is typologised within the field currently, though, works as a major obstacle to this. In working within a flat typology of harm, with explanatory theorisation existing outside of this, the possibility of recognising the cause of racialised harm as within the production of race as a structural phenomenon via colonialism is impossible. The invention and reproduction of race itself is a form of harm in that it entails misrecognition. This misrecognition produces race as a way of social being, and in the first instance produces a hierarchy of human worth. This process of misrecognition facilitates other forms of harm, in that it introduces a moral hierarchy of personhood which renders, in this case, harm to be permissible towards

people because of their skin colour. This requires that the typological framework for understanding social harm is reconstructed in order to sufficiently analyse racialised harms. This chapter has undertaken this reconstruction. The harms of misrecognition and cultural harms can be understood as underpinning the other harms in this typology. Racialised harms would not be able to occur without misrecognition taking place. The colonial invention of race is itself a harmful misrecognition: it denigrated cultures, it placed human beings within a hierarchy, it brought the 'other' into being, and the very humanity of that other was denied. This is what facilitates racialised harm, in the various forms that it becomes articulated, be it physical, economic, emotional, cultural or otherwise. This is currently not acknowledged within zemiology. Recognising this, though, allows for zemiology to overcome its grounding in orthodox Western social theory, which does not recognise colonialism as significant in the production of modernity and its problems. That is, it allows for racialised harms to be recognised adequately as structurally caused. In doing so, it produces a more epistemologically just zemiology.

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Part II

Colonial Injustice and Decolonial Imaginaries



9

One More Broken Silence: An Indigenous Academic Encounters Racism in the Law School

Eddie Cubillo

Introduction

As a Larrakia, Wadjigan and Central Arrente man from saltwater and desert nations of the Northern Territory, I acknowledge my elders. Before proceeding with this paper, I want to make a caveat—I speak about the institution in which I work, but let's not be naïve. This happens throughout all our colonial learning institutions.

This paper is dedicated to Blak scholars who have fought for change. Those changes have allowed me and other Blak academics to even be in the academy. In particular, I want to acknowledge the few trailblazing Blak scholars who are in the legal institutions. I would also like to take the opportunity to recognise Nicole Watson who spent many years at the University of Sydney where I delivered my *Wingarra Djuraliyin* lecture last year.

I empathise with, my heart goes out to, and I want to acknowledge anyone who has experienced making a complaint about racism and tried to be heard. This is important work in demanding that institutions follow their own processes and are held accountable.

I have no doubt that many people will find what I have to say confronting, sometimes hard to believe, and possibly even offensive at times. I ask you to

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listen with an open heart and an open mind, to acknowledge and respect that this is my experience and the experience of many other Blak academics. For a moment, I ask that you try on our shoes and walk a few steps with us.

From Mparntwe to Naarm: Some Opening Reflections

Almost one year ago, I was sitting on a flight leaving Mparntwe (Alice Springs) after a long week observing the inquest into the death of Kumanjayi Walker, who was shot three times by police officer Zachary Rolfe in Yuendumu in 2019. The inquest comes after the acquittal of Zachary Rolfe in criminal proceedings (Anthony, 2022; Bucci, 2022). At that stage in the three-month-long inquest, the many lawyers representing the many family groups, government departments and police organisations were questioning and cross-examining the police officers who were present as part of an Immediate Response Team deployed to “house 511” on that fatal morning at Yuendumu (Northern Territory Government, 2023).

My colleague and I had travelled to Mparntwe to write about the inquest. It is difficult to listen to the obfuscation of responsibility and denial of any role of racism in the death of Kumanjayi Walker by successive police officers: it cannot be denied that racism, and the outcome of contact with this system people, are routinely worse for First Nations people than for other people. Sometimes that contact is fatal.

I am sure the statistics are not new to anyone, but just to refresh your memories: Aboriginal and Torres Strait Islander peoples make up just 3.2% of the Australian population (Australian Bureau of Statistics, 2022), but are “drastically over-represented in the criminal justice system” (Anthony et al., 2021, p. 3; United Nations Special Rapporteur on the Rights of Indigenous Peoples, 2017). In 2020, Indigenous people were 15.6 times more likely to be incarcerated than non-Indigenous Australians (Anthony et al., 2021). We are some of the most incarcerated peoples in the world (Anthony, 2017; Australian Law Reform Commission, 2017). According to the Australian Institute of Criminology, 562 Indigenous Australians have died in custody since the Royal Commission into Aboriginal Deaths in Custody tabled its report in parliament in 1991. Four Indigenous people died in custody in the first two months of this year (Australian Institute of Criminology, 2024). When speaking with families affected and those who work in this space, it is clear that the current figures are so much higher.

According to the Australian legal academics Marcelle Burns (Gomeroi-Kamilaroi) and Jennifer Nielsen:

[R]acism is not only an individual practice but may also be ‘systemic’ or ‘institutional’, operating within systems and organisations through structures and processes, or the ‘normal’ way of doing things, which maintain and reproduce unfair and avoidable inequalities in power, resources or opportunities between groups based on race, ethnicity or culture. At a societal level, racism may also be evident in the cultural and ideological expressions that give voice to dominant values and beliefs — which are communicated and reproduced through social and cultural agencies — such as schools, universities and the media. (Burns & Nielsen, 2019, p. 2)

As we watched the inquest, there was a pattern to the line of questioning that inherently mischaracterised racism—only accepting the most brazen racialised slurs as “racist conduct” and seeing racism as individualised and rare, the conduct of “bad eggs” to be weeded out. My colleague and I couldn’t help but feel jaded when our everyday experiences in educational institutions in the same field repeatedly demonstrate a clear and corroborated truth. Racism as a systematic practice is embedded in all aspects of the settler-colony and particularly the legal and policing institutions that protect it. One insidious and absurdist image of this arrived when, at one point during the inquest, we watched the Court spend a significant amount of time being led by the counsel assisting the Coroner and lawyers for the police parties hearing about one police officer’s relationship with a former Aboriginal neighbour from a nation on the other side of the country, who taught him a martial art. This redemptive arc was used to demonstrate not only this officer’s personal good character, but also to imply redemption for the entire Northern Territory police force?

Several months later in the inquest, in April 2023, an expert report on the impacts of racism, penned by Indigenous scholars Professor Chelsea Watego of the Institute for Collaborative Race Research and my colleague in Criminology and Criminal Law, Associate Professor Amanda Porter et al. (2023), was held to be inadmissible by the coroner (*Inquest into the death of Kumanjaji Walker*, 2023). This was another missed opportunity to include expert evidence regarding systemic racism in the health and legal system. The generosity of Blak people, doing the work of explaining all this to a settler institution that should know better, again is ignored. It is also important to mention that the report was written for the North Australian Aboriginal Justice Agency (NAAJA) as an intervening party in the proceedings, as they too were also demonstrating this same generosity.

On the plane home to Naarm (Melbourne) I felt sad. I was leaving the beautiful lands of the Arrernte peoples, my father's people, the Northern Territory where my mother's peoples, the Larrakia (Darwin) and Wadjigan reside up north along the coastline. These are people I know well, who I have grown up with, who like me have endured similar experiences with racial policies, and who, also like me, respect the land, the language(s) and the culture of country. We think similarly, we come from the land, and we don't have materialistic values and statuses. We will go back to the land, our land where our ancestors roamed free of racism. To me it was like a feeling of mourning or loss—reflecting on the sacrifice of being away from country, family and culture.

I was heading back to Naarm, to go back to the university where I work, and my anxiety was going through the roof; just thinking about the place had me churning. I asked myself, why? Was it because I was leaving the inquest, or because of where I was returning to? I have worked in many challenging environments which should have strengthened my resilience to all forms of racist behaviour! These roles have required coming face to face with racist ideologies and their devastating impacts on my people. Yet it was returning to the academy that I was dreading as the plane flew south.

What I want to do in this paper is take up the invitation of Professor Bronwyn Fredericks to break the silence on my experiences of racism and white privilege at Australian universities (Fredericks, 2009, p. 12). I do this not as a bash and blame exercise, but as a personal reflection on questions that bear on law, the legal profession and law schools. Our law schools are not separate from the criminal justice system that so failed and continues to fail Kumanjayi Walker and his family; they are integral to producing and maintaining its conditions. As Professor Fredericks writes: “[u]niversities are not the safe places we would like to think they are” (Fredericks, 2009, p. 11).

From Practice to Academia

I completed my law degree at the Northern Territory University (now Charles Darwin University) in 2000. Since then, I've worked in roles “at the coalface”. I have been a lawyer for Northern Territory Legal Aid, the Anti-Discrimination Commissioner of the Northern Territory, the Executive Officer of the National Aboriginal and Torres Strait Islander Legal Services and worked as the Director of Community Engagement on a Royal Commission looking at the detention and removal of Aboriginal children in the Northern Territory.

Following my experiences on the Royal Commission in the Northern Territory, I decided to undertake further study through a PhD at the University of Technology Sydney looking at the Aboriginal Legal Services. I wanted to work through some of the things I had seen in the Royal Commission and give voice to the impact (Cubillo, 2021). Since 2018, I have been working at Melbourne Law School, with the hopes of transforming legal education in this country from the inside. From my various experiences on the front lines of providing legal services to First Nations people I know only too well that by the time new practitioners enter the profession their stereotypical ideas about Indigenous people are often fixed.

We see these discriminatory attitudes echo across all our systems. In the context of COVID-19 policing, a recent report by Inner Melbourne Community Legal found that First Nations people received 2.5 times the number of covid-related fines expected by their size of population (Australian Associated Press, 2023; Hopkins & Popovic, 2023, pp. 10–11). In New South Wales, a high number of fines were issued in suburbs where large populations of Indigenous Australians live. Unlike the New South Wales government, Victoria is yet to withdraw any of those fines (Ore & Kolovos, 2023; Taouk, 2022). I felt the racial profiling that is otherwise part of my life more acutely during this time. In lockdown I was followed home by police, the boys in blue, a number of times when doing my hour of exercise. They waited outside my house—they may not have believed it was mine. As lockdowns eased somewhat, I was driving through an affluent suburb of Melbourne when I was racially profiled—asked by police who I was, what I was doing in this suburb, whose car I was driving and where I worked to afford such a vehicle. These instances of blatant racism inform my day-to-day. These are just two examples of the many incidents that have occurred in my lifetime. These are not one-off unfortunate interactions with a couple of “bad eggs”. They are part of a pattern of structural racism that myself and countless others experience every day as Indigenous people in this country. In both instances, my telling police I worked at Melbourne Law School and am an academic was a factor which may have afforded me some protection from things getting worse.

At Melbourne Law School I previously held two roles: Associate Dean of Indigenous Programs and Director of the Indigenous Law and Justice Hub. Together with my colleagues at the Hub, I am working on a range of initiatives to embed First Nations perspectives into legal education. Our extremely successful White Noise program brings Blak excellence into the law school in a series of conversations I have conducted with Aboriginal leaders from diverse backgrounds, places and expertise (White Noise of Settler Law Justice

Talks, 2023). These are available on the White Noise podcast. Recently I gave evidence at the Yoorrook Justice Commission happening in Victoria on how to improve the justice system. My evidence contains several important reflections on questions that bear on law and law schools.

Despite this level of seniority, which is based not only on my academic qualifications but my many years of experience as a legal professional and advocate for First Nations peoples, I have continually experienced racism in this institution. This led me to resign from my role as Associate Dean of Indigenous Programs in September 2023. It is important to understand that no matter where an Indigenous person works or what qualifications they gain, all Indigenous people face racial prejudice in a way that places a heavy burden on our community, both individually and collectively. I am currently the only identifying Aboriginal or Torres Strait Islander academic at the Melbourne Law School and several Indigenous staff have left after their own experiences of racism. Many have said things like “if they can treat you like that, imagine how they’re going to treat me”. If law schools and universities truly want to engage with First Nations Peoples, their knowledges, and their laws, they must engage in a good faith process of decolonisation and anti-racism. In speaking about my experiences I argue that every university in this country needs a fully resourced anti-racism oversight body set up and staffed by First Nations Peoples with appropriate seniority and disciplinary powers. Anything short of this, to quote Professor Chelsea Watego, is “virtue signalling” (Watego, 2021, p. 28)—it is likely to benefit the institution but not create substantive change for Indigenous people.

Experiences of Racism

I want to tell you some stories, like my people do. I am going to draw on some of my own experiences as an Indigenous man, lawyer and academic to reflect on racism within our society and its institutions. I acknowledge that mine is just one Indigenous perspective amongst a diversity of views and experiences of Indigeneity.

I want to tell you about four incidents that have occurred during my time at Melbourne Law School that illustrate the fact that, despite that institution’s firm public stance on equity, justice and the law, it is just window dressing—nothing is real—everything is smoke and mirrors. It’s a façade. It looks good but it is just a veil to hide the white privilege and elitism that continue to shape the institution and others like it.

i. **Category 1—Misrecognition.**

A few years ago, I was relocating offices at Melbourne Law School to set up the Indigenous Law and Justice Hub, of which I serve as Director., I was moving my boxes of belongings from an academic office on the eighth floor to the newly established Indigenous Law and Justice Hub offices on the mezzanine. On my third and final trip, a young man came up to me and said “when you have finished delivering the boxes can you come back and clean up a coffee spillage over here”. I realised that, based on my appearance, he assumed I was a member of cleaning staff. Even beyond the blatant racial profiling in his question, the entitlement he clearly felt to instruct the building’s cleaning staff rather than clean up his own mess shocked me deeply. I didn’t bother responding.

Another time I had left my ID pass on my desk and was stuck out of my section. I asked a passing student if he could buzz me into the study room so I could knock on my door and get my colleagues to let me into our office. Simple enough? However, this student didn’t respond and stared at me. I asked if he was alright, and he responded that students are not allowed to “just let anyone into the building”. Dismayed, I informed him that I was the Director of the Indigenous Law and Justice Hub. The student then raised his phone, up to my face, where he had just googled me, and told me that he had to be sure. Basically, students don’t expect me (a black man) to work at the Melbourne Law School, especially as an academic. I am misrecognised as an outsider or an intruder.

ii **Category 2—Being Apolitical.**

In 2021 my colleagues and I at the Hub wanted to display the ANTAR sea of hands, a symbolic gesture of reconciliation, as part of our celebration of the Royal Commission Into Aboriginal Deaths In Custody’s 30-year anniversary (ANTAR, 2023). As ANTAR themselves state, “[f]or 25 years the Sea of Hands has been a symbol of solidarity with First Nations People...Planting a Sea of Hands is an act of recognition—of identity, culture and history” (ANTAR, 2023). This initiative received push-back from some of our non-Indigenous “colleagues”, who considered it a *political* statement that they felt should not be endorsed by the law school.

After these objections were raised, we were informed that Melbourne Law School could not be identified with the action but would still fund the event. And so, despite working hard with ANTAR to plan a Sea of Hands reconciliation event, we were not allowed to promote the event with our names

attached to its advertisement. Consequently, the event was held directly out front of the law school and only staff from the Indigenous Law and Justice and three other law school staff participated. The objections raised to acknowledging First Nations people in this way had a chilling effect. In my experience this exemplifies the culture of silence and racist values of elite institutions like the University of Melbourne.

iii. Category 3—Being Cultural.

In recent times, ironically, in seeking to educate around, and *sometimes even campaign for*, the Voice to Parliament, the institution exposed its own inability to listen to Indigenous voices as authorities on Indigenous experiences: **a microcosm study for the need for the Voice itself**. At Melbourne Law School, it is constitutional law experts who are considered best placed to speak to the merits of the proposal... they reckon!? As the then Associate Dean of Indigenous Programs, let alone someone who has been an elected member of the former Aboriginal and Torres Strait Islander Commission (ATSIC)—our greatest example of a national representative body—I was not consulted on my Law School's own public education strategy relating to the Voice or invited to any of a series of expert panels. This is reflective of a wider denigration of Indigenous ways of knowing, doing and being, and the prevalence of “deficit discourses” when it comes to Aboriginal people, including experts (Kwaymullina, 2019, p. 11).

Our students know better. They approached me to assist them with an educational initiative around the Voice that they were running, which I was more than happy to do. Yet when I attended a meeting with the students and other supportive faculty members, the other teaching staff referred to me as the “culture guy” and encouraged the students to engage with me *after* they had spoken to the Constitutional Law experts and had written the content, to “ensure the presentation was culturally appropriate”.

If there was anything encouraging that came out of this humiliating experience, it is that several students contacted me after the meeting making it known they understood how disrespectful this dynamic was and apologising on behalf of faculty members.

I share these moments as these are the constant experiences that accompany this type of work as an Indigenous person. **So I'm left here, as an outsider seeking to lead change, wondering what substance sits beneath all the rhetoric.**

Despite being white-qualified, having done an LLB, LLM and a PhD, not to mention my 25 years of practical experience, I am only respected enough

to do ceremonial duties such as “smoking and acknowledgements” with any acceptance of equality. Casual racism is an everyday occurrence, but as an Indigenous person you know that there is no point complaining or pulling someone up as you will be classified as “angry” or too sensitive, and told you should “get over it”. So, it was when things came to a head with this final category that I decided I needed to change my approach to speaking about these matters.

iv. **Category 4—Being Angry.**

Last year, myself and another staff member from the Indigenous Law and Justice Hub inadvertently received a document in a shared Dropbox file of research sources. I say inadvertently because instead of being *for* me this document was *about* me and included several racist remarks.

The document made a number of racially discriminatory comments which position me as a lazy, angry and underqualified Aboriginal man, alongside racist tropes about Aboriginal people. I will outline what was written, and what I take these words to mean. At times you might think “oh they didn’t say exactly that, they didn’t go that far”, or “that’s taken out of context”, but it is important you understand what these words do mean, in **my** context, and in the context of other Blak people. I emphasise this as, in a particularly denigrating part of the lengthy investigation process following an initial internal investigation into this document, the University hired lawyers from a private commercial law firm to determine, line-by-line, whether if the comments in the document were read by an Indigenous person, not confined to the participants in the investigation, an individual Indigenous person could potentially perceive the comments to be:

1. racially prejudiced (in the sense that the comment conveyed a sense of racial superiority or a racial stereotype); and/or
2. racially insensitive, having regard to the individual’s particular circumstances/characteristics.

I am not sure how anyone other than an Indigenous person could answer these questions; that is, how could a non-Indigenous lawyer answer to what an Indigenous person might think?

Perhaps this was done to contrast their views against the evidence of the many Aboriginal people who did, in fact, find the materials upsetting. **I want to assert my right to say what these words mean, to me.**

1. It was written: “*Across the field. I’ve had people say — wherever there’s an Indigenous man in a leadership position, there is a large group of angry [people]...*” I take this to mean Aboriginal people who express disagreement are difficult and disruptive.
2. In relation to my PhD and academic writing generally they wrote:

Questions about authorship loom large.

In the course of building a relationship with Eddie where he trusted me, I reviewed and commented on and rewrote all of his PhD and I know there were other academics doing the same...

And finally:

3. “*If I don’t do it, it won’t get done. Lots complaining about how busy he is.*”

I take this to mean Aboriginal people are lazy and intellectually inferior.

This statement is clearly defamatory. Everyone who knows me and who supervised my thesis can attest to the fact that its clearly my own intellectual property. My thesis won The University of Sydney’s Chancellor’s Award in 2022, as nominated by my supervisor Distinguished Professor Larissa Behrendt, who knows that I wrote it and any insinuations otherwise are both defamatory and racist. They are based on the “soft bigotry of low expectations” (Pearson, 2016b) that we as First Nations people are so used to in the academy, even after jumping through all the hoops that white people do and the additional expectations placed on us as Indigenous scholars.

4. They wrote:

I do think if I hadn’t been able to manage him emotionally he wouldn’t be here. I felt that responsibility personally, because it’s part of my life’s work, but also institutionally, because its important. It can be a condition of intellectual inquiry that you are able to manage the emotions of men like Eddie Cubillo....We want to make note of where the labour burden falls because it will be complicated and emotional... Taking up entire meetings with rhetoric about being victimised.

I take this to mean that when Aboriginal people express a view, it is emotional, not intellectual; *we are to be managed*. We are complaining, not making a justified political fight about what is their academic curiosity but is our life.

5. They wrote: “*We need to make sure that this space doesn’t become so compromised that no one wants to enter it.*”

I take this to mean: Aboriginal people who work in universities make workspaces difficult and *unpleasant* for others to work in and that we should prioritise the comfort of non-Indigenous people in this space—the space being scholarship on Indigenous peoples and the law.

6. They wrote: “*Concentrates a lot of power in the hands of a few [Black] people.*” And also: “*Some of my experiences might be relevant to this... If the expectation is that scholars need an Indigenous interlocutor on work that implicates the relationships, then there will be some collateral damage.*”

I take this to mean: Aboriginal people in positions of power behave in nepotistic ways and that non-Indigenous people do not have to confront their own white privilege as academics and so-called experts about our communities. Also, non-Indigenous scholars should not be expected to collaborate with Indigenous scholars when writing on Indigenous knowledges.

7. They wrote: “*As the field has got more fraught over the last 5 years or so, two things I’m noticing and worrying about — feminisation of the field, and white flight. Both of those things are bad for the intellectual life of the school.*”

I take this to mean: Aboriginal people are harming the intellectual traditions of the Academy, particularly through creating an environment which white men are less interested in working in.

8. They wrote: “*Eddie feeding his [indigenous colleague’s] paranoia*”.

I take this to mean racism is seen as imaginary and illusionary. This statement really irks me. There is nothing paranoid about experiencing racism, unless of course, you haven’t experienced it!

I sat on the document for a few weeks contemplating what I should do. As a former Anti-Discrimination Commissioner of the Northern Territory, I knew what was ahead if I sought justice. Eventually, I approached the former Dean and asked if they had read the document or met with the document’s writer to discuss its contents. After checking their diary, she advised that they did have a meeting, but they didn’t discuss the content in the document. After some further thought I went to the current Dean in September 2022 and showed them the document. I asked how the Melbourne Law School as my

employer was going to look after my safety. I put the onus on the Law School as to how they should respond.

The Effect of This “Document”

The document has had a significant impact on me. Reading the contents has caused me distress and embarrassment. It seems to confirm my suspicions of what is said behind my back. I have not been able to concentrate. I have not been able to sleep properly since reading it.

I no longer feel culturally safe or supported within the confines of the University of Melbourne and the Melbourne Law School. I no longer feel confident in my own work. I feel that my reputation has been diminished. I feel that I have lost integrity as an academic. I feel humiliated. I feel stripped of my dignity as an Aboriginal man. I did not expect this to happen to me at an institution like the University of Melbourne.

I will return to the racist document incident and the university complaint process which compounded my hurt and humiliation, but I want to pause here and put these incidents in context.

Framing the Narratives: Structural Racism in Australian Institutions

The continuing high incidence of Aboriginal deaths in custody and the repeated failures to fully implement the Royal Commission Into Aboriginal Deaths In Custody recommendations are the most egregious examples of structural racism in this country. Two recent examples are the cases of Tanya Day and Veronica Marie Nelson.

This is why I stay at the University. Recent coronial proceedings in Victoria have demonstrated how the legal profession needs to change so urgently. The fact that the Coroner in the Tanya Day inquest made no finding on systemic racism shows how ignorant the system is in failing to understand the issue.

Ms Tanya Day was a proud Yorta Yorta woman who died after sustaining a serious head injury in a police cell on 22 December 2017. In the Coroner Inquest into Ms Day's death, the Coroner found that the decision of a V/Line employee to call the police when Ms Day was found asleep on the train was caused by an unconscious bias against Ms Day as an Aboriginal person (*Inquest into the Death of Tanya Louise Day*, 2020). Although the Coroner found that the police failed to adequately monitor Ms Day while she was in

their custody and has referred the matter to the Director of Public Prosecutions, she made no other findings in relation to systemic racism (*Inquest into the Death of Tanya Louise Day*, 2020).

The coronial inquest into the death in custody of Veronica Marie Nelson, a proud Gunditjmara, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman, found that Ms Nelson was repeatedly failed by the agencies and individuals she came into contact with between her arrest and her death alone in a cell at the Dame Phyllis Frost Centre (*Inquest into the passing of Veronica Nelson*, 2023).

The Coroner's report, released in January 2023, found that the legal service provided to Ms Nelson was inadequate, including that the evidence suggested the lawyer was not alert to her vulnerability as an Aboriginal woman in custody:

It is incumbent upon the legal profession to ensure that lawyers who work with clients in Veronica's position are alert to the range of challenges faced by an Aboriginal woman with a drug dependency in the criminal justice system and equipped to manage the barriers that might impede her capacity to provide instructions. In my view, legal practitioners would be aided by relevant training when they commence legal practice and refresher training at regular intervals throughout their careers. (*Inquest into the passing of Veronica Nelson*, 2023)

There has been much discussion of "unconscious bias" and the justice system in recent years, which is now slowly making its way into the legal profession (Bathurst, 2020; Martin, 2015). I am distrustful of this language.

Along with Professor Chelsea Watego and others, I think we need to problematise the use of this term "unconscious bias" by settler-colonial institutions. Professor Watego sees the language of "unconscious bias" as part of a narrative of "white innocence" which is strategically deployed in opposition to "black rage" (Watego, 2021, p. 281). The logic of "unconscious bias" is suspect—if it is below the level of consciousness, how do we hold individuals or institutions to account for it? This less-than-overt racism is still racism. It is perhaps more challenging to tackle, but it is something that we need to address head on if we are going to have a system which lives up to the title of a "justice" system. Despite what the respective coroners did or did not find or say, racism clearly contributed to the deaths of Tanya Day and Veronica Nelsen.

In the definition of structural racism provided earlier, Burns and Nielson note the role of schools and universities in communicating and promoting cultural values and ideologies, including racists ones (Burns & Nielsen, 2018, pp. 6, 8). The lack of representation of Indigenous peoples, knowledges and

history in Australian primary and secondary school was the subject of the Melbourne Graduate School of Education's recent Dean's Lecture, *Giving Voice to Indigenous Australia: Formal education, help or hindrance?* Delivered by Professor Barry Judd (2023). The role that law schools have played in promulgating racist ideologies was acknowledged in 2019 when the Council of Australian Law Deans ("CALD") published its *Statement on Australian Law's Systemic Discrimination and Structural Bias Against First Nations Peoples*, stating:

CALD urges all Australian law schools to work in partnership with First Nations peoples to give priority to the creation of culturally competent and culturally safe courses and programs. In so doing, CALD acknowledges the part that Australian legal education has played in supporting, either tacitly or openly, the law's systemic discrimination and structural bias against First Nations peoples. At the same time, CALD affirms the positive contribution Australian law schools can, should and will make, in full partnership with First Nations peoples, in exposing, critiquing, and remedying all forms of institutionalised injustice.

A key driver of the lack of Indigenous content in law school curricula is structural racism in the Australian legal education system. Currently there is no requirement for law schools to teach Indigenous content for students to gain the accreditation of a Bachelor of Laws or Juris Doctor degree. At present, Aboriginal and Torres Strait Islander laws and jurisprudence are excluded from the Priestley 11 compulsory subjects required to complete a law degree in Australia. Why does the Law Admissions Consultative Committee of the Legal Services Council disrespect the original custodians of the land, by prescribing content concerning the uncritical preservation of settler law?

Currently, in law schools around the country, students are trained to become experts in the settler legal system that non-Indigenous Australians have built for themselves, in places which were established by, and are sustained by, racial violence. In subjects like criminal law and evidence and proof, they are taught to think like prosecutors and become agents in a criminal (in)justice system that unleashes unrelenting violence and death upon sovereign Blak bodies.

The complete transformation of the values underpinning our legal institutions is necessary and urgent. This involves embedding values of empathy, respect, humility, and humanity in our future legal professionals and providing an education which *imparts* and does not *assume* the interpersonal skills to bring these values to life in the course of our students' future professional roles. I have written elsewhere about the many challenges involved

in bringing First Nations laws to the settler-colonial classroom (Cubillo, 2022), and my experiences reflect those of other Indigenous legal scholars working here in so-called Australia and in former British colonies (Burns, 2018; Burns & Nielsen, 2018; Burns et al., 2019; Kwaymullina, 2019; EagleWoman et al., 2022; Lavallee, 2022; Wood, 2013; Wood & Watson, 2018).

In 2019, in a series of internal reports, Melbourne Law School recommended incorporating Indigenous content into its Juris Doctor curriculum. A committee has been established to oversee this process. The Indigenous Law and Justice Hub is involved in this work (Cubillo, 2022), and has developed a working definition of Indigenous content to guide our approach. It reads:

When we say Indigenous content, we refer to content which exposes and explores experiences of Aboriginal and Torres Strait Islander peoples in settler legal systems, as well as content which highlights the pluralism of systems of law on country. This content must by its nature challenge the premise that settler law is fair, just, objective, and inclusive.

We also speak often of the need to develop curricula which supports legal graduates to develop interpersonal skills; to work with appropriate empathy and cultural awareness within intercultural environments such that they may effectively work alongside Indigenous peoples and other marginalised communities in achieving their aspirations. Additionally, equipping students with the skills to bear witness to the types of stories I heard on the Royal Commission, surviving within settler legal institutions, and supporting others while maintaining their own wellbeing. (Cubillo, 2022, p. 31)

The second part of this definition is a recognition that our graduates must leave having attained Indigenous cultural competency. While there is no universally accepted definition, the Guiding Principles proposed by Universities Australia in 2011 have been endorsed by senior Indigenous bodies and are adopted by researchers working in this area (Kwaymullina, 2019, p. 18; Universities Australia, 2011, p. 3; Wood, 2013, p. 5).

The literature on Indigenous Cultural Competency repeatedly emphasises two things: the need for individuals to critically evaluate their own culture and that of the professions and institutions they work in, in order to “understand the limitations of one’s own culturally based perspective”; *and* the understanding that Indigenous cultural competency is a “journey not a destination” (Kwaymullina, 2019, p. 18). Indigenous cultural competency cannot

be a tokenistic exercise. During my week observing at the inquest of Kumanjaji Walker, it was disheartening to hear lines of questioning about cultural awareness training that positioned individual training modules as transformative *in and of themselves*, rather than as part of the holistic programs of cultural change, education, accountability and unlearning necessary to effect better outcomes. Not many of the police had done *any* cultural awareness training anyway. That week I heard lawyers position police having a single personal relationship with an Aboriginal person as highly unusual and also something which would instil a deep knowledge in the police officer of all Aboriginal cultures across the Northern Territory (Transcript of Proceedings, *Inquest into the Death of Kumanjaji Walker*, 2019, pp. 1836, 1861–1862). What hegemonic understandings are being mobilised here?

Despite the curricula review that is taking place, Melbourne Law School learning outcomes and graduate attributes do not refer to Indigenous content. The learning outcomes speak broadly about graduates' "leadership capacity, including a willingness to engage in constructive public discourse, to accept social and civic responsibilities and to speak out against prejudice, injustice and the abuse of power" (The University of Melbourne, 2023). I think about my experiences of misrecognition by students, and I wonder about our students' ability to fulfil these learning outcomes when they are not supported through their education to engage confidently with the discrimination faced by Indigenous people in the settler legal system.

When I read students' assignments and reflections in On Country learning subjects created by myself and staff of the Indigenous Law and Justice Hub—comparative Indigenous Legal Theory in Aotearoa and a course focusing on Access to Justice on my own Country, Larrakia Country—it is sad to me that the majority have not had the opportunity throughout their legal studies for "real" access to Indigenous content, people, and teachings. My feeling is that the students are up for it, they want to see change and be a part of that change, but the greatest barrier is the prevalent institutional bias that continues to position First Nations knowledges as inferior to its Western counterpart. The student-led Voice to Parliament initiative I outlined earlier is an exemplary example of these attitudes and students' resistance to them.

It matters which voices our students hear and see platformed, and which people they see silenced. Many of our students already know this. Shortly after I delivered my Wingarra Djuraliyin lecture, when students and staff arrived at Melbourne Law School one morning, the building's glass exterior was covered with posters, inside and out, produced by our students (see Brennan, 2023; Charles & Knowles, 2023). Some of the posters featured quotes from my lecture, much to my surprise. Others featured testimony

from Indigenous students recounting their experience of racism in classroom settings at Melbourne Law School. Others still called out the racism that runs through the veins of the university and connected this racism to the broader colonial project. One read:

Every single one of us at MLS, working and studying on Aboriginal land as non-Indigenous people, benefits willingly or not, in small or significant ways, from the colonial legacy of white dominance in institutional spaces.

This reflects the beginnings of recognition of the role our law schools play in upholding and reproducing structural racism, but there is so much more to be done. I put up with the racism I experience in the academy because of what I hear from our people on the front line trying their best in a racist world. If I can educate future leaders to respect my people, I will. My ancestors and elders have endured more, so that I can achieve.

It's pretty simple for me: Indigenous law is the base of the lands on which our students learn and will practise. The colonisers set their systems up on "shaky" grounds, through the invasion and violent dispossession of our lands and by ignoring or manipulating their own laws to get what they wanted. Settler colonial law was designed to steal our lands, kill us and incarcerate us. This system of laws and the institutions it established continue today. An understanding of this should be a core subject taught to the new generation of lawyers, but that is not the education in law school each of us here received. We must then, sensitise ourselves to the gaps in our education, and the things that are false that were taught to us as true. But this teaching can't be a 5-minute session within a core unit with some Blak scholar readings "if you have time" or the usual racist attitudes and values that come through in the narrative of the teaching over a three-year Juris Doctor. These narratives shape the minds of the next generation to continue the white settler "equity" for Indigenous people and other people of colour.

I want to return now to my experiences at Melbourne Law School.

The Effect of the Victimisation Engaged in by the University

After receiving the racist document, and after experiencing what I have outlined above, I thought that I would receive support from the University. Instead there was silence. The only time anyone checked in on me or I heard anything from Human Resources was when I bumped into the Dean or someone from chancellery, and I would get an email or a phone call.

We were originally told that there would be Indigenous voice in the report, only to find out that an Indigenous person would be present at the meetings, but they were for the support of the Hub staff, including the non-Indigenous staff. They would not be there for the alleged perpetrator's interview. A number of times the Human Resources team referred to this as a "cultural overlay" to the process.

This investigation has been ongoing for some 18 months. I have received no official information from the University about how they have decided to handle the behaviour of the individual who authored the document, but I am aware that they have returned to work at the campus.

Sara Ahmed says in her work on University complaints:

the inefficiency of complaints systems can be strategic. As I listened to stories of trying to make formal complaints, strategic inefficiency was the term that came to mind to explain what I was hearing. I kept hearing of unexplained and excruciating delays, confidential folders being sent to the wrong person or being posted with incomplete addresses, whole complaint files mysteriously disappearing, or meetings that were not properly recorded or that were assembled haphazardly in contradiction to policy and procedure. (We have already heard about such meetings.) I was listening to the sound of machinery: the clunk, clunk that was telling me that inefficiency is not just the failure of things to work properly but is also how things are working. (Ahmed, 2021, p. 91)

It has been a long sleepless 18 months, where I have rarely been updated or received real acknowledgement of how hurtful the matter has been.

When Stan Grant walked away from QandA recently, it was *not* because of the abhorrent racist abuse he and his family were subjected to following his appearance on the Coronation program: it was the complete failure of his employer, the ABC, to take any meaningful action to protect him from that abuse and the portrayal of him as an "angry black man" by other media organisations (Grant, 2023; Meade, 2023; Muller, 2023). This resonated with me.

Noel Pearson said it best:

There is no way Indigenous reform will succeed in breaking out of the Zero-Sum game we are trapped in. We will die in the arms of the false progressives whom we mistakenly think are on our side, but they harbour a basic bigotry towards our humanity and oppose our dignity at too many turns. (Pearson, 2016a, 2016b; Robertson, 2016)

It is just so apparent that the universities don't care about anything but their BRAND. I take deep learnings from Professor Chelsea Watego when writing about her ordeal at another one of these white settler education institutions:

In vesting my power in the process, I had largely been silent about my experiences of racism at work. I handed my story over to a process that refused to see me fully, including the full extent of the injuries I and my family had sustained. I persevered with the indignities and assaults in the process, I think because I was too invested in the idea of winning on their terms. But I realised that, even if I were to win, it would not be grounded in Black power, because so much had been ceded in an appeal to white sensibilities. (Watego, 2021, p. 26)

Both my son and daughter work at the University of Melbourne and have felt my pain over the past 18 months as this process drags on. Along with my own pain, three of the Indigenous staff in the Indigenous Law and Justice Hub have since resigned or moved elsewhere, leaving me as the only identified Indigenous academic in the building, feeling very alone. This is not just a loss to me, it is a huge institutional loss for the law school and the students it educates.

I should mention that the University of Melbourne has “blindly tried” to make offers to keep me there—they have agreed the process has been inadequate and have made various offers to me for recompense—but failed to address the two main remedies: remove that person from the campus and deal with racism in a more concerted and systemic way. The best intentions of some senior academics just demonstrated how shallow and lacking their understanding of racism is even though their intent at a personal level was to try to make amends.

Where to from Here?

As Professor Watego points out, the Reconciliation Action Plan (RAP) that her former university had signed up to did not refer to race or racism (Watego, 2021, p. 28). Similarly the University of Melbourne's RAP omits any mention of racism (The University of Melbourne, 2018). It is a truism that you can't change what you can't—or won't—acknowledge. As Angela Davis is credited with saying, “in a racist society, it is not enough to be non-racist, we must be anti-racist”. Australia is a racist society (Watego, 2021, p. 28).

Earlier I referred to the Council of Australian Law Deans' statement. To repeat the final line:

CALD affirms the positive contribution Australian law schools can, should and will make, in full partnership with First Nations peoples, in exposing, critiquing, and remedying all forms of institutionalised injustice. (Council of Australian Law Deans, [2020](#))

That institutional injustice must include the contemporary injustices perpetrated *by, encouraged by, protected by, and taught by the law school itself* and the wider University as its institutional home. The only way to do this, in my view, again is to establish an anti-racism oversight body within the University. It must be set up and run by experts on racism in Australia—First Nations people. Anything short of this is not “full partnership” and does not meet the Council’s stated goals of “exposing, critiquing, and remedying all forms of institutional injustice” (Council of Australian Law Deans, [2020](#)). If law schools want to have a role in holding the criminal justice system to account for its injustices against Aboriginal and Torres Strait Islander peoples, they must begin with holding the mirror up to themselves. It was hypocritical of the University of Melbourne to “support” the Voice, but not have similar processes in place in the University itself.

In closing, this past year I have felt really alone at this institution. I want to thank all those people around me for being there as without them, I would not have been able to survive. At times the loneliness made me think about my grandmothers when they were in Kahlin compound due to the forced removal policy. They give me strength. They did not deserve to be persecuted as kids and should not have had to fight forever for their rights. They had been persecuted enough! I feel it is not fair that I am in this predicament due to someone’s racism. I am forced to choose to fight or succumb to white privilege and to continue to face racial violence in this institution, which has been soul destroying on this whole journey. I should not have to choose, and I do not want to be in a place of such hatred. Most of all though, I do not want this to be an ongoing hate for my people—my kids and grandkids! I am sad as I remember my grandmothers saying they endured all their pain and suffering so I wouldn’t have to. I hang my head because I know it was for nothing. Nothing has changed. This country’s structures continue to oppress and deny our humanity and our rights to exist as equals. People were confused about why we needed a voice. Is it really confusing? Is it?!

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10

Can Criminology Decolonise... and Do We Care?

Juan Tauri

Introduction

It is evident to those involved in criminology in Australasia over the past decade that the schism that exists between the discipline and many Indigenous scholars has widened significantly despite recent attempts by the Australian New Zealand Society of Criminology (ANZSOC) to decolonise itself and the discipline (see Ashe & Bargallie, 2024; Deslandes et al., 2022; Tauri, 2017 for a detailed background on the 'schism'). A range of issues are responsible for the schism, including different approaches between Indigenous scholars and some of their non-Indigenous colleagues to defining, analysing and responding to criminal conduct (Cunneen & Porter, 2017), a preference amongst administrative and authoritarian criminologists for utilising non-engaging research methodologies for research *on*, rather than *with*, Indigenous peoples (Deckert, 2016; Tauri, 2017; see Tauri, 2013 for an overview of authoritarian criminology), and problematic peer review processes of Australian criminology journals that leads to publications that purport to 'analyse' the lived experiences of Indigenous and other 'peoples of colour', without engagement with these communities taking place (see Porter et al., 2022 for discussion of this issue). A further cause of conflict is the

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support many non-Indigenous criminologists in Australasia provide to the settler-colonial states attempts to criminalise Indigenous peoples (Cunneen & Tauri, 2017; Staines, 2023; Tauri, 2017; Watego, 2022).

Over the past few years several Indigenous scholars have been asked by ANZSOC officials ‘how to repair the relationship and decolonise the discipline’. Unfortunately, decades of problematic behaviour by non-Indigenous members of the discipline make it difficult to answer this question in short form. Before we can address them, we have questions of our own, such as ‘is it possible for a discipline borne of the colonial project, with many of its practitioners continuing to serve the settler-colonial state, to decolonise’ (see Agozino, 2003; Cunneen & Tauri, 2017)? Furthermore, given continuous episodes of disrespect directed at Indigenous scholars, Indigenous knowledge, and Indigenous communities by members of the criminology community, should we help it do so?

With these questions in mind, I begin by emphasising the contemporary causes of Indigenous discontent with Australasian criminology in the present moment. Thereafter, I utilise the advent of Southern criminology as a case study in the reinvigoration of crime control as a colonial project in the contemporary settler-colonial context, one that has added fuel to the rift between Indigenous scholars and the discipline. In particular, the malignment of Indigenous scholarship by members of the Southern criminology ‘movement’, despite their claims that it represents a ‘decolonising turn in contemporary criminology’ (see Carrington, 2021), is emblematic of the behaviour that has fuelled the schism described previously. The final part of the chapter provides a critique of current attempts by mainstream criminologists in Australasia to decolonise the discipline, by comparing their ‘decolonising strategies’ to the responses Indigenous scholars have been demanding of the discipline for over thirty years.

‘Where Are the Indigenous Scholars’?

The title of this section is a direct quote taken from a series of texts sent to me by a friend and research collaborator while she was attending her first ANZSOC conference in Geelong in the mid-2010s. The scholar in question wrote the texts after sitting through two sessions of the conference focused on *Indigenous peoples and justice issues*, where all the presenters were apparently non-Indigenous scholars. What also made the situation problematic was the fact that few of the non-Indigenous criminologists had bothered to engage directly with Indigenous peoples during the research they were discussing.

The situation came as no surprise to the author who had attended four ANZSOC conferences between 1997 and 2012, and on three occasions I had been the only Indigenous scholar present, and the only one to undertake what Deckert (2014, 2016) calls *engaging methodologies*. As an Indigenous scholar from New Zealand, the absence of Aboriginal and Torres Strait Island and other Māori scholars on the panels, and at the conferences generally, was noticeable and concerning. However, it must be acknowledged that during this period the lack of Indigenous scholars could be explained in part by the fact that few of us were working in the discipline. What was especially problematic was the fact that few of the non-Indigenous scholars presenting at the conferences the author attended had engaged directly with Indigenous peoples in any meaningful way during the research process.

This situation is no longer excusable, or acceptable. In the 27 or so years since my first ANZSOC, the Indigenous scholar group in Australasia, especially in Australia who engage with criminological issues has grown substantially, including Amanda Porter, Marlene Longbottom, Juanita Sherwood, Crystal MacKinnon, Hannah McGlade, Chelsea Watego, Krystal Lockwood, Natalie Ironfield, and Larrisa Behrendt, and the author, Robert Webb, Tracey McIntosh, Khylee Quince, Riki Mihaere, and Ani Mikaere in New Zealand. And the growth in Indigenous scholars working on criminological and social justice issues in Australasia has resulted in a significant increase in the critical Indigenous lexicon.

So, we now have more Indigenous scholars and significantly more Indigenous scholarship, including a large body of material critiquing social sciences methodology and ethics protocols that provide guidance to non-Indigenous researchers about how to ‘do better research *with us*’ (see AIATSIS, 2020; Bargallie et al., 2020; Tauri, 2014). Furthermore, several of us have aired our issues with the discipline and ANZSOC on numerous occasions, through a range of processes including publications, conferences, and seminars. And yet, non-Indigenous scholars and mainstream journals in Australia continue to disregard or dismiss the value of Indigenous knowledge or misrepresent our research and critique of mainstream criminology (see Carrington, 2021; Weatherburn, 2010, 2014; Weatherburn et al., 2024). Others continue to publish materials that criminalise and marginalise Indigenous and other peoples of colour (see Porter et al., 2022 for a detailed examination of this issue), and the marginalisation of Indigenous knowledge and scholarship continues. As a result, few of us belong to ANZSOC or attend the annual ANZSOC conference in significant numbers. We choose instead to support Indigenous conferences such as the annual event hosted by the North American Indian Studies Association (NAISA), and regular symposia organised by

Macquarie University's Centre for Global Indigenous Futures led by Distinguished Professor Bronwyn Carlson. Furthermore, a significant body of work produced by the Indigenous cohort critiques the discipline and the conduct of its devotees, laying bare our issues with its representative body (e.g., see Porter et al., 2022; Tauri, 2013, 2017; Watego, 2022).

The Long History of Colonialist Criminology in Australasia

In a previous chapter on the state of relations between Australasian criminology and Indigenous peoples and scholars, I contemplated whether the discipline had anything of value to offer us, or whether the time had come for us to walk away from a tent reeking of the stench of *condescending colonialism* (see Tauri, 2017). In that work I made two claims I believe remain germane, given the current state of the relationship between criminology and many Indigenous scholars and Indigenous communities:

Unless Australasian criminology.... can divorce itself from its authoritarian, colonial history, then it has little to offer the Indigenous academy or Indigenous peoples. (p. 779)

And

Sadly, given the repetitiveness of the.... disrespectful behaviour of members of the academy that I and other Indigenous scholars have experienced over recent years, it is apparent that the wider discipline is not our friend, and nor is it ever likely to be. So, I am pessimistic. I am rapidly coming to the conclusion that it might be better for us to walk away and set up our own tent. (pp. 779–780)

The conduct of Australasian criminologists since the publication of these statements is evidence that the situation has not significantly improved. One could argue that it is in fact even worse, given the rise of Southern criminology (see discussion below) and the reaction of non-Indigenous criminologists to Indigenous critique over the past five years or so. And in this section, I will demonstrate why.

To understand the inclination of Western criminologists to support the settler-colonial state and ignore Indigenous scholars and their scholarship (see Carrington, 2021; Marie, 2010; Weatherburn, 2014, Weatherburn et al., 2024) we turn to the work of the critical criminologist Vincenzo Ruggiero. Vincenzo, who sadly passed away while this manuscript was

being written, described the intellectual and moral foundations and focus of ‘traditional’ criminology, thus:

There are imaginary geographies which place imperfect minorities in marginalised locations: in a social elsewhere. These locations consist of protected zones which ensure the reproduction of those who inhabit them, who are separated from the majorities living outside. These geographies of exclusion associate **elsewhere** with that which is contaminated, filthy, offensive to morality and olfaction. (emphasis Ruggiero, 2000: 1)

Furthermore, Ruggiero (ibid.: 1) argues that ‘traditional’ criminology ‘makes filth, sewers, and excrement, in brief that “inferno” delimited by imaginary geographies, its main terrain of analysis and development’. And so, there are specific communities and groups of individuals who continue to be plagued with the privileged gaze of criminologists. These are the *folk devils* of social and criminal justice policy who reside in the social elsewhere threatening to pollute society with their immorality, exuberant emotionality, and their supposedly ‘primitive’ culture(s). These contemporary folk devils, include the unemployed, the indigent, travellers, religious fundamentalists (of all faiths, but especially non-Christian), working class youth, and ethnic minorities. In the colonial and neo-colonial contexts, we must also include Indigenous peoples, given that we have long been considered a criminogenic, high-risk problem population in need of surveillance, suppression, and (social) control (Cunneen & Tauri, 2019; Sandulescu, 2021). What has been evident for decades is that adherents of mainstream criminology’s demonisation of specific individuals and communities extends beyond the bifurcated focus on offenders and victims, to include the Indigenous peoples of Australia and New Zealand, to the marginalisation and at times, the *demonisation* of Indigenous scholars.

Agozino has accurately described criminology as a ‘colonial control freak’ (2010: i), whose imperialist reasoning is most evident when supporting ‘the [contemporary states] exercise of internal colonialism and neo-colonialism’ in settler-colonial contexts. Similarly, Tauri (2016, pp. 57–58) has argued that:

Traditional [Eurocentric, state-centred] criminology, a discipline joined at birth to the developing Western, capitalist state, continues to thrive through its sustained focus on the behaviours and attitudes that fuelled its conception – emotionality, incontinence and contamination.

If Australasian criminologists want to understand how the schism came about and our lack of engagement with ‘their business’, they can start with the fact

that much of their work supports the crime control processes of the settler-colonial state. Furthermore, many of them choose to focus on individual proclivity, while ignoring the impact of the colonial project, systemic bias and racism, while avoiding direct engagement with us (see Marie, 2010; Weatherburn, 2014, Weatherburn et al., 2024 for examples of this approach; also see Tauri, 2016, for discussion of disempowering criminological discourse on Indigenous peoples). However, it is not just the problematic research *on* Indigenous peoples that fuels our discontent, it is the colonising attitude of some of the disciplines practitioners towards Indigenous scholars and scholarship, and the absence of meaningful engagement with the colonial project (i.e., Carrington, 2021; Carrington et al., 2018b; Hill, 2020; Weatherburn, 2014, Weatherburn et al., 2024), that makes reconciliation difficult to contemplate. For an exemplar of the *silencing strategies* that exist in contemporary Australasian criminology, we need look no further than the latest theoretical fad, namely Southern criminology.

Southern Criminology—A Decolonial Turn, or Old Wine in a New Bottle?

Southern criminology has been recognised as a leading theoretical development for attempting to overcome the perpetuation of colonial power relations reflected in the uneven flow of knowledge between the Global North and Global South. Critics, however, have pointed out that Southern criminology runs the risk of recreating **epistemicide** and **colonial power structures** by reproducing colonial epistemology and **by being unable to disentangle itself from the hegemony of Western modern thought**. (Dimou, 2021: 431, emphasis added)

According to advocates Southern criminology is the latest criminological movement seeking to ‘decolonise the discipline’. It seeks to do so by challenging its Northern, westerncentric foundations (Brown, 2018; Carrington et al., 2016). Fraser et al. (2017) go further arguing that it advocates for an imagining of crime control situated in the periphery, while Matthews (2017: 581), described Southern criminology as ‘probably the most significant theoretical development in the recent period’, and lastly we have Fonseca (2018: 709) claiming that the movement was ‘a gush of fresh air in the debate involving studies of crime, crime control and punishment’. So far, I am yet to be convinced of the freshness of the air ‘gushing’ from some acolytes of Southern criminology, especially when founding members

turn their attention to Indigenous and decolonising perspectives, offering unevenced critique, as will be demonstrated below.

A key motivation for the development of Southern criminology is a common belief amongst Australian criminologists (in particular) that criminological theories and concepts produced in 'the North' have dominated the discipline, to the detriment of research and crime control responses in 'the South' (Carrington et al., 2016, 2019; Goyes, 2015). Moosavi (2019) also reports that Southern criminologists are motivated by the need to challenge the (largely) one directional nature of knowledge flow, from the North to the South, to attain a more rounded criminological knowledge of crime and social harm. It is also believed that knowledge and criminogenic programmes are transported from the North to the periphery, such as psycho-therapeutic programs, policing strategies, and such like, without necessary consideration of local context and 'cultural' suitability (Travers, 2019).

During the evolutionary phase of Southern criminology, key writers persistently underlined the emancipatory ethos of their approach, typified by statements like the following by Goyes (2018: 337):

[R]ather than creating divisions, southern criminologies seek to build epistemological bridges, based on the premise that an important form of decolonial action is achieved by 'affecting and transforming the contents of Western science, through the use of knowledge, realities and cosmologies' of the south.

Furthermore, Carrington et al. (2018b: 25, emphasis added) claimed that Southern criminology seeks to bring 'cognitive justice' into criminological analysis, stating that:

Southern criminology... eschews the **standpoint of opposition**. Our purpose is not to add another school to the growing catalogue of new criminologies, but rather we wish to promote a series of projects of retrieval, which might serve to **bridge global divides, enlarge understanding, and foster intercultural dialogues and epistemologies**.

Carrington and her colleagues have consistently claimed that their movement is a decolonising project. For example, in her reconstituted statement of intent on the approach, published in the British Journal of Criminology Blog in 2021, Carrington claimed that:

As an empirical project, epistemologies of the south seek to cultivate knowledges of and from the periphery that have been relatively invisible or marginalized.

And

One of the emphases is to reinsert the historical legacies of colonialism back into analysis of contemporary crime and justice.

Any attempt by contributors to Southern criminology to prioritise the experiences of the marginalised, is likely to be welcomed by Indigenous scholars and Indigenous communities. However, to date we have seen little action from many Southern criminologists that adequately reflects the rhetoric of its founders, such as Carrington. For example, in their critique of Carrington's (2021) statement, Anthony et al. (2021) point out that in contradiction to:

... building bridges and opening the way for different criminologies... Carrington makes scant references to Indigenous researchers in her blog and the article she and her co-authors' published in the British Journal of Criminology, including from the country she occupies, Australia.

This conduct is hardly indicative of an approach focused on ensuring 'cognitive justice' prevails in contemporary criminology.

Relatedly, Cunneen (2018: 24) argues that 'to achieving cognitive justice entails understanding and application of differing epistemological positions. A failure to do so simply reinscribes the epistemic violence of colonial rule'. Cunneen warns that '[i]f Southern criminology fails to seriously consider epistemologies of the South and their differing (and sometimes incommensurate) ontologies, it will simply re-centre Eurocentric (criminological) knowledge'. As an Indigenous scholar, one could take seriously the claims of senior members of the 'movement' that they seek 'cognitive justice', had they not consistently made unevidenced claims about critical Indigenous and other decolonial criminological approaches, as will be discussed below.

In a 2016 article published in the British Journal of Criminology, Carrington and colleagues argued that '[Southern criminology] seek[s] to modify the criminological field to make it more inclusive of histories and patterns of crime, justice and security outside the global North... [It] seeks to work with and complement—to *Southernise*—other established and emerging fields in criminology: feminist, green, postcolonial, queer, rural, cultural and Asian' (2016: 11; emphasis added). If this were the case, then why does Carrington (2021), one of the founding scholars of this supposed 'decolonising criminology', deploy the language of the coloniser and the silencing strategies of administrative criminology, to critique other decolonial criminologies? The phrasing employed by the movement's adherents, such as their stated aim of 'southernising' the discipline, leads one to ask if they are

seeking to Southernise or to *colonise*, (or at the very least silence) ‘other’ criminologies? The language used by members of Southern criminology intimates that something vital is missing from these ‘other’ decolonising approaches. However, they fail to clarify exactly what is missing, and provide no evidence to support their claims, or to demonstrate that their approach would benefit Indigenous peoples. And so, we recoil when Southern criminologists deploy language reminiscent of the violent rhetoric and ideology of the colonial project, such as when they call for ‘the periphery to invade the centre’ (Brown, 2018: 96).

According to Carrington (2021), one of the significant issues with ‘other’ decolonial criminologies, has been the tendency of scholars to essentialise race and romanticise ethnicity. She contends that:

Unlike the negative decolonial projects (which have their place), the project of southerni[s]ing criminology does not set out to denigrate the contribution of metropolitan criminology – or to damn all criminologists as ‘racist’, ‘westerncentric’ ‘control freaks’ on some sort of ‘bandwagon’. Rather than creating divisions the projects of southern criminologies seek to bridge global divides precisely as form of a decolonial praxis in action.

However, as Anthony et al. (2021) demonstrate, Carrington offers no evidence to support these statements, thus contradicting her claim that the criminological movement she champions is focused on ‘bridging’ the North–South divide. Anthony and colleagues also observe that ‘Carrington describes decolonising research—which identifies the colonial logic in penal enforcement—as “negative decolonial projects”, without offering any evidence to support her dismissal of these “other”, predominantly “Southern” criminological movements’. They also reveal the contradictory position taken by Carrington when they state that ‘despite Carrington imploring intercultural exchange, she refutes a resurrection of “alternative origin stories or “founding fathers”, as some decolonial theorists have done’. Lastly, Anthony et al. (2021, emphasis added) state that:

Without identifying who these decolonial theorists are or the nature of these origin stories – in other words, **without offering evidence to support her claims** – these claims amount to an unevidenced rejection of alternative knowledges.

How do we explain the conduct of members of the Australian Southern criminology contingent discussed here, especially their dismissive attitude towards the work of Indigenous criminologists and our non-Indigenous allies? Perhaps

the answer lies in adherents of Southern criminology wanting to feel relevant to the wider criminological enterprise? Moosavi (2019) identified one of the most urgent matters Southern criminologists needed to address is whether Australia should be considered part of this thing they called the Global South. Mark Brown (2018: 93) has also identified this as an issue for the movement, stating that 'Southern criminology faces its own existential question: what makes you Southern?' This question divides opinion even amongst practitioners of Southern criminology. Some believe that Australia is one of the 'selected enclaves of the symbolic north located south of the equator' (Donnermeyer, 2017: 128) while others emulate Raewyn Connell's view that Australia (namely its intellectual endeavours) is marginalised in similar ways to other Global South countries (Carrington et al., 2018a, 2019; Connell, 2007: 212).

The picture painted by Carrington and others, of the hardships faced by predominantly white, middle class, and therefore comparatively privileged criminologists residing 'down under' is clearly hyperbole. Yes, Australian scholarship may sometimes be ignored by those in the United States, the United Kingdom, and the rest of Western Europe, and Australia's geographic location may make it harder for Australian scholars to participate in international academic events (although in this post-Covid era many conferences and seminars utilise online technologies). However, Australia is still a country that is comparatively developed, wealthy, stable, autonomous, and privileged, as are most of its criminologists. Therefore, suggesting that Australia is part of the Global South because of 'epistemological neglect', is highly problematic. At best, Australia might be considered part of what Medina (2011) refers to as the 'semi periphery' (Medina, 2011). However, can the adherents of Southern criminology evidence their argument that the knowledge of 'Western' criminologists in the region like themselves share the same hardships, face the bigotry, their knowledge silenced and ignored, as has been experienced by Indigenous communities and Indigenous scholars for decades in the Australasian context (see Deckert, 2014; Tauri, 2018)?

It has been argued elsewhere that a defining characteristic of 'epistemologies of the South' is that they are 'born in struggle' (Santos, 2014), a position often claimed by leading architects of Southern criminology (Carrington et al., 2016, 2018a). And yet, in her 2021 reaffirmation of the purpose and focus of Southern criminology, Carrington offers the type of unsupported claims about 'other' criminologies discussed previously. These 'other criminologies', such as Indigenous criminology and Counter-colonial criminology, were born of the struggles of Indigenous and other peoples of colour living in the midst of the (ongoing) colonial project. In other words, as a significant

figure in the movement, Carrington attitude towards ‘other criminologies’ replicates some of the fundamental causes of the schism that currently exists between the discipline (more broadly) and Indigenous scholars across Australasia, including the misrepresentation of our critique of criminology, and colonialist attitudes towards Indigenous knowledge.

From its inception members of Southern criminology sought to contest leadership of criminological theorising in the Antipodes. However, at this juncture it is reflective of a narrow scholarly community. Nor does it represent many of the criminalised communities who populate ‘the South’, especially those who have borne the brunt of the colonial project, such as Indigenous peoples.

The Epistemicide of Southern Criminology

To fully understand Carrington’s ‘southern criminological’ attitude towards Indigenous and other post-colonial perspectives, we can turn to the concept of epistemicide as utilised by Dimou in her 2021 critique of the movement. Dimou (2021: 434) defines epistemicide as ‘[t]he active destruction of different ways of being, knowing and thinking through practices of de-legitimation, denial, obliteration and suppression’. Dimou (2021: 436, emphasis added) reveals the epistemic nature of Carrington and colleagues’ approach when she states that:

By presenting Southern criminology as the latest intellectual advancement, while omitting previous works and engaging in under exploration and misrepresentation of the ‘decolonial option’, Southern criminology – specifically, that of Carrington and colleagues (2016, 2018a, 2019) – **engages in unconscious epistemicide** by downplaying, ignoring, and silencing other ways of understanding that could prove significant allies in decolonising criminology. (emphasis added)

Dimou (2021: 446: emphasis added) also argues that:

Carrington’s choice of words, such as North and South, understates past and present structures of oppression. A telling omission in her language (and analysis) is the lack of reference to geo-political divisions of “colonisers and the colonised.” By **failing to confront ongoing colonising relationships**, the type of ‘Southern Criminology’ Carrington champions cannot challenge this divide. This is highlighted in its main mission to ‘democratise’ knowledge by promoting a partnership between the North and South through simply expanding ‘the repertoire of criminological knowledges.’

The imperialist intentions of Southern criminology observed by Dimou, were also exposed by Anthony et al. (2021) who stated that:

[C]olonialism not only meant the imposition of Western authority over [I]ndigenous lands, [I]ndigenous modes of production and indigenous law and government, but the imposition of Western authority over all aspects of [I]ndigenous knowledges, languages, and cultures.

By making unevidenced claims against post-colonial, counter-colonial, and Indigenous criminologies exposed previously, Carrington appears to be *telling us where we belong* in the hierarchy of decolonising approaches. And, given the exaggerated claims made against our scholarship, our place appears to be subservient to the latest in a long line of Western-dominated perspectives on crime and social harm (see Moosavi, 2019 for similar arguments).

Given all we have discussed thus far, the drivers of the schism that exists between Australasian criminology and many Indigenous scholars, the advent of the recolonising movement that is Southern criminology and the denigration of Indigenous and other ‘decolonial’ approaches, necessitates that we ask whether it is possible for the discipline to decolonise... and indeed, if we even care?

Can Criminology Decolonise?

The short answer to the question ‘can criminology decolonise’, is yes. All the adherents of mainstream criminology in Australasia need to do is replicate what governments in the region have done for decades when faced with Indigenous critique, namely, define what they believe constitutes decolonisation, and implement strategies designed to maintain the status quo (see Tauri, 2017; Tauri & Webb, 2012 for discussion of this approach). The key question is whether the discipline can decolonise in ways that are *meaningful to Indigenous scholars and Indigenous communities*. Given the issues discussed earlier this is highly unlikely. And recent attempts by ANZSOC to respond to ongoing conflict with Indigenous scholars does little to assuage our feelings of unease about that institution, or the discipline it represents.

Transforming ANZSOC

In its consultation paper, ANZSOC (2022: 3) acknowledged its failure to ‘be inclusive of Aboriginal and Torres Strait Islander and Māori within

ANZSOC's membership, executive, activities and publications and has failed to support and advocate for First Nations communities in Australia and Aotearoa New Zealand'. In response to the schism, ANZSOC established a sub-committee tasked with examining known concerns and make recommendations to rectify them. The following is a compendium of the range of actions ANZSOC (2022: 5–19) offered in their consultation paper, for consideration by the wider criminology community in Australasia:

- Modify ANZSOC's *Rules of Incorporation* to acknowledge the First Peoples of Australia and New Zealand.
- Actively promote representation of Aboriginal and Torres Strait Islander and Māori in the Society by holding formal positions (i.e., in the Committees of Management).
- The creation of an Aboriginal and Torres Strait Islander and Māori External Reference Group or Steering Committee.
- Increase the representation of Aboriginal and Torres Strait Islander and Māori peoples in the justice profession and academia, and mentorship support.
- Nominate Aboriginal and Torres Strait Islander and Māori scholars, and scholars from other diverse backgrounds for positions as Editors, Assistant Editors, Editorial Board members, and other positions of management on the ANZSOC Journal (The Journal of Criminology).
- Development of a truth-telling forum that 'would demonstrate ANZSOC's commitment to justice and safeguarding self-determination for Aboriginal and Torres Strait Islander and Māori scholars and Communities across Australia and Aotearoa New Zealand'.

While ANZSOC officials are to be commended for the range of issues and responses highlighted above, they represent what Indigenous scholars commonly refer to as 'Indigenising products', responses that serve the needs of organisations like ANZSOC, rather than those of Indigenous scholars and communities (Tauri, 2016). Indigenising products represent a disconnect between how a predominantly white organisation defines (and in some cases reframe, repackages, and (re)presents) problems it has with Indigenous scholars, and acceptable solutions to them, against Indigenous focus on the systemic annihilation of racism and white privilege. Most of these activities are the academic equivalent of the Indigenisation project implemented by settler-colonial states, like New Zealand, Australia, and Canada in the 1980s, in response to our aggressive critique of the racialisation of crime control processes. The Indigenisation project focused on (a) increasing brown bodies

working in the 'system', and (b) utilising 'acceptable' cultural artefacts that are subsumed within Eurocentric crime control processes (see Cunneen & Tauri, 2017 for an overview of the indigenisation project in criminology and criminal justice). Both strategies focused on enabling the state to present itself as responsive to our concerns, while ensuring it retains hegemony over the crime control edifice.

Indigenous scholars like me, have experienced a range of 'indigenising' strategies and tactics that ensure the continued hegemony of the 'Western' discipline and the privileging of the theories, research, and pedagogies of its adherents. Popular 'silencing' or limiting practices include allowing for one lecture in introductory, 1st year (and sometimes in 2nd and 3rd year) subjects, and of course, hiring one Indigenous scholar who thereafter is restricted in their ability to design and implement a range of subjects across the curriculum, while also being expected to sit on every committee that requires a 'brown or black body'.

Does all this activity mean that criminology is decolonising? And if not, is it capable of doing so? To the first question, from a critical Indigenous standpoint, no, it clearly is not. And in response to the second question, maybe, but it has a lot of work to do. Such as:

- Acknowledge the part it has played in the colonial project and the existence, and impact of racism and white privilege exhibited by some of its members.
- Critically scrutinise, and where necessary hold to account members who perpetrate racism and callout those who continue to utilise non-engaging methods, while presenting themselves as experts on the Indigenous lived experience.

Concluding Comments

Contemporary criminology in Australasia faces several challenges if it is to repair its relationship with Indigenous scholars and communities. The first is to admit that some of its members serve a colonial state that continues to criminalise and subjugate Indigenous peoples. This is not only an historical issue, but a contemporary reality. For example, Griffith University, the largest criminology programme in Australia, with 50 plus scholars, the majority of whom focus on providing contract research support to the Police, courts, corrections in Queensland (in particular) and elsewhere, and who have little experience of researching *with* Indigenous peoples, as opposed to researching

on them, an approach replicated across criminology programmes throughout Australasia.

This brings us to a related issue, and that is the prevalence of what Antje Deckert (2014) calls non-engaging methodologies, in which most of the research published by non-Indigenous scholars on Indigenous issues is produced without the use of direct, engaging methods. However, this lack of direct engagement fails to stop some scholars from speculating on the Indigenous experience, or the causes of Indigenous offending (see Weatherburn et al., 2024).

A further, related issue the wider discipline needs to engage with relates to *what is left out of analysis of Indigenous experiences of crime control*. Far too much Australasian criminology ignores that which makes it, and the sources of their external grants, uncomfortable. For this reason, the colonial question is rarely found in most criminological musings on Indigenous over-representation (e.g. Marie, 2010; Weatherburn, 2014; Weatherburn et al., 2024. See also the (in)famous 'debate' between Cunneen, 2006; Weatherburn et al., 2003). Any suggestion of a link between the colonial project and the contemporary Indigenous experience of crime control, especially the vexed issue of our over-representation, is dismissed outright, despite the fact that their research does not consider the issue in a meaningful way.

A similar approach is taken to colonial institutions as well, such as policing. We know racism exists in the police institutions of Australasia. So, why is there little attention to racism and systemic bias by the administrative and authoritarian strands of Australasian criminology? Don Weatherburn, an Australian-based champion of this approach, has declared in the past that his research does not show that police racism or bias is a significant factor in the arrest, conviction, or imprisonment of Aboriginal and Torres Strait Island peoples (Weatherburn, 2014; Weatherburn et al., 2003). However, what is clearly missing from his research is the historical context, the racialisation of policing in Australia since its inception, any significant observational research of police-Aboriginal contact, and, most importantly, little (sometimes no) meaningful engagement with Aboriginal and Torres Strait peoples regarding their experiences of policing (Tauri, 2013, 2017; Cunneen's (2006) evisceration of Weatherburn et al.'s approach to the issue of police bias is, again, instructive here).

Similar issues are evident in the New Zealand context, where one of the significant issues facing the discipline is the lack of focus on Indigenous issues in undergraduate curricula. What is taught is an individualised and ahistorical approach that avoids critical analysis of the settler-colonial state. And so, few Māori students remain in the discipline and carry on to post-graduate studies

or become scholars and researchers. Why? Because what is being taught about social harm and how crime is theorised, does not resonate with their lived experiences, or that of their families and communities.

Relatedly, if you analyse the lexicon of New Zealand criminology and remove the work of Māori scholars, you will find that few criminologists working in that context have published substantive research on Māori experiences of crime control. One of the main reasons for this is the historical reliance of criminology departments for importing their so-called talent from overseas. This 'talent', who, once they arrive in New Zealand, produce few research outputs focused on Indigenous issues, choosing instead to (continue) to focus on whatever jurisdiction they came from.

Lastly, the significant divide between the Indigenous body of scholars, and mainstream criminology in both countries, but especially in Australia, was the catalyst for the decision made in 2021 by several Indigenous scholars there and in New Zealand, to avoid further engagement with ANZSOC, including its conference and its journal (the Journal of Criminology). This decision was made because of the long-standing issues discussed earlier in this chapter. So, when we hear people involved in criminology in settler-colonial jurisdictions state that 'criminology has to decolonise', Indigenous scholars everywhere, like myself, shrug our shoulders and say 'well, that is obvious', followed by the speculation 'but what do *they* mean by decolonisation?'

.... and Do We Care?

An important question to ask at this point, is, do Indigenous criminologists care? Some might, but all those that I engage with, do not. Many of us, including those working directly in criminology do not need the discipline, or its representative body, ANZSOC, to do the vital work we do for our people. It is our people first, always, the institutions that sustain and support us second, and the colonial project that is criminology a distant third, if it is considered at all. The issue we have with assisting criminology to decolonise is that what will invariably occur is *hybridisation* and *indigenisation*, with our black/brown bodies and our cultural contexts being subsumed/consumed and enveloped within a Eurocentric entity hell-bent on ensuring the hegemony of white privilege. Hybridity is touted as providing opportunities for opening formal structures to 'the possibility of the Indigenous', and of *incremental change*, what the venerated Māori legal scholar Dr Moana Jackson once described to me as 'death by incrementalism'.

Due to the current state of the relationship, I am not advocating for the decolonisation of criminology. Instead, I support plans for the development

of a *critical Indigenous criminology*, and our own representative body. Our energy is best directed at the needs of our communities, and not at teaching white criminologists how to be better behaved. It is not our responsibility as Indigenous scholars to fix the problems of mainstream criminology, especially those criminologists who have done little to demonstrate that they are responsible allies. To quote well-known Māori movie director Taiki Waititi when he was asked ‘can Hollywood decolonise’, ‘you fucken broke it, so you fix it’.

Until criminology rids itself of bigotry and ceases to support the violence of settler-colonial crime control, we must continue to be careful about the extent to which we enrich it with our experience, our scholarship, and our support. Right now, I see little evidence that the discipline ‘down under’ is capable of decolonising. It is evident that many of its members equate them and their disciplines indigenisation activities with Indigenous empowerment and self-determination. As a result, what is taking place is less decolonisation, and more the criminological equivalent of the beads and blankets strategies of the old colonial project. Whether criminology can decolonise is, in the end, of secondary importance to *our project*, which is to facilitate Indigenous self-determination.

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11

The Problem with Justice: A Case Study of the Response to Colonial Violence and Possibilities for Justice in Nigeria and Canada

Vicki Chartrand and Kunle Oluwafemi Olalere

Introduction

The search for justice is a powerful mobilizing force in many parts of the world. As a concept, justice has long been a subject of philosophical, political, and social inquiry (Dworkin, 1986; Sen, 2009; Siemoneit, 2023). Within a modern telos, the idea of justice encompasses principles of fairness, equality, and just treatment and involves considerations of distributive (Fraser, 2009; Rawls, 1971), procedural (Agnew, 1992), corrective (Milward, 2022), and social (Nussbaum, 2007) forms of justice. As states worldwide grapple with inequality, discrimination, and systemic injustices, pursuing justice is a fundamental pillar underpinning social cohesion and well-being. Despite its importance and conceptual diversity, modern conceptions of justice are monopolized by state apparatuses and institutional frameworks that confine the scope of justice to state-centric approaches and limit possibilities for thinking about and practicing justice differently. These limits placed on justice are particularly evident in the context of colonized people who continue to experience gendered and racialized violence deeply rooted in

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colonial state functions (Buhler, 2017; Chartrand, 2015; Latty et al., 2016, pp. 133–134). As we show in this chapter, this persistent violence operates in ways often obscured by conventional state-driven justice paradigms.

In this chapter, we seek to illuminate the problem with modern justice by offering a comparative analysis of colonial violence experienced by women and children in post-war Nigeria and the missing and murdered Indigenous women, girls, and Two-spirit+ (MMIWG2S+) people in the settler colonial landscape of Canada. In Nigeria, colonial rule disrupted traditional social structures and cultural practices, leading to the exploitation of the country's resources and people and ongoing internal wars and conflicts. The echoes of colonial history are integral to the post-war experience of displacement and vulnerability of women and children in Nigeria and the lack of state recourse or remedy. In Canada, colonialism took the form of forced land displacements and violent cultural dispossession for the stealing of land. Indigenous women were targeted through sexual and racialized violence as sovereign members and the life and caregivers of the people. Settler colonialism continues to cast long shadows over the lives of Indigenous women, girls, and Two-Spirit+ people, who continue to experience unparalleled violence throughout their lives. The entrenched and ongoing character of colonial violence across both nations exposes the complicity of state-centric models of justice. Set against these two countries' distinct yet parallel backdrops, we reflect on the ongoing veiling of colonial violence in our respective countries, how colonial temporalities intersect with modern justices, and how displaced and colonized women and children navigate this terrain. We argue for a more nuanced and contextually responsive approach to justice that considers what is creative and fluid on the ground.

Modern Justice and Its Structural Impediments

Justice today is often pursued as a fundamental principle of fairness, equality, and accountability. As a concept, justice represents the need to create a sense of equitable treatment and distribution of resources, ensuring that social and economic rights are guaranteed and that the system operates through a fair application of benefits and penalties. In this light, people seek justice to rectify wrongs, address grievances, and ensure that individuals are treated fairly and justly. This understanding presupposes that justice is abstracted as collectively achievable, and its application is equitable, certain, and transparent. To hold the tenet that justice is universally comprehensible and applicable, however,

belies its character. As detailed below, the realization of justice is shaped by its colonial histories and temporalities.

Tuck and Yang (2016) identify modern justice as a colonial temporality, whereby colonialism continues to influence how justice is perceived, structured, and experienced. In addition to reshaping the physical and material lives of colonized lands and people, colonialism also reshapes the temporal quality and dimensions of life that replace cyclical and relational views and gives, over time, a figure of uniform progress (Deloria, 1992). This colonial rationality manifests in various ways, such as by disrupting traditional temporal rhythms and cycles, imposing linear notions of progress, and creating new temporal hierarchies that prioritize colonial interests. Colonial temporalities thus involve an interplay between past, present, and future that shapes not only how time is perceived and experienced but also how justice is conceptualized and practiced, especially for colonized people the world over (Quijano, 2007).

The linear progress and passing of time disrupt connections with one's history and all relations, including ancestral knowledge, land-based practices, and human and more-than-human connections. Justice emerges as an ideological exercise outside of a relational context. Within such disrupted temporal connections, redress mechanisms isolate people from the relations needed for actual reparations or healing. In its place, as we further highlight in the case studies below, is a shallow redress mechanism that places colonial harms and abuses in the past, isolates people from all kinds of important connections, and reinforces colonial futures. Dian Million (2008), for example, points out how Indigenous truth commissions narrowly validate colonial violence within a framework of victimhood and past trauma. This will, to truth, draws on the pathology narrative of *past* victimization and trauma to adjudicate *present* grievances while isolating the stories from a complex colonial interplay that persists over time. Colonial temporalities of justice attempt to maintain colonized people within a relationship of victimhood and dependence while the state remains the arbitrator of its own harm.

The creation of new temporal hierarchies erases past harms and prioritizes colonial interests and futures. Modern powers seek to shape the trajectory of development in colonized spaces and regions. This can involve imposing economic systems, educational curricula, and cultural norms that align with colonial interests and perpetuate colonial hierarchies (Tarvainen, 2022). Best and Hartman (2005) show how ongoing calls for reparations and redress for the historical injustices of slavery are met with an incommensurability of grief where the emotional and historical weight of slavery cannot be addressed

through narrow legal frameworks of quantifiable damages and individualized rights. The legal system fails to recognize the continuity between past and present injustices, which limits the possibility of redress for those who collectively continue to experience colonial slavery and its effects. Justice is monopolized by the state and its institutions, which retain a narrow scope of how it is exercised (Farrow, 2013). As a point of access along spatial and temporal trajectories, justice operates as a site of exclusion and control for colonized people (Kristjánsson, 2003, p. 185) and limits our scope and possibilities for conceptualizing and practicing justice (Bergman Rosamond et al., 2023; McGill et al., 2017; Walby & Piché, 2011).

The relationship between modern justice and colonialism's temporality must be severed for other possibilities of justice. Interrogating the traditional narrative that portrays modernity as the inevitable endpoint of development reveals justice as a historical repetition concerned with disabling competing ways and forms of life. Justice is not fixed or static but dynamic, plural, and evolving, shaped by the relations of all worldly things. In their multiplicity, justices fall outside of normative conceptions and universal abstractions while drawing on local and diverse contexts and existing arrangements. This includes naming the overlapping and interconnected social, economic, environmental, spiritual, and political dimensions that give rise to hardships, conflicts, and violence and attending the tensions and divergences between the state and communities (Przybylinski, 2022). Justices are not limited to following calculable rules and norms of law but act as a deeper essence outside and within colonial temporalities and rooted in relations. In short, justices decolonize.

Through our case studies, we show how those who live through colonial violence inhabit spaces to understand its workings, expose its subtle nature, and dismantle its hold through their own justice advances. Decolonizing justices are renewing the presence of collective creativity and possibilities. The open-ended meaning of justice is its strength, connecting many different justice struggles in a push for collective change. A sense of immanence characterizes decolonial justice. It emphasizes the importance of connections and how individuals and communities engage with each other on an affective, sensory, and embodied level. Decolonial justice explores alternative forms of sociality and community building and envisions alternative futurities. This chapter highlights the possibilities of justice in the spaces of organized abandonment for MMIWG2S+ people in Canada and the failure to effectively evolve a just state intervention that resolves the problems of displaced women and the girl-child in conflict-ravaged parts of Northeastern Nigeria.

Nigeria and the Monopolization of Justice by the State

The first case study emerged out of growing concerns for displaced women and children from the insurgency in the northeastern part of Nigeria and the inadequacies of the National Displacement policy and institutional justice frameworks to address the many struggles and barriers encountered. The research focused on the impacts on women and children and the development of locally evolved mechanisms in response to the displacement. As the case study shows, many local activities reflected some of the more traditional practices and communal notions of justice historically used in Nigeria prior to colonization. Specifically, the study concentrated on displaced women and the possibility of locally evolved mechanisms developed to resolve social problems and, more importantly, extrapolate the existence of an Indigenous communal notion of justice that restores the entitlements of displaced women and children. The case study elaborates on the functionality of economic emancipation, enhanced access to education, social networking, and monitoring as community-based justice for the benefit of women and children.

The study adopted an ethnographic approach to explore the situation of women and children in displaced persons camps in Northeast Nigeria. Focus group discussions and in-depth interviews were conducted with women currently in the camps, those who had left, and government officials overseeing these camps. These interviews and discussions aimed to provide deep insights into the participants' perceptions of displacement and the camps. As further outlined below, the themes of justice and human rights were at the forefront of all these discussions. Our grounded methodological approach facilitated an in-depth and comprehensive understanding of the local context and cultural dynamics affecting displaced women and opened insights into alternative, community-based justice solutions. The study shows that, far from disappearing, traditional justice systems in Nigeria remain a foundation for the community-based approaches to justice found in the camps and for addressing contemporary challenges faced by displaced women and children.

Before the interaction of the Indigenous people of Nigeria with Europeans at the coastal lines and eventually deeper into the hinterlands, each of the different kingdoms and settlements scattered across what is now known as Nigeria had peculiar and complex justice mechanisms. These systems were deeply rooted in local customs, traditions, and values, and each played vital roles in these kingdoms' social, political, and economic organization (Ayan-dele et al., 1986). These traditional systems evolved from a consensus of

the members, a notion of collective responsibility, and harmony to maintain social order, resolve conflicts, and, ultimately, preserve relationships within the community.

The inherited colonial legal systems displaced traditional justice and endured long after the end of formal colonial rule in Nigeria. The disruption and displacement of traditional justice mechanisms by colonial powers are exemplified by notable events such as the deposition of Ovonranwen N'ogbaisi, the Oba of Benin kingdom in 1914, and the subsequent imposition of British political and administrative officials known as resident, district, and assistant district officers that wielded both administrative and judicial power in 1921 after the annexation of Ijebu Ode and Ikorodu as Native Authorities (Oduwobi, 2003, p. 554). The colonial incursions dismantled extant social institutions like the Oyo-Mesi, the traditional council in the Old Oyo Empire, an institution that oversaw adjudication and dispute settlement. At independence, the colonial legal frameworks continued to shape the justice system in the country despite protests and efforts to reform and adopt extant traditional mediatory practices (Albarus, 2023). The imposition of the British legal structure profoundly impacted existing justice traditions within the newly conquered territories, which eventually amalgamated into a single state. The disorientation and disruption of the extant operation of traditional justices eroded cultural beliefs that asserted the import of mediation and collective decision-making within communities. As it currently operates in Nigeria, the colonial justice system is fraught with overburdened courts, bureaucratic inefficiencies, corruption, limited resources, inaction, and inaccessibility. This system has serious implications for displaced women and children.

Closely linked to this colonial problem are displaced women and children in camps whose lives were severely constrained within exceptional states of deprivation and yet surrounded by the politics and policies of modern justice. Common to post-colonial states, the widespread insurgency attacks from the Boko Haram terrorist group in Northeast Nigeria displaced women and children. Ajayi (2020) explains that displaced women mostly lack basic needs, including food and other items like mattresses, blankets, mosquito nets, clothing, sanitary towels, and medicine, considered essential to their livelihoods, despite living in camps established by the government. An analysis of reports submitted by the National Emergency Management Agency shows a shortage of food and supplies in the camps contrary to the recommended living standards. For instance, the study showed that protein intake was deficient among the women, ranging from 25.4 to 30.4g daily. It was observed that they were fed mostly with sorghum, rice, and millet, a starch-heavy diet

seriously deficient in protein, vitamins, and minerals, underscoring a predisposition of displaced women to poor nutrition (Olaire & Adedokun, 2023). Interviews conducted during the study showed that most of the women are yet to recover from the shocks and stress of the insurgency, having lost their homes, husbands, children, and, in some cases, dignity and independence. According to Olaire (Olaire & Adedokun, 2023, p. 685), most women and children in the camps are trapped in poverty due to the inability of the government to actualize its policies, primarily due to the prevailing national economic condition.

Elizabeth Mutunga (2009) explains that in addition to the problems faced by displaced women and children's inability to access essential daily needs, rape and other forms of sexual violence prominent in conflict are often replicated in the camps. This study observed through interviews that, in some cases, displaced women were exposed to sexual violence while others commercialized sex as a means of survival. Apart from being a situation associated with conflicts, it is also important to state that before the Boko Haram conflict, sexual exploitation appeared to be deeply rooted in the prevalent cultural and religious practices of the Northern part of Nigeria. To put this in perspective, Okolo (2018) and Adewole et al. (2021) posit that low levels of education, lack of sensitization and support for victims of sexual violence, and the prevalence of child marriage within this region are precursors of sexual violence against displaced women.

Despite these challenges, women and children in northeastern Nigeria have developed innovative approaches within their communities to seek justice, compensation, and reintegration into the national consciousness of the state. The evolution of this concept of justice occurs against the backdrop of a widely perceived deep-seated colonial violence against women in northeastern Nigeria.

In response to the inadequate government support, women in displaced communities have demonstrated remarkable resourcefulness by forming cooperative societies focused on financial support. Through innovative initiatives like thrifting and revolving loan schemes, the women have created a sustainable means of accessing funds independently, reducing their reliance on unreliable government assistance programs. In addition to these cooperative efforts, the study highlights the diverse income-generating activities undertaken by women in the camps, including trading, shop-keeping, live-stock management, agriculture, and merchandising. Challenges, however, persist in accessing education, particularly for girls. These collective efforts and initiatives displaced women undertake signify resilience and the potential for fostering greater possibilities for justice.

Women have been able to organize into small groups of cooperative societies where they design a process of thrifting and contribute to a revolving loan scheme made available to each member according to a predetermined roster or schedule. This scheme aims to allow every member of this cooperative society to access funds no matter how meager. This resolution of immediate needs developed by the women builds a systematic and gradual unshackling from economic dependence on the government and the failure to implement its policies. In addition to the thrifting societies, our study identified at least five existing and thriving means of income generation for the women in the camp, including trading, shop-keeping, livestock management, agriculture, and merchandising.

Due to restricted access to educational opportunities as a result of religious beliefs, cultural practices, and, more recently, insurgency, a very high percentage of girls in the camps visited did not have basic literacy skills or education. They could not access educational opportunities even in places with a similitude of schools. It was also noticed that despite the guidelines provided for schooling in the National Policy, the actualization of educational opportunities within most camps through makeshift schooling arrangements has not shown promising results. Displaced women transfer their human and social capital and share their entrepreneurial skills with their daughters to reduce literacy and educational gaps. Focus group discussions reveal that despite their illiteracy or lack of educational opportunities, many women have innovated means of generating income from basic skills acquired before their displacement, managing their small businesses beyond the germination stage.

According to the National Policy, the government is expected to facilitate access to relief materials from its agencies and non-governmental agencies by providing support services such as skills training, medical outreach, credit facilities, and educational support for displaced persons. When politicians visit the camps to make donations to the occupants, women are hardly recognized or allowed to partake in the sharing or allocation of these donations and gifts. In some instances, the funds are either diverted by camp officials for personal usage or used purportedly to cater to other "pressing needs" within the camp.

Clashes between NGOs and government officials were reported to be a fundamental reason for the difficulty in actualizing certain parts of the National Policy in the camp. In other cases, relief materials from the government either fail to arrive on time or are not made available as promised, nullifying relevant guidelines in the National Policy document. This has led to a failure to safeguard the individual rights of displaced women against exploitation and unfair treatment. Access to humanitarian assistance and

other benefits provided by the government and other non-governmental agencies remains a key challenge for women living in displaced persons camps. Unfortunately, displaced women and their children often do not have the required resources needed for the networking of humanitarian support as their social cohesion and community have been disrupted by the insurgency and exacerbated by hardships in the camp. The study discovered this is further accentuated by their experiences of losing loved ones and disconnection from their homestead.

The study identified that monitoring and evaluation are fundamental to the actualization of policies, especially as they concern how they will activate the set goals of government as they apply to the rehabilitation and eventual relocation of displaced women. The study discovered that camp administrators did not often monitor personal concerns such as access to basic hygiene, healthcare, sanitary discipline, accommodation, appropriate allocation of space, or even evaluation of the activities of tutors in the makeshift educational facilities provided for the girl-child. In some of the interviews and discussions, the women were able to affirm that the imbalance in their treatment and welfare, despite their status as women with children, is a major pointer to the failure of the monitoring and evaluation process of the government despite making different appeals and presentations to the officials of the camps.

According to some interviewees, the National Policy document is deficient in sensitizing or supporting displaced women in resettlement. They claim that this is especially evident in failing to thoroughly envision a lucid approach that resonates with and underscores the inputs of displaced women about where to be resettled at the termination of conflict or the closure of the camps.

The study highlights how local communities have retained and evolved communal notions of justice that predate colonization, demonstrating the continuity of Indigenous practices despite the imposition of colonial legal systems. Colonial incursions disrupted traditional justice but did not erase them. The activities found in spaces of displacement are born of necessity, communal relations, and material access rather than from some imposed policy that can think through material, affective, and spiritual circumstances. Displaced women are devising and evolving a sense of traditional justice approaches, grown organically from their communal worldview. This approach allows important possibilities of resurging for themselves and their children. This shift in conceptualizing justice practices is inseparable from the daily realities of displaced women and children and offers important insights and alternatives to state-centric justice. This approach challenges the

dominance of colonial justice frameworks and emphasizes the effectiveness of Indigenous systems in restoring justice in their multiplicities.

Indigenous Women, Girls, and 2SLGBTQQIA Unearthing Justices

The National Inquiry into Missing and Murdered Indigenous Women and Girls (NIMMIWG, 2019) was established to examine the pervasive systemic violence against Indigenous women, girls, and 2SLGBTQQIA people in the lands known as Canada. The Inquiry gathered thousands of testimonies from survivors, family and community members, knowledge keepers, and experts. It analyzed more than half a million pages of documents to understand the factors contributing to the violence. With this critical mass of evidence, the Inquiry concluded that the breadth and depth of the ongoing racialized and gendered violence experienced by Indigenous women, girls, and 2SLGBTQQIA amounted to “race-based genocide” (NIMMIWG, 2019, p. 50). The term racial genocide was used to stress the deliberate and systematic destruction of Indigenous communities through various forms of racialized and gendered violence, including physical, sexual, and emotional, resulting from the interconnections of colonialism, patriarchy, misogyny, and racism. To address the many dimensions of this violence, the Inquiry issued 231 Calls for Justice that called on government, industry, organizations, and the public to broadly address Indigenous people’s rights to culture, health, security, and justice. Although not without its criticisms (Chartrand, 2023; Gardner & Clancy, 2017), the Inquiry represents an important public process that exposes glimpses into the character of colonialism through knowledge gathering, witnessing, and storying (Granzow & Dean, 2016). In this section, we glean from the more than 1,484 cross-country public hearings and evidence-gathering testimonies of families and survivors that have helped expose the breadth and depth of gendered and racialized violence. Similar to the displaced women and children of Nigeria, the testimonies offer possibilities for practicing justice outside of state and colonial operations through naming, knowing, and disrupting colonialism.

As consistently documented in the testimonies, colonialism remains a constant organizing force in the lives of Indigenous people. From the loss of lives, child apprehensions and disappearances, assaults and abuses, removal of life-sustaining supports and services, and displacements from vital connections, the magnitude of loss, grief, hardship, disconnections, and struggle

presented in the testimonies are, as Toni Morrison (1988) might say, unspeakable. At the heart of this silenced and ignored violence are the families and communities that not only expose the unspoken and erased violence but, as outlined below, the vital life force that exists at the level of communities to disrupt colonial temporalities.

The testimonies consistently highlight how early colonial traumas, such as forced assimilation policies, cultural genocide, and the disruption of traditional ways of life, have reverberated through generations, shaping the violence that they and their communities experience today. Individuals reflected on the shared experiences of loss, displacement, and marginalization that have shaped their community's lives and collective memory. "There have been tears. There's been blood in this territory. And, I want to acknowledge that long history of our people here and the spirits on this land" (NIMMIWG, 2017, Public Volume 15, p. 80). The testimonies emphasized how entire communities continue to bear the colonial scars, illustrating the cyclical nature of colonialism, wherein patterns of hardship, substance abuse, mental health challenges, and family breakdowns are perpetuated across generations of colonization.

If colonization remains the condition that makes violence possible, the testimonies act not only as a documenting or recounting of events but also as a counter-colonial recourse of visibility, offering important glimpses into dismantling colonialism's shapeshifting character.

But when I hear women, women like you, women like many others who spoke their truth, I feel so relieved, so relieved that the government have no choice to change the way they do things with or without an Inquiry. I know we have warriors. I saw them, and I still see them, but because of the Inquiry, Canada see[s] it. They see it, and even the world see[s] it (NIMMIWG, Public Volume 118, p. 48).

As evidenced in the testimonies, Indigenous communities have endured and resurged, not only experiencing but knowing the many faces of colonialism. "They didn't kill the Indian in us. We are still here. My mother lives on in me. And, when I look at my brother, she lives on in him. And, I look at my nephews and I look at their eyes, and she lives on in them" (NIMMIWG, 2018, Public Volume 79, p. 14). Colonialism's temporality runs deep and far, but so does the countering and intuitive knowledge of the families and communities who draw on the strength and knowledge of ancestors inherited through generations. This ongoing presencing through generations of colonial brutality subverts and defies colonial narratives of disappearance and erasure, which seeks to define the past, present, and future of Indigenous

peoples. The testimonies reveal an intuitive knowledge passed down through generations, reclaiming their presence and narratives.

Many of the stories in the testimonies weaved in and out of the past, present, and future, tracing a non-linear trajectory of colonialism as it was experienced across time and space. What is germane to this contextualizing is eradicating a linear and one-dimensional time-space continuum in which colonialism exists—to a multi-dimensional integration of time and space through ancestry, the day-to-day, and future generations.

And I want to acknowledge the long history of our people here and the spirits that are on this land the way that we all used to talk about those stories. The mythologies that are here, I want those to be acknowledged by you to understand that this land is vibrant with life and love and that with all of us together connected through our minds, through our hearts, we can grow with strength and heal ourselves, our communities, our young people, looking to the past, to the present, to the future (NIMMIWG, 2017, Public Volume 15, p. 81).

In the testimonies, knowing colonialism, speaking its name, and severing its temporal continuum is a vital counter-colonial force in the face of justice systems and institutions complicit in its exercise. By weaving together the threads of ancestral knowledge, lived experiences, and future generations, these testimonies create a tapestry of collective memory and cultivate community connections and belonging—a sense of collectivity that transcends individual experiences, as it emphasizes shared histories and communal resilience.

Colonialism works to create all kinds of rifts and divides between families and communities. The loss or degradation of land displaces and disrupts connections between communities, families, support, and resources. It also directly intervenes with the transmission of culture, language, and access to traditional lifeways.

It is a direct attack on our life givers, the same kind of attacks we see happening to our Mother Earth by aggressive resource extraction companies who bring workers into our nations, inflicting violence on our women and girls. It is an attack on our bodies, our spirits, our minds, our emotions, and our emotional well-being as we fight for our survival within the imposed colonial framework that is rooted in patriarchal structures that have legislated violence against Indigenous women and girls (NIMMIWG, 2017, Public Volume 10, p. 76).

Maintaining relations with humans and more than humans also disrupted a colonial hold throughout the testimonies. “We need that connection to the land because it makes us stronger. We need that connection to our language

because it makes us stronger. We need those connections to our families because it does make us stronger” (NIMMIWG, 2017, Public Volume 7, p. 30). The testimonies consistently called out colonial incursions and thinking through the different ways (re)connections can be made. “At this point in time in history, we need each other more than ever. [We] see what’s going on in the world. We’re not blind. ... If we don’t unite, we have no solid foundation to build from” (NIMMIWG, 2017, Public Volume 20, pp. 140–141). Emphasizing collective relationships and responsibilities took precedence over any punitive or retributive impulse more commonly found in modern justice systems.

The outpouring of connections was expressed through stories of community care, support systems, and coming together to heal and advocate for others. The mass support in searches, for example, is reflected in initiatives like search toolkits, guides for working with the police and media, drone searches, dragging rivers, offering accommodation or paying for a hotel room, building banners and signs, providing gas and supplies, offering food, and fundraising among many more. These activities highlight the collective intergenerational nature of this work, spanning over 50 years of documented advocacy. In describing their mother, one individual testified, “[she was] attending rallies and marches and working for the people. And I remember asking her one time,” “Why do you do this? Some of these people are just talking about you,” and she answered me, like, “They need help” (NIMMIWG, 2017, Public Volume 22, p. 20). Supportive connections generate networks of solidarity, care, and healing. Similar to the case in Nigeria, these connections provided practical assistance and resources, allowing community members to mobilize effectively in their search efforts and advocacy.

Healing was a central theme in the testimonies, not framed by narratives of damage or brokenness but rather connected to the ongoing struggle against colonialism. Healing is often framed as a collective process that involves families, communities, and nations. The testimonies underscore the importance of community support, solidarity, and shared experiences in the healing journey. This collective approach recognizes that the impacts of colonialism and violence are not just individual but affect entire communities. Healing is often connected to the revival and practice of cultural traditions, languages, and ceremonies that have been suppressed.

But, when this is done, when this is done and the Inquiry sums everything together, that the healing continues and the stories be told, because these stories need to be recorded, and our people, our ancestors, in the next hundred years are going to understand all the families and all the hardships

that we went through, but we still survived. We still survived, and we'll continue to survive, because all our people that are coming, all those unborn, will hear these stories (NIMMIWG, 2017, Public Volume 31, p. 5).

Many of the testimonies were stories of reclamation, resistance, and repair, asserting an agency over Indigenous futures. They centered on collective relationships and responsibilities—anti-colonial justice par excellence.

Patricia Monture-Angus argues that “Canadian laws are not an Aboriginal answer” because “our survival as a people has always depended on our own creativity and not on a political power-sharing with the federal government” (1995, 185). Accountability was central to the violence and loss but it was also projected beyond the individual perpetrations of harm to state and collective accountability. Accountability included transparency in investigations, legal processes, decision-making and taking responsibility for actions or inactions. The testimonies included legislative and policy changes in child welfare practices, changes in the justice system, and improved protocols for working with families and communities. It also included community oversight over these processes as a form of accountability. Decolonizing accountability forces an understanding of how justice is deeply connected to the colonization of the people and land.

The families and communities have always been at the heart and soul of dismantling colonial violence. The weaving of past traumas with present experiences, the naming and knowing the faces of colonialism, a (re)building of community and relations, and cultivating an understanding of healing and accountability reflect multiple possibilities for justice. From this vantage point, justice does not occur “over time” but through time and space, where strength and healing can be drawn from ancestors, community, and futurity.

Discussion and Conclusions

The Nigerian and Canadian case studies are a testament that colonialism persists in shaping the conditions of colonized people today. Our respective studies at the local grassroots level offer valuable insights into possibilities for justices and the impossibilities of state justice systems in addressing gendered, racialized, and colonial violence. Where the systemic failures of the state have been well documented and acknowledged in Canada and Nigeria, there has been little government or public attention on how institutions are colonial by nature and how communities organize in the wake of segregation, displacement, organized abandonment, and limited resources.

For colonized people, justice is rarely achieved through modern justice with linear and narrow procedures and legal norms that remain disconnected from the people and places where justice matters the most. When justice is monopolized within state institutions, communities are forced to appeal to colonial sensibilities that demand compliance with some of the more common modern liberal values of what is possible and for whom.

Justice must be located within contextual relations and the activities, things, and people involved. Justices are amorphous and diffuse; they need to be considered in the complexity from which the hardships, conflicts, and struggles and should not dislocate, isolate, or disconnect people from each other or from the places it is most needed. The communities and their activities are rooted in cyclical rhythms, connected to ancestral knowledge, and in relation to future generations, practiced through ceremony, traditions, storytelling, and rituals, among others.

Community justices, in their multiplicities, emerge from widespread neglect and denial of justice, attending to the many spaces and people justice has deserted, failed, or hindered. Within these spaces, families, communities, and individuals create alternative possibilities for understanding and practicing justice, justices that run with and against this organized abandonment faced by colonized people through colonial violence and war.

In the wake of ongoing colonial practices, colonized people are not simply advocating or calling for justice but recreating and redefining conceptions and possibilities for justice. They can do that precisely because they operate outside of state support and definitions of the traditional structures of power and authority, pointing toward the potential for alternative forms of knowledge production and community building that can challenge and disrupt colonial temporalities and decolonize justice.

Disrupting the limitations and constraints of traditional understandings of justice within settler states opens up a space for more expansive and responsive justices. Justice is and needs many things, but for it to grow, it must cultivate people, build communities, and provide the everyday needs that will dismantle colonial violence. Accountability through this kind of grounded collective justice moves away from an individualized response toward community healing, wellness, and growth. In these in-between spaces that collide, converge, and deflect with colonized space, there exists a potential where displaced peoples can expose and transform some of the more stable and coherent colonial discourses and practices.

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12

Incarceration as Colonisation: Indigenous Imprisonment and Self-Determination in Australia and Kanaky

Lisa N. Billington

Introduction

A carceral archipelago has colonized the land of the free. (Mendieta, 2007: 292)

For generations, prison population rates in colonial carceral systems have reported breathtakingly high levels of Indigenous incarceration. While the four ‘CANZUS’ countries—Canada, Australia, Aotearoa New Zealand and the United States of America—are often cited in this regard (e.g. Cunneen & Tauri, 2019), this phenomenon also manifests in other colonial carceral jurisdictions: Kanaky (New Caledonia), for example, and Kalaallit Nunaat (Greenland) (see Billington, 2023; Deltenre, 2022; Lauritsen, 2014). Scholarship in this field has traditionally framed the high levels of Indigenous representation so much in evidence in colonial carceral systems as unintended and unfortunate legacies of long-ago colonial histories—or, as one report suggests, of ‘good intentions’ on the part of colonial invaders, but ‘disappointing results’ (Office of the Correctional Investigator, 2009). This chapter adopts a different view.

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This chapter focuses its analysis on two case study jurisdictions: Kanaky and Australia. Geographically close Pacific neighbours, the European histories of Kanaky and Australia are overtly and inextricably enmeshed with colonial carceral control. The lands of Kanak peoples in Kanaky, and of Aboriginal and Torres Strait Islander peoples in Australia, were each earmarked by colonial powers as sites for penal colonisation. In Kanaky, it was the French who pursued penal colonisation; in Australia, the British. Indeed, as this chapter discusses, the colonial invasions of both Kanaky and Australia can be construed as a series of violent successive confinements—from penal colony, to cannon fodder (Deltenre, 2022: 15), to the modern prison.

Building on the observations and reflections of those with lived experience of Kanaky and Australia's prisons, as well as on critical scholarship and Indigenous advocacy work in these jurisdictions, this chapter probes the structural relations between colonisation and incarceration, and between decolonisation and decarceration. Repositioning Indigenous incarceration as an integral part of a colonial project which is both *lived* and *ongoing*, this chapter scrutinises the imperialist logics driving historical and contemporary exercises of colonial carceral control over Indigenous nations. Drawing on illustrations from Kanaky and Australia, this chapter concludes that the inherently colonial nature of Indigenous incarceration necessitates the fundamental fracture of contemporary structures of colonial invasion—including the prison. Only then can Indigenous decarceration become a reality.

The Colonial-Carceral Relationship

In the early days of Australia and Kanaky's colonial invasions, it was convicts who provided imperialism's 'conquering hordes' (Agozino, 2003: 35). In Australia, penal colonisation commenced in 1788. France, buoyed by Britain's 'success' in Australia, commenced Kanaky's penal colonisation 75 years later, in 1863 (see Forster, 1996).

In the early years of colonisation, the liberal use of penal transportation to Australia and Kanaky facilitated unprecedented levels of colonial occupation in lands far removed from the hearts of the British and French empires (Anderson, 2018: 5). During the first French census in Kanaky in 1860, Europeans numbered just 432 persons; within 40 years, more than 30,000 convicts and political exiles had been dispatched to the archipelago's shores (Fisher, 2013: 28; Merle & Coquet, 2019: 256). In the colony of New South Wales (NSW), the First Fleet of around 1500 colonial invaders arrived in 1788, and grew to 36,500 by the time the first NSW census took

place in 1828 (*Census of New South Wales*, 1828). When a national simultaneous census of the colonies was carried out barely 50 years later, that figure had swollen to more than 750,000 (Byron, 1883). (These NSW population figures, as the colony's Registrar-General notes, exclude 'wandering [A]boriginies' [Byron, 1883].)

Despite stark differences in context and culture among British and French imperial powers, the contours of colonial carceral logics in Kanaky and Australia evince startling similarities. This should come as no surprise. There is extensive literature detailing the racist power relations at play in constructions of 'crime' and strategies for 'crime control' at sites of colonial invasion. This volume continues to develop this vital critique of racial injustice as it appears across the globe. Decolonial criminologist Biko Agozino summarises: an analysis of criminology's development clearly demonstrates the ways imperialism uses criminological knowledge; 'how it can be seen *as a criminological project* – imprisonment with or without walls, a widening of the net of incarceration' (Agozino, 2003: 6). Criminology and imperialism are one another's natural bedfellows. '[C]rime and control seek to exercise colonial power over Others by imperialist force, threat of force or fraud and cunning rather than through the democratic process' (Agozino, 2003: 244). Indeed, had 'democratic process' been adhered to in the early years of Australia and Kanaky's colonisation, so outnumbered were the colonial invaders that they could not have hoped to justify their jurisdictional assertions over Indigenous peoples.

As the case studies in this chapter illustrate, colonial carceral logics are manifestations of what Kanak activists have sometimes called 'colonial rationality' (World March of Women - Kanaky, 2024: 5), and what others have variously called 'imperialist logic' (Agozino, 2003: 35), 'colonial logics' (Chartrand, 2019: 72) and 'logics of elimination and racial superiority' (Maddison, 2009: 104). Laundering imperialist intent through colonial criminal law systems, colonial carceral logics problematise (indeed, criminalise) the presence and resistance of Indigenous peoples on Indigenous land; they also offer a neat solution for both Indigenous repression and Indigenous dispossession: the prison.

When the social order and norms embedded in colonial criminal law systems are geared towards maintaining and expanding the colonial project, it is those who resist the colonial endeavour who find themselves subject to criminalisation. In both Australia and Kanaky, for example, there are overt links between Indigenous imprisonment and Indigenous independence movements.

During 2024, as France was preparing to welcome the world to the Paris Olympics, the French National Assembly in Paris attempted to push through

amendments to the *French Constitution*. If implemented, the constitutional amendments would fundamentally redraw the parameters of Kanaky's electoral roll to include a greater number of the French settler ('*caldoche*') population. On 15 May 2024, the French National Assembly voted overwhelmingly (351:153) in favour of the constitutional reform (France 24, 2024). Kanak, who comprise 41.2% of the total population in Kanaky, resisted (Institut de la Statistique et des Études Économiques Nouvelle-Calédonie, 2019). France, characterising Kanak protests and resistance as an unprecedented insurrection, declared a state of emergency in Kanaky (La Dépêche, 2024: 8:17 am).

Commencing in May 2024, just hours after the French National Assembly vote, the French colonial state used a French-declared state of emergency in Kanaky to introduce a range of 'exceptional measures' which derogated from the rule of law (Customary Senate of New Caledonia, 2024: 18). French authorities closed Kanaky's international airport and banned TikTok (Samidoun Paris Banlieue, 2024); movement restrictions and curfews were imposed, and gatherings were prohibited (Haut-Commissariat de la République en Nouvelle-Calédonie, 2024). In 2025, a range of these 'exceptional measures' still remain in place, almost a year after their entry into force (e.g. Haut-Commissariat de la République en Nouvelle-Calédonie, 2025).

During the opening days of the state of emergency, the French Minister of (so-called) 'Justice' issued a confidential circular to Kanaky's public prosecutor's office. The communication urged prosecutors to take the strongest possible action in relation any breaches of any state of emergency measures. The Minister also called for the deployment of criminal investigative processes in administrative matters, and for prosecutors to seek the heaviest penalties available for any infractions (FranceInfo, 2024). In Kanaky, the Customary Senate of New Caledonia characterised the Minister's instructions as the formal 'judicialisation and criminalisation' of a civil conflict, and more specifically, as the 'criminalisation of an [I]ndigenous emancipation movement' (Customary Senate of New Caledonia, 2024: 20).

By mid-September 2024, France had deployed more than 6,000 French law enforcement personnel to Kanaky (Antoine-Perron, 2024)—one officer for every 45 people on the islands. More than 2,343 Kanak had been arrested in Kanaky (Customary Senate of New Caledonia, 2024: 4): equivalent to *two per cent* of the archipelago's total Indigenous population (Institut de la Statistique et des Études Économiques Nouvelle-Calédonie, 2019). Claiming the prosecution of Kanak political leaders was 'sensitive' (Surk, 2024), French authorities transported more than 60 Kanak leaders to metropolitan France to face trial there (Customary Senate of New Caledonia, 2024: 23). This,

suggested France, was necessary to allow French authorities to conduct their investigations in a ‘calm manner and without any pressure’ (Surk, 2024). This précis is one story among tens of thousands in the ongoing global narrative of carceralism and its intractable links with colonialism. ‘[E]very picture tells the same story’ (Roberts & Reid, 2017); and the story is not new.

Looking back a little further: in the early 1970s in Canberra (Australia’s capital city), Indigenous leaders set up an umbrella on the lawns of the Australian Parliament and the Aboriginal Tent Embassy was born. In response, the Australian colonial state government held a special sitting of parliament, passing legislation expressly targeted to eliminate the embassy and repress Indigenous resistance to the ongoing colonial incursion. Wiradjuri Elder Isobell Coe, who worked to maintain the Aboriginal Tent Embassy for decades, reflects on the aftermath of the passage of the legislation:

The police moved in the early hours of the morning and arrested people and pulled down the tents.

The first protest was a very violent one. Aboriginal people were outnumbered by the police. We had to stand on the outside of the circle and the tent was in the middle and we had to watch the police march up line by line file by file and we thought we were all going to die here. We were prepared to die at the Aboriginal Tent Embassy in Canberra that day. (Watson, 2000: 18)

Colonial states deploy colonial criminal law systems to criminalise the resistance of Indigenous peoples to the ongoing colonial incursion, while simultaneously turning a blind eye to colonial state-commissioned crimes: crimes of murder, theft, rape, kidnapping, enslavement and genocide. Imperialist logic, as Agozino so cogently describes, ‘ignores imperialist crimes’ (Agozino, 2003: 35). Imperialist logic refuses to countenance the colonial state as perpetrator (see Watego, 2021).

As France accelerated its military build-up in Kanaky in 2024, Kanak leaders, activists and advocates continued to call for the international community to stand in solidarity with Kanak peoples (see Customary Senate of New Caledonia, 2024; Makalu & Duong-Pedica, 2024; Taşkın, 2024). As one Kanak activist group observed:

France, historically a colonial empire, has not completed a single peaceful decolonial process. Today, faced with the rapidity and intensity of colonial repression, we now see that the entire process, including the Nouméa Accords, was a fundamentally hypocritical colonial manoeuvre aiming to extinguish Kanak revolt. It was a process of pacification aiming to serve their interests and further the process of settler colonialism. [French President] Macron’s

latest visit [to Kanaky] has confirmed the maintaining of his political strategy of recolonisation through settler colonialism, through his announcement that ‘appeasement cannot mean going backwards’. (World March of Women - Kanaky, 2024: 6)

‘Backwards’, that is, to a time before France’s carceral archipelago had ‘colonized the land of the free’ (Mendieta, 2007: 292).

In Kanaky, in Australia and in colonial states around the world, colonial carceral institutions provide colonial-controlled spaces between the ‘crime’ of Indigenous Otherness and the fulfilment of the colonial objective: the elimination of Indigenous Otherness (Billington, 2022: 57). It is from the penal colonisation of Kanaky and Australia that the carceral imperative spread like a cancer from convict-colonists (or, in Kanaky, *forçats-colons*) to Indigenous peoples. Mi’kmaq Elder and abolition advocate Wanda Whitebird summarises: ‘[w]hen those white people came and they wanted to get rid of us, so they legislated us out of existence. The prison system was only an extension of that process’ (Criminalization and Punishment Education Project, 2020: 1:06:13–27). The remainder of this chapter explores the purposeful and continued deployment of carceral control over Indigenous nations in Australia and Kanaky as a tool of the modern-day colonial project to subdue, subjugate, dispossess and eliminate Indigenous peoples.

Colonial-Carceral Case Studies: Kanaky and Australia

The incarceration of Indigenous peoples cannot exist apart from colonisation. Transplanted onto Indigenous lands, carceral systems are core machinery of the modern colonial state as it works to consolidate its theft of Indigenous lands. Fanon writes:

The colonial world is cut in two. The dividing line, the frontiers are shown by barracks and police stations. In the colonies it is the policeman and the soldier who are the official, instituted go-betweens, the spokesmen of the settler and his rule of oppression. (Fanon, 2001: 29)

In this section, I examine the contours of these frontiers as I explore the colonial-carceral relationship through the lens of two case studies: Kanaky and Australia.

A Kanaky

Kanak peoples are the Indigenous peoples of the archipelago currently called ‘New Caledonia’ or Kanaky. Kanaky is located less than 1,500 kilometres off Australia’s northeast coast; around halfway between Aotearoa New Zealand and the Solomon Islands. The term ‘Kanak’ is used by Indigenous peoples in Kanaky to distinguish themselves from ‘caldoche’—French settler colonists and their descendants. Over the past decade, population trends indicate that the proportion of Kanaky’s population identifying as Kanak has been increasing. The total population of Kanaky is around 270,000 people, with Kanak peoples representing almost 112,000 people—41.2% of the total population (Institut de la Statistique et des Études Économiques Nouvelle-Calédonie, 2019). The prison population tells a different story.

Kanaky’s prison population rate is 199 per 100,000—almost double that of metropolitan France (Fair & Walmsley, 2024: 13, 16). As of April 2024 (prior to the entry into force of the French-declared state of emergency in Kanaky), Kanaky’s total prisoner count was 587 people (Fair & Walmsley, 2024: 16). Males represent 96% of the prison population (Mouchenik et al., 2022: 5), with youth ‘delinquency’ accounting for almost one-quarter of cases appearing before the courts (Mouchenik et al., 2022: 2; see also Deltenre, 2022: 141–144).

While French authorities oppose the disaggregation of prison data on the basis of Indigeneity, reports from Kanak groups (see, e.g., Customary Senate of New Caledonia, 2024: 23–24; Congrès Populaire Coutumier Kanak, 2012) and independent researchers (see, e.g., Anaya, 2011: 15; Deltenre, 2022: 34, 102; Mouchenik et al., 2022: 2) confirm that Kanak people represent between 90 and 95% of Kanaky’s prison population and up to 99% of the youth detention population (Anaya, 2011: 17). France has proved notoriously reluctant to permit external reviews of its imposition of *justice de la France* (the so-called ‘justice of France’) (Deltenre, 2022: 111) in Kanaky; however, in 2016 a Belgian ethnologist, Chantal Deltenre, was invited by French administrators to conduct a month-long ‘observation mission’ at Kanaky’s *Camp Est* (East Camp) prison.

Camp Est has long been recognised for its deplorable conditions (French Pacific Journal, 2024; Hazan, 2019). Profoundly overcrowded (there is less space per person ‘than is mandatory for a dog in a kennel’: Radio New Zealand, 2023) and grossly understaffed (just one addictionologist and one part-time psychologist service Camp Est’s more than 550 prisoners: Mouchenik et al., 2022: 6), Camp Est has long been considered the ‘shame

of the Republic' (French Pacific Journal, 2024). Indeed, as early as the 1930s one Aotearoa New Zealand journalist wrote:

Almost everywhere he went in the South Seas last century the white man turned what nature intended as a paradise upon earth into a positive hell. Above all did that apply to the island of New Caledonia, now a French possession, and for forty years one of the most dreaded penal settlements in the world. (Ramsden, 1938: 6)

In 2015, the European Court of Human Rights in *Yengo v France* described the degrading and inhumane conditions endured by inmates at Camp Est (*Yengo v France*, 2015: 1). Six prisoners are detained in cells measuring just three metres by five metres. Cells include a squat toilet situated in the floor of the shower, a single sink in which to do the dishes and laundry and five bunk-style beds—the sixth inmate sleeps on the floor (*Yengo v France*, 2015: 2). The toilets regularly overflow and soil the mattresses (*Yengo v France*, 2015: 2). Two-thirds of Camp Est's prison cells are shipping containers with inadequate ventilation or cooling (Hazan, 2019: 72)—this in a humid tropical climate where temperatures reach well over 30 °C (86 °F) in summer.

During her 'observation mission', Deltenre reflects on the sense of radical revolt and deep sadness which simultaneously pervade Camp Est's prisoners (Deltenre, 2022: 57). Self-harm is endemic, with prisoners impaling their feet and stomachs with metal rods and fan spokes (see, e.g., Deltenre, 2022: 57–59). Kanak prisoners, particularly young detainees, report a profound sense of being under the thumb of French authorities (Deltenre, 2022: 141). Suicides are not uncommon. The father of one Kanak inmate who died by suicide while incarcerated in Camp Est wrote to Kanaky's public prosecutor after his son's death. In his missive, he denounces the entrenched racism of the colonial carceral system in Kanaky and its inherent opposition to *la vie en tribu* (Deltenre, 2022: 11)—the 'tribal life'.

Deltenre's observations of the situation in Camp Est echo the reflections of carceral survivor and French abolitionist Jacques Lesage de La Haye: 'Prison is thus madness, suicide, escape, or death. Indisputably, we witness psychic, physical, or social destruction. Or all three. It's a world of violence' (Lesage de la Haye, 2021: 31). Incarceration is 'a slow death penalty' (Lesage de la Haye, 2021: 13). Reflecting on the repressive tactics of colonial regimes the world over, Samidoun Paris Banlieue summarises:

France, through its colonial administration, deploys a repressive security arsenal that on the one hand protects the settlers on the land and their reactionary

militias, and on the other, attempts to destroy the country's Kanak independence movement. Imprisonment and incarceration are a weapon of choice in this overall colonial strategy. (Samidoun Paris Banlieue, 2024)

Until 2023, Camp Est was Kanaky's only prison, with an official capacity of 390 persons and an occupancy rate of over 150% (World Prison Brief, 2024).

Following the French National Assembly vote in May 2024, France deployed a massive military presence to Kanaky under the guise of maintaining peace and security; yet armed with heavy weaponry (Makalu & Duong-Pedica, 2024: 6–7). Unsurprisingly, this has corresponded with soaring arrest rates in addition to executions and injuries (Customary Senate of New Caledonia, 2024), as Kanak resist 'the state of emergency, the imposition of a curfew, the excessive deployment of thousands of French soldiers, the arrest of thousands of protestors, the murders, the state's tolerance of armed militias and the deportations of militants to France' (Makalu & Duong-Pedica, 2024: 6).

Prior to the 2024 French crackdown on Indigenous independence protests, Kanaky's entire prison population was 587 people (Fair & Walmsley, 2024: 16); then, between 14 May and 10 June 2024, around 1,500 people were arrested (Chenais, 2024; Cursino, 2024). This trend persisted throughout 2024 and by mid-September, the equivalent of more than two per cent of Kanak peoples in Kanaky had been arrested: 2,343 people (Customary Senate of New Caledonia, 2024: 4). With French law giving the French High Commissioner of the Republic in New Caledonia the authority to declare political representatives and candidates ineligible to hold office on the basis of criminal prosecution (*Organic Law No. 99-209 of 19 March 1999*: art 195), the ongoing impacts of the 'judicialisation and criminalisation' of Kanaky's Indigenous independence movement may reverberate for generations (Customary Senate of New Caledonia, 2024: 20).

It is in this context of accelerated criminalisation of Kanak resistance that France has pledged to make the single largest public investment in Kanaky's history: €500 million towards the construction of a new 600-person prison (French Pacific Journal, 2024). This new prison (in Ducos, Nouméa), in addition to the overcrowded facilities at Camp Est and Koné's new prison (which officially opened in 2024 with capacity for 120 prisoners: French Pacific Journal, 2024), will give France the capacity to incarcerate 1,307 people in Kanaky out of a total population of 270,000. In the words of former President of the Kanak Socialist National Liberation Front or *Front de Libération Nationale Kanake et Socialiste* (FLNKS) Jean-Marie Tjibaou: "Our fathers" claims were always met with a colonial administration and

gendarmes [French military police] saying that they were wrong because they were Kanak, whatever their rights might be' (Tjibaou, 2005: 144).

The realities of the colonial-carceral relationship in Kanaky have, perhaps, rarely been more stark at any period in the twenty-first century; however it is vital to recognise that 2024 attempts by French authorities to redefine voting rights in Kanaky are the only most recent in a series of persistent, long-standing efforts by France to undermine the potential for Kanak independence (see Billington, 2025). In 1972, then-French Prime Minister Pierre Messmer publicly advocated for France to 'head off' Kanak independence through a targeted policy of immigration to the archipelago (see David-Ives, 2017: 178). In the early 00s, France went so far as to make it harder to even identify how many Kanak people live in Kanaky by adjusting population census categories. The new categories render it impossible to compare current population information with earlier censuses (Duong-Pedica, 2023: 77–80).

Yet, despite concerted French efforts, recent years have seen Kanak peoples constituting a growing proportion of Kanaky's population. In the five years to 2019, Kanaky's population census identified a 2.1% increase in Kanak peoples in Kanaky, with the Kanak population growing from 39.1% of the Kanaky population to 41.2% (Institut de la Statistique et des Études Économiques Nouvelle-Calédonie, 2019). Notably, this upward trend in the number of Kanak peoples in Kanaky directly coincides both with France's unilateral and non-consensual decision to hold an independence 'consultation' in 2021 during a period of Kanak mourning while the Covid-19 pandemic ravaged the islands, and with 2024 attempts by France to once again alter voter registration categories in favour of the settler population (Brennan, 2024). Head of the Young Kanaks Movement Daniel Wea testifies: 'Kanak want to declare to the world: "I exist as a people. They want to suffocate me, but I will not allow it"' (Taşkın, 2024). By contrast, French diplomats in the region continue to assert: 'New Caledonia until further notice is France' (Brennan, 2024).

Kanak activists continue to raise the alarm on the French colonial state's live and ongoing project of Kanak repression and dispossession. Although celebrating the 'renewed visibility of the Kanak struggle in our region and in the world' over the course of 2024, Kanak activists Roselyne Makalu and Anaïs Duong-Pedica observe that:

[W]e must also interrogate the little visibility and solidarity in the past 40 years. ... [I]n Kanaky, pro-independence activists and political parties have tried to warn of the colonial practices of the French state to evade decolonization. Kanaky needs solidarity when Kanaks are being shot by militias,

the police and the military, but it also needs solidarity during the everyday colonial 'normality,' while the racist policies and practices of France and anti-independence political leaders suffocate the Kanak people. (Makalu & Duong-Pedica, 2024: 9)

When justifying the French colonial state's vicious repression of Kanak peoples during the French-declared state of emergency in 2024, then-French Prime Minister Gabriel Attal rationalised the overwhelming deployment of colonial criminal law systems against Kanak peoples by declaring violence to be neither tolerable nor justifiable under any circumstances (Libération, 2024). This, while the colonial state turned a blind eye the emergence of French loyalist militias in Kanaky: so-called 'vigilant' (or, indeed, vigilante) neighbours who, according to French representatives, are simply residents 'taking charge of their own security' (see Customary Senate of New Caledonia, 2024: 21–22). This is, as Agozino so cogently describes, the 'imperialist logic ... which ignores imperialist crimes' (Agozino, 2003: 35). One may think that only the 'legendary stubbornness of the French Colonial State' (World March of Women - Kanaky, 2024: 3) could fail to recognise the deadly irony of the situation; however, as we will see below in relation to Australia, colonial states the world over deploy deeply flawed and fundamentally hypocritical imperialist logics to justify the unjustifiable.

B Australia

Aboriginal and Torres Strait Islander peoples are the Indigenous peoples of the land currently claimed by the Australian colonial state. 'Australia' is located in the globe's southern hemisphere, partway between the African and South American continents. At their closest points, islands in the Torres Strait are less than five kilometres off the coast of Papua New Guinea.

In a colonial state of almost 27 million people (Australian Bureau of Statistics, 2024b), Aboriginal and Torres Strait Islander peoples currently constitute a population minority, representing 3.8% of the Australian population (Australian Bureau of Statistics, 2023). (It is worth noting, however, that when relying on boundaries determined by Indigenous nations rather than the colonial state, there are many regions of Australia where Indigenous peoples continue to constitute a population majority in their homelands.) As in Kanaky, the prison population tells a different story.

In a national prison population of 43,305, Aboriginal and Torres Strait Islander peoples comprise 15,070, or 35%, of people in Australian prisons (Australian Bureau of Statistics, 2024a). In youth detention, this figure can

be as high as 100% (Maxwell, 2023). In parts of Australia, some cohorts of Aboriginal men have a one in two chance of being incarcerated during their lifetime (see Leigh, 2020: 10). It is now well established that Indigenous peoples in Australia are the most imprisoned people on earth (Anthony, 2017).

The profound levels of incarceration experienced by Aboriginal and Torres Strait Islander peoples first drew global attention in the late 1980s. On 6 August 1987, Lloyd James Boney—an Aboriginal man from Brewarrina NSW—was found hanging from a blue and white football sock in his police lockup cell. He was the fourteenth Indigenous person reported to have died in police custody that year. By the end of 1987, that figure had reached 22 deaths—almost half of which occurred in the state of Queensland (Muirhead, 1988: 85). By the end of the decade, that figure exceeded 100 (Muirhead, 1988: 85–87). In response to growing political pressure to take action, the then Australian government established the Royal Commission into Aboriginal Deaths in Custody.

In Australia, Royal Commissions are largely a product of the colonial state's British colonial heritage. They represent public inquiries into matters deemed by the colonial state to be of public importance. Commissioners are appointed by the government of the time but conduct their investigations independently of the government itself. It is important to note, however, that it is the colonial state which defines Royal Commission terms of reference, essentially retaining the power to narrow or expand the scope of an inquiry on terms preferred by the colonial state.

In 1987, the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) was convened to 'study and report upon the underlying social, cultural and legal issues behind ... deaths in custody' (Dodson et al., 1991: vol 1, preface). The terms of reference limited the Royal Commission's investigations to the deaths of Indigenous people that were reported in Australia between 1 January 1980 and 31 May 1989. It also largely confined the meaning of the word 'custody' to deaths that occurred in 'custodial facilities' (Williams, 2001: 2). This means that the deaths of people whom police were attempting to detain—for example, through a high-speed police chase—were excluded from the scope of the inquiry.

The RCIADIC produced 110 reports, over 200 shelf metres of records and developed 339 recommendations over the course of its inquiry (National Archives of Australia, n.d.). Key among the Commission's findings was that Aboriginal and Torres Strait Islander people were dying in custody at a far greater rate than non-Indigenous people because they were grossly overrepresented in the country's prison population (Dodson et al., 1991: vol 1,

preface). It was hoped by some that the RCIADIC's findings and recommendations would be a turning point for Australia's inflated Indigenous incarceration levels. These hopes have not been realised.

Since the RCIADIC delivered its final report to the Australian colonial state government in 1991, there have been significant concerns regarding the implementation of the Royal Commission's recommended reforms. In 2018, Deloitte issued an Australian colonial state government-commissioned report claiming the Commonwealth, State and Territory governments had implemented all but 6% of the Royal Commission's recommendations (Deloitte Access Economics, 2018: 701). Other recent reports from the Australian Institute of Criminology underscore that Aboriginal and Torres Strait Islander peoples are now less likely to die in custody than non-Indigenous detainees (Gannoni & Bricknell, 2019: 4). Yet, this is not a new assertion: the RCIADIC itself noted that Indigenous people were *not* more likely to die in custody than non-Indigenous people on a per capita basis, but rather, that high numbers of deaths in custody were indicative of the 'grossly disproportionate' representation of Aboriginal and Torres Strait Islander people in Australia's prisons (Dodson et al., 1991: vol 1, preface). RCIADIC Commissioner J. H. Wootten observed during a public seminar in late 1990 that in the eight years to 1988, if non-Aboriginal people in custody in Australia had died at proportionally the same rate as Aboriginal people, 'there would have been something like 7400 non-Aboriginal deaths, rather than the 368 that occurred' (Wootten, 1991: 58).

Don Weatherburn et al. (2024) are cogent exemplars of the underlying assumptions of traditional criminological research—research which, drawing on colonial carceral logics, champions the interests of the colonial state. In 2024, postulating a 'new' theory of Indigenous contact with the Australian criminal law system, Weatherburn et al. authored an Australian Institute of Criminology report titled, 'Towards a Theory of Indigenous Contact with the Criminal Justice System'. The report's authors rely on data from the National Aboriginal and Torres Strait Islander Social Survey (NATSISS) to conduct a multivariate analysis on 2014–2015 survey data, based on whether a respondent had either been imprisoned or arrested in the preceding five years (Weatherburn et al., 2024: 10). Starting with these two dependent variables, Weatherburn et al. then assess a selection of covariates such as age, gender, alcohol use, use of illicit substances, remoteness, marital status, school completion and the like (Weatherburn et al., 2024: 18–19) in order to develop an 'intuitive picture' (Weatherburn et al., 2024: 21) of the individual factors associated high levels of Aboriginal and Torres Strait Islander contact with the Anglo-Australian criminal law system. The issue

with Australian criminological ‘intuition’—and, indeed, criminological intuition more broadly (see Agozino, 2003, 2004, 2010)—is that it is informed by that same imperialist logic which underpins colonisation itself.

Although claiming to be advancing a new theory of Indigenous contact with colonial criminal law systems, Weatherburn et al.’s new/old theory is a rinse-and-repeat of the kinds of offender-based approaches to understanding Indigenous imprisonment in colonial carceral systems so cogently (and repeatedly) critiqued by Māori scholar and abolition advocate Moana Jackson (see Jackson, 1987: 14–16). Such studies identify an ‘Indigenous problem’ (as critiqued by Cunneen & Tauri, 2019: 364) while blindly embracing the nature of colonial carceral control itself; they argue (and, at times, presume) that while colonisation may have distal relevance to high levels of Indigenous incarceration, the relevant *proximate* cause of Indigenous hyperincarceration is high rates of Indigenous arrest and/or offending (see, e.g., Weatherburn, 2014; Weatherburn et al., 2024). Indeed, as Weatherburn wrote in one of his earlier publications on Aboriginal and Torres Strait Islander incarceration levels:

There is something rather perverse in the idea that the all-too-real world of Indigenous violence is something other than what it appears to be. But, of course, the claim that Indigenous violence and crime cannot be understood in terms of the factors conventionally found to be associated with involvement in crime is not to be taken at face value. ... [Such arguments are] designed to close off any line of enquiry that might result in some responsibility for Indigenous offending and imprisonment landing on Indigenous rather than non-Indigenous shoulders. (Weatherburn, 2014: 65)

Since the RCIADIC, Aboriginal and Torres Strait Islander people have been dying in custody at a greater rate than before the Royal Commission: a rate of 10.5 deaths per year in the 1980s; a rate of 15.1 deaths per year between 1991 and 2018 (Australians for Native Title & Reconciliation, 2023). Since RCIADIC released its Final Report, there have been around 600 more Indigenous deaths in custody, and that figure continues to grow (Australian Institute of Criminology, 2025). The same upward trend applies to incarceration levels of Aboriginal and Torres Strait Islander people in prisons.

In the 1999, the prison population rate for Aboriginal and Torres Strait Islander people was 1,790 per 100,000 of the adult Indigenous population (Australian Bureau of Statistics, 1999: 5). By 2024, that figure was 2,559 per 100,000 (Australian Bureau of Statistics, 2024a), and an Aboriginal or

Torres Strait Islander person was almost 17 times more likely to be incarcerated than a non-Indigenous person (Weatherburn et al., 2024: 1). In the 12 months to 30 June 2024 alone, the number of Aboriginal and Torres Strait Islander people in Australian prisons increased by 15% (Australian Bureau of Statistics, 2024c).

As in Kanaky, we find the Australian colonial state continually deploying its criminal law system in the colonial endeavour, problematising Indigenous peoples and rationalising Indigenous displacement, confinement and control under the banner of ‘law and order’. With imperialist logics fundamentally mischaracterising the so-called ‘proximate’ causes of Indigenous hyperincarceration as within Indigenous peoples and communities themselves, it is unsurprising that Indigenous incarceration levels in colonial carceral systems continue to grow. The incongruous dynamic which emerges from this operation of imperialist logics is one of colonial states appearing to try and ‘fix’ the so-called ‘tragedy’ of Indigenous hyperincarceration (see Conifer et al., 2016) while simultaneously reinforcing and expanding the colonial systems and structures which ensure Indigenous imprisonment levels will continue to grow. An example of these discordant dynamics can be observed in the attempted development and implementation of the so-called ‘Aboriginal Strategic Direction’ (ASD) by NSW Police.

In 2024, following the implementation of a five-year plan by NSW Police to improve relationships between police and Indigenous peoples, the Law Enforcement Conduct Commission (LECC) ASD monitoring report found that not only had Indigenous incarceration levels *increased*, but further, that over the same time period covered by the ASD, ‘high levels of Aboriginal over-representation in police interactions continued, and in some cases, increased’ (LECC, 2023: 2). The LECC’s report reiterated the essential role of police in reducing high levels of Indigenous over-representation across the Anglo-Australian criminal law system (LECC, 2023: 2).

Since the LECC report was released, then NSW Police Commissioner Karen Webb has repeatedly asserted that holding NSW Police responsible for ensuring Aboriginal and Torres Strait Islander adults and children are not overrepresented in the NSW prison system is incompatible with the ‘law enforcement’ duty of the police force (see Begley, 2024; McGowan, 2023). That is, ‘the NSW Police Force is not responsible for the complex social, economic and intergenerational factors that have led to over-representation in the criminal justice system’ (LECC, 2023: 53). The latest NSW Police ASD (NSW Police Force, 2024) excludes the independent monitoring of the LECC in relation to the NSW Police’s relations with Indigenous peoples (NSW Police Force, 2024: 9–12).

Recognising the operation of imperialist logics helps unpack the seeming tension between the colonial state feigning efforts to address Indigenous hyperincarceration (e.g. the ASD and LECC monitoring report) while simultaneously working to maintain the status quo of colonial carceral control (e.g. the NSW Police Commissioner's response). It is the *illusion* of Indigenous recognition (Watson, 2015: 94), and not actual recognition, to which the colonial state aspires. French lawyer Vincent Brengarth, who represented more than 100 Kanak applicants before the French Council of State as they sought to postpone the French-administered 'independence consultation' in 2021 during a period of Kanak customary mourning, similarly described this as the incredible paradox (*'l'incroyable paradoxe'*) of imperialist logics (Brengarth, 2022): on the one hand expressing support for the rights of Indigenous peoples; on the other, conducting an 'independence consultation' in Kanaky in a manner which ensured Indigenous non-participation.

Hypocrisy is a central feature of imperialist logic. Such logics are incapable of countenancing the colonial state as the criminal (see Watego, 2021). Such logics, to borrow Weatherburn's words, 'are designed to close off any line of enquiry that might result' in the imperialist criminological gaze turning upon the colonial state itself (see Weatherburn, 2014: 65); to, as Agozino urges, 'go beyond pickpockets and street criminals' and 'see the big picture of the greatest organized crime that there ever was, the crimes of imperialism' (Agozino, 2010: xiii).

Indigenous incarceration finds its genesis in colonial carceral control, not in Indigenous peoples (see Billington, 2023). As Yuin carceral survivor Vickie Roach observes:

The brutalities of the police and prisons started with colonization. Aboriginal people were criminalised, herded up, rounded up and segregated. We were also shot and massacred. They fed us into their system and tried to assimilate us through the Stolen Generations, removing us from family and Country. This is also my story.

The criminalization of us as a race of people has been unrelenting ever since. The policies have changed, but the separation, segregation and violence has continued. (Roach, 2022: 36)

Colonial carceral systems are alien systems of so-called justice, imposed from the outside and without the consent of Aboriginal and Torres Strait Islander peoples in Australia or of Kanak peoples in Kanaky. The solution is not the perpetuation of the 'same colonizing arrangements' that produce and reproduce more and more colonial carceral control (Chartrand, 2019: 79)—the solution is their disruption.

Conclusion: The Decolonial-Decarceral Relationship

The incarceration of Indigenous peoples in colonial carceral systems is not a symptom of colonialism—it is, in itself, colonialism (Adema, 2016: 13). Indigenous incarceration is a manifestation of the colonial present, not a vestige of the colonial past. High levels of Indigenous incarceration in colonial carceral systems are not an aberration; they are not a crisis; they are not an exception to the rule. Indigenous incarceration is ‘part of the colonial process itself’ (Chartrand, 2019: 69).

Coloniality is not peripheral to carceral control over Indigenous peoples, but central. Ngāti Porou criminologist Juan Tauri identifies Indigenous imprisonment as ‘one of the principal colonial projects of the contemporary settler-colonial state’ (Tauri, 2023: 52). Even as Indigenous hyperincarceration in colonial carceral systems is ‘as predictable and fixed as the colonial structures’ (Arbel, 2019: 439) which produce it, so too the *disruption* and *fracture* of these colonial systems and structures hold the promise of Indigenous decarceration. Even as ‘the colonial imperative’ and the ‘carceral imperative’ are fundamentally entwined (see Pranteau et al., 2022: 82), the abandonment of the colonial imperative paves the way for Indigenous decarceration.

Decolonial scholar Harry Blagg has observed that the idea that there can somehow be a “normal” level of [Indigenous] involvement in an alien white settler justice system, which has been imposed from the outside, without Indigenous consent’ (Blagg, 2016: 234) is ludicrous. Indeed, only colonial carceral logics could countenance such a suggestion. Dismantling colonial carceral control, then, is not merely a matter of reducing the number of Indigenous people in colonial carceral systems. Indigenous decarceration necessitates the abandonment of the ‘colonial imperative’ (see Pranteau et al., 2022: 82) and the embrace of colonialism’s antithesis: Indigenous self-determination.

Self-determination is a fundamental right of peoples from which all other rights flow (Expert Mechanism on the Rights of Indigenous Peoples, 2013: 6). According to the International Court of Justice, it is the right of self-determination which gives rise to ‘the need to pay regard to the freely expressed will of peoples’ (*Western Sahara (Advisory Opinion)*, 1975: 33). By virtue of their right of self-determination, Indigenous peoples have the right to ‘freely determine their political status and freely pursue their economic, social and cultural development’ (United Nations Declaration on

the Granting of Independence to Colonial Countries & Peoples, 1960: art 2).

Professor Irene Watson—an Aboriginal legal scholar of the Tanganeald, Meintangk and Boandik peoples—describes self-determination as ‘a standard, which is known in international law and which comes closest to empowering the lifestyle’ (Watson, 2015: 90) Indigenous peoples experienced prior to colonisation. As self-determination is a collective right of peoples to live free from ‘subjugation, domination and exploitation’ by alien cultures (United Nations Declaration on the Granting of Independence to Colonial Countries & Peoples, 1960: art 1), the incarceration of Indigenous peoples in colonial carceral systems is arguably the antithesis Indigenous self-determination (Edney, 2001: 7).

Literature linking Indigenous self-determination and Indigenous decarceration is hardly new. Even Australia’s RCIADIC, developed during the 1980s and early 1990s, explicitly identified Indigenous self-determination as central to Indigenous decarceration (Dodson et al., 1991: vol 2, ch 20). In reviewing the 99 deaths which formed the subject of the RCIADIC’s inquiry, the Commissioners observed a key theme:

No matter what their age at death they all had files – in many cases hundreds of pages of observations and moral and social judgments on them and their families; considerations of applications for basic rights, determinations about where they could live, where they could travel, who they could associate with, what possessions they could purchase, whether they could work and what, if any, wages they could receive or retain. Welfare officers, police, court officials and countless other white bureaucrats, mostly unknown and rarely seen by the persons concerned, judged and determined their lives. The officials saw all, recorded all, judged all and yet knew nothing about the people whose lives they controlled. (Dodson et al., 1991: vol 2, ch 20, para 20.1.5)

It is noteworthy that even the colonial state-commissioned (otherwise glowing) Deloitte review of the implementation of the RCIADIC’s recommendations found Indigenous self-determination ranked among the ‘lowest proportion of fully implemented recommendations’ (Deloitte Access Economics, 2018: xi, 701) by Australian Commonwealth, State and Territory governments.

Colonial carceral control is violently opposed to the legal systems and structures of Kanak peoples in Kanaky and of Aboriginal and Torres Strait Islander peoples in Australia. Drawing on her observations of court processes in Camp Est (see Deltenre, 2022: 149–155), Deltenre reflects that confrontations between Kanak peoples and the French colonial criminal law system are

a brutal clash between two worlds, and between two languages that are closed to one another: on the one hand, the language of the so-called ‘justice’ of France, expressed at full speed and in a technical language belonging only to it; on the other hand, the language of Kanak prisoners, rare, discreet and incorporating long silences perceived within the colonial criminal law system as provocations (see Deltenre, 2022: 154). As Gunditjmara woman and carceral survivor Tabitha Lean reflects:

I am number 177057 ... I’m a criminalised black woman in a colonial settler state founded violently with policies and practices seeking to erase, eradicate, breed out, extinguish, deny and invisibilise my kind. Every breath I draw is an act of radical resistance. (see Ironfield, 2021: 21.48–22.37)

There is no common ground—no meeting place—between colonial carceral logics and Indigenous self-determination. Indigenous incarceration is inherently colonial, and colonialism is in no way compatible with Indigenous self-determination. When colonial states hyperincarcerate and harm Indigenous peoples—as they do in Australia, in Kanaky and across the world—these colonial carceral systems are *not* failing (Roach, 2022). On the contrary, they are working exactly how they are designed to work (Roach, 2022: 36). The construct of prison, like the colonial project itself, is built on violence and division—it is a system which can only dehumanise and undignify the existence of Indigenous peoples (see Lesage de la Haye, 2021).

‘Kanak don’t have prisons’ (Lesage de la Haye, 2021: 109). Nor are prisons part of Aboriginal and Torres Strait Islander justice systems. Indeed, Aboriginal and Torres Strait Islander peoples are among the most enduring cultures on earth, having continually dwelt on the Australian continent for more than 60,000 years without prisons. In contrast, European colonisation of Kanaky and Australia was primarily carceral. Indigenous lands themselves were fashioned by French and British invaders into carceral spaces. It took less than a decade of British ‘settlement’ in the Colony of NSW for the first physical prison to be erected: a log building 80 feet in length with a ‘strong and high’ fence (Collins, 2003: ch 4).

To facilitate Indigenous decarceration, it is imperative that the ‘Indigenous self’ in Indigenous self-determination ‘be fully realized in all of its forms, from internal self-government to lands, territories, and resources to international affairs’ (Sambo Dorough, 2014: 19). The imposition of ‘colonial ceilings’ (see Short, 2008: 162) on Indigenous self-determination must be eschewed. The French colonial state is not capable of circumscribing Kanak self-determination; the Australian colonial state is not capable of circumscribing Aboriginal and Torres Strait Islander self-determination. All colonial

state-construed versions of so-called ‘Indigenous self-determination’ advocate only a pale imitation of self-determination—one carefully stripped of all its sovereign power. Such ‘self-determination’ is self-determination in name only: the ‘illusion of recognition’ (Watson, 2015: 94). It is, as Watson observes, ‘subservient to the rules of the state ... [and] not self-determination at all’ (Watson, 2015: 91).

Indigenous hyperincarceration is inevitable in colonial carceral systems. Prisons are imperfectible; they are already perfect. Thus, as abolitionist Victor Serge observes, ‘[b]eing perfect, there is nothing left but to destroy them’ (Serge, 2014: 43). Indigenous peoples in Kanaky, in Australia and around the world continue to resist a live and ongoing project of colonisation. Only when Indigenous lands are liberated from imperialist logics can Indigenous peoples be free from colonial states’ ever-expanding carceral archipelagos.

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13

Red and Black, Back-to-Back

Darryl Barthé

There were 19 murders in 2010 in Seattle, a city with a population of about 610,000 people at the time. Indeed, in 2010 the murder rate in Seattle was lower than it had been in more than a half century, when the population of the city wasn't quite half a million (King 5, and Census Bureau). Regardless, Birk was apparently so afraid for his own safety, patrolling the relatively safe streets of downtown Seattle, that he unloaded four hollow-point bullets into the body of John T. Williams (Ford, 2011).

An official investigation into the shooting of John T. Williams found that Officer Birk's use of deadly force "was not necessary," that Birk did not have probable cause to believe that Williams "posed a threat," and that "reasonably effective alternatives" to the use of deadly force were available, including allowing Williams to be on his way and about his business. In short, the investigation found that the "death of John T. Williams was **unjustified** (bold in original)" (Seattle Police Department, 2011). The investigation further recommended that Birk be relieved of duty but before the relevant parties could act on that recommendation, Birk resigned. Despite the unambiguous conclusions of the official investigation, local prosecutors refused to press charges against Birk, dismissing any pretense of official responsibility or concern for police accountability.

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Unfortunately, the story of John T. Williams is not unique. In truth, the story of a White police officer gunning down an unthreatening suspect out of an unreasonable fear of mortal peril in the United States is horrifyingly banal. This is especially the case when white police officers are confronted with suspects who are people of color, and John T. Williams was not White.

In 2013, the Black Lives Matter movement emerged in response to the wildly disproportionate rate of state-sanctioned, homicidal, violence marshaled against unarmed Blacks in the United States by White police and vigilantes. The catalyst for this genesis was the Trayvon Martin Affair wherein vigilante George Zimmerman followed Martin, a 17-year-old child, home from a convenience store before accosting him and gunning him down. The phrase “Black Lives Matter” became an internet hashtag, often with clarifying contexts (e.g. “Trayvon Martin’s life mattered”), that indicated a sense that justice for Martin had been denied in court after Zimmerman was acquitted for the killing by a Florida jury (See Fulton and Martin, 2018, and Johnson, Warren, Farrell, 2015).

The phrase “Black Lives Matter” would soon appear in other media—internet, print, and broadcast—drawing attention to other episodes of state-sanctioned violence against unarmed Blacks and calling for a social and political intervention in what was perceived as a troubling pattern of policing that transcended state and regional boundaries. Trayvon Martin was gunned down in Sanford, Florida, but Tamir Rice, who was 12 years old and unarmed when he was gunned down by a 26-year-old White police officer named Timothy Loehmann in 2014, was killed in Cleveland, Ohio. Michael Brown, who was 18 years old and unarmed when he was gunned down by a 28-year-old White police officer, was killed in Ferguson, Missouri in 2014. Eric Garner was unarmed and 43 years old in 2014 when he was strangled to death by a White police officer, Daniel Pantaleo, ostensibly because Garner was selling loose cigarettes on a corner in Staten Island, New York City. George Floyd, Jr. was 46 and unarmed when Derek Chauvin, a White police officer, knelt on Floyd’s back for 9 minutes and 29 seconds, smothering him to death on the side of the street in Minneapolis, Minnesota in 2020. Whether in the South, the North, or the Midwest, the same pattern of White men killing unarmed Black people held fast, impervious to American regionalism (See Wu et al., 2023).

Black Lives Matter activists demanded that Americans confront the embedded racism in the criminal justice system. It was this embedded racism, activists argued, that was responsible for the distressingly disproportionate rates of extrajudicial violence leveled against Blacks. Indeed, Blacks experience higher rates of state-sanctioned extrajudicial violence against them than any

other racial group in the United States with one exception. That exception is Native Americans (See Males, 2014; Woodard, 2016).

John T. Williams was a seventh generation Nitinaht carver of the Nuuchah-nulth First Nations. When he was slain by Ian Birk, he had been carrying a log of cedar and a folded carving knife, the tools of a trade that he had been raised to just as his father, and grandfathers, for six generations before him. Williams was a living repository of technical skill and knowledge and, in an instant, and for reasons that proved unjustifiable (though, apparently, not criminally prosecutable in an American court), that vault of traditional knowledge was destroyed and the man responsible for that destruction was allowed to walk away without facing any significant consequences for his actions, in a turn of events that would be clearly recognizable to any Black community in the United States affected by extrajudicial violence from White police and/or vigilantes.

In the wake of the George Floyd Affair, protests erupted all over the United States. Hundreds of cities imposed curfews and well over half of all states deployed their national guards to maintain order. The impact of the George Floyd affair, and the protests in reaction to it, was dramatic and far-reaching as Americans took the opportunity to grapple with their history of racism (See Schiffer, 2020; Warren & Hadden, 2020).

Despite the fact that Native Americans are killed at higher rates than Black Americans, there is no Native American equivalent of the George Floyd affair. There were no national protests for Paul Castaway of the Lakota nation when he was gunned down by Denver Pextraolice in 2015. There was no national media coverage of the death of Daniel Covarrubias of the Suquamish nation when he was shot in the head by police in Lakewood, Washington in 2015. The death of Jonathon Tubby, the 26-year-old Oneida man who was killed by police following a traffic stop in Green Bay in October of 2018, did not spark riots nor a national conversation on racism (Tory, 2017).

The conspicuous silence surrounding the phenomenon of extrajudicial violence against Native Americans inspired activists to raise awareness of the issue. Stephanie Woodard, in her 2016 article “The Police Killings No One Is Talking About” observed that the “media blackout” regarding stories of police violence against Indigenous people was such that when “Minneapolis police killed both White Earth Ojibwe tribal member Philip Quinn, 30, and African-American Jamar Clark, 24, during the fall of 2015, Clark’s story was well-reported, while Quinn’s passing, like those of almost all other Native victims, was barely noted.” Woodard notes that, in response to the successful branding of the Black Lives Matter movement, a group of Native American activists styling themselves as “Native Lives Matter” organized in order

to “bring attention to the deaths, and to the larger social and economic oppression of Native Americans.” The emergence of the Native Lives Matter movement represented the most significant attempt to establish a mass movement of Indigenous people in the United States, organized in opposition to police violence, since the American Indian Movement of the 1960s, though its media visibility was eclipsed, or perhaps subsumed, in the larger coverage afforded to the Standing Rock Protests that began in April of 2016 (Woodard, 2016).

In many ways, the circumstances of Standing Rock were illustrative of the specific, characteristic, context of Native American activism. Unlike Black American activist causes, virtually all of which focus on the securing of civil rights in the United States, the protests at Standing Rock were organized in an attempt to assert the sovereignty of a separate nation presently occupied by the United States. That assertion of sovereignty was met with a veritable army of (mostly White) police officers who responded with violence.

In December of 2015, the US Army Corps of Engineers published a report titled “Dakota Access Pipeline Environmental Assessment.” The purpose of that document was to evaluate a proposition by Dakota Access, LLC “to construct and operate the Dakota Access Pipeline Project which would connect the Bakken and Three Forks crude oil production areas in North Dakota to existing infrastructure in Illinois” (US Army Corps of Engineers, 2015). The route of the proposed pipeline was to be confined to federally controlled lands, but still crossed beneath the Missouri River at the Lake Oahe reservoir, waterways that were vital to the Standing Rock Indian Reservation, a sprawling expanse covering more than 2 million acres, straddling the border between South Dakota and North Dakota. The Army Corps of Engineers approved the pipeline in July of 2016 and in response, the Standing Rock Sioux Tribe filed an injunction against the pipeline construction a month later (*US Army Corps of Engineers vs Hersher*, 2016 and *Standing Rock Sioux Tribe vs US Army Corps of Engineers*, 2021).

While the Standing Rock Sioux Tribe’s litigation proceeded through the court system, a group of Lakota citizens, organizing themselves as “water protectors,” established a camp called “Oceti Sakowin” (meaning “The Seven Council Fires,” a reference to the Nakota, Dakota, and Lakota nations) on land that had been slated for seizure via eminent domain in order to facilitate the pipeline project. It was not long before this camp would become the focal point in an ongoing demonstration against the corporate interests and government power that worked hand-in-glove to undermine the Standing Rock Sioux Tribe’s sovereignty. Thousands of activists, from all over the

world, would come to the Oceti Sakowin camp, including Black American activists identified with the Black Lives Matter movement.

The response to the Oceti Sakowin coalition from corporate interests, and from the government, was brutal. Mercenaries hired by Energy Transfer Partners (ETP) sicced dogs on praying women. Police attacked activists with batons and concussion grenades, deploying tear gas and mace against peaceful demonstrators. Nonviolent activists, who were engaged in no crime whatsoever, were swept up in mass arrests by police and imprisoned in conditions so abusive that the United Nations was compelled to investigate. In one particularly horrible instance, police bombarded a crowd of more than 400 people with water cannons in sub-zero temperatures and in the dead of night, injuring more than 300, 26 of whom required hospitalization (Dakwar, 2016, and Montare, 2018).

Many of the tactics employed by police at Standing Rock were clearly incompatible with the peacekeeping role of a civilian constabulary. However, that criticism was too often articulated through a problematic narrative that focused on the “militarization” of police. In actuality, the violence unleashed on the Standing Rock Sioux Tribe and their allies was not so much a police action as a military deployment masquerading, and misrepresented in media, as a police action.

The assembled forces arrayed against the Standing Rock Sioux Tribe and their allies coalesced like an eighteenth-century colonial militia and included representatives from over 70 law enforcement agencies from as far away as St. Charles Parish in Louisiana and the Ohio State Highway Patrol (Dresslar, 2016). These forces would stay in ample supply of “less than lethal weaponry” through the generosity of ETP, and TigerSwan, the mercenary company that ETP had contracted to “take the lead with various law enforcement agencies per state, county, state National Guard and the federal interagency” as required to suppress the efforts of the Standing Rock Sioux Tribe—a sovereign nation—to act on their sovereignty (Brown & Sadasivam, 2023).

On November 20, 2016, NBC News reported that police justified their decision to douse peaceful, unarmed, activists with water in freezing temperatures, describing “the clash as a ‘riot.’” Yet, there was no evidence that people were rioting nor was there any evidence of a “clash.” Rather, the preponderance of evidence suggested that the police, facing a peaceful crowd, simply unleashed havoc in a display of wanton violence and cruelty (Stelloh et al., 2016).

The violence at Standing Rock against the Standing Rock Sioux Tribe and their allies spoke to an older, more fundamental, conflict than that represented by the phrase “police violence.” Scenes from Standing Rock of White

police turning water cannons on peaceful demonstrators certainly evoked the memory of Selma. However, the violence of Selma was between a citizenry and its constabulary. The violence of Standing Rock was between an Indigenous nation (and its allies) and an occupying colonial power, the latest in an ongoing conflict over settler colonial encroachment that goes beyond any capacity for constabulary remedy precisely because the function of the police, in this context, was to serve and protect ETP, a conglomerate of colonial interests seeking to infringe on tribal sovereignty.

As historian Patrick Wolfe observed, settler colonialism is “inherently eliminatory” and manifests as a “structure, not an event” (Wolfe, 2006, pp. 387–389). This is to say that extirpative violence against colonized people is a defining characteristic of the settler colonial society that is not intended to diminish until the colonial project is completed (i.e. until all colonized people are either dead or assimilated into colonial identities). The violence demanded by ETP and facilitated by (mostly White) police and sheriffs from all over the United States, is removed from the violence of the Trail of Tears in space, time, and magnitude, but not in its intentions.

It is a stark fact rarely articulated that there is no such thing as a “United States of America” separate from the historical dispossession of tribal nations. Sometimes that dispossession manifested in the relocation of Indigenous people from their traditional homelands, but not always. Wolfe (2006) notes that

“Negatively, (settler colonialism) strives for the dissolution of native societies. Positively, it erects a new colonial society on the expropriated land base... In its positive aspect, elimination is an organizing principle of settler-colonial society rather than a one-off (and superseded) occurrence. The positive outcomes of the logic of elimination can include officially encouraged miscegenation, the breaking-down of native title into alienable individual freeholds, native citizenship, child abduction, religious conversion, resocialization in total institutions such as missions or boarding schools, and a whole range of cognate biocultural assimilations” (Wolfe, 288).

The “positive” manifestations of settler colonialism Wolfe describes here should not be understood as “positive” in the sense of “right-minded” or “morally correct,” but as a “generative” program that seeks to “recreate” Indigenous people—socially, culturally, politically, definitionally—rather than murdering them outright. In no case, and under no scenario, are Indigenous people allowed to persist, as Indigenous communities on their own terms, as a part of a settler colonial program.

It is through settler colonial transmogrification that “Lakota,” “Nakota,” and “Dakota” become “Native Americans,” an arbitrarily racialized group,

rather than members (citizens) of distinct nations, separate from the settler state. It is through this same settler colonial sorcery that traditional colonial militias became redefined as county (or parish) sheriff departments and State Highway Patrols and traditional, violent, colonial encroachment is repackaged, redesigned, and marketed as “police actions.”

There are several, mostly regionally specific, historical contexts for the emergence of modern policing in the United States. In the Northeast, police emerged initially out of town watches and militias organized to the purpose of defending colonists from slave rebellions and from attack by Indigenous people whose land they were stealing. However, just as policing in the Anglo metropole would evolve into a professional force tasked primarily with investigating crimes, suppressing labor unrest and defending private property rights, policing in New England would also follow this pattern. In the American South, and on the western frontier, policing emerged in response to different contexts and social pressures (See Hadden, 2003, and also French, 2018).

Colonial militias in the South, like colonial militias in the North, were initially organized to defend colonial communities from slave rebellions and from the Indigenous nations upon whose lands American Whites encroached and squatted. However, the American South was a slave society for much longer than the American North was and, especially after programs of “Indian Removal” had ethnically cleansed the largest and most powerful Indigenous nations (i.e. the most dangerous to colonial ambitions), the most common function of colonial militias in the South was that of the slave patrol, a typically loose-knit organization of non-elite Whites and a precursor to the lynch mobs of the Jim Crow era, whose primary responsibilities included suppressing slave rebellions and remanding into custody those who dared the attempt to escape their condition of bondage and captivity.

On the western frontier, the origins of policing are riveted to the historical context of American slavery only slightly less than they are to the history of British class warfare. In the American West, the origins of policing, or rather “law enforcement” more broadly, is inseparable from the history of White Nationalism, articulated most often as “Manifest Destiny” and performed most often as genocidal violence against Indigenous people. Nowhere is this more perfectly represented than in the history of the Texas Rangers, a state police agency whose earliest days of service extend back to the Texas Republic. Described as “valiant, and honorable” on the official website of the Texas Department of Public Safety, the history of the Texas Rangers includes such “valiant and honorable” battles as the Red Fork Massacre where Rangers under the command of Colonel John Moore “beamed with feelings of pride

and anticipation” before assaulting a Comanche village, where they “displayed their skill in rifle shooting” by gunning down people indiscriminately until there were “the bodies of men, women, and children to be seen on every hand, wounded, dying, and dead” (*Telegraph and Texas Register*, 1840). In the American West, the historical connection between police violence and extirpative, colonial, violence is perhaps the clearest, and most direct.

Regarding the way that settler colonial violence manifests as racialized violence, and the different ways that “Blacks” and “Native Americans” are racially constructed through the filter of settler colonial prerogatives, Patrick Wolfe further observed that

“Indians and Black people in the US have been racialized in opposing ways that reflect their antithetical roles in the formation of US society. Black people’s enslavement produced an inclusive taxonomy that automatically enslaved the offspring of a slave and any other parent. In the wake of slavery, this taxonomy became fully racialized in the ‘one-drop rule,’ whereby any amount of African ancestry, no matter how remote, and regardless of phenotypical appearance, makes a person Black. For Indians, in stark contrast, non-Indian ancestry compromised their indigeneity, producing ‘half-breeds,’ a regime that persists in the form of blood quantum regulations. As opposed to enslaved people, whose reproduction augmented their owners’ wealth, Indigenous people obstructed settlers’ access to land, so their increase was counterproductive. In this way, the restrictive racial classification of Indians straightforwardly furthered the logic of elimination” (387–388).

This observation is certainly accurate in the antebellum period. However, once Blacks could no longer be sold, and when their multiplication no longer “augmented their owners’ wealth,” this is to say that when Black life no longer held an explicit purchase price, Black lives lost virtually all of their apparent value to those Whites who could only view Blacks as property, and not as people.

Prior to Emancipation, the primary role of the slave patrol was to secure property and to protect wealth, but after the Civil War, the priorities of the White majority changed with regard to free Blacks. After Emancipation, the existence of free Blacks—another community of colonized people—was just as problematic for the settler state as the existence of Indigenous tribal nations.

The racist mythologies invoked to justify and normalize the enslavement of blacks in the United States before the Civil War would be transformed into scientifically verifiable “facts” after the Civil War in order to justify Black dispossession and White Nationalist violence against communities of free Blacks. That regime of official institutional dispossession would evolve

into what is generally referred to as “Jim Crow.” Often, “Jim Crow” is represented as the legal regime established as the law of the land after the Supreme Court’s *Plessy vs Ferguson* decision in 1896 that affirmed the constitutionality of official racial segregation. However, attendant to that legal regime of racial segregation was an extrajudicial social and political culture characterized by violence and White Nationalist terror.

It was in 1896 that Frederick L. Hoffman, an insurance company statistician and an unambiguous champion of “Aryan” supremacy, would publish *Race Traits and Tendencies of the American Negro*. In this work, Hoffman argued that Blacks were possessed of an innate moral defectiveness that made them prone to anti-social, criminal, and behavior. Moreover, argued Hoffman, this tendency to sociopathy could only be arrested by improbably “radical and far-reaching changes in their moral nature” (p. 328). Without such radical changes, Hoffman concluded, the “gradual extinction” of American Blacks was only “a question of time” (p. 329).

Hoffman’s view informs early twentieth-century understanding of the racist justifications not only for Jim Crow segregation, but also for institutional violence against Blacks in the United States, whether that violence manifested as police repression or as extrajudicial violence like lynching. For racists like Hoffman, it seemed clear that if unarmed Blacks were gunned down by police, or tortured to death by lynch mobs, it was best understood as natural selection weeding out the morally defective. Hoffman gave voice to the colonial conviction that extinction was just as much the manifest biological destiny of Blacks as it was that of those tribal nations that were being subjected to extirpative violence in the American West when his book went to print.

Jim Crow was not officially dismantled until 1964 with the passage of the Civil Rights Act but, practically, the social and political culture of Jim Crow would adapt and endure. Lee Atwater, former adviser to Republican US Presidents Ronald Reagan and George H. W. Bush, and former chairman of the Republican National Committee, famously explained this adaptation in a 1981 interview.

“You start out in 1954 by saying, ‘nigger, nigger, nigger.’ By 1968 you can’t say ‘nigger’—that hurts you, backfires. So, you say stuff like, uh, forced busing, states’ rights, and all that stuff, and you’re getting so abstract. Now, you’re talking about cutting taxes, and all these things you’re talking about are totally economic things and a byproduct of them is, blacks get hurt worse than whites... ‘We want to cut this,’ is... a hell of a lot more abstract than ‘nigger, nigger’” (Perlstein, 2012).

This adaptation, later dubbed “The Southern Strategy,” would be instrumental in bringing Republican candidate Richard Nixon to power.

In 1964, the Democratic Party had presided over the end of Jim Crow and in 1968, the Republican Party became a welcome home for the electoral representation of those disaffected White Americans that resented the extension of full citizenship rights to Blacks. Without a doubt, the championing of “abstractly racist” policies played a role in the Republican Party’s attempt to woo racist Whites, but this should not obscure the fact of overtly racist, and explicitly anti-democratic, policies advanced by the Nixon administration. Nixon’s “War on Drugs” provided all the necessary pretense for a coordinated program of political repression against Black communities and against those White Americans that declared political solidarity with those Black communities. John Ehrlichman, Assistant to the President for Domestic Affairs under Richard Nixon, offered an explanation of what Nixon’s policy on drug prohibition, “was really all about” in a 1994 interview:

“The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. You understand what I’m saying? We knew we couldn’t make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news” (Baum, 2016).

Between Joseph McCarthy’s “Red Scare” and COINTELPRO, the government of the United States had an established history of organized political repression of communities viewed by White conservatives as “subversive” that spanned decades by the time Richard Nixon took office in 1968. However, none had been so effective as Nixon’s “War on Drugs.”

Indeed, for those who embraced the White Nationalist proposition that Blacks, Natives, and other non-White people, were unworthy of equal citizenship rights in the United States, Nixon’s War on Drugs allowed for the perpetuation of Jim Crow dispossession despite the provisions of the Civil Rights Act of 1964. This argument is most effectively articulated by Michelle Alexander whose work describes the emergence of foundational structures of “the carceral state,” a system of social and political repression that she refers to as “the new Jim Crow.” As Alexander points out, a person with felony convictions can be legally discriminated against in employment and housing, loses the right to bear arms and can be legally denied the right to vote. In short, Americans with felony convictions can be relegated to the same form of “second class citizenship” that Blacks endured in the United States prior to

1964 and, according to John Ehrlichman, the War on Drugs was purposefully directed at American Blacks (See Alexander, 2020).

Jim Crow was not only a legal regime but also a regime of institutionalized racist terror and violence. In 1947, a journalist asked a man who had recently participated in a lynching whether he believed that his victim was guilty of the offense for which they had been killed. The man responded negatively and explained further that the guilt of innocence of the victim was “irrelevant,” and that “no particular crime was avenged.” Rather, with the public, ritualistic, torture, and murder of his victim, the “negro population was being warned never to forget that the colored man in the South is still a slave,” and that “between him and the white man there can be no law, no claim to justice” (Quispel, 2002, pgs. 39, 58). While the traditional lynch mob is certainly an artifact of the past, there are certainly contemporary parallels between the effect of witnessing lynchings and that of bearing witness to murderous police violence visited on unarmed men and women; the town square may have been replaced by YouTube, but the spectacles of Whites murdering unarmed, helpless, non-White people serves the same purpose of inspiring terror and despair in the power of the law to protect non-White people from White Nationalist violence. If the American criminal justice system has been used to implement a “new Jim Crow” political landscape via felon disenfranchisement, new digital media has, intentionally or not, created a “new Jim Crow” regime of racist terror through spectacles of police violence against helpless, unarmed, victims caught on cell phones and police dashboard and body cameras (See Richardson, 2021).

As a result of White conservative imperatives to maintain the dispossession of colonized communities, Americans established a legal regime where police were empowered to kill unarmed citizens, including unarmed White citizens. Indeed, Whites are not spared this effects of this regime of violence and police in the United States kill more unarmed Whites than any other racial group. However, the disproportionate rates at which unarmed Blacks and Native Americans are killed compels attention.

A 2020 study at the University of Pennsylvania found that “fatal police shootings are a public health emergency that contribute to poor health for BIPOC (Black and Indigenous People of Color)” and that the rate of fatal police shootings of “(BIPOC) have significantly higher death rates compared with Whites in the overall victim pool,” most notably among “unarmed victims” (Lett et al., 2020). American police kill a lot of people of all races, ethnicities, and nationalities, but the fact remains that a disproportionate number of those people are Native American and Black.

The arguments for police violence against Native Americans manifesting as genocidal violence are straightforward. If the object of the settler colonial program is, as Patrick Wolfe claims, the elimination of the Native, then there are few ways to accomplish this goal more efficiently than through the slaying of people with the practical knowledge required for cultural reproduction. When it comes to culture bearers of endangered cultures and languages, like John T. Williams, every death is devastating to the purpose of cultural preservation.

While perhaps less straightforward, the arguments for police violence against Blacks in the United States being a manifestation of a genocidal intention are nevertheless compelling, and noteworthy in their consistency and longevity. In 1952, and much to the chagrin of the American media and political establishment, activists rallying under the banner of the Civil Rights Congress presented to the United Nations a petition titled “We Charge Genocide” that implicated the United States in a program of genocide against American Blacks. The petition was signed by dozens of celebrated public luminaries, including W.E.B. DuBois and Paul Robeson, among others. The petition focused on the United Nation’s definition of genocide as any act undertaken with the “intent to destroy, *in whole or in part* (italics in original), a national, racial, ethnic, or religious group,” and asserted that US policy toward its Black minority population fit that definition (Civil Rights Congress, 1970, p. xii). The petition was explicit in its condemnation of Jim Crow violence enacted by racist White Nationalists who rejected the proposition that American Blacks were entitled to the rights of American citizenship.

“We cite killings by police, killings by incited gangs, killings at night by masked men, killings always on the basis of ‘race,’ killings by the Ku Klux Klan, that organization which is chartered by the several states as a semi-official arm of government and even granted the tax exemptions of a benevolent society ... Our evidence concerns the thousands of Negroes who over the years have been beaten to death on chain gangs and in the back rooms of sheriff’s offices, in the cells of county jails, in precinct police stations and on city streets, who have been framed and murdered by sham legal forms and by a legal bureaucracy... who have been killed, allegedly for failure to say ‘sir’ or tip their hats or move aside quickly enough, or, more often, on trumped up charges of ‘rape,’ but in reality for trying to vote or otherwise demanding the legal and inalienable rights and privileges of US citizenship formally guaranteed them by the Constitution of the United States” (p. 4).

Some things have changed dramatically in the United States since this petition was drafted; other things have not. In 2024, for example, it has been

quite some time since any Black person in the United States was murdered by a White mob for failing to refer to a White man as “sir,” or for refusing to tip his hat in passing. Yet, the specter of fatal misfortune still looms large for Black Americans forced to engage with the American criminal justice system, and it is a dark and sinister truth that Blacks taken into police custody in 2024, are not much safer than they were in the sheriff’s offices, county jails, police stations, or city streets of 1952.

A 2015 journalistic exposé revealed that Chicago police maintained “an off-the-books interrogation compound” at Homan Square. The Homan Square facility served as a “domestic equivalent of a CIA black site” where Chicago police employed practices that echoed “the much-criticized detention abuses of the US war on terrorism” except that its victims were “Americans, most often poor, black and brown” (Ackerman, 2015). The public response to these revelations was telling.

Eliza Solowiej, the Executive Director of First Defense Legal Aid, a Chicago organization dedicated to providing legal advice and representation to the impoverished, was largely dismissive of the comparisons of Homan Square with CIA torture centers. Solowiej cautioned against the sensationalism of the story and rejected the narrative of “domestic CIA black site” not because she believed that the allegations of abuse were untrue, but because the allegations of abuse at Homan Square were so tragically banal. According to Solowiej, the prevalence of civil rights abuses, and human rights abuses at Homan Square were indicative of larger, structural, systemic problems with policing in Chicago: “(i)t’s not just this facility. This is a citywide problem” (Heinzmann & Gorner, 2015). Chicago police behaved as if though they were an occupying army at war with Black people, a state of affairs that would be unthinkable in a civil society, but that is absolutely normalized in a colonial society where militarized colonial violence commonly masquerades as “police actions.”

The process of settler-colonialism in the United States, and its attendant program of genocidal violence against colonized communities, is ongoing. It should be no surprise, therefore, that the relationship between the settler-state and Native Americans and American Blacks, would be marked by violence. What is surprising is that there has not been more unified resistance to settler-colonial violence from Native American communities and Black American communities especially since, whether the victims are Native American or Black, the perpetrators of police violence against these communities are most often White.

Neither “Black Lives Matter” nor “Native Lives Matter” speak directly to the colonial imperatives driving the phenomenon of White Nationalist

violence against communities of dispossessed, colonized, people. Proclaiming the value of Black and Indigenous life to people whose politics are riveted to a colonial program necessitating the extermination of Black and Indigenous life is absurd. Having two activist movements meant to confront the same problem separately (but equally) is also absurd. This insight was not lost on BLM activist Miski Noor who participated in the resistance at Standing Rock in 2016 and observed afterward that the time had come to step beyond “solidarity,” a concept she described, skeptically, as a “buzzword for progressives.” Rather, Noor spoke to a deeper, historical, continuity of struggle:

“(A)s a movement, we have a duty to uplift and amplify the stories and struggles of all marginalized folks, as our liberation is intertwined. The history of genocide and stolen land and stolen labor in America will forever link Black folks and Indigenous folks (and let us be clear that the two are not mutually exclusive), as there can be no Black liberation without Indigenous sovereignty” (Hayes, 2016).

The realization that Black and Indigenous fortunes in the United States are intertwined at all is significant. Though it has often been suggested that the enslavement of Blacks represents America’s “original sin,” it seems obvious that there would never have been cause to bring enslaved Africans to North American colonies if Europeans had not already settled themselves on stolen land.

The Black American struggle for equal civil rights in the United States commenced in the immediate wake of Emancipation. However, equal consideration under the law and “liberation” are constructed in a way that is mutually exclusive when the legal system, and the government expressed through that legal system, is predicated on the dispossession of people of color. Equal consideration under the law will never be possible in a legal regime that exists only because the rights of people of color (i.e. Indigenous people) to self-determination and sovereignty have been systematically subordinated to the demands of the settler state.

There are many reasons why American Blacks and Native Americans have experienced difficulty in establishing unity in their struggle against the colonial violence perpetrated against them. Some of those reasons are rooted in historic European colonial manipulations. Some of those reasons are circumstantial and specific to geography and demographics. Some of those reasons are the result of systemic miseducation and the misrepresentation of historical connections between the American racial category of “Colored/Black/Negro/African American” and “Indian/Native American.”

Regarding the historical efforts of Europeans to segregate the political interests of colonized Africans and Native Americans, Dixie Ray Haggard observed that from

“...the first arrival of Africans to north American in 1619 until the end of the nineteenth century, European colonists, and later white Americans, worked continually to prevent blacks and Native Americans from uniting against whites by playing the two groups against each other...White Americans used Natives as slave hunters and eventually turned some in the southern tribes into slaveholders. They transformed Africans and African Americans into Indian fighters...This allowed both groups to be exploited by white society well into the twentieth century” (Haggard, 2010, p. xxi).

The measure of “civilization” through which the Cherokee, Choctaw, Chickasaw, Creek, and Seminoles became regarded as the “Five Civilized Tribes” was primarily identified by their adoption of Christianity and participation in Anglo-American plantation economy, and its attendant slave trade. The first group of Africans emancipated from slavery in colonial Louisiana were given their freedom on the condition that they assist the French in ethnically cleansing the Natchez nation and in the aftermath of the Civil War, emancipated Black Americans joined the US Army as “Buffalo Soldiers” and assisted in the ethnic cleansing of the Apache, Cheyenne, Comanche, and Yaqui nations. This is a complicated history that reverberates into the present, yet more than anything else, this history speaks to a crucial lack of agency afforded Blacks and Native Americans in American colonial spaces; it is the history of Blacks and Native Americans interacting with one another within constraints imposed on them by colonial authorities.

Contemporarily, there are issues of geography that have complicated efforts to establish a unified political struggle between Blacks and Native Americans. First of all, the majority of American Blacks in the United States live in the Southeast of the country where the largest Native American tribal nations were ethnically cleansed over 150 years ago. Outside of the American South, Black communities tend to be located in cities which are, with few exceptions far removed from tribal reservations, or from other large Native American communities. In the South, where Black Communities and smaller Indigenous tribal communities are in proximity, there are other issues, historical and structural, that have impeded collective struggle.

Indigenous tribal nations in the United States were, in part, conditioned to anti-Blackness through hypodescent laws (i.e. “one drop rules”) that threatened tribal nations with denial of official recognition if they intermarried with Blacks. Tiffany Lethabo King eloquently observed that the “American calculus of Native American blood quantum and Black hypo-descent, or the

one-drop rule, function as diametrically opposed racial and temporal-spatial logics,” which is to say that “Indigeneity” and “Blackness” were, in the United States, socially constructed in ways that were intentionally at odds with one another. Legal regimes predicated on Indian blood quantum that denied Indigenous identity to those whose “Indian blood” had been too diluted by intermarriage with Whites acted in conjunction with legal regimes predicated on the idea that “Black blood travels across space and time like a stain that pollutes all blood (even White) that it seeps into, turning everything Black” (King, 2019, p. 161). The politics of determining Native American racial identity in a country that was predicated on the annihilation of Indigenous people demanded that chronic inbreeding be the only sure solution for Native Americans to remain Native Americans and though blood quantum laws discouraged Native Americans from intermarrying too often with Whites, hypodescent laws served to punish Native Americans who intermarried with Blacks by bringing an Indigenous family line to an immediate and abrupt end by defining the children of that marriage out of existence as Indigenous people.

In 2015, a study published in the *American Journal of Human Genetics* determined that the “genome-wide ancestry estimates of Black Americans” show, on average, just a little less than 1% Native American ancestry. The study postulates that such results (which also included instances of self-identified American Whites who carried traces of both Native American and African genetic markers) “suggest that the early US history, beginning in the seventeenth century (around 12 generations ago), might have been a time of many population interactions resulting in admixture” (Bryc et al., 2015). While DNA is certainly no arbiter of Indigenous identity (and certainly not of tribal affiliation), these results do suggest that if racial classification laws were constructed in such a way to make “one drop” of “Indian blood” sufficient to classify a person as a “Native American,” then the average Black American would certainly have a legal claim to such an identity based on that criterion alone. Again, and I emphasize, none of this is to suggest that “Black Americans” and “Native Americans” are “the same thing,” rather, this is to explicitly demonstrate that both of those categories are artificial constructions that are arbitrary and capricious in both their inception and application.

That Black Americans are denied their claim to Indigenous heritage is more a function of settler-colonial prerogatives to eliminate Indigenous people than it is a reflection of any underlying, rational, “racial logic.” While, according to American racial criteria, there is a definitive, concrete, difference between “Blacks/African Americans” and “Native Americans,” historically, these peoples have more in common with one another than either group has

with colonial interests. The fact that Blacks and Native Americans have been largely discouraged from breaching this conceptual chasm, especially when their struggles are so inextricably linked to one another, has been a deeply unfortunate circumstance for them (though not for the colonial interests that directly benefit from their dispossession).

To echo Miski Noor, the contemporary struggle against police violence against colonized communities demands that the people most directly impacted by that violence rise above “buzzword” calls for “solidarity.” Historically, neither Africans nor Amerindians have ever had much to gain by engaging one another on terms established by the people who colonized them. This demand calls for a new mode of engagement between Black communities, Indigenous tribal nations, and Native American communities in urban spaces.

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Part III

Intersectional Harms of Criminal Injustice



14

Stigma and Penalty in the Everyday Lives of Black British Young Women: The Case of Child Q.

Esmorie Miller

Part One

Introducing Child Q: A Case Study of Everyday Exclusion and Racial Stigmatisation

Meet the Black, British, racialised young woman known as Child Q. Due to her age she has remained anonymous, unnamed in public documents, thus her pseudonym. In 2020, Child Q was a secondary school student when the events analysed in this chapter occurred. Soon after the COVID-19 pandemic, Child Q was stripped searched by two female Metropolitan Police Officers, on her school premises. The story is told that teachers alerted law enforcement, upon purportedly observing a cannabis smell, from the young woman. Initially, they questioned her about drug use and drug possession, suspicions Child Q denied. They next focused on her possessions, where ‘A search of her bag, blazer, scarf, and shoes revealed nothing of significance’ (Gamble & McCallum, 2022: 2). Finding nothing, either in her belongings or on her person, the Police escalated their actions. A consequential response to Child Q’s strip search, presented by Gamble and McCallum (2022) as

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part of their reactive *Local Child Safeguarding Practice Review*, revealed that the young woman's school is participant in *the Safer Schools Police Officers'* (SSPO) programme. This programme is a school surveillance scheme commencing in the late 1960s and expanded under former Prime Minister Tony Blair's New Labour Government's zero tolerance regime. By 2020 there were over 650 officers, across English and Welsh schools (Parveen et al., 2021).

Scholarship simultaneously exposes and problematises the character of this relationship between policing surveillance and British secondary education (Parveen et al., 2021; Perera, 2020). Citing her London research, Jessica Perera (2019) explains how a cross-section of educational institutions became ensnared within an educational enclosure. Perera demonstrates how successive governments, from Margaret Thatcher (1979–1990) to Boris Johnson (2019–2022), rationalised the deepening economic marginalisation of working-class communities, spaces disproportionately populated by racialised peoples. Famously deemed the new social services, under Thatcher, policing surveillance supplanted social services (Thatcher, 2011 [1995]). The educational enclosure categorisation is important for its concurrent emergence with this now familiar replacement of social services with surveillance, consistently responsibilising working-class communities into socio-economic despair. According to this, 'The enclosure of education (alongside the decimation of labour rights and stable wages) has occurred at exactly the same time schools have become sites for developing and applying heightened technologies of control on multiracial working-class communities' (Perera, 2019: 34). An enclosure vocabulary indicates relegation from a normative mainstream, to safeguard that mainstream, from the relegated. The educational enclosure is marked by structural resistance to supporting the developmental needs of youth caught up within, replacing care with amplified school surveillance and exclusion.

It is within this history that this chapter argues Child Q's confrontation by her teachers and the police is best understood, a child within a system where the punitive gaze of policing surveillance has been legitimised. This is how, despite finding no drugs in the young woman's possessions, two such officers were called in by teachers who remained doggedly suspicious. Without her teachers and without seeking parental consent, officers strip searched her. When suspicions of drug possession remained unsubstantiated Child Q was sent home, alone. In her own words she conveys her vulnerability and trauma, as she gives her impressions of being let down by the institution and people

she had expected to safeguard her wellbeing. In a context where she previously expected safety, with authority figures from whom she expected care, Child Q voiced that being strip searched was an experience punitively felt:

Someone walked into the school, where I was supposed to feel safe, took me away from the people who were supposed to protect me and stripped me naked, while on my period. I don't know if I'm going to feel normal again.

I was held responsible for a smell,

But I'm just a child. The main thing I need is space and time to understand what has happened to me and exactly how I feel about it and getting past this exam season.

I need to know that the people who have done this to me can't do it to anyone else ever again. In fact so NO ONE else can do this to any other child in their care.

Things need to change with all organisations involved. Even I can see that (Child Q, cited in Gamble & McCallum, 2022: 11–12). Against this backdrop, Child Q's experience enables an analysis on the workings of penalty as an effect of racial stigma (Tyler, 2018; Goffman, 1986 [1963]). I argue that in matters of racial stigma a retributive framework legitimises and amplifies retributive thinking and practice. This argument relates to debates emanating from left and right realism (Cullen, 2013; Lilly et al., 2018) regarding the fall of rehabilitation and the rise of retribution (Lipton et al., 1975). According to this proposal, retributive logics and the resulting punitiveness permitted within youth justice, following from rehabilitation's displacement, is not confined to interactions with youth drawn into penal matters. Expanding policing surveillance, from this perspective, necessarily rationalises retributive thinking and practice cross-institutionally—particularly for those institutions within the enclosure. In this arrangement, penalty supersedes lenience and concern for racialised youth like Child Q, and this is proposed to be an effect of retribution intersecting with the a priori punitive force of racial stigma. The observation that policing schools indicates a society going in the wrong direction (Joseph-Salisbury, 2021) can also be read as a commentary on how historic tendencies to police the working-classes customarily begin with their offspring (Pestaña, 2012).

The chapter is organised in two large parts, with subsections. Part one contextualises the Child Q event. It situates the British secondary education system as a key example of how racist institutional procedures normalises and sutures penalty, instead of care, into racialised young women's everyday lives. Ultimately, the corrosive effect of the interaction between retributive thinking and racial stigmatisation is aptly analysed within the interdisciplinary discussions following from African American feminist scholar Kimberlé Crenshaw's

(2013, 1991, 1989) logic of the unique deficit positioning, where race and gender intersect and compound the pains of historic racial stigmatisation. Following similar adaptations (Collins et al., 2021; González, 2018) of Crenshaw's distinguishing race, gender intersection I add youth (age), exploring a tripartite overlap where race and gender collide with youth. This is argued to be a particularly crucial life phase for racialised youth whereby, as Child Q's notes, there remains a frustrated expectation of protection and safeguarding. Section two of the chapter offers two supplementary insights, each exposing the uniqueness of the racial fault lines, demarcating the institutional lines wherein expectations of protection by youth like Child Q remain frustrated. The first subsection outlines what a response supporting Child might have looked like. Meanwhile, the second outlines why such a response was unlikely.

A Note on Method: Historcising the Case Study

The chapter engages the Child Q case as a methodological opportunity, joining efforts rectifying the dearth in research on Black female experiences, particularly those pinpointing the centrality of epistemic marginality to the intersectional-gendered racialisation of penalty and exclusion (Latty, 2023). In this regard, the chapter uses a multi-disciplinary, mixed approach, assessing materials from extant scholarships including political theory, public policy, decoloniality, sociology of crime, history, and criminology. I also draw from the archives, specifically collections from the George Padmore Institute (GPI), London. GPI is an institution preserving Black British cultural history, starting in the 1960s. The chapter relies on ideas found in the Black Education Movement (BEM) files, which holds materials from activists challenging White British educators, during the late 1960s early 1970s, who invented unsubstantiated reasons to relegate Black youth to special schools under the guise that they were educational sub-normals: youth were deemed incapable of keeping up with the supposed brighter White, British students; and similarly it was feared that Black youth's supposed sub-normality would lead to lowered learning standards, in the normal British schools. Alongside BEM files the chapter relies on the Alfred Doulton Report (1969), named for the Harringey Headmaster whose Banding scheme exemplifies what the BEM fought against—racial differentiation through segregating Black and White students. The logic and vocabulary, informed by these, enables an expanded analysis of the Child Q case study.

While orthodox scholarship decry case studies as anecdotal (Pelassy, 1990), others prioritising epistemic equalisation uphold such methods as capable of advancing greater contextual effects and demonstrate how case studies pinpoint the intersectional ‘micro impacts of meso and macro structures and political decisions’ (Canning, 2021, 2). In Child Q’s example, the intersectional, racialised-gendered impacts of historic decisions rationalising surveillance in schools become clear. Moreover, the deployment of case studies, far from being discrete, uncanny anecdotes, build on existing knowledges like those which risk relegation to history. In this case, Child Q’s stigmatisation within the education system can be analysed against the backdrop of longer histories of surveillance in schools, focused on the racialised effects. I therefore avoid the typical de-historicisation scholars like da Silva decry in relation to the racialised amplification of penalty, across British institutions (Miller, 2022a). Access to the archives helped this researcher to reassert and contextualise the impacts of entrenched structural deficits, within the contemporary, to a historic trajectory which can serve as a critical starting point for analysis. For British schools, Child Q’s case confirms continuity in the historic mistreatment of racialised youth. This affirms my look at penalty as cross-institutional.

Indeed, the contemporary research focused on Black young men in similar settings reveal the structural detriments observed in Child Q’s case. What has been gleaned from the multitudinous research focused on racialised men is that the racialisation of penalty and exclusion are experiences felt, (a), in everyday cross-institutional participation, and (b), beyond the criminal justice system (CJS). That racialised women also navigate these institutions informs an urgency to understand the female perspective of racial penalty. Looking beyond the CJS enables a crucial exploration of racialised young women’s entrenched, disproportionately unequal positioning, within the everyday.

Black British Young Women: The Greater Issue of Stigmatisation in Education

The opening quotation, in contrasting Child Q’s expectations of her education with her anguish of the pains she instead encountered, finds affinity with one key aim of this volume: exploring racist institutions, procedures and practices, and their impacts. Extant analyses of systemic pains exposed by experiences like Child Q’s move from the general to the specific: some cite a system characterised by fault lines, before considerations of racist impacts

(Case et al., 2020); others offer greater specificity, looking at contemporary institutions according to multiple social impacts, including (but not limited to) intersections of race, gender, sexuality, nation, religion, and ability (Collins et al., 2021; Collins & Bilge, 2016). While the final section of this chapter maps an analogous typology, this section uses Child Q's experience to contextualise the dearth of Black female experiences with penalty. British criminology resounds with alarm at the absence of such research (Chigwada-Bailey, 2003; Sharpe & Gelsthorpe, 2015).

My starting point is with the greater issue of Black, British young women's stigmatisation, within education. Extant scholarship emphasises education as an important context for interrogating concerns with stigmatisation, but much existing research focuses on the male experience (Graham & Robinson, 2004; Pennant, 2023). This male focus captures the more historic recognition of criminology as a male-stream, a discipline by men about men (Adler, 1975; Britton, 2000). Sociologist Stephanie Latty's (ibid) observation of the prioritisation of racialised men and the marginalisation of racialised women's concerns, within the Canadian context, joins a global cohort of similar critiques about the gendering of social inquiry (Collins et al., 2021). Thus, the greater issue of young women's stigmatisation within education is embedded within the sociology of knowledge (Choak, 2020). Stigmatisation, from this perspective, is synonymous with women's invisibility and subsequent distortion, and correlated to knowledge development (Hodgson, 2022). From feminist concerns with invisibility (Chesney-Lind & Eliason, 2006) to contemporary postcolonial critiques (Choak, ibid), condemnations of social theory's exclusionary character are firmly established. An important basis, therefore, for understanding racialised young women's stigmatisation within the education system is awareness of the deeper roots and wider rootedness of these women's deficit placement.

Regarding deeper roots, Child Q's treatment occurred within an institutional arrangement which historically denigrated racialised youth (Miller, 2022b). A key interaction faced by generation Windrush when they arrived, upon invitation to help pull Britain out of yet another crisis, was the relegation of their children to *Educational Subnormal* (ESN) status (Coard, 1971; John-Baptiste, 2021). Following from their ESN designation, a 1969 report by School Headmaster Alfred Doulton who, having concluded that Afro-Caribbean students had low intelligence due to low I.Q. scores, recommended their placement in special schools, in a process called Banding. A multitude of protests challenged this: in a document titled '*Protest Grows Against Banding in Haringey—Parents Strike Threatened for Autumn 1970*' the formation of the Haringey Advisory Centre for Education (HACE), was

announced. The group comprised the North London West Indian Association, The Greek Parents Association, and The Haringey Parents Group. Lodging their protest against Banding, HACE stated:

The policy of HACE can be stated in two words—Parental Choice. It believes that parents should be able to choose the schools their children go to. It is therefore opposed to banding. Banding means that the education office will decide which schools children go to. That is wrong. Parents should choose (Nicolson, 1970).

Among the reasons for banding was the idea that students' home accents (not unlike the varied British Isle accents), signified incompetence at speaking the Queen's English (Andrews, 2013). The fear was that racialised students would greatly lower the standards of the purportedly normal British school system. It was therefore rationalised that they should be placed out of the way, where their ostensible inevitable failure would not disturb normal school standards. As with Child Q's treatment five decades later, an ESN designation was not a benevolent effort, consistent with safeguarding youth through education into adulthood. Here we see the roots of the contemporary enclosure incubating; instead of safeguarding youth the system safeguarded itself from the ostensible risk youth purportedly posed to its integrity. According to Nicolson (1970), in response to the Doulton Report, '*We have become mor (sic) convinced than ever that the system of education in Britain...has left an enormous legacy of neglect...And West Indians cannot accept the responsibility for a situation which they have neither fashioned nor controlled*'. Part two of this chapter explores this tendency to subvert safeguarding racialised youth as part of a paradox of retributive rationality. This occurs where institutions abdicate their responsibilities to those whom they are purposed to support. Instead, a verdict of individual failure veils structural incapacity.

The dearth of gendered specificity within this race focused education history reflects wider concerns decrying the dearth of research on Black female experiences. Yet, some insights can be untangled from scholarships on British education history. Research on the expansion of education in Britain observes the intersection between race, education, and nation (Shain, 2013). Between the 1944 *Education Act* (observing an agenda for greater equality and inclusivity) and the 1988 *Education Reform Act* (observing a neoliberal agenda economising equality and proffering the enclosures noted previously) it has been noted that 'the designs of education systems [in Britain have] reflected the processes of wider social change, but education policies and processes were also significant in producing new forms of classed, racialised and gendered inequality' (Shain, 2013: 65). A notable post-colonial malaise at the loss of its pre-War hegemony has been implicated in Britain's efforts

to control racialised peoples through a process which labels them as inferior and risky, thereby rationalising surveillance and curtailment (Gilroy, 2004). The education system, through its access to the next generation, has been a premier agency for such pursuits. Race scholar David Gillborn (2005) pinpoints British education policy as a conduit for White supremacy. Racialised young women's unique experiences of institutional racism, within this history, remains invisible.

Black British Young Women: The Greater Issue of Invisibility and Distortion within Education

Within a history rife with continued stigmatisation, Black British young women inhabit a paradox, underscored by invisibility and distortion. Consider Child Q's anonymity, for instance. Read superficially, her pseudonym spares her from being named, apparently barring her from public spectacle and potential (re)traumatisation. Indeed, anonymity arguably proffers the care and concern absent from her initial treatment by her teachers and the police. However, this anonymity is indelibly locked into the invisibility and distortion historically marking out the experiences of racialised young women, in Britain. Even as they are denied the normative recognition of care reserved for youth, denial is rationalised by institutional authorities, like Doulton, who label their punitive denouncements protection. Therefore, anonymity represents a paradox: on the one hand, it ostensibly accords protection, preventing those like Child Q from being woeful spectacles within a system which places youth like her beyond institutional concerns with care; on the other hand, it safeguards institutions from accountability, as they continually rationalise deficient duty of care, for youth like Child Q.

A status of invisibility and distortion within contexts like education is particularly prescient as scholars note the centrality of education as a form of social capital (Menzies & Baars, 2021). However, while scholarship demonstrates how marginality within education is indicative of one's prior or consistent marginality, within society, one problem of invisibility and distortion within education can be seen in an overwhelming focus on pupil (mis)behaviour and (mis)conduct, particularly their rates of (non)attendance (Burchardt et al., 2018). Focus on (non)attendance rates glosses over the role of institutional processes contributing to individual (mis)conduct, while exaggerating (non)participation on the part of pupils. The true structural issues contributing to (non)participation remain hidden, while pupil (non)participation is continually stressed and the impact on their future

lamented, distorting the reality of who is responsible for an apparent and abiding intransigence.

An example of Black youth's paradoxical positioning is the criminogenic reality of contemporary school environments, particularly the tendency to focus policing on those institutions populated by racialised, working classes. The SSPO programmes expanded under Tony Blair, for instance, are overwhelmingly in schools where a large proportion of students receive school meals (Joseph-Salisbury, 2021; Parveen et al., 2021). School Resource Officer (SRO) programmes in jurisdictions like the United States (Turner et al., 2020) and Canada (Madan, 2016) are implicated in surveilling rather than protecting the majority poverty-stricken students in policed schools. Those like racialised Roma, Gypsy, Traveller (RGT) youth are noted for simultaneously acknowledging the relevance of education while failing to follow through (Burchardt et al., 2018). This makes blame for non-attendance squarely the fault of individual RGT youth. Yet, the impositions wrought by deepening surveillance and consequential deficit interactions with school authorities are largely unexplored.

I reiterate that where race, youth, and gender intersect, youth's deficit experiences, beyond the penal estate is worsened by a lack of research into the institutional effect of surveillance and policing, in the everyday (Carter Andrews et al., 2019). It is within contexts like these that criminologists characterise Black young women as over-policed and under-protected (Sharpe & Gelsthorpe, 2015). Against the backdrop of criminology's historic-gendered exclusion David Lammy's (2017) report that Black, British youth risk being a lost generation, emphasising their disproportionate punishment rates, indicates the criminogenic fervour characterising racialised youth's life worlds. The notion of fervour denotes the larger ideological ideals informing institutional practice labelling Black youth out of considerations of care. While Lammy decried Black youth's lost potential this is read here as an indication of youth's politicised positioning as risks to social stability and thereby those for whom surveillance, scrutiny, and penalty is rationalised at disproportionate levels (Miller, 2022a). Therefore, while much of the research on the intersection between race, youth, and penalty prioritise Black young men (Robertson & Wainwright, 2020), those findings underscore a realisation that young women exist within this same politicised reality, where their race subjects them to similar caprices of injustice. The greater problem of their invisibility and distortion is that while little is known about them what is known is not the full story, but a misrepresentation of their reality.

Race education scholar Nicola Rollock (2007: 201) laments Black young women's invisibility and distortion within the British school system. Rollock's

(2016) research tenaciously maps the intersection of race, gender, and youth in British education and stands out within the loud silence typically characterising knowledge on this demographic. Rollock reveals that ‘Black girls become viewed in direct relation to the sets of ongoing bothered beliefs and contentious concerns that exist for Black boys’. There is a visibility and negativity associated with Blackness whereby, despite being viewed as the lesser threat by teaching staff (compared to their Black male counterparts), gender does not protect Black young women from the links between Blackness and deviance (Du Bois, 2017 [1901]). While Du Bois’s (ibid) historic observation foregrounds the United States, Rollock’s (ibid) findings support the relevance of this link to contemporary Britain, observing how teachers who were her research subjects at a particular inner-city school continuously stressed ‘the great number of Black pupils’ in their midst, while the school’s Ofsted report showed equal numbers between Black and White pupils. She recounts this as part of teachers’ heightened awareness of Black pupils, which is indicative of youth’s distorted, politicised positioning as risky. While their reality remains largely under researched, key to these observations is, first, Black young women do not escape the deficit positioning historically attributed by institutions to Blackness, and second, this attribution confirms their similarly distorted representation as risky.

Rollock’s findings of the heightened awareness attributed to racialised school youth is a good time to introduce adultification, as a way of recentring Child Q’s experience. In the *Local Child Safeguarding Practice Review* produced by Gamble and McCallum (ibid), in response to family outcry against Child Q’s mistreatment, reviewers confirm the effect of an adultification bias (Epstein et al., 2017; González, 2018). Adultified, Black children are denied the benefit of innocence attributed to youth and are instead regarded with an adult gaze. This is detrimental on multiple levels. First, youth are not skilled to protect themselves from vulnerabilities, unlike adults who are gifted with the insight of life experience. Adults, particularly institutional actors, are tasked to recognise youth’s vulnerability and accord them due protection (Rules, 1985: Article 2.1). To do otherwise is an abdication of their institutional responsibility—or so it should be. Second, an adultification bias is fuelled by racial stigma, indicating that Black young people (including children) are treated like adults, because of the stain cast by racism and racialisation (Goffman, ibid). Sociologist Erving Goffman notably discussed varied ways one’s identity is blighted (labelled out of acceptability), including through the racial stigmata. Noted as an a priori positioning, racial stigma is an inheritance over which the labelled have no choice. One’s identity is blighted whether youth or adult, with youth ascribed the stain, threat,

and risk purportedly emanating from their race. The stained youth cannot be vulnerable and does not, therefore, prompt protection. Child Q argued that she was blamed for a smell. Understood within this distortion, she was penalised against the backdrop of heightened institutional awareness purporting that Blackness necessitates policing. Intersectional logics offer a vocabulary, both enduring and transformative, for unpacking the perimeters of Child Q's deficit positioning.

Adapting Crenshaw's Intersections of Race and Gender: Beyond either/or

Thirty years after Crenshaw's ground-breaking mapping of African American women's uniquely plural and overlapping modes of exclusions in the law, a wide-ranging interdisciplinary canon has followed (Carbado & Harris, 2019). Alert to the continued critical reception of Crenshaw's original ideas feminist theorist Patricia Hill Collins et al. (2021: 691) observe the logic's generalisability, citing 'the increasing globalization of intersectionality as a field of critical inquiry and praxis'. Indeed, this chapter builds on my previous work, where Crenshaw's ideas on the intersections of gender, youth, and race were introduced (Miller, 2022b). Youth serves as a social intersection, alongside race and gender, paralleling scholars who, like me, have also adapted Crenshaw's logic. Intersectionality has been a framework for critically assessing how multiple aspects of our identity intersect and compound to effect unique experiences of structural privilege or oppression. Indeed, the concept is used to describe the ways that both societal privilege and oppression are complicated by different elements of our social identity, elements that are either prone to privilege or to marginality (Crenshaw, 2013, 1991, 1989). Child Q and young women like her, Black and British, are represented in this chapter as ones whose life experiences unfold within a paradox—positioned as simultaneously invisible and distorted. This seeming contradiction—to be simultaneously invisible and distorted—risks subversion to an either/or binary, forcing a choice between one or other. It is such concerns, the subversion of key marginalities in forcing a choice between one or other, which intersectionality elucidates.

An intersectional approach considers 'how the experiences of women of color are frequently the product of intersecting patterns of racism and sexism' (Crenshaw, 1991: 1243–1244). Centring women of colour, Crenshaw argues 'these experiences tend not to be represented within the discourses of either feminism or antiracism' (Crenshaw, 1991: 1243–1244). This either/

or approach reveals how mainstream activist and political discourses of anti-oppression have historically failed to address African American women's concerns. Mainstream feminism typically forwarded the interests of White, western middle-class women breaking shackles of domesticity, demanding entrance into the economy (Adler, 1975; Britton, 2000; Smart, 1977; Smart, 2013). Yet, women of colour in the United States (and globally) had other concerns precise to how features like race and gender intersected and informed issues beyond domesticity's shackles; this intersecting position includes their utilisation in the modern western economy's historical colonial, slave origins. Crenshaw's intersectional logic showed that women of colour held a unique position, having formed the backbone of the modern western economy as workers, both inside and outside the home.

Sociologist Jacqueline Jones (1988) traced African American women's labour from the slave cotton fields of the American south to their mass northern migration (post-emancipation) and eventual placement in the arena of domestic servitude, in the homes of the White middle and upper classes. Titled *Labour of Love, Labour of Sorrow* Jones drew attention to Black women's unique placement, where their struggles towards progress (not just against oppression) came to represent a paradox; while Black women's autonomy to work can be read as synonymous with resistance, theirs was shaped by what Crenshaw (2013) noted as structures of domination—where resistance was cast between love and sorrow. This denotes the visibility of their position as participants in the economy, against their abiding struggles for equality and true autonomy. For instance, Jones showed how Black women's ostensible autonomy to work meant neglect of their own children, as they could not afford the cost of childcare, including the cost of feeding their families and employing childminders. Women were often penalised for stealing leftovers from employers' kitchens to make up this deficit. Young children left on their own, as their parents worked in other people's homes, wandered the streets hungry, falling asleep in bushes, and were often placed in detention by the police, who rationalised jail cells as appropriate places for children. In this history, jail cells became normalised as protection for Black youth in need of care and concern—lives cast between love and sorrow.

African American women's experiences of oppression necessarily diverged from that of middle-class, White counterparts. Consistently, Crenshaw's intersectionality lens showed how the anti-racist movement similarly excluded women of colour because, despite being racialised, men of colour held the mantle of masculinity, which rendered anti-racism a gendered movement, subverting Black women's concerns. Crenshaw (1991: 1242) concluded that 'when the practices expound identity as woman or person of colour as an

either/or proposition, they relegate the identity of women of colour to a location that resists telling'. Thus, an intersectional logic reinforced the need for awareness of racialised women's unique positioning of oppression: at once occupying two historically marginal positioning, as both woman and person of colour (Crenshaw, 1991); and at once denied recognition, in dominant processes established to resist these modes of marginality.

While Crenshaw's intersectional thesis related to African American women, scholars from a number of critical traditions, including post-colonial feminism, draw further awareness to the global relevance of intersectionality. Indeed, Criminologist Clare Choak (*ibid*) calls for Black, British postcolonial feminist intersectional perspectives. This call emanates from her recognition of the paucity of focus on racialised women's experiences, especially in knowledge development. Meanwhile, observing contemporary narratives polarised around global north, south concerns feminist theorists Amy Piedalue and Susmita Rishi (2017) argue for more relational perspectives which considers that northern concerns and southern concerns necessarily overlap and compound pains of oppression. Sociologist Monish Bhatia (2023: 473) offers an exemplar of this north, south overlap uncovering 'how gender, race, class, sexuality, marital and migration status intersect to oppress, control and discipline poor/illegalized single migrant mothers and pregnant women from the Global South' in the contemporary immigration relations, unfolding in places like Britain. Termed *crimmigration*, the merger of immigration with criminal law starts with historical colonial relationships, noted in the Crenshaw analysis. These relations are reproduced contemporaneously, as an outcome of postcolonial continuities of economic oppression, which sees vast swathes of individuals uprooted and displaced in a bid to access resources and opportunities repeatedly denied them. How immigration has become punishable can appropriately be understood through an intersectional lens.

Intersectionality, Invisible, and Distorted: Enters Youth, Black, and Female

Intersectionality enables the inclusion of critical explorations of matters consistently excluded from typical youth justice analyses. In Britain, typically, such concerns are linked to punishment amplification associated with the 1991 Criminal Justice Act (CJA). This Act adduced a deepening racialisation of crime where, consistent with what criminologist Coretta Phillips et al. (2019) noted, a hidden history linking race and deviance continued to reproduce disciplinarity. Consider that the historic stain of institutional

racism, though continuously denied, continuously makes its impact known in the lives of the racialised (Macpherson, 1999; Scarman, 1981). Within this context, Lammy (ibid) noted that over 40% of all youth in the English, Welsh criminal justice system are Black, and that the youth justice statistics therefore represents disproportionate racialisation. In 2020 this number has written to 52% (Youth Justice Board, 2021). Disproportionality is described as a phenomenon whereby individuals associated with a particular group identity (such as Black youth) have a higher representation in custody, compared to their overall percentage within the population (Doob & Webster, 2008). The literature pinpoints structural disadvantage fed by racial discrimination in this reality—concluding that this speaks to a deficit in the system (Doob and Webster, ibid). That these hidden histories alluded by Phillips and colleagues are not limited to the British context has significance for demonstrating the expansive relevance of racial concerns. In Canada, for instance, the deficit positioning of Black and Aboriginal youth within the CJS speaks to an amplification of punishment (Owusu-Bempah & Wortley, 2014).

The intersectional lens takes these concerns correlated with punishment amplification, rationalised under Britain's 1991 Criminal Justice Act, as events that have impact beyond racialised youth's disproportionate representation in the criminal statistics. This is supported by the stigmatising link between race and deviance (Phillips et al., 2019; Rollock, 2007). Locating penalty beyond the CJS demonstrates the wide reach of penalty, emphasising that Black youth face the wider punitive effect of retribution, due to stigma (Miller, 2022a). This is where institutions and authorities, like teachers, take up the mantle of risk concerns and exact blame similar to the punitiveness unfolding within the penal estate. Through a series of racial stereotypes, teachers determine youth's riskiness and put them in contact with policing authorities. For youth within the enclosure, like Child Q, policing surveillance intersects with education—so the police are already on hand, and this is due to a stigmatising association with risk (Carey, 2024). Goffman's assessment that the stigmatised is necessarily dehumanised is more nefarious for the young whose experiences unfold in spaces where protection is expected.

This frustrated expectation is noted in Child Q's words, in this chapter's opening quotation. Locating penalty beyond the penal estate, therefore, necessarily proffers the need to understand penalty as something inclusive of concerns with the overlooked role of criminalisation—through stigmatisation. Indeed, the zero-tolerance fervour of the 1991 CJA allows the retributive logic shaping relationships within the CJS to intersect with this *a priori* punitive influence of racial stigma. There is an important gendered element to this. Rollock (ibid) notes, while the attention in school are on Black boys,

Black girls receive the trickle-down deluge of scrutiny. Here, the retributive interests of police officers responds to the unique positioning of risk bearers occupied by Black racialised youth, even at school, and conceptually incarcerates them (Brockett, 2000). The next, section of the chapter (part two) returns focus to Child Q. In locating penalty beyond the penal estate, I outline perimeters for understanding the notion of expanded, everyday penalty beyond prisons, criminals, and offender youth. Starting with Crenshaw's intersection lens, the section starts with the following questions: what would a response prioritising care for Child Q look like? Why was a response prioritising care for Child Q's case unlikely?

Part Two

What Would a Response Prioritising Care Look like, in the Child Q Case?

Crenshaw's intersectionality thesis is key to this to shaping a response to the opening question. Recall that Crenshaw emphasises overlapping processes which compound, under the aegis of institutional domination. These are key to this chapter's efforts, drawing attention to the role of racist institutions in undermining racialised individuals' possibilities for accessing wellbeing. Child Q's mother's lament on her daughter's trauma pinpoints the criminogenic orientation of the institutional response. In her mother's words:

the incident that happened (was) treated not as a safeguarding issue. (It was) treated as a criminal matter. (Professionals) treated her as an adult. (She was) searched as an adult.

Child Q is a changed person. She is not eating, every time I find her, she is in the bath, full of water and sleeping in the bath. Not communicating with us as (she) used to, doesn't want to leave her room, panic attacks at school, doesn't want to be on the road, screams when sees/hears the police, and we need to reassure her. We try to get her to do things and reassure her.

At the end of day, things like that happen, is it because of her skin, hair. Why her, now looking at the future, will she be comfortable?

Child Q was searched by the police and was asked to go back into the exam without any teacher asking her about how she felt knowing what she had just gone through. Their position in the school is being part of the safeguarding team, but they were not acting as if they were a part of that team. This makes me sick - the fact that my child had to take her sanitary towel off and put the same dirty towel back on because they would not allow her to use the restroom to clean herself. I was

also wondering if the officers body cameras were on while my child was stripped of her clothes, are they re-watching it? (Child Q's Mother, cited in Gamble & McCallum, 2022: 12–13).

In discussing how being strip searched at school impacted her daughter, Child Q's mother observes that neither the effort of teachers nor the police reflected or intended safeguarding. Mother's words inspire two important questions about institutional responsibility: first, what would a response prioritising care look like, in Child Q's case? Second, why was a response prioritising care unlikely, in Child Q's case?

What Would a Response Prioritising Care Look like, in the Child Q Case?

The research on child friendly justice gives us both a logic and vocabulary for answering question one (Case et al., *ibid*). To begin, consider the international treaty response, regarding minimum standards of treatment for youth, specifically the Beijing Rules:

The following Standard Minimum Rules shall be applied to juvenile offenders impartially, without distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status (Rules, 1985: Article 2.1).

A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult (Rules, 1985: Article 2.1.a).

The relevant provisions of the Rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behaviour that would not be punishable if committed by an adult (Rules, 1985: Article 3.1).

These are international treaty guidelines for protecting children, because they are not adults and should not be treated as such. While the minimum standard protects those youth culpable of wrongdoing, it also extends to children, beyond criminality, denoting need for support beyond CJS matters, including what Child Q's mother notes as safeguarding—indicating everyday life concerns.

Notions of penalty in the everyday has wide recognition, as exemplified in the Child Friendly Cities Initiative (CFCI). This is an undertaking under the auspices of UNICEF, supported by the United Nations Conventions on the Rights of the Child (UNCRC) in 49 countries, launched in 1996. Child friendly cities:

operationalizes the child rights outlined in the UN Convention on the Rights of the Child (CRC) into a local system of good governance committed to children. CFCI prioritizes the voices, needs, and rights of children as an integral part of public policies, programs, and decisions. (Oberg, 2024: 990).

the links made by this initiative with everyday life is of particular importance to this chapter. I emphasise the need to understand the role of penalty beyond the penal estate as part of a logic which recognises something consistent with the stigmatisation of race—or the punitive character of exclusion. Scholars demonstrate that the penal estate is a catchment system which absorbs what is left of individuals and communities after encounters with a series of exclusions and denials from key resources and opportunities intended to support (McAra & McVie, 2010). Youth whose lives intersect with authorities also experience exclusions, including exclusion from care. Said another way, exclusion from care indicates longer trajectories of marginality that are typically dehumanising and cross-institutional.

Yet, much of criminological research focuses on offender identities and histories, effectively decontextualising such outcomes from the structural intransigence underpinning them (Phillips et al., *ibid*). Unsurprisingly youth who find themselves in the CJS are likely from poor, working class, often racialised backgrounds (Goldson, 2005). Initiatives like child friendly cities recognise that absent social capital, starting with where youth live, places them in the crosshairs of the CJS. The link Crenshaw (2013) makes between the public spectacle of mass incarceration and private violence is consistent with this idea that punishment starts long before individuals enter the penal system—or that retributive penal logics and practice are embedded within, and structures, everyday life. In recognition, Child Friendly Cities' initiatives prioritise care logics, placing concerns with children's wellbeing first. Initiatives actively tackle indices of institutional dysfunction in recognition that proactive care is essential to actualising the rights that all modern individuals are owed, including youth. In this CFCI arrangement, unlike the CJS, youth have a platform to vocalise their needs.

Extant research on child friendly justice align within treaty specifications, like the Beijing rules and CFCI. Such logics are part of my answer to the question guiding this section—what would a response prioritising care, in the Child Q case, look like? A response prioritising care, in Child Q's case, favours child friendly logics and practice.

Child Q and the Rationality Paradox: Why Was a Response Prioritising Care Unlikely?

That Child Q was denied care, remains the reality, despite international treaty specifications that institutions treat youth with care and despite exhortations for child friendly justice. Here, institutional authorities organised their responsibilities according to dominant, racist attitudes stigmatising racialised youth as suspicious and deserving of scrutiny. Findings outlined by the oversight body reviewing the Child Q event correlates with this critique.

Finding 8: *Having considered the context of the incident, the views of those engaged in the review and the impact felt by Child Q and her family, racism (whether deliberate or not) was likely to have been an influencing factor in the decision to undertake a strip search* (Gamble & McCallum, 2022: 32).

That said, one feature believed to have a significance to the experience of Child Q is that of adultification bias. This concept is where adults perceive Black children as being older than they are. It is 'a form of bias where children from Black, Asian and minoritised ethnic communities are perceived as being more 'streetwise', more 'grown up', less innocent and less vulnerable than other children. This particularly affects Black children, who might be viewed primarily as a threat rather than as a child who needs support (Gamble & McCallum, 2022: 34).

A rationality paradox historically organised that relationship between racial stigma and penalty, cited in Gamble and McCallum's conclusion that institutional authorities were influenced by racism. This is consistent with Crenshaw's characterisation about the racial derogation underpinning African American women's portrayal to the wider public: cast between Jezebel and Jemima, Black women are perceived in the wider consciousness as either risky or insipid, both identities steeped in diminution. According to the Child Q review Black children are similarly (mis)represented, adultified as street-wise, threatening, tougher, and more invulnerable than the rest. Child Q was stripped naked, effectively touched, and then sent away on her own. How does a child distinguish between the supposed good touch of legitimate authority and the bad touch of illegitimate authority? This question is more poignant given that the young woman had genuinely done nothing wrong, according to all discernible scientific evidence. She did not even have the solace of a guilty conscience on her side, to assuage her experience. Instead, she was confronted and forced to live with racist suspicion and the amplified, disproportionate retributive punitive effects upon her person.

According to sociologist Sherene Razack (Hubbard & Razack, 2011) a process of rationalisation underpins institutional behaviours of this kind. To

treat a child in this way can, for instance, be rationalised (not unlike techniques of neutralisation) (Matza & Sykes, 1957), denoting a lack of outrage at the legitimisation of stigma instead of care, in the lives of racialised young people. They are tough. They can take it. Anything goes. It is their fault. They bring negative attention on themselves. For Razack this speaks of the placement of racialised peoples, by White institutional authorities, in a subordinate category as ones to be scrutinised for fear that they might succumb to baser instincts and act characteristically out of control. While Razack was speaking of continuities of colonial violence experienced by Canada's Aboriginal populations at the hands of policing authorities, the correlation is with the processes of rationalisation underpinning legitimising authorities who offer surveillance as protection. The rationality paradox builds from what intersectionality reveals, that structures on which contemporary wellbeing relies are also structures that shape and deploy racial oppression. The rationality paradox is used here to answer the question guiding this section: why was a response shaped by care unlikely, in the Child Q case?

Child Q: Mapping Intersections of Youth, Race, and Gendered Oppression

I have thus far established that Child Q's experience has an intersectional gendered lens, and this has been explained according to Crenshaw's intersectionality logic. Two themes emerging from this explanation are women's invisibility and consequential distortion. While there are a multitude of paths analyses correlating with these themes can take, I conclude the chapter by using the Child Q event as an exercise in epistemic reorientation. In their lament on institutional violence, Razack and Crenshaw make similar reference: if epistemic violence concerns both invisibility and distortion in one's (mis)representation, then epistemic reorientation is the act of writing or mapping young women into the picture to (among other possible outcomes) get a true sense of the reality within which their experiences unfold. Recall that this chapter critiques institutional intransigence. My efforts outline the system, focusing on what scholars call its essential fault lines (Miller, 2022b). This denotes a system, even before considerations for gender and race, that is troubled. My outline begins with a general picture of what constitutes this trouble and then shows more specifically the intersections that particularises this troubled characterisation as racial stigma. Moving from the general to the specific, I will outline where women, in general, and racialised young women, in particular, are positioned according to the identified faults. This represents

my adaptation of Crenshaw's intersectional logic to include youth, alongside race, and gender. There are four categories to note.

First, before particularisation along gendered and racial lines, criminologists speak of a *criminogenic youth justice system that has 'institutionalised irrationality'* (Goldson (2005: 79). Criminologist Barry Goldson (2005: 79) argues that youth justice in England and Wales 'represents a curious form of institutionalised irrationality. It systematically damages children, it fails to prevent and/or reduce youth crime and it imposes an extraordinary financial burden on the public purse'. This is a system that denounced rehabilitation in favour of retribution, effectively rationalising penalty for youth. Boasting one of the lowest age of criminal responsibility (ACR) (ten years old) in the world means that youth are given a life sentence, criminally labelling youth permanently out of normative recognition: a record excludes youth from opportunities like jobs, housing, education, and the like (Traub, 2024). Remarkably, retribution was rationalised into a youth justice system which early penal reformers had painstakingly separated from the adult system. This is counterintuitiveness (or institutionalised irrationality) at its best. Having deemed youth a period of transformation and development, reformers historically repudiated the inclusion of punishment, citing its likelihood for harming youth's progress (Traub, *ibid*). Yet, rehabilitation was superseded and has been retribution rationalised.

Second, criminologists encourage a particularised analysis, looking at lines where gender intersects with youth (Choak, *ibid*). Here criminologists speak of a *criminogenic youth justice system with a shrinking gender gap* (Estrada et al., 2016). This is a gendered lens, before concerns with race. Narratives draw attention to this phenomenon which concerns the deepening relationship between gender and punishment, marking a shift from the historic tendencies to treat girls' deviance as psychiatric (Rennison, 2009). The gap between the recorded number of girls facing punitive action, compared to the number of boys, is said to be shrinking and girls' presence has been normalised in the penal regime. This is typified by sensationalised narratives about a 'laddette culture', indicating a 'masculinisation of girls', and lamenting 'the dark side of female emancipation' (Sharpe & Gelsthorpe, 2015: 52). According to this, young women now occupy the public sphere, having been liberated from domesticity, and are increasingly seduced by deviance, normalising behaviours typically associated with men, and these are actions eclipsing ideal feminine attitudes (Sharpe, 2023).

Against this backdrop of institutional irrationality, there is a third category, where criminologists encourage particularised analyses, focusing where race and gender intersects with youth. This is a *criminogenic system*

which stylises racialised youth as reluctant (Pitts, 2007), *yet inevitable, deviants*. Crenshaw also allows for such adaptation, with subsequent analyses including youth, alongside her initial integration of race and gender (Crenshaw, 2013). In recent analyses the author shows how the historic disciplinarity linking Black women with incarceration is constitutive of 'a wider template of disciplinary practices produced both by state institutions as well as by private social power' (Crenshaw, 2013: 23). Correspondingly, Crenshaw's talk about (mis)representation in the cultural constructs deployed about Black women, denotes interactions beyond the penal estate, notably non-penal institutions.

Observing gender and youth through the lens of racialisation, in this context, scholars note a distinct positioning of invisibility and distortion: 'The racialisation of punishment, although rarely discussed through the lens of gender, is very significant. Minority girls, like their male counterparts, are over-policed and under protected' (Sharpe & Gelsthorpe, 2015: 51). Criminologist Ruth Chigwada-Bailey (2003) also notes this invisibility, arguing that alongside facing the triple disadvantage of being poor, Black, and female, there has been very little research on intersections of gender, race, and penalty in Britain. Child Q's experiences unfolded within this criminogenic context of institutionalised irrationality, where (a) youth have been drawn into the retributive regime, (b) women and girls are increasingly portrayed as punishable, (c) racialised young women and girls face a version of this irrationality, amplified along racial lines, and (d) we necessarily need to understand that these criminogenic institutional attitudes and actions impact youth, beyond the penal estate.

The fourth and final category observes the *institutionalised irrationality as constituted by authoritative behaviours, extending beyond the penal estate*. This is crucial to this chapter's analysis. Child Q was not an offender. She was not in a penal institution. She was walking through the halls of her school. Yet, these halls are policed. This is the criminogenic expansion of retributive scrutiny and action. Just as with its rehabilitative predecessor, whatever logic is rationalised for the so-called deviant racialised youth necessarily extends to all racialised youth. According to the punitive effect emerging where retribution intersects with stigma, retribution is the same, whether it is deployed in prisons, on sidewalks, in schools, or in the surveillance mechanisms in shopping centres. The retributive criminogenic approach, marking Child Q's experience, cannot be bounded to youth drawn into the penal estate alone. Ignoring the reality of retribution's corrosive potential is like believing in the likelihood of containing water in a straw basket.

Conclusion

This chapter responds to calls, from British scholars of race, encouraging greater criticality in how matters of race are analysed. Identified limitations of orthodoxy reproduce statistical approaches essentialising racialised peoples as exceptionally criminal and dangerous. Such approaches correlate with the normalisation of the high levels of punishment—renowned as disproportional in scope—characterising racialised peoples experiences, globally. Noted as a correlate of the globalised amplification of deviance and the consequential racialisation of punishment, scholars including criminologists, exhort the need for more expanded critical knowledge development, starting with an awareness of the dangers of linking racialised peoples' identities to deviance (Phillip et al., *ibid*). Scholars pinpoint the histories within which such approaches are rooted, encouraging greater awareness that orthodox approaches are steeped in colonial domination and that arrangement's historic normalisation of violence, in the lives of racialised peoples, globally (da Silva, *ibid*).

In response, this chapter uses the Child Q case—a Black, British, female secondary student stripped searched without cause, by Metropolitan Police Officers, while at school—responding to this call for greater critical expansion. Child Q represents a key opportunity to centre a goal relevant to this collection's goals—emphasising indices of structural, racial intransigence instead of the normalised individual blame, by centring racist institutions, procedures, and practices, and their impacts, beyond the penal estate. Central to this is the view that penalty is more than being detained behind bars; instead penalty can be adduced as a correlate of everyday cross-institutional experiences.

Grounded in an intersectional analysis, the chapter takes the approach that for racialised youth, everyday navigation of institutions beyond the penal estate, is a field rife with penalty, a field typically disregarded in the orthodoxies prioritising statistics of offenders and their criminality. Observed through the intersectional lens, the chapter foregrounds the youth justice context, adding youth to Crenshaw's initial dual categories of race and gender. According to Crenshaw, there is a complexity to racialised experiences of domination that is often ignored or downplayed—this is the idea that for women of colour two premier features of marginality (race and gender) overlap to compound the pains of inequality. I argue that Child Q enables an analysis on the workings of penalty, in the everyday, as an effect of racial stigma. While observing the Child Q case study through an intersectional lens the chapter historicises the ubiquitous nature of the punitiveness suturing

itself in Black youth's everyday experiences, including the British education system. Indeed, in an arrangement where policing surveillance is rationalised in schools, penalty supersedes lenience and care for youth like Child Q, and this is proposed to have the amplified effect of retribution, intersecting with the a priori punitive force of racial stigmata.

In the final analysis, the chapter asks two important questions: what would lenience have looked like, in the Child Q experience? Why was lenience unlikely in the Child Q experience? These questions enabled an exploration of the cross-institutional particularities of everyday, cross-institutional penalty, in the context of British education. One crucial insight is that the education system offers an opportunity to acknowledge the historic role of penalty, for racialised youth in British education. Penalty, according to this insight, is a historic point of reference, which has been rationalised as a protective those youth within the scope of the racial gaze. Against the backdrop of this history everyday life, like life behind bars, are correlates of a more embedded history reproduced in more sanitised contemporary experiences. Retribution can, in this case, be positioned as safeguarding all the while downplaying the racist institutional procedures and their impacts. Ultimately, I conclude the chapter by using the Child Q event as an exercise in epistemic reorientation, offering a conceptual framework for understanding the character of cross-institutional, everyday penalty.

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15

Religion, National Identity, and Racial Injustice in Southeast Asia

Sriprapha Petcharamesree

Introduction

Religion has a long, complicated, and interconnected relationship with the legacy of racism. Religions, religious institutions, and the academic study of religion have been (and continue to be) utilized to uphold white supremacy and justify racism and ethnic discrimination. Social contexts and social conditions always inform religious studies. Hence, religion often functions as a mirror of society's broader assumptions and attempts to divide and discriminate, 'whether that be based on race, ethnicity, class, social status, nationality, religion, (dis)ability, gender, or sexuality' (Dept.of Religious Studies, University of Pittsburgh, 2020). However, some other studies, such as a survey conducted by Pew Research Center among Black Americans in the US between Nov.19, 2019, to June 3, 2020 revealed that even though Black Americans believe that racial discrimination is the main reason that Black people cannot get ahead in society, the survey emphasized that they reported experiencing racial discrimination outside of religious contexts much more than in religious settings (Pew Research Center, 2021). A similar finding by the study conducted by Stefanie Doebler (2016) across 47 countries of Europe on the European Values Survey 2008 showed that religion does not

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facilitate racist attitudes; poverty and low education are some of the factors that do. In addition, a study conducted by Schneider, R. C. et al. (2024), found that both White and Christians of color draw on religious frames to respond to perceived discrimination.

While there is a general acceptance of the relationship between religion and ethnicity (Oppong, 2013) evidence of the strength of the relationship between religion and identity is yet to be confirmed. However, in the case of South-east Asian countries, especially ASEAN Member States (AMS), it seems that religion is an important determinant for identity formation at individual and communal levels and at the state level. To varying degrees, AMS either explicitly recognizes State religion or grants certain privileges to some particular religion(s), as will be demonstrated in the cases of Singapore and Thailand. For many people around the world, including in SEA, religious identification is an integral part of their communal and national identity, which some may seek to express through constitutional recognition (Dawood, 2017). Religious recognition, institutional establishment, religious privileges, or religious law may, however, damage the rights of religious minorities, dissenters, and non-religious people. It may also increase tensions between an 'in-group' and an 'out-group' (Dawood, 2017). Dawood explains in his study that a particular religion may be associated with national identity or with the foundational values of the community (2017, 4).

This paper examines the impacts of state recognition of religion, or the State privileging religion(s) on citizenship rights and racial discrimination/racial injustice. It also analyzes how in countries, namely Singapore and Thailand, where religion and ethnicity play a crucial role in politics and society, racial discrimination and injustice seem to be unavoidable. The two countries are chosen as case studies due to their contrasting situation. While Singapore is known for its success in keeping 'social harmony' with no violent conflicts, Thailand has been facing ongoing violence in the Deep South for so many years without signs of any long-term solution. It argues that wherever State authority(ties) attempt to enforce religious 'unity' or 'social harmony', certain minority groups are perceived as 'politically subversive' and therefore excluded from mainstream society. This always leads to intolerance of differences, discrimination, and human rights violations. It not only prevents communal peace, but it always results in racial injustice. One by one, this paper addresses the questions of what the religious landscape in ASEAN/SEA looks like; what is the relation between religious identity and conceptions of nationhood; have countries in ASEAN/SEA experienced religion-related social/racial hostilities recently; how tensions are manifested; and how is it that religions—which

supposedly espouse peace, love, and harmony—are so commonly connected with intolerance and racial injustice. Recommendations are provided in the conclusions section.

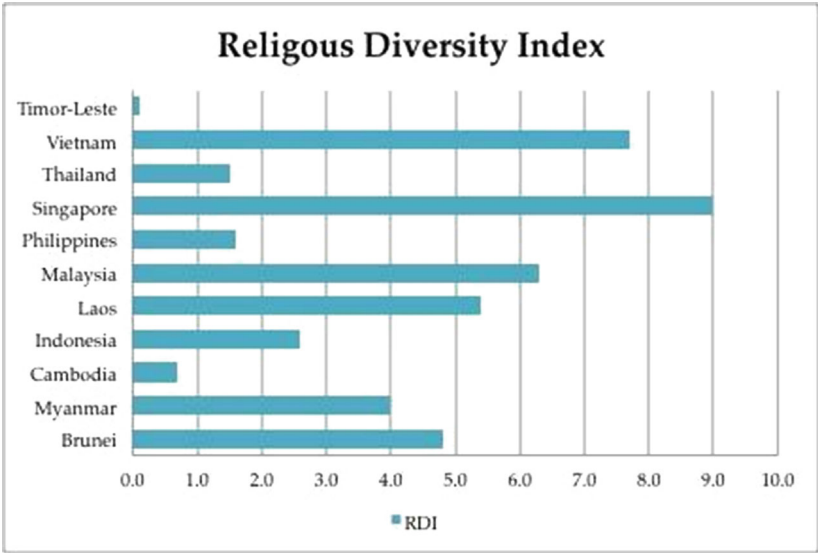
Before the author enters substantial discussions, it is important to note that even though the term ‘racial justice’ is defined in some glossaries such as the one introduced by the International City/County Management Association-ICMA (2021) it’s hard, though, to find the term/concept of ‘racial injustice’. The glossary refers to racial justice as ‘the systematic fair treatment of people of all races, resulting in equitable opportunities and outcomes for all. Racial Justice [is defined] as the proactive reinforcement of policies, practices, attitudes, and actions that produce equitable power, access, opportunities, treatment, impacts and outcomes for all. Racial justice—or racial equity—goes beyond “anti-racism” (ICMA,2021). It is not just the absence of discrimination and inequities, but also the presence of deliberate systems and supports to achieve and sustain racial equity through proactive and preventative measures’ (ICMA, 2021). There are attempts, though, to define ‘racial injustice’ such as the work of Matthew (2017) who refers to ‘racial injustice’ as the systemic and pervasive discrimination and inequality experienced by individuals and communities based on their race. It encompasses various forms of oppression, such as state-sanctioned violence, health disparities, restrictions on refugees and asylum seekers, and White supremacism. However, Matthew’s suggested that conflating racial injustice and racial discrimination with racism would be insufficient to understand the phenomenon of race-related ills (Matthew, 2017). Meer (2022) in his book highlights the historical emergence and ongoing social reproduction of racial injustice in relation to nation formation, endemic racism, health inequalities, restrictions on refugees and asylum, and white supremacism as pervasive throughout Western societies.

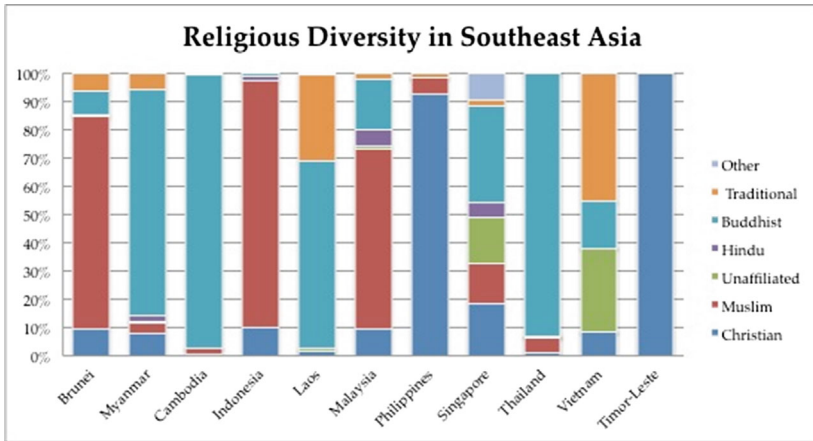
It is worth noting as well that legally, the term ‘racial injustice’ is not used. The International Convention on the Elimination of All Forms of Racial Discrimination refers to the principles of equality and nondiscrimination. It defines ‘racial discrimination’ in Article 1 as ‘any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life’ (OHCHR, n.d.). The same article clarifies that ‘the Convention shall not apply to distinctions, exclusions, restrictions

or preferences made by a State Party to this Convention between citizens and non-citizens’ (OHCHR, [n.d.](#)). This allows discrimination by the state against groups who are not considered ‘nationals’ of the state party, including minorities, migrant workers, refugees, asylum seekers, and stateless persons, to name some. While racial injustice encompasses the acts of discrimination, inequality, exclusion, and racism, this paper uses the term racial discrimination and racial injustice interchangeably.

Understanding the Religious Landscape in ASEAN/SEA

As already pointed out earlier, in this paper, racial injustice is put in the context of recognition of state religion or state privileging a particular religion. The study of the recognition of State religion in ASEAN offers a mixed picture. There are countries with one dominant religious group, countries with one majority religion and well-defined minority religions, and countries with religious/ethnic diversity. The two graphics created by Brennan ([2014](#)) show the religious diversity in the region.





Southeast Asia ranges from very religiously diverse countries (Singapore and Vietnam) to very uniform (Cambodia and Timor-Leste). Thailand, the Philippines, and Indonesia are all on the less-diverse side (Brennan, 2014). The first half of the twentieth century saw religious movements emerging to oppose colonial powers. The movements have seemed to revive in some countries, no longer against colonizers but against those deemed 'different' (Ileto and Cook, 2008). The case of Myanmar provides evidence of this observation.

The emergence of religious intolerance and (in some cases) religious extremism could be explained from different perspectives one of which is through the lens of State-religious relations, how this relationship is regulated by law and how, to repeat what was quoted earlier, the recognition of a particular religion is associated with national identity or with the foundational values of the community.

The relations between the state and one or more religious groups may be structured in various ways, depending on (a) the extent to which the state funds, supports or endorses religion, or recognizes a religious basis to the nation or to public authority; and (b) the extent to which religious laws or institutions control or influence the state (Dawood, 2017: 8).

Dawood has classified the State-religion relationship into 6 archetypes namely (a) *'laïcité' (strong secularism)*, (b) *'neutrality' (weak secularism)*, (c) *'pluralist accommodation'*, (d) *'recognition'*, (e) *'weak establishment'*, and (f) *'strong establishment'* (Dawood, 2017: 8). No SEA states exhibit strong secularism, despite the existence of a 'Republic' such as the Philippines, where the constitution prescribes the separation between State and religion. The Philippines does not seem to reject religious privilege, and the influence of the Catholic Church over legislation and public policy is evident. In the same vein, States

proclaimed to be socialist countries, such as Lao PDR and Vietnam, do not display religion-State neutrality or weak secularism. In this type of relationship, religion of any kind may not be publicly enjoined, funded, or supported by any public authority (Dawood, 2017: 9). Both countries, although not promoting or supporting any religious belief or practice, authorities, especially in the case of Vietnam, place limitations on and discriminate against some religious minority groups in the country (Vu, Bailey and Chen, 2016). For Lao PDR, religious freedom is recognized by Article 4 (amended in 2015) of the Lao Constitution, which provides that Lao citizens have the right and freedom to believe or not to believe in religions (The Constitution of the Lao People's Democratic Republic, 2015). While Lao PDR tends to privilege (without declaring it) Buddhism, it's not clear if, in this country, different religious interests and beliefs could participate in social and civic life on an equal basis.

Countries such as Indonesia and Singapore may be seen as pluralistic in the sense that their constitutions seem to accommodate religions, and the State may also cooperate with religious institutions in their social functions. By law, these States recognize a plurality of religious groups that exist side by side; the State does not favor or discriminate based on religion. The Constitution of Indonesia Article 29(2) guarantees the freedom of religion and worship of every citizen in accordance with their religion and belief (The Constitution of the Republic of Indonesia of 1945, amended in August 2002). However, Paragraph (1) of the same article specifies that the state is based on the belief in the One and Only God (The Constitution of the Republic of Indonesia of 1945, amended in August 2002). Whatever the interpretation of this, the fact is that although the Indonesian government recognizes six distinct faiths, namely Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism, it is undeniable that almost 90% of Indonesians are Muslim (McKenzie, 2019). Defamation against religion, in this case, Islam, is punishable under Blasphemy law. A similar law is also applied in Singapore, the most religiously diverse SEA country (Singapore Department of Statistics, 2015; Mathews, Lim and Selvarajan, 2019).¹ Article 15 of the Singaporean Constitution recognizes the right of every person to profess and practice religion and propagate religion (Constitution of the Republic of Singapore, n.d.). Article 14 (2) of the Singapore Constitution allows Parliament to impose the law to restrict defamation or incitement to any offence. Such a broad scope of restrictions enables Singapore's government to impose a number of legal and

¹ With 43.2% of its population Buddhist or Taoist, 18.8% Christian, 14.7% Muslim, 5.0% Hindu, 0.7% other religions, and 18.5% professing no religion.

policy measures to curtail religiously motivated inflammatory speech. Legislation targeted at maintaining religious peace includes the Maintenance of Religious Harmony Act (MRHA), Sedition Act, and the Internal Security Act (ISA). These acts prohibit the dissemination of speech deemed inflammatory toward any religious groups. The ISA permits the State to monitor and pursue suspicions of religious extremism (Mathews, Lim and Selvarajan, 2019). How inflammation is determined, and by whom, is a challenging issue in many countries.

As for recognition without establishment, constitutions and other laws may formally or symbolically recognize a particular religion. This type of State-religion relationship, in many ways, associates the State (—and sometimes—the nation itself) with a particular religious identity or set of religious identities (Dawood, 2017:11). In theory, such recognition does not give the recognized religion or religions any special privileges or quasi-public power (Dawood, 2017). From an examination of legislation and practice in ASEAN, it appears that national constitutions may, in some cases, accord ‘special status’ to certain religions without explicitly recognising them as state religions. Thailand does not recognize an official State religion (Tonsakulrungruang, 2018). It always claims that although 93 percent of the population is Buddhist, Thailand allows the free exercise of other religious beliefs (Tonsakulrungruang, 2018). This has been reiterated by the Thai constitutions, including the 2017 Constitution, which states in Section 31 A person shall enjoy full liberty to profess a religion, and shall enjoy the liberty to exercise or practice a form of worship in accordance with his or her religious principles (Constitution of the Kingdom of Thailand, 2017). However, all constitutions of Thailand, including the 2017 Constitution stipulate that The King is a Buddhist and Upholder of religions (Constitution of the Kingdom of Thailand, 2017). The constitution in fact prescribes that the King professes Buddhism, but also entitles him as the upholder of all religions practiced by the Thai people (Tonsakulrungruang, 2018). In addition, the said constitution, for the first time in the recent history of Thailand, further prescribes in Chapter VI—Directive principles of State Policies, Section 67 that

the State should support and protect Buddhism and other religions. In supporting and protecting Buddhism, which is the religion observed by the majority of Thai people for a long period of time, the State should promote and support education and dissemination of dharmic principles of Theravada Buddhism for the development of mind and wisdom development and shall have measures and mechanisms to prevent Buddhism from being undermined in any form. The State should also encourage Buddhists to participate in implementing such measures or mechanisms (Constitution of the Kingdom of Thailand, 2017).

With this provision, Thailand's approach toward religion has taken a radical turn. To protect Buddhism, the Constitution requires that the State only direct its assistance to the Theravada school of Buddhism and that the government guard Buddhism against all forms of desecration (Tonsakulrungruang, 2018).

With special treatment given to a particular stream of Buddhism protected under the apex law of the country, Thailand could be classified as a country with a religious establishment where the state (while recognizing the democratic baselines of religious freedom and non-discrimination) maintains a formal connection with a specified religion, which is 'established' in the sense of being supported, funded, endorsed or patronized by the state (Dawood, 2017:12). Religion can be established in various ways, with differing degrees of intensity. In a state with an established religion,

a religion can be adopted as an official state religion, religious law can become a source of law or it may simply be a source of inspiration. It could be specified that the head of state needs to have certain religious qualifications, the government could be made accountable in accordance with religious norms or religious *education could be encouraged*" (Dawood, 2017:12).

This is the case in Brunei Darussalam, Cambodia, Malaysia, and Myanmar, where a particular religion is recognized as that of the State. Indeed, in Article 3 of the Constitution of Brunei Darussalam amended in 2011, 3.(1) specifies that The official religion of Brunei Darussalam shall be the Islamic Religion: provided that all other religions may be practiced in peace and harmony by the persons professing them. It further prescribes in Paragraph (2) that The Head of the official religion of Brunei Darussalam shall be His Majesty the Sultan and Yang Di-Pertuan" (The Constitution of Brunei Darussalam, Law of Brunei, n.d.). In Cambodia, Article 43 of the Constitution of the Kingdom of Cambodia (2019) stipulates that "the Khmer citizens of both sexes shall have the full right of belief. Freedom of belief and religious practice shall be guaranteed by the State, provided that such freedom and religious practice do not impinge on other beliefs or religions, on public order and security. Buddhism is the State's religion. Malaysia is a predominately Muslim country, with more than 60% of the population professing Islam, especially the ethnic Malays (Ochab, 2019).² Article 3(1) of the Federal Constitution of Malaysia states Islam is the religion of the Federation; but all other

² 61.3% Sunni Muslim (data published by the Malaysian Department of Statistics in 2010, up to date data is not available). The remaining population consist of 19.8% Buddhist; 9.2% Christian; 6.3% Hindu; 1.3% adherents of traditional Chinese religions, and 0.4% other religions.)

religions may be practiced in peace and harmony in any part of the Federation (Fernando, 2006). It has to be noted that Malaysia is also ethnically diverse. Religion and ethnicity have always played an important role in politics and society. The same applies to Myanmar. The 2008 Constitution of the Republic of the Union of Myanmar Article 34 states that every citizen is equally entitled to freedom of conscience and the right to freely profess and practice religion.³ Although it does not recognize Buddhism as a formal State religion, Article 361 recognizes the special position of Buddhism as the faith professed by the great majority of the citizens of the Union (Constitution of the Republic of the Union of Myanmar, 2010; Shu, n.d.).⁴ The constitution prescribes very clearly the principles of the protection of freedom of religion and non-discrimination on the grounds of religion and ethnicity.⁵ However, reality is different, and this issue will be further discussed in the following sections.

Looking at the religious landscape in ASEAN/SEA, one may agree that the region is religiously diverse. However, judging from the close examination of law and practices in the region's countries, diversity is much less than it appears. Across most countries in the region, even where no particular religion is officially recognized or given privileges, or in those that claim themselves to be secular like the Philippines, three religions are clearly predominant. Islam is the State religion in Brunei Darussalam and Malaysia, while most Indonesians profess Islam. Across the rest of the region, Islam accounts for less than 5% of the population, with small or tiny minorities in Vietnam, Cambodia, and Laos. While a decline in Hinduism has been witnessed, Buddhism is the religion officially recognized by Cambodia and Myanmar and given special status in Thailand. Despite the absence of any written law stating as such, it could be said that Buddhism is also given special privileges in Lao PDR. Catholicism/Christianity is predominant in

³ Article 34 states 'Every citizen is equally entitled to freedom of conscience and the right to freely profess and practice religion **subject to public order, morality or health and to the other provisions of this Constitution**' (highlighted by author).

⁴ Article 362 says The Union also recognizes Christianity, Islam, Hinduism and Animism as the religions existing in the Union at the day of the coming into operation of this Constitution.

Article 363. The Union may assist and protect the religions it recognizes to its utmost.

⁵ Article 354 reads/Every citizen shall be at liberty in the exercise of the following rights, if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquillity or public order and morality: (a) to express and publish freely their convictions and opinions; (b) to assemble peacefully without arms and holding procession; (c) to form associations and organizations; (d) to develop their language, literature, culture they cherish, religion they profess, and customs without prejudice to the relations between one national race and another or among national races and to other faiths.

Article 348. The Union shall not discriminate any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, official position, status, culture, sex and wealth.

the Philippines and Timor Leste. Singapore is acknowledged as a country with well-managed ethnic and religious diversity, yet tensions among various religious/ethnic groups emerge occasionally. A delicate balance of religious freedom proves to be hard to maintain, especially in countries where religion serves to define national identity.

Relationship between Religious Identity and Conceptions of Nationhood

As already stated, while there seem to be links between religions and ethnicities, the relationship between religion and national identity is less evident. This section attempts to unpack if religion, ethnicity, and national identity are connected, and if so, in what ways.

There are two opposing views of the relationship between religion and nationhood. On the one hand, there is the view that religion threatens the nation. This was evident in medieval Europe, where the Church(es) was the dominant power. The historical influence of Christianity throughout Europe is shown by the remains of churches and the high number of churches that became tourist destinations. The struggle for power between the Church and civil authority was evident during the process of state formation in Europe between fifteenth and seventeenth centuries. The concept of secular government, as expressed in the French and then American Constitutions, was established in the eighteenth century, and the separation of Church and State as a principle was recognized.

On the other hand, religion is expressed as a fundamental characteristic of national identity, which seems to be the case in several ASEAN/SEA states. The Young Man's Buddhist Association in Burma was created in 1906, aiming to bring down Western influence (Ty, [n.d.](#)). In Indonesia, Muslims were the first to organize a nationalist political party, Sarekat Islam in 1912. Sarekat Islam sought to bring all Indonesian Muslims together under its banner of reformist Muslim ideas. It was the first mass political party to appear in Southeast Asia (Wilson, [n.d.](#)). In the early twentieth century, cultural and indigenous religious movements surfaced and emphasized a national identity based upon traditional religious and cultural values (Ty, [n.d.](#)). The case of Vietnam was different as religious practices were discouraged after reunification in 1975–1976. However, it should be noted that Buddhist opposition to the regime of Ngo Dinh Diem, who converted to Catholicism, was partly responsible for the November coup in 1963. With U.S. support,

Catholics were appointed to positions of power at all levels of the government and generally enjoyed advantages throughout South Vietnam, which created resentment among a majority of Vietnamese who followed Buddhism (Brush, 2005).

In a study conducted by a Singaporean scholar, Joseph Chinyong Liow (2019), he dismisses the claim that religion (alone) is the main cause of the problems which have resulted in violence and human rights violations in 4 cases of intrastate conflicts in Southeast Asia.⁶ He strongly posits that religion and nationalism are important elements of the conflicts (Liow, 2019), although he argues that the distinction between the religious and secular is false as

religion has always been a key component of identity in many Southeast Asian societies. And because religion is a key component of individual and collective identity, it stands to reason that religion can play, and indeed has played, an important role in providing a framework for interpreting political events and a normative language for articulating purpose in response to these events (Liow, 2019: 3-4).

Hence, religion and religious narratives, in this sense, speak to broader concerns that relate ... to questions of identity, nationhood, legitimacy, and belonging (Liow, 2019: 4). Liow further asserts that religion and nationalism are two of the most potent and enduring forces that provide powerful impetus for mobilization in Southeast Asia, a region where religious identities are as strong as nationalist impulses (Liow, 2016). He advances that at the heart of many religious conflicts in Southeast Asia lie competing conceptions of nation and nationhood, identity and belonging, and loyalty and legitimacy. In his study, he examines how religious identity nourishes the collective consciousness of people who see themselves as a nation, perhaps even as a constituent part of a nation, but are anchored in shared faith (Liow, 2016). By nourishing the collective consciousness of a people, religion(s)

Serves as a vital element of identity and a means through which issues of rights (especially denizen rights) and legitimacy are understood especially when it becomes immediately tied to political, cultural, and historical reproduction of a community's identity.... (Gin & Grabowsk, 2017).

The cases of Myanmar and Thailand reveal how Buddhist movements have tried to solidify Buddhism in the building of national identity.

⁶ Deep South Thailand; Mindanao Philippines; religious tensions in Malaysia; and politicization of religion in Indonesia.

Another angle that merits attention is the issue of the nexus between ethno-religious identity and local/national identities. This reflects the problem of identity and integration within a particular political community. Many different groups in ASEAN/SEA are residing within the confines of a national territory without having citizenship. One study highlights issues relating to ethnic, cultural, and religious identity that affect national integration within the nation-states (Gin & Grabowski, 2017). What is critical to this paper is the analysis of how identity and integration are negotiated at communal and state levels in a region where diverse identities intersect and overlap. The fundamental issues of identity, belonging, and 'being Muslim', or 'being Buddhist' are home to some of the most enduring conflicts that continue to beset many societies in the region, including violence that has broken out in Myanmar between Buddhists and Muslims (Rohingyas whose citizenship was removed and denied), that results in massive human rights violations and exodus.

The imposition of a religious or national identity leads to the marginalization and isolation of certain(ethnic) groups, as seen in many parts of the region. The fact that a particular religion is privileged or a specific 'identity' is required to become a full member of any political community tends to create conditions for intolerance and social/racial injustice. In some countries, such as Myanmar and Indonesia, it can already be seen that religious fundamentalism has made significant inroads into nationalism and national identity. In fact, legal recognition of a religion, or granting privilege to any particular religion as practiced in most ASEAN/SEA countries, is, in a way, legalizing exclusion through which the basic rights of minorities, especially religious who tend to be also ethnic minorities, have been neglected or even denied.

The relationships between religious communities and national identity or nationhood could be analyzed at two levels. The vertical level, which has been covered already, refers to faith communities and government institutions meaning that law or policies will not favor or stifle any religions or beliefs. The previous section has shown that while the right to, and freedom of, religion is recognized everywhere in the region, minority religions seem to be institutionally marginalized. These minorities tend to be, in most cases, racially different.

The horizontal level refers to the concept of living together, in which different communities with different faiths coexist peacefully without violence or discrimination and minority folk beliefs are as respected as any other majority beliefs. A Muslim in a Buddhist-majority country should be able to access the same rights and freedoms without discrimination. This does

not seem to be the case in many countries around the region. In fact, there seems to be a causal relationship between the vertical and horizontal levels.

The pattern of discrimination and intolerance tends to emanate from the way vertical relationships work. In general, the relationships go beyond the right to religious freedom as this also implies the legal, political, economic, and social inclusion of different religious/ethnic groups, which is decided at the national political level. In many cases, denial of religious freedoms is exercised through restrictions of identity and legitimization of exclusion through law, policy, and public propaganda. In some countries, religion is perceived as the main source of collective rituals through which the national identity was formed. This could be traced back to anti-colonial nationalist movements in SEA, and then the similar movements in some countries which perpetuate discrimination against religious minorities. Conflations of religious and communal identity are reinforced by the sense of nationalism. For many people, religious feelings, belonging, and beliefs are integral to their identity. As such, religiously held positions are often non-negotiable, and any perceived threat to them can provoke vehement and potentially violent reactions (Dawood, 2017:16).

While the recognition of religion, especially by constitution or law, could be based on a variety of reasons such as popular demand, protection of religious freedom, accommodation of minorities, or appeasing religious leaders; it could be problematic if such recognition aims at cementing national identity linked with any particular religion. By trying to reinforce national identity; legal, social, or political commitment to religion may be incompatible with the pursuit of human rights. This is especially so if the law proclaims that some rights are to be limited by religious commitments, as there may be tensions between the religious establishment and the civil rights of people of different ethnicities and faiths or of no faith, who may feel subject to discrimination and, therefore, excluded. On this particular matter, the UN Human Rights Council cautions that:

while the notion of State religions is not per se prohibited under international human rights law, States have to ensure that this does not lead to a de jure or de facto discrimination of members of other religions and beliefs ... It seems difficult, if not impossible, to conceive of an application of the concept of an official "State religion" that in practice does not have adverse effects on religious minorities, thus discriminating against their members (Human Rights Council, 2011).

Where religion is tied to identity, locally or nationally, this can be:

at the heart of tensions between social groups. As such, constitutional recognition or establishment can sometimes aggravate an already fragile situation. Just as the recognition of a religion may tell one group that the state belongs to them, it may also tell another group that is not so recognized or that objects to such recognition that it does not belong to them” (International IDEA, 2014:12).

In countries which are religiously diverse it's not possible to establish one religion or to make specific accommodations to named minorities (International IDEA, 2014:8). Yet, Indonesia, Malaysia, Myanmar, and Thailand, explicitly or implicitly, do. The cases of the Buddhist movement in Myanmar and the Islamic movement in Indonesia serve as evidence of this issue. In the next section, cases of communal conflicts related to religious identity will be examined.

Manifestation of Religion-Related Racial and Social/Racial Injustice: Cases of Thailand and Singapore

ASEAN/SEA is known for its long history of religious/ethnic diversity and moderation. Right to freedom of religions and beliefs (or of no religion) is guaranteed by the respective national constitutions. However, “in recent years the fabric of plural societies has been wearing thin in places. In a world given to spectacular displays of violence and brutality along the fault lines of faith and ethnicity, this is a concern” (Vatikiotis, 2015). ASEAN/SEA is not unique in this case. According to Pew Research, in 2018 more than a quarter of the world's countries experienced a high incidence of hostilities motivated by religious hatred, mob violence related to religion, terrorism, and harassment of women for violating religious codes (World Economic Forum, 2019).

Violence inspired by religious intolerance is easier described than defined. It spans intimidation, harassment and internment to terrorism and outright warfare. Usually it arises when the core beliefs that define a group's identity are fundamentally challenged. It is ratcheted-up by ‘in-group’ communities against other ‘out-group’ communities, often with the help of fundamentalist religious leaders (Muggah & Velshi, 2019).

Justin Lane et al. (2018), in his study with a team using AI systems to shed light on the root cause of religious conflict, refer to the sense of threat among insiders as ‘xenophobic social anxiety’, which—when combined with political and cultural exclusion and social and economic inequality—can escalate into extreme physical violence. Elliot Brennan (2014) wrote that communal violence in Myanmar has made headlines, as have ongoing insurgencies in southern Thailand and the Philippines. Even Singapore, the world’s most religiously diverse country and a bastion of stability, was faced with ethnic unrest during the Little India riots in December 2013. Vietnam (the third most religiously diverse on Pew’s global RDI) has long been criticized for its repression of religious/ethnic groups, highlighted by reports that at least 85 Montagnards (hill tribe people of mostly Protestant faith) have fled to Cambodia after a crackdown. Cambodia, Indonesia, Malaysia, Laos, and Brunei have all had their problems (Brennan, 2014). It may thus be inferred that when religion and State are intertwined, mass violence can arise and racial inequality emerge. The cases of Thailand and Singapore will be examined in this section.

Conflicts in Deep South Thailand: Different Narratives

From January 2004 when the violence re-erupted (Melvin, 2007; Nilson, 2012) in Narathivas, one of the three provinces in Thailand’s Deep South, until December 2019, there have been 20,512 incidents resulting in 7085 deaths and 13,233 injuries (Deepsouth Watch, 2020). Although the casualties may seem less significant when compared with conflicts/violence in other countries, such as the Philippines, the situations have a few common characteristics including a localized form of violence, multidimensional but involved relations between nation-state and the Malay-Muslim minority in a Buddhist/Catholic majority country; and marginalization of the minority population.

Different narratives have been advanced to explain and analyze the conflicts in the Southernmost provinces of Thailand, Yala, Pattani, Narathivas, and parts of Songkhla. Some maintain that the ongoing violence is part of the jihadist movements in the region. However, suggested links with ISIS were not supported by analysts (Melvin, 2007; Nilson, 2012). While the International Crisis Group (2017) admits that individuals and small groups unaffiliated with a militant network have sought to join ISIS or act in its name, such patterns of involvement with ISIS or other jihadist groups have not yet manifested themselves in Deep South Thailand. One reason is that Thailand’s Malay-Muslim society is not a sympathetic milieu for transnational jihadism. The area’s Muslim religious leaders, both traditionalists and reformists, overwhelmingly reject the Salafi-jihadist ideology

espoused by ISIS and al-Qaeda (International Crisis Group, 2017). It was suggested, nevertheless, that the longer the conflict continues, the greater the risk of increased polarization which jihadists could exploit.

Another narrative was adopted by both political and military leaders, who have often framed the Southern problem in terms of 'development' issues and have tended to channel project resources into the region, which have generally failed to benefit their intended recipients. So far, such an investment does not contribute much to addressing the marginalization that the Muslim minority has suffered for so long. The three provinces remain socially and economically underprivileged. They are among the 20 poorest provinces in the country. However, there is no evidence that socio-economic grievances play much of a role in inspiring the insurgency:

Another red herring has been the question of insurgency-related crime: the Thai authorities have long been eager to assert that much of the violence is driven by organized criminal activity, smuggling and the drug trade. But the evidence points overwhelmingly in the opposite direction. Crime in the region is underpinned by an ongoing violent conflict which is essentially political (McCargo, 2014).

Some argue that the conflict is based on separatist movements led by nationalist insurgents who aim to create an independent state. This historical analysis is advanced since the contested area is the former Sultanate of Patani, founded in 1390 and annexed by Siam (now Thailand) in 1909. This historical interpretation relies on the forced incorporation of 'Raya Patani' into Siam, which caused violence and insurrection. Following annexation, Bangkok tried to pacify the Deep South, including through attempts at linguistic and cultural assimilation, but completely failed. This is compounded by the failure to address broad structural problems in the relationship between the southernmost provinces and the rest of the country also seen as one of the main reasons for the return to violence (Melvin, 2007). It is important to note that the violence has existed for decades. The twentieth century had several periods of violence, between the 60 s–80 s, and in the late 1990s; but it was not officially recognized by the government until 2004, when the number and scale of violent incidents rose rapidly (Burke et al., 2013). Most observers agree that the conflicts in Southern Thailand are complex and result from a combination of causes. What is clear and relevant to this study is that the tensions stem from long-running strained relations between the nation state and a minority population. As already mentioned:

the conflict in the Deep South is not purely one-dimensional. The main axis of contestation—between the Thai state and Malay Muslims—is complicated by other forms of tension and violence. At the local level, inter-elite violence and inter-communal tensions are sometimes intertwined with the broader axis of state-minority contestation...The problem in the Deep South touches on sensitive issues of both national identity and territorial control (Burke et al., 2013).

Malay Muslim make up a clear majority of the Deep South's population of around two million yet are a tiny minority—only a little over 2–3% at the national level. However, roughly 80% of Thailand's Muslim population is concentrated in the three provinces with around 20% non-Muslim. This stands in sharp contrast to the fact that about 94% of all Thai citizens adhere to Buddhism (Moller, 2011). This religious cleavage is mirrored by an ethnic divide as the Muslims of the conflict region are ethnically Malay. The two distinct categories of ethnic and religious identity are viewed as inseparable and interchangeable by most of the local population, as for the Malays of Patani, Malayness and Islam are virtually indistinguishable (Moller, 2011). Malayness and Thainess are further distinguished by language. Thai, the official/national language is not spoken by the majority of Malay-Muslims. They only speak a local dialect-Bahasa Malayu or Yawi. It is undeniable that identity, as manifested in religious practices and language use, is prominent in this protracted conflict area in the Deep South. Thai identity is predicated on the shibboleth of nation, religion, and king, Malay Muslims have struggled to embrace 'Thainess'. Many Malay Muslims cling to a different nation (imagined notions of an earlier Patani nation), a different religion (Islam rather than Buddhism), and a different king (a political identity to which the Chakri dynasty is completely extraneous) (McCargo, 2014). Another study points to the role of identity in the conflict. The interplay and manipulation of the ethnic Malay and Thai identity on one hand, and the religious Islamic and Buddhist identity on the other, are key factors that will assist in explaining the change in the character of the unrest (Harish, 2006). This was reinforced by a study based on survey by James Kline (2010), who has lived in Thailand for several decades, that Two-thirds (65%) of Southerners believe that ethnic and religious differences are of equal status in explaining the conflict (Kline, 2010). Over a third (37%) believe that the main cause of the conflict is the failure of officials to understand the local population and only 17% believe that separatism is the main issue (Kline, 2010).

The cases of the conflicts in Thailand suggest some features. Raya Patani was once independent Kingdom, which was arbitrarily drawn into the territory of non-Muslim powers, Thailand. Ethnic and religious issues lie at the

center of ongoing violence. In both places, accommodation, religious and racial equality, and inclusion seem to be a better solution to using forces. Singapore, despite the occurrence of tensions, may serve as a good example of how diversity is accommodated.

Singapore's Myth of Managing Diversity

Singapore is known as a multiracial state which always attempts to institutionalize multiculturalism in the process of nation-building, with the aim of preventing ethnic/religious polarization. Containing the possible overt inter-communal hostilities then becomes a constant concern of this city state.

Singapore has a population of approximately 6 million in 2024. Ethnically, Singaporean society has for more than five decades contained a relatively stable mix of Chinese 74.2%, Malay 13.7%, Indian 8.9%, and other 3.2% (2021 est.) (The World Factbook, 2024). Due to the PAP government's policy of multiracialism, such ethnic identities must be carried in tandem with a Singaporean identity. In other words, one cannot simply be a 'Singaporean', one has to be a 'Singaporean XYZ'. Among the Chinese, Confucianism, Taoism, and Hinduism/Buddhism are the major belief systems or religions. By the 2015 estimations, the Singaporean populations are Buddhist 33.2%, Christian 18.8%, Muslim 14%, Taoist 10%, Hindu 5%, other 0.6%, and none 18.5% (Indexmundi, 2019). Malays are almost exclusively Muslim; while Indians, who are mostly of Tamil origin, are predominantly Hindu (with a small number of Hinayana Buddhists who are generally Sri Lankan or Thai in origin) (Hill, [n.d.](#)). Christianity has shown the most rapid recent growth, especially among younger, more highly educated Chinese from wealthier, English-speaking backgrounds. Four languages have been recognized as official languages namely English, Mandarin, Malay, and Tamil (Indexmundi, 2019).⁷

As part of its racial and religious 'management' the policy of 'shared values' was introduced in the 90 s by the Singaporean government. In November 1990, the Maintenance of Religious Harmony Act was adopted after the country had gone through a few 'crises' such as several incidents of racial violence even before Singapore became independent. On July 21, 1964, a Malay procession was held to commemorate the birthday of the Prophet Muhammad. This event sparked quarrels between Chinese and Malay youths, which in turn led to full-scale riots lasting nearly a week, in which 22

⁷ English (official) 36.9%, Mandarin (official) 34.9%, other Chinese dialects (includes Hokkien, Cantonese, Teochew, Hakka) 12.2%, Malay (official) 10.7%, Tamil (official) 3.3%, other 2% (2015 est.).

people were killed and 460 injured (Ministry of Foreign Affairs, 2004). Another ethnic/religious problem occurred in June 1987 on the occasion of the anniversary of the 1969 racial riots in Malaysia and Singapore. These events are just two of several in Singapore's history.

As part of its multicultural policy, Singapore has also imposed the 'mother tongue' language policy. Students who are Singaporeans or Permanent Residents are required to study one of the three official mother tongues of Mandarin, Malay, and Tamil, although students may appeal to substitute Urdu, Hindi, Gujarati, or another such language in place of Tamil. The policy thus has the effect of reinforcing a simplification of race into the 'official' categories; racial identity is pegged on cultural practice (in this case, the learning and use of a 'mother tongue'), so that to be Chinese is to speak Mandarin, and to speak Mandarin is 'Chineseness' (Goh, 2009). The insistence on the 'four official races' of Chinese, Malays, Indians, and Others already constitutes a constant pressure to align one's identity along these official racial distinctions, which could prove problematic (Goh, 2009). It tends to ignore the dynamic and evolving nature of identity. The categorization is further enforced by the registration of 'identity'. The National Registration Identity Card (NRIC), the Certificate of Registration of Birth, and numerous application forms and datasets used by government agencies, statutory boards, and even private-sector agencies require official racial categorization.

The official racial terms clearly have the effect of reducing factional (or sub-racial, according to the official terms) difference by re-writing these into an imagined racial category, towards the goal of national integration. In this way they have a kind of self-reinforcing circularity, compelling individuals to habituate themselves with a particular racial identification, while using that racial grouping as a discrete and stable identity because they effectively contain and categorize individuals in everyday life (Goh, 2009).

It should be noted that Singapore's practices, by making efforts to accommodate diversity in the society through regulating the day-to-day life of the people, raise questions about freedom of religious practice. The aforementioned Maintenance of Religious Harmony Act, makes it an offense to "cause ill-feelings between different religious groups (Goh, 2009) The Act, which comes under the aegis of the Minister for Home Affairs (who is advised by the Presidential Council for Religious Harmony), allows for the making of 'restraining orders' against any religious leader who (among other things) may cause feelings of enmity, hatred, ill-will or hostility between different religious groups (Goh, 2009). In fact, the work of the Act is actively restrictive, explicitly policing and reinforcing the boundaries between the religions

by restraining any person who has committed or is attempting to commit an act that may be interpreted as causing enmity, hatred, ill-will or hostility between religious groups (Goh, 2009). It's important to add, though, that in practice the Malays (who are effectively identified with Islam) are singled out for particular attention under the Singapore constitution. The constitution declares that the government shall exercise its functions in such manner as to recognize the special position of the Malays, who are the indigenous people of Singapore, and accordingly it shall be the responsibility of the government to protect, safeguard, support, foster, and promote their political, educational, religious, economic, social, and cultural interests and the Malay language (Goh, 2009). So, special attention was given to Islam and Malays.

Despite restrictions and some incidents of tension among racial groups in Singapore, the country is still regarded as a relatively harmonious and stable society. It is therefore appropriate to consider what factors contribute to maintaining relative harmony in such an ethnically and religiously diverse society.

The late Prime Minister Lee Kuan Yew, founding father of Singapore, emphasized that the communal problem, unless properly addressed, would defeat development goals (Mathews, 2018). The key is that, while embracing a national identity, this will not be pursued at the expense of the constituent cultures of three main races, Chinese, Malays, and Indians. As such, government policies sought to recognize Chinese, Malay, and Indian heritage. The small proportion of those from other cultural backgrounds—commonly referred to as the 'Others'—were similarly accorded the privilege of retaining their cultural practices, although these did not receive official endorsement in the way obtained by the other three races (Mathews, 2018). National and ethnic identities in Singapore are intricately linked. The Singaporean is always Singaporean first, but then also simultaneously Chinese, Malay, Indian, Eurasian, or some other ethnicity. It is perceived that identities of race, religion, and language cannot be easily replaced by a national identity, and Singapore's government has never sought to do so (Mathews, 2018). It is true that Singapore does not have strong 'national' cultural affiliation. This is different from several societies in ASEAN/SEA where expression of primordial identities is denied in order to forge national identity.

When compared to the two cases studied above, it is apparent that Singapore has successfully developed inter-communal-racial harmony, despite communal tensions at independence in 1965. However, when describing the condition of multicultural Singapore, that is, the manner in which the different races and religions in Singapore interact with one another; a common refrain is that though inter-religious and racial harmony prevails,

the harmony currently enjoyed could unravel very quickly if it is not continually worked at (Chin & Vasu, 2012). So, one cannot jump to the conclusion that Singapore is an inherently harmonious society without inter-communal tensions. As pointed out by the former Senior Minister of State for Foreign Affairs, Zainul Abidin Rasheed, Singapore's current level of harmony is not a natural state... it is always a work-in-progress (Chin & Vasu, 2012). Also, in his 2009 National Day rally speech, where the customary issues are addressed, the then Prime Minister Lee Hsien Loong took pains to stress that "the most visceral and dangerous fault line[for Singapore] is race and religion" (Chin & Vasu, 2012). That is why Singapore always tries to 'arrange' as peaceful co-existence and tolerance have been legally and politically engineered. While the law helps to protect ethnic identities, it also polices them. Identities in Singapore have never been flexible, but invariably fixed and rigid. There are sub-racial and sub-religious groups which are not recognized by the State of Singapore.

In all cases, there is a need.

for developing increasingly complex models of state governance of religious identities, especially non-dominant and non-official ones, than simply those within the terms of policing and suppression with the concomitant terms of insurgence, overt civil action and separatist violence; and of applying these to uncover the complex interactions of statehood and religious identities in Asian nations increasingly transformed by global influences and transnational operations (Goh, 2009).

Protection of Religious Freedom and (Ethnic) Minority Identities

The right to freedom of religion and belief, as noted previously, is recognized by all ASEAN/SEA states without exception. This right is also recognized by international human rights treaties which the countries in the region have ratified. While all ASEAN/SEA states have ratified the CRC, CEDAW, and CRPD, just over half have ratified the ICCPR and ICERD. There is a need for further analysis of the attitudes of each AMS through reservations made on the issues.

In addition, all AMS provide for the right to freedom of religion in Article 22 of the ASEAN Human Rights Declaration, adopted in 2012. Not only does it recognize the right of every person to freedom of thought, conscience, and religion; it also prescribes for the elimination of all forms of intolerance, discrimination, and incitement of hatred based on religion and beliefs.

Despite the general recognition of religious freedom by all countries in the region, the case studies in earlier section demonstrate that the reality is different. The report presented by the UN Special Rapporteur on freedom of religion and belief before the UN Human Rights Council points out that states in every region are increasingly confronting the challenge of safeguarding the right of all persons to freedom of religion or belief while also protecting a range of other rights. The pressures engendered by migration and globalization, along with easily available telecommunications and social media tools, are accelerating the exchange of ideas and values, ultimately changing the demographic and religious landscape of many societies and accentuating competing interests (Human Rights Council, 2018). It is becoming more and more challenging to most if not all states to guarantee human rights, especially those rights exercised by persons belonging to religious or belief-based ethnic minorities.

The earlier sections of this paper examined, in a variety of ways, the State-religious relationships through constitutional and legal establishment of all ASEAN/SEA countries. Two case studies were also presented. The case of Thailand shows, to a certain extent, states' identification with a particular religion by way of giving a special position, or by practice of a particular religion. The case of Singapore shows a state which does not identify with a particular religion but recognizes four major religions adhered to by population of the country. These two states/cases express explicit commitment to respecting freedom of religion and belief in all legal frameworks, especially Constitutions. Many, if not all, place restrictions on various aspects of the manifestation of religions and belief which impacts different racial minority groups.

The Human Rights Committee, in Paragraph 9 of its General Comment No. 22 (1993) on the right to freedom of thought, conscience, and religion, states clearly that the fact that a religion is recognized as a State religion or that its followers comprise the majority of the population should not effectively impair the enjoyment of their rights under the International Covenant on Civil and Political Rights, including Articles 18 and 27, or result in discrimination against non-believers or adherents to minority religions. Furthermore, the Beirut Declaration and its 18 commitments on Faith for Rights explicitly refer to preventing the use of the notion of 'State religion' or 'doctrinal secularism' to discriminate against individuals or groups, and to reducing the space for religious or belief pluralism in practice.

It is believed that religious freedom is a human right that contributes to the well-being of individuals and society at large. For billions of people across the world, religion and beliefs bring hope and consolation. Religions

hold great potential for peace and reconciliation (University of Minnesota Human Rights Center, 2016). Nevertheless, ASEAN governments often see this freedom as a threat to order and unity. The perceived threat stems from the social fact of majority religions in ASEAN nations which is crucial as it defines the corresponding cultural values of order and unity in society. It has already been shown that in ASEAN religions have sometimes been the source of great tension and conflict. This complexity, and the difficulty of defining ‘religion’ and ‘belief’ inclusively, is illustrated by the continuing struggle to protect freedom of religion or belief in the context of human rights. This translates into a high degree of pressure on minorities to conform to the cultural and social norms of the majority religious group, implicitly or explicitly, and it defines communal relationships as ‘religion’, which comes from the Latin word *religare*, which means to tie, to bind fast. This etymology is favored by many based on its ability to explain the power religion has over people and the communities in which they live (University of Minnesota Human Rights Center, 2016). The power of religion, for many communities/societies, represents the collective identity. So, when states favor one over another, it always leads to innumerable, often tragic conflicts. We have seen the catastrophic consequences of state-sponsored religious persecution and the stirring of inter-communal tensions in Myanmar’s Rakhine State and other places.

Conclusions: Religious Intolerance and Violence—A Threat to Racial Justice

It is hard to conceive that any concept of State Religion or the practice of privileging any particular religion could be free from discriminatory effects on the variety of ‘others’ which this creates. The UN Special Rapporteur on religious freedom cautions in his report that.

when offering a privileged legal status position for certain religious or belief groups, such a specific status should be accorded in strict conformity with the principle of non-discrimination and should fully respect the right to freedom of religion or belief of all human beings. Privileged positions accorded to religious, or belief groups should never be politicized for purposes of identity politics, as this may have detrimental effects on the situation of individuals from minority communities (Human Rights Council, 2011).

This does not seem to hold true in the SEA region.

One observation about societies in ASEAN/SEA is that the region leans toward community values rather than individualistic ones. “Collectivist or

high group societies like these value unity in society and the obligation of the individual to fulfill his or her duties. The needs of the family, the community, and the nation are valued over the individual's hopes and desires. High group societies also tend to merge culture, ethnicity, and religion to form identity in a much deeper way than in individualistic societies" (ASEAN Parliamentarians for Human Rights, 2019). Here, religion is a public and political issue, not simply restricted to private life. As a result, the natural path to social order and unity in the minds of many ASEAN governments is through encouraging conformity to the majority ethnic group's culture and religion as is the case of the Thai State vis-a-vis Southern Thailand.

Although it is hard to conclude that the cases of conflicts in Thailand represent communal conflicts which are related to national identity and racial injustice, it is also hard to say otherwise. Communal relations which are based on ethnicity, religion, or language more often than not end with violence and are seemingly intractable. To overcome such conflict and to establish 'co-existence' requires structural change, looking into the extent to which parties are integrated into, or separated from each other, and the degree of equality or inequality between them. In most cases, there is a real need to balance resources in terms of power, status, and economic conditions, that are currently unbalanced, as well as to eliminate the sense of collective demonization of certain religious and racial groups in the society.

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Part IV

Racist Law Enforcement



16

Spitting Truth(S) to Power: Rap Music as Evidence of Racial Injustice

Lambros Fatsis

This chapter tells the story of a music genre that is treated as anything other than the form of artistic expression that it actually is. If it's rap music, and specifically drill, that you are thinking about—you are right. Violently dismissed as unwelcome noise that litters the sonic space, this latest rap subgenre is also aggressively policed as an unwanted cultural presence that poses a threat to public safety (Fatsis, 2021a, 37–41). Scratch the surface and another picture emerges. Instead of looking at drill as a 'criminal subculture', paying closer attention to how and why it is perceived and pursued as such shows that the violence that drill depicts—in a deliberately provocative but nevertheless fictive way—is not incontrovertible evidence of 'criminality', but irrefutable testimony of the very violence that rappers are victimised by at the hands of the state and its law enforcement institutions. This chapter plunges headlong into such controversies, exposing the very legal-penal logics, tactics and processes that make it possible to deny the artistic nature of rap, so it can only be heard as evidence of wrongdoing in the courtroom. Rather than treating drill music as the “soundtrack to London's murders” (Knight, 2018), it is therefore approached as a counterpoint—which disrupts the soothing mood music that romanticised allusions to 'the law' as justice lull us into,

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forcing us instead to attune ourselves to the normalised, legalised, institutionalised violence that ‘the law’ (re)produces for those who are (stereo)typically targeted by it. To do so, the chapter begins with an overview of the punitive logics and tactics that are routinely used to criminalise drill—followed by a commentary on what the British state’s lawfare against Black cultural expression tells us about the nature, purpose and function of ‘the law’; as an instrument of violence against those ‘lesser breeds’ it has historically been wielded against (Fatsis, 2021b; Fatsis & Lamb, 2022, esp. 23–8 and 63–8).

Drawing on Albert Murray’s (2020, 10) attack on how “the folklore of white supremacy” orchestrates “the fakelore of black pathology”, what is offered here is a critical discussion of the very legal-penal processes that suspect, approach and apprehend UK drillers as cold-blooded killers. The chapter begins with a flickering snapshot of the criminalisation of UK drill music, walking readers through an imaginary scenario that describes how drill rappers get caught in the dragnet of law enforcement—followed by a factual description of the legal-penal methods that are used to police UK drill. In so doing, the expectation that the fictional scenario presented bears no relation to the actual truth is betrayed—forcing us to contend with how imagined threats become real targets for state surveillance, in ways that leave us little room but to question the legitimacy of official, legal-penal rhetoric, thinking and practice; which tells us more about the threat of law and order *politricks*, than it does about the menace of drill music to respectable, law-abiding society.

The Fakelore of ‘Black Criminality’: Rap Music as ‘Evidence’ of ‘Criminality’.

UK drill music is the latest rap subgenre or stylistic branch in the hip-hop/rap family tree. It originated in Chicago in the mid-noughties, but travelled across the Atlantic and took root in the UK rap music scene soon after. Unlike other rap music, UK drill is moodier and darker in sound and more graphic in its violent imagery. It is unabashedly edgy and violent in its posture, lyrics, imagery and sonic qualities. Its lyrics depict fictional larger-than-life personas who tell their story in the first person and pose as violent. As such, rap lyrics are often (mis)taken for real-life descriptions of crimes committed, rather than as first-person narratives that may be partly or purely performative, fictional, hyperbolic or fabricated even, as is the case with many other music lyrics or literary works. Crucially, drill rappers consciously exploit stereotypes of violence, gangsterism and “ghetto life” as a sought-after commodity to be

consumed online by followers whose clicks, views, likes and shares can and *do* yield material rewards (Evans, 2020; Schwarze & Fatsis, 2022; Stuart, 2020). Rather than offering a simple ‘authentic’ voice, rappers are highly attuned to the commercial potential of their work. They deploy themes of violence and crime that they know to be very marketable. A central aspiration behind making drill music is the desire to become a successful and therefore escape poverty. The conscious, if not cynical, manipulation of violence therefore serves commercial ends, but is also an essential part of the genre’s aesthetic and artistic conventions (not unlike the violence in gangster films for example). UK drill enjoys a huge popular following among young listeners of all ethnic backgrounds, as evidenced by festival line-ups, club events and the proliferation of YouTube and Spotify playlists, where drill reigns supreme. The protagonists of UK drill music however, are young Black people who can relate to the themes of marginalisation and social exclusion as well as consume and produce it as an outlet for creative expression (Fatsis, 2023d, 101). Having familiarised ourselves with what UK drill music is, let us now turn to how the genre’s makers are treated as little more than habitual lawbreakers, by telling that story in the form of a fictional narrative that is fictional in name alone; made up as it is of pure facts that attest to how drill music is taken hostage by legal-penal institutions.

Imagine that you are a young (teenage) rapper who bears witness to, or is fascinated by stories of gang feuds, post-code rivalries, ‘criminal’ lifestyles and violence; driven by a desire to write lyrics, make beats and shoot videos that explore such themes through the medium of rap—with the added bonus of a successful career in music, if your creative output attracts enough followers and reaches a critical mass. You create an account on YouTube, upload your video and hope for the best. Meanwhile, dedicated teams of police officers trawl the web in search of “gang-related music linked to serious violence” and find your video. Hearing you name an incident, a person and a place in hostile and confrontational ways—as is common in most rap music subgenres since 1990s gangsta rap—they add your music track to a gang’s database on the grounds that you associate with known gang members; people with whom you might have family or friendship ties. The officers in question are now debating whether they should ask YouTube to remove your track and approach radio stations to forbid them to play your music. They are also toying with the idea of applying for a court order that would force you to inform the police 24 hours in advance of your intention to publish any videos online, while also demanding that you give them a 48-hour warning of the date and locations of any planned live performance. The more they brainstorm the more they like this idea and decide to also prevent you from

associating with certain people, entering designated areas, wearing hoods or using social media and unregistered mobile phones. If they go ahead with this decision and you don't comply, you are committing a serious offence. Meanwhile, you become better known and more confident in your art and create more tunes reflecting life in your area. As is canonical in your genre, you shoot videos that feature more than three people, who display a logo of your newly created rap collective and do so in a back alley where that video was shot. The feds find that video, see it shared by others via social media and decide that it is enough to bring gang conspiracy charges against you and all the others in that video, given that what you describe fits the facts of a fatal incident they are investigating. The prosecution instructs the officers who collected such material to act as expert witnesses for them, by writing a report where they interpret your lyrics as literal testimony and testify against you in court. You are then charged with an offence and serve time in prison, as the jury has been swayed by the emotive nature of the drill 'evidence' that was presented to them by the Crown.

The exact scenario that is narrated here is fictional, but the tactics described are very real indeed. These are the main methods that police and prosecutors rely on to wage their war against UK drill rap(pers) and judges are more than happy to oblige—judging, as they do, only within their narrow legalistic playbook being Crown servants, rather than impartial agents. On the other side of the bench, those who are summoned to the defendant's seat when drill is on trial are those who don't need to imagine that fictional scenario. This is their reality. And here's what it is made of, should they choose—God forbid—to make beats and rhymes that blindfolded Lady Justice can only see as 'crimes'. But how does all this happen?

First there are the cops who target, monitor and control drillers in a number of ways. They may be part of the Drill Music Translation Cadre of the London Metropolitan Police which decodes lyrics and translates them into evidence for the prosecution (Quinn, 2018). Or they may be operatives of Project Alpha. This is an operation that was set up by the National Police Chiefs' Council the Home Office and the Metropolitan Police Service to clamp down on "gang-related" music (Railton, 2022), prompting serious concerns about racial profiling and potential privacy violations on a large scale by youth violence experts (Crisp & Dodd, 2022a, 2022b, Fatsis, 2023c; 22–6). Even the Meta platform's Oversight Board overturned a decision to remove a UK drill music video from Instagram, on the grounds that policing online content in this manner can "amplify bias" as well as undermine "respect for due process and transparency". If they work in gang-related roles, cops are also responsible for maintaining the Met's Gangs Violence Matrix

which can, does and has classified people on the basis of the music they make as evidence of their involvement in gang activity. This is an intelligence tool which the Met itself admitted being unlawful, disproportionately targeting young Black people and breaching the right to a private and family life—following a landmark legal challenge led by Liberty on behalf of UK rapper Awate and UNJUST UK (Liberty, 2022). But that is not all that cops do in their earnest fight against UK drill. They are also instructed by the prosecution to give evidence through written reports and in court as ‘experts’, not in drill music or rap culture of course—but in ‘gangs’ and ‘street slang’; assuming that drill only exists as a soundtrack to gang activity that can and should therefore be treated as such by analysing lyrics in search of, or rather *as* evidence of wrongdoing; without knowing, or even caring about being (in)sensitive to the artistic conventions of the genre or to the broader context of Black expressive culture(es). All they need to do is either certify *themselves* as ‘experts’ by merely signing a self-certification form, or by attending a training session on street slang—the most frequently mentioned of which is run by a lexicographer (not an expert on drill or rap music culture!), whom cops refer to in their reports as a ‘Professor’; despite the fact that he only holds a BA degree and no university position. But who cares about accuracy, factual details or upholding high standards of evidence? And, indeed, who cares about the fact that two frequently instructed cops and ex-cops (nicknamed PC Bar and PC Railings) are laughed out of the theatre in a recent sellout play (*The UK Drill Project*), but are taken seriously in court?

Then, there are the prosecutors who have no compunction about devising legal guidelines that make associations between gangs, drill and social media *without* any concrete evidence that could conclusively prove any such link and do so by mentioning drill music *by name* in their decision-making advice on gang-related offences (CPS, 2021). While the Crown Prosecution Service (CPS) has recently pledged to review its guidance by conducting “listening exercises” with academics, barristers, civil liberties groups and youth organisations, it nevertheless claimed that they were “not aware of any cases where drill music had been wrongly used as evidence in the past” (Ball & Lowbridge, 2022)—when the very guidance the CPS produces makes the use of such material possible in the first place; in ways that have less to do with whether it is used appropriately, but with the fact that the use of such material is inappropriate. More worryingly still, such public announcements were aired *after* the CPS heard from the author of this chapter and two other academic colleagues about how drill-related material is misused in court, in that same listening exercise that they spoke to the media about.

Finally, there is the law itself which works its perverse magic through a myriad of tricks. Criminal Behaviour Orders (CBOs) are one of them which, in our fictional scenario, is the court order used to impose restrictions on what rappers are allowed to say or do (CPS, 2019). Another is the very definition of gangs, under Section 34(5) of the Policing and Crime Act 2009, which lists acts as gang-related if the targeted group: (a) “consists of at least 3 people”, (b) “uses a name, emblem or colour or has any other characteristic that enables its members to be identified by others as a group” and (c) “is associated with a particular area”. Yet another involves how drill music lyrics and videos are admitted as ‘evidence’. Consider “bad character” evidence for example. Defined by Section 98 of the Criminal Justice Act 2003 as “evidence of, or of a *disposition towards*, misconduct”, rather than evidence which “has to do with the alleged *facts* of the offence with which the defendant is charged” (Owusu-Bempah, 2022a, 2022b). Were this not enough, the legal doctrine that treats those featured in drill music videos as suspects is joint enterprise. Joint enterprise allows the court to show a link or guilt by association between defendants, making it possible to convict individuals of crimes *without* committing the criminal act they are charged with, or even being at the scene of the crime (Clarke & Williams, 2020; Hulley & Young, 2021; Mills et al., 2022; Waller, 2022). But who cares about the disproportionate use of joint enterprise to convict young Black people (Clarke & Williams, 2020; Hulley & Young, 2021)? Similarly, who cares about a 2016 Supreme Court ruling which criticised the use of joint enterprise for overcharging and over-convicting secondary suspects (‘secondaries’) who are not suspected of having committed the substantive offence (Mills et al., 2022; Waller, 2022)? And who indeed cares about the fact that judges rarely find anything problematic about allowing such ‘evidence’ to be heard? Never mind the fact that such ‘evidence’ is light on evidential value, but rich in prejudicial impact (Nielson and Dennis, 2019). Judges insist that anyone can understand and accurately interpret rap lyrics without being knowledgeable about the music (Dennis, 2007). Would they also claim that anyone can evaluate the meaning of a poem without expert knowledge of how such meaning is created by and through techniques of literary composition like similes, metaphors, metonyms, irony, verisimilitude and the like?

Posing that question implies a double standard that results from judging rap music as little more than factual/literal evidence of criminal involvement, rather than a manifestation of fictional/literary artistic production—due to racist thinking that rejects the possibility that rap may *be* art or *have* poetic and artistic value, reducing it instead to the realm of mere autobiographical testimony. In so doing, a form of creative, artistic expression is (mis)taken for

self-incrimination in verse—while also presuming that no specialised knowledge is required to interpret rap lyrics and that lyrics should be interpreted literally as reflecting accurate, truthful and self-referential narratives. Such transformation of poetic licence into poetic justice is disturbingly indicative of how ‘the law’ thinks and acts as an “instrument of social control but also a symbolic expression of dominant society” (Calmore, 1992, 2184) that “preserv[es] the status quo and only periodically and unpredictably serv[es] as a refuge of oppressed people” (Bell, 1992, 364). Taking a cue from such a critical view of ‘the law’ as a form of institutionalised injustice, the following section of this chapter challenges the mythology of equality in the rule of law ideology of modern liberal democracies; as a folklore that lends legitimacy to the racialised state-sanctioned criminalisation of drill music, like so many Black music genres before it (Fatsis, 2021a, 2023c, 2023d).

The Folklore of ‘the Law’: Rap Music as Testimony of Legalised Racism.

Thinking about the woes that beset drill rappers, as described in the preceding section of this chapter, should suffice as a damning indictment of how easily drillers are caught in the jaws of the law machine; by being *produced* as the proto/stereotypical targets of racialised state-sanctioned criminalisation. Yet, there is more to this story than a matter of legal(istic) protocol (*lex*) and that is the issue of justice (*jus*)—as a principle, process and outcome that is social, cultural and political, not merely procedural or institutional (Williams, 1993). The selective, racial(ised) state-sanctioned criminalisation of drill therefore is not a matter of legalistic procedure gone wrong. It is a reflection of unspoken, but legible assumptions about who and what matters and who belongs socially, culturally and politically too (Fatsis, 2021a, 2021b). None of the legalistic contrivances exposed in this chapter would *ever* be, nor have they been, applied to other art forms or people who are not racially or otherwise minoritised, for the simple reason that the policing of Black music(s) presupposes the denial of its artistic status (Nielson and Dennis, 2019). And the denial of its artistic status cannot take root without a logic that considers rap intellectually and culturally inferior (Fatsis, 2021a). That logic is racism, its history is imperial-colonial and it does its dirty work by functioning as an ideological tool that naturalises social hierarchies and justifies the oppression of people and the suppression of their cultural expression as aesthetically discordant (=it’s not even music, it’s noise) is also culturally dissonant (=it does not belong *here*) and politically disorderly (=it resists

the established order). Drill music therefore is not an exceptional case. It is just the latest villain cast in an old and tiresome play whose plot dramatises the systematic silencing of Black art, as noise (Fatsis, 2021a, 37–41; Fatsis, 2023b, 2023c), just like Blackness is cast out as a category of non-being (Fatsis, 2021b; Fatsis & Lamb, 2022, 63–6). The UK’s legal-penal system has followed the script down to the letter and the audience appetite is as insatiable as ever. Before the drillers of today were demonised in print, on air and in court, their musical ancestors were suppressed, villainised and criminalised by the British state. Reggae soundsystems, garage and bashment and grime—to mention but a few—have all been policed on British soil, but this is just an iteration of what took place previously in Britain’s colonial outposts (Fatsis, 2019a, 2019b, 2021a, 2021b, 2023c, 2023d, 2023e; Oliver, 2023). From legislation that banned religious rites and ceremonies like *obeah*, drum dances like Calenda/Kalinda, Belaire and Bongo, cultural festivals like Jonkonnu parades in Jamaica and Carnival/*canboulay* processions and calypso/*kaiso* in Trinidad, music and dance produced by colonised and/or enslaved Black people across the diaspora has historically been considered as a dangerous call to arms, rather than a legitimate art form (Fatsis, 2021a, 2023b, 2023c). As any excursion into the colonial (pre)history of policing against Black music reveals, beating drums, blowing horns, dancing and singing were penalised *both* because they carried the potential of inspiring rebellion against colonial rule *and* because they violated aesthetic and cultural norms of what counts as valid artistic or cultural expression (Fatsis, 2023b, 2023c).

Such a contextual reading of the criminalisation of drill by being sensitive to the proper historical, ideological and political forces that (in)form the suppression of Black cultural expression becomes vitally important for two main reasons. Firstly, it allows a deeper understanding of the socio-cultural and political “condemnation of blackness” (Fatsis, 2021b; Gibran Muhammad, 2010). Secondly, it offers a rare insight into how law and justice work to create, institutionalise, legalise, normalise and formalise racial injustice. Building on those two points, the remainder of this chapter will focus on how the penalisation of rap music offers a window into racial injustice as something that the law does, rather than works to undo. This involves approaching legal-penal culture from the standpoint of those who are victimised by it as suspects, not simply of criminal wrongdoing but as an unwanted/unwelcome cultural presence (Fatsis, 2021a, 2021b; Gilroy, 1987; Hall et al., 1982). The importance of such a view becomes even more urgent if we consider its logical implication, this being no other than the realisation that the law suddenly becomes legible not as a dispassionate arbiter of

right and wrong, but as the codification of the right to wrong those who are singled out as the targets rather than the beneficiaries of the law. The long imperial-colonial history of policing against Black culture(s) tells us as much, additionally highlighting the complicity of ‘the law’ in making colonial slavery possible by legalising the institution of slavery itself, through the creation of penal codes and colonial police forces—armed with the task of applying “civilizing discipline” (Robinson, 2019, 331, 69–74) to the enslaved by targeting, monitoring, regulating and ultimately overseeing and policing their cultural activities.

Thinking with rap about the law as an instrument of perfectly legal(ised) racial injustice, therefore, alerts us to the ideological processes through which ‘race’ (as cultural difference) becomes criminalised and how ‘crime’ (as legally punishable activity) is racialised. But it also exposes the imperial-colonial history of such ideologies and the legal-penal systems and culture(s) that uphold them, making demands on our ability to trace the roots of English law in the era of colonial slavery (Moore, 2016, 2020), as well attend to the imperial-colonial origins of British policing (Fatsis, 2021a, 35–7; Fatsis, 2023b). Starting with the law as an expression of colonially derived racist ideology, one needs to look no further than the making of law as a necessary instrument of imperial-colonial, that is to say racial(ised), rule over and against the enslaved. Indeed, slavery was a perfectly legal enterprise. In addition to slave codes, police regulations and legislation that administered the social, cultural and political life of Britain’s colonial plantocratic system, music-making included (Fatsis, 2023b, 48–51)—the slave trade was also governed by Navigation Acts and treaties; like the Treaty of Utrecht which granted Britain the licence (*asiento*/treaty, contract) to conduct the trading human beings as commodified cargo to be sold, owned and exploited as “units of labor power” (Wynter, n.d., 17). Moving from law-making to law enforcement, the imperial-colonial origins of policing itself are also revealed, as the state’s prime law enforcement agency that functions as the portal to the criminal court and the prison cell. Contrary to what mainstream police historiography tells us, British policing does not emerge immaculately conceived in Victorian England, as the familiar criminological refrain goes. Rather, it is modelled after the pre-professional, colonial militias established in Britain’s colonial outposts in the Caribbean, Africa, the Indian subcontinent, the Middle East and Ireland too (Fatsis & Lamb, 2022, 23–8; Fatsis, 2021a, 35–7). Indeed, when the Met was founded in London in 1829, the process of abolishing slavery (through the Abolition of Slavery Bill and the Emancipation Act) would only *begin* 5 years later in 1834—lasting at least another 6 years in a more indirect form, through the system of apprenticeship; under

which the enslaved performed free (=unpaid) labour for their former slave-owners. With rap music acting as our expert guide, a witness and a target of legalised, racialised state-sanctioned criminalisation of Black cultural expression nowadays, the historical function of the law and law enforcement as mediums for the governance of racially subordinated groups becomes difficult to deny or wish away.

This is what makes it such valuable testimony of racial injustice. How so? Because it demonstrates how and why imperial-colonial rule legislated itself into existence as a political logic and system of power that sought to assert its political dominance through the control of culture, by policing the physical movement and cultural expression of the enslaved to suppress what is essential, life-affirming, valuable, meaningful and of course subversive in the culture of the colonised and clamp down on the potential of insurrection, rebellion and resistance to imperial-colonial rule. Criminal law and policing therefore become associated less with safety from danger or violence, but as a way of protecting, that is to say defending, the imperial-colonial order—with racism functioning as the legitimising script for such operations; as a fiction that justifies colonial plunder as a civilising mission: an expedition designed to bring civilisation through violence, brutal force and coercion intended for those who need such supervision, discipline and punishment—due to their assumed and assigned status of inferiority in a socio-political and cultural order that is racially marked as ‘white’, among other hierarchies of belonging; like gender, class and sexuality, that also share the same imperial-colonial history (Hyam, 1990, 2; Hall, 2014, 35–6; Wynter, 2003, 316; Balani, 2023). What all this tells us is that when Black music is policed, what is *actually* policed is the cultural presence of Black people. When drill is policed as little more than a front for collective offending as ‘gang-related’ music, this is not because drill rappers are necessarily involved in gangs or violent ‘crime’ (Fatsis, 2023d; Fatsis et al., 2021). Rather, what is policed is ‘race’ through allusions to ‘criminality’—by legal-penal logics and tactics that literally create ‘crime’, by determining what constitutes a legally punishable offence in the first place. Legal(istic) processes aside, this becomes further justified though cultural(ist) arguments that deny and reject the artistic nature of Black music, so it can be processed as a criminal offence. It is not really music, it’s noise. It does not belong *here*, it is unassimilable, incomprehensible and politically disrespectful to our institutions, social order and cultural norms. Black music therefore becomes policed as unwelcome noise, produced by cultural ‘aliens’ who are unbelonging and politically threatening to a social order that is racialised (by default) as “white” in and through state activity that has never illegal or extra-legal. Rather, the state’s legal warfare (=lawfare) against

drill and its musical predecessors has *always* been legally sanctioned; enabled and regulated by law in a deliberate and conscious manner—rather than in a metaphysically, supernaturally or accidentally. The legalised, racialised, state-sanctioned criminalisation of drill music therefore must not, cannot be seen as a flagrant miscarriage of justice but as evidence of *how justice is carried out* against those who are deemed unworthy of ‘due process’ and ‘the rule of law’. The long history of policing against ‘race’/blackness through ‘crime’ attests to that, as does the musical poetry of drill rappers whose beats and bars resonate as an eloquent testimony of social injustice that opens our eyes to what our ears refuse to hear. Listening to what rap music beats into our scholarly and political consciousness as an art form that is criminalised the way it is; for what it is, we have been forced into thinking differently about the very logic that makes all this possible—namely, the law. In so doing, rap is turned from evidence of wrongdoing to testimony of racial injustice by pointing us in the direction of how and why the law racialises crime and criminalises race through the penalisation of Black music genres.

As I type, a newly published report (Quinn et al., 2024) reveals the current state of the (mis)use of rap music as ‘evidence’; reviewing cases covering 252 charged individuals over the last three years in England and Wales—in the manner described by the fictional, yet ever so real, story that this chapter offered as an example of the state’s war against drill. Add to that the fact that 84% of defendants were racially minoritised with 66% of those Black and the concerns expressed in this chapter become clearer (Quinn et al., 2024: 7). While none of this is new, as preceding sections of this chapter have demonstrated, this alarming trend of criminally prosecuting (mostly) young Black people for the music they make or indeed listen to, shows no signs of abating. As this chapter draws to a close, the cases of the ‘Moss Side 11’ and the ‘Manchester 10’ are briefly touched on as just two disturbing illustrations of the “rap on trial” phenomenon (Nielson and Dennis, 2019). Starting with the ‘Moss Side 11’, it is a story of eleven teenagers sentenced to a minimum 168 years collectively based on a rap video they made as a key piece of evidence to convict them under joint enterprise law (Conn, 2021). Never mind that the video was organised by a youth worker (Kemoy Walker), part-funded by Greater Manchester Police and shot by a film student at Manchester Metropolitan University. The incriminating factor? The video’s title: Active Only, a term used by the defendants and other young people in Moss Side, Manchester to describe that they were out and about. According to the CPS however, these two words: Active Only signalled gang affiliation and the judge’s summing up of the case entertained the possibility of

inferring guilt from the “participation [in] or possession of that video”—making ‘possession’ of a video sound equivalent to possessing a lethal weapon, doubling perhaps as ‘evidence’ that the defendants were possessed by a malignant, evil and violent spirit too? Putting sarcasm to one side, the logic behind and the implications of such thinking are clear enough and consistent with the way drill is considered as ‘evidence’ in the hallowed halls of British jurisprudence. The second case concerns the ‘Manchester 10’, a group of ten teenagers who were presented as a brutal gang, who listened to drill and plotted revenge. All were sentenced to a total of 131 years in prison (Legane, 2022), charged not for *making*, but for merely *downloading* (=possessing?) drill music tracks or watching drill music videos as incriminating evidence of gang conspiracy (Pidd, 2022). While these two cases are hardly coincidental, given the “vastly expanding” number of cases involving drill as evidence (Quinn et al., 2022, 2; Swann, 2021), they nevertheless demonstrate how the law conspires in manufacturing suspects to be criminalised—raising critical questions that question the legitimacy, logic, tactics, purpose and function of an entire legal-penal system, when approached from the perspective of those who are at the receiving end of such carceral machinery.

This chapter opened with an imaginary story which revealed the very real ways in which making art becomes incriminating evidence, while also offering a contextual discussion of how and why such punitive zeal is reserved for drill rap(pers). Ending with two indicative examples of just how unjust ‘criminal justice’ is, it seems urgent to (re)consider whether knowing what we now know allows us to pretend that this is not what ‘justice’ actually *is*, or how it is carried out against those who are seen as its proto/stereotypical targets. The long and ignoble history of the racist suppression of Black expression tells us as much, bringing to mind Langston Hughes (1997, 31) poetic critique of (Lady) *Justice* who cannot see the injustices she oversees:

*That Justice is a blind goddess
Is a thing to which we black are wise
Her bandage hides two festering sores
That once perhaps were eyes*

In the same vein, the great African-American poet was to extend his healthy scepticism of the workings of ‘the law’ in *Children’s Rhymes* (Hughes, 1997: 390) by unequivocally stating that:

*What ‘s written down
for white folks
ain’t for us a-tall:
“Liberty And Justice—
Huh—For All”*

Much is to be learned by listening to what poetry, in rap form or not, teaches socio-legal scholarship and thinking. All this chapter attempts to do is sound out an invitation to become well-versed in a sharper criticism of ‘the law’ and its system(at)ic pathologisation of Blackness, through the way it thinks and acts as an instrument of social and racial injustice—while also drawing on rap as a valuable—yet culturally and politically under-*mined* (=underexplored and marginalised)—resource for making sense of the very forces that are turned against it. Hopeless though the fate of rap *lore* seems in the hands of the *law*, thinking and writing against the legal-penal mainstream (scholarly or otherwise) creates enough optimism with which to stem the tide of criminalising ‘race’/Blackness through music—or likening music to ‘crime’. In court, the jury is out unfortunately—so we must try harder and harder to make sure that rap as evidence is never allowed in.

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17

Policing the Cost-of-Living Crisis in England and Wales: Neoliberalism, Austerity, and Racism

Megan McElhone

Introduction

In 2010, in the aftermath of the Global Financial Crisis, the Conservative-Liberal Democrat coalition government committed the British people to an ‘age of austerity’ entailing reduced public spending and the sale of public assets. In disassembling public infrastructure, services, and welfare provisions, austerity has proved devastating and potentially deadly for economically and racially marginalised people across the nation. Its effects have since been compounded by the fall-out from Brexit, COVID-19, and Britain’s high levels of poverty coinciding with global geo-political factors like the soaring cost of food and energy to create a ‘cost-of-living crisis’. The formation of anti-austerity organisations, protests, and widespread industrial action throughout the last decade-and-a-half are demonstrative of the conflict and discontentment characterising the post-austerity period.

In many respects, the ‘age of austerity’ has been in step with the entrenched neoliberalism of the preceding three decades, but it does have distinctive features: one being the government’s identification of the police as a site for funding cuts. This decision heralded a reversal of the police’s sustained fortunes under both Conservative and Labour governments from the late

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1970s to 2010. In response, police leaders and police staff associations have repeatedly denounced such cuts, claiming they perilously weaken the police 'frontline' and, in turn, compromise public safety. These claims have been reiterated by journalists, Police and Crime Commissioners, HM Inspectorate of Constabulary, think-tanks, and academics, amongst others.

While the notion that the police have been hamstrung by austerity abides in public discourse, it is difficult to reconcile with the established literature demonstrating that periods of economic decline tend to be accompanied by increased policing and social control (Garland, 2002; Wacquant, 2009). Perhaps the foremost British account remains Hall et al.'s collective work *Policing the Crisis* (1978/2013), to which this chapter's title gestures. As traced by Hall et al., in the post-war period, a hard-won consensus regarding capitalism and the welfare state began to give way amidst Britain's reluctant retreat from Empire and deindustrialisation, a prolonged recession, high inflation, high unemployment, and the declining value of the pound sterling. This economic crisis was accompanied by authoritarian political discourses whipping up concern about immigration. At the same time, protests (such as those animated by the 'spirit of 1968') provided further evidence of deep political fissures. As Britain's social elite pursued a new consensus, a shift to more coercive forms of governance, and an 'exceptional' state, became evident. For Hall et al., in this conjuncture, the racialised figure of the 'mugger'—connoting the violence of the American ghetto—provided one scapegoat upon which concerns about social decline could be hung by politicians, police spokespeople, journalists, magistrates, and others; in turn justifying expanded and intensified state interventions like the heavy-handed, militarised policing of Black people and communities, and tougher sentencing (2013, pp. 18–28).

Proceeding from the above observations, the purpose of this chapter is to provide an alternative reading of the relationship between 'the age of austerity' and police funding in the legal jurisdiction of England and Wales. In doing so, it qualifies the received public narrative that the police have been incapacitated by austerity, with a view to demonstrating that members of racialised groups have remained subject to police attention and intervention: especially Black people and communities. Police have been implicated in creating and sustaining a 'succession' of racist tropes regarding Black criminality since the entrenchment of neoliberalism, from 'the mugger of the 1970s, to the rioter of the 1980s and ... the underworld "Yardie" of the 1990s' (Keith, 1993, p.245). As this chapter aims to demonstrate, in the post-austerity period, 'knife crime' can be added to this list, with significant effects for Black people and communities. But the chapter will also discuss how the policing of racially and economically marginalised people has taken ostensibly 'softer',

more consensual forms as social, welfare, and educational provision have been subject to cuts and securitised. In all, the blanket claim that austerity has imperilled the police frontline and thereby compromised public safety misreads the police mandate and obscures the continuation—and in some respects expansion—of the policing of Black people and communities in the post-austerity period. This is especially true in light of the Conservatives' attempts to (re)establish their authority and crime control credentials in times of pronounced political, economic, and social conflict by providing greater police funding and powers.

'The Age of Austerity'

Following the Global Financial Crisis (GFC) of 2008, the UK entered a recession lasting five quarters, prompting then-Conservative party leader David Cameron (2009) to declare that 'the age of irresponsibility [was] giving way to the age of austerity'. Here, Cameron referred to the fiscal policy of austerity, entailing reduced public spending and the sale of public assets with a view to controlling a budget deficit. When a Conservative-Liberal Democrat coalition formed government following the 2010 general election with Cameron at the helm, the portended 'age of austerity' commenced. Outlining his first budget in Parliament, George Osborne, the Chancellor of the Exchequer, held that pared spending would '[lay] the foundations for a more prosperous future' (HC Deb, 2010). Meanwhile, Cameron (2010) touted the 'Big Society': 'a new approach to government and governing', which 'open[ed] up public services to new providers like charities, social enterprises, and private companies', and which was therefore contingent upon 'the daily decisions of millions of people ... to [give] their time, effort, even money, to causes around them'. In effect, the British people were made responsible by the coalition for navigating the fallout from the GFC—allegedly caused by reckless public spending and escalating levels of personal debt, but actually caused by the recklessness of the financial elite—while entrepreneurs and the private sector were invited to fill service provision vacuums.

The coalition's fiscal policy and approach to government is best understood in the context of Britain's entrenched neoliberalism. Neoliberalism became the guiding principle of British economic thought and management during the 1980s under the championing of then-UK Prime Minister Margaret Thatcher and has remained a matter of consensus for the governments following hers and many others across the globe. As explained by Harvey (2005, p.2), neoliberalism:

Proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterised by strong private property rights, free markets, and free trade. The role of the state is to create and preserve an institutional framework appropriate to such practices. The state has to guarantee, for example, the quality and integrity of money. It must also set up those military, defence, police, and legal structures and functions required to secure private property rights and to guarantee, by force if need be, the proper functioning of markets ... But beyond these tasks the state should not venture.

In practice, neoliberalism has entailed the withdrawal of the state from many areas of public provision throughout the last five decades, under both Conservative and Labour governments. Privatisation programmes have seen the sale of public assets and infrastructure, and new markets and deregulation have come to the fore in areas of provision previously under state control (Chakraborty, 2016; McDuff, 2020). At the same time, the public sector has been subject to managerialist emphasis on productivity, performance indicators, and cost-effectiveness attendant to 'customerisation' (Whyte, 2015). So, while Cameron reportedly intended for his government and the 'Big Society' to break from 'nasty', Thatcherite fiscal and social policies, captured in Thatcher's infamous claim that 'there is no such thing as society' (Espiet-Kilty, 2016), his declaration of the 'age of austerity' deepened the neoliberal hollowing of the state.

Even by the reckoning of the International Monetary Fund, regular proponents of austerity, the UK's austerity programme has been rendered counter-productive by its severity (Ostry et al., 2016). For his part, Philip Alston, former UN Special Rapporteur on extreme poverty and human rights, lambasted the 'great misery' and 'punitive, mean-spirited, and often callous' nature of the social and welfare policies accompanying successive governments' neoliberalism and austerity (Alston, 2018). In the time since Alston's scathing assessment, the situation has become more acute, as existing social inequalities have become further polarised and so too have British politics. Brexit provides a blatant example: not only did it cause the economy to become more closed, less competitive, and less attractive for business investment, while making necessities like food more expensive (Freedland, 2022), but it was carried out according to the logic that Britain should not remain in the European Union. For some on the right, Brexit was propped up by imperial nostalgia and nationalist longing for Britain's former 'greatness', thereby exacerbating racism and xenophobia (Virdee & McGeever, 2017). But there also existed a leftist Leave ('Lexit') movement highly critical of the European Union's neoliberalism and tendency towards imposing austerity agendas, and

the structural racism of ‘Fortress Europe’ (Bejan, 2019). So, in one way or another, both right- and left-wing movements exposed austerity as an ideological ruse which furthers the interests of political and financial elites. Indeed, the ‘declining value of the pound following the Brexit vote ... forced the government to abandon the same deficit reduction target that the absolute necessity of austerity argument [was] based upon’ (Cooper & Whyte, 2017, p.10). The COVID-19 pandemic then caused an extreme recession and saw the UK build up its highest levels of national debt since the 1960s (Brien & Keep, 2023). As the pandemic subsided, inflation surged and real terms wages declined (Francis-Devine et al., 2024). When combined with the soaring cost of food and energy across the globe, and the UK’s long-standing high levels of poverty, these conditions burgeoned in a cost-of-living crisis ultimately borne of—and consistent with—capitalist profiteering and exploitation.

People’s standards of living continue to be compromised. In 2021–22, 22 percent of people in the UK were in poverty and poverty was deepening. The following year, owing to the cost-of-living crisis, 72 per cent of households were going without essentials and 58 per cent of households reportedly did not have enough money for food (Joseph Rowntree Foundation, 2024). These effects have not been felt evenly, despite the coalition government’s claims that the British people would bear the pains of austerity ‘together’: as explained by the Institute for Race Relations (2024), members of racialised groups are more likely to be in poverty. And it is now well-documented that austerity exposes people to illness and premature death (Stuckler & Basu, 2013). Perhaps unsurprisingly, then, organisations like the People’s Assembly Against Austerity, UK-UNCUT, and Occupy London formed to oppose austerity throughout the 2010s, and tens of thousands took to the streets in anti-austerity protests across major British cities. Industrial action has also been recurrent in many industries, with train drivers, doctors, nurses, civil servants, schoolteachers, and lecturers all going on strike regarding their pay and working conditions in recent years. Yet, the rich have become richer as austerity has seen wealth transfer to private capital and high-income earners have benefitted from tax cuts. As summed up by Cooper and Whyte (2017, p.11), ‘austerity is a class project that disproportionately targets and affects working class households and ... protects concentrations of elite wealth and power’.

While the effects of neoliberalism and austerity have no doubt cumulated in the last five decades, one distinctive feature of the ‘age of austerity’ declared by Cameron was the coalition government’s identification of the police as a site for spending cuts. This ran counter to the neoliberal tenet—outlined by Harvey above—that one of few state responsibilities is the provision of

police to secure private property rights. Indeed, these spending cuts heralded a reversal of the police's sustained fortunes following Thatcher's 1979 declaration that '[t]he next Conservative government will spend more on fighting crime even while we economise elsewhere' (quoted in Laub, 2023, p.654). Thereafter, the police proved instrumental in suppressing industrial disputes including the miner's strike (Gilmore, 2019), and in maintaining the status quo against racially and economically marginalised people via aggressive and often brutal practices (Scarman, 1982). In the ensuing decades, populist politics ensured continued increases in police spending and police leaders successfully requested greater numbers of officers from both Conservative and Labour governments. These increases were maintained even in the context of falling crime rates and growth in the private provision of security services. Because common-sense dictates that the police are primarily concerned with law enforcement and crime fighting, increases to police spending and headcounts in such circumstances were especially auspicious since the police would have been widely understood to have less 'core business' (Ellison & Brogden, 2013, p.16). So, while they would never have welcomed funding cuts, the indignation expressed by prominent lobbyists like the Police Federation of England and Wales since 2010 must be viewed in the context of the police falling out of the Conservatives' favour.

In turn, in their public communications and remonstrations, police staff associations and police leaders have asserted that English and Welsh forces have been incapacitated by austerity (see, e.g., Burgess, 2022; Dearden, 2018; Warrell, 2017; Watts, 2018). Their assertions have been propped up by Police and Crime Commissioners, journalists, academics, and criminal justice consulting firms, amongst others. Three prominent claims are that austerity cuts have reduced police funding (see, e.g., Naylor, 2015; Lancashire Evening Post, 2017; Wallis & Gray, 2024), headcounts (see, e.g., Evans, 2011; Jones, 2014; Watt, 2014), and the police estate through the closure of police stations (see, e.g., Ford et al., 2010; Greenwood, 2018; South Wales Evening Post, 2013). Yet, as explored in the sections below, which take each of these claims in turn, determining austerity's effects for the police remains difficult. Efforts to do so are beleaguered by the decentralisation of the UK police landscape. But even within forces, funding cuts have not been applied uniformly across all areas of service provision. Accordingly, public narratives about austerity's effects for the police can be difficult to reconcile with police policy and practice, especially regarding the policing of racialised communities.

Austerity's Effects for the Police

Police Funding

Austerity is widely supposed to have reduced police funding. The two most noteworthy sources of police funding are the central government grant and the local council tax 'precept'. Each year, England and Wales's 43 territorial forces are allocated a proportion of the total central government grant, determined by the application of a complex formula called the 'police allocation formula' or 'PAF'. The PAF has been widely criticised owing largely to its reliance on dated demographic data to calculate forces' 'relative needs compared to each other' (Home Office, 2013). In 2010, in line with austerity, cuts to the central government grant were applied evenly to all forces in percentage terms. However, disparities in the council tax base in force areas, and historical decisions about precept levels, meant that forces with lower precept revenues were likely to fare worse in terms of reductions to their overall funding. As added by Hales (2020), other sources of funding including a force's reserves, assets available for sale, and income generating activities, will have also contributed to these disparities.

But within a few years, the Conservative government performed something of a U-turn, seeking to dispel concerns about the preceding Conservative-Liberal Democrat coalition having incapacitated the police. Put differently, having faced criticism regarding austerity-related funding cuts for several years, the Conservatives sought to reassert their crime control credentials by demonstrating willingness to invest money in the police and expand their powers. A prominent example of this has been the Serious Violence Strategy framing the Conservatives' response to serious violence and especially knife crime, gun crime, and homicide since 2018. As explored further below, given the long-standing racialisation of gang-related and violent crime in England and Wales, the Strategy's implementation has encouraged the over-policing of Black people and communities. Suffice it here to say that the SVS has bolstered the police materially through the provision of funding and other resources.

Beyond the parameters of the SVS, the Conservative government also pledged funding boosts in consecutive police funding packages, which set out the aggregate amount of grants for forces across England and Wales and determine the precept flexibility available to Police and Crime Commissioners. While these pledges were upheld in ensuing budgets, police staff associations continued to insist on their insufficiency (Syal & Dodd, 2024). Such insinuations may yet bear further fruit, with the newly elected Labour government

promising to ‘take back [the] streets’ and ‘halve serious violence’, following the Tories’ alleged ‘failure to deliver on law-and-order’ (Labour Party, 2024).

It is also apparent that some areas of police service provision have been more affected by funding cuts than others. Baroness Casey of Blackstock’s 2023 report into the culture and standards of the Metropolitan Police provides pertinent examples. As set out in the Casey report, officers focusing on child protection, rape, and serious sexual offences ‘lack the infrastructure and specialism which the Sapphire specialist command benefited from’ before being disbanded due to funding reductions (2023, p.15). These issues routinely endanger rape trials: across the Met, fridges containing victims’ rape kits were in a state of disrepair and ruining evidence. But the review team found that conditions were very different for the Met’s ‘prestigious and elite’, hypermasculine specialist firearms command ‘MO19’. They ‘heard of excessive spending on unnecessary, high-end equipment and kit, such as tomahawk axes and unusable night vision goggles which turned out to be useless in London’s street-lit environment’. They also heard of MO19 superiors turning a blind eye to their officers ‘gaming’ the overtime system to garner significant additional wages (2023, pp. 192–193). Leaving aside specialist commands, assertions that there has been reduced investment in domestic policing on the streets since 2010 persist. Scarce acknowledgement is given to the fact that intrusive interventions against members of racialised communities have been sustained in areas of ‘core business’: Black people and communities have continued to experience disproportionate policing in respect of minor drug-related offences, not least as police have sought to rationalise their resource allocation by concentrating their efforts in ‘deprived, ethnically diverse, urban and inner-city neighbourhoods’ (Egwuonwu, Kadiri and Shiner 2022, p.71).

Even if there has been an overall reduction in spending on the police since austerity, it does not follow that there has been insignificant or insufficient investment in *policing*. On the contrary, recent years have seen an intensification of policing in respect of immigration control (Bhatia & Burnett, 2022). Meanwhile, referrals to Prevent—part of the government’s counter-terrorism programme, which places a legal responsibility upon teachers, doctors, nurses, and social workers, amongst others, to identify those at risk of committing terrorist acts—are up (Home Office, 2023b). Prevent is known to pivot on Islamophobic logics and normalise British Muslims as subjects of policing and surveillance (Amnesty International UK, 2023; Cohen & Tufail, 2017; Kundnani, 2015). In short, members of racialised groups have continued to experience policing on the streets, and in terms of immigration enforcement and counter-terrorism, in the post-austerity period.

Police Headcounts

Austerity is also claimed to have reduced police headcounts. According to Hales (2020), there is some accuracy to these claims:

By March 2019, 9 years after austerity began, the 43 territorial police forces in England and Wales had reduced their total number of police officers by 16 per cent (down from 143,734 to 123,170), police staff by 19 per cent (from 79,596 to 64,411), and [civilian Police Community Support Officers] by 42 per cent (from 16,507 to 9565).

However, Hales cautions that ‘while cuts to officer numbers have increased with cuts to overall funding, the correlation is not especially strong’. Other factors, such as real terms pay cuts—which have affected workers across the public sector and civil service—have also been at play. Nevertheless, when rates of recorded crime began to rise in 2016, commentators including journalists, police leaders, and police staff associations denounced austerity-related reductions in police headcounts as a prominent causal factor.

In response, the Conservative government announced its ‘Police Uplift Programme’ in 2019. The stated objective of the Programme was to recruit 20,000 police officers over 3 years, additionally to those recruits hired as backfill for leavers or in keeping with local recruitment commitments. ‘An immediate £45 million to kick-start recruitment’ was to be followed by a further £750 million funding (Home Office, 2019). The Home Office later confirmed that the target had been surpassed with 46,504 recruits joining between November 2019 and March 2023, 20,951 of whom were counted towards the uplift. The police headcount across England and Wales (149,572) therefore represented ‘the highest number of police officers on record since comparable records began’. However, one of the 43 territorial forces did not meet its recruitment target: the Metropolitan Police, responsible for policing the English capital and the UK’s most populous city, London (Home Office, 2023a). At the same time, the Police Federation of England and Wales characterised the Programme as ‘a flawed success story’, contending that, even with the new officers recruited through the Programme, population growth meant that there was a lower number of officers per capita than in March 2010 (PFEW, 2023). And, although the Home Office articulated an intention to leverage the Programme to diversify the police workforce along the lines of race, the jury is out (Home Office, 2023a).

Recruitment and retention in this period will no doubt have been affected by an ebb in public confidence attributable to patterned and systemic police racism, misogyny, and homophobia. In the years since the announcement of the Police Uplift Programme, the UK has seen 2020’s widespread Black

Lives Matter protests against racist police violence, as well as public outrage following the fatal police shooting of a young Black man, Chris Kaba, in 2022, and the revelation in 2023 that Child Q, a 15-year-old Black student, had been removed from an exam and strip searched without an appropriate adult present, while she was menstruating. The same year, Baroness Casey's review found that the police in London remain institutionally racist, misogynistic, and homophobic. Then, in February 2024, the National Black Police Association called for racialised communities to boycott joining the Metropolitan Police upon the basis that the force had pursued 'racist and vexatious' misconduct proceedings against the chair of the Met Black Police Association after he complained that he had been racially abused in a WhatsApp group (Siddique, 2024). Although the matter is yet to be resolved at the time of writing, the vexatious use of misconduct proceedings against police officers who are members of racialised communities and women have been well-documented (Casey, 2023), as have the use of racist, misogynistic, and homophobic language in police WhatsApp group chats (IOPC, 2022). Indeed, each of the above examples serves as a reminder that, even if the Police Uplift Programme's stated intention of diversifying the police workforce had been achieved, the expectation that recruiting officers from racialised communities can remedy racism by increasing the force's representativeness does not sufficiently reckon with the entrenched, systemic, and institutionalised nature of the issue, and the power relations sustaining it.

Police Stations

Finally, austerity is claimed to have caused the closure of police stations. According to Pratt (2019), it is estimated that 600 were closed across the nation between 2010 and 2018. More recently, an Institute for Fiscal Studies working paper focusing on the situation in London has claimed that 'between 2008 and 2018 the number of operating stations dropped from 160 to 45, with 80% of all closures taking place in 2013' (Facchetti, 2024, p.7). The closure of some of these stations can be attributed to budgetary pressures: selling assets can raise funds for capital investment. This is especially true of 'legacy buildings' which are no longer suited to the day-to-day needs of the police (Millie et al., 2023). But changes in crime reporting behaviour have also influenced the decision to close police stations. Reports about non-urgent crime problems can now be made online or over the phone. According to the Mayor's Office for Police and Crime, between 2006 and 2016, there was a 22 per cent decline in the number of people reporting crimes at police counters in London (cited in Pratt, 2019).

Concerns regarding the closure of police stations are often animated by acknowledgement of the ‘communicative properties to police visibility’ (Millie et al., 2023, p.11). A police station communicates a visible police presence; the closure of a station communicates the police’s withdrawal, absence, or invisibility. However, it should not be assumed that the presence of a police station will be valued by those who live and work nearby, or increase their trust, confidence, or reassurance in policing. The response to the re-opening of Tottenham Police Station in June 2023 following refurbishments is a case in point. The station came to international attention in 2011 following the police killing of Mark Duggan. Protesters gathered outside the station demanding accountability for Duggan’s killing were left unanswered before then being met with police violence, precipitating the 2011 England Riots. Since then, the station has regularly been the site of further protests against police racism and violence. So, when Commissioner Mark Rowley arrived in Tottenham to cut the ribbon at the refurbished station’s threshold, he was probably not surprised by the protestors gathered outside demanding to know why he ‘would not admit that the police force is institutionally racist’; a reference to his refusal to accept the Casey review’s finding. When then pressed by an ITV reporter about the spate of Metropolitan Police internal misconduct inquiries prompted by the Casey review, Rowley was determined not to waste his opportunity for positive press, demanding instead that attention be paid to the re-opening of the police station and reminding the reporter ‘*this* is the news story’ (Holder, 2023).

In short, austerity cuts since 2010 may well have affected the police’s funding, headcounts, and physical estate. However, as traced above, the relationship between austerity and policing is yet to be made out conclusively. More to the point, in the last half-decade, the then-Conservative government sought to reverse the cuts allegedly wrought upon the police by their coalition predecessors’ imposition of austerity, if only to demonstrate their attentiveness to law-and-order concerns expressed by public commentators including police leaders, representative bodies, and journalists. But, despite persistent assertions that police have been impoverished and rendered impotent by austerity, this does not appear to be true of all areas of service provision, and some of the police’s most coercive and racially discriminatory practices have been maintained and intensified since 2010. That the recently elected Labour government have stated their intention ‘rebuild public confidence in policing by getting police back on the beat’ suggests they will continue to invest in them (Labour Party, 2024).

Police Presence and Public Safety

Public narratives about austerity incapacitating the police tend to pivot on a premise that should not be left uninterrogated: namely, that police ensure public safety. The evidence produced to support this premise varies in rigour and sophistication. For example, commentators have sometimes relied on kernels of common-sense wisdom, as demonstrated by the following statement regarding the Police Uplift Programme from Ché Donald, National Vice-Chair of the Police Federation of England and Wales:

Since 2012 the population has grown by at least 4 million, and this demonstrates recruitment levels have not kept pace with an expanding population, which *evidently* puts the public at risk (PFEW, 2022, emphasis added).

Others, however, rely upon ‘impenetrable’ mathematics (Moore, 2024). Take, for instance, the above-mentioned Institute for Fiscal Studies working paper regarding the closure of police stations in London. Its claims are drawn from an elaborate ‘combination of four extremely granular datasets’ including geo-coded information pertaining to the closure of London police stations, geo-referenced information on 7 million criminal incidents recorded by the Metropolitan Police, geo-referenced data regarding crime clearance rates and local house prices and sales, and victimisation data. While acknowledging that ‘measuring the causal effect of police station closures’ is ‘challenging’, the author nevertheless asserts that ‘violence increases as a result of police station closures’ (Facchetti, 2024, p.18). Put differently, despite conceding that official crime data are inherently partial and skewed by the reporting behaviour of the public, the recording behaviour of the police, and their resource allocation, the author uses data pertaining to criminal incidents recorded by the police to make a causal claim about police policy across London. Indeed, the inaccuracy of police recorded crime figures is underscored by the Office for National Statistics’ decision to withdraw their gold-standard designation (Travis, 2014). And, while the author has duly included victimisation survey data to try account for crime reporting behaviour, such data frequently exclude groups of people likely to be victimised in violent crimes, for example young people and those who are homeless.

The Institute for Fiscal Studies is certainly not alone in drawing links between austerity cuts to the police and rises in violent crime, though. The relationship between austerity and knife crime has remained an especially salient matter of public discourse. Perhaps this is unsurprising with recent figures indicating that offences recorded by police involving a knife or sharp instrument have reached record highs in recent years (Allen et al., 2023).

But, throughout the last two decades, politicians have continued to broaden the range of offences ensnared by the ‘knife crime’ dragnet, and police have adapted their recording practices to account for them, while mobilising ever-greater resources to curb offences committed in public involving knives and sharp instruments; all of which will have affected the official data. Meanwhile, complementary sources of data used to provide a fuller picture of the incidence of knife injuries—namely hospitalisation data and MORI youth surveys—have also been affected by the intensification of interest in knife crime. While the MORI surveys have adapted the questions asked of respondents year on year, medical staff have experienced greater pressure to record knife injuries (Williams & Squires, 2021, p.9). Yet, data from the National Health Service show a decline in the number of hospital admissions for knife or other sharp object wounds since 2013 (Allen et al., 2023). It is therefore far from proven that austerity increased knife crime. In fact, as discussed further below, knife crime may well have proven expedient to the police in times of austerity.

Often, the notion that the police are embattled and struggling to ensure public safety is expressed using the metaphor of the ‘frontline’. The police’s frontline is claimed to have been weakened after being ‘thinned out’ by austerity cuts. But what constitutes the frontline? Attempts by HM Inspectorate of Constabulary (HMIC) to provide greater definitional clarity about the ‘frontline’ have proven futile. HMIC was tasked with defining the term in December 2010 by the Minister for Policing and Criminal Justice, upon the basis that the ambiguity of the term belied the frequency of its deployment in discussions of policing. Having consulted police representatives, conducted a small public survey, and considered the use of the term in other sectors, HMIC produced the following definition: ‘the police frontline comprises those who are in everyday contact with the public and who directly intervene to keep people safe and enforce the law’ (2011, p.6). This definition means the ‘frontline’ pertains to a range of police roles and practices. But rather than rendering the term unworkable, this breadth likely enhances the utility of the ‘frontline’ to the police and their proponents: as pointed out by Ellison and Brogden (2013), the ‘frontline’ may be contorted to fuel populist sentiments posing the police against potential foes, including members of racialised communities.

But while these lines of thinking—linking police austerity cuts to reduced public safety—have a certain common-sense appeal, they are not reconcilable with a properly historicised account of British police work. As illustrated below, British police, whether on the frontline or in the back office, are not primarily concerned with ensuring public safety.

The British Bobby

Abiding public discourses about the relationship between austerity, policing, and public safety—heavily influenced by the proclamations and protestations of police leaders and staff representative bodies—are often undergirded by an ideological condition called ‘police fetishism’. Police fetishism ‘conceives of a time-bound human product—the police institution—as if it was an eternal entity. It tacitly presumes that the police are a functional prerequisite of social order and that without a police force chaos would ensue ... In fact, many societies have existed without a formal police force of any kind, and certainly without the present model’ (Bowling et al., 2019, p.3).

Police fetishism belies the fact that police institutions are inherently modern. In the English-speaking world, the Royal Irish Constabulary, established by the British in 1822 to quash resistance to their administration in Ireland, is usually considered a prototype for the militaristic, armed system of policing spread throughout the Empire during the nineteenth and twentieth centuries. Indeed, in Britain’s colonies, police tended to adopt paramilitary institutional structures and military-type nomenclature, uniforms, and armament, and many recruits were ex-soldiers (Sinclair, 2010).

The police were fundamental to British imperial and colonial conquest. They facilitated the expropriation of land and labour in colonised and occupied territories, and the control of colonised and enslaved peoples. ‘Colonial policing functioned to legitimate central rule from Westminster’ and constituted ‘pre-eminently missionary work to legitimise external governance’ (Brogden quoted in Sinclair, 2010, p.11). This ‘missionary work’ often amounted to mercenary work, including lethal and genocidal violence; especially when colonial subjects’ resistance to Westminster’s impositions threatened a colony’s viability and prosperity. The exigencies of ensuring the colonies’ prosperity saw the police assume a breadth of administrative and regulatory duties ‘from veterinary inspections to issuing licences, from delivering mail to determining welfare, as well as reporting on the state of the crops, the condition of the roads, and so forth’ (Cunneen, 2023, pp. 27–28). Counter-insurgency, and the surveillance upon which it was contingent, were also police responsibilities. Racism against colonised and enslaved peoples meant that the notion of establishing the police’s legitimacy in the colonies was relegated. Instead, the efficiency, stability, and profitability of the colonies remained paramount (Cunneen, 2023; Sinclair, 2010).

But profitability for capitalists required order in the imperial centre, too. The colonial experience informed the development of police institutions in

the metropole. British police histories trace a shift from ‘parochial governance’ and communal policing—personified by village constables, watches, and the hue and cry—culminating in the establishment of the London Metropolitan Police or ‘new police’ in 1829 (Bowling et al., 2019, p.186). One of the foremost proponents of the ‘new police’ was then-Home Secretary Robert Peel, who had been Chief Secretary in Ireland when the blueprints for the police were drawn up. For orthodox historians, rapid urbanisation, and corresponding crime and disorder in the cities attendant to the growth of industrial capitalism, provided the impetus for the establishment of professional, bureaucratic police institutions, as the existing system of parochial governance proved ill-equipped. These orthodox histories tend to be both conservative and teleological in attesting to the social necessity of the police. But from the 1970s, Marxist ‘revisionist’ accounts emerged emphasising the class repression practised by the ‘new police’. They highlighted how the police encroached upon the lives of the labouring poor to ensure their fitness for work, sought to quash industrial disputes and protests, and engaged in political surveillance as in the colonies (Bowling et al., 2019; Cunneen, 2023).

As pointed out by Porter (2025), the intricacy of the relationship between policing in the colonies and the imperial centre is further illustrated by the influence of the Thames River Police upon the development of the ‘new police’. Created in 1798, and first funded by the West India Committee, the Thames River Police patrolled the Port of London to protect the property and profits of English plantation owners. By modelling centrally funded and prevention-focused policing, the Thames River Police provided a precedent for the ‘new police’, and indeed came to be subsumed by them. As such, the ‘new police’ are not simply attributable to Peel’s pioneering. Acknowledging this history helps to explain the entrenchment of the protection of (colonially derived) property and profits in the police mandate.

But, leaving aside the plantation owners, merchants, and industrialists who directly benefited from them, the police in the imperial centre faced broad-based opposition at the time of their establishment, necessitating efforts by police architects to establish legitimacy and public consent (Bowling et al., 2019). A mythology emerged from their efforts. British police officers are conceived of as merely ‘citizens in uniform’, carrying out duties to which any civic-minded person would be compelled. Here, direct, nostalgic links are drawn from the police to the parochial governance and communal policing predating them. Indeed, the primary duty or obligation of the police is said to be to the public or the community, rather than the state; impliedly distinguishing the police from their repressive, authoritarian, continental

counterparts. It is for this reason that British police, while swearing allegiance to the Crown, also make an oath to discharge their duties with reference to the rule of law, and without political interference. This oath vests them with the 'Office of Constable', and means they are not classified as employees. Nevertheless, the chief constable of each force maintains corporate responsibility for their force's officers, and their expectations regarding standards of conduct are usually framed in terms of the 'Peelian Principles'. Conventionally understood to have been drafted by Peel upon the establishment of the 'new police', the Principles emphasise that the police should be minded to prevent crime, rather than act punitively in retrospect of offending behaviour. In their efforts to prevent crime, the police are contingent upon the public's support and trust; that is, their consent to policing. They can secure such consent by acting impartially and using force as a last resort. It is for this reason that British police are usually characterised as being unarmed.

The notion that the police's role revolves around public safety can be traced to these idealised tales. But the concept of policing by consent obscures the fact that police work in Britain has always been about protecting property and reproducing social order in a class-divided society and informed by the experience of policing in the colonies. Policing is therefore inherently political. Meanwhile, the claim that the police are not subject to political interference is rendered preposterous in consideration of the many instances of political lobbying and scandal within which they have been embroiled (see, e.g., Bunyan, 1977; Schlembach, 2024). Moreover, the Peelian Principles do not appear to have been formulated by Peel, but by orthodox police historians writing in the first half of the twentieth century (Lentz & Chaires, 2007).

Regardless, the mythology of the British bobby is significant in revealing the police as a site of 'affective identification'. As explained by Loader, the police are 'an institution through which people project various hopes and aspirations, fears and fantasies, about the social world ... [People's identifications with the police are] inescapably entangled with questions of life and death, order and chaos, security and vulnerability, morality and immorality, honour and dishonour, belonging and exclusion, the boundary between "us" and "them"' (2020, p.11).

These binaries—and particularly the dynamic of 'us' and 'them'—are captured in the metaphor of the 'frontline'. Given that the British bobby is deeply rooted in the English national self-image, the pitting of 'us' against 'them' via the police frontline implies racism and xenophobia, despite the frontline's seeming race neutrality (Loader & Mulcahy, 2003). Indeed, in England and Wales, the targeted policing of the descendants of formally colonised and enslaved peoples in areas racialised as 'crime hotspots' brings

the colonial frontier to the imperial centre. This means the frontline is not merely metaphorical: it involves the highly asymmetrical application of police power against those who are racially and economically marginalised. If calls for the replenishment of the frontline following austerity are tilted towards reassurance, they are clearly intended for the attention of some segments of the public and will be fulfilled at the expense of others.

Indeed, the public's affective identification with the police can be leveraged in pursuit of social consent to state intervention in times of political and economic upheaval. As noted above, Hall et al.'s *Policing the Crisis* provides the pre-eminent study of how periods of conflict, crisis, and unrest have been accompanied by increases in the scale and pace of legal repression and social control in Britain (1978/2013). Hall and his co-authors were motivated to analyse a resurgent authoritarianism that entangled police, political, and judicial discourses in the construction of the problem of 'mugging'—a term with no discrete legal meaning in Britain, but which connoted the violence of the American ghetto—to which the concerted policing of Black people and communities, and harsher sentencing, provided the answer. They located the emergence of the mugger in the political, economic, and social landscape of the late 1960s and 1970s, as the post-war consensus regarding capitalism underpinned by a welfare state, accompanied by nationalised industries, and the legislative enshrinement of workers' rights, was ceding. They argued that growing social conflict and dissent, and the 'law-and-order' response to them, indicated an emerging crisis of hegemony; that is, the social elites' failure to produce consent to their authority. This crisis necessitated a shift to a more coercive form of governance, of which mugging was symptomatic. As police mobilised specialist 'anti-robbery' squads and harassed Black people and communities (and activists) in the areas where they tended to live and work, policing became instrumental in importing the term 'mugging' from across the Atlantic and imbuing it with distinctly British meaning. It functioned as a deposit for concerns that society had become too permissive, leading to social decline, and implied that disorderly and dangerous Black people were central to this decline. The figure of the mugger was therefore borne of a hegemonic project signifying a shift towards the exercise of more coercive, 'exceptional' state intervention to secure a new consensus.

Yet, the heavy-handed policing of Black people and communities has continued unabated under successive governments. So too has the policing of other racialised groups, immigrants, protestors, and anti-austerity organisations, amongst others; calling into question the exceptionality of the 'exceptional' state described by Hall et al., and suggesting that a hegemonic settlement or consensus remains elusive in the neoliberal period. Indeed, the

following section presents the case study of knife crime, which may well constitute a hegemonic project with similar features to mugging. Significantly, until the ‘age of austerity’, governments had kept the police ‘onside’ for decades. Since then, police and their staff associations have emerged as significant detractors, attributing allegedly rising rates of knife-related violence to their incapacitation via austerity. Meanwhile, the people most likely to be pathologised in elite discourse as potential knife criminals, and policed accordingly, are those bearing the brunt of austerity: racially and economically marginalised communities.

Policing Knife Crime

As traced by Williams and Squires, the neologism ‘knife crime’ emerged following a police-initiated shift of ‘focus towards knives in crime recording practices’ in the late 1990s as Labour exerted pressure on police and other public authorities to ‘produce evidenced work outcomes and efficiency’ (Williams & Squires, 2021, pp. 136–137). At the time, the police were reeling from Sir William Macpherson’s finding in the Stephen Lawrence Inquiry (1999) that London’s Metropolitan Police were institutionally racist, and that the same was likely true of other forces across the nation. This finding was accompanied by a recommendation that police should have to record stops and searches to allow for the monitoring of racial disproportionality. After some initial reticence—likely stemming from police indignance towards the Macpherson report—the use of stop and search greatly expanded in the decade following the Stephen Lawrence Inquiry. No doubt keen to reassert their credibility, the police appear to have changed their recording practices regarding knife crime and focused on this ‘type’ of crime in their efforts at performance monitoring under the neoliberal scrutiny of New Labour. As such, the police’s ‘mobilisation towards [knife crime] precedes a public definition of the label, just as with the notion of “mugging” in the 1970s’ (Williams & Squires, 2021, p.133).

From 2018–19, the Conservatives proved especially willing to provide greater resources and powers for policing knife crime, with a view to countering the conception that their Party incapacitated the police via austerity. For example, during 2019, successive Tory Home Secretaries Sajid Javid and Priti Patel repealed the Best Use of Stop and Search Scheme safeguards intended to constrain arbitrariness and racial disproportionality in stop and search. For her part, Patel took this decision upon the advice of senior police officers, reasoning that the repeal of the safeguards would encourage police officers to make greater recourse to stop and search powers contained in

Section 60 Criminal Justice and Public Order Act 1994, to end the knife crime ‘epidemic’ (Home Office 2019). Patel’s announcement preceded a drastic uptake in the police’s use of Section 60. An Equality Impact Assessment published by the government soon after the repeal of the safeguards noted that Section 60 powers were already being used disproportionately against members of racialised groups, and especially against Black people (Home Office, 2020a). The police’s use of other powers recently introduced by the Tories, such as Knife Crime Prevention Orders, appear to be similarly marked by racial disproportionality (Lavin, 2022).

A common riposte from elite and conservative commentators has been to claim that Black people and communities are disproportionately affected by such powers because they are markedly involved in crimes involving knives and sharp instruments (see, e.g., *Roberts v Metropolitan Police Commissioner* (2015)). Such common-sense reflects the status of knife crime as a racialised signifier for urban crime, disorder, and national decline. In other words, ‘knife crime’ does not simply denote offences involving knives and sharp instruments, but functions metonymically, conjuring images of gangs, and of particular urban areas home to Black communities who have experienced multigenerational conflict with the police as they have resisted police and state violence. So, while the term ‘knife crime’ makes no explicit reference to race, it reconstitutes associations drawn between Black British communities, disorder, gangs, violent crime, and disregard for the rule of law over several decades (Gilroy, 1987/2013; Hall et al., 1978/2013; Williams & Squires, 2021). The highly disproportionate policing of Black people and communities using knife crime-branded powers thereby becomes sustained by circular reasoning. But recorded crime data pertaining to offences involving knives and sharp instruments can only be skewed by the disproportionality characterising the police’s deployment of the powers in question.

As argued by Williams and Squires (2021), knife crime has therefore maintained racist and authoritarian policing at a time when police needed to be seen to be ‘doing something’ about institutional racism, and later, when they bemoaned the government for hamstringing them in the ‘age of austerity’. Again, Section 60 stop and search powers are illustrative. The arrest rate for these powers has fluctuated between 2 and 6 per cent in recent years, but seldom are knives uncovered when they are deployed (Diver et al., 2023; Home Office, 2020b). Yet, police leaders attest to the powers’ necessity for uncovering offensive instruments, even in the face of their officially evidenced racial disproportionality. To understand why, it is crucial to intellectually decouple stop and search from crime detection. Contrary to the declamations

of police leaders and politicians, stop and search is not simply an instrument for crime detection and law enforcement. Rather, it is a legal resource police can deploy to conduct surveillance, explore experiential hunches, initiate conversations with people, acquire information, impose their authority, and control people's uses of public space. Stop and search powers therefore provide police with resources they can use in fulfilment of their mandate, which may involve crime detection, law enforcement, or crime reduction, but which is ultimately about reproducing social order and disciplining socially marginal people, including members of racialised groups. Indeed, institutional imperatives to use powers like Section 60 to combat knife crime have seen police saturate localities where they have experienced multigenerational conflict with racialised communities (Elliott-Cooper, 2018; Keith, 1993). So, while austerity is alleged to have reduced frontline policing, knife crime means this is not true for members of racialised communities.

Policification and Education

While knife crime provides an example of blatantly authoritarian and coercive police practice, policing has also become diffuse throughout welfare, education, and public service provision in the post-austerity period. Since Britain's embrace of neoliberalism, funding cuts have increased many agencies' reliance on the police, cast 'harm problems' as 'crime problems', and enabled the police's interventionist and co-opting compulsions. Scholars have developed the concept of 'policification' to highlight how the social insecurity occasioned by neoliberal capitalism—especially in times of austerity—may be accompanied by the securitisation of welfare and public services; not least as funding cuts mean the police become more prominent in their delivery (Millie, 2013). In turn, while this may outwardly suggest a strengthening and muscularisation of state power, the state becomes weaker as the democratic legitimacy and accountability of its institutions dissipates (Laub, 2023). Policification 'raises the question of what can be expected of the state other than coercion and carcerality' (p.3). In doing so, it suggests the potential breadth and depth of the British state's criminalisation of those who are racially and economically marginalised. Police frontlines may well be drawn wherever these people engage with welfare and public services.

As set out by Laub (2023), a prominent example of policification in England and Wales is the police's integration into schools. Police liaison schemes have existed in schools throughout England since the post-war period, but became more extensive during the 1980s, when 'community policing' came into vogue across the Anglosphere. 'Community policing'

denotes police practices which are ostensibly 'softer' and more democratic and participatory than traditional police work, in that they emphasise the desirability of the police working in collaboration (or at least cooperation) with the community to identify and respond to crime concerns. On the face of it, this was a contradictory period of policing, given the co-existence of community policing with brutal practices such as those seen at Orgreave and during the Brixton uprisings. However, whatever benefits proponents conventionally claim for community policing, its paradigmatic origin lies in police efforts to overcome crises in public consent and legitimacy occasioned by aggressive policing against racialised and other socially marginalised groups. In short, it aims to make persistent police presence amongst such groups palatable: hence community policing becoming 'orthodoxy' following Scarman's Inquiry into the Brixton uprisings (Reiner, 2010). Perhaps unsurprisingly, then, community policing often involves information gathering and resembles the counterinsurgency of the colonial police. The increase in police in schools during the 1980s was therefore likely tilted at quashing Black and working-class militancy and resistance as much as legitimising policing.

The 'age of austerity' saw the police's presence in schools become further entrenched, especially following the 2011 riots. The Riots were precipitated by the police killing of Mark Duggan and occurred in the context of deteriorating social conditions after 30 years of neoliberalism. However, they were blamed by then-Prime Minister Cameron on gangs originating from urban areas, and poor parenting. Accordingly, more police were placed in schools to identify those alleged to be at risk of gang violence and to facilitate information gathering and sharing amongst welfare and public services. Then, from 2018, concerns about knife crime, and the Conservative government's above-mentioned Serious Violence Strategy, entailed a further increase in the police's presence in schools (Nijjar, 2021). Of course, as noted above, 'gangs' and 'knife crime' are both racialised signifiers. As expanded by Laub (2023, p.12):

These strategies of school policing came in the context of austerity cuts to a wide range of social services, many of which affected those areas most that police were told to focus on: deprived inner-city neighbourhoods, often with a high share of racialised residents. Marginalised communities were hit hardest when budgets for social work, youth clubs or local sports facilities were slashed after 2010.

Indeed, proxies for racial and economic marginalisation, such as the uptake of free school meals, have been used to inform the allocation of police to schools. In some instances, police are supplementing or even fulfilling roles of counsellors or mediators (Laub, 2023). But this should not be taken to mean

that the duties of police in liaison with schools are ‘softer’ or less coercive than those of their colleagues (Joseph-Salisbury 2020). The case of Child Q, a fifteen-year-old Black girl removed from an exam and strip searched after her school in Hackney, London contacted police, is illustrative. More to the point, the practice of disciplinary power in schools may well increase the likelihood of those who are socially marginalised becoming involved with the police and prisons later in life (Graham, 2014), thereby sustaining social ordering in respect of race and class.

Conclusion

Since 2010, interested and influential parties—including police leaders and police representative bodies—have stoked abiding public discourses contending that austerity has diminished the police’s frontline and their ability to ensure public safety. As this chapter has argued, these discourses need to be understood, at least in part, as a reaction to the police’s seeming fall from the government’s favour at the commencement of austerity, despite them having enjoyed bipartisan support in the three decades prior.

As the chapter has also shown, claims about the effects of austerity for police funding, headcounts, and station closures are in need of some qualification. Not all police forces, and areas of service provision, have been equally affected by austerity. And since 2018, facing criticisms for allegedly hamstringing the police via austerity, successive Conservative governments pledged greater police funding and powers. These provisions complicate simple, linear claims about how police have fared since Cameron’s announcement of the ‘age of austerity’.

More to the point, this chapter has demonstrated that the policing of racialised groups has been maintained and intensified during this period. Black people and communities especially have been racialised as the rightful subjects of police attention and intervention; not only as crime suspects, but also in their engagements with welfare, education, and public services. So, while the police frontline is claimed to have been perilously weakened in the post-austerity period, an alternative viewpoint dictates that police frontlines have actually been diffused throughout a range of areas of provision. This state of affairs sustains structural racism and is entirely consistent with the police’s historical mandate, which has never been concerned first and foremost with ensuring public safety.

Although a Labour government was elected in 2024, their promises to invest in street policing, intervene against gangs, halve serious violence, and

out-do their Tory predecessors on law and order suggest that the policing of racialised communities is unlikely to abate.

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18

Latina/O/X/E Residents and Racialized Social Control in the Settler Colonial State Known as the United States of America

Robert J. Durán

In 2024, Latinos, the largest racialized minority group in the United States, were reclassified by the Office of Management and Budget (OMB) from an ethnicity to a racial category for more accurate census data collection. This is not the first time Hispanics or Latinas/os have been considered as a race by the federal government. In 1930, the census used a “Mexican” classification, but it was highly debated (García, 1989; Gómez, 2020; Haney-López, 2003; Rodríguez, 2000). Some Latinos at the time were seeking inclusion by claiming whiteness based on Spanish ancestry and a concern that being labeled as non-white could result in increased exclusion and second-class treatment. In response, the OMB removed this category. In the 1940s and 1950s, “persons of Spanish Surname” or “persons of Spanish language” were used. However, ongoing differential treatment led many residents of Mexican descent who identified themselves as Chicano along with Puerto Ricans to struggle during the civil rights movement to counter various forms of inequality (Haney-López, 2003; Mora, 2014). Many of these individuals identified themselves as non-white. On the other hand, Cubans were more economically mobile and identified themselves as white. However, leaders of these civil rights groups coalesced with business, government, and media for the creation of the Hispanic category (Mora, 2014). In 1980, the census

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adopted Hispanic as an ethnicity, to where any member of this group could self-identify as one of the traditional racial categories at the time or choose the category of “other race” (Rodríguez, 2000). Many researchers became interested in which Latina/o groups identified themselves as white or non-white and whether it depended on national ancestry, phenotype, or generational status (Rodríguez, 2000; Sáenz & Morales, 2015; Telles & Ortiz, 2008; Telles & Sue, 2019).

According to the Pew Research Center’s analysis of census data in 2020, the Latina/o/x/e population was 19% of the U.S. population. Eighty-one percent were U.S. citizens (Moslimani et al., 2023). Fifty-eight percent were of Mexican descent, nine percent were Puerto Rican, four percent Salvadoran, four percent Cuban, and four percent Dominican (Peña et al., 2023). Although many Latinos select their race as white (58%), the next largest category selected is “some other race” at 27%, followed by eight percent two or more races, and two percent Black. No other racial or ethnic group selected “some other race” higher than one percent (Rodríguez, 2000). A 2021 Pew Research study found that 80% of Latino adults identified their skin color as lighter but didn’t necessarily identify as white (Noe-Bustamante et al., 2021). Sociologists Rogelio Sáenz & Morales, (2015) reported that from 2010 Census data, Cubans were the most likely to identify themselves as white (88%) followed by Colombians (76%) whereas Dominicans (34%) and Guatemalans (51%) were the least likely. Sociologist Clara Rodriguez (2000) emphasizes how census classifications in the United States have been primarily built on a bipolar structure that contains “whites” at one end of the continuum and other races at the other. Rodriguez reported how Latinos push the fluid boundaries of what race is when stating, “Hispanics, perhaps more than other groups, best illustrate the permeability and shifting lines of the bipolar structure” (2000, 104).

Although Latinas/os are not considered a monolithic group in background or identities, in this chapter, I will present several historical and contemporary inequalities that are key in shaping the Latina/o/x/e experience. The theoretical framework of racialized social control will then explain these patterns. Such an analysis will be important as we move forward in time because as the Latino population continues to increase, the exposure to differential treatment continues to limit the illusory ideology that the United States of America is a democracy.

Historical Racial Inequality

Researchers have provided insight into the various historical challenges Latinos have experienced. These studies have primarily concentrated on Mexicans and Mexican Americans in the Southwest; Puerto Ricans in the Midwest, Northeast, or the archipelago of Puerto Rico; Cubans in Miami; immigration enforcement and transition experiences into U.S. society; or U.S. political and military endeavors in Latin America. A brief overview of these studies will be included in this section.

For centuries, people of Mexican descent, the largest proportion of Latinos, in the United States have received second-class treatment or in the words of sociologist Alfredo Mirandé: they have experienced *Gringo Justice* (Mirandé, 1987). Despite an interest in westward expansion, the Southwest portion of North America was a colony of Spain and its establishment occurred prior to the first English community of Jamestown (Durán, 2018). This did not stop white colonists from developing an ideology of Manifest Destiny in that Anglos were pre-determined by God to control the geographic area from one end of the ocean to the other (Alonzo, 1998; Gómez, 2007; Montejano 1987; Navarro, 2005; White, 1991). This mixture of white nationalism and racism were at the heart of U.S. conquest as Indigenous people were considered in the way, as were the nations of Spain and later Mexico.

Feelings of superiority existed as residents from the Southern portion of the United States began moving as immigrants into the Spanish state of Tejas (De León, 1983; Navarro, 2005). These immigrants desired land and Spain's colonization law allowed for foreigners who settled in Tejas to receive a land grant if the person was of good moral character, obeyed Mexican law, and became both a Roman Catholic and Mexican citizen (Navarro, 2005). In 1821, when Mexico had removed Spain as the colonizing power, the country continued to legislate the abolishment of slavery (Horne, 2022). Many of these early white immigrants were incapable of reaping the rewards of citizenship without continuing a practice that many had learned from the southern states where they had moved from (Burrough et al., 2022). It had been reported that most of these new foreigners were in Tejas illegally and thus not following the conditions to receive a land grant. Based on threats of removal, white immigrants revolted and led an insurrection against the Mexican government. The participants did not receive a designation as traitors because they prevailed against Mexican forces. In practice, the residents who became Texans, as the lone star, claimed lands far beyond its geographic reach. Congress voted for the annexation of Texas into the United States prior to the start of the war with Mexico. However, most of

the southwest was seized after the U.S.-Mexico war which resulted in Mexico losing half of its territory and is now the southwestern portion of the nation (Navarro, 2005). Leaders of the United States debated conquering the entire country of Mexico, but since population numbers were much higher, they did not want to make this many individuals considered non-white as citizens (Durán, 2018).

Each of the additional largest Latino groups, whether Puerto Rican, Cuban, or Dominican, highlights how U.S. involvement in not only these nations but throughout Latin America reflects imperialism or the process by which empires are established, extended, and maintained (Go, 2011). According to Sáenz and Morales (2015), when Cuba was attempting to gain independence from Spain in 1898, the United States volunteered to function as the mediator which Spain denied. For some reason, a U.S. warship that was stationed in Cuba to protect its economic interests, exploded, and around 200 soldiers were killed resulting in war. As part of the peace treaty, the Treaty of Paris, Spain ceded control of Cuba to the United States and capitalism flourished to the point where Cuba became known as the “Latin Las Vegas.” Fidel Castro with the help of Che Guevara and many supporters initiated a revolution to create a more humane society and they were successful in overthrowing the U.S.-supported leadership (Anderson, 1997; Gill, 2004). After Fidel Castro assumed political power in 1959 and began developing a socialist political system, the capitalistic middle and upper class fled the country and became known as the “golden exiles” for which many moved to Miami, Florida. Cuba became a beacon for exporting an ideal, anti-colonists seeking to overthrow colonial empires, and key among these empires was the United States of America. The United States fought fervently to protect its economic interests in the hemisphere by creating military bases and even creating a military training facility, Latin American Ground School (LAGS) which later became the School of the Americas, to train soldiers from Latin America to participate in state violence that incorporated the ideology and best interests of the nation (Gill, 2004). Anthropologist Lesley Gill (2004, 60) reported:

The United States aided and abetted this process by arming preferred leaders, intervening militarily to prop them up when necessary, and using threats, loans, diplomatic pressure, and other techniques to control governments in power...The result was the increasing internationalization of state-sponsored violence...The School of the Americas aided this process by training national armies and knitting them together under the aegis of the United States.

Actions in Latin America seeking to improve education and health care for the people were constantly labeled by the United States as communist and thus countered.

The United States has maintained a high level of interest in the Caribbean. The treaty that acquired Cuba also included Puerto Rico. In contrast to Cuba, Puerto Rico was designated as a territory of the nation (Sáenz & Morales, 2015). A 1917 Act allowed for Puerto Ricans to travel freely between the archipelago and the mainland. Many Puerto Ricans moved to New York City, Chicago, and Philadelphia (Gonzalez, 2000). For the Dominican Republic, they sought to maintain independence, but the United States constantly desired to control the country with the reported interest of protecting the Caribbean region from communism (Sáenz & Morales, 2015). The United States sought to annex the Dominican Republic in 1869, but it was denied. The many civil wars and often change in political rule resulted in the United States occupying the country from 1911 to 1924. The country's next ruler Rafael Trujillo was described by sociologists Rogelio Sáenz and Cristina Morales (2015) as a brutal dictator for three decades but because he opposed communism, he remained supported by the U.S. government. The CIA later assisted with his assassination in 1960 which later led to continued political instability resulting in a wave of immigration (Gonzalez, 2000).

As the United States modeled itself after the British empire (Go, 2011), the land that became known as the United States became increasingly fortified along the U.S.-Mexico border and also in terms of limiting immigration as to whom was allowed to enter and remain in the country. The early forms of law enforcement during westward expansion acted with limited oversight. Law enforcement and vigilante groups participated in the lynching and killing of Mexican residents (Carrigan & Webb, 2013; Martinez, 2018). Historian Armando Alonzo (1998) reported many Anglos did not think the killing of Mexicans was a crime. Historical records most often reflect the protectionism of this inequality and the failure to change laws, policies, and practices to hold law enforcement, particularly the Texas Rangers, and its officers accountable (Martinez, 2018). Thus, when the U.S. Border Patrol was created in 1924 to primarily monitor the U.S.-Mexico border it came during a period of time of the National Origins Act and a "whites-only" immigration policy (Hernández, 2010). The Ku Klux Klan was actively against foreigners and traveling into Mexico for entertainment (Durán, 2018).

With such a historical base of racism, nativism, and anti-Latino sentiment, the challenge for this population group became how to receive fair and equal treatment in a newly developed settler state of the United States of

America that proclaimed itself to be a democracy. The evidence of democratic inclusion was lacking for individuals considered non-white (Feagin, 2013). Despite such obstacles, resistance has always existed (Navarro, 2005; Romo, 2005; Rosenbaum, 1991; Vigil, 1999). The techniques of resistance have changed with time along with the conditions that are being challenged. From early conquest and westward expansion (Gómez, 2007; Navarro, 2005; Rosenbaum, 1991), to the Mexican American generation of the 1930s and 1950s (García, 1989), to Chicano and Puerto Rican civil rights (Haney-López, 2003; Mora, 2014; Vigil, 1999), to the Hispanic era (Navarro, 2005). Chicano, Hispanic, and Latina/o/x civil rights organizing were occurring throughout the country in states such as Arizona, California, Colorado, Illinois, New Mexico, Texas, and Utah.

Contemporary Racial Inequality

In the last 50 years, 1974-to present, there have been Latina/o/x/e accomplishments. According to Sociologists Rogelio Sáenz and Morales (2015), the population numbers of Latinos have increased nationwide, resulting in expanding economic and cultural influence. High school graduation rates have improved, teenage pregnancies are down, and there has been an increasing number of Latinos who have attained professional occupations which provide increased pay, benefits, and opportunities. Despite these successes there are still lingering issues involving white nationalist hate crime, ongoing patterns of residential segregation, school punishment, criminalization, and criminal justice and immigration practices targeting the Latino community. This section of the chapter will outline five contemporary forms of racial inequality that coalesce into ongoing patterns of generations of exclusion.

First, the ideology of manifest destiny or the God given authority to assume political and economic control of a geographic territory has shifted to fears of being replaced with a non-white population. Demographically, the Latina/o/x/e population has grown to be the fastest in the country along with Asians, the white population has become older and has fewer children, and thus a smaller proportion of the country (Sáenz & Morales, 2015). In response, white nationalist groups have retaliated with various forms of hate crimes and terrorist activities (Hamm & Spaaij, 2017; Simi & Futrell, 2024). Anthropologist Leo Chavez (2013; 4) described the “Latino Threat Narrative” as “...part of grand tradition of alarmist discourse about immigrants and their perceived negative impacts on society.” Chavez emphasized how

Latino presence in the Americas predates English colonists, yet they continue to be portrayed as perpetual foreigners with views that Latinos do not assimilate and are always plotting to take over the Southwest. Hate crime and racial terror have taken a new level of precedence under the presidency of Donald J. Trump who has brought back overt racism and nativism (Bonilla-Silva, 2022; McVeigh & Estep, 2019). Examples of this racial terror include the recent hate crime in El Paso Texas where a white individual traveled 650 miles to shoot and kill 23 individuals and injure 22 additional residents under the claim of a “Hispanic Invasion.” Trump’s reelection campaign in 2024 has continued claims of the threat of immigrants and the U.S.-Mexico border.

Second, segregation is an ongoing issue that differentiates the quality of life in U.S. neighborhoods. Historically, the Latino population has often been separated from white society in neighborhoods known as barrios with higher levels of poverty, less homeownership, and less access to jobs, usually across railroad tracks. A research study by sociologists Ruth Peterson and Laurie Krivo (2012) utilized 2000 census data and crime data to explain differential patterns for whites, Latinos, and Blacks in nearly nine thousand neighborhoods across 87 cities. For Latinos, these authors found most neighborhoods had above-average disadvantage in comparison to white neighborhoods with very low disadvantage. Spatial differences were seen to account for a large portion of differentials in criminal violence. Based on 2020 census data, sociologists John Logan and Brian Stults (2022) report that Hispanic segregation has remained virtually unchanged since 1980. They report:

The average white, black, Hispanic, and Asian Americans live in very different neighborhood environments. Whites continue to live in predominantly white neighborhoods, although their declining numbers nationally and the growth of Hispanic and Asian populations has made these neighborhoods more diverse than they once were. Non-whites, too, live in neighborhoods where their co-ethnics are disproportionately represented (2022, p. 12).

Quantitative studies highlight national patterns, but qualitative studies provide “thick description” regarding how such segregation concentrates different opportunities for white residents in comparison to Latinos. For example, Durán (2013, 2018) emphasized policing practices that were different in Latino neighborhoods in comparison to white communities. White communities received little oversight and less police involvement unless someone called 911, whereas Latino communities received heightened levels of public surveillance of individuals and geographic spaces that resulted in much higher numbers of interaction with law enforcement. These interactions with residents were also less trusting of Latino resident statements and

a belief that they were more likely to be involved in delinquent or criminal activity. As these stereotypes persisted in society, they were often adopted by law enforcement officers.

Third, segregation has continued to impact the type of schools that Latina/o/x/e youth can attend. Valencia (2008) reported that since a school desegregation lawsuit in 1925, Mexican Americans have fought more than eight decades for educational equality. Valencia stated that despite gains made after *Brown v. Board of Education* in 1954, several Supreme Court decisions in the 1990s led to widespread resegregation. Contemporary challenges include the ongoing issues with high school dropout/pushout (Flores, 2016), Disproportionate Minority Contact (Durán & Posadas, 2013, 2016), and other forms of school discipline and punishment (Lopez-Aguado, 2018; Peguero & Shekarkhar, 2011; Rios, 2017).

Fourth, over time we have seen how the Latino population has been criminalized as violent (Mirandé, 1987; Romero, 2001). Sociologist Ramiro Martinez (2015) examined homicide rates and patterns in six cities to see the reasons why they occur and differences between whites and Blacks. Martinez found that each of these locations had their own histories, but they tended to all have various forms of relative deprivation and structural conditions that heightened points in time where drug and gang violence were higher and at other times lower. However, overall Latino homicide rates were not as high as expected, per the level of disadvantage, and Martinez attributed this to higher rates of labor market inclusion. He did find immigration had a positive impact on reducing homicide rate despite media “moral panics” targeted toward the Latinos, overall, this racial or ethnic group was doing better than what many may assume.

Fifth, the role of the criminal justice system has sparked interest for many scholars who study policing, courts, or corrections. Several edited books have provided background into the unique issues that Latinas/os/xs/es experience (Mirandé, 2020; Urbina, 2012) as have several groundbreaking studies (Díaz-Cotto, 2000; Romero, 2001). The United States has established strict forms of regulation for who can become a citizen or receive asylum status. Entering the mainland of the United States is particularly difficult on the U.S.-Mexico border which has been described as a militarized zone (Dunn 1996; Durán, 2018). For those found in the country undocumented or even residents who have lived in the United States since they were children can experience deportation which separates families (Macías-Rojas, 2016). Sociologist Patrisia Macías-Rojas has reported that immigration policy has taken a punitive turn in its increased criminalization of migrants, creation of detention centers, increased risk of crossing the border, and deportation. As the U.S.

region of the South has increasingly become a new destination location for new immigrants it has been described as “Juan Crow” for the social isolation and exploitation of undocumented immigrants (Lovato, 2008).

Overall, sociologists Telles and Ortiz (2008) in their book *Generations of Exclusion* found that after reviewing data on generations of Latinos that public education was the greatest source of Mexican American exclusion and policies were required to shape these outcomes because education shaped career trajectories. Latinos in general are more likely to attend two-year college in comparison to whites who are more likely to go to four-year institutions.

Racialized Social Control

There are a variety of explanations that can be adopted to explain the patterns occurring for the Latino population. The explanation used for this chapter is racialized social control. Researchers studying this theory blend the study of race and ethnicity with the study of punishment/criminal justice often referred to as social control. The concept of racialization emphasizes how race is not a genetic base but rather socially constructed with real consequences. In Durán's, 2006 dissertation, he focused on a concept of fatalistic social control. Fatalism was a concept developed from the sociologist Emile Durkheim to describe excessive regulation or in contemporary terms: too much social control. In two additional publications Durán attempted to develop a theory of racialized social control to explain the empirical data. In *Gang Life in Two Cities*, a study of primarily Latina/o and Black youth attempts to navigate violence at the interpersonal level and also from the state. Ogden, Utah, and Denver, Colorado in conjunction with group organizing in the form of gangs resulted in several patterns. A theory of racialized oppression was based on three components. First, were the *socially constructing of power differences* wherein dominant groups in society utilized strategies to further marginalize and disempower racial and ethnic minority groups. Second, *de facto segregation* resulted in the creation of different life chances based upon where residents lived, what schools they attended, and what type of policing they encountered. The concentration of socio-economic privileges versus inequalities resulted in the creation of geographic areas that were more conducive toward punishment. Third, levels of resistance for those marginalized and segregated led to organizations and strategies that led to forms of self-empowerment that were not mainstream or accepted by the dominant

group because their existence challenged the legitimacy of these inequalities and supported the formalization of social groups willing to use whatever means necessary to change the structure of this framework (Durán, 2013; Haney-López, 2003; Navarro, 2005; Romo, 2005; Vigil, 1999).

The Gang Paradox on the other hand focused primarily on the practitioner efforts to provide services through the juvenile justice system as the U.S.-Mexico border region of southern New Mexico and West Texas despite a lack of resources. Despite high levels of poverty and lack of resources there was a surprising finding of a lower level of gang involvement and interpersonal violence on the U.S. side of the border, but youth struggled to find identity. Mexican American culture and history was discounted, and the lack of resources limited opportunities to go beyond the goals deemed available for a marginalized population. In this context of racialized oppression, it was important to highlight how punishment was not a solution to the individual choice among structural inequalities of the area. National propaganda of demonizing the U.S.-Mexico border and its residents did not offer a solutions-oriented lens to comprehend or address inequalities that exist between the United States and Mexico. Despite such a lack of resources, the communities along the border were resilient in maintaining families and culture by a desire to become incorporated as U.S. citizens, the ability to pursue various opportunities, and the support system provided by sports and religion that provided self-help and spiritual beliefs that things can improve.

Sociologist Joe Feagin (2013) emphasized how extreme racial oppression involving colonialism, genocide, and slavery, have been foundational to the history of this country. Systemic racism has resulted in the white racial frame for which Feagin (2013) defines as:

...a broad and persisting set of racial stereotypes, prejudices, ideologies, interlinked interpretations and narratives, and visual images. It also includes racialized emotions and racialized reactions to language accents and imbeds inclinations to discriminate. This white racial frame, like most social frames, operates to assist people in defining, interpreting, conforming to, and acting in their everyday social worlds (p. xi).

Africans were held as slaves and the Chinese became excluded. Citizenship in the United States was restricted to “white persons” from 1790 to 1952 (Haney-López, 2006). Feagin (2013) emphasized that understanding how the white racial frame operates can help us to create counter-frames of resistance.

Conclusion

Based on the historical and contemporary examples of inequality, it is very evident that Latinos have been given a second-class status in the United States of America (Mirandé, 1987, 2020). Such an experience was shaped from the origins of a settler colonial society that participated in the genocide of Indigenous peoples and the seizing of political control in North America and across Latin America (Gómez, 2020; Gonzalez, 2000; Navarro, 2005; White, 1991). The primary theme presented in this chapter are crimes by government officials or in other words state violence. Human atrocities are not deemed criminal when insurrectionists or conquerors *obtain* power because laws can be maneuvered and shifted to justify inhuman actions. However, if there are threats to that same power, laws can be used to mobilize criminal justice consequences for domestic residents or initiate acts of war when individuals are “foreigners.” Victors in war do not label their actions as crime, but rather nation building. As a people, Latinos have participated in various forms of resistance. First among these have been efforts seeking inclusion but also the realization that gaining a seat at the table is insufficient in creating a more humane and just society and to accomplish that goal requires decolonizing the structure of an empire in the United States built on hierarchy of white racial supremacy.

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19

‘Kwela Kwela—The Big Police Van’: Racialised Policing in South Africa and Australia

Thalia Anthony and Kathryn Pillay

Introduction: A Junction of the Epidemics of Racialised Police Violence

This chapter examines historical and contemporary policing of colonised peoples in Australia and South Africa and its manifestations in the COVID-19 period.¹ It underscores the relevance of Critical Race Theory (CRT) in comprehending continuities in racialised policing practices since the beginning of colonial occupation and enforced through segregation laws and policies. Notwithstanding the repeal of these laws and implementation of neutral laws, hyper-policing Indigenous peoples has persisted. CRT highlights the persistence of racialised epistemologies and practices in institutions as a marker of ‘whiteness as property’—the privileged status of white people

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¹ Song by Johnny Clegg on his 2010 album *My Favourite Zulu Guitar Street Music*. The song tells the story of South African Zulu workers in the townships who would call ‘kwela kwela’ to warn their fellow countrymen of the arrival of the big police van. Early in his career Johnny Clegg worked as an anthropologist at the University of Witwatersrand. His song writing, academic analysis and activism has been described as embedded in an understandings of Racial Capitalism (Coplan, 2019).

and a white order, as coined by Cheryl Harris (1993, 1709). While CRT provides important insights into ideological continuities of whiteness, its transformational potential is limited without an understanding of the architecture of racism as a socio-economic structure. The limitations especially pertain to the masses of impoverished people in Black communities (Cowley, 2022, 195). CRT has not conventionally attended to colonial structures that inscribed racism in settler colonies such as the United States from the seventeenth century, instead it attributes white privilege to segregation laws (see Harris, 1993, 1709). The pursuit of land, resources and labour enforced racial degradation that cast Indigenous peoples as ‘savages’, ‘barbarians’ and ‘bandits’ (Archer’s Journal 1607; Latham, 2025). Dehumanised labels and practices legitimated enslavement, exclusion and containment of colonised people within a ‘zone of legal exception’ (Blagg and Anthony 2019, 189).

We suggest that Racial Capitalism, a concept developed in South Africa and popularised in the United States by Cedric Robinson (2000), is a concept ripe for consideration in evaluating the factors that sustain racism in law enforcement. It extends the critique of CRT by identifying the role of primitive accumulation—a process of dispossessing communal Indigenous economies by bringing Indigenous people into class relations and stealing their land (Marx, 1982, ch. 26)—in order to assure profit for the white ruling class. Racial Capitalism reveals the class features of racism. ‘Race’ is a power structure that facilitates classed societies and their colonial expansion (Kelley 2017). It enables the conquest of others’ land and the division of a labour force in which Black, or ethnic, labour is subordinate, enabling more searing exploitation and extraction of surplus value for the capitalist class. It follows, therefore, that working-class Black people bear the greatest burden of racial oppression, including in the realm of law enforcement.

COVID-19 Policing as a Signifier of Racial Capitalist Structures

Racialised policing at the height of the COVID-19 pandemic was symbolised by the killing of Black American George Floyd. The footage of the white police officer Derek Michael Chauvin kneeling on the neck of Floyd for nine minutes while Floyd screamed ‘I can’t breathe’ galvanised a movement against racialised policing. This was not *sui generis* to the United States but resonated with countries across the world. Episodes of violent policing of Black bodies during COVID-19 was also televised in South Africa and Australia. In early

June 2020, within days of the killing of Floyd, a white police officer in inner-city Sydney violently slammed to the ground a 16-year-old Indigenous child as part of an unlawful arrest (Rose, 2023). Footage from this arrest, taken on a bystander's phone, went viral and precipitated parallels in the media between racialised police violence in Australia and the United States (Bavas 2020). Soon after, in August 2020, a Black South African child with Down Syndrome, 16-year-old Nathaniel Julies, was shot and killed by a white police officer in Johannesburg. This sparked nation-wide protests demanding an end to 'endemic police brutality' (Egwu, 2021).

The racialised impacts of COVID-19 law enforcement revealed its distinct class features. Policing of communities sharply crossed racial and class lines. Poor Black communities were a focal point of intensified and coercive lockdowns across Australia and South Africa. In this chapter we present the framework of Racial Capitalism to explain the historical and contemporary manifestations of penal racism. By highlighting the role of class in racial oppression, and the function of race in capital accumulation in the colonies, we examine the importance of studying racist policing beyond an identity issue (white police officers, Black bodies) alone. We argue for the importance of engaging understandings of class to nuance the role of policing as targeted at lower class Black communities, including as enforced by middle-class Black officers, especially in South Africa. COVID-19 brought class based, racialised policing into sharp relief. However, it has a long lineage in colonial policing serving the interests of the ruling class. This chapter identifies key features of that history in South Africa and Australia before moving on to contemporary forms of policing in Black communities.

'Unequal Laws unto a Savage Race':² Colonial Policing and Violent Histories

History of Dutch and British Colonisation of South Africa

Contemporary policing in South Africa is rooted in colonial and apartheid systems of surveillance, control and economic exploitation. During colonial rule in southern Africa, policing was designed to preserve and advance the economic interests of the white capitalist class, and consisted primarily of paramilitary occupying forces (Botha, 2022). These armies imposed, through violence, the demands of the capitalists which included the coerced labour

² Lord Alfred Tennyson, *Ulysses* (1842).

of Indigenous African people, forcibly removing them from their land, and exploiting their labour, especially in the context of mining and agriculture (Simons & Simons, 1969). The growth and development of the modern industrial economy in South Africa, therefore, is deeply intertwined with structural state violence.

In this early period, the European racial classification system was established, which categorised people into hierarchies of 'races'. The division of the colony into the discrete categories of 'white' and 'native', as races or species was not simply descriptive, but was about constructing certain people as 'whites' and superior, and others as 'Blacks' and inferior (Pillay, 2017). The era was thus characterised by forced indoctrination of 'white' supremacy, and racism, discrimination and oppression towards Indigenous peoples and immigrants (Hirschman, 2004). Racial categories were constructed in ways that justified the exploitation of Black Africans, treating them as a cheap, disposable labour force. Policing during this period was thus structured to keep Black people disempowered and without landed property and served to not only uphold white supremacy but also the interests of the white capitalist class. The objective of policing, therefore, was to maintain the hegemony and racial superiority of white people (Snyman et al., 2023).

Policing was thus fundamentally rooted in racism but also in religious ideology. With colonial authorities often justifying their domination by invoking a civilising mission, grounded in the belief that they were divinely ordained to bring order to what they perceived as a 'backward' and 'uncivilized' Indigenous population (Pillay, 2017), as can be seen from the following extract published in the newspaper *The Mercury* in 1860:

Native clanship is incompatible with the exercise of the rights of political citizenship under a free and civilized government ... In this colony the white man is constituted by Divine Providence the guardian of the black man...

This fusion of racial superiority and religious paternalism legitimised the violent enforcement of colonial rule and shaped the structures of early policing which were designed to control Black people.

During colonialism and through to the union of South Africa in 1910, the law was used to systematically dispossess Black people. For instance, through the introduction of the Natives Land Act of 1913 which spearheaded the establishment of native reserves for Indigenous people. Black people were therefore continually compelled to labour in the mines and factories to earn a living, as there was no longer arable land available for them to farm. Thus, the Union government was able to violently police the lives and livelihoods of African people (Hall, 2014).

Apartheid Policing—The Hand of the State

The period from 1948 to early 1994 represents the watershed years of apartheid, the system of government that institutionalised racial discrimination. Under apartheid, racial capitalism was codified through laws and policies designed to ensure the economic dominance of the white minority while further marginalising Black South Africans. Apartheid brought with it separate development legislation that entrenched segregation between the so-called 'population groups' that it created. According to Posel (2001, p. 58),

Apartheid's principal imaginary was of a society in which every 'racerace' knew and observed its proper place – economically, politically and socially. Racerace was to be the critical and overriding faultline: the fundamental organising principle for the allocation of all resources and opportunities, the basis of all spatial demarcation, planning and development, the boundary for all social interaction, as well as the primary category in terms of which this social and moral order was described and defended.

The foundations laid by colonial policing, which included surveillance, militarisation and violence to maintain white dominance and economic exploitation, only intensified under this system of government. Discrimination was written into law, and pieces of legislation such as the Group Areas Act of 1950, the Population Registration Act of 1950 and the Prohibition of Mixed Marriages Act of 1949 were introduced. The Group Areas Act was a particularly atrocious law which resulted in the forced removals of Black, Coloured and Indian people who were already settled in specific areas, to inferior housing in areas distinctly set aside for that 'race' group. Black people were moved to new townships³ away from the city centre. To travel within South Africa, Black people were required to carry passbooks that they had to present to police as confirmation that they had permission to reside, work or travel in areas set aside for white occupation. If found without a pass they faced assault by police officers and sentences of imprisonment. Black people then were treated as temporary migrants, who would travel from the rural areas to work in white South Africa's mines, farms and factories and return to their 'homelands' after a life of extractive labour, and once they were deemed no longer valuable to the economy. This system of circular migrant labour was central to sustain apartheid's economic and social order (Seidman, 1999).

³ The term 'township', in this context, refers to an underdeveloped racially segregated urban area reserved for Indians, Africans and Coloureds. The ideological demands of apartheid required that these townships be situated on the periphery of white towns and cities and acted as 'labour reserves' for these spaces (Rogerson, 2000).

The police, as the hand of the state, was given the responsibility of enforcing these laws (Snyman et al., 2023). The South African government thus used the police and the military to suppress uprising against the state especially in Black townships. Chilling examples of this violence are the Sharpeville Massacre that took place in 1960, the 1976 Soweto uprising, and the Trojan Horse incident of 1985. In the township of Sharpeville on 21 March 1960, peaceful protestors who had gathered in opposition to the pass laws were brutally fired upon by police, who killed 69 people and injured over 150 protestors (Hollister, 2023). Many were shot in the back during attempts to flee (Evans, 2013). This massacre, early in the rule of the apartheid regime, revealed the willingness of the state and police to use lethal force in the face of opposition. On 16 June 1976, students in Soweto gathered to protest the use of Afrikaans as a medium of instruction in Black schools. During the protest, police threw tear gas into the crowd of peaceful and unarmed students and then opened fire, killing at least 176 students (Bonner & Segal, 1998). As Worden (2012) argues, this violent action was part of a broader strategy to use police as a paramilitary wing of the apartheid state. For Black people under apartheid, the police were not a protective presence but represented violent enforcers of racial inequality.

The Trojan Horse incident took place almost 25 years later, on 15 October 1985, in Athlone a predominantly Coloured township on the Cape Flats in Cape Town. Townships like these became sites of unrest with the youth leading the resistance against apartheid. Police began to use more covert methods and deceptive tactics in response to this growing unrest. In this incident, police hid in wooden crates on the back of a delivery vehicle which was driven through a street where young protestors had gathered. Plain clothes policemen emerged from the back of the truck opening fire and killing three people aged 11–21 and injuring several others (SAHO, 2013). All these incidents and countless others, told and untold, reflect the systematic use of deadly force by police. These operations also demonstrate the overarching strategy of the apartheid state to criminalise people in Black and Coloured townships, which were seen as spaces that needed to be contained and suppressed. The South African media portrayed protestors as violent criminals, and the police as law enforcers. Furthermore police were not held accountable for these events revealing the impunity embedded within the policing structures under apartheid (Muntingh & Dereymaeker, 2013).

History of British Colonisation and Policing in Australia

Policing the 'Australian' colonies, since the late eighteenth century, demonstrates how Indigenous people are construed as a priori criminal. Rendered trespassers for seeking to stay on their land, Indigenous people bore the brunt of direct physical and, at times, fatal punishment by police (Clayton-Dixon, 2020, pp. 23–24). The legal myth that Australia was *terra nullius* (a land without people) meant that in the absence of any treaty, Indigenous people were deemed outlaws on their own land. In the colony of Queensland, for instance, paramilitary 'native police' killed an estimated 24,000 Indigenous people in the colony (Brennan, 2024). Commanding white officers Constable William Willshire and Lieutenant Frederick Wheeler, who directed the Indigenous officers, were able to evade convictions on the basis that the killings were justifiable (Gray, 2018; Nettelbeck & Foster, 2007; Queensland Legislative Assembly, 1861).

The wide-scale extent of militaristic policing towards Indigenous people in the Australian colonies is depicted in the Colonial Massacre Map (Centre for 21st Century Humanities, University of Newcastle, 2019). The mass scale of these massacres from the eighteenth to early twentieth centuries amounted to over 10,000 Indigenous people killed across 270 massacre sites. The majority of massacres were led by police officers (Allam & Evershed, 2019). They were punitive raids that sought to defend the land and property claimed by white settler colonists (Wilson, 2000, p. 247).

Policing Indigenous people in Australia is Janus-faced. While one side projects violent policing, its other side projects protective policing. Both guises subordinate Indigenous peoples. Policies of protectionism rolled out from the late nineteenth century under a series of 'Aboriginal Protection Acts' across⁴ Australia. Police were among those appointed as 'Protectors' of Aboriginal people and had broad powers over Aboriginal lives, including in relation to Aboriginal employment, savings and expenditure of money, marriage and family (Anthony & Blagg, 2020; Glowczewski and Wotton, 2008). Police serving as Aboriginal Protectors, or alongside Protectors, facilitated the forced relocation of Indigenous people from their homelands to government settlements, missions and children's homes. Officers were also responsible for the coercive recruitment of Indigenous labour (Anthony & Gray, 2020). There were no rights of redress or legal avenues to lodge

⁴ "Aboriginal Protection Acts" include the Aboriginal Protection Act 1869 (Vic); Aborigines Protection Act 1886 (WA); Aboriginal Protection Act and Restriction of the Sale of Opium Act 1897 (Qld); Aborigines Protection Act 1909 (NSW); Aborigines Act 1911 (SA); Aborigines Ordinance 1911 (NT); Aborigines Ordinance 1918 (Cth).

complaints other than through the Protector themselves. Bidjara and Birri professor Jackie Huggins (2022, p. 112) described Queensland's *Aborigines Protection and Restriction of the Sale of Opium Act 1897* as creating a system that made Indigenous peoples 'prisoners' in 'our own country'.

Police were involved in the the removal of Indigenous children to assure the intergenerational impacts of assimilation and control. Stealing Aboriginal children from families has an enduring impact on the dislocation of Aboriginal people from their culture, identity and Country. A commission of inquiry found that over 10 per cent of Indigenous children from Victoria were taken from their families between 1956 and 1957, and police were at the forefront of violent removals:

The great majority [of Aboriginal children] had been seized by police and charged in the Children's Court with "being in need of care and protection". Many policemen act from genuine concern for the "best interests" of Aboriginal children, but some are over-eager to enter Aboriginal homes and bully parents with threats to remove their children. (Human Rights and Equal Opportunity Commission, 1997, p. 54; also see Ibid, p.6).

Policing powers, whether violent or administrative, were used in pursuit of white property ownership and sovereignty. The construct of race ensured Indigenous people were assigned to an inferior, less civilised human category to assure white control, sovereignty and supremacy. This designation enabled the imposition of white language, culture, routines and Christian religion. Colonisers periodically relegated Indigenous people a diseased population status that would validate their relocation to lock hospitals (see Anthony & Blagg, 2021). In addition, Indigenous people were forced to work in pearling, cattle and domestic industries without pay and give up their land without compensation.

Police were used to enforce the enslavement of Indigenous people in the cattle, pearling and domestic industries. Indigenous cattle worker Hobbles Danyarri said that the 'police tracker' would 'bring them in to work' (quoted in Rose, 1991, p. 72). Barney Barnes remembers, 'The manager made the police go out and bring all the people in from the desert' (Barnes, 1988, 256). Punishment directed at Indigenous cattle workers, including shootings, was meted out for disobeying bosses or absconding (Barnes, 1988, p. 268). In Western Australia and South Australia, corporal punishment was set aside in legislation specifically for Aboriginal servants.⁵ Indigenous workers

⁵ Native Offenders Ordinance 1849 (WA); Aboriginal Offenders Amendment Act 1892 (WA); Breach of Contract Act 1842 (SA); Aboriginal Native Offenders Act 1849 (SA).

comprised the main labour force in the highly profitable north Australian cattle industry. Their skilled labour in mustering, fencing and other station work was crucial to the maintenance of the economy from the turn of the nineteenth century until the 1960s (Hasluck, 1988, p. 52).

The takeover of Aboriginal land and exploitation of Aboriginal labour were the pillars of British colonial possession of Australia. This process of 'primitive accumulation' continues to impoverish the masses of Indigenous people as Indigenous people are increasingly deprived of their use of land and resources. The continual process to renew colonial domination is spearheaded by police who target working-class Indigenous people in their pursuit of control.

Policing and Racial Capitalism in Post-Apartheid South Africa and Australia

The New Face of Old Laws (i): Continued Criminalisation and Class Oppression of Black Bodies in South Africa

In 1995, a year after the political transition to democracy, the South African Police Service Act 68 of 1995 was introduced and the South African Police Service (SAPS) was formed with the intent of transforming the old paramilitary police structure (Berning & Masiloane, 2011). It was envisaged that this new system of policing would be racially diverse (from a predominantly white police force under apartheid) to reflect the demographics of South African society (Montesh, 2010), and that it would be based on the principles of Ubuntu, which is an African philosophy grounded in the interconnectedness of human beings and focuses on engaging with others compassionately, respectfully and with empathy (Mbigi, 1997). The implication of this was that police would demonstrate humanity and treat the people they served with dignity. This, however, did not materialise, instead, the new face of policing perpetrated the same acts of brutality as the previous regime (Muntingh & Dereymaeker, 2013). The result of this was continued distrust among communities especially in Black townships.

Crime began to increase and as a result, after 2010, the police once again remilitarised, reinstating military style ranks, arguing that it was difficult to maintain a community policing approach in a violent country, with some politicians subsequently advocating for a more forceful and punitive strategy to policing (Berning & Masiloane, 2011). Although democracy represented political change, the structures of racial capitalism that upheld the previous violent and racist regime remained (Habib, 2013; Rudin, 2022).

Instead of more equality and justice for Black communities' post-apartheid, what transpired however, was worrisome continuities of racialised structural injustices (Kynoch, 2016). Black South African police officers whose economic position improved, but who may only be marginally better off than other working-class Black people, are nevertheless positioned within a system that has historically been used to control, suppress and discipline Black South Africans. Police officers then, even if Black themselves, embody state power, and seem to distance themselves from the underprivileged and working-class members of their own communities as they, sometimes, violently enforce a system that upholds the interests of the elite, including the government and corporations. As Ratele (2013, p. 247) notes 'in the context of historically powerless race groups or subordinate classes, some men appear to be simultaneously positioned as hegemonic and subordinate'. Alexander (2002) argues that the Black and white middle class therefore are aligned against the working poor. Race and class are thus interwoven in maintaining racialised structural inequality. Despite legislation promulgated to combat racism, as well as the establishment of human rights institutions, white supremacy remains deeply entrenched in South African society. Regardless of the rise of a Black elite and middle class, white people who constitute 5% of the South African population still own and control 85 per cent of the economy while the majority of Black South Africans, who constitute over 50 per cent of the population, remain landless (Ramantsima & Joala, 2024).

In addition, Suttner (2015) argues that there is continued differential treatment by police of Black and white people in a democratic South Africa and this is especially true of public order policing post-1994. Violent scenes reminiscent of those that took place during apartheid, where peaceful protests were met with violent tactics, often resulting in the deaths of innocent people, continued to take place in a democratic South Africa, revealing worrisome continuities in the response of the state to dissent. For example, 50 years after the Sharpeville massacre, on 16 August 2012, outside Rustenburg in the Northwest Province, police opened fire on peaceful striking miners, killing 34 and wounding at least 78 others (Brown, 2022). These workers were employed by the Lonmin Mining Company at Marikana and were protesting for a living wage of R12 500 (1200 USD). The strike was seen as a threat to the mining sector and posed significant risks to capitalist interests, which included members of the emerging Black elite. The massacre of these miners was regarded as the most brutal use of state force since the apartheid regime ended.

The Marikana massacre, is an example of how police, both Black and white, have continued the criminalisation of Black bodies, with colonial and

apartheid narratives feeding into contemporary perceptions of how Black people are viewed. The underlying logic of the circular migrant labour system, although abolished, continues to shape the treatment of workers, which is as cheap and disposable, while the economic interests of a privileged few are maintained at the expense of the majority. As Alexander (2002) argues, capitalism and the neoliberal policies adopted by the African National Congress (ANC) has effectively reproduced racism in new forms. By prioritising the interests of the rich, poor Black workers are considered disposable.

This violent policing of dissension was not an isolated event. In 2015 as university students began calling for the decolonisation of higher education, peaceful protests soon followed on campuses across the country. This began with the #Rhodesmustfall movement at the University of Cape Town. In one incident students from the University of Cape Town and the University of the Western Cape protested at Parliament, to make their voices heard by government leaders. Based on police responses historically to peaceful protests, and most notably at Marikana, Black students had their hands raised in the air as they walked to where riot police had gathered. It was expected that police would shoot to protect property in the same way it did at Marikana to protect the interests of capital. Even with their hands raised Black students were tackled to the ground by police and choked, while white students who advanced on the building appeared to be ignored by police officers who made no attempts to stop them (Wolff-Piggott, 2015). This disparity in treatment reveals how racial hierarchies continue to inform perceptions of the self and other in post-apartheid South Africa. While Black people are viewed as threats despite non-violent behaviour, white people appear to be imbued with legitimacy and a presumption of innocence, and their lives seem to hold value. White students at these protests understood their positionality and formed a human shield using their whiteness as a layer of protection for their black peers. They were acutely aware that their white bodies would not be violently targeted especially by Black police officers (Wolff-Piggott, 2015).⁶

State violence, as it was enacted during colonialism and apartheid, appears to be reserved only to control and subdue Black people in a democratic

⁶ U.S. President Donald Trump has amplified the narrative of a “white genocide” in South Africa, offering refugee status to white Afrikaners in particular, whom he claims are systematically targeted for violent crimes. Data from the South African Police Service however reveal that although all races and classes are affected by violent crime, Black South Africans are disproportionately affected (Crime Registrar Head Office, 2025). In addition, police violence in South Africa, as this chapter argues, consistently reflects a racialised pattern in which Black people are more likely to be subjected to excessive and sometimes fatal force, harassment, and arbitrary imprisonment, while white South Africans generally experience greater levels of protection and respect. Trump’s actions demonstrate how white supremacy has been mobilised to obfuscate the history of oppression, and contemporary patterns of racialised violence, in South Africa.

society. This reveals a continuity in how state violence is racialised (Nicolson, 2016). Both at Marikana and seen on campuses across South Africa, it is evident how racial capitalism operates through the policing of Black bodies in the protection of capital and property. Black resistance is consistently met with police violence which continues to sustain racist and capitalist structures (Dissel et al., 2009).

The New Face of Old Laws (ii): Continued Colonial Domination and Subversion of Indigenous Lives and Land

Following a protracted Aboriginal rights struggle, segregationist Aboriginal Protection laws in Australia were repealed in the 1960s. However, a new phase of control took shape in the form of incarceration. Law enforcement and penalty became the predominant means of controlling Indigenous people. As Indigenous people left the missions, they came within the purview of policing in urban areas that were formerly exclusive white zones. Places such as Alice Springs in central Australia had prohibited Indigenous people living in town until the 1960s came to attract the gaze of police and its carceral apparatus (Coe, 1993, p. 17). Policing Indigenous people especially focused on minor crimes in response to policing: offensive language, resist arrest and assault police (Eggleston, 1976, p. 241). More recently, traffic crimes and breach of justice orders constitute the principal reasons (44%) for criminalisation in Australia (Australian Bureau of Statistics, 2024a).

Hyper-policing and punitive bail, sentencing and parole decisions that pivot on racialised assumptions have culminated in a steady increase in Indigenous segregation in prisons. While Indigenous people comprise 3% of the general population in Australia, they constitute 36% of people in Australian prisons (Australian Bureau of Statistics, 2024b). Indigenous men are 17 times more likely to be imprisoned than non-Indigenous men and Indigenous women are 25 times more likely than non-Indigenous women (Australian Bureau of Statistics, 2024b). The modern prison has become the primary vehicle to segregate and control Indigenous bodies. Resonant with the United States that transitioned from Jim Crow segregation laws to a carceral regime coined the 'New Jim Crow' (Alexander, 2020), Australia's post-protectionist policing response can be seen as the new stage of Aboriginal Protection (Anthony & Stanley, 2025).

As evident in policing since the beginnings of colonisation, imprisonment sought to protect white property and status, resulting in Aboriginal people pushed to the urban margins in street sweeping strategies (see Gorrie,

2024; Wacquant, 2025). At the time of the repeal of the Aboriginal Protection legislation, Aboriginal labour became less useful for large-scale industry. The mechanisation of the cattle industry, for instance, and the introduction of equal wages made the Aboriginal labour force largely redundant. Consequently, as abolitionist geographer Wilson Gilmore (2007) noted, the declining need of capital for racialised labour meant resources were redirected to carceral enforcement.

A consequence of mass incarceration of Indigenous people since the 1970s is increasing Indigenous deaths in custody. Indigenous people are 10 times more likely to die in custody compared to non-Indigenous people (Anthony et al., 2021, p. 4). Gilmore (2007, p. 28) describes how 'differentiated' populations are vulnerable to 'premature death'. Their lives, 'surplus to humanity' due to their unfulfilled economic potential are expendable (Gonzalez & Mutua, 2022, 130). As Zygmunt Bauman puts it, they are banished 'from the universe of moral empathy' (Bauman, 1997, p. 70). There have been over 500 Indigenous deaths in custody since 1991, and yet no criminal convictions. After David Dungay Jnr died in custody in 2015 after screaming 12 times 'I can't breathe' when held down for over ten minutes with a correctional officer's knee in his back (The Guardian, 2018). His mother, Leetona Dungay, made a statement following the coroner's refusal to refer the officer to the prosecutors: 'If an Aboriginal man held down a white man until he was dead, where do you think that Aboriginal man would be? In jail for life. ... I am going to fight until I live in a country where black lives matter' (Allam, 2019).

Fast Forward to COVID-19: The Apex of Black 'Street Sweeping'

'COVID-19 Less Important Because We now Fear Law Enforcement'⁷

The global health emergency brought on by COVID-19 reconstituted daily activities in ways many living through it would not have imagined in their lifetime. The rapid spread of COVID-19 across the world resulted in many countries, including South Africa, implementing lockdown and quarantine measures such as stay at home orders and travel bans to curb the spread of the

⁷ Sesona Ngqakamba (2020), 'Covid-19 less important because we now fear law enforcement' - family of man killed during lockdown, 17 April 2020. <https://www.news24.com/covid-19-less-important-because-we-now-fear-law-enforcement-family-of-man-killed-during-lockdown-20200417>.

virus via community transmission within its borders, and to also prevent new cases from entering in (Pillay, 2023). In South Africa particularly, lockdown measures, supported by the military and increased police presence, during level 5 lockdown, meant heightened surveillance, harassment and violent enforcement of lockdown protocols which disproportionately targeted the poor, predominantly in Black townships (Knoetze, 2020).

South Africa presently is still a deeply unequal society (Beaubien, 2018; Habiyaemye, 2022). The legacy of apartheid's discriminatory laws of separate development is still apparent, 31 years later with many Black households continuing to live in informal settlements and townships as post-apartheid spatial planning continues to favour the interests of the elite (Habiyaemye, 2022). In 2020 approximately 23% of South Africa's population lived in informal settlements across the country (Simbanegavi, 2021). Once apartheid laws were abolished, rapid urban migration resulted in the rise of informal settlements, due mainly to insufficient urban infrastructure and housing, forcing these new urban residents to build makeshift homes and shacks on available land. Residents in these informal settlements have no or limited access to basic services such as water and sanitation. In addition, in 2019, 21.7 million people were living in the 532 townships set aside for Black, Indian and Coloured occupation, under apartheid (Schwabe, 2020). Townships are spatially constrained and severe overcrowding and inadequate housing infrastructure during the lockdown rendered self-isolation measures practically impossible. The COVID-19 pandemic therefore, exposed the deepening fissures of structural and income inequality.

Instead of administering meaningful support through aide to address these socio-economic challenges, the response of the state in many poor, predominantly Black townships consisted of heightened surveillance and violent policing (Langa & Leopeng, 2020). The militarised enforcement of lockdown regulations resulted in reports of police brutality, harassment and death, all disproportionately occurring in marginalised communities. This response to the pandemic lockdown bore similarities to the apartheid era's racialised logic of control and subjugation. The violent policing of Black men especially during this time, drew on colonial and apartheid notions of Black people as threats who would oppose state regulations thereby justifying the deployment of armed military troops into predominantly Black townships (Trippe, 2020). This stereotype of Black people by police officers post-1994 was evident in Jensen's (2008, p. 128) study as one station commander noted: 'Your average law-abiding citizen [lives] in [specific middle-class areas], whereas the problematic groups lived in the townships: "You can say that most people in [the townships] are gangsters"'. Jensen (2008, p. 128) further notes that police

described the people they were in contact with daily as either 'assholes' or 'suspicious persons'.

The police tactics that resulted in the arrest of approximately 230,000 people during the lockdown, were reflective of the apartheid regime's strategies, with police killing three people in the first three days of lockdown (Knoetze, 2020). Petrus Miggels was killed by police on the first day of lockdown for carrying alcohol which was prohibited as part of lockdown regulations.⁸ He was brutally assaulted, and died shortly thereafter (Knoetze, 2020). Similarly, Collins Khosa was attacked by four soldiers for consuming alcohol, inside a fenced yard, and later died from the injuries he sustained. This occurred during what was meant to be a routine patrol through the Black township of Alexandra (Schatz, 2021). Sibusiso Amos was shot dead for violating lockdown regulations by smoking near his gate (Sebeelo, 2023). In addition to these and other fatal attacks, Langa and Leopeng (2020) detail the humiliation rituals Black men had to undergo had the hands of policemen and South African National Defence Force (SANDF) soldiers for minor infractions. Further to this, in Alexandra police used rubber bullets and water cannons to disperse people waiting patiently outside shops to purchase food (Trippe, 2020).

The state instead of calling for restraint, lauded the police and SANDF for maintaining discipline (South African Government, 2020). As discussed earlier, in post-apartheid South Africa, law enforcement officials comprise primarily Black men (Faull, 2006), and the violent enforcement of lockdown regulations against Black people were committed by Black police officers and soldiers. While the criminalisation of Black people has persisted since apartheid, violent policing, which has historically been embedded in South Africa's security structures, became even more visible during the COVID-19 crisis.

Australian COVID-19 Differential Policing

In Australia, COVID-19 exposed the race and class inequalities across social-economic, geographic and institutional matrixes. The discrepancy in the transmission of infection and mortality rates from COVID-19 are well-documented, revealing the differential impacts based on race and class in

⁸ Initial Level 5 lockdown regulations in South Africa restricted movement of people for essential purposes only, such as purchasing food and to receive medical care. Activities including outdoor exercise, interprovincial travel, and the sale of alcohol and tobacco products were prohibited (Trippe, 2020).

Australia (O'Donnell et al., 2023; see also Prasad, 2024). However, there was also discretion in law enforcement that especially resulted in police surveillance of Indigenous and ethnic lower class communities, which was supplemented by the deployment of military personnel (Georgeou et al., 2023; Khalil, 2021). In Australia, special orders were imposed on poorer communities and regional areas with high Indigenous populations. This culminated in highly publicised police attacks on Indigenous young people on the streets of Sydney and intensified coercive measures in prisons that had a disproportionate impact on Indigenous people (Burke, 2020). Indigenous people in prison who protested harsh lockdowns and showed solidarity with the Black Lives Matter movement were violently attacked by a riot squad who fired tear gas at the prisoners (Anthony, 2021).

The COVID-19 lockdown orders disproportionately affected poor Indigenous people. In Western Australia, Indigenous people were issued with disproportionate and excessive numbers of COVID-19 fines (Hirini, 2020). In New South Wales (NSW), COVID-19 policing was most stringent in communities that were both impoverished and had significant Indigenous and/or ethnically marginalised populations:

The suburbs facing larger amounts of fines are some of the most diverse in the country, with large Indigenous communities, and where residents faced tough COVID-19 restrictions including curfews and tight limits on travel. The suburbs are also home to a high percentage of people from low socioeconomic backgrounds with incomes well below the national average (Rachwani & Evershed, 2022).

Regional communities in NSW, such as Walgett that has a large Indigenous community, saw some of the highest rates of COVID-19 penalty notices issued (Rachwani & Evershed, 2022). The Walgett-based Dharriwaa Elders Group released a statement that included the following:

The NSW Government made a big mistake for our community in tasking police to lead the local emergency response to this public health crisis. Police have a long history as an intimidating presence in Walgett, without a track record of building trust or communicating well with the local Aboriginal community (quoted in Centre for Crime, Law and Justice, 2022, p. 6).

In NSW, Police issued tens of thousands of COVID-19 penalty notices to enforce health orders (see Mabin, 2023). Of the 62,000 notices issued, 33,000 were invalidated following the decision of *Kosciolek v Commissioner of Police* (2024) NSWSC 15 which held that the plaintiff received a notice that was not consistent with legislative requirements. Nonetheless, their punitive burden had been felt in the processes of apprehending the person, issuing

the notice and then appealing its legality. Louise Boon-Kuo and colleagues identified the discriminatory imposition of COVID-19 fines to the detriment of Indigenous people and other marginalised groups (Boon-Kuo et al., 2021). This amplifies the broader issuing of Criminal Infringement Notices (CINs) disproportionately against Indigenous women and children (Quilter et al., 2024, p. 6). The NSW Ombudsman's summary findings in the *Review of the impact of Criminal Infringement Notices on Aboriginal communities* (2009) found a sharp increase in CINs issued to Aboriginal people when the scheme was extended in 2007 and that almost half (45%) were for offensive language. Aboriginal people were also 'much more likely to experience difficulties in paying the fine within the time and be referred for enforcement action by the State Debt Recovery Office' (New South Wales Ombudsman, 2009).

Indigenous people caught within this fine system in Australia were burdened by the effects of both neoliberalism and neocolonialism that seeks to generate profit from an oppressed Indigenous population (see Methven, 2019). This has a distinctly regressive impact on Indigenous people, as they are targeted by punitive policies and subjected to systemic discrimination. The increasing reliance on fines and other forms of financial penalty exacerbates existing social and economic inequalities, perpetuating cycles of poverty and disenfranchisement within Indigenous communities.

Why Racial Capitalism Needs to Enter the Dialogue on Punishment of Colonised Peoples

This chapter has demonstrated the racial legacies in contemporary law enforcement institutions that oppress colonised peoples in South Africa and Australia, with racialised policing reaching a peak during the COVID-19 pandemic. Critical Race Theory reveals how racism persists under neutral laws, long after the demise of official laws of segregation. With few exceptions, such as works of William Calathes (2017, p. 443, p. 448) and Angela Davis (2020), scholars of the racialised policing have given little attention to Racial Capitalism. There is a need to engage racial capitalism given that the CRT prescription of more seats at the table and a shift in racial discourses have not resulted in transformative change. Indeed, the case study of South Africa reveals that co-option of Black people into law enforcement can entrench harm inflicted on lower class Black communities. Olúfẹ̀mi (2022) argues that the 'identity politics', which provides an important entry point to social change, has morphed from a radical tradition to an appeal to 'racial and

gender representation'. Consequently, as Taylor (2022, p. 4) suggests, the past several decades that have seen increased representation has also seen an acute and growing chasm between Black elites and ordinary Black people. The elites are arguably using the 'master's tools', as Audre Lorde (2018) describes it, to dismantle the master's house with the impact that the masses are sacrificed, and the society remains intact. This includes where the representation among the ranks of Black police officers and political actors.

Germinating in Apartheid South Africa, the concept of Racial Capitalism proffers that racism and capital accumulation are mutually dependent (Lentin & Turner, 2024). South African scholar and activist Harold Wolpe (1972), who was imprisoned and escaped to exile in the UK, pointed out that the total control of Apartheid laws enforced racialised conditions where African workers could have their labour valued below reproduction cost (see also Legassick & Hemson, 1976). As Gonzalez and Mutua (2022, p. 129) recently remarked, South African capitalists reaped 'enormous profits by grossly undercompensating Africans who resided in [subsistence] rural areas and migrated to urban areas for daily work'. They described this as the 'mutually constitutive' role of law in the structure of racial capitalism: profit-making and race-making—which also occurs under neutral laws (see also Clarno, 2017, p. 9). These forces represent a confluence of 'unbridled extraction of wealth from both humans and nature' and reinforce 'white supremacy'. Wolpe's contribution is regarded as having continuing relevance today (Webster, 2019).

The ideas of Racial Capitalism in the United States, and the Anglophone world, elevated in standing with Cedric Robinson's publication of *Black Marxism* in 1983. He identified how racism sustains capital accumulation in the aftermath of slavery and Jim Crow laws. Through assigning differential value to racialised people, exploitation and surplus value could be maximised (Dorries et al., 2022, p. 264; see also Melamed, 2015, p. 77).

Racial capitalism involves three processes of profit making: *exploitation* from the commodification of labour and generation of surplus value; *expropriation* of natural resources without sufficient payment to cover the cost of their replenishment; *expulsion* is the process of 'discarding as "waste" persons who come to be viewed as "surplus humanity"', including through mass incarceration of racialised persons and '[white] gentrification of blighted urban neighbourhoods', with such neighbourhoods constructed in these terms due to their poor racialised populations (Gonzalez & Mutua, 2022).

Racial capitalism has particular resonance in colonies in both their historical and current formations. Arguably, race as a construct emerged as a form of settler colonialism (Simpson Center, 2017). Dené scholar Glen Coulthard

(2014, p. 77) points out that in contemporary society, colonialism and racism are deployed through 'liberal and multicultural' terms of engagement that value humans differently to suit the needs of 'state-capital orders'. Crucial to the colonial project is the stealing of land and subordination of Indigenous peoples to assure private property ownership and exploitation (Koshy et al., 2022). This extends from the non-payment of Indigenous cattle workers *en mass* in northern Australia to the severe under-payment of African workers in South African townships, and the ongoing opening up of Indigenous lands to miners in each country without Indigenous recompense (Short, 2016).

Policing, as discussed in foregoing sections, has played a pivotal role in maintaining racial capitalism in the colonies. Today, as Michael Javen Fortner (2023, pp. 268-9) asserts, racial capitalism continues to be crucial to understanding policing. Writing in a US context, he examined the policing of Black lower class people by Black middle-class officers in order to uphold the class divide. 'Class distinctions among African Americans', according to Fortner (2023, p. 266), require attention because they help shape 'white supremacy and capitalism in the United States'. It also upholds 'socio-spatial' differentiation between lower and middle-class people that enables exploitation through separated racialised communities (McClintock, 2018, p. 3). This was exposed in the COVID-19 pandemic where policing focused on communities on the periphery who endured harsher lockdowns and intensified policing.

Law enforcement in post-apartheid South Africa, as indicated above, has singled out poor Black townships. The accumulation of wealth by a small class of privileged Black South Africans enabled the urban Black poor (S'bu Zikode interviewed by Pithouse, 2024). These communities remain the source of exploitation and expulsion, including through hyper-policing (Viljoen, 2021). S'bu. Zikode, South African activist in the 'Residents of the Shacks' struggle for Black inhabitants of shack settlements—places on the periphery of cities similar to Indigenous town camps in Australia—has faced intensified policing. He recalls the police, while banging his head on a wall, constantly asking, 'Who the hell do I think I am to think I can lead ignorant people, rubbish people, to think that we have a right to live with middle-class people...?'. Among the officers policing the 'shacks' are Black officers who managed this impoverished racialised class (Pithouse, 2024).

The resurgence of the Black Lives Matter, combined with the rampant class inequalities exposed during the COVID-19 pandemic, has drawn attention to the need to interrogate race within the power structures that are served by the construct. This juncture has seen renewed interest in the prison abolition works of Angela Davis (2020), and Ruth Wilson Gilmore (2022)

explains this as ‘organized abandonment’ that identifies the divestment from services for racialised communities and increased investment in policing and criminalisation to ‘fill the cracks of a compromised social infrastructure and [to] maintain hegemonic social order’ (Gilmore, 2007 cited in Riley et al., 2024, p. 1). Racialised groups deemed unproductive for the capitalist system come under police control and languish in prisons, perpetuating their lower class status and exclusion from society. While the excesses of COVID-19 have moderated, the tremors of a divided society remain intact and lower class communities of colour are its lowest hanging fruit.

Conclusion

Issues of policing and racial capitalism are not merely analytic. For Apartheid South Africa, debates around racial capitalism were crucial to reshaping a future. The political question was: when we abolish race do we abolish class and capital accumulation at the same time? (Kelley, 2023). This continues to be a question with post-apartheid South Africa experiencing enduring racial and economic tensions. Singer, songwriter, anthropologist and anti-apartheid activist, Johnny Clegg, released the song *Asilazi* in 2010 to express the uncertainty and despair with South Africa’s ongoing economic and race divisions: ‘We don’t know when our day of freedom will come’.

Ongoing debates in racial capitalism, nonetheless, can foster ‘new, creative policy remedies’ that empower the poor and grant them greater control over shaping their own futures (Fortner, 2023, pp. 270-1). It offers a structural response that goes further than CRT in its focus on representation, but nonetheless builds on the important contribution of CRT in critiquing ongoing racism, including in police forces. The rise of White Supremacy, which conflates race and criminality as a ruse for the unfolding crisis in Western capitalism, poses new threats to critical race thought. As criminologist Stuart Hall et al. (2017) informed us decades ago, race and crime are scapegoats in the struggle for elites to recapture a declining legitimacy. However, racial capitalism sheds light on the structural basis of the New Right—the interests it protects, and the nature of the resistance required. It also calls for new anti-capitalist responses (Kundnani, 2023).

During the COVID-19 pandemic, capitalism experienced a rapid global contraction. As governments were at a loss to show leadership in relation to a health, economic and social emergency, policing lower class Black communities reached a new high. These communities were targeted for intensive

COVID-19 lockdowns and attendant coercive law enforcement. Prison lockdowns saw in-cell segregation for up to 24 hours per day. As Liebman et al. (2020) stated, 'COVID-19 is inseparable from the carceral structures of racial capitalism inflicting violence upon Black bodies'. Simultaneously, mobilisations against brutal racialised policing took on an international character. Australia and South Africa saw the impact of both the penal system on lower class racialised communities and the resistance against this penalty. Important insights from COVID-19 provide new ways to conceptualise growing racism and classism that results in an increasingly abandoned Indigenous population. Ultra-conservative governments and political influences in neocolonial states will extend this trajectory while racial capitalism remains firmly rooted in socio-legal structures.

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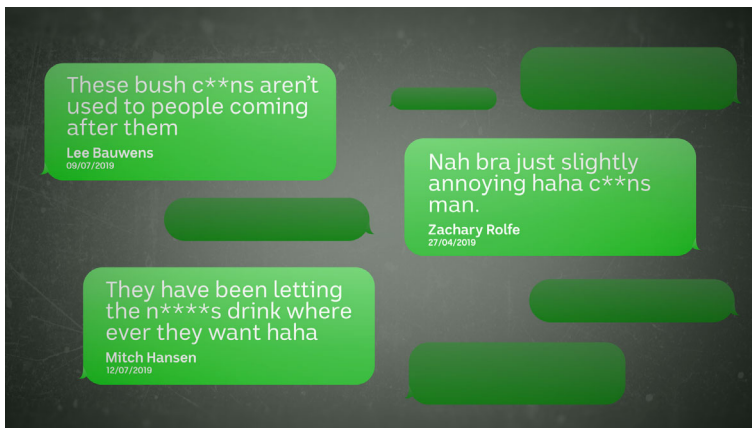
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20

Prejudice Plus Power. The Truth About Racism Inside the Northern Territory Police

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“...The Structural Nature of Our Problem”.

In 2017, delegates from across Aboriginal and Torres Strait Islander communities issued the Uluru Statement from the Heart—a 440-word call to be recognised, heard, and included in all decision-making and law-making processes in Australia. Elders, community leaders, and representatives from a wide range of Aboriginal and Torres Strait Islander groups and organisations came “from all points of the southern sky” to discuss and agree on the constitutional and structural reforms necessary to address the challenges faced by their people. The *Uluru Statement from the Heart* (National Constitutional Convention, 26 May 2017) emerged from these discussions as a consensus document, calling for Voice, Treaty, and Truth (Makarrata). Explicit in the Statement is the “structural nature of the problem”, the systemic racism that blights the lives of Aboriginal peoples.

“Proportionally, we are the most incarcerated people on the planet. We are not born criminals. We are not an innately criminal people. Our children are alienated from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should be our hope for the future. These dimensions of our crisis tell plainly the structural nature of our problem. This is the torment of our powerlessness”.

The “structural nature” of the problem is systemic racism, which we define as prejudice plus power, a definition first put forward by sociologist Patricia Bidol in the 1970s.¹ Racism is both structural and systemic because it is prejudice combined with social and institutional power. Power codifies and enforces prejudice into an entire society, creating a system of advantage based on a person’s race. As the dominant culture in Australia, the white population experience privilege that protects them from any form of discrimination related to ethnicity and race, an unseen built-in advantage that is separate from one’s level of income or effort. It is so entrenched in our systems, laws, policies, practices, procedures, and beliefs that it feels like the natural way of things.

As human rights lawyers, we at the National Justice Project (NJP) challenge the status quo, calling out prejudice and speaking truth to power. Our mission is beautifully articulated by civil rights activist James Baldwin “If one really wishes to know how justice is administered in a country, one does not question the policemen, the lawyers, the judges, or the protected members

¹ The definition of racism as “prejudice plus power” was first introduced by sociologist Patricia Bidol-Padva in her 1970 book, *Developing New Perspectives on Race: An Innovative Multi-media Social Studies Curriculum in Racism Awareness for the Secondary Level*.

of the middle class. One goes to the unprotected—those, precisely, who need the law’s protection most!—and listens to their testimony”. At NJP we look and listen for those voices and then amplify them in a strategic way to take on unfair systems and practices and drive systemic change.

In 2023 we joined forces with an Aboriginal woman whose professional life has been spent speaking truth to power to challenge the racist culture in the Northern Territory Police (NTP). Leanne Liddle, an Arrernte lawyer with 30 years of experience working in the justice system nationally and internationally, was to give a statement at the inquest into the death of Kumanjayi Walker (Kumanjayi) in the remote community of Yuendumu in the Northern Territory in 2019. We represented Ms. Liddle and worked closely with her to prepare her statement to the coroner.² Her testimony shows us how racism among police ranks went unchecked by those in positions of power thereby metastasising into entrenched racist norms until perversely, dehumanising treatment of Aboriginal and Torres Strait Islander peoples was thought to be the natural way of things.

The Walker inquest exposed the prejudice and power that nurtures a racist culture in the NTP and how an unchecked racism can have deadly consequences. In this chapter we will discuss how police actions have contributed to “the torment of our powerlessness”, that is entrenched structural and systemic disempowerment that can seem intractable, causing Aboriginal and Torres Strait Islander people to feel unheard and unable to take responsibility in decisions made about their lives.

This chapter explores prejudice and racism within the Northern Territory Police in the context of Australia’s history of colonial violence and dispossession. It demonstrates how systemic racism profoundly shapes contemporary relationships between police and Aboriginal and Torres Strait Islander communities.

Many Australians prefer to overlook or forget this history, but understanding this historical context is critical. The violence of Australia’s colonial past did not simply end; rather, it has transformed into systemic injustices that persist today. The recent failed referendum on an First Nations “Voice to Parliament” underscores Australia’s continuing struggle to fully acknowledge and reckon with its colonial past. The rejection of the Voice proposal highlights ongoing tensions around recognition, representation, and reconciliation, revealing a national discomfort with confronting the violence and injustices committed against Aboriginal and Torres Strait Islander peoples.

² https://justice.nt.gov.au/_data/assets/pdf_file/0018/1208160/10_10c_liddle_leanne_statement_adop ted_evidence_06_03_23.pdf.

Recognising and addressing this continuity is essential for Australia to genuinely confront and dismantle institutional racism, heal historical wounds, and achieve meaningful justice for Aboriginal and Torres Strait Islander peoples.

This chapter serves as a wake-up call, confronting Australia's historical amnesia and institutional denial. By connecting historical injustices directly to contemporary policing crises, it highlights how the racism and violence of Australia's past continue to influence law enforcement practices, policies, and social outcomes. Such recognition is necessary to foster meaningful dialogue, accountability, justice, and lasting reform.

Absolute police power over this nation's original peoples was granted at the beginning of the colonial enterprise so we will begin there.

Police as a Tool of the Colonial Enterprise from 1788...

Since 1788 the colonial history of Australia was based on the myth of *terra nullius*: that this was a land with no people. This lie is exposed by the violent suppression of Aboriginal peoples by police which formed the basis of the colonial enterprise.³ Our state policing institutions were founded in the Frontier Wars, genocide, and racist violence. We cannot look at the history of policing and police powers in Australia without acknowledging their attempts to clear the country of the First Peoples by enforcing policies and laws that facilitated their dispossession, the destruction of their culture and languages, to take their land and their children and to control, and assimilate the Aboriginal population. The Australian police force's role in maintaining colonial order and implementing government policies significantly shaped the social and political landscape of Australia, with enduring consequences for Aboriginal communities.⁴

Many Australians still deny these facts, or they don't know them, while others choose to write their own versions of Australia's Aboriginal history. Our National amnesia is a complex mix of educational shortcomings, political influences, cultural discomfort, and institutional biases that perpetuate Australians' denial or ignorance about their own colonial past. Understanding this interplay is critical to addressing and ultimately overcoming it.

³ Banner, S. (2005). *Possessing the Pacific: Land, Settlers, and Indigenous People from Australia to Alaska*.

⁴ Nettelbeck, A., & Foster, R. (2007). "In the Name of the Law: William Willshire and the Policing of the Australian Frontier." *Journal of Australian Studies*, 31(91), 75–87. DOI: <https://doi.org/10.1080/14443050709388125>.

The Australian education system historically downplayed or omitted the realities of colonial violence, dispossession, and Indigenous resistance. For generations, Australian students learned about European “settlement” rather than invasion, frontier wars, or massacres. This selective history created collective amnesia, distancing Australians from uncomfortable truths about their past.

Like America, Australia’s political landscape often influences how history is taught, commemorated, and discussed publicly. Politicians and media figures sometimes fuel “History Wars”, debates that either highlight or downplay violent colonial realities to suit their agendas or ideologies.

Systemic racism entrenched in institutions can reinforce historical silence or denial. When acknowledging past violence implicates powerful institutions—like government, policing, or churches—there’s institutional resistance to recognition or accountability.

Finally, collective denial serves psychological purposes. Australians’ self-perception as egalitarian, peaceful, and fair can be threatened by acknowledging systemic racism, dispossession, or genocide. This cognitive dissonance leads many to avoid or deny confronting truths.

Frontier Wars

The earliest forms of police included the Mounted Police and Border Police whose purpose was to extend the colonial frontier and garrisons. Historian Henry Reynolds described the Mounted Police as “the most violent organisation in Australian history”.⁵ The military instrument of the Queensland Government was the Native Police, a body of Aboriginal troopers that operated under the command of white officers on the Queensland frontier from 1849 to the 1920s.

Police forces were integral in enforcing the British Crown’s claims to land, and this involved protecting settlers and forcibly removing Aboriginal people from their ancestral lands, often with great resistance. When settlers and police were met with resistance, reprisals generated reprisal massacres of extraordinary scale and impact. The scale of the killing is expertly documented by the University of Newcastle’s interactive map of Colonial Frontier Massacres in Australia, 1788–1930.⁶ Today, place names bear witness to sites of atrocities as our forebears implicate themselves: Skull Creek, Waterloo Plains, or Blackfellows Bones Bore, and Murdering Gully.

⁵ Reynolds 1987 at 27.

⁶ <https://c21ch.newcastle.edu.au/colonialmassacres/introduction.php>.

The 1928 Coniston Massacre in on Warlpiri/Anmatyerre/Kaytetye lands west of Alice Springs (NT) was the last documented massacre of Aboriginal peoples in Australia. Following the murder of a white dingo trapper, reprisal killings were carried out by civilians and police. More than 60 Aboriginal men, women and children were murdered over several locations in the Central Desert region of what is now the Northern Territory.

Regulating Aboriginal Populations

The colonial enterprise was intent on controlling Aboriginal bodies and police were often tasked with enforcing these policies. This included prosecuting curfews, movement restrictions, exclusion zones, and policies aimed at assimilating Aboriginal people into white society. Colonial monikers on maps bear witness to these practices. “Boundary” roads and streets were used to segregate settler populations from its traditional owners.

In 1910 the Northern Territory Aboriginals Act 1906 created compounds for those Aboriginal people under the Chief Protector’s control. This was a means of legal segregation, and Aboriginal bodies were tightly controlled. The Chief Protector’s control was all encompassing and in 1918, the Chief Protector’s powers were extended even further under the Aborigines Ordinance 1918, including a provision that all Aboriginal females (regardless of age) were to come under the total control of the Chief Protector unless they were married to a white man, and even to do this they had to obtain the Chief Protector’s permission.

‘Protecting’ Aboriginal Populations

In addition to the violence of the colonial frontier, police officers played an integral role in the removal of Aboriginal children under a policy known as “protectionism”.⁷ From the late nineteenth century, various Australian colonies implemented policies to control and assimilate Aboriginal people, particularly the Aborigines Protection Act (1909). Under these regimes, the police were given exceptional powers of state surveillance and control over Aboriginal populations.⁸ Police were granted powers to forcibly remove Aboriginal children from their families without having to establish that the child was neglected. The only criteria necessary was assessed based on the

⁷ Cunneen, 2001; NISATSIC, 1997; Roberts, 2005; Owen, 2016.

⁸ HREOC ‘Bringing Them Home’ (n 37) 27. See also Senate ‘Unfinished business’ (n 38) 8 [2.5]–[2.6].

colour of their skin.⁹ This practice continues today under the guise of child protection. Aboriginal and Torres Strait Islander children represent 42.8% of the total number of children in out-of-home care but only represent 5.98% of all children in Australia.¹⁰

Today this legacy of protectionism is known as the Stolen Generations, as documented in the landmark 1997 *Bringing Them Home* report. The report was the result of a national inquiry that investigated the forced removal of Aboriginal and Torres Strait Islander children from their families.

In 2007 the federal government implemented a set of controversial protectionist policies and actions in response to the *Little Children are Sacred* report. This report highlighted widespread child abuse and neglect in Aboriginal communities in the Northern Territory and the government responded with the Northern Territory Emergency Response (NTER), commonly referred to as the NT Intervention.

In an unashamed assertion of colonial power, this legislation was imposed overnight on 73 Aboriginal communities in the NT, ostensibly in response to the “Little Children are Sacred” report into sexual abuse of Aboriginal children, however, it did not accord with the recommendations in that report. Instead, more damaging protectionist policies were implemented without consultation that resulted in increased controls, restricted access to land and to social security, compulsory income management, and land acquisition, increased police presence and the dissolution of Aboriginal governance structures that surged the emergence of Super Shires from the existing Aboriginal community-led community councils. This effectively decapitated already compromised Aboriginal leadership in the NT and diminished the status and standing of Aboriginal men (through the messaging that they were all paedophiles), which together seriously reduced the ability for Aboriginal people to make decisions that impacted on their ability to control behaviours and restore core values that they wanted to be supported in their community to maintain a safe cohesive community. Many Aboriginal people saw these actions as racially discriminatory, reinforcing negative stereotypes and treating them all as potential criminals or incapable of managing their affairs.

No evidence was found that these policies resulted in the increased identification and prosecution of child abuse.¹¹ Rather, since the Intervention, incarceration rates in the NT have doubled for Aboriginal men and tripled

⁹ HREOC ‘Bringing Them Home’ (n 37) 24–25.

¹⁰ <https://www.snaicc.org.au/wp-content/uploads/2024/07/20240731-Family-Matters-Report-2023.pdf>.

¹¹ Rex Wild and Pat Anderson, *Little Children Are Sacred: Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse* (Report, Darwin: Govt. Printer, 2007) 50–4. See also Blagg and Anthony 2019 (n 17) 216–217.

for Aboriginal women and Aboriginal suicide rates, especially for youth have increased six-fold, which is devastating as the purpose of the swift, imposed overnight laws was to improve Aboriginal people's lives.¹²

Importantly, the contemporary component of this legacy has manifested today in the continuation of shamefully high numbers of Aboriginal child removals, deaths in police custody, fatal shootings, police brutality, abuse of Aboriginal people and systemic neglect in terms of police investigations into missing and murdered Aboriginal men, women, and children.

Police in 2024—"Significant Harm"

The legacy of colonial policing practices has had a disastrous impact on the relationship between Aboriginal communities and police forces in Australia. Historical trauma and mistrust continue to adversely influence interactions today. Many Aboriginal communities report strained relationships with the police, citing a lack of trust and a perception that police do not protect their interests or respect their rights.

Some police forces have begun to acknowledge their traumatic legacies. In 2018, the West Australian Police Commissioner issued a historic apology to the state's Aboriginal people saying he was deeply sorry for the police role in carrying out policies that led to the Stolen Generations, while also acknowledging that "land dispossession, violence, racism, incarceration and deaths in custody have occurred through a history of conflict with Aboriginal people and police".¹³

The Commissioner went on to say that "as the legislated protectors of Aboriginal people, police played an important and significant role in contributing to a traumatic history, which continues to reverberate today", he said. "I accept that previous laws, practices and policies deeply affected the lives of Aboriginal people, and that police involvement in historical events has led to mistrust in law enforcement and the damaging of our relationship".¹⁴ The Police Commissioner's apology was limited and did not address his state's record to deaths in custody and critics will assert there has been little change.

In 2024 Victoria's Chief Commissioner of Police issued a formal and unreserved apology to the Aboriginal community on behalf of Victoria Police for

¹² Blagg and Anthony 2019 (n 17) 217–218.

¹³ <https://www.theguardian.com/australia-news/2018/jul/12/deeply-sorry-western-australia-police-chief-apologises-to-indigenous-people#:~:text=Speaking%20at%20police%20headquarters%20in,a%20history%20of%20conflict%20with.>

¹⁴ Ibid.

the “significant harm” caused by the organisation that directly links to the overrepresentation of Aboriginal people including children in the criminal justice system and a lack of trust and even fear of police for many Aboriginal people. He acknowledged there is racism in the force that contributes to “the persistent and consistent poor outcomes for Aboriginal people, thus compelling Victoria Police to examine where unconscious bias and the inequitable use of discretion or unfair systems are adversely impacting Aboriginal people and contributing to systemic racism”.¹⁵ This was an apology for the Stolen Generations and it did not articulate any anti-racist actions and initiatives.

The two Police Commissioners have identified a useful set of criteria for examining systemic racism within police forces: racism in the force, mistrust and damaged relationships, violence, unconscious bias, inequitable use of discretion, unfair systems, and consistently poor outcomes.

Another critical criterion, particularly evident in the Northern Territory, is the intentional lack of accountability, as a result of Territory legislation that effectively shields police from consequences of their misconduct. For instance, complaints of police misconduct must be made within 6 months of the event, and the police commissioner has only 6 months to impose discipline on an officer. Additionally, strict legislative caps on damages and compensation severely limit the capacity of vulnerable communities to seek justice, a level of statutory protection unique among Australian police forces.

Aboriginal Deaths in Custody

The ongoing deaths of Aboriginal and Torres Strait Islander peoples in custody demonstrate how unconscious bias, inequitable discretion, overt racism, systemic violence, and a lack of meaningful accountability combine within unfair systems to cause significant harm.

In 1991 the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) found that almost two-thirds (63) of the 99 deaths that were investigated occurred in police custody. Furthermore, most Aboriginal people at the time of the Royal Commission were in police custody for minor offences, mostly public drunkenness, and, to a lesser extent, street offences.¹⁶ In particular, the exhibition “Sorry For Your Loss” documented the ways in which Aboriginal women were much more likely to die in police custody

¹⁵ <https://www.police.vic.gov.au/statement-commitment>.

¹⁶ Johnston 1991, vol 1, pp. 12–13.

compared to other forms of custody.¹⁷ For example, nine of the 11 women who died were in police custody at the time were held for minor offences, mostly for the offence of public drunkenness or fine default or offensive language, all examples of police using their discretion in racist ways. There is evidence over several decades to show that the recommendations of RCIADIC are ignored or inadequately implemented in practice.

More than 30 years after the RCIADIC, the central recommendations remain unimplemented and systemic racism remains entrenched in the Australian legal system. More than 500 Aboriginal and/or Torres Strait Islander people have died in custody since the RCIADIC. Not a single officer has ever faced jail time for causing such a death.

In 2020, a Northern Territory police officer was accused of murdering Kumanjayi Walker. Zachary Rolfe was committed to stand trial in the territory's supreme court, but to outrage and protests, he was found not guilty of murder and not guilty of the lesser charge of manslaughter by an all-white jury.

The circumstances of Kumanjayi's death shattered his family and community and triggered national and international outcry. Distressed and furious members of Kumanjayi Walker's family and Warlpiri leaders called for "Justice for Walker", demanding a proper accounting for this death, as well as a transformative legislative and political response.

A coronial inquest into Kumanjayi's death commenced in 2022 and from the outset the NT Coroner Elisabeth Armitage indicated that that police racist attitudes may have been part of the "confluence of factors" that led to Kumanjayi's death. Armitage told the court: "I am inviting everyone to look a little deeper and listen a little longer, because I think there is more to learn from, and more to try to understand, about this story".

What transpired was an explosive exposé of the deeply racist culture and practices of the NTP and the voices of the Warlpiri and all Aboriginal people across the Territory demanding change. This case speaks directly to the Uluru Statement and "the torment of our powerlessness", and we believe that it is the perfect vehicle to expose the pervasive structural racism in our police forces. The coroner described what she uncovered in the process as "deeply disturbing" after examining allegations of racism, cultural insensitivity, cover-ups, and excessive use of force within the NTP ranks.

¹⁷ <https://jumbunna.institute/2018/05/01/sorry-for-your-loss-project/>.

Yuendumu 2019

It is important to set the scene in Yuendumu when telling the story of the killing of Kumanjayi Walker.

It is 12 years since the NT Intervention, but its noxious legacy pervades laws, practices, and policies with ruinous effect on the lives of Aboriginal people, poisoning the reputation of Aboriginal people in the NT. It is fertile ground for racism, confirming negative stereotypes perpetuated by the colonial enterprise.

NT Aboriginal communities were completely demoralised and that continues today. Mothers and grandmothers feel they have failed, dismally. They feel they were labelled as inadequate and unable to keep their families safe and happy and that as women they had allowed these unspeakable acts to occur under their watch.

Aboriginal people say that they feel disempowered with no control and ability to make decisions for and on behalf of their communities and families. There is no consultation about how money from service providers was coming into their communities, how money was spent, and who was delivering programs into their communities and there was no accountability for outcomes or the lack of them. They also had no influence over how decisions around what programs or services were wanted or needed were made.

When the Coroner pledged to try to learn from and understand this story, she knew she had to probe the links between housing, health, education, and the youth justice system. More police also came to remote communities, but they didn't make the community any safer. Rather, it meant that more people went to jail or got arrested. Police in community made it clear that they were here to do a job, and they weren't happy living in community, away from their families and hometowns, so they didn't want or look for, a relationship with the traditional owners. In one remote community, the children of the local police were home schooled and they did not shop in the local store as all their food was bought in by police plane. They lived in a complex with an eight-foot-high razor wire fence, did not socialise with the local community. Police housing included a pool, green lush lawns, a playground, and parked in the carport was a boat and a 4WD whereas on the other side of the road there were Aboriginal people living in poverty with next to nothing.

In her statement to the Walker inquest Leanne Liddle gave voice to Aboriginal peoples' experience in the Northern Territory. Her testimony carries authority as Liddle and her Aboriginal Justice Agreement (AJA) team visited the entire breadth and width of the Northern Territory (NT) to talk to Aboriginal people, non-Aboriginal people, agencies, communities, people in

prisons, and more over a three-year time frame. After 160 consultations, Liddle told the coroner that people felt that life has never been as bad as it was now, especially since the Intervention.

“Personally, it was one of the most depressing and saddest experiences of my life. I was devastated to see the fear and despair and hopelessness in the faces and voices of Aboriginal people, young, old, men, women, and children in so many communities and towns”, testified Liddle. The depressing environment was a result of systematic failures, as well as a lack of leadership, a failure in understanding, gaps in communication and racism in all its forms. “Often, I thought that the Aboriginal people hadn’t failed, the systems had failed them, yet we were the ones who carried the blame and the shame”.

The issues raised at the consultations were consistent and disheartening. The overwhelming narrative was a feeling of failure to keep their communities safe and that no one was listening, and no one was really helping them.

The NT Police pledge is “To serve and protect”, but Liddle and her team were told of multiple instances of systemic racism in policing these communities. At one Police Station they were told that police had taken the batteries out of the intercom as they were sick and tired of Aboriginal people pushing the button. In other communities, the button just wasn’t working, which is unacceptable because at times this is the only lifeline for Aboriginal to get help from, or to call Police. Instead, it’s lack of operation was excused by many police as just wear or tear in harsh conditions or people just being “pests”.

Liddle said the communities shared many stories of refusal of service and poor policing. People told how they would call 000 for police attendance in an emergency, including serious violent incidents but they were told that the police weren’t attending as it was a family issue, not a police issue, or that the police would attend when they could like the next day. Sometimes as a result of a call to 000, police would turn up the next day in a community less than 10 kms from the town centre, but by then, the incident was over, the crime scene was contaminated, and everyone had left. People said they were reluctant to call police when offences occurred because they were questioned about everything except what had happened when all they wanted was an immediate response from police to attend to the incident that they had actually called police for. This included serious family and domestic violence incidents. People said that they were reluctant to call police for any incident that occurred in their community as they felt that it would solve nothing, and they were worried that they would be arrested.

Liddle recalls on one consult, a Senior Sergeant of a remote police station, who in front of his junior colleague said to her when asked what he believed was the answer to reducing incarceration of Aboriginal people. “The only hope you mob have is to stop breeding for the next 10 to 15 years”, he said. The junior officer when later questioned about hearing this statement denied that he had heard it, but Liddle knows it was impossible that he did not. “That tells me something about the culture of junior officers and their fear to report on senior officers”, she surmises. Liddle reported the comment, “I didn’t want this person working in an Aboriginal community again, but to my surprise this officer was transferred to another Aboriginal community with a promotion, and then they told me as I had signed off on it there could be no further action only for that officer to turn up again in another Aboriginal community”.

Leanne Liddle was a torchbearer of anti-racism at this inquest, symbolising the courage to challenge the implacable force that is the police and confront them with the truth, embodying the leadership her people need to navigate their way out of the powerlessness.

“I know many police who work for the benefit of all, who understand and care for the social and welfare needs of those who they interact with. Of course, there are exceptions. There are power hungry individuals who enjoy power and the use of violence, who are supported by structures inside systems. However, by characterising those individuals as outliers or exceptions to the rule, our governments and bureaucrats ignore the way violence and discrimination are systemically perpetuated in this country.”¹⁸

The question that the coroner was ultimately asking was, I is the NTP force systemically racist and therefore normalises and nurtures racism in its ranks, or was Zachary Rolfe a racist lone wolf? Inquest into the death of Kumanjyi Walker [2025] NTLC “that structural and institutional racism permitted a work environment to exist which not only tolerated Mr. Rolfe’s racism but allowed it to go unchecked and permitted others to actively engage in it with him.” see <https://agd.nt.gov.au/attorney-general-and-justice/courts/inquests-findings/kumanjyi-walker/files-exhibits-and-media/Inquest-into-the-death-of-Kumanjyi-Walker-2025-NTLC-8.pdf>.

¹⁸ https://justice.nt.gov.au/__data/assets/pdf_file/0018/1208160/10_10c_liddle_leanne_statement_adopted_evidence_06_03_23.pdf.

The Killing of Kumanjayi Walker 9/11/2019

Kumanjayi Walker, a 19-year-old Walpiri Luritja man disabled with Foetal Alcohol Syndrome Disorder (FASD), was fatally shot by Constable Zachary Rolfe during a botched arrest at Yuendumu, 300 km out of Alice Springs, on 9 November 2019. Rolfe discharged his Glock weapon three times at close range into Mr. Walker after he stabbed Mr. Rolfe in the shoulder with a pair of scissors.

Zachary Rolfe and his Immediate Response Team (IRT) colleagues were deployed from Alice Springs to Yuendumu. The five-member unit was sent to arrest Kumanjayi after he had fled an Alice Springs alcohol rehabilitation clinic the week before, even though he had agreed to turn himself in after his great uncle's funeral. Anybody who works with Aboriginal people would have known that Kumanjayi would have wanted to go to that funeral. Efforts to allow him to attend should have been taken well before he absconded from Central Australian Aboriginal Alcohol Programs Unit (CAAPU). The officers told the coroner they were under the impression they were required to track down and arrest a 19-year-old man, who had cut off his ankle bracelet and fled from rehab to the community. Other senior police said that was only part of their assignment—the other was to provide respite to overworked local officers.

There were no health staff in Yuendumu (a community of around 200 people)—they had been evacuated due to their own safety concerns—so after having been shot three times, Kumanjayi was dragged (against police protocol) to a police vehicle and taken to the police station where ill-equipped officers tried to save his life. Outside, his family waited in the dark. They were not permitted to be with him as the police tried to save his life. The nearest nurse was 70 km away. All she could do was pronounce the victim dead.

After the passing of Kumanjayi police used the nurse and the ambulance as a decoy, driving it to the airstrip to pick up extra police. The community thought the ambulance at the airstrip signified Kumanjayi was being airlifted to hospital. No one told them he had died until the next morning.

That night the attending police had beers and a barbeque at Rolfe's house to check on his welfare. They had not been debriefed by their superiors. Four days later, the then-officer was charged with murder.

In 2022, an NT Supreme Court jury acquitted Rolfe, after it found he acted in self-defence and in line with his police training. He is no longer a serving officer, having lost his job for breaching the force's media policy by writing an open letter criticising the coroner and police force.

Lone Wolf or a Racist Police Force?

Earlier we referred to a useful set of criteria for assessing **racism in the force: unconscious bias, violence, the inequitable use of discretion, mistrust and damaged relationships, unfair systems, consistent poor outcomes**—and we added a **lack of accountability and oversight**—and we will use these criteria to home in on what was discovered during the inquest and discuss how racism in the NT police force is emblematic of a wider structural problem in policing across Australia. And a reminder that the NT Police pledge is “To serve and protect”.

Racism in the Police Force

Anyone tuning into the inquest online or reading the transcript and the subsequent media coverage had to be struck by how police culture dehumanised Aboriginal people. From the outside this culture was shocking, but from the inside the behaviours that assumed Aboriginal people as savages were so normalised that they became the natural way of things. Slurs, and mocking names such as “bush coons”, the “n” word, and caste language (half-caste) were commonplace. We are not going to debate here whether the bias exhibited in the following tales is conscious, or unconscious as the police commissioners like to think. What is evident is that racial biases among NTP officers lead to deeply disrespectful behaviours, discriminatory practices, including racial profiling and prejudiced decision-making in law enforcement.

In a curious turn of events, Rolfe finally turned on his police colleagues and told the coroner he was not a racist but rather a product of his racist environment and gave wide-ranging evidence to bolster his claim. “Racist language was normalised in the NT Police Force”, Mr. Rolfe told the court. “In the muster room ... I could hear something racist every day”. The Todd Tavern, a pub enjoyed by Aboriginal people was called the “Animal Bar” by police. Mr. Rolfe told the court “Basically the whole [Alice Springs] police station” would refer to a so-called “Aboriginal-only” section of an Alice Springs pub as “the animal bar because it’s an Aboriginal only bar”.

The Northern Territory coroner was shown examples of awards shared among Rolfe’s elite unit of NT Police which depict Aboriginal people as unhygienic and intoxicated. Rolfe alleged the TRG held an annual party where it issued a “Coon of the Year” award to members “for the most coon-like behaviour of the year”. Rolfe said members of NT Police who took part in the ritual had been promoted through the force. “The culture starts at the

head”, he said. He also said the behaviour was accepted and known by NT Police members who had given evidence at the inquest.

Also shared with the coroner was an image of “Black Monopoly”, where every property square is marked “Go to Jail”, that was reportedly shared by members of Northern Territory police in 2008. Text within the email reads “this is gold”. Other award certificates later supplied to the court included two from 2007 referring to the “Shit Barbecue award” winner who cooked “the most coon like bbq ever!!” and the Noogadah award winner “expressing [their] utmost level of Aboriginality while being an elite member of the [TRG]”.

During the inquest, counsel assisting the Coroner, Dr. Peggy Dwyer shared a series of text messages involving NT police including Rolfe to police leadership who admitted the language was “inappropriate” and agreed it could bring NT police “into disrepute”. “Filthy racist terms about people they were required to serve and protect”.

After initially telling journalists that he had no knowledge of the racist awards, the inquest heard Police Commissioner Michael Murphy knew about the racist awards months before they were made public and that he regretted not investigating the “coon of the year” award or reporting them to the NT police professional standards command. After denying racism in the force, the Northern Territory’s top police officer had to agree with the inquest he was “gaslighting” Aboriginal people when he said he had not seen its pervasive effects and its normalisation.

The acceptance and dismissal of racist language makes it easier for discriminatory behaviour to continue. Even when police do investigate themselves, they resist the findings to be released publicly. A 2021 report prepared by Commander David Proctor for the purposes of the coronial inquest was scathing about police culture in Alice Springs at the time of the shooting lamenting it had degenerated into a state where unacceptable police behaviour was allegedly being condoned by supervisors and senior police management. In fact, it was damning that the police attempted to hide it from the public for more than a year and half.

When Leanne Liddle and her team visited communities as part of their consultation for the AJA, they heard police racism in all its forms was the major complaint. It was the topic raised at every consultation. Some people did not even know what they had experienced was racism. For many people, racist experiences were thought to be the norm, just the way that you are treated and expected to be handled because you are Aboriginal.

Liddle recalls one of the most telling moments was when she asked people what justice meant to them. Nearly all replied “when I get treated good, and

fairly by the police”. What she took from all the consultations was that racism was real in all its forms and that Aboriginal people experienced it every day; day in, day out, and that Aboriginal people would not thrive until it was non-existent.

What was clear from Liddle’s research out in communities was that Aboriginal people do not know how to complain about police, which speaks to the powerless articulated in the Uluru Statement from the Heart. Liddle recounts that despite the need to address poor service delivery, not one community member had heard of or knew about the Ombudsman Office, the Police Integrity Unit, the Health Complaints Authority, the Antidiscrimination Commission, or the Children’s Commissioner. When she asked people why they didn’t complain one 70-year-old woman said: “That policeman he is the last one to see me before he zips me up in a body bag. I need to be nice to him so he can treat me with dignity”.

Violence—Use of Force and Police Brutality

The dehumanisation of Aboriginal people sets the scene to permit acts of violence against Aboriginal peoples and parts of Australia are often characterised as the wild west in terms of discipline in police ranks. In texts deemed inadmissible in his murder trial, Rolfe described his job as a “sweet gig, just get to do cowboy stuff with no rules”. The coroner heard that Rolfe had an appetite for violence as he liked to “towel up” (beat up) locals whom he also referred to as “Neanderthals who drink too much alcohol” and he was “always ready to make my camera face the other way”.

During the inquest Commander David Proctor, who prepared an investigation report to the coroner, was scathing of the culture of the NT police force at the time of Kumanjayi Walker’s death, pointing out the “militarisation” of policing in the NT. In the decade to May 2020, he said, 192 of the 718 NTPOL recruits—about 26.4%—were former ADF (Australian Defence Force) personnel. “This is a vast over-representation of former military members recruited to police the Northern Territory who do not proportionally represent the populace of the community they serve”, Proctor wrote. Emeritus professor of criminology Jude McCulloch gave evidence about the militarisation of police forces, telling the coroner “The risk is that police develop a warrior mindset, whereby they seek to overcome, or treat as the enemy, those people that they’re meant to protect and serve”.¹⁹

¹⁹ <https://www.abc.net.au/news/2023-03-07/kumanjayi-walker-inquest-ben-mcdevitt-zachary-rolfe/102061824>.

Proctor stated acquiring military grade weapons, equipment, and uniforms was unjustified. Ex ADF members “does not necessarily provide a neutral and objective core of membership...with the requisite level of high integrity”. When Rolfe and IRT (Immediate Response Team) arrived to arrest Mr. Walker they were specifically instructed to wear their police uniforms but they elected not to take their full kit (including camouflage uniform) and instead randomly armed themselves with equipment and weapons including an AR15 rifle and other rifles, Glock pistols, tasers, OC Spray, batons, a shotgun (beanbag rounds), and a police dog. Proctor was highly critical of IRT in Yuendumu and concluded the members involved in the arrest did not attempt to utilise their twenty-first-century non-lethal options and should never have been deployed to Yuendumu to arrest Walker.

On the night of Walker’s death, arrest planning should have involved better forethought, clear communication, and risk assessment, heard the coroner. The plan was to enter the house at 5 am and arrest Walker while he was sleeping on November 10, but officers decided to do it the night before at 7 pm. The entire exercise was lacking clear team leadership and a mission plan—they did not know who was in charge.

If there had been a briefing on the suspect the police would have discovered that Walker had difficulty hearing and suffered the effects of FASD. When asked if somebody suffering from FASD may well have had problems with impulse control, part of attending IRT team Sergeant Eberl said “definitely”, agreeing that knowing this information would have been “crucial” to effectively planning an arrest however this information had not been communicated. “You would probably try and get the family members to assist you with trying to put together a plan to mitigate the risks, so they’re going to have less anxiety”.²⁰

When Leanne Liddle and the AJA team spoke to communities, they said people talked a lot about the use of excessive force by police. They recounted stories of police entering homes without warrants and an elderly man being pepper sprayed when he tried to help. They heard stories of how people said that they were often arrested with force for no reason at all and how police would “rough them up”. People asked for police to operate in their communities without exposed forearms and to not use dogs in frontline duties, and a return to respectful non-confrontational community policing of the past. “People told us that they thought that the treatment and responses they received by police specifically would not happen if they were non-Aboriginal.

²⁰ <https://www.abc.net.au/news/2022-10-17/kumanjayi-walker-coronial-inquest-adam-eberl-gives-evidence/101538222>.

People told us that they felt they were made to feel like they were subhuman. That they were treated differently because of their skin colour”.²¹

Inequitable Use of Discretion

Discretion is the freedom and authority given to police officers to make decisions based on their own judgement, within the boundaries of the law. Discretion is important because it makes space for mercy, creative problem-solving, understanding others’ perspectives, and bringing policies to life in a humane way.

In community policing, understanding the people they are employed to serve and protect is integral to using discretion, otherwise actions can become discriminatory. This is especially the case in communities where the populations are so culturally different to those policing them. A lack of cultural competency and understanding of Aboriginal and Torres Strait Islander customs, languages, and communities damages relationships and trust, exacerbates tensions, and leads to inappropriate responses by police.

In this case there were many instances of cultural insensitivity on behalf of police that caused the situation to escalate initially, and then cause distress after. First, Mr. Walker should never have been arrested on the eve of a family member’s funeral and senior police admitted to the coroner this could have been dealt with better.²² Second, police lied to the family about the passing of Mr. Walker. The family were not informed until 8 hours later and were lied to in the interim that he was receiving treatment. “Unfortunately, the way this decision was then executed, can only be described as appalling”, wrote Proctor in his report.²³ Third, when police did visit the family the next day to tell of his passing they called Mr. Walker the wrong name. Fourth, after killing Mr. Walker, police patrolled Yuendumu carrying “long arm” shotguns. Coroner Elisabeth Armitage said, “There might need to be a little bit of reflection” about what the Yuendumu community felt was a “very heavy handed and uncalled for policing response... in the days following” the shooting of Kumanjayi Walker.

Inequitable use of discretion leads to police using their power in discriminatory ways, acting as a vortex drawing Aboriginal and Torres Strait Islander

²¹ Liddle statement.

²² <https://nit.com.au/01-03-2023/5123/tactics-used-to-arrest-kumanjayi-walker-wereunsound-and-unsafe-says-senior-cop#:~:text=At%20the%20time%2C%20Const%20Rolfc,after%20his%20great%20uncle's%20funeral.>

²³ See p61–3 https://justice.nt.gov.au/_data/assets/pdf_file/0017/1221191/1-8A-Coronial-Investigation-report-of-Commander-David-Proctor-APM.pdf.

peoples into a racist justice system. Instead of putting into practice policies that could address racism, police bias, and discrimination, the inequitable use of police discretion can warp a neutral law into a racist tool this making the system unfair. Aboriginal peoples, particularly in the NT, are disproportionately targeted for arrests. This is reflected in higher arrest rates for minor offences, contributing to an overrepresentation in the criminal justice system. The prejudicial use of discretion runs contrary to the recommendations of the RCIADIC which emphasised diversion from police custody and the use of imprisonment as a last resort.²⁴

Liddle said not one Aboriginal person in consultations asked for more police to keep them safe, or to restore law and order to their community. Instead, they asked to be empowered and supported, to work in partnership with police and other agencies to keep the communities safe, and to be used for their skills of language, conflict resolution, knowledge of cultural issues, and politics. They needed empowerment and the tools to navigate a system of government and regulation that was not designed by them, for them.

Lack of Accountability and Oversight

Months before fatally shooting Kumanjayi former NT Constable Zachary Rolfe characterised his role in the police force as follows:

Alice Springs sucks ha ha. The good thing is it's like the Wild West and f** all the rules in the job really... We have this small team in Alice, IRT, immediate response team. We're not full time, just get called up from the Gd's [general duties] for high risk jobs, it's a sweet gig, just get to do cowboy stuff with no rules.²⁵

Rolfe's comments suggest he perceived his and other police officer's roles as ones they could undertake with impunity. Rolfe should never have been a police officer. There were repeated failures to discipline and punish his violence including 46 use of force incidents in his 3 years on the Alice Springs beat, none of which amounted to findings of unnecessary use of force. In a previous case concerning violence towards Aboriginal men, he was found to have lied and fabricated evidence. There were multiple complaints against

²⁴ Recommendations 78–121 <https://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol5/5.html>.

²⁵ ABC News Online, 'Zachary Rolfe said his police unit had 'no rules' and did 'cowboy stuff' prior to fatal shooting of Kumanjayi Walker', 18 March 2022, <<https://www.abc.net.au/news/2022-03-18/zachary-rolfe-text-messages-supreme-court-suppression/100921248>>.

him, disciplinary issues, and numerous reminders to turn on his body worn camera. Superintendent Virginia Read of NT police professional standards command raised concerns about Rolfe's use of force in the months before he shot Walker. Despite her concerns, no action was taken by Alice Springs supervisors.

Addressing police accountability for violence, excessive use of force, and systemic racism necessitates a proactive approach to reforming police culture and eliminating dehumanising behaviours. For as long as police allow so many areas of discretion that remains unchecked, unaudited, and unaccountable, there will always be an environment for bias and discrimination to exist, especially for those in marginalised and minority groups that include Aboriginal people.

The current protocol of internal investigations conducted by police themselves is demonstrably ineffective. To make matters worse the NT Parliament has limited the ability of disciplinary complaints against police to be maintained if they are brought more than 6 months from the incident and legislated restrictions on civil and criminal liability on police for their actions. Implementing oversight by an external international body dedicated to examining systemic racism and police misconduct would be a more suitable solution than having police investigate their own ranks. Nonetheless, this coronial inquest represented a significant improvement over internal police investigations, as it incorporates the questions posed by Walker's family and ensures they remain informed to the greatest extent possible.

After their exhaustive consultations the AJA team concluded that the NTP does not cope well with allegations of racism. Any allegation of racism is seen as an attack on them, and people are too afraid to speak up, so they do not say anything thereby allowing bad behaviours to exist, even flourish, and the culture maintains this position, normalising racism as the status quo.

"Sorry Means You Don't Do It Again"

"I apologise in advance, for any discomfort my words may cause", began NT Police Commissioner Michael Murphy at the annual Garma festival held on Yolgnu lands in August 2024, deeply aware that members of his force will not want to hear what he has to say, and "changing the culture within the agency will be tough".

"I am deeply sorry to all Aboriginal Territorians, for the past harms and the injustices caused by members of the Northern Territory Police... police officers have abused their powers or fall[en] short in their duty of care towards

Aboriginal offenders, witnesses and victims of crime” and it is time “to be accountable for the past treatment of Aboriginal people”. Murphy became the third Police Commissioner to say sorry to Aboriginal people, committing to make every effort to eliminate racism within the force and “transform relations between police and Aboriginal people... It will not be a reset; it will not maintain the status quo”. Citing the Uluru Statement from the Heart’s call for a Makarrata, or truth telling, Murphy said it “is critical for the Northern Territory Police to ‘own’ its part in the challenging history many Aboriginal people have experienced over many decades”.

Overwhelmingly, Murphy’s words affirm that history matters because past injustices are reflected in Aboriginal lives today, daily. “The intergenerational impacts of colonisation, including poverty, ongoing disadvantage and racism, are reflected in the over-representation of Aboriginal people in custody... 86% of all people incarcerated in the Northern Territory are Aboriginal, despite Aboriginal people making up 31% of the Territory’s population. Over 96% of youths in detention in the Northern Territory are Aboriginal, yet they are only 45% of Territorians aged between 12 and 17”.²⁶

Part of the problem is that Australians, and particularly police officers, do not know the history of colonisation and therefore “may lack awareness of the profound and ongoing intergenerational impacts that this history has had on Aboriginal Territorians”. Murphy’s speech gave a litany of incidents to highlight the negative impact that police have played in the lives of Aboriginal Territorians over 154 years of policing from “justified” massacres where settlers were protected from Aboriginal people resisting their incursions, to their part in the “cruel, inhumane and devastating” act of taking children away, to the police enforcement of the Intervention with “measures [seen] as racist and reminiscent of the old Protection era”. Police acts contributed to “inter-generational trauma, loss of language, loss of cultural knowledge, loss of connections to land and waters, and loss of authority structures” all of which “play a critical role in what causes disengagement, anti-social behaviour, offending, and violence today”.

Aboriginal and Torres Strait Islander people will be wary of how much action and reform truly emanates from another high-level Sorry. In Australia we have a national Sorry Day in May to mark the anniversary of the tabling in Parliament of the 1997 Bringing Them Home Report into the forced removal of Aboriginal and Torres Strait Islander children and to commemorate the survivors of these Stolen Generations. In 2008 Prime Minister Kevin Rudd also said sorry to Aboriginal peoples, particularly to the Stolen Generations.

²⁶ <https://www.abc.net.au/news/2024-08-05/nt-police-commissioner-racism-apology-viewed-as-new-beginning/104181502>.

Almost 30 years on, Aboriginal children are being removed at a far higher rate than at the time of Rudd's apology. On Sorry day marches there are plenty of banners saying, "Sorry means you don't do it again".

Acknowledging there are sceptics, Murphy knows the key to trust and success is sustained relationships between police and Aboriginal people and communities. Without leadership from Aboriginal people NTP will not be able to overcome any of their blind spots relating to racism, cultural safety, and unconscious bias. Trust must be "nurtured through genuine efforts and an openness to criticism".

Is it a "new dawning" for repairing Aboriginal relations with the force?²⁷ Murphy's appointment of Leanne Liddle as the executive director of the community resilience and engagement command as his most senior Aboriginal team member is a vital part of implementing his ambitious anti-racism strategy. Liddle's role includes challenging the recruitment process, training, and cultural reform, including recruiting 30% Aboriginal and Torres Strait Islander representation across the entire work of NTP. Liddle says she is ready to lead a "complete transformation" of the NT police and has hailed the "courage" of Murphy to appoint her. Commissioner Murphy has high hopes for what Liddle might achieve, saying she "will challenge the thinking and the current culture of the Northern Territory police force".²⁸

Murphy and Liddle are under no illusion that the task will be easy or quick to deliver on the intended outcomes, and to deliver there will need to be "substantial change" in policies, processes, and practices—both formal and informal. Paramount is to train people understand what racism may look like. "I've written to the anti-discrimination commissioner ... and I've written to the Aboriginal Justice Unit", he said. "I've said: 'The doors are open. Come and have a look at our backyard and help us reform'".²⁹

Hearts will have been lifted by the truth of his statement, but within days the NT police union condemned the apology which makes us wonder if systemic change will be quick or if it can happen at all.

²⁷ <https://www.abc.net.au/news/2024-08-05/nt-police-commissioner-racism-apology-viewed-as-new-beginning/104181502>.

²⁸ <https://www.theguardian.com/australia-news/article/2024/jul/29/nobody-is-happy-with-the-northern-territory-police-including-officers-leanne-liddle-hopes-to-fix-that>.

²⁹ <https://www.abc.net.au/news/2024-08-05/nt-police-commissioner-racism-apology-viewed-as-new-beginning/104181502>.



21

Racial Profiling, Policing and Lack of Accountability

Tamar Hopkins

Introduction

Racial profiling occurs when a person in a position of authority responds to another with unjustified suspicion or distrust because of the other's race, religion, Indigeneity, nationality or ethnicity. It occurs at the point a person is selected for investigative attention and in the treatment that a person receives by authorities. Examples of treatment that could correspond to racial profiling include using excessive force, failing to provide medical treatment, failing to take adequate care, misidentification of the perpetrator in family violence cases, inadequate investigation of racialised missing persons, dismissing complaints, excessive questioning and searching. While in many jurisdictions, racial profiling is illegal, it endures as a defacto mechanism by which institutional (state, corporate, organisational) power is exercised to enforce racial hierarchies. Racial profiling sends its targets clear messages about their status in society: 'you do not belong', 'you are an outsider', 'you are not welcome', 'you do not matter'. Racial profiling by government authorities involves an exercise of state power and the selection of targets reveals with clarity those groups who the state distrusts. Targeted groups know who they are. There is no need to translate the meaning of the exercise of authority to them.

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Racial profiling strips its targets of power through degradation and humiliation. In 2018, in Victoria, Australia, responding to a survey, an Aboriginal woman described being pulled over in her car by two Victoria Police officers for a 'random check':

During the encounter, her car was searched without reasonable grounds. She says the police 'made me get out of the car and sit in the gutter legs crossed. They looked through my car asking who the items belong to. I thought I answered respectfully 'Yes Sir' and they asked if I was being a smart arse.' At the end of the interaction, the police, having detected nothing that could give rise to a charge or fine, or even a warning, told her she was free to go... This experience left her feeling dehumanised, humiliated, scared and fearful. She felt powerless, without rights and with no capacity to prevent future encounters like this with the police (Hopkins, 2022, 1).

Racial profiling is linked to suicidal feelings, despair, reduced social participation, poor health, alienation (Selvarajah et al., 2022) and increased incarceration rates (Harcourt, 2007). It impacts on the belonging and participation capacity of whole communities of people, entrenching and reinforcing racial underclasses. Because of its destructive outcomes, racial profiling is outlawed under international law and in the domestic legislation of many countries. International rules against racial discrimination are so fundamental that they may not be abrogated in times of emergency (Art 4, ICCPR).

However, despite international and domestic legal and policy bans, racial profiling remains an enduring practice in every jurisdiction where it has been investigated (Epp et al., 2014; S. Bowling & Phillips, 2007; Barnes 2019; Bobis et al., 2021; Hopkins, 2022; Shiner & Thornbury, 2019; Wortley 2019, 2021).

In 2020, when I started to investigate racial profiling prevention strategies, I had hoped to find examples of structural reforms to police practice that had reduced or prevented racial profiling. During March to May 2020, I interviewed academics, lawyers, practitioners and activists in Canada and the UK. I also undertook an extensive literature review.¹

My research examined strategies attempted in England and Wales and North America to reduce racial profiling. While many of these strategies were the result of hard fought, creative and rare victories, I discovered that these attempts at regulating police conduct had largely, to date, failed to reduce racial profiling. Alternatively, their impact on racial profiling was

¹ Research approved on 28 September 2018 by UNSW Human Research Ethics Committee (HC180500).

unknown due to a lack of transparency in police activities. While in some cases the adopted strategy produced a significant, if temporary, reduction in the frequency of 'stop and search' as it is called in England and Wales, or 'stop, question and frisk' as it is called in New York, examination of the remaining police contact revealed that it was just as, if not more, racially disparate (See for eg Shiner & Thornbury, 2019; New York Civil Liberties Union, 2015). Black people continue to be disproportionately beaten, killed, neglected, harassed, interrogated, detained and imprisoned by police despite years of research, regulation and litigation (See for eg Wortley & Jung, 2020; Wortley et al., 2020). As Canadian journalist Desmond Cole accurately states, 'Where Black people and other oppressed groups are concerned, rules directing police behaviour become all but meaningless' (Cole, 2020, 127).

The key question to ask then, is why are international attempts to prevent racial profiling *failing*? Is police reform possible or should resources be focussed on creating alternatives to police? (Vitale, 2017). Can the targeting of racialised people end while its fundamental drivers (white supremacy, colonisation, racial capitalism and global and domestic inequality) operate? Tactical questions arise: If police abolition is the goal, should we divest immediately from state mechanisms and stop attempting to hold the state accountable (Diverlus et al., 2020, 46, 47) or is the solution a complex mix where a world without police remains the overall goal, while incremental steps provide the pathway to build momentum (Herzing, 2015)?

This chapter has three intentions. Firstly, it provides a brief sketch of how police are conceived to be regulated in Canada, England and Wales and Australia. Secondly it explores why police regulation is not working. Thirdly it proposes a strategy for moving forward based on creating police alternatives and drawing on the lessons of global attempts to prevent racial profiling in policing.

How Are Police Regulated? Comparing Police Regulation in Canada, England and Wales and Australia

In theory, racial profiling should be preventable by banning racially biased policing (changing the rules) and enforcing the ban through effective accountability mechanisms (effective enforcement). Effective police accountability relies on the existence of a set of mechanisms and tools to regulate the police. There are two dominant models. The first relies primarily on bureaucratic or administrative mechanisms (Bowling et al., 2019, 4,5). The

second regulates through holding police accountable through adversarial legal processes and external investigation (Bowling et al., 2019, 244). While all jurisdictions attempt a combination of the two models, by comparing the way police are primarily regulated in Canada with England and Wales, it is possible to draw conclusions about the relative merits of each model to enforce rule compliance in police behaviour. The comparison also makes starkly visible the gaps in the Australian police regulatory environment.

Police Regulation in England and Wales

One of the unique features of police regulation in England and Wales is the level of bureaucratic oversight and control that Parliament and the executive hold over the police. The Metropolitan Police are accountable to the Home Office and His Majesty's Inspectorate of Constabulary and Fire & Rescue Services. Furthermore, these entities, along with the College of Police, participate in setting the police agenda and provide data and detailed research into policing. Since 2011, two additional governance features have been added: Police and Crime Commissioners and Police and Crime Panels. In addition, the Equality Commission has a focus on police and the House of Commons conducts regular inquiries into the police. Along with this oversight, in 1984, the English Parliament enacted the *Police and Criminal Evidence Act* ("PACE") which regulates the use of search powers to an extent unseen elsewhere. PACE currently bans the use of race and other identity factors including past criminal history from being part of the 'reasonable grounds' for suspicion that police are required to hold to conduct a search. Furthermore, it requires the monitoring and reporting of searches, it bans consent searches and requires police to establish community panels to provide feedback on the use of the power.

While the police regulatory bodies established in England and Wales have unprecedented power over policing and obtain exceptional levels of information from and access to the police (HMICFRS, 2013), when it comes to reducing the discrimination in the use of stop and search, these bodies have had less success (Dodd, 2021). Furthermore, while novel in engaging in civilian participation and oversight, Police and Crime Panels are described as 'dogs that didn't bark' (Bowling et al., 2019, 249).²

The policing of non-white citizens in England and Wales has always been problematic for racialised groups. In *Police Power and Black People*, Derek Humphry charts the catastrophic impacts of police on Black lives in England

² See also Katrina Ffrench interview dated 21 April 2020.

and Wales up until 1972 (Humphry, 1972). Policing of Black people has since been the source of multiple inquiries and community campaigns. Commentators have observed that much of the policing of Black people falls outside the regulatory framework described above (Aspden, 2007; Bowling, 2020).³ For example Black people are labelled ‘gang involved’ and many are placed on gang databases without justification or regulatory oversight (Williams & Clarke, 2016). Furthermore, Black people are subject to intense scrutiny through ‘*stop and account*’ which is not recorded and not subject to PACE restrictions.⁴

The investigation of police complaints in England and Wales has also faced consistent criticism (D. Taylor, 2020; Smith, 2006). Currently in England and Wales while the Independent Office for Police Conduct (the IOPC) investigates complaints about deaths or serious injuries, the remaining matters are investigated by the police.⁵ In August 2020, shortly after the 2020 Black Lives Matter uprising, the House of Commons Home Affairs Committee initiated an inquiry into the IOPC.⁶ This is the fifth such inquiry by the House of Commons in 40 years.⁷ Evidence provided to the Committee by Deborah Cole and Michael Oswald indicates that previous reforms have not made significant improvements in the experience of Black and Ethnic Minorities or their families in making complaints.⁸ In 2020, Graham Smith writes: ‘It is evident that despite several attempts, meaningful reform of the police complaints system has proved unattainable up to the present time.’⁹

Stop and search rates in England and Wales fell by an extraordinary 75% across the 43 police agencies between 2011/2012 to 2016/2017 (from 1,229,324 to 303,228) (Shiner & Thornbury, 2019, 32, 33). This drop may, in part, be caused by the HMICFRS’s scrutiny on searches. A range of factors including litigation in the European Court of Human Rights in *Gillan and Quinton v The United Kingdom* (2010) may have also contributed (Bowling & Marks, 2017; Also see Murray & Harkin, 2017). However, while

³ See also Patrick Williams interview 3 April 2020, dated where Patrick draws on lessons from the Windrush Scandal.

⁴ Interview with Patrick Williams 3 April 2020, Interview with Sarah Flanagan 5 May 2020.

⁵ Independent Office for Police Conduct, accessed 25 January 2021 <http://www.ipcc.gov.uk/complaints-reviews-and-appeals>

⁶ <https://committees.parliament.uk/work/495/police-conduct-and-complaints/>

⁷ Graham Smith, Written Evidence to the Home Affairs Committee Inquiry into Police Conduct and Complaints, September 2020.

⁸ Oral Evidence to the Police Conduct and Complaints Inquiry by the Home Affairs Committee of the House of Commons 27 January 2021 (Oral Evidence to the Macpherson Report 21 Years On (2020)).

⁹ Graham Smith, Written Evidence to the Home Affairs Committee Inquiry into Police Conduct and Complaints, September 2020.

the overall number of stop and searches has dropped, its racial disproportionality has increased. For example, in Northamptonshire, in 2011, black people were searched at twice the rate of white people, but in 2017, they were searched at nine times that rate (Shiner & Thornbury, 2019, 49). As Shiner and Thornbury say, 'the less stop search there is, the more it seems to focus on minority ethnic groups' (Ibid). It is also quite possible as Delsol¹⁰ and Williams¹¹ point out that the reduction in searches is a result of a reduction in *recording* of searches and that the unregulated 'stop and account' now dominates as a street control tactic.

Unfortunately, the 2019/2020 figures on stop and search in England and Wales (577, 054) show that searches are on the increase. This indicates that reductions in search numbers caused by the work of HMICFRS among others, may only be temporary. Overall Black people continue to be searched at nine times the rate of Whites (Dodd, 2020).

In a study designed to increase the reasonableness of police searches, sworn police officer Sally Trattle in Northamptonshire developed a project by implementing a regulatory system that leads to an escalating disciplinary response in line with Braithwaite's regulatory pyramid (Shiner, 2015, 167) to monitor and respond to police failures to meet the PACE 'reasonable grounds for suspicion' threshold. The project established a set of community panels whose aim was to adjudicate individual police decisions to search a person to determine whether the police officer had met the reasonable suspicion threshold before initiating the search. A study into the impact of the panel on police decision-making found that overall, the project was strongly supported by the police officers and community members who had had an experience of being part of the panel. But they also found that the panel's decisions faced fierce resistance by police engaged in 'pro-active' drug enforcement (Shiner & Thornbury, 2019). Furthermore, while overall there was a reduction in the number of searches taking place, there was a sharp *increase* in the racial disproportionality of the stop and searches. At the end of study, one third of all stop and searches were being conducted by the resistant pro-active drug police. An implication from this study is that a focus alone on increasing the police reasonable grounds use of stop and search will not fully address racial profiling. Firstly, as this study shows, police who target racialised people are also those most resistant to having their grounds for action analysed. Secondly, even if an individual search is reasonable, if it is part of an operation or pattern of conduct, that is racially targeted (i.e. by a group or individual

¹⁰ Interview 31st March 2020.

¹¹ Interview 3 April 2020.

who investigates only or predominantly racialised groups) the result is racial profiling.

While Thornbury and Shiner's study demonstrates that the grounds for the use of '*stop and search*' by non-resistant police groups, can be regulated through well-designed community panels, lawyers in England and Wales who regularly act for policed individuals state that unjustified police searches police are routinely approved by courts.¹² While the Courts do have a role in the English police regulatory framework, other than in the form of major inquiries such as Macpherson and Scarman, the English judiciary has not been at the forefront of preventing racial discrimination by police (Moeckli, 2007). For example, in its decision in *Gillan* members of the House of Lords accepted racially stereotypical tropes without evidence¹³ and asserted support for 'common-sense policing' arising from police training¹⁴ even where this might be racial discriminatory. While, the English common law has displayed scepticism of police and an interest in protecting fundamental rights,¹⁵ when it comes to issues of race and police stop and search powers, English caselaw is far behind its North American counterparts.¹⁶ While stop and search data in the UK clarifies that the policing of black people is highly targeted (Bowling & Phillips, 2007), to date, English case law has made no findings of racial discrimination by police based on them.¹⁷ If, as scholars have argued, the law and judicial decision-making shapes police culture (Dixon, 1997, 144, 227), then absence of case law findings about police racism in the common law¹⁸ undermines the capacity of the English courts to participate in the regulation of racial profiling. This is despite landmark inquiry findings that the police are institutionally racist (Holdaway and O'Neill 2006).

¹² Interview with Chanel Dolcy 18 March 2020

¹³ *Gillan and Quinton v The United Kingdom* (2010) ECtHR 4158/05, per Lord Brown of Eaton-Under-Heyward [81].)

¹⁴ *Gillan and Quinton v The United Kingdom* (2010) ECtHR 4158/05, Lord Bingham [39].

¹⁵ See for example *Christie v Leachinsky* [1947] AC 573.

¹⁶ See for example, (R (on the application of Roberts) (Appellant) v Commissioner of Police of the Metropolis and another (Respondents)[2015] UKSC 79) *Diedrick, R (On the Application of) v Hampshire Constabulary & Ors* [2012] EWHC 2144 (Admin) (26 July 2012) compared with (R. v. Le 2019 SCC 34)

¹⁷ See for eg. R (on the application of Roberts) (Appellant) v Commissioner of Police of the Metropolis and another (Respondents)[2015] UKSC 79.

¹⁸ See for eg Roberts, R (on the Application of) v The Commissioner of Police of the Metropolis & Ors [2014] EWCA Civ 69 (04 February 2014). See Sarah Flanagan quoted in (T. Hopkins 2021b).

Police Regulation in Canada

In contrast, to England and Wales, in Canada, judicial officers exhibit a clear and relatively consistent understanding of institutional racism in policing.¹⁹ Canadian judges are more willing to find each other and the police to be racially biased or discriminatory.²⁰ Furthermore, Canadian police chiefs appear to be more willing to accept that their forces have a problem with racism (Closs and McKenna 2006) and take steps to give the appearance of addressing it (Toronto Police Service, 2013). However, while it seems that (some parts of the) Canadian judiciary and police are more likely to self-examine, the policies and legal remedies they offer are yet to impact on practice. Discriminatory policing continues to be the norm (Cole 2020; Foster et al., 2016; Maynard 2017; Wortley 2021).

Along with significant Inquiries into police conduct (McNeilly, 2018),²¹ and a sustained focus on racial profiling by the Ontario, Ottawa and Halifax Human Rights Commissions, litigation has become an important part of the regulation of policing in Canada. The work of impacted individuals and their lawyers has led to some of the clearest legal articulations of racial profiling that exist globally (Tanovich, 2018).²² Furthermore courts have defined and limited the power of police to stop and question individuals on the street (McDonald & Taylor, 2019). On the other hand, the regulatory bodies established specifically to regulate the police are less successful. In Ontario, the Special Investigations Unit has faced a strong criticism for failing to prosecute police and failing to keep records or analyse the impact of institutional racism in the cases before them (Marin, 2012; Tulloch, 2017). Furthermore, the Office of the Independent Police Review Director continues to refer complaints to the police for investigation despite 2017 recommendations that it investigate these matters (Tulloch, 2017, 168). Canada also has a system of civilian police boards to provide oversight over municipal police. However as journalists Desmond Cole and El Jones discovered in Toronto and Halifax respectively, despite the diversity of their membership, civilian police boards are volunteers who are functionally powerless to control the police (Cole, 2020).²³ These oversight mechanisms have nothing like the power, access and bureaucratic control that the Home Office, House of Commons, College

¹⁹ See for eg, *R. v. Le*, 2019 SCC 34

²⁰ See for eg, *R v Brown* [2003] O.J. No. 1251.

²¹ Frank Paul Inquiry, Stonechild Inquiry, Ipperwash Inquiry, Report on Royal Commission of Aboriginal Peoples October 1996 (Canada).

²² See for eg: (*R v Brown* [2003] O.J. No. 1251.; *R. v. Le* 2019 SCC 34; *R. v. Dudhi*, 2019 ONCA 665; *R v S* (RD) [1997] 3 SCR 484)

²³ See also Interview with El Jones 18 April 2020.

of Policing and His Majesty's Inspectorate, have over police in England and Wales.

An example of Canadian litigation that resulted in the regulation of police practice, occurred in Halifax, Nova Scotia. In 2003 Kirk Johnson, a black Nova Scotian professional boxer who drove a sports car with Texan number plates was pulled over by police six times for no reason. On not one occasion was a fine or caution issued.²⁴ He filed a racial profiling claim against the Halifax police service in the Nova Scotia Human Rights Commission and in 2004, as part of the settlement, the police agreed to collect data on who they stopped. In 2015, in response to the Black Lives Matter movement and ongoing local agitation, the Canadian Broadcasting Corporation requested the stop data that had been collected since 2004 from the Halifax police. In response to the official request, Halifax police eventually agreed to release *street* check data, but refused to release *traffic* stop data. The street stop data was provided to the Nova Scotian Human Rights Commission who commissioned leading Canadian racial profiling data scholar Scot Wortley to analyse it. The Halifax police define 'street check' as a stop where the officer has no basis for believing that the person has committed a criminal offence. Fundamentally, these are stops that the police have no objective basis on which to conduct, but so do anyway. Wortley concluded that there was a large difference between the rate at which white and African-Nova Scotians were being subject to a 'street check'. White Nova Scotians are 'street checked' at the rate of 2.5 per cent of their relative size in the population, African Nova-Scotians are stopped at the rate of 15 per cent (Wortley, 2019). In response to the report, the Halifax police issued a moratorium on street checks and the Human Rights Commission commissioned a legal opinion into their legality. The legal opinion determined that street checks had no legal basis and were effectively unlawful (J. Taylor & McDonald, 2019). Subsequently the Nova Scotia Justice Department banned 'street checks'.

While this appears to be an excellent regulatory outcome, the Nova Scotia community have little faith that the ban will prevent the *practice* of street checks; fearing it will mean simply that police stops will no longer be *recorded*. Consequently, while the ban on street checks in Halifax is a step in the right direction, what the community needs is proof that police behaviour has changed. At this stage, Halifax has failed to implement an effective rule monitoring and enforcement mechanism. Furthermore, traffic stops clearly need to be part of this process. On 9 July 2020 the Nova Scotia Advocate reported:

²⁴ Interview with Kimberley Franklin 4 April 2020.

“Since the Wortley Report was issued over one year ago, street checks have not stopped and police violence against Black people has not abated. Police have continued to engage in violent attacks against Black people, including mother Santana Rao. We’ve also seen an increase in surveillance and racial profiling of Black people during the pandemic, including a documented incident at Victoria Park,” said the group Abolish the Police – Halifax/Kjipuktuk.

Further research is needed to establish whether the Halifax street checks ban has worked, or whether the practice continues.

Police Regulation in Australia

The regulation of police in Australia has neither the administrative apparatus of England and Wales nor, in a sustained way, the active use of the judiciary or Human Rights Commissions as in Canada. Australian police forces are large and complex bureaucracies, with a powerful, almost universal police union membership (Finnane, 1994). Police hold a powerful sway over politics in most Australian jurisdictions giving them substantial autonomy (Dixon, 2007, 31). Furthermore, politicians are quick to defend police from any accusation of racism (ABC TV, 2004).

While in each Australian jurisdiction, there is a Minister for Police, there is no substantial and powerful regulatory authority such as the Home Office between the police and Minister to monitor and research police powers and evaluate the need for the power police request. For example, while the Victorian Department of Justice and Community Services manages Corrections Victoria (which runs the prisons system), Victoria Police is described by the Department as being at arm’s length: a ‘stakeholder’ (Department Justice Community Services Annual Report 2019–2020, p14). This indicates there is no department that takes responsibility for police policies or activities. The use of everyday police powers in Australia is not monitored by an Inspectorate nor are their Civilian Boards. Furthermore, policing functions are not subject to routine scrutiny by Parliament in the way that occurs in the House of Commons in England and Wales. Data on racial profiling and the use of force are not automatically made public and are largely unmonitored, except by small or unfunded community organisations. While various jurisdictions within Australia have held parliamentary inquiries, Inquests and important Royal Commissions, including the 2023 Yoorrook Justice Commission, these brief inquiries do not exercise anything like the power of the ongoing apparatus established to monitor and regulate police in England and Wales.

Without the administrative and bureaucratic power of a Home Office equivalent, the police in Australia, supported by the vote winning and destructive power of law and order politics, are able to resist change and accountability and demand resources and power.

While Australia lacks regulatory and bureaucratic apparatus, neither is its judiciary cognisant of its role as the only regulators of police of police power currently available (Presser, 2001). Partly due to adverse costs awards and low costs recovery for lawyers, and until recently in Victoria and NSW, a lack of legal aid funding for criminal defence work involving racial profiling and police misconduct, Australia has a piecemeal history of litigation against police. Furthermore, the investigation of police complaints is overwhelmingly left in the hands of police (McCulloch & Maguire, 2021; Prenzler & Maguire, 2023).

The absence of effective regulation of police in Australia has meant that racial targeting by police occurs with impunity (T. Hopkins, 2021a; T. Hopkins & Popovic, 2024; Yoorrook Justice Commission, 2023). Victoria Police search data from 2023 shows that while police are *less* likely to find contraband on people they perceive to be African, they are six times *more* likely to search them than white people (Centre Against Racial Profiling, 2024). Aboriginal people are 11 times more likely to be searched in Victoria than white people (ibid). This is a dangerous and sometimes lethal position for many racialised people and means that Australia fails to comply with the rule of law and its obligations under international treaties such as the Convention on the Elimination of All Forms of Racial Discrimination (Committee on the Elimination of All forms of Racial Discrimination, 2020).

While there are structural gaps in Australia that explain the lack of accountability of policing in Australia for racial profiling, my brief overview of English and Canadian accountability systems indicates that racial profiling continues to exist as a problem in these localities. This suggests that while the poor state of Australia's police accountability mechanisms demands attention, something else is required to end racial profiling.

Understanding Police Resistance

Research by Michael Shiner sheds some light onto the difficulties facing police reform. His work examined the police response to the Macpherson Inquiry report in 1999. This Inquiry was triggered by a police investigation of the racially motivated murder of black teenager Stephen Lawrence in 1993, in London. Macpherson described the police as 'institutionally racist' (Marlow,

2000, 5). However, as powerful as the Macpherson Report's findings were, its recommendations failed to lead to effective improvements in structural accountability. Instead the police institution focussed its attention on addressing its racism problem through 'cultural change' (O'Byrne, 2000, 109). Shiner's research found that this was met with fierce organisational resistance (Shiner, 2010).

As I discuss below, racism is not an attitude problem, it is structured into the practice of policing. Addressing racism requires enforceable changes in the police practices that result in racial discrimination: the use of biased databases, stop and account, stop and search, the use of force, neglect in custody, misidentification of the survivors of family violence. Simply banning racism is not enough as can be seen in the following example. The UK legislation setting out when police can engage in a stop and search is clear: race *cannot* be a reason used to stop a person.²⁵ The subversion strategy is simple: denial. In a case London based lawyer Sarah Flanagan was involved in, a new recruit wrote 'I stopped the kid because he was black.' He had not yet learnt to use the 'alternative' explanations' of more senior offences.²⁶ This example reveals how the practice of racial profiling continues through the development of alternative explanations.

Since the introduction of the PACE stop and search recording requirement in the 1990s, England and Wales have very clear statistical evidence that Black people are more likely to be searched than white people (Shiner et al., 2018). However, rather than confronting this reality, the police have 'learned to defend themselves from the use of data.'²⁷ Using circular arguments to demand data be benchmarked against 'available populations' rather than the census (Miller, 2000, Quinton, 2015) and rigid definitions that institutional racism requires individual intent rather than institutional effect (Singh, 2000), policing scholars seed confusion, which the UK judiciary is yet to resolve.²⁸ Consequently police continue their discriminatory practices despite decades of evidence of wrong-doing.

In contrast, police in Canada have been observed using a different tactic to the denial strategy of the UK police. Their resistance strategy is to admit and apologise to defuse tension and get people off the streets, before carrying on

²⁵ "Revised Code of Practice for the Exercise by: Police Officers of Statutory Powers of Stop and Search; Police and Criminal Evidence Act 1984 (PACE) - Code A" 2014.

²⁶ Interview with Sarah Flanagan 5 May 2020.

²⁷ Interview with Michael Shiner, 20 March 2020.

²⁸ Roberts, R (on the Application of) v The Commissioner of Police of the Metropolis & Ors [2014] EWCA Civ 69 (04 February 2014)

as usual. Halifax based academic and journalist El Jones articulates this with crystal clarity:

‘The cycle of reform is part of the institution. Institutions actually depend upon crisis. [Engaging in] ‘reform’ [is] what allows them to maintain their life. So if they refuse to [do something]...we’d actually be in the streets constantly....so they ... give us enough fuel [so that we get off the streets and we say] ‘Oh, yeah, we won this victory, right.’ ... Part of neoliberalism is this shift to public relations. [E]verything is a PR response....So [they] will put a black person on the police board [or put in a new] chief or whatever it is...and then people, [say] ‘give them a chance’. And then you have to wait five years [and nothing changes].’²⁹

As Jones articulates, the changes offered by police and state are superficial and fail to address the police practices that are discriminatory. But they are dressed up in terminology and a public relations campaign that silences dissent until the next wave of activism. People who are unhappy with the superficiality of the reforms are described as cynical.³⁰

Another example of superficiality in Canadian police reform is provided by Scot Wortley commenting on the Toronto Police Service:

What I have seen is police agreeing to do something and then unless they are held to account through politics, the media or a Commission, doing everything they can not to collect or provide or cross link the data in a way that makes it useful. Take Use of Force forms. These Forms have been around for 30 years. They were introduced as an accountability measure. They collect 5 forms of information on lighting, but nothing on civilian race, civilian gender, age etc. They are sent in hardcopy to the training academy and then destroyed after 1 year, with no accountability attached to them...Failure to collect data should be seen as a wilful attempt to sweep the problem under the carpet.³¹

Wortley also described witnessing police resistance to data collection on the race of who they stopped. He noticed that black people were sometimes recorded as white to make the figures look more equitable.³²

Police resistance to reform is wholly supported and encouraged by police unions. El Jones articulates this as follows:

²⁹ Interview with El Jones 18 April 2020.

³⁰ Interview with El Jones 18 April 2020.

³¹ Interview with Scot Wortley 4 May 2020.

³² Ibid.

The minute a police chief does even the barest gesture towards [acknowledging that] ‘racial profiling is a thing’ ...they start leaking to the media...about how the chief is a puppet, how he’s incompetent. You know... he can’t really... run the police because he’s bowing to public pressure.

The powerlessness of police chiefs is clear in a US example. In Minnesota, 46 per cent of police and corrections officers who were fired for misconduct between 2014–2019 were re-instated on appeal (Dewan & Kovaleski, 2020). The power of police unions to resist and prevent reform is one of the key reasons police reforms struggle to be established (NYT Editorial Board, 2016). In Canada, Police Union backlash and in England and Wales, resistance from proactive police units and the Police Federation can derail reform strategies and render them ineffective.

Also preventing reform are the many administrative appeal bodies and courts who fail to identify or problematise racism and police misconduct. Ultimately these bodies and the legal precedents they establish enable and sustain the status quo.

Resistance to change is also aided and abetted by actors in the media, politicians from all side of politics, and the saturation of white supremacist discourse across society that links race and particularly Indigenous, African and Muslim identity with criminality, dangerousness and risk. Patrick Williams explains that in the UK ‘gang’ is code for ‘young black males’.

Labelling young black men, almost definitionally, as ‘gang involved’ or potentially ‘gang involved’ justifies their status as police property and licences police involvement. Patrick Williams’ work identifies how this labelling is sustained and perpetuated across the work of many actors in the community.

Sustaining Institutional Change—From Superficial to Structural

Institutional change in police practices requires the investment of power into communities. Simultaneously power must be divested from the police, their unions, and the white-supremacist logic that licences and sustains the criminalisation of racialised people. This cannot be done in a superficial way. What is required is a fundamental change in the role of police in society. This requires the deployment of alternatives to police and the realisation of economic, social and cultural rights. While ever there are police, there must be effective accountability, though as we have seen, to date, this has not been satisfactorily achieved in England, Canada or Australia.

Changing the Role of Police in Society

The criminal legal system focusses on the acts of racialised and other stigmatised individuals while ignoring institutionalised human rights violations (McConville et al., 1991, 206). It criminalises those who are systematically and structurally disadvantaged and fails to address the neo-liberal, capitalist, white supremacist government policies that sustain homelessness, poverty, disadvantage and punish disability, mental illness, intergenerational trauma and dispossession.

The glorified role of police makes it hard for mainstream media to sensibly discuss a reduction in police power or even police abolition. But as Bowling et al. note, the presumption that ‘the police are a functional prerequisite of social order and that without a police force chaos would ensue.... is an unwarranted ideological assumption. [...] The police contribution to crime and order maintenance is debatable’ (Bowling et al., 2019, 3). Recent books including *Defund the Police* by Chris Cunneen (2023) and *The End of Policing* by Alex Vitale (2017) make powerful critiques of any attempt to reform the institution of policing, both arguing that policing is dangerous, violent, racist and fundamentally unnecessary. I agree with these propositions. Criminalisation has been a wasteful diversion of state resources. The urgent task ahead is the rapid reduction of policing and criminalisation, accompanied by the simultaneous resourcing of fundamental rights such as housing and basic income and building alternative first responder and dispute resolution systems.

Remove the Order Management Function of Police

In the pathway towards abolition, one of the first critical steps is to remove the order management functions of police. Increasingly unequal access to adequate housing, income support and health care has resulted in the ‘organised abandonment’ (Anthony et al., 2024) of particular populations who are left in the ‘care’ of police. Police involvement in ‘order maintenance’ is a large proportion of the day-to-day function of the police (Bittner, 1974). However, as Victoria Police Association head Wayne Gatt argues: ‘the best people to deal with mental health crisis’ aren’t the police’ (Simon Love, 2021).

If the primary functions of the police are precisely those functions they are ill-equipped to perform, then governments must fund adequate housing and income support, public health systems and social workers who can work constructively with community to create long-term solutions to social problems without the threat of criminal sanctions.

Alternatives to Police

Creating alternatives to police will reduce racial profiling (Herzing, 2015; Diverlus et al., 2020; Maynard 2017; Vitale, 2017) and reduce the grip police have on the public and political imagination that police are the solution to all social problems. Alternatives to police can be divided into three categories. The first category involves the decriminalisation of a range of offences where a harm reduction strategy would be more appropriate (See (1) in Fig. 21.1). The second is to reduce the drivers of harm production (including the criminal legal system itself) (see (2)–(8) in Fig. 21.1). The third is to replace the police with community based or technological alternatives (see (9)–(12) in Fig. 21.1). Community-controlled alternatives will need to be culturally safe and based on the basic principles of right to adequate housing and income, health care, education, opportunity, social equity and self-determination.

Figure 21.1 sets out 12 strategies to reduce police contact with the public that are common to many justice re-investment/crime reduction strategies (eg Burns, 2012; Wahlquist, 2021). The decriminalisation and regulation of the sale of drugs (Chatwin, 2016), coupled with the funding of anti-addiction programs has the potential to decrease police work dramatically (Howard, 2020). For example, in 2018/2019, 83.5 percent of police searches without warrant in Victoria were drug related searches (Centre Against Racial Profiling, 2024). If drug possession was no longer an offence and its sale was regulated, this would result in a dramatic reduction of police contact with

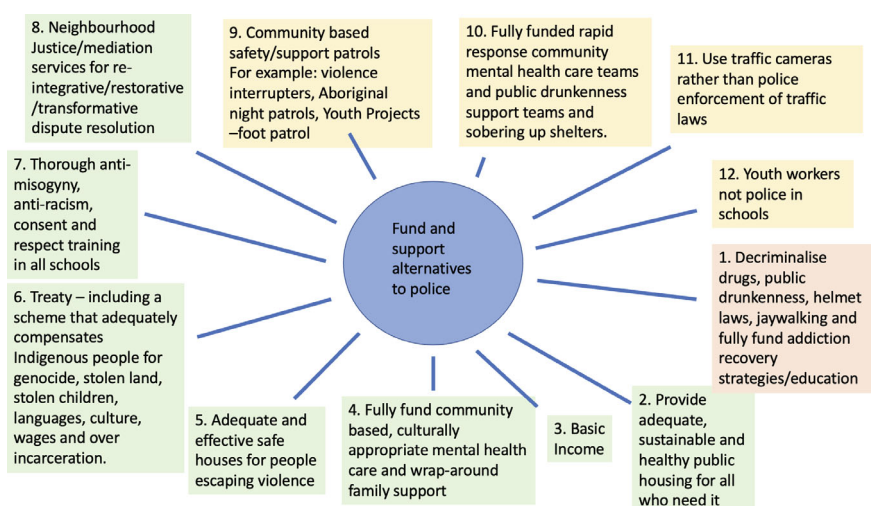


Fig. 21.1 Alternatives to police

the public. Furthermore, the reform-resistant, pro-active, racially targeted drug police in Shiner and Thornbury's study would no longer have job to perform. There are many other areas where decriminalisation requires attention. For example in Scotland, violence is being treated as public health rather than criminal issue (Linden, 2023). Decriminalisation and removing police from family violence interventions coupled with the provision of alternative housing and income support, and alternative dispute resolution may result in greater harm reduction and safety for survivors.

The second approach involves addressing the drivers of harm. The provision of adequate health and mental health care, culturally appropriate family support, public housing and provision of basic income would reduce poverty and health-related behaviours that are currently criminalised. This requires a fundamental shift from neo-liberal capitalist conceptions of a minimal role of the state, to fully embrace the rights contained in the International Covenant of Social, Economic and Cultural Rights. Nine out of every 10 prisoners in Australia are male (Tyler, 2019). Positive-masculinity programs examine the beliefs that men have that lead to their violent behaviours and attitudes towards women and each other (Irvine et al., 2018). Programs that address patriarchal belief systems from the start of primary school may assist in undermining violence, misogyny and other gender related harms. Similarly, the ongoing effects of colonisation continue to generate inter-generational trauma for indigenous communities. A Treaty and other compensation measures could start the process of reckoning with these founding injustices (Brennan, 2004).

Thirdly, there is a need to *substitute* the existing use of police for technological or community alternatives. Traffic cameras could be used to identify driving offences rather than police traffic patrols (O'Connor, 2021) offering a replacement strategy (if positioned equitably) that could eliminate police bias (Barnes, 2019). A rapid response community mental health care team could safely and expertly address people in acute mental health distress. While studies have examined mental health workers working alongside police (Walker et al., 2016), it is possible to envisage scenarios where properly trained mental health workers on their own are more effective at de-escalating potentially violent situations than police (Vera Institute of Justice, 2022). Community violence interrupters, interrupt violence and prevent harm. Their role is not to arrest or collect evidence to prosecute individuals, but to create safer communities. Violence interrupters are being trialled in Minneapolis (Winter, 2020) and have been used in Chicago (Violence Interrupters, 2022). Alternative first responders could also interrupt family violence. Survivor safety is not necessarily the focus of police, who

instead consider whether there is enough evidence to charge the offender. By shifting away from criminalisation and towards safety, non-police interveners can attend to the safety and long-term needs of the survivors. In Australia there are examples of alternatives to police in the form of Aboriginal Night Patrols (Porter, 2016) and public drunkenness patrols (Rooney, 2024). These community-based patrols could be adapted for all places police currently patrol. Instead of police attending schools, youth workers could be funded to support children with behavioural/trauma issues. Finally, rather than the criminal legal system, we could use alternative dispute resolution systems, aimed at restorative or transformative justice. These steps require an investment in community rather than criminalisation through police and prisons.

Recognise that Racial Profiling Is a Practice that Is Structured into Police Work and Is Not a Training or Education Issue

As we transition to police alternatives and decriminalisation, any remaining policing functions must structure out the opportunity for racial profiling. Understanding racial profiling as an institutional outcome rather than an individual failure (though it may also include intentional or unconscious racism) has profound implications for the strategies needed to prevent it. Anti-racism education and training generally assumes that the problem of racial profiling is attitudinal. However, even if anti-bias training could change attitudes, it has been shown to have no effect on disproportionality in stop and search in (Shiner et al., 2018, 7) (see also Kahn, 2018, 50). This is because racial profiling is structured into police practices. It arises through the strategies police use to analyse risk, construct suspicion, run operations and rationalise the targeting of race based on alleged crime rates. Preventing institutional racism does not start with attitude change. It requires changing 'the way we do things around here' (Martin, 2006). Racist practices create racist attitudes (Kendi, 2019). Attitudes are formed as a way of explaining racist outcomes. Institutional change will occur when there are changes made to what police are permitted to do, not to their education. This means transforming the rules of engagement and making non-discrimination non-negotiable Fig. 21.2.

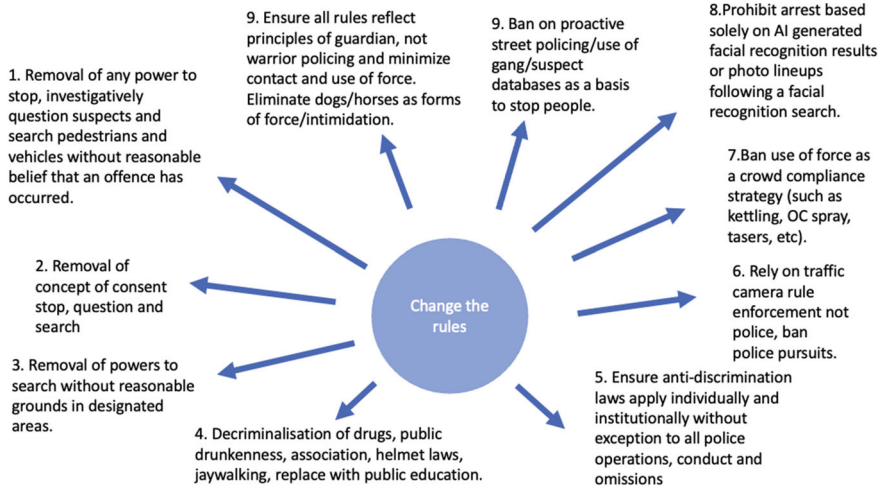


Fig. 21.2 Change to the rules of engagement prevent racial profiling

Ending Impunity through Real Accountability

Changing the rules to reduce police power is politically difficult. Of equivalent difficulty is ensuring that police comply with legal change. As restrictions on who and for what purpose, police initiate investigations represent a fundamental shift in the way police do their work, enforcing new behaviour requires significant attention. While legal limitations on police conduct can influence police behaviour (Rushin and Edwards, 2021), in the absence of accountability, it is not possible to simply change the rules and expect police will comply. There has always been distinct gap between 'law in the books' and 'law in action' (Bowling & Marks, 2017). While many models have been devised to explain this difference (Bowling & Marks, 2017, 65–69), a reoccurring theme is the chronic absence of police accountability.

Reform is impossible while police are largely immune from accountability when they break the law, their policies or violate the human rights of racialised and other people. While ever police exist, their activities must be regulated through all best features of the administrative and litigious regulatory strategies described above. Furthermore, transparency is critical (Fitzgerald, 1989, 126).

Drawing on the best examples from England and Wales and Canada, here are some suggestions for effective rule enforcement:

In Fig. 21.3 the four strategies to end impunity and achieve effective rule enforcement on the left side are regulatory strategies for controlling police behaviour. These strategies require powerful regulatory and monitoring

bodies that cannot be undermined by police resistance. The strategies on the right side of Fig. 21.3 are more litigious. Access to litigation and criminal defence requires improving access to lawyers and removing barriers such as costs. Furthermore, judges and lawyers must be trained in racial profiling identification so that are as aware of racial profiling as many of the judges in Canada (See for eg *R. v Le* (2019) SCC 34.)

Independent and effective investigation of police complaints as well as the use of effective disciplinary processes, inquests and prosecution must comply with international human rights principles (Hopkins, 2009; Smith, 2017;) such as adopting the type of thoroughly independent and transparent system observed in the Police Ombudsman of Northern Ireland. Of critical importance, complaints concerning the routine everyday police practices must be subject to independent investigation. Furthermore, the use of all police powers, arrests and custody matters must be subject to continual independent monitoring to prevent racism, duty failures and neglect.

The rule enforcement strategies described in Fig. 21.3, adopt a mix of the best features of the regulatory and litigious approaches for police regulation. The leadership of regulatory bodies, human rights commissions, police oversight agencies and police investigatory bodies is critical to their effectiveness. As these appointments are largely political, consideration should be given to the establishment of independent parliamentary committees which can make fearless appointments unfettered by political fluctuations.

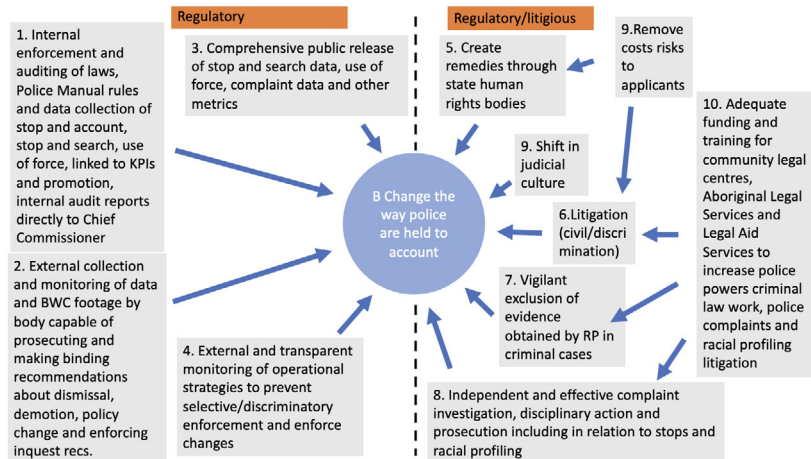


Fig. 21.3 Police Accountability through rule enforcement

Creating the Conditions for Change

Preventing racial profiling requires funding basic entitlements, creating alternatives to police, changing what the police do, and holding police to account. The failure of governments to do *any* of these things reflects the political power of the police and system they uphold and the powerlessness of the criminalised. Furthermore, despite the massive costs of the police and prison systems (Justice Reform Initiative, 2023; Police, 2023), funding alternatives doesn't square with neo-liberalist, capitalist notions of the role of the state. The reality however is that by failing to fund alternatives, governments leave the police to manage the unequal distribution of basic rights and resources across society through engaging in 'order maintenance' and targeting those they consider to be 'police property'. This increases the size of the prison system and its racialised nature. Not only does this increasingly expensive option fail to achieve crime reduction, it further entrenches racial and other forms of discrimination (Wilson, 2021; Alexander, 2011).

Many scholars argue that to make black lives genuinely matter transformative change is required. At the international level, this involves the re-organisation of global power, resources and accountability. At the domestic level this involves the redistribution of resources and dismantling of the police and prison industrial complex (Diverlus et al., 2020, 80, 81). The power of social movements to initiate these types of changes cannot be underestimated. On 7 June 2020, the Minneapolis City Council pledged to dismantle the police department (*The New York Times*, 2020). This response was possible in the context of the worldwide condemnation of the police killing of George Floyd on 25 May 2020 (*The Age*, 2020). Unfortunately, however, by November 2021, a referendum to replace the police with 'a comprehensive public health approach' was voted down by Minneapolis voters (Oladipo, 2021).

In England and Wales, in first half of 2020 before the death of George Floyd and just as the Covid-19 pandemic was starting to create lockdowns, the focus of activists was on demanding that the regulatory systems target racism in policing.³³ The differences in the demands of activists in the US after Floyd and the UK before Floyd reflects the strength of the movements against racial profiling in each jurisdiction at each of these moments in time. The work of Bowling and Marks (2017); Stuart (2016), Murray and Haikan (2017) and Baumgartner et al., (2018) reveals that creating the conditions

³³ Interview with Rebekah Delsol 31st March 2020

that lead to changing police practice depends on the strength of social movements and civil society. The strength of the movement governs the ask that is possible (Alexander 2011; Baumgartner et al., 2018).

It is not necessarily evidence that triggers legislative action. Politicians act when the movement's demands shift voter intentions. However as Katrina Ffrench the chief executive officer of Stopwatch in the UK noted in 2020, leaders and individuals will also act when an issue becomes personal for them.³⁴ Political positions change when family members make issues personal and where activists work with hope rather than despair (Huntley, 2020). Ffrench explains, we must engage with the step-by-step work of building links between oppressed groups, educating and engaging voters, judges, lawyers and white supremacist institutions. Public interest litigation, evidence-based research, engaging with media and tactical campaign work is a critical part of this work, but is unlikely, on its own, to achieve what is necessary. It will be a powerful movement that will make racial justice urgent.

El Jones says liberation may not happen in her lifetime:

The only way you learn is through engaging in direct action. The only way you learn is from your elders and mentors. The only way you learn is through engaging in black history. You have to live that struggle, you have to sacrifice and if you can do all of those things, then one day we will surround the police station and they'll be gone.

Conclusion

This study of English and North American attempts to change the rules and the enforcement of rules guiding police behaviour is revealing. While offering glimpses of hope, police resistance to the establishment of reforms coupled with the strength of law and order politics over politicians, the media and the courts, has resulted in the failure of reforms being embedded adequately to produce a sustainable reduction in racial profiling. Each strategy to prevent racial profiling represents a hard-won victory for the movement for racial justice. While offering tantalising prospects, none to date, have stopped the disproportionate targeting and violation of Black, Brown and Indigenous peoples. Time will tell whether the Yoorrook Commission Justice in Victoria and the movement around it has made racial justice sufficiently important to result in real change. If the Victorian Government and Police Chief are

³⁴ Interview with Katrina Ffrench 21 April 2020. See also interview with Sally Trattle 17 April 2020.

committed to ending systemic racism by police—as they so claim—their task is to switch from using police to address social needs and to fund and support community alternatives. This necessarily includes implementing universal social, economic and cultural rights and a Treaty with First Peoples. Ultimately this will be cheaper than funding multi-billion-dollar police and prison budgets and the significant costs involved in the substantial, sometimes deadly and intergenerational harm these institutions produce.

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22

The Breeding Ground for Institutional Racism: Policing Others and Racial Capitalism in Europe.

Ioana Vrăbiescu

Introduction

Scholars have analysed the relationships between racial capitalism and policing both in the American and European context (Gilroy, 1987; Hall, 1997; Wacquant, 2009), showing how colonial legacies have informed the prison industrial complex (Gilmore, 2007) or the racialisation and exploitation of migrants (Tazzioli, 2021). Some tied racial capitalism and policing, explaining how the exploitation of labour cannot be done without the fear of the police rooted in discretionary power (Neocleous, 2021). In particular, the racialised policing of migrants in Europe demonstrates how neoliberal governance aligns with racial capitalism to regulate mobility and labour markets (De Genova, 2023; Fraser, 2016; Walia, 2021). In this chapter, I argue that policing lies at the heart of racial capitalist structures, with transnational policing emerging as a tool to maintain and extend institutional racism at the supra-state levels.

Using the Franco-Romanian police collaboration as a case study, this analysis traces the historical and contemporary entanglements between policing practices and nation-state formation. France's policing institutions are deeply shaped by its colonial legacy, while Romania's lesser-known history of Roma

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enslavement (Achim, 2004) and the militarised infrastructure of its socialist past inform its contemporary law enforcement strategies. Situating these trajectories within broader processes of state transformation, I conceptualise *fear* as a racialised political emotion: an affective and disciplinary technology embedded within policing, particularly mobilised against Romani communities (i.e., Anti-Tziganism, Romaphobia). Here, *fear* functions both as an institutionalised police skill and as a legitimising force for state-sanctioned violence. Framed as an ethical emotion, *fear* not only authorises coercive practices but also reinforces racialised notions of threat that maintain social order. As such, fear emerges as a regulatory principle—one that operates within police culture and mediates broader state-society relations, sustaining both racialised governance and the symbolic authority of law enforcement.

As I have shown elsewhere, the concept of Romaphobia (Vrăbiescu, 2014; McGarry, 2017)—the entrenched racism against Roma people—explains its persistence across the EU despite variations in visibility and intensity. At times and when needed by political authorities, Romaphobia manifest itself in moral panic as a short-term racialisation tactic (Vrăbiescu, 2016), which is a tool for political strategy against racialised groups in order to marginalise, expel and render them undesirable. ‘Roma’ remains the primary identity, justifying structural and institutional racism in Europe. Comparable to anti-semitism, Romaphobia is embedded in all forms of sociability and power dynamics. A history of widespread persecution against the Roma attests to this European practice; but it is within structural racism that the identification, categorisation and exclusion of Roma is perpetuated at the local, national and transborder levels. Even well-funded integration policies, such as the National Roma Integration Strategy (NRIS), are argued to reflect subtle forms of racism (Vrăbiescu, 2014; Popoviciu & Tileagă, 2020) pertaining to systemic injustice that evades anti-discrimination frameworks.

The policing of Roma communities shows structural racism. The left hand of the state (e.g., social services) often neglects the structural vulnerabilities of racialised minorities, while the right hand (e.g., law enforcement) reinforces their criminalisation. This dynamic positions Roma as the ‘criminal-migrant other’ (Barker, 2017), reflecting broader European regimes of racial governance through securitisation, ethnic profiling and punitive bordering practices (van Baar et al., 2018; Kostka, 2018; Vrăbiescu, 2019a, 2019b, 2024). Processes of criminalisation are deeply tied to issues of class, economy, and welfare, demonstrating how racial capitalism exploits racialised groups to sustain capitalist economies (Franko, 2019). Racial capitalism theory posits that racism is not just a byproduct of capitalism but is integral to the system. Under racial capitalism, processes of racialisation structure labour markets by

assigning racialised populations (such as Roma) to informalised, precarious, or devalued labour. Cheapened and racially subordinated labour power is not an anomaly but a central mechanism through which racial hierarchies are reproduced and capital accumulation sustained. Embedded in the logic and organisation of the police and the design of the welfare system, institutional racism allows the rule of law to function unequally for *some* citizens and non-citizens. While poverty indicates otherness, state-sanctioned precarity means that informal and insecure labour becomes both tolerated and policed.

In Europe, the criminalisation of Roma through transnational police practices aligns with racial capitalism's logic, treating racialised bodies as expendable to uphold socio-economic hierarchies. Police organisational culture and bilateral policing reveal the intricacies of Romaphobia and 'whiteness' in the European cross-border policing of foreigners, 'Other' and racialised minorities. The bilateral mission facilitates racial and ethnic dynamics. At the same time, the production of differences (and similarities) in the work of Romanian and French mixed police forces responds to the context of East-to-West mobility within Europe (Dumitrescu, 2018; Leschke & Weiss, 2023).

The data was gathered from my ethnographic fieldwork in France during 2016–2017 when I was following the policing and deportation of Romanians as EU citizens alongside a shared deportation apparatus (Vrăbiescu, 2021). Observations, interviews, and informal discussions with stakeholders—from French volunteers to Romanian police officers and deportees—reveal the complexities of cross-border policing. Romanian officers on French territory assist in identifying Romanian citizens using national databases, but their responsibilities are carefully circumscribed, as they cannot enforce the law or conduct independent investigations. The French officers enforce the law. The tensions between cross-border cooperation and national sovereignty offer a model for addressing transnational issues while navigating jurisdictional boundaries.

Three steps structure my argument. First, I examine the concept of *fear* as central to police power, police work and policing the Other. *Fear* is relational and ideological, and the focus on *fear* and police let me revisit what Romaphobia means for the European identity and how it specifically flourished in the East-West cross-border migration. Second, I situate police organisations within their historical and contemporary contexts, emphasising their role in shaping anti-Roma practices. Third, I explore how the concept of 'knowing the Roma' operates as a police tactic within bilateral missions, where fear and knowledge intertwine to justify impunity. The conclusion reflects on the role of fear in legitimising police actions, reinforcing structural racism, and gaining sovereignty through transnational policing.

Fear, the Police and European Identity

The mainstream literature on police and policing addresses *fear* in police organisations by discussing pragmatic issues of police forces in confronting criminality (Alper & Chappell, 2012): the police fear for their life or for the lives of others. In this interpretation, fear is considered a complex human emotion provoked by a threat that is imagined, real, or perceived (Crowl & Battin, 2017; Pole et al., 2003). By contrast, *fear* as affective power in policing has been rarely studied, often lacking a critical understanding within the politics of emotions. My approach to *fear* starts from studying mobility control in Europe, analysing the politics of emotions, and how ethical emotions structure organisations implementing policies of border and migration (Vrabiescu, 2024). As an ethical emotion, *fear* is instrumental to policing illegalised migrants and poor and racialised EU citizens. The affective dimension of police power explains how and why *fear* is used in policing migration, particularly within the context of the bilateral mission.

Fear as Ethical Emotion

The mainstream police scholarship tackles three ways in which *fear* manifests in police work: *fear* as a regulatory principle, *fear* as a tool of policing, and *fear* of victimisation. First, *fear* is used as a regulatory principle within the police forces. This time, *fear* is both a justification for racist practices and a tool for maintaining social and racial hierarchies. The police are acutely aware of the double role of *fear* prevalent in society: the ‘fear of crime’ and the ‘fear of the police’ (Linnemann & Medley, 2017; Trinkner et al., 2019). Mainstream police scholarship has increasingly focused on understanding whether the fear of crime, which the police may or may not manage to alleviate, contributes to societal tensions. By contrast, the ‘fear of the police’ remains a critical area of research. Scholars of postcolonial studies explicitly show how fear of the police is deeply rooted in colonial histories, where law enforcement served as a tool for maintaining racial hierarchies and suppressing resistance (Fanon, 1963; Mbembe, 2001).

Second, *fear* is used as a skill in the ‘art of policing’ (Frewin, Stephens and Tuffin 2006); it entails the ability to detect, address, or even instil fear in others. Police officers undergo various training sessions, engage in peer learning, and develop skills (forms of intimidation) aimed at evoking *feelings of fear* in their interlocutors. When someone is fearful of the police, they are more likely to abandon the confrontational disposition and conform to the norms (allegedly legal) imposed by the authorities. My data, as I will show,

explain how police officers talk about *fear*, playing between the structuring element of society and describing their skills to manoeuvre *fear*.

Third, *fear* is a constraint upon the police, whose practices are surveilled, limited and punished when the rules are voluntarily trespassed. Some scholars explain how officers are constantly subjected to fear (Lantz & Wenger, 2023; Smith et al., 2022), how they *fear* being socially ‘judged’ or morally wrong, to be called or found out for mistakes (e.g., abusing a civilian). The regulatory principles guiding the police grant them a certain degree of power, which includes the authority to legitimise their actions, even in cases where the practices officers employ may be illegal or unethical. Officers learn to use the law to create instances of justice in response to the morally wrongs (Eski, 2018). The anxiety over organisational consequences gets amplified with the use of new technologies of surveillance and, in my case study, in cross-national policing. Nevertheless, this fear does not constrain police officers from abuse. Organisational repercussions often have a contrary effect by applying violence against racialised subjects rather than alleviating or diminishing officers’ reactions.

Critical scholars explained *fear* within the framework of violence as fundamental to police operations (Bradford & Jackson, 2016; Bryant-Davis et al., 2017; Delsol, 2015; Neocleous, 2021). The police power is a necessary tool to instil *fear* and discipline, ensuring compliance among marginalised and exploited groups. Neocleous (2021) explains that *fear* is a crucial component of police power: fear is both a tactic and a product of policing practices. While violence is justified through narratives of fear, danger, and the need for protection, policing is directly linked to the exploitation of labour under racial capitalism. The police are called to enforce the law, to maintain social hierarchies and the status quo. While the police are the service provider of safety, human (in-)security remains in the hands of the police power. *Fear* is embedded in the social contract, making us obey the law as subjects of the political order. Furthermore, as others have argued, the police’s ability to evoke and control *fear* leads to low public trust in law enforcement (Andreescu & Keeling, 2012; van Craen, 2013; Morris, 2015).

During my fieldwork, I’ve encountered how *fear* works as a regulatory principle in a class society and across racialised European identities. For some Romanian officers, noting class differences was the way they made sense of their role in French society. They saw French citizens who lived in comfort, fearing not to lose their privileges to the newcomers, the migrants, and the Roma.

[The Roma are not stressed, and neither are the French. But] the French people are not worried because they live in comfort. I am not sure they would not be

stressed if they did not have this comfort, and they had to make some sacrifices. This is why they implement these [police] measures because they are afraid not to lose this comfort.

Whenever fear of crime becomes ‘fear of the Other,’ the foreigner, prejudice and biased behaviour flourish. Strategies to manage societal biases or to steer those behaviours that lead to crisis can take the forms of scapegoating, hate crimes, or moral panic. Fitting this framework of interpretation, the officer used *fear* and *stress* interchangeably. Fear or stress indicates a social relationship rather than an individual spontaneous emotion. The comfort the French citizens have is a guarantee that *fear*, translated as stress and insecurity, will not touch them. Fear stirs security measures, which become a necessary buffer to maintaining class privilege. The officer’s interpretation of fear is of a regulatory principle, such as losing class privileges, which leads to hyper-securitisation and the explanation for the bilateral mission. Moreover, fear commands a certain positionality in society. The *feeling of fear* is an indicator of power relations, which in turn makes regulatory principle to be explained as ethical emotion. The social and political dimension translates how social relations are demarcated by fear of trespassing.

Yet, *fear* has another meaning. It can be fairly a translation of *phobia*, which compels, in the European context, a very different understanding and a specific relation to racialised minorities, such as Roma ethnics. Romaphobia reveals a common knowledge and procedural injustice of law enforcement.

Romaphobia and the ‘White’ European Identity

Bonilla-Silva (2006) explains the concept of ‘racism without racists’ as part of the daily bureaucratic activities of the state, which configures institutional racism. He exposes the subtle and covert forms of racism that persist in modern society, characterised by systemic and structural inequality that continues to marginalise racial minorities despite the absence of openly racist individuals or policies. In the case of Roma in Europe, it has been long argued that multiple discrimination and the persistence of racial inequality led to a chronic marginalisation of these ethnic groups (van Baar, 2011; Vincze, 2014; Vincze et al., 2025; Legros et al., 2021).

Particularly in the field of the police, two approaches to Roma people have been noted: the historical context of antiziganism in police recording practices (Selling, 2017) and a contemporary form of racism against Roma (Kott, 2014; van Baar, 2014). As discrimination occurs not necessarily through

explicit prejudice by individual officers but through structural and institutional practices, Roma are exposed to processes of racialisation and criminalisation throughout European societies (Sigona & Trehan, 2016; Kóczé, 2021). In France, allegedly a country where overt racism is condemned, Roma individuals face disproportionate scrutiny and policing. As I show, this can manifest as racial profiling, where Roma are more likely to be stopped, searched, or arrested based on stereotypes about their ethnic group. While officers may not see themselves as racist, these practices align with the broader societal narrative that associates Roma with criminality. In a society where racism exists but racists are not to be found, systemic discrimination continues through implicit bias and organisational practices.

Yet, the targeted policing of Roma communities is rooted in Europe's long-standing racial hierarchies. Romaphobia, as the last 'acceptable form of racism' (McGarry, 2017), is deeply embedded within European institutional frameworks and normalised through systemic social discrimination. Unlike other forms of anti-Roma racism (e.g., antiziganism), which are often addressed within the paradigms of human rights and minority protections, Romaphobia constitutes a distinct modality of racialisation. It operates not through overt biological discourses, but through cultural stigmatisation, securitisation, and state-sanctioned neglect. Romaphobia largely evades existing anti-discrimination mechanisms and remains unaccounted for in mainstream legal and policy instruments. Rather than being disrupted, it circulates and intensifies through a system of scapegoating, racialised moral panic, and engrained stereotypes. In doing so, it reinforces the social conditions that justify punitive interventions and exclusionary practices: particularly policing and criminalisation. Thus, Romaphobia remains a structural force within contemporary European governance, integral to the reproduction of racialised state power.

French media frequently conflate Romanians and Roma, framing both as undesirable migrants and illegitimate, unworthy, EU citizens (Paraschivescu, 2021). In a context marked by race- and class-blind republicanism, France distinguishes between 'good' and 'bad' EU migrants primarily through the lens of citizenship. Romanian police officers in France were compelled to navigate this terrain—distancing themselves from poor, racialised Roma migrants while performing their policing duties. This tension between executing their role and negotiating the visibility of 'the Roma' emerged consistently in interviews, often articulated through ambivalent and contradictory statements:

Maybe [the French police colleagues] think [about Romanians] like that [that they are poor] because they see these camps [i.e. 'Roma camps']. But [people

that live in camps] have a very good situation at home, the majority. It might be that among them, some people are poor, but the majority have houses and cars. We are not talking about some poor people who ran away from poverty and went to France. Yes, they started to differentiate between the Romanians, I mean between Romanian Gypsy and Romanian Romanians. They have started to see that there are Romanians who have skills and jobs, not only Romanians who steal.

Officers' challenge is not to recognise who is Roma and who is a 'white' Romanian, but to be able to translate the distinction to their French colleagues, knowing that French racialised trope goes against all Romanians, be they self-asserted 'white' or racialised 'Roma'. The quarrel over 'Roma camps' sparked heated moments between French and Romanian representatives and society at large (Breazu & Machin, 2018). While the visible and structural poverty of Romanian citizens, be they Roma or not, was systematically neglected by political elites in both states, Romanian and French authorities converged to initiate the bilateral police cooperation, prioritising control over socio-economic redress. Consequently, police officers centred their practices on the ethnicity–criminality nexus, a move that clarified and reinforced the racialised framing of Roma as internal threats within French society. Some of my interviewees expressed a blunt distinction between Roma ethnics and 'white' Romanians:

It is not that I felt discriminated against, but it is this general perception about us [i.e. Romanians] by French people that we are all Gypsies. And we think that they see on the TV that the Gypsies are doing this and doing that (...) I think some [of them] don't know where Romania is on the map. They had contact only with beggars. Maybe I would also be like that, so I cannot judge them. What do they see: shoplifters, beggars, dirty, homeless people. They don't see Romanians who are doctors or professors or doing something else; one does not see them on the streets as I can also pass invisibly as a policewoman if I don't wear a uniform. [By contrast], these people are visible.

Despite decades of EU-wide social inclusion policies (Matache, 2017; Magazzini, 2020), the persistent marginalisation of Roma communities reveals the deep entrenchment of systemic discrimination within European identity, often articulated through culturalist rather than racial discourses. This framing proved crucial in understanding the disproportionate violence Roma communities faced during the COVID-19 pandemic (Berta, 2020; Matache et al., 2021), who were often scapegoated for the spread of the virus. Romaphobia functioned as a fear-based governmental logic. As Reny and Barreto (2022) show, fear-driven xenophobia led to intensified 'othering'

of racialised groups (Lantz & Wenger, 2022), while police operated with impunity (Cârstocea, 2023; Fekete, 2022).

To understand how *fear* functions as a disciplinary force, we look next at police organisations, police work and police power. Police organisations are the modernisation project of colonial and slavery institutions. In different ways but with similar outcomes, EU countries developed police organisations to respond to criminality and to tackle (imagined) social fears and insecurities. Police work changed substantially with technology, but the principle remained the same: the bastion of civilisation, the landmark of community protection, the ‘thin blue line’ that distinguishes between law-abiding citizens and criminals. In practice, however, sensemaking in police forces translates legitimacy as shared ideas, often overlooking laws and adapting to political circumstances. Police power extends beyond the monopoly on legitimate violence and the routine claim to impunity; it also entails the symbolic authority to define, protect, and produce community identity. It is through this dual role, enforcement and identity-formation, that policing becomes central to fear-based governance.

Police Work from Racist Stereotypes to Institutional Racism

Contemporary law enforcement practices in the EU remain deeply informed by the militarised legacies of policing rooted in colonial domination and slavery. In both France and Romania, these historical trajectories underpin present-day racialised policing practices, especially towards Roma communities. Transnational police cooperation facilitates the cross-border reproduction of ethnic profiling and systemic discrimination, embedding racial hierarchies within EU security infrastructures. The analysis of police narratives and practices reveals the intersection of racial capitalism, institutional racism, and cultural prejudices. Ethnographic insights uncover how policing legitimises discrimination, criminalisation, and social exclusion, reflecting broader socio-economic hierarchies across the EU.

Two Models of Policing under the EU Jurisdiction

Modern police institutions emerged in the late nineteenth and early twentieth centuries, shaped by militarised logics of control (Ponsaers, 2001) and deeply rooted in colonial and slavery-based governance. Romania and France exemplify two distinct genealogies of policing: in Western Europe, police structures

developed from colonial regimes of subjugation and racialised governance in Eastern Europe, policing was a slavery linked organisation, later institution-alised as ‘militia’¹ (Lobnikar et al., 2014). In both contexts, policing served to discipline non-citizen populations, whether in colonial territories or within Europe, through surveillance, repression, and the racialised control of groups such as the Roma (Matei, 2018).

France’s police organisation was forged within a colonial framework, embedding principles of racialised order long before the formalisation of liberal law enforcement (Blanchard, 2020; Pruvost, 2007; Walker & Archbold, 2018). Postcolonial policing thus retained a logic where the preservation of order precedes legal accountability. With the prevalence of police enforcement, police officers face bureaucratic incentives to maximise arrests and convictions (Fassin, 2013). Consequently, policing foreigners becomes a bureaucratic strategy for enhancing statistical output, but also a symbolic act of reasserting national purity (de Maillard & Savage, 2018; de Maillard & Skogan, 2020). The result is a technocratic reinforcement of racial profiling practices under the guise of efficiency (Jobard & Lévy, 2009; Mouhanna, 2019; Hettrich, 2018), revealing structural racism embedded in everyday police work.

The police organisation in Romania started within the laws of the land that dictated chasing fugitive slaves, who by that time were Roma ethnics (Matei, 2018; Rostaş & Moisă, 2023). This police’s role emerged during the period when Roma slavery, legally sanctioned from the 14th to the mid-nineteenth century, was central to the Romanian principalities’ socio-economic structure, positioning the state apparatus as an enforcer of racialised bondage. In the nineteenth century, as the Romanian nation-state was being consolidated, the institutional model of policing drew heavily from French structures (Vrabiescu, 2021). Under the socialist regime, Romanian police became centralised and militarised, which reformed in the 2000s only to allow the EU integration (Beck & Chistyakova, 2002). Complying with *acquis communautaire* requirements, Romanian police structural changes, including the reclassification of officers as civil servants, increased popular trust. However, this institutional harmonisation failed to engage critically with racial profiling, leaving practices of ethnic discrimination within policing unchallenged.

The synchronisation of EU security politics led Romania to adopt European security standards immediately after accession and almost unconditionally. The post-accession conditionality (Gateva, 2013) enabled continued

¹ The term ‘militia’ here means police in ex-socialist states and not paramilitary or private security as it is used in the Western World. I prefer to keep the denomination because it was a state-intentional branding that was meant to be different from the ‘police’.

monitoring of Romania and Bulgaria's political and security environments after EU entry. Moreover, the EU's differential integration (Schimmelfennig, 2021; Schimmelfennig et al., 2015; Trenz & Triandafyllidou, 2017), coupled with the migration crisis, intensified the securitisation of mobility and expanded national discretion in managing intra-EU migration. While EU membership introduced instruments like National Roma Integration Strategies (NRIS) and funding schemes, these largely served symbolic compliance rather than addressing the structural roots of anti-Roma policing.

The historical, organisational and cultural backgrounds of both France and Romania (e.g., colonial past, history of Roma slavery) continue to shape and legitimise contemporary police practices and attitudes towards Roma communities. Historical chauvinism embedded in police institutions is a key aspect of racial capitalism, whereby past economic systems continue to inform present-day racialised institutional arrangements and social hierarchies. These continuities also manifest in bilateral police cooperation, where legacies of discrimination are reproduced through complex, often racialised, dynamics of transnational policing.

Police Power from Racist Stereotypes to Ethnic Profiling

Racist stereotypes and prejudices are reproduced across borders, particularly as ethnic profiling, which is increasingly seen as a 'legitimate' skill among police officers. The reproduction of racist stereotypes begins with the identification of Romanian citizens of Roma ethnicity by Romanian officers, who translate 'ethnic identifiers' to their French counterparts, a process facilitating the ethnic profiling of Roma in France.

Police interpretation of diversity contributes to delineating the boundaries of belonging, perpetuating stereotypes about minority groups and formalising them into 'ethnic profiling.' On the one hand, in France, scholars have shown how colonial policing methods are rearticulated within the mainland context, often in collaboration with states that support this 'camouflaged' structural violence (Blanchard, 2016). The targeting of minorities and foreigners exemplifies how ethnicity functions as a category of practice in police work (Bonnet & Caillault, 2015). On the other hand, in Romania, ethnic profiling is routine during widespread police practices such as ID checks, arbitrary accusations, and the harassment of Roma (Rostas, 2005). Although the 2001–2004 reforms aimed to demilitarise the police in line with EU accession demands, the new policing model justified stronger actions, especially within international cooperation.

Ethnic profiling functions as a key mechanism within bilateral police missions shaped by institutional racism. French and Romanian officers jointly produce and share data on Romanian nationals, and, at the same time, negotiate the ethnic profiling of Roma/Romanians (Roma who are Romanians, Romanians who are or not Roma). Studies on migration revealed that the difficult task of distinguishing between Roma and Romanians (Kaneva & Popescu, 2014) remains ingrained in diaspora discourses, political negotiations, and police practices. Struggling to border this distinction, the mixed teams of French and Romanian officers share a common understanding of criminal behaviour and the role of the police organisations but also exhibit everyday anti-Roma racism: ‘There are [also Romanians], but very few. The majority are Roma. Over 90% are Roma.’

The production of such data is constitutive of racialisation processes, enabling surveillance through classification (M’charek et al., 2014). Ethnic profiling not only reinforces social boundaries but also affirms the authority of the policing apparatus. Equally, surveillance and stop-and-search police practices contribute to institutional racism, especially against Southeast Europeans and the Roma communities (Law & Zakharov, 2019).

Franco-Romanian police collaborations constitute a transnational site where racialised prejudice and cultural stereotypes are operationalised into everyday policing. These joint operations reveal that Romaphobia and the instrumentalisation of fear are central, and not peripheral, to the exercise of police power. Bilateral policing not only facilitates but legitimises the racialisation and criminalisation of Roma populations, embedding anti-Roma sentiment within official security frameworks. By exporting racialised policing logics across national borders, these collaborations institutionalise racist practices, exemplifying what Balibar (2009) and Armenta (2017) define as institutional racism.

Sensemaking in Police Work

Police power operates through the construction and maintenance of community boundaries, with narratives of criminality shaped by institutional perceptions of social order. While policing in another state territory, the socio-cultural categories have to adjust to the laws, norms and values of that country. The recurrent interpretation, translation and values negotiation is part of the bilateral mission and the daily life of officers.

When Manuel Valls, while in function as prime minister of France (2014–2016), declared that there were few Roma able to integrate because ‘Roma lifestyles were “clearly in confrontation” with French ways of life’ (Rorke,

2014), the statement resonated strongly with French police officers. At the same time, Romanian officers start interpreting extended Roma family networks living in informal dwellings (i.e., 'Roma camps') as indicative of trafficking. They gather data against the 'camp-dwellers', aiming to provide evidence that 'Roma camps' represent more than just an 'illegal residence' (i.e., occupying public or private spaces). They claim the 'lifestyle' is a chosen way of living because 'Roma are happy the way they are', but that this lifestyle goes against Roma's integration into the host society. This racialised reading of Roma kinship is contrasted with a normative ideal of 'civilised' nuclear (heteronormative) family life, illustrating how racial capitalism renders non-conforming familial forms legible as threats. Yet, officers walk the 'thin blue line', navigating the blurred boundary between 'lifestyle' and 'trafficking,' a distinction central to how racialised governance is enacted on the ground:

They make money [because] they are well organised in the family. The head of the household... he does not think he exploits his own children. But it is exploitation. This is how they live to make money: the young one begs, the elder one steals, and the wife is with them, begging, stealing, while he stays home on the camp. In the evening, he collects the money from everyone. It's not bad in itself because they take care of their children: first, for the elder one to have a house, everybody works for him. Then, the next one. They love their children; they do not exploit them to buy things for themselves. They work together for them. There are also some cases of exploitation when very poor ones are brought for begging. But mostly and firstly, they are organised by families. (...) It is a way of living.

Sensemaking in police work, particularly within bilateral mixed police forces, is shaped by cultural interpretations and civilisational assumptions. The interpretive effort of categorising lifestyle as trafficking crushes with officers' factual knowledge that those who live in informal camps 'take care of their children... they work together for them'. Framing extended kinship ties as criminal reflects a structural logic that pathologises non-nuclear family forms while legitimising state intervention. The interpretation of trafficking enables officers to see themselves as 'saviours' tasked with correcting the Roma 'way of life.' At the same time, officers derive professional satisfaction from the discretionary flexibility of the law, indulging in what Sausdal (2018) calls the pleasures of policing.

Sensemaking in policing forms part of a broader racialised governance, reiterated in the discretionary practices of social services or the judicial and administrative courts. In France and across Western Europe, racist practices target non-citizen minors under the guise of benevolent policies (Vrăbiescu,

2017; Fussey and Rawlinson, 2017). Frequently, these minors enter state care not due to neglect, but through their construction as delinquent subjects. In 2001, although non-citizen minors made up only one-fifth of arrests in Paris, they accounted for half of all juvenile prosecutions (Sobanet & Terrio, 2005). Social workers monitoring Romanian Roma describe their role as managing a marginalised EU population. Working in mixed teams, they patrol informal settlements and report directly to local authorities, legally obligated to alert child protection services. However, field data show a systemic bypass of social support: Roma children are routinely fast-tracked into state custody. Echoing Terrio's (2003) findings, these practices reflect not exceptional bias but institutionalised racism within welfare and judicial systems. Romanian migrants are seen as victims yet simultaneously treated as delinquents: a paradox that has long underpinned deportations, so-called 'voluntary returns,' and reintegration programmes financed by France in Romania.

Knowing the Other, Knowing 'the Roma' in Bilateral Policing

Structural racism in policing is not simply a legacy but an active process of racial formation, reproduced through institutional routines and policy frameworks (Souhami, 2014). Policing practices often codify local and national biases into standardised operational norms and use them as categories of practice. In bilateral missions, Roma profiling exemplifies how policing translates cultural difference into racialised threat. Officers draw on (racialised) professional training, 'gut feeling,' and cultural stereotypes, all of which participate in the ongoing construction of Roma as the racialised 'Other.'

In everyday policing, refusal to disclose one's identity functions as a trigger for suspicion. While French citizens may legally withhold identification, for foreign nationals, the refusal is often interpreted as grounds for administrative detention and subsequent deportation. Between 2016 and 2017, the increasing number of Romanians identified by police illustrates how identity work became a metric of competence for Romanian officers embedded in joint missions. These officers, though occasionally adopting a condescending tone, defer to their French counterparts, whose tacit approval affirms the legitimacy of bilateral policing, particularly in cross-border petty crime or misdemeanours. Identification thus serves as the gateway to state intervention: the judicial (criminal) or administrative (deportation) process once a citizen is identified.

The bilateral missions are highly scrutinised as the mixed police teams perform both a diplomatic mission, representing the state on another state's territory (Vrăbiescu, 2020), as well as police operative tasks. Romanian officers' heavy duty is to work alongside their French counterparts identifying petty criminals of Romanian citizenship, and while doing so, to show knowledge of their field, 'the Roma cases', and professionalism. These policing encounters expose a tension between professional pride and the discomfort of racialised differentiation. Officers emphasise their skill in managing interviews with Roma subjects, yet remain alert to the reputational risks of appearing discriminatory. Under the scrutiny of bilateral cooperation, they are caught between articulating and concealing Romania's internal ethnic hierarchies. Identification shifts from state (ethnic) category—the Roma, the criminal—to cultural behaviours demarcating intra-group boundaries within migrant populations between racialised Roma and 'white' Romanians.

On the ground, ethnic boundaries were continuously explained, negotiated, and operationalised between Romanian and French police officers. A key point of contention was the identification of Roma individuals. To do so, they need to translate racialised cultural codes, language, and (informal) classification systems across national contexts. Romanian officers stationed in France were tasked with navigating and reinforcing distinctions between Roma and non-Roma Romanians, both to align with French police expectations and to distance themselves from racialised stigma. Meanwhile, French officers were highly aware of domestic anti-Roma discrimination, particularly against Manush and Gitanes populations, who, despite being multi-generational French citizens, were still required to renew residence permits every three months (by the time of my research, in 2016).

One relevant example of how 'knowing the Roma' helps the work of policing is in the following extract from an interview where the police officer took pride in his knowledge about 'the Roma' and showed that this knowledge had currency for the police work in France. The example also shows how police power is translated in transnational arenas, how violence and instilled fear are culturally and ideologically contingent and need to be calibrated to the situation.

I have been to a police station Friday night... The French [officers] were edgy – looking a bit like Romanians (laughing) – their computers did not work, I had to move to three of them... Briefly, before knowing it, I successfully identified 4 people, 4 women: two minors and two adults who [initially] did not want at all to collaborate and did not want to have their photo taken. They [the French officers] were very intrigued about how I did it: 'How did you convince them?!' 'I didn't do anything' 'Cannot be! Tell us the secret.' They put me on a chair

there... 'take a seat and tell us the secret.' 'I don't tell you anything, it is my secret.' 'Common! We are colleagues here.' They even called those from the judiciary police... It is this impact when a Romanian police officer talks to them [they] have a bit of fear. 'Are we too gentle?' [said a French officer] 'You can be as you want but you cannot make it. You need us here.'

The officer narrative expresses two different perspectives on the role of Romanian police in France and the relevance of 'knowing the Roma.' On the one hand, the police are cultural interpreters who need to explain facts and practices to those who apparently cannot do the same. Romanian officers know it is not the training the French officers miss, neither their lack of applied violence—'are we too gentle?' rhetorically asked the French officer. What the Romanians have, and the French do not, is a cultural intimacy with Romanian Roma as their (own) racialised subject (see Mulinari, 2017). The power dynamics between white police officers and Romanian Roma are of another dimension than of any other (foreign) police officer. The pride of 'knowing the Roma' means, in this context, the meaning-making of structural racism within the framework of cultural intimacy, historical dependency and neoliberal governance.

Romanian police officers believe that there is a misunderstanding of who are 'the Roma' because French people rarely encounter 'white' Romanians. Thus, an untold task officers assume they have is to play a role in culturally translating the differences between (white) Romanians and (racialised) Roma.

They [the French] do not really understand them [the Roma]. They think they are wild and bad. Those with whom I work do not see them as Romanian citizens, but, and this is how they also write the documents, like Roma or Gypsy [tsiganes – fra.] – they write with tz in the documents – of Romanian citizenship or Roma of Romanian citizenship. But in general, [the French people] see them as Romanians.

Back and forth, elements of cultural identification were translated in such a way to prove both a deep knowledge of 'who are the Roma' and criminals more generally. Romanian officers had the difficult task of embodying the ethnic boundary (Vrabiescu, 2020), representing white Romanianess and making sure it was distinctive from the (racialised) Roma identity. Thus, ethnic profiling has shifted from a source of professional pride to a mechanism through which cultural and racial knowledge is mobilised to perform a certain identity.

Many people have no idea about our country [Romania]. And those that know something they think of [Roma ethnics]. I have to say I suffered a lot of discrimination during the patrol mission from my French colleagues. (...) They thought they were teasing us with small jokes that seemed innocent, but they can hurt. For example, once [and my Romanian colleague] asked where we could go to listen to some music and which pub they would recommend. And they told us there are some caravans at the periphery if we want to go and listen to music because this is the music we (as Romanians) listen to and like. I tried to explain that I had studied, I went to school, and I didn't look similar to what they knew [as being Roma].

While for many Romanians to be confused with Roma stays as a painful experience and a duty to reclaim their white Romanian identity, for the police officers deployed in France, the task was even more challenging. Not only do they have to make sure that the suspected criminals are mainly of Roma ethnicity, but that certainly they themselves are not confused with the racialised Roma. On the path of defending and demarcating the white Romanian identity, officers claim to speak the language of the Roma, which makes them professionally sounded officers and ethnically different at the same time. By learning a different language, they settle the ethnic and group boundaries and, at the same time, enact the power of white Romanians over racialised Roma.

...many times they speak Romani – this is how is called nowadays – and we can figure out they talk about money... before I came to this mission I signed up for a language course for beginners to learn Romani at the Schengen training centre, [organised by] the Romanian Police. I am very interested. I would love to learn the language. My colleagues are sceptical 'What's in for you to learn Tiganeste?' Why not?! I would love to. I wanted once to ask an actor who is Roma... I tried in my community, because I have Roma in my community. But they don't want to teach me. 'But there are books, 'mam, there books in libraries.' It is a hermetic community from my point of view. (..) it is not an easy language. There are some words in Romanian, but it's difficult.

In this case, language is a tactical tool and a cultural identifier. For police purposes, it is not important to learn the language but to know 'just enough' to gain leverage over the other and reaffirm authority, to know how to instil *fear*. The police aim to impose their authority, and learning the 'language' of the Other gives them a leverage of intimacy and indirect power over their subjects.

I know pretty well [the Roma,] their customs and their way of living: simple, wild. I liked working with them. I liked talking to them. It's beautiful for me to meet them here, to see how they behave. They behave badly, they are wild, screaming, yelling [when they are stopped and searched by the French police]. But when I talk to them, they calm down. [the French colleagues ask] 'what did you do to them?' It's the impact: you talk to somebody who knows you, in Paris, in France, somebody that talks like you... I do talk with their accent. (laughing) I don't think it's respect [what I receive]. It is rather fear.

Officers communicate the power imbalance by activating fear. The intimacy gained while speaking the language of the 'Other' offers police officers the leverage of affective knowledge. Knowing how to speak is knowing how to frighten. 'You talk to somebody who knows you,' said the officer, explaining that knowing the 'Other' establishes a connection and implicitly the power relation.

Yet, ethnic profiling is *passé*. Facial recognition and 'neutral' digital technologies allow the police to discriminate without being responsible. Nowadays, the skills, knowledge, and responsibilities that police officers are proud of have been replaced by design. Yet, the knowledge and 'art of policing' are to be found with every step of police work. Old or new technologies complement the same skills of police officers, the same training they receive and the same ways in which they share ideas rather than use objective data in police work. The Franco-Romanian bilateral mission is just an example of reproducing and sharing a type of 'knowledge' about a racialised group in order to outline the cultural differences/similarities between two equal nations, French and Romanian.

The police in France use stereotypes about 'Romanian-looking people' (i.e., poor white foreigners) to target for stop and search anybody of Romanian nationality. They used different methods, either by sharing ideas of how Roma or Romanians look like or more daring ones to disclose the identity of some who were on the move on the street. For example, one useful trick was pretending that someone dropped a Romanian ID card on the street. Those who would turn to look would be questioned about their identity. A much safer method to avoid being accused of racism against people of colour urges police officers to target people according to their national identities rather than ethnic profiling. The target for the French police is detention and deportation, and not 'playing nicely' to their Romanian counterparts. Some French officers admitted they only came to understand the distinction between (white) Romanians and (racialised) Roma after visiting Romania—only to be mocked back home for trying to explain it. In a word, French

cultural intimacy reproduces the East-West divide in Europe, sustaining the logic of racial capitalism.

Transnational police work, entwined with cultural negotiations, reinforces institutional racism by reproducing mainstream social norms, cultural biases, and share institutional logics. The deployment of national police forces across EU borders contributes to the securitisation of intra-EU mobility, legitimises the deportation of racialised and marginalised groups, and enacts a de facto hierarchy among EU member states and their citizens. Analysing racialisation within these practices reveals how intra-national and inter-ethnic boundaries are reasserted to preserve the fiction of equal national identities within an unequal European order. Ultimately, bilateral policing missions serve as tools through which states reassert sovereignty amid the constraints of globalisation.

Conclusion

Institutional racism, rooted in historical and socio-economic contexts, is internationally reproduced through police practices and the ways in which police power is played out in bilateral organisations. Through the lens of racial capitalism, police violence is not merely prejudice enacted, but a constitutive mechanism for sustaining unequal social and economic orders built on racialised exploitation. The banishment and (informal) exploitation of Roma are not peripheral, but integral to racial capitalism. The racialised policing enforces Roma's ongoing role in low-wage economies as cheapened labourers, with a marginal access to societies while having denied the full inclusion.

Police officers navigate their roles by enabling *fear*, a concept that shapes their understanding of freedom and law. For officers, fear functions as a structuring principle. It is both a professional tool and a moral compass—one that justifies the suspension of rights and reshapes violence into necessity. In bilateral policing, fear not only regulates the conduct of policed populations but also defines the professional identity of officers themselves. In identifying their own citizens, Romanian officers showcase their professionalism and expertise in criminal law enforcement while also translating and reinforcing cultural inferiority through French perspectives. In doing so, they align themselves with the 'civilised' world by homogenising the Roma under the label 'Romanian' according to French cultural codes. At the same time, the French officers are not limited by cultural tropes and by no means need to distinguish between white Romanians and Roma. Their racialised subject is defined within the European East-West divide. On a daily basis, the Romanian-Roma

distinction is important only to Romanians who need to differentiate themselves from Roma by embodying the white Romanian identity, hoping to get closer to an imagined European identity.

Fear in police work, especially within the context of racial capitalism, is both pervasive and underexplored. Examining *fear* in the context of trans-border police missions reveals officers' intercultural efforts are increasingly relevant today. *Fear* is tied to structural racism, serving to sustain and rationalise it. As an ethical emotion deeply embedded into the use of violence, *fear* morally legitimises abuse by law enforcement in their routine duties. At the same time, *fear* is a mechanism for communicating power imbalances to oppressed groups, such as Roma in Europe, bolstering authority even when legal frameworks are not fully adhered to.

Violence, rather than an end in itself, is a tool to instil fear and submission, which in turn reinforces the significance of borders and belonging within the EU. This process serves as a reminder to EU citizens of these borders' tangible reality and importance. Police, the transnational custodians of social order and European identity, extend their surveillance and maintain a monopoly on violence over state subjects, beyond nation-state borders.

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Part V

Reinvented and Expanded Racialised Punitiveness



23

Racial Gaslighting in Britain: Politics and Power

Jon Burnett and Sam Hanks

This chapter is about obfuscation and the twisting of reality in the state's 'management' of racialised communities in Britain. It is about how this twisting of reality contributes to the production and realisation of state power; and it is about the functions of these processes in the service of dominant political objectives. This is a chapter about racial gaslighting.

Racial gaslighting is not a new term. In 2017, political scientists Angelique M. Davis and Rose Ernst set out a pioneering analysis of the concept in the United States, linking it to the production of narratives which 'obfuscate the existence' of racial and racist power structures (Davis & Ernst, 2017: 761). Racial gaslighting, they continued, consequently operates in the service of upholding these same structures, further undermining challenges to them. And taking this as a starting point, what follows in this chapter develops understanding of racial gaslighting in a British context as an *ideological* process informing *material* realisations of state power. In doing so, initially it provides a brief intellectual genesis of the term, foregrounding some of its parameters by those who have developed analyses of it as a

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concept and linking this to dominant narratives around race and racism in Britain. This provides a framework against which a series of ‘case studies’ of racial gaslighting are presented and explored analytically, each demonstrating different but inter-related dynamics *of* racial gaslighting. These are as follows: first, it explores the ‘Rwanda scheme’ (relating to Britain’s ‘outsourcing’ of people seeking asylum (first put forwarded in 2022 before being disbanded in 2024), and its rationalisation—or part of its rationalisation—as a form of ‘benevolence’. Second, it builds on this discussion by exploring the implementation of a range of what are widely acknowledged as *violent* policies and practices relating to those seeking asylum, and how these have been rationalised through narratives that the state itself is victimised by the presence of asylum seekers (or migrant communities) themselves. While finally, it examines the ‘management’ of migrant sex work in England and Wales through which discourses of ‘rescuing’ sex workers can operate as mediums for monitoring, surveillance and immigration control. Of course, these examples are not exhaustive. On the contrary, they are selective examples demonstrating particular thematic dimensions of racial gaslighting. So, this chapter is not, and does not claim to be a definitive analysis of it as a concept. But what it does do is critically explore some of its parameters in a specific domestic context.

Racial Gaslighting

As has been pointed out elsewhere (see Poore, 2024, for example), the contemporary usage of ‘gaslighting’ draws in large part from Patrick Hamilton’s 1938 play *Gas Light*, set in London in the late nineteenth century and centred around Jack Manningham and his wife, Bella. In certain adaptations of the play, Jack systematically and subtly abuses his wife by manipulating her to doubt her recollection of events or her surroundings. Moving around items in her late aunt’s flat (who was murdered many years ago, and where they are living as Bella was bequeathed the property), he manipulates Bella into thinking she must have misplaced them, forcing her to question her own actions and memory. Over time, he attempts to isolate her from those who care for her, leading her to believe that she needs to be protected from them, by him. In the evenings, he frequently tells her he is leaving the house. But, in reality, he secretly searches the attic of the apartment for her aunt’s hidden jewels, which he intends to appropriate (and which he is aware of as, unbeknownst to Bella, it was him who murdered her aunt years ago). In the process, his lighting of certain gas lights in the attic causes others below

to flicker and dim: a scenario which Bella sees while downstairs, but questions her own recollections and understandings of (and from which the play draws its title). Adapted into films soon after by Thorold Dickinson in 1940 and George Cukor in 1944, and further reworked in myriad ways on stage, radio and screen, the play has over time become an allegory for aspects of domestic violence. By the 1980s, the term ‘gaslighting’ had become ‘a term of art in therapeutic practice’ (Abramson, 2014: 2; see also Calef & Weinshel, 1981); and it has since become a core focus in psychology and psychoanalysis when discussing abuse in interpersonal relationships or by individuals in positions of power (Stern, 2007). In England and Wales, this focus on interpersonal relationships has been reflected in legislation, with the Serious Crime Act 2015 making ‘controlling or coercive behaviour in an intimate or familial relationship’ a criminal offence and the High Court acknowledging gaslighting for the first time in 2022 (for discussion, see FrancisHanna & Co Solicitors, 2022). Such is the extent that it has entered popular usage that in that same year it was Merriam-Webster’s ‘word of the year’.

However, while gaslighting has most frequently been interpreted in such contexts, as Sweet (2019: 852) has argued, it is ‘fundamentally a social phenomenon. Engaging in abusive mental manipulation certainly involves psychological dynamics, but scholars have thus far disregarded the social characteristics that actually give gaslighting its power.’ And against that backdrop, a range of analyses have been put forward in disciplines including (but not restricted to) cultural studies (Philips, 2021), philosophy (Abramson, 2014; Sodoma, 2022; Spear, 2019) and communication studies (Graves and Spencer, 2023; Li & Samp, 2023) which implicitly or explicitly pay attention to such broader social dynamics. Indeed, in Davis and Ernst’s critical repurposing of the term to explore *racial* gaslighting, they draw on the work of feminist scholars and activists (among others) in examining gaslighting as an institutional, cultural and structural process. In doing so, they suggest that racial gaslighting relies on what they describe as *racial spectacles*. These spectacles, they argue, in the first instance ‘obfuscate the existence of white supremacist state power structures’ (Davis & Ernst, 2017: 761; see also Davis & Ernst, 2011). But when manifested through dominant institutions or processes (such as legal processes, the actions of political figures, dominant cultural narratives and so on) they may coincide with attempts not just to obfuscate, but to *normalise* those same structures.

Davis and Ernst provide numerous examples to explain these processes. For instance, they discuss how—following the bombing of Pearl Harbour in the United States in 1941—President Roosevelt ‘set into motion state forced removal of over 110,000 persons of Japanese ancestry from their West Coast

homes' (David & Ernst, 2017: 765). With people rounded up en masse into concentration camps, concerted attempts were made to obfuscate the reality of these measures through defining the camps as 'assembly and relocation centers' (Ibid: 766). However, in doing so, the Supreme Court denied that this form of state-sanctioned racial internment was anything to do with 'race', legitimating it on the basis of 'public necessity' (Ibid: 765). Moreover, those who resisted were criminalised, with failing to comply categorised as a federal crime and held up as evidence of 'disloyalty', and therefore justification for detention.

Meanwhile, a further example put forward relates to the fire-bombing of the home of a black couple Andrew and Charlotte Wade (and their 2-year-old daughter) in Louisville in 1954. After the Wades were prevented from purchasing a house in white-majority areas, a white, anti-racist couple active in the Civil Rights Movement (Anne and Carl Braden) bought a home on their behalf with an intent to transfer the title to them. However, what followed was weeks of racist terror, culminating in the fire-bombing of the house after dynamite was placed under the toddler's bedroom. After this took place, the Braden's were convicted through fabricated charges that they had in fact orchestrated the explosions, with one prosecutor rationalising the sentence of Carl Braden to 15 years' hard labour through a claim that the Braden's had organised the events in order to inflame 'racial tension' as part of a 'communist plot' (Ibid: 768). Indeed, while the former example embodies how racial gaslighting contributes to the articulation of anti-racist resistance as 'sedition', the latter embodies how the criminalisation of anti-racist solidarity serves as a 'warning' to others, Davis and Ernst explain. As such, they continue, they further embody the way racial gaslighting functions as 'the political, social, economic and cultural process that perpetuates and normalizes a white supremacist reality through pathologizing those who resist' (Ibid: 763).

Davis and Ernst's analysis, then, provides a compelling conceptual framework for understanding racial gaslighting; and this has been developed and explored further in a range of analyses. Berenstein (2020: 420), for instance, has demonstrated how a core function of racial gaslighting is 'denying that marginalized people's experiences are informed, influenced, or partially constituted by structures of oppression and settler colonialism'. Examining anti-Palestinian racism, meanwhile, Abu-Laban and Bakan (2022: 510) have foregrounded the ways 'groups, not just individuals, can experience a denial of their lived experience and reality and this creates harms'. While in turn, Zembylas (2024) has emphasised that racial gaslighting can be understood as a form of 'affective injustice' *reproducing* the lived realities of oppression.

Indeed, such is the extent to which the concept has been elaborated and developed that there is not space here to fully cover the myriad ways it has been explored (for example, see also Beaman, 2022; and Tobias & Joseph, 2020). But what can be established is that as a conceptual framework it resonates with a British experience where moves to obscure understandings of 'race' and racism have been manifested through centres of power and policy not just implicitly, but explicitly.

In 2020, for example, the government established a Commission on Race and Ethnic Disparities (CRED) to investigate 'disparities' across Britain: a Commission for which the Black Lives Matter (BLM) protests, activism and forms of organising taking place globally were (according to the CRED's Chair) the 'trigger' (Commission on Race and Ethnic Disparities, 2021: 7). While the focus of these forms of organising was multifaceted, among them was racist state violence and the repeated police (and more broadly, state) killings of black people in the US, and beyond. Yet when the CRED published a report of its findings in 2021, as the Institute of Race Relations (IRR) has made clear, it ultimately argued that in Britain any semblance of structural racism was a thing of the past, with Britain representing a bastion of 'good relations' and a model for 'white majority countries' (in the CRED Report's terminology) to follow (IRR, 2021). Moreover, after effectively suggesting structural racism did not exist, the CRED turned its focus to what is claimed were the causes of 'racial inequality', suggesting ultimately that this was in large part down to racialised communities themselves. One area 'where cultural traditions may play an important role is in attitudes to integration and mixing with other ethnic groups', the report stated (Commission on Race and Ethnic Disparities, 2021: 43). Therefore, the 'role of culture and religion in family outcomes' must be foregrounded, it continued (Commission on Race and Ethnic Disparities, 2021: 44). At the same time, it suggested, it was necessary to embed a vision of British history in school curriculums encouraging people to reinterpret 'their British heritage': foregrounding the 'slave period', for example, as 'not only being about profit and suffering but how culturally African people transformed themselves into a remodelled African/Britain (Ibid: 8). Indeed, while there 'are still real obstacles and there are also practical ways to surmount them', it claimed, 'that becomes much harder if people from ethnic minority backgrounds absorb a fatalistic narrative that says the deck is permanently stacked against them' (Ibid: 8). As such, the fundamental 'challenge' facing Britain was ensuring 'participation' from minority ethnic groups, it said, with some groups supposedly not 'participating' enough (Ibid: 7).

However, as the IRR continued, this narrative redefining racism as a form of ‘disadvantage’—to be combated by racialised groups ‘participating’ more and hindered by the ‘fatalism’ of anti-racism—should not be a surprise (Bourne, 2021). For it followed a pattern of official thinking on ‘race’ in Britain which has been central to how it defines itself. For example, the establishment *Colour and Citizenship* report published in 1969, the IRR suggested, effectively legitimated claims that with regard to post-WWII ‘race relations’ it was ‘race’ that was the problem, not racism, consequently appealing to racist state structures for ‘tolerance’ (Ibid). Moreover, while such narratives were reproduced persistently by New Right thinkers and groups in the late twentieth century (for discussion, see Gordon & Klug, 1986), they were given new life in mainstream politics in the twenty-first century, in large part through the policy responses to a series of urban disorders in the north of England in 2001 involving (among others) Asian (predominantly Muslim) youths mobilising against far-right groups and police violence. For it is through these responses, Kundnani (2007) has demonstrated—given greater weight against the backdrop of the terrorist attacks in the United States on 11 September 2001—that a discourse of ‘integrationsim’ was solidified. As Kundnani (Ibid) suggests, by effectively arguing that cultural diversity was problematic if not ‘managed’, it was through this discourse that particular onus was placed on Muslims to adhere to (assumed) ‘British values’ in order to ‘integrate’. Within a few years, he continues, ‘the liberal intelligentsia as a whole seemed to have abandoned its earlier tolerance of cultural diversity and adopted this “integrationism”, which redefined integration as, effectively, assimilation’ (Ibid: 123). Indeed, it was this discourse of intergationism which in many ways provided the blueprint which the CRED Report’s promotion of ‘participation’ built on and took forward.

At the same time, the assertion that British history on colonialism somehow needed ‘correcting’ to foreground its supposed benefits is somewhat ironic when set against the fact that elite figures have consistently attempted to do so. In 2005, for instance, soon-to-be Prime Minister Gordon Brown described the British empire as something to be ‘proud’ of. In 2013, Prime Minister David Cameron reiterated this sentiment, suggesting that there was ‘an enormous amount to be proud of in what the British empire did and was responsible for’; while the CRED Report itself was established by a prime minister who once claimed of parts of the African continent that ‘the problem is not that we were once in charge, but that we are not in charge any more’ (for discussion, see Burnett 2022). Indeed, as Milne (2005) noted decades ago, Britain not only consistently attempts to forget the violence and brutality of its imperial foundations; it romanticises them. And if this

can be understood as one form of racial gaslighting obfuscating twisting and understandings of 'race', racialisation and racism, it exists alongside further attempts to undermine attempts to disrupt, challenge or even correct them.

For example, in 1981, the Scarman Report into the Brixton 'riots'—lasting some three days and culminating in around £7.5 million of damage—notoriously rejected the suggestion that institutional racism might have been a factor underpinning the events (Jefferson, 2012). As is well known, the immediate spark for the disorder was the 10-day mass stop and search of over 1000 Black youths under the rubric of 'Operation Swamp', as well as a longer backdrop of police and state racism. However, for Lord Scarman it was a combination of a few 'bad apples' in the police, vaguely-defined 'racial disadvantage' and black families themselves which were among the things to address (Scarman, 1981). Meanwhile, when the 1999 Macpherson Report into the investigation of the racist murder of Black teenager Stephen Lawrence (in 1993) stated that the police's response demonstrated institutional racism (Machperson, 1999; albeit not expanding its analysis to explore state racism), the backlash from certain think-tanks, political figures and thinkers was immense. Just a few years later in 2003, Home Secretary David Blunkett was arguing that it 'missed the point' (Travis, 2003). In 2020, Metropolitan Police Commissioner Cressida Dick suggested the term was not 'helpful' (Guru-Murphy, 2020), and in 2023 Metropolitan Police Commissioner Mark Rowley argued the term was 'ambiguous' (Duggan & Sandhu 2023).

By that point, of course, it had since been established that not only had the Metropolitan Police been indifferent to the racist murder of Stephen Lawrence. It had further tasked undercover police to infiltrate and undermine the family's struggle for accountability and justice (along with many anti-racist and left-wing networks (Evans & Lewis, 2013). But as indicated above, various Metropolitan Police figures were not alone in their indifference or hostility to discussions of institutional racism. For these are sentiments which have been held by segments of the UK's governments. When, for example, in 2023, the Casey Review published the outcome of an inquiry into policing established following the kidnap, rape and murder of 33-year-old Sarah Evered in 2021 by a serving Metropolitan police officer, the findings were explicit about the 'institutional homophobia, misogyny and racism' embedded within the Metropolitan Police (Casey, 2023: 235). It echoed decades of research demonstrating patterns of surveillance and force of those considered 'police property' (Lee, 1981), foregrounding the way that the institutional response to critique has frequently involved 'denial, obfuscation, and digging in to defend officers' (Casey, 2023: 10). However, it seemed

that Home Secretary Suella Braverman had other things on her mind when she commented on these points. For the *real* concern with the Metropolitan Police, she suggested, was that it was too 'woke' (Martin, 2023). Indeed, this was obfuscation in the service of normalising a particular set of social relations through which oppression is reproduced. And what follows demonstrates and explores the concrete manifestation of such processes through the presentation of three distinct but interrelated 'case studies' embodying different forms and functions of racial gaslighting.

Cruelty as Benevolence

On 1 May 2024, the Home Office in Britain announced that immigration enforcement teams had begun detaining people in preparation for their removal to Rwanda, releasing footage of immigration officers putting people in the back of vans and pledging more enforcement action over the coming weeks (Hymas, 2024). Stating that the first flights would begin operations that same Summer, the Home Office continued to explain that commercial charters had 'been booked' and that an airport had already been 'put on standby'. At the same time, 'detention capacity' had been increased, it suggested, while in turn 200 case workers had been trained to 'quickly process claims' and 500 'highly trained escorts' were ready to facilitate these removals (Home Office, 2024a). This would be the 'will of the people' according to Prime Minister Rishi Sunak (Sparrow, 2024): the intended realisation of what former Home Secretary Suella Braverman had 2 years earlier described as her 'dream' and 'obsession' of a 'front page of the *Telegraph* with a plane taking off to Rwanda' (Syal, 2022a).

It had taken the Party years to get to the point where this dream might come true. First announced in April 2022 by Conservative Prime Minister Boris Johnson, the policy had initially been described as a 'considerable deterrent' to those arriving in Britain on ships or boats via the English channel: a small stretch of the Atlantic Ocean between southern England and Northern France (Skoulding, 2023). However, a few months later, the first intended flight to Rwanda under the policy framework was cancelled at the behest of the European Court of Human Rights, marking the beginning of a series of cases, challenges and counterchallenges regarding its legal validity. In December 2022, the High Court ruled it lawful; in March 2023, a High Court judge ruled that asylum seekers could appeal against their deportation there on the basis that it may threaten their human rights. In June 2023, the Court of Appeal ruled it unlawful, stating that it was unsafe for

asylum seekers, and this was reiterated by the Supreme Court in November that same year (Ibid). In response, the Conservative government introduced the Safety of Rwanda (Asylum and Immigration) Bill a few weeks later, which was passed in April 2024 following a series of amendments. And by that point, the extensive ideological effort that had gone into rationalising the legislation included depicting it as a form of generosity to Rwanda itself.

According to the Home Secretary, for example, the Rwandan genocide in 1994—a genocide which Britain was initially both indifferent to and attempted to downplay—meant that the country was still ‘underpopulated’ (Squires and Hymas, 2024). Therefore, not only Britain’s transfer of people, but also financial incentives provided by the British government to Rwanda to take them, would enable the country to ‘grow its economy and be the modern society they are aspiring to become’. Meanwhile, the policy framework would ensure that people ‘seeking a safe and prosperous life’ would be able to find this, he continued, suggesting that it benefitted everyone involved (Ibid). As has been well documented, the Rwanda policy framework had echoes of, and reworked Britain’s colonial practices of banishing surplus populations (a term which, following Max Haiven (2020, 11), we use, for as he suggests ‘so-called “surplus populations” are not responsible for or defined by their fate’) through things like transportation and indentured labour: reinforcing a system in which ‘asymmetric power relations are normalised’ (Collyer & Shahani, 2023). It was a policy framework through which Britain’s attempts to abdicate itself of any form of responsibility for certain people seeking asylum included financially incentivising another country 4000 miles away to take them, and forging an expansion of state power riding roughed over limited legal protections to facilitate this. Even when compared to the violence of British asylum policy this suggested a particularly inventive form of cruelty. But for the government facilitating this and its allies, it represented kindness.

Moreover, the claim that the Rwanda policy came into being as an act of economic benevolence to Rwanda itself was by no means the only way it was rationalised through a form of racial gaslighting. For it also rested on a claim that it was an act of generosity to those intended to be detained and deported, too. As has been pointed out elsewhere, the legislation on which it rested was the third of ‘a series of progressively restrictive UK laws [eroding] access to refugee protection since 2022’ (United Nations, 2024), following and in some respects complementing aspects of the Nationality and Borders Act 2022 and the Illegal Migration Act 2023. These pieces of legislation sought explicitly to curtail legal protections, including: attempts to create a ‘duty to disregard’ claims for protection where a person has attempted to

apply a judicial review of a decision to remove them; attempts to empower ministers to disregard ‘interim measures’ set out by the European Court of Human Rights (such as those which had blocked the first flight to Rwanda in 2022); and attempts to remove rights of appeal for things like age assessment processes and the removal of that person subject to them if a judicial review of such a decision was ongoing (Donald & Morgan, 2024; Lenegan, 2023). At the same time, they sought to establish a two-tier asylum system, through which those arriving in the UK through ‘irregular means’ (such as travelling through another country and not claiming asylum, or not utilising particular routes), would mean that person would potentially receive a lower standard of legal protection (for example, being denied access to public funds or the right to family reunification; see Blake, 2022). Yet, at exactly the same time the government was investing substantial efforts in attacking or eradicating mechanisms potentially enabling people to access legal protections and safety in Britain on the one hand, the Home Secretary claimed that the Rwanda framework was geared (in part) towards ensuring that people denied these rights would be able to have ‘a safe and prosperous life’ in Rwanda, on the other (Squires & Hymas, 2024).

In fact, the government went further than this, claiming that the safety of those sent to east-central Africa would be guaranteed as ‘the UK has worked extensively with Rwanda to build capacity of their current asylum system’ and because experts from the Home Office had ‘supported training delivery to Government of Rwanda officials and members of the judiciary and the Rwandan Bar Association’ (Home Office, 2024b). So, while fundamentally attacking the limited legal rights of those seeking asylum within the UK, it claimed the moral authority to oversee the distribution of rights for those effectively deported as a result of these rights being destroyed. Indeed, as Eñiqlá Ànúolúwap’o Sóyemí (2024) has argued, while debates frequently focused on whether Rwanda was a safe country for people seeking protection, this in many ways missed the point that the danger people could face came not just from Rwanda, but Britain: a form of racial gaslighting of its own. And while the newly-elected Labour government dismantled the policy framework soon after coming to power in July 2024, it made clear that this was not due to moral reasons, but technocratic ones, stating that it was an expensive scheme unlikely, on its own terms, to ‘work’. After using some of the pre-booked charter flights to deport people to Vietnam and East Timor, it pledged to use the funds to increase the use of immigration raids and enforcement across the UK (see Migrants’ Rights Network, 2024).

The State as Victim

Such was the ferocity of the legislative immigration and asylum plans and measures set out in the early 2020s that they were condemned by bodies such as the UNHCR for breaching the UK's (limited) obligations under the 1951 Refugee Convention (Syal, 2022b). However, what must be borne in mind is that they in many ways built on measures within the immigration and asylum system which were already in place, and which further operate as part of a global architecture of immigration control (see for example Bhatia and Poynting, 2023). And one-way significant state-sanctioned harms upon those seeking asylum or subject to immigration control have been rationalised is through a claim of the state as victim *of* those seeking asylum or subject to immigration control. This is not new. In a series of pioneering interventions in the early 2000s, criminologist Joe Sim elaborated on constructions of the 'victimised state' in Britain, arguing that ideological mobilisation of the state 'as victim' could (and did) have profound political and cultural consequences (see for example Sim, 2004). As he argued, a select, distinct focus of state-led narratives about violence *faced* by state bodies and servants distracted attention 'away from the institutionalized nature of violent state practices'. It enabled state agencies to monopolise debates about violence and victimisation. It narrowed understandings of violence and undermined critical thinking *about* social constructions and manifestations of violence and victimisation. While simultaneously, it bound together a whole range of forces (government spokespeople, mass media, aspects of public opinion and so on) 'cementing them into a moral and political force' uncritically accepting constructions of reality 'articulated by powerful interest groups' (Sim, 2000/2001: 26). Sim's focus was not on immigration and asylum policies per se, but profound insights for analyses of them. For political constructions of immigration and asylum have normalised ideas that these are issues either potentially or actually representing a cultural, economic and ultimately existential threat to Britain.

In 2002 for example, then education secretary David Blunkett echoed prime minister Margaret Thatcher's 1978 election campaign rhetoric about Britain being 'swamped by people from a 'different culture' (in that instance, referring to New Commonwealth countries in Asia and Pakistan), by claiming that it was necessary to intern asylum seekers in camps so to avoid them 'swamping' schools and local services (see Webber, 2004). Just over a decade later in 2014, Defence Secretary Michael Fallon claimed that British towns were being 'swamped' by immigrants, and that residents were 'under siege' from people 'claiming benefits' (Syal, 2014). A year after that, Foreign

Secretary Phillip Hammond spoke of Europe being unable to ‘protect itself’ (with the inference being it needed to) from ‘marauding’ migrants from Africa (Perraudin, 2015). While that same year, Prime Minister David Cameron described migrants living in desperate conditions in Calais—people who it has been well established were being subjected to extreme violence from French police and fascist groups including beatings, having tear-gas sprayed into their eyes and having their meagre possessions destroyed—as a human ‘swarm’ attempting to reach Britain (see BBC, 2015; and Carr, 2014). Indeed, depictions of segments of those attempting to arrive in the UK as insects, as a hostile threat, by political figures is by no means isolated. So when, for example, Suella Braverman described those attempting to reach Britain via the Channel in 2022 as an ‘invasion of our southern coast’ (cited in Sparrow, 2022) she trod a well-trodden path in British politics. But the broader point, here is twofold.

First, as indicated above, while claiming that Britain is a ‘victim’ of those seeking asylum, or particular forms of immigration, policy makers have contributed to the building of an immense institutional, political and legislative machinery of immigration control which can—and in many cases does—victimise those caught up within it through fostering substantial harm. As has been very, very well documented, for example, an immigration detention estate which went from incarcerating almost 200 people annually in 1975 to more than 32,000 people annually some four decades later causes routine damage to those detained (Burnett, 2022). Punishing regimes and physical and psychological deterioration are among its watchwords, and it has ended people’s lives (Medical Justice, 2016). What is more, the *forms* and institutional spaces of detention available within the state’s toolkit continue to expand (Cowen, 2021). At the same time, a policy framework transforming things like health services, educational institutions, employers, banks and landlords into nodes of immigration control has foregrounded a combination of destitution and the denial of services on the one hand, and a form of surveillance and ‘everyday bordering’ on the other (Tyerman, 2021). While simultaneously, immigration raids and deportation have become core aspects of immigration enforcement frameworks (Bhatia & Burnett, 2022; Fekete, 2009). Indeed, while it is not possible here to outline the multiplicity of ways which immigration control regimes damage those under their ambit, as has been pointed out elsewhere, violence is a central part of their underlying logic (Jones, 2017).

But second, while such policies and practices are in some contexts rationalised by policy makers as ‘protecting’ a Britain which, it is claimed, is under ‘threat’ from (particular forms of) migration, any sense of gaslighting

is compounded through the ways it is those same policy makers who are in many cases fundamentally *causing* the damage they claim to be defending people *from*. As Perocco and Della Puppa (2023, 5) have pointed out, for example, by ‘turning reality on its head, [a] racialized welfare discourse hides the social roots of social insecurity and mass impoverishment by blaming them on asylum seekers and migrants’. Through implicit and explicit discourses depicting immigration and asylum as undermining or eroding welfare services, this legitimises forms of what some call ‘welfare chauvinism’ whereby those subject to immigration control in many cases have limited or lesser access to these services, or are subject to specific forms of control through them (for discussion see Careja and Harris, 2022). At the same time, when Fallon, for instance, claimed that British people were ‘under siege’ from migrants ‘claiming benefits’, what this also sidestepped was the real ‘siege’ on the welfare state which his political party (and indeed, not only this political party) was mounting (Burnett, 2015). In 2014, for example (when Fallon made these remarks), the Conservative-Liberal Democrat coalition government was administering its packages of welfare ‘reforms’ which caused immense suffering on some of the poorest people in the UK and, according to the United Nations (2019) at least, underpinned the ‘systematic immiseration of millions’.

Punishment as ‘Rescue’

As the above suggests, then, racial gaslighting has involved rationalising policy frameworks inflicting particular forms of harm as protecting communities *from* harm. It has involved appropriating narratives of victimhood in the service of state-sanctioned victimisation. But at the same time, a parallel form of racial gaslighting has involved rationalising the criminalisation and punishment of racialised communities as a way of *protecting* racialised communities. For example, in 2020, Dame Diana Johnson MP gave an impassioned speech to parliament suggesting that the ‘UK sex trade is dominated by organised crime, with sex trafficking taking place on an industrial scale’, and asserting that ‘predominantly vulnerable, non-UK-national women... are being abused in brothels across Britain’ (Johnson, 2020). Linking concerns about the prevalence of migrant sex workers in the United Kingdom with her characterisation of it as ‘a high value, low risk destination for sex traffickers’ resonated with a wider political climate eager to scapegoat migrants and racialised communities as *the* perpetrators of sexual exploitation and violence (Johnson, 2020). Indeed, ex-Immigration Minister Robert Jenrick would go on to speak of

‘significant and growing evidence’ and ‘mounting concern that the UK is importing crime, particularly violent crime [and] sexual assaults...’ (Leigh, 2024). But what is central to this chapter, is that in doing so Johnson simultaneously painted migrant sex workers as reliant on an expansion of British state intervention and carceral power to be protected and liberated. She set the scene for a Scottish Government Cross-Party Group on Sexual Exploitation, and All Party Parliamentary Group on Commercial Sexual Exploitation (which she chaired) to publish reports calling for the increased criminalisation and control of sex workers under the rubric of ‘protection’. Yet rather than recognise and target the systemic and structural violence sex workers repeatedly document experiencing, Scottish and British Parliamentary Group reports and subsequent legislative amendments leant heavily on sensationalised and racialised exposés of human trafficking perpetrated by ‘Romanian brothel gangs’ to evidence their proposals for further criminalisation (see Cross-Party Group on Commercial Sexual Exploitation, 2021; All-Party Parliamentary Group on Commercial Sexual Exploitation, 2024).

Johnson was neither the first or the last political figure to amplify and distort reports of human trafficking and sexual exploitation in Britain perpetrated (it is suggested) by immigrant and racialised communities to call for the increased criminalisation, surveillance and ‘protection’ of sex workers. In May 2024, for example, Carolyn Harris MP echoed her claims, calling for all sex work to be redefined as sexual exploitation, alongside the introduction of a new offence of ‘enabling or profiting from the prostitution of others’. She argued changing definitions and expanding policing powers over platforms used by sex workers to advertise their services would ‘combat human trafficking’, focusing on ‘a trafficking gang that spent £25,000 advertising a group of young Romanian women (Harris, 2024). Years earlier, in 2007, former Europe Minister Denis MacShane claimed there were some 25,000 individual ‘sex slaves’ in massage parlours and brothels across the United Kingdom, reinforcing demands for particular forms of state intervention combining immigration enforcement and criminalisation (The Guardian, 2007). However, when the police carried out the self-styled ‘largest ever crackdown on human trafficking’ in Britain that same year—conducting coordinated raids across 822 premises thought to be used by sex workers across each police force in England, Scotland, Ireland and Wales—not only this did fail to identify a single perpetrator of trafficking for the purposes of sexual exploitation, but of 528 reported arrests made during the operation, 122 were found to have been fabricated by officers, and 106 of those individuals actually arrested were later released without charge (Davies, 2009). In the absence of human traffickers to detain or victims to rescue, police instead

issued cautions for minor offences to 47 of those arrested, whilst a further 76 were charged for immigration breaches, and several others for drug and prostitution offences.

In fact, steadfastly maintaining that ‘sex trafficking [takes] place on an industrial scale’ is neither borne out by the state’s best efforts to identify victims and perpetrators, or—crucially—by the numerous accounts provided by sex workers themselves. While in turn, the endeavours of those who continue to prioritise distorted, reductionist and racialised interpretations of prostitution to expand police powers are undermined further by the extensive evidence showing that criminalisation is linked directly to an increase in sexual or physical violence amongst sex workers, with migrant and racialised individuals often most severely impacted. Policies of carceral expansionism rationalised as protecting ‘predominantly vulnerable non-UK national’ (Johnson, 2020) sex workers from violence can therefore be precisely those that have been demonstrated to increase their proximity to it. Yet the malleability of carcerality allows reality to be flipped to recast the role and function of state power and intervention should it be contradicted. Indeed, a central function of suggestions that the violence and repression sex workers document may be alleviated through an expansion of state carceral power is to atomise and obfuscate any analysis of the state itself in orchestrating the structural and systemic violence sex workers have documented so exhaustively.

For example, sex worker-led coalitions such as the English Collective of Prostitutes (ECP) and Sex Worker Advocacy and Resistance Movement (SWARM) have long outlined how a raft of policies and legislation function to isolate and marginalise individuals, in many instances creating a reliance on sex work to avoid destitution, whilst undermining the safety of sex workers (see for example; The English Collective of Prostitutes, *n.d.*). Prostitution legislation criminalises many working practices that increase safety, such as working collectively from a premises. Indeed, individuals who do not work alone are exposed to charges of brothel keeping under the 1956 Sexual Offences Act. Similarly, any individual suspected of sex working can be issued a Prostitutes Caution, which unlike other criminal cautions requires no admission of guilt, and remains on an individual’s criminal record for life, jeopardising alternative employment and educational opportunities (English Collective of Prostitutes, 2023). Having No Recourse to Public Funds or facing caps on welfare imposed via Universal Credit pushes sex workers—the majority of whom are mothers working to support their families—towards more dangerous work practices (Safety First Wales, 2023, English Collective of Prostitutes, 2019a; Hanks, 2021; Connelly and English Collective of

Prostitutes, 2021). Support Not Separation and Global Women's Strike have further highlighted how these policies target and punish the poor by imposing poverty, which can in turn be classified and constructed as 'neglect' by social services and the family courts to remove the custody of children from 'unfit mothers' (Legal Action for Women, 2017). Furthermore migrant sex workers have reported how increasingly restrictive immigration controls have exposed them to threats of deportation and extortion, displacing them to less visible and more risky work spaces, where they provide services they would previously refuse and at a reduced cost (English Collective of Prostitutes 2019a).

Such policies that create a reliance on sex work, whilst isolating sex workers and displacing them to precarious and dangerous conditions are therefore clear manifestations of state violence. Yet the state repeatedly instigates further harm under the guise of protecting and rescuing sex workers from those violent conditions it has imposed to underscore its purported benevolence. It is in this way, for example, that the 2014 'anti-trafficking' raids during Operation Companion in Soho (London), which led to sex workers being threatened with deportation, dragged in to the streets, paraded to the media and thus 'outed' to their families were presented as a manifestation of a compassionate and kind state working to rescue migrant victims and 'vulnerable' women (English Collective of Prostitutes, 2019b). Indeed, its 18 brothel closures during raids involving 250 officers, many reportedly wearing riot gear and accompanied by dog units, demonstrate how sex workers own accounts of their social and material conditions are dismissed, and repressive action is recast as compassionate and necessary to expand and exert state power (English Collective of Prostitutes, 2014; Townsend, 2014).

Moreover, the continued and profound undermining of narratives emphasising the prevalence of trafficking and sexual exploitation amongst migrant sex workers has not resulted in reduced efforts by the state to monitor them. A continued suspicion of migrant workers can be seen in police officer testimonies claiming that officers are told 'repeated cover stories' when they 'visit brothels' (UK Feminista, 2020:3). Some police forces have been explicit that even in the absence of any evidence of trafficking, or complaints from victims, they conduct ongoing surveillance to monitor for exploitation (ibid). Indeed, that racialised and migrant individuals present their sex work as anything other than trafficking and sexual exploitation is treated as circumspect. This is perhaps emblematic of a broader discursive shift that is taking place in an effort to legitimise the ongoing repression and disruption of sex workers by state agencies and structures. The increasingly discredited raids to 'rescue'

victims of modern slavery are being supplemented with extensive and ostensibly benevolent welfare checks in the name of protection and safeguarding (Hanks, 2022).

Such a strategy is embodied in National Police Chiefs' Council (2024: 36) guidance that presents the role of the Police as having a duty to safeguard and protect sex workers, whilst focusing on exploitation and building trust and confidence. Specific care is taken within the guidance to identify the high numbers of migrant sex workers in urban areas, and to acknowledge their association with slavery and trafficking in media and public debates. Yet the guidance continues to note how 'many migrant sex workers come from countries where they cannot count on law enforcement because sex work is criminalised or because people working in law enforcement are corrupt, homophobic, transphobic or sexist' (2024: 67). It describes how 'these shifting perceptions and complex experiences strongly influence whether migrant sex workers in the UK see law enforcement as a threat or an opportunity'. Such guidance, however, appears oblivious to the possible effects of migrant sex workers' experiences of violence at the hands of police in the United Kingdom in undermining potential relations. Furthermore, attempts to contrast policing in the United Kingdom to that of countries 'where many migrant sex workers come from' fails to recognise the 'institutional racism, misogyny and homophobia' identified in the Metropolitan Police by Baroness Casey (emphasised above), or racism across the United Kingdom's Criminal Justice System detailed repeatedly elsewhere (see for example Lammy, 2017). Indeed it has become necessary for reality to be inverted, for the 'repeated cover stories' and lack of trust in Police amongst migrant workers to be attributed to the claimed repressive and authoritarian practices of foreign states. It becomes, therefore, the role of the UK police to establish relationships and trust, so that migrant sex workers can finally be protected.

At the same time, this is not simply a matter of police guidance, as state funding is distributed to a variety of organisations and charities that provide services in the name of safeguarding and supporting sex workers. Yet revealingly, non-compliance with these services has been seen to lead to threats of Criminal Behaviour Orders for sex workers demonstrating how further criminalisation can be the outcome of efforts purported to protect and support (Oppenheim, 2019). Perhaps the ultimate irony though can be found in former Prime Minister Rishi Sunak's assertion that Britain 'is a country that has always been open, welcoming, compassionate and generous to those in need' (Sunak, 2023). For his parties' own policies meant that should victims of trafficking for sexual exploitation *actually* be identified through the Home Office's National Referral Mechanism, they had no legal entitlement

to remain in the United Kingdom (Right to Remain, 2024). Deportation, then, becomes the final act of a supposedly compassionate, generous British state.

Conclusion: Reflecting on Racial Gaslighting

Much like in Hamilton's 1938 play, the forms of gaslighting examined above involve the manipulation of reality and interpretations of it in order to solidify, shape and/or buttress particular forms of relations. However, as those developing analysis of racial gaslighting conceptually have demonstrated, this cannot be understood solely in terms of interpersonal dynamics, but is manifested through (and buttresses) social relations: culturally, institutionally, politically, and structurally. Racial gaslighting, as has been made very clear, is a process which is bound to power at such levels.

Drawing from these insights, this chapter has demonstrated how racial gaslighting operates in one such context: through the simultaneous rationalisation and materialisation of state power. Through a series of interrelated case studies relating to immigration control (itself, of course bound up tightly with a whole range of further policy domains; see Burnett, 2023), it has demonstrated differing functions of racial gaslighting and different manifestations. The examples given here include (among other things) the recasting of the now-disbanded 'cash for humans' (Sceats, 2022) policy agreement between Britain and Rwanda as a form of benevolence. They include the recasting of state-led victimisation articulated through immigration control as the state being victimised *by* those subject to immigration control. They include governments fostering the immiseration of marginalised communities while simultaneously blaming (and enacting punitive measures against) those subject to immigration control and racialised communities for this immiseration. And they include governments evoking imagery of particular migrant communities as simultaneously in need of punishing and liberating, while simultaneously creating policy frameworks which foster the harms which they claim to be 'saving' people from. The functions of these distinct forms of racial gaslighting differ; but one of the things they oscillate around is solidifying state power.

This does not mean that they should be taken as definitive explanations of state power with regard to race and racialisation, of course. To take just one of the above examples, the Rwanda policy framework might have been rationalised *in part* through a cynical recasting of it as a form of benevolence (benefiting Rwanda as a country as well as those in line to be targeted

by it as a policy framework). But this was not the *only* rationalisation, and on the contrary was one among many others. Indeed, in this context racial gaslighting might be seen as one factor among many in this construction and realisation of policy formation and state power: not a definitive explanation, but part of it.

At the same time, as indicated above, racial gaslighting is not restricted to the realisation of state power, but is manifested in multiple further ways. When, for example, multiple mobilisations took place across towns and cities in England and Northern Ireland in Summer 2024, after the horrific murder of three girls and serious injury to others, mosques were attacked, shops were firebombed and people were racially abused and assaulted. Meanwhile, National Front slogans were stuck on walls, with razor blades hidden behind them to lacerate the fingers of anyone trying to remove them. 'Checkpoints' in one area were established, with people being denied or allowed entry based on assumptions about their ethnicity, nationality, faith or immigration status. And accommodation for asylum seekers was set on fire in arson attacks, with those inside at risk of being burned alive while onlookers watched on and jeered. The reasons behind this sustained racist violence were multifaceted, of course. But as journalist Daniel Trilling (2024) has pointed out, ostensibly 'respectable sources' were among those who provided the 'ideological fuel'. So it was somewhat perverse when particular political figures and segments of the press which had spent years actively fostering conditions where islamophobia and anti-migrant racism are part of popular discourse all of a sudden decried the physical manifestations of racism which they had helped normalise. At the same time, it further embodied a form of racial gaslighting when, following the events, a whole range of voices claimed a supposed 'two-tier' form of justice favouring racialised communities over the far-Right. For this, as indicated earlier, did not just misconstrue reality, it was a complete inversion of it (see Bienkov, 2024).

Indeed, while the point here is not just to add further examples of racial gaslighting, it is to suggest that a core function of racial gaslighting is to turn reality on its head, and in so doing normalise and reproduce racialised and racist social relations. Against this backdrop, those who have developed and pioneered analyses of racial gaslighting have provided conceptual tools which can contribute to the vital process of unravelling and foregrounding the basis of these social relations, and ultimately transforming them.

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24

Tagging, Privacy Intrusions and Racial Injustice: The Case of GPS Monitoring and Migrant Rights in the United Kingdom

Monish Bhatia and Lucie Audibert

The Evolution of Electronic Monitoring in England and Wales: From Criminal Legal System to Immigration Controls

Electronic monitoring (EM) was implemented under the Criminal Justice and Public Order Act 1994. It is a surveillance tool designed to track offenders and suspects, verify their whereabouts and determine whether they are complying with a set of ‘liberty’ conditions imposed by a court or government authority, and/or attending appointments and other programmes which are part of the requirements of their sentence. After some risk assessments, people are fitted with a tag on their ankle. This can be applied at any stage in the criminal justice process—either pre-trial as a condition of bail, as an alternative to the criminal-legal process through pre-trial diversion, as a condition of early release from prison, parole or as an alternative to a prison sentence.

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Those subjected to monitoring may have restrictions placed on them—for e.g. a “curfew”, that requires them to remain in a fixed location (home for example) during certain hours in a day. The use of EM in the criminal arena is determinate in nature, such that courts set a fixed time length for tagging (as outlined in the Sentencing Guidelines). In England and Wales, children as young as 12 years of age are given ankle monitors.¹

EM was introduced to address prison overcrowding and the escalating cost of incarceration (Nellis, 2003), intended to bring about decarceration and diversion from custodial pathways. Hucklesby et al. (2016) argue that England and Wales have the highest number of individuals subjected to this technology, and that the high use of EM is linked with high use of imprisonment (Hucklesby et al., 2016). This raises complex questions around EM’s ability to reduce prison numbers, or if it simply results in an increase in the overall number of criminal justice interventions. EM may result in administrative changes and proliferation of criminal justice controls—Stan Cohen (1985) describes this as the net-widening effect. EM as a sentence could be passed for individuals not receiving a prison sentence/formal sanction or where normal probation would suffice; thereby making strict conditions associated with EM rather harsh, unnecessary and disproportionate to the crime committed (Bonta et al., 2000; Padgett et al., 2006). Net-widening could also occur due to technical violations of “liberty” conditions that can only be identified through such intensive surveillance (Bonta et al., 2000; Padgett et al., 2009). The use of EM is justified by criminal justice reformers on the basis that it is a softer, more humane or less punitive option when compared to imprisonment. Such argumentation, however, may lack critical reflection and ignore the ways in which EM may create its own penal excess. The use of this sanction can unfairly punish people belonging to poor and disadvantaged groups, who are likely to serve sentences in deplorable conditions (Payne et al., 2009). Those critical of EM oppose such non-abolitionist and reformist alternatives and view the technology as an extension of confinement and an intense form of punishment (Alexander, 2013; Davis, 2003; Kilgore, 2022).

EM technology has opened up new surveillance possibilities for authorities. Its success is measured through overall compliance and sentence completion rates. However, the evidence of EM’s effectiveness in reducing re-offending is rather minimal (Graham & McIvor, 2015) and inconclusive (Ministry of Justice, 2019). There is a moderately strong consensus within the literature that EM can only bring about rehabilitation if it is used in

¹ See: <https://www.newscientist.com/article/2365642-hundreds-of-children-made-to-wear-gps-tags-by-uks-ministry-of-justice/>.

combination with supervision and support provisions (Graham & McIvor, 2015; Nellis, 2020). Otherwise, its crime reductive effects, if any, are strictly limited to the duration for which people are subject to it (Graham & McIvor, 2015). Scholars have argued that the implementation of EM has led to a move away from traditional values of probation that involve *“slow nurturing of inner change in offenders ... towards the galvanising of rapid processes of outward compliance”* (Bottomley et al., 2004: 71). According to Hucklesby et al. (2016), increasing numbers of EM are associated with a reduction in the involvement of probation services, while in England the lack of credibility of probation services has contributed to the increased use of EM. Furthermore, technological advancements and the introduction of Global Positioning Tracker (GPS) devices have a potential to dramatically reduce human contact and replace it with highly intrusive at-distance surveillance. This, of course, also raises troubling legal and ethical questions about the ever-expanding surveillance state.

EM was introduced as a result of the transformation of the penal field—which is succinctly explained by Feeley and Simon’s (1992) ‘new penology’ thesis. As argued by the authors, new penology targets people as aggregates as opposed to individualising or creating equity. Its focus is not on punishment or rehabilitation, but on identifying, managing and controlling those deemed as ‘risky groups’ by utilising the most cost-effective methods. According to Paterson (2007: 107), the growth in EM is driven by a fascination with the potential of new technologies to deliver *“managerialist solutions to complex social problems”* and the *“broader processes of neoliberal globalization that have developed the markets in incarceration and social control. The commercial market in crime control is set to continue to expand and to present new opportunities for organisations linked into the outsourced justice sector”*. In a similar vein, Galic et al. (2017) state that corporations have become the new driving force of power and control in capitalist structures. Despite the sparse or inconclusive evidence around the effectiveness of the technology, and on-going Serious Fraud Office investigations against private security company G4S, the company was awarded a £25million contract in 2017 by the British government to manage EM. The net expenditure on the programme between 2011–12 and 2021–22 was £153 million (National Audit Office, 2022). And the forecast for the new programme is £1214 million between 2021–22 to 2030–31 (including £808 million for the live service, £55 million for re-procurement and £232 million for expansion projects). In 2023, another private company called Serco was given the EM contract with a value of £200 million. US civil rights lawyer and legal scholar Michelle Alexander

(2013) has strongly warned against the growing use of EM and involvement of corporations, arguing that it presents a clear challenge and threat to the integrity of the justice system and can lead to growing numbers of people finding themselves subject to perpetual criminalisation, surveillance and control. This, of course, will continue to increase the profit margins of the security companies involved. Paterson (2007), meanwhile, raises concerns over the lack of independent oversight of the EM industry and insufficient monitoring by governmental bodies.

EM is increasingly termed as 'e-carceration' (Alexander, 2013), as it shifts the site of imprisonment to homes and other spaces of daily life. Those who are incarcerated experience what Sykes (1958) calls the pains of imprisonment: as deprivation of autonomy, deprivation of goods and services, deprivation of liberty, deprivation of social relationships and deprivation of security. Participants in a study conducted by Payne and Gainey (1998) experienced all of the five pains of imprisonment while being subjected to EM. In addition, they suffered types of pain that were not experienced by those imprisoned, which included: financial or monetary implications—not able to work adequate hours due to working restrictions or inability to find a job due to their criminal record; increased stress in relationships with their partner or family members; dehumanisation/stigma of wearing an ankle monitor and concerns with their appearance in public; and emotional effects of watching others get on with their lives while being subjected to restrictions. Similarly, Mair and Mortimer (1996) argue that people who are tagged feel constantly monitored and not able to escape surveillance, while participants in research by Herzog-Evans (2009) mentioned the stress caused by the fear of being sent back to prison—all of which adds to the list of imprisonment pains.

Different groups may experience EM's punishment in different ways (Jones, 2014). For instance, tags (just as the criminal-legal system overall) are designed for men and may impact women differently (Holdsworth & Hucklesby, 2014). Older individuals may find tagging harsher when compared to younger offenders (Payne et al., 2014). With regard to race, Wood and May (2003) surveyed 113 people convicted of crime in northeast Indiana (US) and examined racial differences in perceptions of the severity of 'alternative sanctions' (including EM) compared to imprisonment. Their findings suggest that black people rated alternative sanctions more severely than white people and identified more strongly with reasons to avoid any alternatives to imprisonment. Black people were significantly more concerned about participating in alternatives than did white people, their concerns stemming largely from difficulties in following programme rules and from potential mistreatment at the hands of parole and probation officers and other personnel that

oversee alternative sanctions—all of which may increase the risk of revocation and imprisonment. May and Wood (2005) surveyed 588 people convicted of crime in Kentucky (US) to develop a ranking of sanction severity, and concluded that males, blacks, and older people with prison experience rated alternative sanctions as more severe than their counterparts. According to Provine and Doty (2011), the use of such control measures and practices of othering is part of a ‘racial project’ (p. 264), one that is built on the visions of white supremacy and treating migrants as a racialised risk, and with sheer contempt. Despite the increasing use of this technology and growing concerns around it, there are no official studies or academic research (in the UK nor internationally) on how ethnic and racial groups experience EM (with the exception of Bhatia, 2021 who uncovers the impacts of radio frequency tags and curfews on the mental health of asylum seekers). This chapter therefore intends to explore how GPS tags can have racially discriminatory impacts on migrants.

Through the Immigration and Asylum Act 2004, the British state extended the use of EM to immigration controls; thereby, drawing (rather questionable) crime control measures in migration arenas (Bhatia, 2021). People who are on immigration bail also have conditions attached to their release, such as reporting to immigration authorities or the police, staying at a specific address, or a requirement for a surety to post bail money, payable should they abscond from the conditions. In addition, EM can be used as a condition by the Home Office for those who are considered at risk of absconding, re-offending and/or have a potential to cause harm to the public. One of the differences in the use of EM in the immigration system is *time*—whilst criminal sentences involving EM are determinate in nature, the immigration system uses it with no upper limit on time.

As far as we know, Britain is the only European state to use EM in the migration arena.

Tagging in the immigration system is not intended to be punitive of an offence—notably, it is not the criminal courts that authorise tags. It is branded as an ‘administrative measure’ and enforced by immigration authorities. It is not imposed as a criminal sanction, and yet there is no statutory requirement to seek consent of the subject. Former Minister of State for Immigration, Citizenship and Nationality Tony McNulty (2005–2006) justified the removal of consent stating that:

... asking for the subject’s consent is inconsistent with any other area of contact management. It hampered our ability to manage contact with people flexibly because the need for consent left us with very little recourse if the individual failed to give it or where, having initially agreed to be monitored electronically,

they subsequently failed to comply. That is why I agreed a change in the policy ... *to allow the Immigration Service to draw up contact management plans without first seeking the consent of the individual*. The consideration of whether the individual will comply with specific requirements will be part of the process of deciding how best to manage contact and this change places us in a stronger position by enabling us to consider what action to take where someone fails to comply with an electronic monitoring requirements. (House of Commons Debate, 2008; emphasis added)

Unsurprisingly, given the consequences for non-cooperation, McNulty noted an increase in compliance, albeit in a small sample of tagged individuals (House of Commons Debate, 2008). Under Section 24 of the Immigration Act 1971, a person on immigration bail breaching their conditions without reasonable excuse can be subjected to criminal proceedings, and if convicted can be fined and/or receive a prison sentence of up to 6 months.

EM is considered as an 'alternative to immigration detention' (ATD). It is now well established in the literature that detention centres are harmful, exacerbate mental distress and cause a great deal of anxieties amongst those confined (Griffiths, 2013). Suicide and self-harm rates in detention (including of those on suicide watch) remain significantly high (Bhatia, 2020b). Scholars have made a case for detention to be abolished altogether (Bhatia & Burnett, 2019). Internationally, Immigration and Customs Enforcement (ICE) in the United States (US) has deployed EM as an ATD. This is largely due to its perceived 'cost effectiveness'. In July 2018, over 38,000 immigrants were tagged in the US with GPS technology (AP News, 2018). The Department of Homeland Security (DHS) highlighted the high success rate and 'strong alien cooperation' with such control measures (DHS, 2018: 179). In the UK, in contrast, the reporting population is approximately of 60,000 people, with a total cost of £8.6 million per year and a 95% compliance rate (All Party Parliamentary Group Inquiry, 2015). Despite the existence of ATD measures, the spending on detention in the UK remains high. The annual cost of detention for the year ending March 2018 was £108 million and this does not include the cost of compensation for wrongful confinement (The Migrant Observatory, 2018). Also, the increase in alternatives over the past decade or so (in both the US and UK) has not led to any serious reductions in the detention population (for US statistics see: DHS, 2018; for UK statistics see: Migrant Observatory, 2018). Therefore, EM (and other alternative measures) represent a net-widening of interventions and should be viewed as supplementing rather than replacing immigration detention.

The international evidence that supports (non-enforcement based) ATDs also opposes EM surveillance. For instance, a report of the American Immigration Lawyers Association (2019) indicated that ICE's Family Case Management Program (FCMP), in which families received caseworker support without having to wear an ankle monitor, had 99% compliance with court appearances and ICE appointments. A similar pattern was noted across another ICE programme where individuals who were released from detention between 2001 and 2016 appeared for *all* immigration court hearings, making the rate of compliance 100% and rate of absconding 0%.

The studies around absconding in the UK are limited, but the few that exist counter the official 'flight risk' narrative. In their research, Bruegel and Natamba (2002) used the records of a charity organisation called Bail for Immigration Detainees to trace ninety-eight asylum detainees who were bailed between July 2000 and October 2001. They concluded that over 90% complied with ordinary bail conditions and did not abscond. Weber and Gelsthorpe (2000), in their study of British ports, found that absconding rates vary between 3 and 12%, indicating a high degree of inefficiency—because as many as 97% individuals due for deportation did not abscond. By contrast, the Home Office revealed (under the Freedom of Information Act 2000) that the absconding rate was only 3% in 2019 and further dropped to 1% in 2020.² Marouf (2017) explains that simply being tagged does not help individuals to resolve their cases or navigate the legal system—on the contrary, it makes it more difficult to participate in community-based assistance. Tagging is also dehumanising, degrading and discriminatory (Bhatia, 2021). Therefore, EM is an ineffective non-alternative alternative, and simply extending enforcement measures.

As far as we know, the US were the first country to deploy GPS monitors for immigration control purposes. These monitors are directly connected to a network of satellites in orbit providing subjects' real time location information to the authorities. On 7th August 2019, ICE executed criminal search warrants at seven food processing plants in the state of Mississippi and apprehended nearly 700 migrants—one of the biggest worksite enforcement actions in the country's history (Silva, 2019). In a coordinated sting, ICE had tracked the movements of individuals wearing GPS monitors and established patterns around times spent at specific locations. The monitors thereby provided intelligence and assisted authorities in arresting illegalised and deportable migrants who were not given the permission to work. In this case, GPS tracking went well beyond its original purpose of stopping people

² More information here: https://www.whatdotheyknow.com/request/absconding_rate.

from absconding, and was used as a ‘drag-net’ to trap and draw migrants into the criminal legal sphere.

In the UK, however, migrant tagging developed slightly differently. In 2016, the Court of Appeal ruled that the Home Office had no legislative authority to automatically impose curfews (along with radio-frequency tags) on migrants and restrict individual liberty.³ As a result of the judgment, viable claims for false imprisonment could be brought if one could prove that curfew requirements were imposed unlawfully. Nevertheless, the practice of imposing curfews and tagging did not cease and was set to evolve to become more expansive and invasive. The accommodation requirement associated with the curfews and radio-frequency tags were going to be removed when the Home Office moved to using GPS technology (which was rolled out by the criminal legal system in England and Wales in 2019⁴). When combined with the immigration raids system (Bhatia, 2024; Bhatia & Burnett, 2022) already in place,⁵ changes to the bail regime introduced through the Immigration Act 2016⁶ and ever growing crimmigration controls (Bhatia, 2015, 2020a, 2023)—are set to create another layer of punitive dragnet. The following section offers a framework to understand migrant monitoring, followed by the use of GPS tagging in the immigration system and consequent challenges.

Race and Surveillance: A Framework to Understand Migrant Tagging

Surveillance studies emerged as a field not so long ago, and came to the increased attention of academics, rights-based campaigners and public after the events of 9/11 (Lyon, 2007; Monahan, 2006). However, the theoretical roots of the field go way back. The idea of surveillance as a disciplinary tool emerged in the eighteenth century and can be traced back to the ‘panopticon’ writings of philosopher and jurist Jeremy Bentham.⁷ The panopticon, as described by Bentham, is an apparatus of surveillance, a principle of

³ See *Gedi v Secretary of State for the Home Department* [2016] EWCA Civ 409: <https://www.gardencourtchambers.co.uk/wp-content/uploads/2016/06/R-Gedi-v-SSHD-2016-EWCA-Civ-409.pdf>.

⁴ See: <https://www.bbc.co.uk/news/uk-47256515>.

⁵ According to a leaked document, the Home Office carried out a total of 36,381 ‘illegal working’ visits across the UK between 2009 and 2014, or roughly 6000 a year. From the 36,381 visits, there were 29,113 arrests. See: <https://corporatewatch.org/snitches-stings-leaks-how-immigration-enforcement-works-2/>.

⁶ For instance, see: <https://www.freemovement.org.uk/immigration-bail-commencement-15-january/>.

⁷ Bentham letters.

construction, based on the idea of an apparent omnipresence of the guard. The panopticon layout shows how a maximum number of subjects can be monitored with the fewest possible guards (or arguably none) and low operational costs. The layout consists of a central watch tower where guard is placed, surrounded by a ring-shaped building of cells, with every cell having one side facing the tower. This makes the subjects feel constantly visible and vulnerable. One of the striking aspects of the plan was the elimination of physical power. Bentham expected this '*new mode of obtaining power of mind over mind, in a quantity hitherto without example*'⁸ would modify the subjects' behaviour in order to avoid punishment, resulting in the internalisation of discipline. The plan embodied control, invisibility (of guards) and isolation of those confined. He further expanded on the benefits of the panopticon and its '*wide-ranging application—to factories, hospitals, schools, prisons or any other surveillance situations or social spaces—thereby, eliminating waste of public resources*'.

*Whilst few institutions were created based on the panopticon, none conformed precisely to the detailed drawings or to Bentham's principles of management (for instance, see Bentham Project website). Nevertheless, panopticon grabbed the attention of various revisionist and prison historians, in particular Michel Foucault, who revisited the idea in his book *Discipline and Punish: The Birth of Prisons*, published in 1975. He saw the panopticon metaphorically and used it as a way to illustrate disciplinary societies. For Foucault, the panopticon's (unverifiable) surveillance gaze induced in the subject a state of conscious and permanent visibility, ensuring a constant functioning of power—which made surveillance permanent in its effects (p. 201). This was the point of departure from Bentham's model, where surveillance was temporary, confined to a physical space, creating a perfect disciplinary institution—whereas Foucault argued that surveillance measures were used in ways that were more ubiquitous and polyvalent, spreading throughout the whole social body and forming a disciplinary society (209)—the constant surveillance gaze resulting in docility and subjugation of bodies. The de-individualisation of subjects in control societies would evolve into dehumanisation, as they would not be considered as humans but simply seen through representations. Many scholars have expanded on Foucault's work and created versions of 'opticons'—one leading example would be that of that 'ban-opticon', as termed by Bigo (2002). Within the ban-opticon, profiling technologies determine who needs to be placed under surveillance and who is free of it. The ban-opticon*

⁸ Bentham letters.

functions to exclude subjects deemed as ‘risky’ and potentially ‘dangerous’—such as minoritised groups and certain specific nationalities. Foucault is considered as ‘foundational thinker’ (Murakami Wood, 2003: 235) whose work led to social theorists to take ‘*surveillance seriously in its own right*’ (Lyon, 1994: 7). While surveillance studies have emerged in the past two centuries, there is limited recognition of the racially differential impact of surveillance.

In 2015, an African-American scholar Simone Browne subjected the panopticon to interrogation through the reading of a slave ship. The ship in question was built in 1780–81 and operated until 1804 as a slaver. It was co-owned by a Liverpool (North of England) slave-merchant Joseph Brooks and came to be known as The Brooks. The plan of The Brooks was released around 1789 for a Parliamentary enquiry, using it as a visual aid to highlight the brutality and violence of the Middle Passage and slave trade. This was around the same period when Bentham (1786) wrote about the panopticon. In her initial chapters, Browne outlines Bentham’s journey—travelling on a Turkish ship with eighteen black slaves under the hatches and eventually reaching Crecheff in Russia (where the panopticon Letters were written). Browne asks: “*how must we grapple with the Panopticon, with the knowledge that somewhere within the history of its formation are eighteen “young Negresses” held “under the hatches”? If Bentham’s panopticon depended on an exercise of power where the inspector sees everything while remaining unseen, how might the view from “under the hatches” be another site from which to conceptualize the operation of power?*” (p. 33). This in a way shifts the narrative about the emergence of modern disciplinary power and management of life, along with the genealogy of surveillance. Browne goes on to critically reinterpret Foucault’s panopticon and interrupts the reading of discipline and birth of prison. She argues that techniques of disciplinary power that Foucault laid out were always violent and operated both as a spectacle and discipline on racialised bodies. The Brooks was clinical in its architectural logic and provided an aerial viewpoint of slaves stowed away on shelves with a height of 2 feet 7 inches—who were subjected to the violence of slavery and also to the white surveillance gaze. The Brooks was a floating mobile prison on water, which existed even before the modern prison was established on land (Browne, 2015). By drawing on Fanon’s thinking into surveillance studies and his concept of epidermalisation and imposition of race on the body, Browne builds a theory of racialising surveillance. Here the absented presence of the history of racial formation and policing bodies of colour is central to understanding how different forms of surveillance reify borders and boundaries along racial lines, and how the contemporary laws, policies and practices

of surveillance have the power to define what is in or out of place (Browne, 2015)^{9, 10}.

Surveillance does not involve a fixed set of practices, and neither is it applied to any one particular racial group—but it does rely on techniques that reify boundaries along racial lines. Whilst surveillance has spread into all aspects of social life, however, it is not a colour-blind or neutral technology—it has a purpose attached. The connection between today's migration controls and surveillance needs to be viewed in the context of empire, colonial conquest and slavery (Danewid, 2017; also see Browne, 2015—chapter 3). According to Sharma (2017), since the late fifteenth century, European empires actively engaged in moving people through slavery, debt bondage, penal labour, and in late imperialism, immigration regimes. What we have today is a globalised system of controls in which it is impossible to move freely across nationalised borders—more specifically for the poor from the Global South—who are left with little but their labour power to sell in the globalised capitalist marketplace (Sharma, 2017). Contemporary social sorting (Lyon, 2003) has rapidly resulted in new forms of borders across Europe, which are digital and aim to control and exclude those deemed as 'undesirables' (Broeders, 2007). Biometric information is stored in databases and used for identifying and filtering legal and irregular migrants on the basis of digital traces of their migration history. Similarly, Aas (2011) argues that border surveillance is not only a tool for exclusion, but also for internal community building and creating 'us' vs 'them'. Crime control and migration control have become intertwined in defining the implementation of such measures and have created what Stumpf (2006) terms as a 'crimmigration' control system—surveillance sorts out bonafide travellers from 'crimmigrant bodies' (Aas, 2011).

Migrants who are racialised and constructed as deviant, fraudulent and inherently criminogenic (Bhatia, 2018; Bhatia & Poynting, 2023) have become the objects of control. One example would be that of the EURODAC system, which was designed with an aim to stop so-called 'bogus' asylum claims. The database stores biometric fingerprints of asylum seekers

⁹ Similarly, another African-American scholar called Alexander Weheliye uncovers Foucault's de-raced reading of discipline and punish, and remind us as to how the claims of Western philosophers are accepted 'without scrutinising the historical, philosophical, or political foundations upon which they are constructed' (Weheliye 2014: 6).

¹⁰ Neither Browne nor Weheliye are suggesting that those studying race and racism should not engage the thought of Foucault nor are they bemoaning the exclusion of race from the conceptual apparatus. Instead, they probe and complicate the conceptual apparatus—which is important in understanding contemporary surveillance practices, understanding the politics of surveillance and (in)visibility, and fostering political conversations around surveillance.

and Member States use it to enforce the Dublin Regulations, which determine which Member State is responsible for treating an asylum claim (see Aas, 2011). Similarly, new technologies, such as deception detection and surveillance through artificial intelligence (for example the EU's iBorderCtrl project) are being developed to identify 'fraudulent' migrants at the EU's external borders. In the UK, a number of surveillance measures have been deployed: in 2009/10, the Home Office made use of genetic and isotope testing for border control purposes. The aim of molecular tests was to ascertain ancestry and geographical origins of asylum applicants through the use of a DNA database, to detect 'bogus' claims. The practice was terminated due to widespread criticisms from the scientific community and shed light on the willingness to subject negatively racialised groups to experimental technologies and the extent of border control's entanglement with discourses on race and crime (Tutton et al., 2014)^{11, 12}.

The practices and modes of surveillance constantly evolve—in 2019, reports emerged of the Home Office subjecting asylum seekers to street-level surveillance by tracking their ASPEN card¹³ spending. The Home Office monitored and flagged purchases made outside of person's 'authorised' city where they were given temporary housing, in order to make a case that they were fraudulently living elsewhere or did not qualify as destitute—rendering them ineligible for financial support and shelter (Tillyard, 2019). Furthermore, since 2013, and through an amendment to the Police Act 1997, immigration officials are granted property interference powers, including interference with equipment, which can involve planting a listening device in detention centres, as well as hacking into phones or computers (Townsend, 2016). In the next section, we bring the focus back to migrant GPS tagging and resistance.

¹¹ The use of science and medicine in the surveillance of migration, however, is not new—Smith and Marmo (2011) analysed the practice of "virginity tests" endured by women from the Indian subcontinent who wished to enter Britain between 1960 and 1980. Women were subjected to gynaecological examination, with an aim to identify and filter 'bogus' migrants. Authors place this within the wider historical context and colonial preoccupation with the female body and medical surveillance that occurred through the Contagious Diseases Act 1864.

¹² The use of DNA surveillance in migration control is now growing. In October 2019 it was announced that the Trump administration was creating new regulations that would give immigration officials the permission to collect DNA material from people in federal immigration custody—including children and those who are seeking asylum. The results of tests would be entered into a national criminal database. This alters the original purpose of the technology which is pre-dominantly used for criminal investigations.

¹³ For what is Aspen card, see: <https://www.gov.uk/asylum-support/what-youll-get>.

The Tech Behind Tags—Towards Total Internalised Surveillance

In line with the widespread criminalisation of migration, tagging for immigration control uses the same technology as that used in the criminal justice system. The Home Office procures its tags through a Memorandum of Understanding with the Ministry of Justice, which sources directly from private technology suppliers (Electronic Monitoring Directorate, 2018). Over time, suppliers have ‘innovated’ by developing and offering to state authorities technologies enabling increasingly precise and close monitoring of people.

Traditional ankle tags, which have been around since the 1980s, function with ‘radio frequency’ technology (‘RF tags’). RF tags are secured around a person’s ankle and communicate with a monitoring unit placed in the subject’s home (for the purposes of monitoring compliance with curfews) or at any address they are forbidden from approaching (i.e. exclusion zones) (Community Justice Scotland, 2024). The system only collects binary data: by measuring the distance between the tag and the monitoring unit, it establishes whether the subject is at home or within an exclusion zone or not (Privacy International, 2022b). In 2021, however, the Home Office adopted a new generation of ankle tags, equipped with a fundamentally different and more intrusive technology—the well-known Global Positioning System (‘GPS ankle tags’). These tags monitor subjects’ precise geolocation continuously, just like a navigation app on a smartphone. Records of subject’s geolocation data are then stored and retained for years, available for authorities to access for a wide variety of purposes. This move from a binary presence/absence type of tracking to continuous GPS monitoring moves the control of migrants much closer to a type of racialised ban-opticon surveillance. Individuals are tracked every minute of the day, everywhere they go. Authorities have access to vast amounts of data that reveal highly granular and personal details of their daily lives—such as trips to health centres, places of worship or political gatherings. Surveillance of migrant lives is dematerialised but intensified, and internalised.

While on surface the technology might appear as cutting-edge and a perfect surveillance tool, GPS tracking suffers from inaccuracies that can have severe consequences for subjects. The tools of GPS tagging surveillance are dematerialised data points, rather than the physical observation of subjects, such that they are not a necessarily reliable source of ‘truth’. Indeed, technical research by the NGO Privacy International demonstrated that:

[t]rail data can show individuals attending certain locations when they have actually attended others – for example, inaccuracies of just a few meters can show someone attending an office building every day, when they have actually been attending the coffee shop next door. If the individual's bail conditions forbids them from working, this can lead to wrongful accusations of breach to be made against them. (Privacy International, 2022c: 115)

Certain locations are also unable to reach GPS signal, such as underground transport systems or certain types of buildings (often, supermarkets). As loss of contact can be a trigger for an alert to be sent to authorities and for immigration enforcement to seek to locate the subject (Home Office, 2021), someone could be unjustly flagged as having 'absconded' or breached their bail conditions if they spend too much time in these unreachable locations. It's unclear in the policy what amount of time without contact will trigger an alert—an investigation by the Independent Chief Inspector of Borders and Immigration (2022) suggests this is merely 15 minutes. Therefore, not only migrants fear and are impacted by constant surveillance (see Bhatia, 2021; Hynes & Leslie, 2023), but the dematerialisation of surveillance also creates a new source of fear—as to what authorities may take as the factual record of individual movements—which is not always an accurate reflection of reality.

The burden of GPS surveillance is exacerbated by all the uses that the Home Office does or intends to make of subjects' trail data, beyond its use to monitor compliance with bail conditions. In its Immigration Bail policy, it grants itself the powers to review trail data, amongst others, to inform its assessment of 'Article 8 representations / further submissions'—which refers to legal representations made by migrants on the basis of their human right to private and family life, for example in support of their claim for immigration status or to challenge restrictions on their daily lives imposed by their bail conditions. This means that subjects' daily movements can be scrutinised to corroborate or deny their claims about their personal circumstances, family arrangements or other facts about themselves—inevitably creating fear about what the data shows, and the repercussions of any errors and misinterpretations. Subjects' movements and activities, as 'coded' into their geolocation data points, are thereby analysed to make life-changing decisions about them, not least whether they have the right to be in the UK or should be deported.

In 2022, the UK government purchased a new generation of GPS tags that do not need to be locked to people's ankles (called 'non-fitted devices' or NFDs). Instead, to ensure that a subject is constantly carrying or near the device monitoring their GPS location, the device sends random requests throughout the day for the subject to scan their fingerprint. Ironically, these devices (resembling a small phone equipped with a fingerprint scanner) were

sourced from Buddi Limited, a British tech company selling GPS-enabled personal alarm wristbands for the elderly, equipped with a fall detection and alert system (Privacy International, 2022a). The company quietly repurposed its technology for tracking other groups of people, opening a new market.

In its contract with Buddi, the Ministry of Justice describes NFDs as a ‘more proportionate’ form of monitoring because they are not ‘fitted’—but while the device indeed does not need to be attached to a subject’s body, it does the same amount of geolocation tracking. And it adds a layer of anxiety that further internalises the subject’s control: as Hynes and Leslie (2023: 23) note, while NFDs may be less *physically* invasive than ankle tags:

[t]hey subtly dictate habits and are a constant physical and mental presence in people’s lives. Where fitted devices are physically heavy, non-fitted devices represent a heavy mental burden by requiring people to be constantly alert to the notifications requesting fingerprint scans.

While this is not set out in publicly available guidance, lawyers and researchers have reported that the alerts are normally sent up to five times a day (although some received alerts up to ten times a day), and that people only have *one minute* after the alert to submit their fingerprint (Hynes & Leslie, 2023). A failure to scan fingerprints within that minute can trigger enforcement action (monitoring officers can call the subject or visit their home to check on their whereabouts, and/or record a breach of bail conditions in their file). Due to their frequency, lack of foreseeability and urgency, the alerts permeate subjects’ lives into the most intimate places. They have to take their NFDs to the shower, toilet, or bedroom so as not to miss an alert. While touted as an ‘alternative to detention’, EM thereby inserts the state’s control over migrant bodies into the depths of their private and intimate lives, like a constant reminder that their presence is not welcome.

Expanding Surveillance to Small Boat Arrivals—The “Expansion Pilot”

In a bid to further extend the dragnet of EM surveillance, the Home Office announced in June 2022 an 18-month ‘expansion pilot’, whereby it would test the efficacy of tagging people arriving into the UK by ‘unnecessary or dangerous routes’, i.e. those arriving via lorries or small boats (Home Office, 2022). While restricted to 600 people at the start, anyone who arrived through such means was liable to be tagged. The aim, in the words of then-Prime Minister Boris Johnson, was to prevent people from ‘vanishing’

into ‘the rest of the country’ (MacSwan, 2022). The ‘vanishing’ rhetoric is a powerful one when applied to racialised minorities, whose very physical presence is what draws the state’s desire to control. As a group, they are hypervisibilised and invisibilised at the same time, and the spectacle of deterrence shapes and informs these policies and processes (Neylon, 2025). On the other hand, migrants (especially those with ‘legitimate’ status) also experience cultural marginalisation and suppress their cultural identity so as to, ultimately, *not* stand out—and hence vanish into society.

An evaluation of the expansion pilot was published by the Home Office on 13 January 2025, over a year after the end of the pilot in December 2023, concluding that “*GPS tagging did not improve compliance behaviours of asylum claimants on bail conditions*”. After the pilot ended, everyone who was tagged under it went back to reporting (in person at immigration reporting centres or via telephone). The evaluation notably found that tagged people, as opposed to those on traditional reporting, were more likely to be considered non-compliant because of the ‘immediacy’ of a non-compliance alert (which occurs as soon as the tag loses contact for more than 15 minutes, or when the individual misses a fingerprint scan request). Because a person’s compliance is determined by a technological phenomenon that is constantly monitored, the scope for non-compliance is infinitely wider than under reporting conditions (where a person’s compliance is only assessed at one specific point in time, once a week or every two weeks). And the less subjects comply, the more reasons the Home Office can rely on to deny them status and/or process them for deportation.

Hence whether EM helps improve compliance with bail conditions or not, the state’s objectives of visibility (and invisibility) and control are achieved. People are either surveilled into compliance (with bail conditions, but also with what behaviour *conforms* to expectations), or their non-compliance provides grounds to reject them.

Conclusion: Technical or Systemic Resistance?

The tech-driven expansion of the surveillance of migrant populations tends to operate in a state of legal exceptionalism. The resistance to EM has therefore been active on the regulatory and legal fronts, challenging governments’ schemes on public law, human rights and data protection grounds. In the UK, all challenges so far have led to findings of unlawfulness that go to the heart of the ‘crimmigration’ approach: the use of criminal law mechanisms for immigration control purposes, without the same public law and human rights

safeguards. Plainly, migrants tagged by the UK state are not afforded the same protections as UK citizens when it comes to the state's uses of its power. Courts and regulators have notably found that in many cases the Home Office could not demonstrate a justification or rationale for tagging people, that it was not conducting regular reviews of people's tagging condition (as required by law), or that it failed to consider individuals' vulnerabilities when making the decision to give them an EM condition.

In August 2022, Privacy International filed a complaint against the Home Office's GPS tagging policy with the Information Commissioner's Office (ICO), the authority in charge of enforcing data protection law in the UK. The NGO argued that the intensity of the tracking (resulting in staggering amounts of data) was not necessary for the purpose of the scheme, disproportionate to the impact on subjects' freedoms and mental health, and in breach of various principles of data protection law. The complaint was investigated by the ICO, which in March 2024 issued an Enforcement Notice finding that the expansion pilot had been unlawful, and a formal warning regarding any future data processing carried out on the same basis. The Information Commissioner stated:

Having access to a person's 24/7 movements is highly intrusive, as it is likely to reveal a lot of information about them, including the potential to infer sensitive information such as their religion, sexuality, or health status. Lack of clarity on how this information will be used can also inadvertently inhibit people's movements and freedom to take part in day-to-day activities.

The ICO's press release confirmed the crux of Privacy International's complaint:

Throughout the ICO's enquiries, the Home Office was unable to explain sufficiently why it was necessary or proportionate to collect, access and use people's information via electronic monitoring for the pilot's purpose, including failing to evidence that it had considered less intrusive methods.

Such intrusive processing should be accompanied by robust guidance and procedures to ensure it is applied consistently and in a privacy preserving way. The Home Office guidance failed to provide sufficient direction to staff on when it would be necessary and proportionate to electronically monitor people as an immigration bail condition.

While this regulatory investigation and enforcement action did not put an end to the GPS tagging of migrants, it made it clear that a blanket policy of tagging those who arrive to the UK by specific means (in this case boats or lorries) cannot be lawful. It is not reasoned nor individualised enough, leading

to unnecessary and disproportionate interferences with subjects' rights and freedoms. In non-legal words, it had all the elements of a performative, unjustified and wasteful policy.

Performativity was also displayed in the Upper Tribunal case of Mark Nelson (*R (on the application of Nelson) v Secretary of State for the Home Department* [2024] UKUT 00141), whom the Home Office (knowingly) fitted with an ankle tag that did not work for nearly 6 months. Nelson is a car mechanic and father of five who has been living in the UK since 2000 and obtained indefinite leave to remain in 2007. In 2017 he was sentenced to four years in prison, at which point the Home Office made a deportation order against him, which Nelson appealed (his appeal remained outstanding at the date of the Upper Tribunal's judgment on his GPS tagging condition). He was released from prison in 2019 but placed in immigration detention pending deportation. In May 2022 he was released from detention and fitted with a GPS tag, and later diagnosed by a psychiatrist with severe depression related to his deportation proceedings and the imposition of the tag. The Upper Tribunal found that his tagging had been unlawful for over a year for procedural reasons, and for the nearly 6 months during which he was fitted with a tag that the Home Office *knew* was not working. During those 6 months the Home Office could not possibly demonstrate any rational purpose of tagging, since the tag was technically incapable of performing electronic monitoring. His tagging was therefore a breach of his human right to privacy.

In another case brought by four people who were tagged (*ADL & Ors v Secretary of State for the Home Department* [2024] EWHC 994 (Admin)), the Home Office was found to have failed to show proper consideration of the actual need to tag the claimants, and of the impact it may have on them. Case officers notably ignored medical evidence about the deterioration of one claimant's health as a result of the tagging, which stated: "*In my opinion, the GPS tag has caused an exacerbation of pre-existing psychiatric illness by way of depression, anxiety and PTSD such that she now suffers from severe depression, anxiety and PTSD.*" (see judgment §110) They also ignored or did not take proper account of claimants' vulnerabilities, who were recognised survivors of trafficking, female genital mutilation or modern slavery.

The lack of consideration for the *need to tag* (e.g. by reference to an evidenced risk that a person poses if released from detention without EM) and for the *individual impact of tagging* is emblematic of the government's pursuance of a policy that is performative rather than rational and considered. It is also precisely what led courts to find violations of claimants' rights in these individual cases. Yet the government continues to tag migrants. This may say something about the UK judiciary's inability to strike down legislation, but it certainly says something about its inability to effect systemic

change and to recognise the discriminatory, racialised nature of the EM policy. And that is despite the express recognition in the ‘Race’ section of the Home Office’s Equality Impact Assessment on GPS tagging¹⁴ that ‘[i]mmigration control necessitates overseas nationals being subject to considerations not applicable to UK nationals and *will inherently impact some nationalities disproportionately*.’ This fact is simply brushed off, if not justified:

In any case, the disadvantages would be justified in order to support the objectives as we believe that it is appropriate to rely on the limited exceptions in the 2010 [Equality] Act due to the legitimate aim of deporting foreign national criminals whose presence in the UK is not conducive to the public good.

People subjected to tagging by the Home Office have not therefore been able to mount a systemic challenge to the policy as specifically targeting racialised populations. They are left to grapple with technical legal arguments about the Home Office’s procedural failures—which do shed a light on the performativity of the policy but fail to address the racialised nature of EM and surveillance.

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¹⁴ <https://www.gov.uk/government/publications/offender-management/equality-impact-assessment-gps-non-fitted-devices-accessible>.

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25

Race and the Impact of the First Crimmigration Controls Today

Cori Alonso-Yoder

Introduction

Dear President Joe Biden my name is Maily Alejandra Murcia. I send you greetings and congratulations for your new job as president. My reason for this letter is to ask you to please help me to bring my papa and my mama and my little sister Angely to the United States, if you can do this for me I will be the happiest girl in the world. Goodbye with hugs, kisses and love from Maily.¹

Maily Murcia was seven years old when U.S. immigration officials forced her hands over her head, patted her down, and separated her from her father, Antonio. By 2018, Maily and Antonio had fled their native Honduras after receiving threats of violence that included burning down the family home.

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Seeking safety, Antonio took Maily on the arduous journey to the United States while her mother, Carolina, and younger sister, Angelly, remained behind. Antonio explained the pain of being separated from his daughter as the feeling of “being useless, as though you had no arms, nothing to fight back.” Antonio was deported back to Honduras while Maily remained in the United States. The family remained separated for years, just one of the estimated 5,000 families separated under the Trump Administration’s “zero tolerance” policy.

Under this policy, former U.S. Attorney General Jeff Sessions directed federal prosecutors to prosecute all violations of illegal entry referred from immigration officials. According to the Transactional Records Access Clearinghouse (2018) and the American Immigration Council (2021), this led to a 60% increase in prosecutions in the first month of the policy in April 2018, and to an all-time record number of prosecutions in fiscal year 2019. It also led to children being separated from their parents—government officials took custody of children from their parents and caregivers while the adults faced incarceration and deportation. Today, many families remain separated and many more irreversibly altered, more than five years after the implementation of the policy.

The legal predicate for family separation can be traced back to a border enforcement mechanism and legal scheme directly tied to white supremacist ideologies. These systems included decades-old legislation that sought to restrict immigration of “mongrel” non-white immigrants to the United States. Recent use of these laws has come at a time of pitched xenophobia and anti-immigrant sentiment. Indeed, Trump’s “zero tolerance” policy leveraged federal laws that have criminalized unlawful entry since the era of the Great Depression, but have only come to be commonly prosecuted in the last two decades. These laws, Sections 1325 and 1326 under Title 8 of the U.S. Code, provide criminal penalties for improper entry and illegal re-entry. The sanctions for prosecution of these crimes have ratcheted up over time, today including up to two years of jail time² and up to twenty years in federal prison,³ respectively for each. Much scholarly attention has been paid to the convergence of immigration and criminal legal systems under the particularly punitive banner of “cimmigration.” Yet, only recently have scholars, attorneys, and judges critiqued the racial motivations animating these early laws criminalizing immigration.

Historically, the proponents of these laws sought to “close the back door” to immigration from Mexico and other parts of Latin America. This campaign came after a sweeping 1924 immigration law that maintained “Nordic” white Americans as the dominant racial group through a series

of restrictive quotas. The provisions of the federal criminal law that today account for the majority of the federal courts' criminal case load, came into the U.S. Code under the banner of the Undesirable Aliens Act of 1929. They are commonly known more neutrally, by their statutory citations: Sections 1325 and 1326. Not only do they represent the majority of *all* criminal cases prosecuted in the federal court system, but they also impact a population of criminal defendants of whom 99% are estimated to be from Mexico or Latin America (Fish, 2022, p. 1). More recently, journalists and advocates have reported that these laws are being used to target individuals migrating from Muslim-majority nations.

This chapter begins by introducing how these first provisions of law criminalizing migration fit into a larger context of racial subjugation by law. It proceeds to discuss the specific context of racial exclusion within the framework of U.S. immigration law and how legislation creating a criminal-immigration nexus—crimmigration—feeds racial subordination. It reveals the racist history of the Undesirable Aliens Act's passage into law and to explore some of the current efforts to resist the tainted legacy of the legislation, even while enforcement continues to target racially-disfavoured groups. It then concludes with the worrying signs of retrenchment on racially restrictive immigration policies permeating policymaking and popular opinion.

Criminal Immigration Enforcement Within the Historical Context of Racial Injustice by Law

That the legal, economic, and political systems of the United States were historically organized according to a social hierarchy that distinguished individuals racialized as “white” from other racialized groups, is well-studied. The racial character of citizenship and its solidification within the law is also widely understood. Many American schools teach the historical significance of the 1857 Dred Scott case, where an enslaved man was disqualified from seeking redress within the federal court system. The Supreme Court of the United States ruled that Mr. Scott was not a citizen of the United States because all Blacks, regardless of the legal status that kept them in bondage or recognized them as free, were an “inferior class of beings.”⁴ This decision essentially left Black Americans stateless by law, a condition that would not be remedied until the Civil War was fought and won.

During the period of Reconstruction after the Civil War, the Federal Government enacted and ratified the Fourteenth Amendment to the U.S. Constitution, guaranteeing birthright citizenship and equal protection of the laws. These promises at times proved insubstantial in cases that denied

birthright citizenship to Native Americans (*Elk v. Wilkins* (1884)), declared the legality of racial segregation (*Plessy v. Ferguson* (1896)), blessed the extension of lesser constitutional protections for the majority non-white Americans living in U.S. territories (*Downes v. Bidwell* (1901) and progeny), and justified the internment of Japanese Americans during wartime (*Korematsu v. United States* (1944)).

Given the challenges experienced by Americans born in the United States and racialized as non-white, it is perhaps unsurprising to consider the problematic legal treatment of the non-white foreign-born. Yet, it is still remarkable that the very first U.S. law of naturalization was designed in overtly racial terms. In 1790, Congress acted on its constitutionally enumerated responsibility to “establish a uniform Rule of Naturalization.” This initial eligibility applied only to “any alien, being a free white person.”⁵ As legal scholar Ian Haney López (2006, p. 31) writes: “Though there would be many subsequent changes in the requirements for federal naturalization, racial identity endured as a bedrock requirement for the next 162 years. In every naturalization act from 1790 until 1952, Congress included the ‘white person’ prerequisite.” In the years that followed, a series of cases proliferated in jurisdictions throughout the United States seeking to determine the eligibility of varying ethnicities and nationalities for naturalization. A case in which the District Court for the Eastern District of South Carolina denied naturalization to a Syrian petitioner, expressed the difficulty with interpreting the meaning of the statute, lamenting that “there have been a number of decisions in which the question has been treated, and the conclusions arrived at in them are as unsatisfactory as they are varying.”⁶

While the law dealt early in U.S. history with the issue of citizenship, the question of legal presence in the country developed later. Here too, lawmakers crafted legislation along racial lines. Up until the late nineteenth century, the United States generally supported a policy of open borders, with minimal regulation on entry initially exercised by individual states. The Chinese Exclusion Act of 1882 changed that by suspending the entry of Chinese labourers into the United States for a period of ten years. In a challenge to the constitutionality of this enactment, the Supreme Court upheld the law on racial exclusion. In *Chae Chan Ping v. United States*, the Court not only upheld the law based on racial exclusion, it also affirmed that in matters of immigration law, the judgement of Congress is “conclusive upon the judiciary.”⁷ This concept of Congress’s “plenary power” would serve to give the political branches of government cover from judicial scrutiny in matters of immigration and permit ongoing racially-motivated legislation. This exclusion on Chinese nationals was eventually extended and expanded to encompass

nationals of other Asian nations. Notably, the 1917 law which created an “Asiatic barred zone” accompanied legislative efforts to extend exclusion to “all members of the African or black” race. This aspect of the legislation was overcome due in large part to advocacy by the NAACP (Haney López, 2006, p. 27).

The 1924 National Origins Act would use immigration law to set the racial character of the United States, a policy that would remain the norm until immigration law again benefited from racial justice efforts led by Black Americans in the civil rights movements of the 1950s and 1960s. The 1952 McCarran-Walter Act and the 1965 Hart-Celler Act eventually eased racial restrictions against Asians and fostered immigration from a broader portion of the globe. These laws gave us today’s Immigration and Nationality Act (INA) housed within Title 8 of the U.S. Code. Yet, race-conscious policies remain in place and non-white immigrants have continued to face a disproportionate level of enforcement and discrimination. The expansion of immigration law into criminal enforcement has been a principal locus of this race neutral, yet racially-motivated discrimination.

Crimmigration and the Racial Injustice of Facially Race Neutral Immigration Policies Today

There is a solid and growing literature within racial justice and immigrant justice scholarship about the discriminatory impacts of enforcement against racially marginalized groups. Within the immigration legal scholarship, Juliet Stumpf (2006, p. 376) coined the term “crimmigration” to describe the U.S. legal system’s creation of “parallel systems in which immigration law and the criminal justice system are merely nominally separate.” Authors including Jennifer Chacón and César Cuauhtémoc García Hernández have built on this immigration scholarship. Chacón (2007) writes about how immigration has become enmeshed not only with criminal law enforcement, but also with the broader concept of national security. This phenomenon became particularly notable in legislative responses in the wake of the attacks of September 11, 2001. Counterterrorism efforts in immigration and criminal law relied on racial, ethnic, and religious profiling, focusing attention on individuals with ties to Muslim-majority countries. García Hernández (2014, p. 1457) also considers the role of racial difference in the decades before 9/11 and how lawmakers turned to criminal law to achieve a desired exclusionary outcome in immigration policy: “Unlike earlier episodes of widespread concern about immigration, legislators operating in the aftermath of the previous decades’

civil rights movements could not resort to the simple vilifications that motivated so much of immigration law's history." Whereas earlier legislation could overtly invoke the perceived inferiority of non-white immigrants, the times demanded a new approach to achieve exclusion under the law.

Beginning in the 1980s, the federal government turned to the creation of a facially race neutral crimmigration law that relied on "the criminal policing practices that had taken hold at the state and federal levels with devastating consequences for people of color" (García Hernández, 2014, p. 1457). The 1988 Anti-Drug Abuse Act amended the Immigration and Nationality to add immigration consequences for those convicted of an "aggravated felony" to the existing prohibitions on individuals with convictions for "crimes involving moral turpitude." Subsequent amendments to immigration law enmeshed criminal law further, perhaps most notably with the 1996 Antiterrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). Both of these provisions amended the INA to further expand the categories of crimes for which individuals would face immigration penalties, in addition to sanctions imposed under the criminal law.

The resulting crimmigration system had become so fraught and complex that by 2009 the U.S. Supreme Court ruled that criminal defence attorneys who do not warn noncitizens of the potential immigration consequences of a criminal plea are responsible for ineffective assistance of counsel under the Constitution. In *Padilla v. Kentucky*, the Court noted that, [c]hanges to the immigration law have dramatically raised the stakes of a noncitizen's criminal conviction," and "[w]hile once there was only a narrow class of deportable offenses [...], immigration reforms have expanded the class of deportable offenses and limited judges' authority to alleviate deportation's harsh consequences."⁸

Legal scholars like García Hernández (2014, p. 1457; 2024), Ingrid Eagly (2010, 2020), and Eric Fish (2022) have considered how the more recent supercharged reliance on criminal law to execute immigration law can be traced back almost one hundred years to the very first federal laws to criminalize migration. Increasingly, this analysis unmasks the virulent racism behind the sanitized texts of those early enactments.

Closing the Back Door: The Undesirable Aliens Act of 1929

Compared to the record high number of 106,312 prosecutions of entry-related criminal offenses in 2019, the first year of enactment of the provisions

which would become Sections 1325 and 1326 ensnared less than 800 individuals that were overwhelmingly of Mexican nationality.⁹ Yet, the very fact of its existence and enforcement in the Southwest border areas represented a stark shift. Much of the geographical area and population of the region had fallen under Mexican sovereignty less than a century earlier. Since the Treaty of Guadalupe Hidalgo that ended the Mexican–American War in 1848, Mexican nationals had been free to enter the United States largely unimpeded.

Then the uprisings throughout Mexico leading to what would become the seven year-long Mexican revolution beginning in 1910 contributed to a turn in U.S. popular opinion which was already informed by racist and xenophobic sentiments. Though Mexican immigrants were politically unpopular, their presence in the United States was economically expedient. Monied interests in the United States, most notably among agribusiness and in the industrial sectors, lobbied hard to keep immigration policies from cutting off access to affordable Mexican labour. Due in part to these efforts, no prior provision of law had prevented Mexican nationals from traveling freely between the United States and Mexico based on nationality alone.

As detailed above, the first restrictions on immigration, forming the basis of today's immigration and control system, excluded the entry of Chinese nationals and later spread to the exclusion of other nationalities from 1882 to 1924. In that latter year, the U.S. Congress passed what would become known as the Johnson-Reed, or National Origins Act. This law tied authorization to enter the United States to a quota system which sought to revert to replicating the national ethnic makeup existing in 1890. Its intent and effect were to preserve the United States as a country dominated by a white ethnic identity that prioritized immigration from Northern Europe and Great Britain. The leadership that developed and enacted the law was informed by white supremacy and staffed by prominent eugenicists.

Representative Albert Johnson, for whom the act was named, served as the Chairman of the Congressional House Committee on Immigration and Naturalization, for which he engaged prominent eugenicists to testify and provide reports. He also retained eugenicist Harry Laughlin to serve on the House Committee on Immigration and Naturalization in the capacity of the committee's "expert eugenics agent." Upon passage of the 1924 National Origins Act, Johnson touted the legislation as signifying that "the day of indiscriminate acceptance of all races has definitely ended" (Daniels, 2004, p. 55). Senator David Reed, who also leant his name to the legislation, was similarly motivated by ideologies of racial restriction. In his figurative victory lap celebrating the passage of the legislation, Reed promoted the new law as

ensuring that new immigrants “be of the same race as those of us who are already here.” His point was driven home in the *New York Times* article in which his remarks appeared under the headline “America of the Melting Pot comes to End” (García Hernández, 2024, p. 54).

Building on laws that restricted immigration from most Asian countries, the resulting law succeeded in limiting non-white immigration to the United States with a critical exception: it did not apply to countries in the Western Hemisphere. Following the passage of the National Origins Act, Representative Johnson set his intention to “close the back door” by restricting immigration to the United States, primarily from Mexico. An ally of this effort, Congressman John Box of Texas, stated his support for the policy in overtly racist terms. As published into the Congressional Record in 1928, Box explained that:

[A] purpose of the immigration laws is the protection of American racial stock from further degradation or change through mongrelization. The Mexican peon is a mixture of Mediterranean blooded Spanish peasant with low-grade Indians who did not fight to extinction but submitted and multiplied as serfs. Into that was fused much negro slave blood.¹⁰

He went on to decry the “degradation” of ongoing mixing of the races once Mexican nationals arrive to the United States including among “sorry whites,” while advocating immigration restrictions on the Western Hemisphere.

U.S. Senator Coleman Livingston Blease from South Carolina would also prove sympathetic to the cause of restricting immigration from Mexico and serve as a key figure in targeting Mexican immigration through other means. As César García Hernández (2024, p. 47) explains, Blease’s hatred for Mexican migrants fit into the framework for anti-Black, white supremacist racism that was politically popular in that era: [r]unning for governor in 1908, [Blease] criticized a proposal to bring migrant workers into South Carolina, claiming the migrants would be “worse than negroes” who would “underbid our people.” Still, the entrenched business interests of U.S. companies invested in importing Mexican labourers continued to make restriction on immigration politically challenging.

Senator Blease found a way around this impediment by reimagining criminal law to penalize immigration. In a novel approach to criminal and federal immigration law, Blease introduced a bill into Congress to penalize illegal re-entry to the United States. Thanks in part to the 1917 Immigration Act’s introduction of administrative requirements, including the payment of taxes and visa fees, health examinations, and a literacy test, many Mexicans were increasingly vulnerable to deportation. This initial legislation capitalized on

that vulnerability to target those who re-entered following deportation with criminal penalties. This provision, the predecessor to today's Section 1326 for illegal re-entry, notably did not criminalize unauthorized entry. While scholars are unsure of the reason, César Cuauhtémoc García Hernández (2024, p. 55) explains that prior congressional efforts led by Representative Albert Johnson had failed in the preceding years 1925, 1926, and 1928, and that it is possible that Blease, "worried about finding enough votes for a more aggressive version." Without that initial expansion, the proposed law sailed through the legislative process.

Backed with the support of the U.S. Secretary of Labour, a critical endorsement given the Department's responsibility for regulating immigration at that time, Blease introduced his bill on December 22, 1928. Blease's bill gained traction not only with the Secretary of Labour, but it also garnered support from within the ranks of the business interests who relied on Mexican labour. Historian Kelly Lytle Hernández (2017, p. 138) explains how the agricultural business interests in particular supported the measure as a means to control the temporary labour on which the industry relied. Lytle Hernández observes how measures to control labourers while benefitting from their labour were promoted by agribusiness lobbyists on Capitol Hill. California grower S. Parker Frisselle testified in congressional hearings on earlier legislative efforts to address Mexican migration that, "[w]e, in California, would greatly prefer some set up in which our peak labour demands might be met and upon the completion of our harvest these labourers returned to their country." This ability to control the flow of workers seemed to align well with the law's punishment of illegal re-entry and the existing administrative measures that made deportation of workers more readily available. With key endorsements from political supporters and business interests, Blease's bill passed the Senate and moved on to the House of Representatives.

From his perch within the House Committee on Immigration and Naturalization, Representative Johnson seized the opportunity to amend the legislation to include a provision criminalizing unlawful entry as a lesser offense. Despite some opposition from the American Civil Liberties Union, the amendment passed the House of Representatives and went back to the Senate for reconciliation of the two different bills. Senator Blease's efforts proved critical in shepherding the amended legislation through the Senate where he vowed to retain the amendment criminalizing unlawful entry. Johnson's amendment made it through the Senate and ultimately landed on the desk of outgoing President Calvin Coolidge. Coolidge signed the bill into law on March 2, 1929.

Since that time, both unauthorized entry and illegal re-entry have remained good law, today codified under Sections 1325 and 1326 of Title 8 of the U.S. Code. In the end, while efforts to exclude immigrants based on Mexican nationality never became law, restrictionists ultimately achieved their aims of penalizing Mexican immigration through these extraordinary legal methods. These included not only the passage of criminal laws targeting migrants, but also relied on aggressive enforcement of existing exclusion grounds, including the facially race-neutral provision denying entry to individuals “likely to become a public charge” and deportation for failing to comply with entry requirements including taxes, fees, and literacy tests (Ngai, 2003, pp. 84–86).

Yet, among all of these efforts at restriction, laws criminalizing illegal entries into the United States would prove to be the most effective and enduring. In the 1929 Undesirable Aliens Act legislators enacted a bill that would both surveil and create criminal penalties for those entering the United States illegally. Its passage contributed to bolstering the then nascent Border Patrol, which had been established five years earlier to enforce the 1924 National Origins Act. The 1952 McCarran-Walter Act codified the Undesirable Aliens Act, and the law was amended five times in the 1980s and 1990s, eventually being housed in today’s Sections 1325 and 1326. Each of these recodifications of the law served to increase relevant penalties. But despite the retention of the law with reforms to the immigration and criminal laws over the years, government officials pursued relatively few prosecutions. More commonly, individuals entering into the United States without authorization were processed through the federal immigration system, often facing removal in lieu of criminal prosecution. This changed in the wake of George W. Bush Administration’s efforts in the War on Terror following September 11, 2001.

Modern Enforcement of Sections 1325 and 1326

The unprecedented nature of the circumstances of September 11, 2001 fostered an extremist approach to the wielding of state violence at home and abroad. Military actions internationally developed alongside oppressive tactics that the government deployed domestically. Key among these, was the developing political rhetoric of protecting the U.S. “homeland.” Existing policies of immigration exclusion collapsed and became subsumed into fears of terrorist threats and mass casualties. A frightened population also became increasingly comfortable waiving individual rights, particularly the rights of the politically unpopular (Cole, 2002). As a result, emboldened politicians

moved to overhaul entire sectors of the federal government. Immigration and its merger with criminal law would move closer to completion.

On the heels of the 2003 Homeland Security Act, the newly formed Department of Homeland Security joined with the Department of Justice to enforce “Operation Streamline.” Though the Homeland Security Act was made possible by political support to combat terror following the attacks of 9/11, opportunistic politicians wielded this extraordinary power to achieve policy objectives more tenuously related to counterterrorism.

Indeed, officials tasked with implementing the enforcement efforts touted the policy not as means to address acts of terrorism at all. Instead these officials viewed the policy as “put[ting] a deterrence effect into the mindset of economic aliens coming across, hoping to deter those crossings,” (Robbins, 2010) and “recogniz[ing] the critical importance of detention and immediate removal as deterrence to future illegal migration” (United States Customs and Border Protection, 2005). The euphemistically named program achieved its goal by streamlining mass prosecution and conviction of migrants in criminal proceedings that raised serious questions of due process among justice advocates.

As explained in a 2010 report from the Chief Justice Earl Warren Institute on Race, Ethnicity & Diversity at the University of California, Berkeley Law School, the sheer number of prosecutions for low-level illegal entry offenses strained the capacity of the federal court systems, primarily in the Southwestern United States. The report’s author Joanna Lydgate (2010) writes that: “[Operation Streamline’s] voluminous prosecutions have forced many courts to cut procedural corners. Magistrate judges conduct *en masse* hearings, during which as many as 80 defendants plead guilty as a time, depriving migrants of due process.”

With a “zero tolerance” approach to illegal border crossings, the program grew the number of illegal entry prosecutions from 14,790 to 52,087 in just one year (American Immigration Council, 2021). The number of prosecutions continued to balloon into subsequent administrations. The Obama Administration continued the trend of increased enforcement, outpacing the Bush Administration with between 63,527 and 87,769 prosecutions in the years between 2009 and 2016. This number would eventually hit an all-time annual high in 2019 with the Trump Administration’s zero tolerance enforcement policy fostering a sum total of prosecutions numbering 106,312 (American Immigration Council, 2021). The efforts under Trump initially began in 2017 as a directive from Attorney General Jeff Sessions that federal prosecutors prioritize improper entry and illegal re-entry prosecutions. By April 2018 Sessions amped up the mandate, instituting the policy of zero

tolerance to remove prosecutors' discretion not to charge individuals and instead requiring mass enforcement and universal prosecutions. These efforts led to the crisis that separated children from their parents, prompting national and international outrage in the summer of 2018.

Recent Legislative and Judicial Efforts to Resist Sections 1325 and 1326

The bland language of today's Section 1325's prohibition "enter[ing] or attempt[ing] to enter the United States at any time or place other than as designated" belies the fervour in its passage and recent implementation. Its ordinariness would also conceal the dramatic and tragic effect to which it would be put in the first years of the Trump Administration's border crackdown. While parents faced prosecution for illegal entry—and to a lesser but still significant extent, illegal re-entry—U.S. officials took their children from them with lies, misdirection, and at times physical force. In the summer of 2018, Honduran father Marco Antonio Muñoz hung himself while in federal custody. This occurred the day after immigration officials pried Muñoz's three-year-old son out of his arms and before federal prosecutors could bring criminal charges for illegal entry against the distraught parent (Miroff, 2018).

The reaction to the crisis of family separations at the U.S.-Mexico border also had reverberations in the political campaigns for federal congressional and presidential elections in 2019 and 2020. Democratic presidential candidate Julián Castro voiced his own support for repeal of Section 1325 and encouraged his Democratic challengers to do the same (Samuels, 2019). While centring this conversation in the presidential debate brought some national attention to the issue, action on repeal faded from the headlines and faltered on Capitol Hill. Beginning in 2019, Representative Jesús "Chuy" García of Illinois introduced the New Way Forward Act to moderate the criminal aspects of immigration enforcement, including by repealing Sections 1325 and 1326. While Representative García has introduced the Bill in the last three sessions of Congress, it has never made it out of the Judiciary Committee.

The record numbers of prosecutions under the Trump/Sessions version of zero tolerance also fostered a slew of new litigation regarding the modern version of the Undesirable Aliens Act. Defendants prosecuted under the new policy challenged their convictions as unconstitutional, leading to a series of cases to consider the history of Section 1326. In these cases, defendants have argued for their convictions under Section 1326 to be dismissed because the law is unconstitutionally discriminatory.¹¹ While a number of federal

courts have considered these arguments, only one decision has ruled that Section 1326 violates the Constitution's equal protection guarantee.

In *Carrillo-Lopez v. United States*, Chief Judge Miranda Du of the U.S. District Court for the District of Nevada ruled that Section 1326 violated the equal protection clause of the Fourteenth Amendment as applied to the federal government by the Fifth Amendment's guarantee of due process.¹² While attorneys for the U.S. Government argued for a less stringent review of the law given Congress's plenary power over matters of immigration, the court ultimately endorsed a more searching standard. In the decision, Judge Du applied the Supreme Court precedent from the 1977 *Village of Arlington Heights v. Metropolitan Housing Development Corp.* This case established a legal test for proving that a facially neutral law violates equal protection where there is a disparate impact and a racially discriminatory intent that served as a "motivating factor" in the decision.¹³

In the decision, the court ruled that the defendant Gustavo Carrillo-Lopez had met his burden in demonstrating the *Arlington Heights* criteria when it came to the enactment of Section 1326 and its impact on Latinx defendants. Judge Du's decision focused not only on the legislative history of the 1929 Undesirable Aliens Act—which even attorneys for the U.S. Government conceded was racist—but also on the history of the INA's 1952 re-enactment of the law. In that history, the court pointed to the contemporaneous passage in 1952 of what legislators termed the "Wetback Bill." This legislation openly used a racial epithet for Mexican migrants and aimed at preventing "aliens from entering or remaining in the United States illegally."¹⁴ The court reasoned that this legislation passed a few months before the INA in 1952 evinced Congress's discriminatory intent in re-enacting the 1929 illegal re-entry legislation. Judge Du was also persuaded that the expansion of Section 1326 by the INA to make it more punitive alongside the then-Deputy Attorney General's stated support for the law again using the racist term "wetback," further demonstrated the racist motivation of legislators in 1952. At minimum, the court reasoned, Congress had not purged the INA of its predecessors' discriminatory intent in the 1929 Act.

Despite Judge Du's lengthy and well-reasoned opinion, it was ultimately overturned by the Ninth Circuit Court of Appeals. The appellate court ruled that any of the originally discriminatory intent tainting Section 1326 was cured by the McCarran-Walter's Act subsequent reincorporation of the provision in 1952.¹⁵ In particular, the court was persuaded that Carrillo-Lopez had not met his burden to establish animus in passage of the INA and that the law's "good faith" presumption of legislators' intent, could not be overcome by the evidence cited in Judge Du's opinion. Subsequent cases have relied on

the Ninth Circuit's reasoning in declining to find that Section 1326 violates equal protection.

Emerging Reports of Islamophobia in Criminal Law Enforcement at the Southern Border

As courts and legislators have faltered in dismantling the law, evidence of discriminatory border enforcement continues. In March of 2024, the organizations National Immigration Project and Muslim Advocates sued the United States Department of Justice and United States Customs and Border Protection seeking information related to the prosecutions of criminal defendants from Muslim-majority countries. Specifically, the complaint filed under the federal Freedom of Information Act (FOIA) sought to illuminate practices from the Executive Office of U.S. Attorneys' office in Del Rio, Texas.¹⁶ In the complaint, the advocacy organization-plaintiffs referenced investigative reporting out of the *Los Angeles Times* (Aleaziz, 2023) exposing "a previously unreported federal effort that disproportionately locked up migrants from Muslim-majority countries."

While the reporting detailed prosecutions under the federal criminal statute Section 1459 of Title 16 of the U.S. Code for failure to report to a customs official upon arrival, the complaint also sought information about prosecutions under Sections 1325 and 1326. In explaining the important public interest in revealing the information, the plaintiffs asserted that, "United States policies targeting noncitizens from predominantly Muslim countries are a matter of significant public concern and have been the subject of numerous lawsuits, advocacy reports, news reporting, and scholarly interest." While this litigation remains ongoing at the time of this writing, the complaint and reporting of disproportionate enforcement suggest the unsettling possibility that U.S. officials are again wielding Sections 1325 and 1326 to punish and control a minority group.

From the initial targeting of Mexican labourers,¹⁷ to the rounding up of economic migrants in Operation Streamline, to the separation of families seeking asylum, and now with emerging questions about Islamophobic enforcement, these earliest provisions of crimmigration law continue to adapt to protect the economic and racist interests that led to their creation. Today under a new presidential administration, immigration prosecutions remain high. According to federal court data, all immigration offenses account for 20,018 convictions out of 65,754 total defendants convicted. Listed alongside homicide, robbery, kidnapping, and sex offenses, "improper entry

by alien” and improper reentry by alien” represent 15,113 convictions, or roughly 23% of those convicted (United States Courts, 2024).

Today’s Political Retrenchment of Racial Injustice in Immigration Enforcement

Del Rio, the Texas border community where advocates suspect Muslim immigrants are facing disproportionate enforcement, was the location of the first federal prosecution efforts under Operation Streamline in the early 2000s. It was also the location of confrontations between border patrol officials and asylum seekers in 2021, the photos of which dominated U.S. headlines. Racial justice scholar Bill Ong Hing (2022, p. 2) writes, “[t]he images of Border Patrol officers on horseback in September 2021 using long ‘reins’ or whips to stop Haitian migrants from entering an encampment on the banks of the Rio Grande River and ‘grabbing’ some migrants by the shirt say it all.” In the years following the 2020 murder of George Floyd at the hands of Minneapolis police, it seemed that the racial justice movement was primed to coalesce with advocacy for immigrant justice in calling for meaningful reforms to address generations of racially unjust police practices. In the 2020 presidential campaign, a majority of the Democratic candidates for president supported repeal of Section 1325 (Hesson & Forgey, 2019). This support included the politician who would become the Democrats’ 2024 presidential candidate, Kamala Harris.

Yet, in today’s presidential debate it is difficult to imagine the same level of broad political support for such a position. In 2020, Joe Biden voiced support for maintaining Section 1325 in federal law but applying discretion to adjudicate those crossing illegally through a civil process, with a view to retaining the criminal law for limited situations (Eagly, 2020, p. 2017). With her role in the Biden presidency, Vice President Kamala Harris has adjusted her stance on immigration, pushing for bipartisan legislation which would increase border enforcement (BBC, 2024). Analysts have noted that this approach marks a shift in Democratic politics, moving the party further right (Garsd & Ma, 2024). Even ignoring the reality of the rigid U.S. two-party system, independent and third-party candidates have not paid attention to repeal of Section 1325 as a priority. Both Jill Stein (*Jill Stein 2024*, n.d.) and Cornel West (*Cornel West 2024*, n.d.) mention abolition of ICE and ending family separation among their agenda items on immigration, but neither explicitly calls for repeal of Section 1325 or the Undesirable Aliens Act. This is striking given their positions as the most formidable progressive presidential candidates and when considering that Stein calls out other areas

of crimmigration law for repeal, including AEDPA and IIRIRA (*Jill Stein 2024*, n.d.).

Despite her prior support for repeal, an effort by Kamala Harris to decriminalize illegal border crossings seems fanciful at best. Polling and analysis suggest that Americans see immigration enforcement as a top priority and the Democrats under Harris have taken an “unequivocal lurch to the right” (Mason, 2024). On the other side of the ballot, Trump has amplified the fallacious rhetoric of a nexus between immigration and criminality, speaking favourably of the Eisenhower Administration’s mass deportations of Mexican nationals (a border enforcement project termed “Operation Wetback”) in the 1950s.

While Trump has proposed deporting millions of immigrants from the United States (Wolf, 2024), Biden and Harris have been comparatively less vocal on their immigration priorities. Most notably, Biden supported the failed Senate immigration bill that Kamala Harris now touts as representative of her vision for immigration. In addition to billions of dollars in border enforcement, the bill limits asylum protections and empowers the president to shut down the border. What the bill does not do is mitigate the harms of crimmigration, much less repeal its key provisions.

When promoting the bill in his 2024 State of the Union speech, President Biden referred to an undocumented immigrant accused of homicide as an “illegal,” a term he later said he regretted using (Egan and Ward, 2024). This tracks with other Democratic candidates’ increasingly restrictive view on immigration. Progressive Ohio Senator Sherrod Brown refused to condemn the rhetoric of his Republican opponent Bernie Moreno. Moreno decried “an invasion” at the border and claimed that “[e]very crime committed by an illegal is a crime that should have never happened in the first place” (Schladen, 2024). When initially asked about his own misuse of the term “illegal” President Biden expressed a similar sentiment. Without remorse or irony, he clarified that the people that U.S. immigrations laws have made unauthorized and criminalized are “technically not supposed to be here.”

Conclusion

Despite a history of racial animus and century-old policy priorities, the Undesirable Alien Act continues in full force. Indeed, its modern expressions in Sections 1325 and 1326 of Title 8 of the U.S. Code have ascended to enforcement levels beyond what its creators could likely have imagined. This is particularly stunning to consider during a period in which broad calls for

resistance in the guise of law reform and racial justice have become popular political talking points. In light of the Biden-Harris administration's broader statement of commitment to racial justice (The White House, 2024), the current approach to immigrant justice could not be more disconnected. Litigation has also proved to be of limited use in resisting the laws as the judiciary has taken pains to ignore the blatantly racist motivations that led to the creation of the earliest crimmigration law. Indeed, as opposed to productive conversations about law reform to meet the need for a modern approach, conversations of increased penalization continue to dominate discussions of reform. A more unsatisfying response to Maily Murcia's plea for help is difficult to imagine.

Notes

1. Maily Murcia's letter was reprinted by Piper French (2024) in the New York Magazine. The orthography of the child writer of the letter is retained in this translation from the original Spanish done by the author.
2. See 8 U.S.C. § 1325(a).
Any alien who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offense, be fined under title 18 or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18, or imprisoned not more than 2 years, or both.
3. See 8 U.S.C. § 1326(b).
(b) Criminal penalties for reentry of certain removed aliens.
Notwithstanding subsection (a), in the case of any alien described in such subsection—
(1) whose removal was subsequent to a conviction for commission of three or more misdemeanors involving drugs, crimes against the person, or both, or a felony (other than an aggravated felony), such alien shall be fined under title 18, imprisoned not more than 10 years, or both;

- (2) whose removal was subsequent to a conviction for commission of an aggravated felony, such alien shall be fined under such title, imprisoned not more than 20 years, or both;
4. *Dred Scott v. Stanford*, 60 U.S. 393, 405 (1857), *superseded by constitutional amendment*. U.S. Const. amend. XIV.
5. Naturalization Act of 1790, ch. 3, 1 Stat. 103 (repealed 1795).
6. *Ex parte Shahid*, 205 F. 812, 813–14 (1913) (cataloguing among various naturalization cases the approval of “a Mexican,” “a Syrian,” “an Armenian,” “a Maronite, and “a Parsee,” while denying “Mongolians,” “a half-breed Indian and white,” “a Chinese,” “a Japanese,” and “a half-breed Mongolian and white.”).
7. *Ping v. United States*, 130 U.S. 581, 606 (1889).
8. See *Padilla v. Kentucky*, 559 U.S. 356, 356 (2010).
9. *Migra! A History of the U.S. Border Patrol* documented 236 Spanish-surnamed individuals convicted of illegal re-entry and 513 convicted of illegal entry between April 19, 1929 and April 18, 1930 (Hernández, 2010, p. 92).
10. Mr. Box’s original statement can be found in 69 CONG. REC. 817–18 (1928).
11. See *United States v. Carrillo-Lopez*, 68 F.4th 1133 (9th Cir. 2023); *United States v. Wence*, No. 22-2618, 2023 WL 5739844 (3d. Cir. Sept. 6, 2023); *United States v. Garcia-Sanchez*, No. 22-11225, 2023 WL 5703563 (5th Cir. September 5, 2023); *United States v. Barcenas-Rumualdo*, 53 F.4th 859 (5th Cir. 2022); *United States v. Machic-Xiap*, 552 F. Supp. 3d 1055 (D. Or. 2021).
12. *United States v. Carrillo-Lopez*, 555 F. Supp. 3d 996, 1027 (D. Nev. 2021), *rev’d and remanded*, 68 F.4th 1133 (9th Cir. 2023).
13. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–66 (1977).
14. United Statutes at Large, ch. 108, 66 Stat. 26 (1952).
15. *United States v. Carrillo-Lopez*, 68 F.4th 1133, 1149–50 (9th Cir. 2023).
16. National Immigration Project Compl. for Injunctive and Declaratory Relief.
17. National Immigration Project Compl. for Injunctive and Declaratory Relief 2–3.

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26

Racial Injustice and Risk Frameworks in Aotearoa

Grace Gordon and Robert Webb

Introduction

This chapter problematises risk frameworks, tools, and policies at different stages of the criminal punishment system. In line with prison abolitionists and critical scholars, the term ‘criminal punishment system’ is intentionally used here to recognise that fundamentally it is a web of punishment-centred institutions that does little to achieve ‘justice’ (Bell, 2021; Kaba, 2021; Kilroy & Lean, 2022). This chapter argues that risk frameworks largely ignore the historical processes and neo-colonial policies that have created social inequalities, which continue to marginalise Indigenous and ethnic minority communities. While this chapter centres Aotearoa New Zealand (from here referred to as Aotearoa), we draw links and parallels to the international context and explore relevant implications for Indigenous peoples globally.

Information about how risk is used within legal and punishment institutions is increasingly obscure. Updated details regarding the specific risk tools

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and policies used within the criminal punishment system seem to be deliberately opaque. A lack of transparency in how the risk tools function makes it harder to understand how these tools operate, and the consequences of their use. When seeking information about risk frameworks, a large proportion of information is geared towards understanding the ‘risk’ to institutions, rather than how risk data tools are implemented and operate. The focus on institutional risk can overshadow the need for transparency and accessibility. For example, Pennington (2023) noted that the official New Zealand Police documents indicated that the Search X intelligence tool used to assess risk situations was not made public until the system was in place. The Police briefing before implementation noted that “If adverse media attention occurs then the project may be delayed or closed” (Pennington, 2023, para. 14). This suggests a deliberate strategy or tactic to obscure information from public scrutiny to allow implementation of systems despite criticisms internationally in the United Kingdom and United States of how these data mapping systems cause racial bias (Pennington, 2023). This does raise the concern that racialised policing in Aotearoa will be worsened by data systems that are implemented without full transparency, or consideration of the impact on Māori and Pasifika communities.

Firstly, this chapter defines ‘risk’ and succinctly explains how embedded risk frameworks are within criminal punishment systems globally. Claims that risk tools are ‘neutral’ and ‘objective’ are challenged, by demonstrating that racial bias and injustice are perpetuated through their use. The rise of risk frameworks within the context of neoliberalism is discussed to demonstrate how liberal ideologies are forefronted to push responsibility of social conditions onto individuals. Disinvestment in social welfare pushes communities further into marginalised and precarious positions, while simultaneously sidelining collectivist approaches to care. The interventionist state then weaponises the marginalised position to justify control and surveillance of certain communities.

Secondly, this chapter takes a detailed look at how risk frameworks function within the police, prison, and probation in Aotearoa. As the first point of contact in the criminal punishment system, police have a gate-keeping function, which means their risk-based decision-making can funnel certain communities into the system. Racialised policing of Māori and ethnic communities has consequences of entrenching future bias in the new intelligence and predictive policing tools that identify risk based upon police administrative data. Risk frameworks in the context of the prison system are pervasive, as they are used to determine security classifications, which dictate a person’s movements, social engagement, and access to programmes

within prison. Māori are more likely to be segregated in prison, which reflects perceived levels of ‘risk’ and ‘dangerousness’. Probation deals with people serving a community sentence or people who have been released into the community after completing their sentence, or after being released under the authority of the New Zealand Parole Board (NZPB). Māori are disproportionately represented in all community sentences, but particularly the most coercive and stringent sentences. Additionally, Māori and Pasifika are more likely to be denied parole, therefore spending more time in prison. Collectively, this section highlights the racialised consequences of risk frameworks within the criminal punishment system in Aotearoa.

To conclude, this chapter turns to discuss how racialised communities are deemed ‘risky subjects’ who are then swept into the state care and criminal punishment system. Communities labeled as ‘vulnerable’ are increasingly more likely to be simultaneously labeled as ‘at risk’, which is used to justify state intervention. The politicisation of risk demonstrates how recent policy changes have expanded the reach of the interventionist state. Concerningly, for Māori communities and Indigenous peoples globally, the ideology of risk inhibits meaningful opportunities for self-determination. As Cuneen (2011) observes, “Within the risk paradigm, any rights of Indigenous peoples (such as self-determination or self-government) are seen as secondary to the membership of a risk-defined group” (p. 319).

Defining Risk

Since the 1980s, risk discourses have increasingly permeated various aspects of social life globally. This is particularly evident within the criminal punishment system, where risk is used to control, manage, and respond to ‘dangerous’ and ‘risky’ individuals and collectives. The prevalence of risk dominated thinking in relation to crime and crime control is well theorised, from Feeley and Simon’s (1992) ‘the new penology’, Garland’s (2001) ‘culture of control’, Carlen’s (2008) ‘risk-crazed governance’, to O’Malley’s (2010) work on risk and crime control.

The growth of risk-based approaches over recent decades has entrenched new forms of managerialism in crime control responses across many countries, including Aotearoa. Risk assessment tools have become central to these new forms of managerialism, in an attempt to systematically categorise levels of ‘risk’. Data-driven tools dominate risk decision-making, in an effort to predict behaviour and manage populations. An increasingly datafied world has been created through “the quantification of social interactions and their

transformations into digital data” (Richterich, 2018, cited in Cormack & Toko King, 2023, p. 51), which has implications for state relations with Indigenous and ethnic communities. These tools were introduced to overcome concerns about prejudice and bias within human judgements on risk (Eckhouse et al., 2019).

The prevailing assumption underpinning risk assessment tools is their supposed ‘neutrality’. Risk tools claim to be objective, value-free, and neutral, however, racial injustice and bias is “baked in” to the tools (Keddell, 2019, p. 10). Data tools rely on a combination of static factors (e.g. criminal history) and dynamic factors (e.g. lack of prosocial leisure activities), which are often devoid of their historical, cultural, and social context (Cunneen, 2020; Gordon & Webb, 2023). These risk factors carry and reproduce bias, whereby structural issues—such as the over-policing of certain communities and social conditions as a result of oppression and colonisation—become “an individual’s demographic [which] may be inadvertently criminalised” (Shepherd & Anthony, 2018, p. 214). Consequently, the use of these risk factors creates unequal outcomes for social groups who are marginalised.

Risk tools often reflect and reproduce broader societal ideologies. According to Pat O’Malley (2008), the rise of risk paradigms coincided with the growth of neo-liberal politics and ideology underpinned by ideas of individualism. Within this framework, the emphasis is placed on individuals taking responsibility for managing their own risks (Carlen, 2012; Kendall, 2013). Approaches such as ‘responsibilisation’ assume that individuals choose to commit crimes, and that they have the ability to take control of their risk levels through behavioural changes (Gray, 2005, p. 938). However, critics argue that focusing on individual responsibility ignores broader structural issues that contribute to social and economic disadvantage, and detracts from collectivist ideas of care (Furlong & Cartmel, 2007; Gray, 2009). Centring individual responsibility refuses to acknowledge the significant impact of structural and institutional factors on individual and collective actions. It also overlooks the connection between crime and various societal issues such as poverty, marginalisation, racism, and institutional injustices. For Indigenous communities it ignores the legacies of colonialism and ongoing neo-colonial policies.

Concerningly, the imposition of neo-liberal risk frameworks and policies ignores the state’s involvement in pushing people into precarious and marginalised positions. Through disinvestment into social welfare policies, social groups and whole communities are pushed to the margins of society, their lives being marked by impoverishment, intergenerational trauma and harm, becoming deeply entwined with the criminal punishment system.

The interventionist state then uses these social conditions and experiences to justify increasing state involvement. Indeed, the state weaponises the very trauma they have injected into these communities, and then labels these social conditions as ‘risk factors’ (Carlton & Russell, 2023; Page & Woodland, 2023). Risk frameworks function to individualise structural and systemic issues. These frameworks individualise “responsibility onto Indigenous peoples for structural, systemic, and intergenerational traumas while disregarding the role of the state in creating the conditions that heighten risk” (McGuire, 2023, p. 17).

In Aotearoa, the Māori population bears the burden of these societal issues, with disparate social, economic, and health outcomes due to the ongoing legacies of colonialism. These factors also contribute to the alarming rates of Māori involvement in criminal activities and high rates of incarceration (Workman & McIntosh, 2013). The lived experiences and social conditions that Māori experience result in an elevated perception of risk level, which is used to further justify state control. Risk assessment tools “represent the technologies of racial governance”, whereby the lived experiences of precarity, discrimination and inequality by Māori (and other marginalised groups) are reshaped into riskiness (Cunneen, 2021, p. 275). Social groups that bear the brunt of structural and ‘slow violence’ (McIntosh, 2022a, 2022b) are more likely to be labeled as ‘risky’, which further exacerbates the violence and harm that is thrust upon them. For McIntosh (2022a, 2022b), slow violence refers to the colonial and neo-colonial practices of dispossession that have resulted in intergenerational harms of poverty, racism, and entrenched negative social issues for Māori. Being labeled as ‘risky’ is then used to justify state intervention through the police, prisons, and probation, while ignoring the ongoing role of the state in creating the conditions that exacerbate ‘risk’.

Risk Frameworks and Police

The identification of risk in policing may have particular consequences for racialised ethnic minorities who already experience disproportionate state control. Policing in Aotearoa should be understood within the force’s origins in the country as part of the colonial state apparatus that controlled Māori communities and protests against land and political dispossession, as part of the settler state policies up to the present time (Hill, 2008; Workman, 2021). While Māori remain an ethnic minority at 17% of the wider population, they experience the majority of crime control practices. The ongoing issue of systemic bias can be revealed in various aspects of policing in Aotearoa,

through the criminalisation of Māori and other racialised minority groups with disparate arrest and punishment practices by state agencies (Webb, 2017). Pasifika peoples in Aotearoa, for example, experienced racism and disproportionate policing and arrest for visa violations in the 1970s during a period known as the 'Dawn Raids' (Anae, 2012).

More recently in 2015, a former Police Commissioner Mike Bush publicly acknowledged that the Police figures showed that the use of discretion by officers to issue a warning or to arrest an individual differed on the basis of the ethnicity of the person stopped. This was described as 'unconscious bias' against Māori, who were more likely to be arrested than given warnings like other groups (Harley, 2015). The next Police Commissioner Andrew Coster initiated a two year research project called 'Understanding Police Delivery', and the initial reporting in 2024 found that Māori were more likely than other groups to be stopped by Police, to be prosecuted, and to experience the use of force by being tasered (Leonard & Brown, 2024). This recent report draws attention to both systemic racism and bias, and continues to document decades of research including Moana Jackson's (1988) seminal report into institutionalised racism against Māori by the legal and criminal system.

Young Māori in particular have experienced biased policing practices, including illegal police searches and collection of details for no reason other than they might be future offenders. This concerning practice became public in 2020, with reports that the New Zealand Police were deliberately stopping innocent Māori youth and children on the street to record personal details to add to a Police intelligence database, including photographs (Hurihanganui and Cardwell, 2020; Hurihanganui, 2021). When brought to media attention, the New Zealand Police acknowledged that the children were not stopped in relation to any criminal activity, but were being stopped as part of intelligence gathering for future purposes. The Office of the Privacy Commissioner (OPC) and the Independent Police Conduct Authority (IPCA) (2022) found the practice was widespread, was illegal, and breached children's rights. With young Māori comprising more than 50% of the youth stopped and photographed, Norris and Tauri (2021) argue that this racial profiling and criminalisation of the minority Indigenous population reinforces stereotypes about who are deemed as being at risk of future offending.

Racialised policing is not unique to Aotearoa, and scholars internationally have examined the criminalisation of minority communities. In the UK, Bowling et al. (2008) observe that the criminalisation of ethnic communities involves stereotyping minority youth as offenders, with discriminatory policing and patterns of selective enforcement by police officers. In Australia, the use of the risk-based Suspect Targeting Management Plan (STMP) by

the New South Wales (NSW) Police Force was also critiqued for the lack of public transparency, and the criminalisation of Indigenous youth and people (Sentas & Pandolfini, 2017). The STMP operated from 2000 to 2023 and aimed at future crime prevention by identifying individuals for overt surveillance. The practice involved intrusive policing, that included repeated stops, searches, and home visits (Englezos, 2023). An external review by the Law Enforcement Conduct Commission (LECC) found that there was a gross overrepresentation of Indigenous youth as Police targets, and that this was, “unreasonable, unjust, oppressive and may have been improperly discriminatory in its effect” (LECC, 2023, p. 13). As Maurutto et al. (2023) document in relation to Canada, increasingly police are redefining the boundaries of risk, where practices involve surveillance, and the collection and use of personal data that is not specifically related to any crime. The use of preventative security and precautionary logics justifies the incorporation of non-offending behaviours, and to signify individuals as being potentially risky. For Indigenous people globally, these practices continue and extend the legacy of colonial control under the auspices of intelligence gathering against future risks.

The consequences of this over-policing will be reflected in official criminal databases that identify individuals who have been in contact with the system. This administrative data may feed future and emergent technologies used in crime control, that are based on predictive policing practices. In Aotearoa these can include a range of information technology systems, data analytic tools and algorithms used to identify high risk individuals (Pennington, 2023). A major concern is that as many of these new tools rely on existing administrative data, they may ignore a history of systemic bias and the over-policing of racialised minorities. From international studies, Ugwudike (2023) observes that the deployment of predictive algorithmic risk assessments, for example, can rely on criminal history such as arrest data, which reflects the over-policing of ethnic minorities and racially biased policing. She notes that, “Studies suggest that, with predictive policing algorithms, for instance, conduits of systemic bias include the reliance on administrative datasets, including crime data that contain records of racially biased arrests that go on to trigger biased algorithmic predictions...” (Ugwudike, 2023, p. 147). Other critics refer to the biased data from racist or illegal policing as ‘dirty data’, which can elevate further racial bias when the data is used in predictive policing models (Englezos, 2023; Richardson et al., 2019). In Aotearoa, Brown et al. (2024) argue that the systemic racial biases within the algorithms, or nested in the outcomes that impact Māori as an Indigenous

group, are the continuation of a ‘colonising bias’ that reinforces historical and contemporary prejudice and injustices.

Risk Frameworks in Prison

Risk frameworks and discourses are embedded into prison institutions, as they seek to minimise and manage risk. Interviewees for the Ombudsman’s (2023, p. 109) investigation identified that ongoing negative criticism of the Department of Corrections by the public has created a deep-rooted “reactive and risk-averse culture”. Consequently, risk and criminogenic needs assessment tools are frequently used to assist in the management of people in the prison system, despite the criticisms of such tools (Webb, 2018). A focus on managing risk overrides any potential efforts at rehabilitation. Hannah-Moffat (2005) argues that risk tools in prison for rehabilitation have been focused on individuals, rather than attempting to change social and structural conditions that contribute to offending.

RoC*RoI (risk of (re)conviction multiplied by risk of (re)imprisonment) is an actuarial risk tool that was developed and piloted in 1995, before its implementation across prisons in Aotearoa in 2001. The risk assessment tool uses static factors, such as criminal history and demographic variables, to determine the likelihood that a person will be reconvicted or reimprisoned after five years. The emphasis on using criminal history reinforces the argument that past behaviour is the best predictor of future behaviour. Concerningly, this approach to risk locks historical and contemporary racial bias within the justice system into the risk tool itself, which in turn further justifies and perpetuates racialised criminalisation (Gordon & Webb, 2023). In 2011, the RoC*RoI tool was recalibrated to improve accuracy, whereby the data sets used to create the algorithms were updated. The reason for the recalibration was due to the algorithm *over-predicting* the likelihood that a person would be reconvicted following a community sentence (Johnston, 2021). Nevertheless, concerns remain about the racialised implication of using these tools, and international concerns have been raised about the racial bias built into such risk assessment tools within prison (Cardoso, 2020).

These assessment tools are used to influence decision-making at multiple stages of a person’s time within prison: prison location, access to rehabilitation programmes, and movement and communication within the prison. In Aotearoa, there are five security classifications given to people in prison: minimum, low, low medium, high, and maximum. Because of their impact on life within prison, these security classifications are recognised as “a defining

feature of institutional experiences” (Montford & Hannah-Moffat, 2021, p. 1). Of the 10,860 people in prison as of September 2025, the majority (78.6%) had a minimum, low, or low-medium security classification (Department of Corrections, 2025). Security classification can trap people in a cycle of behaviour, and that by assigning someone a maximum security classification ironically reinforces their risk (Gordon, 2022). High risk security classifications restrict access to programmes, despite the required successful completion of programmes to move to a lower security bracket. In addition, high security classifications have human rights implications, where prolonged solitary confinement and the inability for people to access social interaction breaches Mandela Rules.

In a recent Official Information Act (OIA) response, the Department of Corrections justified the high numbers of Māori and Pasifika people in higher security classification brackets by acknowledging that Māori and Pasifika individuals are more likely to be gang-affiliated. The Department of Corrections further stated that “gang affiliation is a proven risk factor for in-prison violence” (Department of Corrections, 2022, p. 3). However, this perspective disregards the state’s historical and present involvement in the formation of youth gangs in Aotearoa (Gerrard et al., 2023). The Abuse in Care Royal Commission of Inquiry (2024), the Waitangi Tribunal (2021), and the Prime Minister’s Chief Science Advisor (2023), to name a few, have all highlighted the connection between state care, gangs, and incarceration.

The Office of the Inspectorate is responsible for prison monitoring and inspections, and released a report in 2023 that reviewed segregation directions and experiences across all 18 prisons in Aotearoa between October 2020 and September 2021. Within the year to September 2021, 3,791 (29%) people in prison had been placed in segregation for a period of time (Inspectorate, 2023). Many people are placed in isolation and segregation because they are identified as ‘at-risk’ to themselves, or ‘at-risk’ to others. One concern raised in the report was the harms of prolonged isolation and segregation that some people are experiencing within prisons, insinuating that responses to people labeled as ‘at-risk’ can be the greatest risk. Opportunities for social interaction with other prisoners and staff is limited for those placed in segregation, which can be defined as solitary confinement, which is condemned by international human rights organisations (Lamusse, 2018).

Māori are heavily represented in the prison population in Aotearoa (53% of prison population compared to 17.3% of the general population), which is also reflected in segregation orders. Of the 3,791 segregation directions reviewed in the report, 63% of them were Māori (Inspectorate, 2023). Most notably, the majority (74%) of segregated Māori were done so under

Section 58(1a) and 58(1b) of the Corrections Act 2004, which relates to the ‘security or good order of the prison’ and ‘safety of another person’. Indeed, this speaks to perceived notions of ‘risk’ and ‘dangerousness’. The prison director is responsible for making these two segregation orders, however, both the Inspectorate (2023) and Ombudsman (2023) have raised concerns about the lack of documentation around segregation processes. The lack of institutional transparency acts as a barrier to accountability.

While the Inspectorate (2023) segregation report is comprehensive, in that all 18 prisons in Aotearoa were visited and reviewed for the first time collectively by the Inspectorate, the Prisoners of Extreme Risk Unit (PERU) was identified as being out of scope (Inspectorate 2023). A year later, the Inspectorate (2024) released a report that focused solely on reviewing the PERU in Auckland Prison. The PERU was established in 2019 to accommodate the Christchurch Mosque terrorist, who in March 2019 committed the most serious mass shooting in Aotearoa, with 51 people killed and 40 injured in their place of worship. At the time of the inspection, three remand prisoners and 10 sentenced prisoners were in the PERU (Inspectorate, 2024). Five of the men were Māori, three were Pasifika, and six had gang affiliations. The ‘risk criteria’ for someone to be placed in PERU are the following three ‘dimensions’: risk of harm *to* others, risk of harm *from* others, risk of influence capability *over* others. Many of the men in the PERU were not informed of why they had been placed there, which made it difficult for them to demonstrate a reduction in their ‘risk’ level. Additionally, the restrictive conditions within the PERU reduce access to rehabilitation programmes, which can further prolong their time within the PERU (Inspectorate, 2024).

Risk Frameworks and Probation

This section examines risk frameworks within the context of people who are on probation. Discourses of ‘risky subjects’ and dangerousness are ever-present regarding people who are on probation. Media discourse of reoffending by people released on parole or serving community sentences contributes to, and exacerbates, risk-averse policy. This section examines the racialised consequences of risk-based decision within the parole board processes, before succinctly acknowledging how community sentences function as a net-widening coercive tool.

In Aotearoa, if a person has been given a prison sentence of two years or less, the person is automatically released after half of their sentence has been served. People serving a sentence of more than two years in prison

will go before the NZPB after serving a third of their imposed sentence, or after their minimum non-parole period, to determine whether they can be safely released to the community. Risk frameworks are embedded into NZPB decision-making processes, as their core purpose is to determine whether a person poses an ‘undue risk’ to community safety (New Zealand Parole Board, n.d.). The NZPB uses a variety of information to guide decisions. Most notably, a parole assessment report provided by the Department of Corrections, specialist reports, and submissions from victims, Police, offenders, and supporters. RoC*RoI scores are featured in the parole assessment report and represent the likelihood of a person being re-convicted and re-imprisoned and are used to measure risk.

A series of Official Information Act (OIA) requests were made to the Parole Board to access data about who is granted parole in their first few appearances to the Parole Board, and who is released from prison having served their full sentence. The data shows that between 2018 and 2023, the overall trend shows that Māori and Pasifika people are less likely to be granted parole, compared to other ethnicities. Unsurprisingly, this finding is repeated as the same demographics are more likely to serve their full sentence compared to other ethnicities. From this data, we can make interpretations about dangerousness and who is identified as an ‘undue risk’ to the safety of the community. This corroborates Lamusse’s (2019, para. 4) claim that the Parole Board is “a crucial cog in the machine of institutional racism and mass incarceration of Māori and Pacific communities”.

Extended Supervision Orders (ESOs) and Public Protection Orders (PPOs) were introduced in 2004 and 2014 respectively as post-prison sentence tools to monitor and maintain control over people. They expand on preventive detention (PD) measures, which are indeterminate sentences, that were first introduced through the Habitual Criminals and Offenders Act 1906, and are now legislated through the Sentencing Act 2002 (NZLC, 2023). People who are subjected to ESOs and PPOs are identified as long-term, high-risk individuals, with the former being monitored in the community, and the latter being monitored in a secure facility within prison grounds. In 2022, 205 people were managed by an ESO (42% Māori), 8 people managed by PD (45% Māori), and 2 people were managed by a PPO (1 of which was Māori) (NZLC, 2023). In 2022, the New Zealand Law Commission (NZLC) initiated a review into PD, ESOs, and PPOs. Analogous to concerns from international bodies, the NZLC’s (2023) initial review criticised the current approaches to managing risk post-sentence. Notably, the concern of individuals receiving ‘double punishment’ when subjected to these post-sentence, which breaches the New Zealand Bill of Rights Act. There are

racialised implications in the use of these post-sentence management tools, as Māori are more likely to be subjected to ESOs and PPOs (NZLC, 2023). Additionally, the NZLC (2023) argues that the current laws regarding ESOs and PPOs are inconsistent with tikanga Māori and Te Tiriti o Waitangi.

In the past decade, between 30,000 and 37,000 people serve a community sentence each year in Aotearoa. Anita Gibbs (2021), in her examination of community sentences in Aotearoa, argues that community and prison sentences have simultaneously increased. Community sentences, therefore, “remain as punishment in the community and not as serious alternatives to incarceration”, consequently contributing to a net-widening of surveillance and state control (Gibbs, 2021, p. 234). Despite a small decrease in community sentences since Gibbs’ commentary, the numbers and types of sentences are still concerning. Over the past decade, the most coercive types of community sentences have increased. Most notably, intensive supervision has increased from 6.6% of all community sentences in 2014 to 18.1% in 2024, while community work sentences have dropped from 44.7% to 22.1% (Department of Corrections, 2014, 2024a).

Similar to other parts of the criminal justice system, racial disparities are evident in community sentences, with 45.8% of sentences given to Māori (Department of Corrections, 2024a). In 2023, Māori and Pasifika people were the majority of the following community sentences: intensive supervision (61%), home detention (57%), and community detention (54%) (NZ.Stat, 2024). Notably, they are still represented in monetary fines (38%), however, this reflects that racialised communities bear the brunt of the most restrictive and coercive community sentences. Concerningly, the more restrictive community sentences function as a neo-liberal approach to state control, where the burden and responsibility lies on people and their whānau.

Remand in custody operates as a nexus between risk dominated decision-making by the police, prisons, and probation. The exponential rise in the number of people on remand in custody in Aotearoa is a consequence of risk-averse policy. In 2014, the percentage of people in prison on remand was 21%, and had remained steady the years prior (Department of Corrections, 2014). Over the past decade, that figure has skyrocketed to almost half (44%) of people in prison being on remand. Concerningly, 56% of the women’s prison population were on remand in 2024 (Department of Corrections, 2024a, 2024b). The stark change in the number of people on remand can be attributed to the Bail Amendment Act 2013, that made the application to receive bail considerably harder. This policy change was implemented following the murder of a 17-year old while the perpetrator was on bail. Media and public outrage was directed towards the justice system for

not adequately measuring the ‘riskiness’ and ‘dangerousness’. The introduction of an onDuty app for Police officers in 2014, which enables officers to easily identify if someone has previously offended on bail, has also been attributed to the increased use of remand in custody (Justice Sector, 2022). Māori bear the brunt of these risk-averse policies, processes, and characterisations, as Māori defendants, particularly Māori women, are more likely to spend time on custodial remand (Justice Sector, 2022).

‘Risky Subjects’ and the Politicisation of Risk

Instead of focusing on reducing social harm that arises from historical and structural inequalities, the current approach in Aotearoa is more concerned with managing populations perceived as ‘risky’ or ‘at risk’. This approach is not unique to Aotearoa. It has similarities with how settler-states respond to and regulate other Indigenous peoples, suggesting that risk paradigms are another colonial tool for the social control and marginalisation of Indigenous peoples. Thalia Anthony (2013) for example, notes how the Australian settler state defines ‘risk’, and observes its application works to distinguish Indigenous peoples as the ‘other’ requiring state interventions. She argues that this is an extension of a longstanding narrative of dominance that dates back to the colonial era, and continues to be perpetuated through the modern neo-colonial state’s strategies and governance. The state extends risk frameworks beyond the criminal punishment system into other social policies to justify community surveillance, mental health responses, child welfare and removals, and to manage Indigenous organisations (Blagg, 2008).

For Māori communities, being ‘at risk’ has resulted in higher levels of state interventions. In Keddell and Hyslop’s (2019) study of social worker perceptions in Aotearoa, they found that families with similar background factors were perceived with different risk levels based on the family’s ethnicity. Māori families were perceived to be at a higher risk and requiring intervention than non-Māori, even with similar factors. As Cormack and Toko King (2023) observe about state interventions: “‘risk’ is missed for privileged populations less likely to come into contact with the same administrative systems, while Indigenous Peoples and other social groups who experience marginalization and structural oppression are over-identified in terms of ‘risk’” (p. 55).

Stanley and Monod de Froideville (2020) contend that under neo-liberal governance, the perceptions of risk are intertwined with narratives of vulnerability in Aotearoa. Being labelled as vulnerable is then used to justify ongoing

state intervention and control. State categorising of vulnerability has implications for Māori, who are subject to overt and ongoing colonial state oversight with the framing of these policies as necessary for promoting ‘well-being’ or serving to protect the interests of those involved. This narrative of protecting interests is visible in justifications by the government for amendments in 2024 to the youth welfare legislation *Oranga Tamariki Act 1989* to restrict Māori community involvement in child protection. The amendments include removing Section 7aa, which recognises the importance of cultural connection for Māori children in state care with their whānau, hapū, and iwi, and the need for state partnerships with Māori organisations to improve outcomes for Māori. The Children’s Minister suggested the amendment was necessary due to child safety as, “Section 7AA may be influencing practice decisions to the detriment of the safety of Māori children, including through changes to long-term care placements” (Waitangi Tribunal, 2024, p. 7). However, the Waitangi Tribunal (2024) found that the amendment was not evidenced-based, and that Oranga Tamariki (the state youth welfare agency) possessed no actual evidence that Māori communities or organisations posed any risks to child safety. It is noted that the amendment would continue a legacy of abuse of Māori who are the majority of children in state-run youth services, and deny Māori communities self-determination over their care.

Alongside entrenching state interventions, being considered ‘at risk’ by the state also works against Indigenous peoples’ claims to self-determination over their communities. As Cunneen (2011) observes about the Australian context, the state is seen to have to intervene rather than Indigenous people implementing their own responses as they are perceived as being an ‘at risk’ group requiring intervention: “Within the risk paradigm, any rights of Indigenous peoples (such as self-determination or self-government) are seen as secondary to the membership of a risk-defined group” (2011, p. 319). Such regulation of Indigenous rights to self-determination is replicated in Aotearoa, where the state continues to entrench authority over Māori communities and children, despite documented histories of Māori children in state care experiencing widespread harm and abuse (Abuse in Care Royal Commission of Inquiry, 2024).

Stanley and Monod de Froideville (2020) note that the concept of vulnerability is dynamic and can overlap with perceptions of risk and danger, where vulnerable youth are often perceived as being at risk of harm and, at the same time, as posing a risk to others. The authors highlight that young individuals and children who have faced abuse, or struggles during their formative years, are frequently viewed as risky and dangerous ‘others’ (Stanley & Monod de Froideville, 2020, p. 528). The categories of ‘risky subjects’ and being

‘at risk’ are both diverging and overlapping for Māori, and reinforce further net-widening of state intervention and control.

Risk is a political issue, and in Aotearoa, governments from across the political spectrum have engaged in ‘tough on crime’ rhetoric over recent decades to justify punitive crime control policies. This is not unique to this country, and Carlen (2008, p. 1) observes the reproduction of “risk-crazed governance” coincides with punitive populism. The National-Act-NZ First coalition government elected in Aotearoa in 2023, has openly engaged discourses on crime and fear to promote targeted policies and legislation for gangs and youth in particular. These groups are largely labelled as ‘risky subjects’ that are prone to crime, or ‘at risk’ of offending. Recently implemented anti-gang legislation prohibits the public and private displays of gang insignia and gathering of members in public. Scholars, gang members, and community members have collectively raised concerns about breaches in freedom of expression, creating further social divisions and alienation, and lack of evidence to support the proposed policies (Tam et al., 2024; Tauri, 2024). Regarding youth, punitive policies over successive governments have been proposed and implemented, such as creating a Serious Youth Offender designation with a bootcamp style sentencing response. This marks a decided policy shift away from evidenced-based interventions aimed at keeping children and youth out of the adult carceral system. These punitive policies have particular implications for Māori, as they predominate the targeted groups of children and young people who come into contact with the youth system.

Conclusion

Risk frameworks see the shift of focus from systemic and structural problems onto the characteristics and behaviours of individuals. Societal problems that are often reproduced through ‘slow violence’ (McIntosh, 2022a, 2022b) by the state are attributed to individual failings, which obscures broader structural factors. Indeed, datasets that are used within criminogenic risk tools are “dehistoricized and decontextualized”, and place responsibility onto neo-liberal individuals for their social conditions (Cormack & Toko King, 2023, p. 52). Erica Woodland argues that the state weaponises the individual and collective trauma of marginalised communities against them (Page & Woodland, 2023). Quantifying trauma and vulnerabilities through risk assessments seeks to individualise social conditions and experiences, and in doing so ignores the structural violence and harm that disproportionately affects racialised communities. Indeed, structural inequities are conflated with

individualised risk, which promotes increased punitive measures to maintain and minimise ‘risk’ (Carlton & Russell, 2023).

The individualisation of risk reinforces the criminal punishment system as a primary tool for managing perceived risks. Risk tools dominate within policing, prisons, and probation as a mechanism to control and manage individuals deemed ‘risky’, all in the name of ‘public safety’. Moreover, the reliance of risk frameworks and tools within the criminal punishment system restricts the possibilities for Indigenous self-determination. In considering the implications of datafication, particularly in regards to mokopuna Māori, Cormack and Toko King (2023, p. 58) express that data tools “that are borne out of, and continually reproduced in, an entrenched cycle of white supremacy, racism, heteropatriarchy, capitalism, imperialism, and coloniality are unlikely to be the tools that address issues of importance to Indigenous Peoples”. Concerningly, this does not transcend high incarceration rates for Indigenous peoples and ethnic minorities and limits the possibilities for furthering Indigenous self-determination.

In the US context, Schwerzmann (2021) convincingly outlines an argument for the abolition of predictive algorithms. Predictive algorithms perpetuate racial bias, while simultaneously “producing the conditions of possibility for racial differences and hierarchies by automatically maintaining the disenfranchised in the never-ending present of crime, prison, and political exclusion” (Schwerzmann, 2021, p. 1900). Efforts to reform risk assessments ignore the fact that, by their very nature, these algorithms legitimise structural racism embedded in the criminal punishment system (Green, 2020). In alignment with Black radical abolitionist thought, Schwerzmann’s (2021) theorising is not simply about removing these risk assessment tools but, more importantly, about transforming society and social conditions that enable risk frameworks and logics to thrive.

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Part VI

Resistance and Counter-Resistance



27

Police Violence and Insurrection: The 2020 Uprising as an Anti-Colonial and Anti-Racist Abolitionist Moment

Chris Cunneen

It is rare that we can talk about an *international* insurrection against policing and state violence of the type we witnessed in 2020. The insurrection arose internationally in different local contexts and with different historical trajectories and more immediate precursors. Despite the extent that we are dominated by the Americanized global media, the 2020 uprising was not all about, or even primarily about George Floyd's death at the hands of the Chicago police. The police killing in Chicago was, however, a spark that galvanized and connected many disparate and seemingly unconnected struggles against state violence by police and security agencies.

This chapter analyses the way resistance movements centred on policing in 2020 often drew attention to both the structural racism underpinning policing and its violent operationalization. In many instances, that racism was seen in the context of colonialism and imperialism, with policing constituting a key part of the state apparatus that reproduces racist colonial relationships and outcomes, always implicitly and often explicitly, through the use of violence. Indigenous, Black, brown, and other racialized peoples continue to be oppressed by various political regimes internationally. The global nature of state violence has been a core driver of contemporary

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protest movements. Police, security agencies and other carceral workers can kill the racialized and criminalized subject at will with little or no fear of repercussions.

The resistance movement was also important in drawing out the intersections between racist police violence and its relationship to class, caste and gendered, LGBTQIA, disability and other minoritized populations. The chapter considers how these links were made, for example, by disability activists who showed that the police killings of people with disability were concentrated among Black, Indigenous and people of colour with disabilities, or similarly, the failure to protect women from violence and the use of police violence against women was also strongly racialized.

Similarly, the chapter argues that the failure of police reform is also a failure to understand the structural formation and nature of policing and its systemic links to racism, colonialism and ongoing imperialism. Despite inquiry after inquiry into policing which have pointed to the problem of individual and systemic racism, reforms have led to cosmetic changes which have largely had the effect of further entrenching police power. The chapter concludes by contrasting reformism with abolitionism and anti-colonial perspectives.

The International Insurrection

When Minneapolis police officer Derek Chauvin killed a handcuffed, prostrate George Floyd and smiled for the camera whilst doing it, the images sent reverberations around the world. Both the nakedness of police brutality and racial image of a white police officer killing an unarmed and defenceless Black man was there for all to see, and the international breadth of the protests sparked by the events in Minneapolis is important to emphasize. However, it is also imperative to understand how the global protests were founded in and strongly reflected specific local concerns with police repression. These 'localized' instances of institutionalized state violence can also be seen are part of a larger and ongoing international struggle. Protests against the police and security forces were often local in their grievances but global in their targets of racism, inequality, state violence and the absence of accountability. In that sense, the struggle against violent state repression which the police and security forces embody is intertwined across time and space. They are struggles for a range of political, economic and social freedoms, both locally and globally (Cunneen, 2023).

The international protest movements in 2020 were extensive. In Africa protest movements in support of Black Lives Matter (BLM) occurred, for

example, in Kenya, South Africa, Senegal, Ghana and Nigeria. However, the protesters, while in support of the BLM movement, were there to express their opposition and outrage at police brutality within these African nations. In South Africa the number of deaths in police custody and during police operations, as well as complaints of police torture, rape and assaults have continued to grow (Independent Police Investigative Directorate, 2021: 38; and see Anthony and Pillay on continuities with the colonially-based penal system, this volume). In Nairobi, Kenya protesters drew attention to police violence and extrajudicial killings, while in Lagos, Nigeria protests against police violence continued throughout 2020 particularly against the Special Anti-Robbery Squad (SARS) police who were responsible for multiple killings of citizens over recent years. As Waseem (2023: 101) has shown, SARS were known for intimidation, extortion, use of excessive force and torture. *#EndSARS* protests spread across Nigeria and gathered international support. Indeed, in late October 2020 army and police forces opened fire on a peaceful demonstration protesting police brutality at the Lekki Toll Gate in Lagos. At least twelve people were killed and hundreds severely injured (Amnesty News, 2020). A subsequent judicial inquiry described the event as a ‘massacre of unarmed, helpless and defenceless protesters’ (Busari, 2021: 1).

Violent policing intensified in many African countries during the COVID pandemic where police enforced curfews in poor neighbourhoods with beatings, tear gas and shootings—leading to dozens of deaths within the first few weeks of lockdowns. Human Rights Watch (2020) noted that at least six people died from police violence in first 10 days of the curfew in Kenya. Police in Kenya ‘shot and beat people at markets or on the way home from work, even before the daily start of the curfew. Police also broke into homes and shops, extorted money from residents or looted food in locations across the country’ (Human Rights Watch, 2021: 390). In Nigeria the National Human Rights Commission (2020) found there were 18 extrajudicial killings by law enforcement agencies in the first two weeks of the lockdown in Nigeria. The Commission reported more people killed by police than COVID-19 in the first few months of the lockdown.

Emblematic of these killings in various African countries, at the beginning of the Kenyan curfew in March 2020 police shot and killed a 13 year old boy, Yassin Moyo, while he was standing with his siblings on the third floor balcony of his family’s home. Two months later in Lagos, Nigerian police enforcing the curfew, shot and killed 17 year old Tina Ezekwe while she waited at a bus shelter (Human Rights Watch, 2020). Nigerian police were also accused of harassing and extorting health workers as they went about their work responding to the pandemic—the harassment was so extensive it

resulted in a 'sit-at-home' strike called by the Nigeria Medical Association. The institutionalized corruption and extortion by police and security forces undermined the work of public health initiatives (Aborisade & Gbahabo, 2021; Onuoha et al., 2021). In Africa there was acknowledgment that police forces were established by colonial rulers to conquer, repress and dominate the population and were never there to protect their citizens or respect human rights. The widespread use of police violence during the COVID pandemic lockdowns reinforced the view that governments had failed to reform the structures of colonial policing (Dahir et al., 2020).

Across various parts of south, southeast and east Asia, including India, Malaysia, Japan, the Philippines, Korea, Indonesia, Hong Kong and Taiwan, demonstrators came out in protest after the death of George Floyd. Police violence and racism were dominant themes in these protests. Opposition to political repression in Hong Kong, the Philippines and Indonesia were also key elements that intersected with protests against police violence. Each country had its own history and contemporary experience of police brutality and the use of lethal violence. There was widespread recognition that racism and police violence within the US was not a localized problem, but one which resonated globally. For example, in Taiwan, a BLM solidarity protest was used to highlight the ongoing discrimination against Indigenous peoples of Taiwan who comprise about 3% of the population (Reuters Staff, 2020).

Police violence and racism were also a focus in Indonesia, in particular against Papuans who have struggled for the recognition of self-determination in the provinces of West Papua and Papua, which Indonesia annexed in the early 1960s. Papua had previously been part of the Dutch East Indies colony. However, it is ethnically Melanesian and forms the western half of the island of independent Papua New Guinea. There are long-standing issues of racism, violence and the use of imprisonment against Papuan students and activists. Activists have adopted the hashtag *#PapuanLivesMatter* (Sutrisno, 2020). Amnesty International documented security forces using water cannons and beating peaceful Papuan protesters and the imprisonment of others (Amnesty News, 2021). More generally it has been noted in Indonesia that the criminal law had its origins in Dutch colonial law *Wetboek van Strafrecht voor Nederlands-Indië*, 1918. Recent attempts to 'decolonize' the law with a new Criminal Code in 2022 have resulted in neither decolonization nor democratization and the new Code 'remains largely Dutch and impedes democracy... [and] enables the misuse of criminal law and processes for a variety of nefarious purposes, including to repress minorities' (Butt, 2023: 190; also Kavia & Chouhan, 2025).

Hong Kong had ongoing pro-democracy protests which saw violent police responses, including the indiscriminate use of chemical and other crowd control weapons and firearms, resulting in widespread injuries. Official inquiries exonerated police, despite thousands of complaints (Mahtani, 2020). There had also been complaints of racial profiling by the Hong Kong police (Bong-Kwan, 2020). Twelve months before the death of George Floyd, there were demands to disband the Hong Kong police. At later protests in solidarity with the BLM movement, Hong Kong police officers were filmed mocking the 'I can't breathe' and other calls used by demonstrators (Mahtani, 2020). In Malaysia attention was drawn to the longstanding problem of deaths in custody (Human Rights Watch, 2014), including those arising from police violence. Official statistics reported 257 deaths in police custody between 2002 and 2016, although independent monitoring claims the figure is much higher. The ethnic Indian population were over-represented among these victims (Koh and Koh, 2018).

In the Philippines, solidarity with BLM was shown while demonstrating against new restrictive anti-terror laws and the more than 27,000 deaths by police and vigilantes since the government's war on drugs began in 2016 (Johnson & Giles, 2019; Lo, 2020). In September 2021 the International Criminal Court ordered an investigation into the killings associated with the war on drugs in the Philippines. It found the initial evidence indicated the killings were not the result of legitimate law enforcement operations and that a widespread and systematic attack against the civilian population took place. The prosecutor's preliminary investigation found a reasonable basis to believe that crimes against humanity had been committed in the Philippines (ICC, 2021). Former President Duterte was later arrested after a warrant was issued by the ICC.

The police torture and killing people in custody in India also has a history that long predates the events of 2020. Various human rights organizations including the Indian National Human Rights Commission have commented that police torturing suspects was common and the primary cause of deaths in police custody (National Human Rights Commission, India, 2018). In addition, the National Campaign Against Torture (NCAT) indicated that armed security forces (the Indian Army and the Central Armed Police Forces) who are deployed in insurgency affected areas and the border areas (Bhatia, 2021) and have the power to take persons into custody were the subject of many reported cases of torture and sexual violence. Further, Forest Department officials were also responsible for torture, sexual violence and killing, particularly of Adivasi peoples (NCAT, 2021: 131–136). The majority of torture victims come from poor and marginalized communities, including Dalit, Adivasi

and Muslim minorities. In India the basic structure of the criminal law and police date from the time of British colonialism and attempts to decolonize the criminal law have been limited and absorbed into an essentialist and right-wing Hindu nationalism (Hindutva). As Sahgal (2023: 391) has argued, India continues 'to be plagued by interconnecting systems of oppression on grounds of caste, Indigeneity, gender, poverty, religion and political dissent'. The new criminal law reforms are 'an exercise in colonial continuities and strengthening anti-democratic tendencies' (Kavia & Chouhan, 2025: 50).

In India, the lockdowns to counter the COVID pandemic exacerbated police brutality against the urban poor, the street vendors and the tens of thousands of homeless migrant workers who attempted to return to their communities in what was described in the *Economic and Political Weekly* as a 'sort of dogged civil disobedience'—they were undeterred by police lathis and driven by 'no wages, no food, no savings, no money for rent, no faith [in] the administration... and great apprehension of disease and death' (Kalhan et al., 2020: 1). Historian Ramachandran Guha described the impact on migrant workers as the 'greatest manmade tragedy' in India since the Partition (*The Hindu*, 24 May 2020), and this was prior to the devastation caused by the pandemic itself after April 2020. As one writer put it, these were among the many victims of police violence, the 'unnamed George Floyds of India... whose voices are easily suppressed' (Ravi, 2020). In mid-2020, the deaths of a father and son, Jeyeraj and Benicks, in Tamil Nadu sparked a broader debate about police killings in India in the context of the BLM movement. The pair were taken into police custody for breaching COVID restrictions on trading and held overnight. Both were tortured and died two days later. As typical in these cases, initially no police were charged with criminal offences but those thought to be responsible were transferred elsewhere. After mounting public pressure nationally over the deaths, nine police officers were subsequently charged with murder and destruction of evidence (Human Rights Watch, 2021: 319).

The death of George Floyd also coincided with protests across Latin America and the Caribbean, stretching from Jamaica, Trinidad and Tobago, to Mexico, Colombia and Brazil. While in Cuba a planned protest for late June 2020 against the police shooting of a young Black man was suppressed by the government. There is a long history to the struggle against police brutality, racism and class oppression in Latin America. The sheer volume of police killings in the region meant there were ongoing protests against police violence in, for example, Colombia, Mexico and Brazil, which predated and were independent of the George Floyd murder in the US. These included for example, protests against the killing of a 14-year-old boy in

Rio de Janeiro in May 2020 (where police killed on average five people a day in 2019), and the police shooting in early June 2020 of a 16-year-old as he rode his motorcycle with a group of friends in Oaxaca State, one of the poorest areas of Mexico. Both Amnesty International in its annual country reports (www.amnesty.org/en/countries/americas/mexico/report-mexico/) and Human Rights Watch have long been critical of policing in Mexico, including the incidence of torture, arbitrary arrest and detentions, and forced disappearances (Human Rights Watch, 2021: 452–455). Protests against police violence in Mexico have continued—in April 2021 women demanded justice for Victoria Salazar. Police were filmed killing Ms Salazar. Her neck was broken when a police officer jammed his knee into Ms Salazar's neck.

Racism and the targeting of Black and Indigenous people in Latin America has dominated the activism against police violence. In Brazil, for example, police kill nearly six times the number of people compared to the US, and 75% of the people killed are Black (Carvalho, 2020; Watson, 2020). Similar to the Philippines, much of the police violence in Brazil is related to the war on drugs, increased militarization and indiscriminate state violence against poor and Black communities. For example, in Rio de Janeiro in May 2021 some 200 heavily armed police supported by armed helicopters moved into a poor, densely populated favela and engaged in a firefight with alleged drug traffickers that killed at least 25 people. The UN High Commissioner for Human Rights called for an independent investigation of the incident. Former President Bolsonaro openly promoted the police use of deadly force. Across Brazil police killings have been rising and the official figures do not include extrajudicial killings by vigilante death squads, which often also involve police (Human Rights Watch, 2021: 105–108).

Like the situation in South Asia and Africa, the COVID pandemic increased poverty and inequality, impacted on social unrest and intensified police violence in many Latin American countries. For example, in Colombia dozens of people were killed in early 2021 as police and security forces fired into crowds who protested the social and economic policies of the government. Colombian police are within the command of the Defence Ministry and there has been no appetite by the government to curb state violence—to the point where escalating protests are targeting police violence, particularly by the riot police ESMAD, as a key focal point of resistance. The Inter-American Commission on Human Rights criticized the Colombian security forces for using excessive, disproportionate and sometimes lethal force, including the indiscriminate police use of firearms against protestors and bystanders. The use of gender-based and sexual violence

against protestors by police has also been highlighted (Dickinson, 2021; Inter-American Commission on Human Rights, 2021).

Across the global north the protest movement was equally extensive. In Canada, the death of George Floyd reignited the focus on Black and Indigenous people killed by police. There are no national statistics on race, ethnicity and deaths in police 'encounters' in Canada, but various sources show that Black and First Nations peoples are especially over-represented. The Canadian Broadcasting Commission (CBC) *Deadly Force* database showed that since 2000 Black people represented nearly 37% of the people killed by police in Toronto, but only 8.3% of the city's population. In Winnipeg, Indigenous people represented approximately 10% of the population but accounted for nearly two-thirds of police victims. Based on their population, Indigenous people are nearly four times and Black people nearly three times more likely to die in police 'fatal encounters'. The majority of these fatal encounters involve a police shooting (Marcoux and Nicholson, nd). The *Globe and Mail* reported that nationally more than one-third of the people shot and killed by Royal Canadian Mounted Police (RCMP) officers between 2007 and 2017 were Indigenous (Freeze, 2019).

Similarly, in Australia and Aotearoa New Zealand there were demonstrations in support of the BLM movement. The protests were used to highlight the deaths in custody of First Nations people in both countries. It was noted in Aotearoa New Zealand that over the past decade, two-thirds of all victims of fatal police shootings have been Māori or Pasifika (Thom & Quince, 2020). Attention in Australia was drawn to [then] more than 432 First Nations deaths in custody since the landmark report of the Royal Commission into Aboriginal Deaths in Custody in 1991 and the fact that not one police or prison officer has been convicted for any criminal offences relating to these deaths. The death of David Dungay Jnr, who died screaming multiple times that he could not breathe, was a particular focal point (Whitaker, 2020). In Australia, Indigenous people are five times more likely to die in police custody than non-Indigenous people (Doherty & Sullivan, 2021). In both Australia and Canada it was acknowledged that police were instrumental in the colonial dispossession and repression of Indigenous peoples—and Indigenous peoples today are more likely than others to be killed by police (Cunneen, 2023).

In the UK and Europe, support for the movement also highlighted racism and policing in the context of existing racial and ethnic inequalities. In Paris and other French cities, protestors drew attention to police violence, deaths in custody and racism against minorities within France (Bobin, 2023; France24, 2020). Similarly, in the UK protestors emphasized racism, the lack

of police accountability and that Black people were more likely to die in police custody than other groups. British protesters carried placards with the names of those who had died in UK police custody, prison or at the borders (Elliott-Cooper, 2021: 4–5). In England and Wales, the community-based organization INQUEST's database on deaths in police custody showed that 'Black, Asian and Minoritised Ethnicities die disproportionately as a result of use of force or restraint by the police, raising serious questions of institutional racism as a contributory factor in their deaths' (INQUEST, 2022).

In Germany tens of thousands of protestors marched in cities such as Berlin, Munich and Hamburg. Like other European protests, these were not simply supporting the movement in the US. Protestors drew attention to police racism and violence within Germany, the lack of police accountability, and in particular the deaths of refugees and asylum seekers whilst in police custody (Perrigo & Godin, 2020; more generally on the protests in Germany, France and Switzerland and racialized policing, see Thompson, 2021). In other parts of Europe, it was noted that Roma were brutalized by police but were no nearer their 'Black Lives Matter moment' in terms of public outcry (Petre, 2021; Rostas & Moisa, 2023).

The preceding discussion shows that the 2020 protests were indeed global in their targets of racism, the effects of colonialism, inequality, state violence and the absence of accountability. However, the one ongoing and perhaps most violent of all and that also embodies all the matters raised above is struggle for survival of the Palestinian people.

Global Palestine

In relation to the international movement against the violence of police and security forces, it is imperative to acknowledge the resistance by Palestinian people against Israeli state. The struggle against police and security forces (and armed vigilantes) is an ongoing battle against a violent settler colonial state that has continued since the division of Palestine and the declaration of an Israeli state in 1948. As Rashid Khalidi (2014: 15) has noted, Israel is 'a vast carceral edifice' aimed at 'imprisoning or killing those who actively contest the legitimacy of the colonial project'. Tatour and Tatour (2023: 91–102) have also argued that mass arrests have been used to stifle dissent through what they refer to as a process of securitizing crime, and criminalizing and racializing Palestinian resistance.

The June 2020 international protests occurred prior to the invasion of Gaza by Israel in October 2023. However, the Palestinian presence was everywhere during the international 2020 protests movements with Palestinian flags and keffiyehs prominent at demonstrations from Paris to Sydney. Since 2020 we have witnessed the rapid transformation from what had been a long running ‘incremental genocide’ (Pappé in Barat, 2015: 147) to a full-scale genocidal attack on Palestinian people: ‘Israel’s genocide on the Palestinians in Gaza is an escalatory stage of a longstanding settler colonial process of erasure’ (Albanese, 2024: 26). The Palestinian genocide is a central focus of international protest movements today where settler colonialism has been stripped to its core—the violent and complete annihilation of every living, material and cultural sign of the Native population. It is indicative of what has been referred to as ‘Global Palestine’ (Collins, 2011): the growing movement of international solidarity and the transnationalization of forms of struggle against colonial states.

Contemporary Palestine is the site of the ongoing genocidal project of settler colonialism. The ruthless extermination of a people by a settler colonial state is built on the foundations of a racism that denies the humanity of the colonized: ‘we are fighting human animals’, according to Israeli Defence Minister Gallant; and a civilizational struggle, ‘a battle of civilization against barbarians’, according to Israeli President Netanyahu (cited in Republic of South Africa, 2023: 60)—ideological tropes that reference directly centuries of justifying colonial logics of annihilation. Thus, the Palestinian struggle speaks directly to the experiences of colonized peoples in settler colonies and former colonies where a foundational site for the operation of colonial power is (and historically has been) the law and criminal legal systems of the colonizer—which have continued within both settler colonial societies and former colonies post empire. International solidarity with Palestine also speaks to the struggle against new international configurations of coloniality in which Israel plays a global role, particularly through its arms trade and ‘technical assistance’ in surveillance and repression (Walsh, 2024: see also Lentin, this volume).

Racist violence, Systemic Racism and the 2020 Uprising

As noted previously, a frequent premise to the 2020 protests was that the vast majority of people killed by police are Black, Brown, Indigenous or from other minoritized or disempowered groups. Fundamental to the historical

and contemporary experiences of police violence and carcerality, the modern idea of 'race' was founded in the colonial encounter which codified the differences between the colonized and the colonizer into 'a natural situation' of biological inferiority and superiority (Quijano, 2000: 533). For many people across the globe, policing, courts, and prisons have been historically synonymous with colonial state violence and are still experienced as violent *colonial* enterprises today. Criminalization and differing forms of police/war power (Neocleous, 2021) were and are key to the maintenance of colonial and contemporary power.

A recurrent theme in the protests against police and security forces was that the histories of colonialism, slavery, racism and dispossession were fundamental to understanding the targets of policing and violence today. Understanding the coloniality and racism of state power and the requirement for a decolonial politics was a persistent refrain. There was thus an international dimension to local protests against the police that linked to the longer histories of anti-imperialist and anti-colonial struggles. The blurred contemporary distinctions between police and the quasi-military power of security forces served to reinforce the longer term connections to the history of the asymmetrical use of violence by colonial powers against protestors and civilian populations more generally.

Indeed, the ongoing contemporary struggles that Indigenous peoples and the rural poor engage in with settler colonial and neo-colonial states over land and resources exposes them to various forms of violence from police and security forces globally from Palestine to North America (Estes et al., 2021) to Brazil (Carvalho et al., 2021) and to India (Kakati, 2021; InSaf India and London Mining Network, 2025). The ongoing legacies of colonial structures of police and security forces intersect with the contemporary capitalist and imperialist demands for extractive resources. Further the protest movements highlighted the various *modes* of police violence including: the targeted war on drugs in places like Brazil and the Philippines utilising both paramilitary operations and vigilante death squads; torture, enforced disappearances and extrajudicial killings in countries like Pakistan, India and Bangladesh; violent deaths arising from police interventions for minor offences or 'welfare checks' in countries like the US, Australia and Canada; and what has been referred to as the 'violence of neglect' where rampant disregard for the well-being and health of a detainee leads to their death (Cunneen, 2023: 90–105).

Another longer term linkage between the protests of 2020 and the history of the coloniality of power was the absence of state accountability. The exercise of police/military power in the colony did not involve the consent of

the colonized. The racist ideologies underpinning colonialism and imperialism and the motive of ruthless economic exploitation meant that the idea of political legitimacy and popular consent was largely irrelevant. The aims of policing were to ensure colonial efficiency, stability and profitability for capitalism. Colonial policing never sought nor achieved legitimacy beyond the few who directly benefitted from it—it was an exercise of imposed and alien power over the colonized (Squires, 2023). One of the key themes of recent protests was the failure of accountability measures in responding to police killings. Indeed, it was noted that, notwithstanding the fundamental importance of a state-sanctioned decision to end someone's life or seriously maim them, it is difficult to get a handle on the overall size of the problem of police violence, killings or police custodial deaths.

Most countries do not publish comprehensive national information, so the estimates are left to media, human rights and other non-government organizations. The silencing of evidence by government is informative. As Rodriguez (2023: 126) states when it comes to state violence it is the 'comprehensive, systemic, active neglectfulness' of collecting information that is noteworthy—the absence of 'accessible, coordinated data about the casualties of police violence composes an *infrastructure of official ignorance*'. The absence of information is part of the process which enables plausible deniability.

Knowledge evacuation, factual non-accountability, and unarchiving are not failures of the state or police bureaucracy, they are infrastructures of police power that actively produce the epistemic and ideological contours of a political culture that thrives on disappearing, concealing, and obscuring the evidence of everyday police terror and its various forms of atrocity. (Rodriguez, 2023: 126).

The war on drugs, the war on crime, the war on terror, the war on migrants and refugees, the war on trans people, the war on *dissidence* is indeed increasingly a war where the lines of police/war power are dissolved. The classic global colonial tactics of police/military repression are equally at home today in Lagos as they are in Los Angeles.

The Intersections Between Racist Police Violence and its Relationship to Class, Caste, Gender, LGBTQIA, and Disability

In many countries the protest movements of 2020 drew attention to police and state violence against caste, women, people with disabilities and people from LGBTQIA communities. An understanding of the intersection between

state violence and repression against racialized and other minoritized people was brought to the fore by activist groups. Some of the most well-known police killings in the US which spurred the BLM movement involved Black Americans with disabilities, including Eric Garner, Tamir Rice, Tanesha Anderson, Freddie Gray, and Sandra Bland. In Canada, in the three months between April and June 2020 in the lead-up to mass protests over police violence and killings, six people died during mental health-related contact with police. All were Black, Indigenous, or people of colour. Four were shot dead by police. The other two fell from balconies after police intervened. The circumstances of these deaths provided a powerful impetus to Canadian calls to 'Defund the Police' and to provide non-punitive support for people in need. Similarly, in Australia police fatal shootings and violence against people with disability have been detailed in evidence to recent state and federal royal commissions into mental illness and disability. It has also been a source of First Nations activism in relation to deaths in custody (Cunneen, 2023: 130–131).

One of the greatest misnomers in policing is the idea that police officers can conduct *welfare* checks on vulnerable people, including those suffering from mental ill-health and cognitive impairments. In many countries, police welfare checks or wellness checks on people with disabilities are common. It is not unusual for a medical practitioner, social services or other agency to request police to check on someone when they cannot be contacted or have not attended an appointment; nor is it uncommon for family and friends to request police to check on someone, or for the person with the disability or mental illness to call police. It is difficult to determine how many of these police checks end in violence, arrest and in some cases death. However, these outcomes are frequent enough to have become one of the major drivers in the calls to stop police involvement in responses to people with disabilities. In the six Canadian deaths noted above, *all* arose in the context of wellness checks by police. In response the Canadian Mental Health Association (2020) issued a *Statement on Police and Wellness Checks* pointing out what should be obvious, 'mental illness is not a crime'. The Association observed that the deaths were 'the most recent in what has been a terrible history of fatalities involving people in mental health crisis situations. Systemic racism, including anti-Black and anti-Indigenous racism, has gravely increased the risks associated with experiencing a mental health crisis' (Canadian Mental Health Association, 2020).

It has been estimated that between one third and one half of people killed by police in the US have mental ill-health, cognitive impairment or other disability. Other studies in Australia, Canada and the UK on fatal police

shootings indicate similar findings (Fuller et al., 2015). Disability intersects with other social categories of race, class, gender and sexuality to magnify marginalization and to increase the risk of police violence. Black, Indigenous and other racialized communities are over-represented among police killings of people who are in a mental health crisis or have cognitive disabilities in the US, the UK, Australia and Canada (Cunneen, 2023: 130–131). Women with disability experience greater levels of violence both in the community and at the hands of police and other institutions. Stigmas about women with disability are further intensified by racist myths that pervade police responses to Black, Indigenous and women of colour. Andrea Ritchie (2017: 88–103) has written eloquently on the tragic consequences of the controlling narratives that frame police interventions into the lives of Black women with disability and the role of scientific racism in the conceptualizations of disability and disorder—what she refers to racialized ableism.

The issue of disability is not separate from either racism nor colonialism. As Rowe and Dowse (2023: 270) have argued, it is important to understand the nexus between colonialism, disability and race: colonialism ‘was not only about the creation of racial hierarchies based on the assumed superiority of white bodies/minds, but also about ableist hierarchies based on the assumed superiority of able bodies/minds’. The connection between race and dis/ability was firmly established within the colonial foundations to contemporary policing. As we return to further below, the policing of colonial boundaries around gender and sexuality was and is also racialized.

Despite the ideological rationale for policing that it provides a necessary institutional response to protect citizens from crime, the evidence shows that police institutionally fail to protect women from violence. This failure is particularly pronounced for Black, First Nations, Brown, racialized, poor and other minoritized women and especially those at the intersections. For example, in India the UN Committee on the Elimination Against Women (CEDAW) concluded that there was continuing impunity for the increasing violent crimes against women and girls, particularly rape and abduction; that this violence especially impacted on marginalized castes and communities, including Dalit and Adivasi women, and that key state officials continually downplayed the ‘grave criminal nature of sexual violence against women and girls’ (CEDAW, 2014: 3).

Promises of more policing and increased police and penal powers seem to be the stock answer by government to women’s demands for safety and protection against harassment, violence and rape. There are numerous reasons that show why police are not the solution to violence against women and why an increase in policing does not equate to more protection for women

in general or especially for those women from communities that are already subject to intense police surveillance. Low reporting of offences to police, failure by police to take reports seriously, misidentification of perpetrators (i.e. blaming the woman) and violence, including sexual violence, by police are all part of the reason for the failure of policing to protect women. When police punitive action is taken, it has resulted in targeting Black, First Nations, and other racialized and minoritized men. Angela Davis (1982: 172–3) observed in the US more than 40 years ago, that few white men were prosecuted for rape, while between 1930 and 1967 almost 90% of men *executed* for this offence were Black. Black, Indigenous and women of colour opposed the growing movement towards carceral feminism during the 1980s and 1990s (Davis et al., 2022: 102–108). The more recent BLM and Defund the Police movements have reinvigorated abolitionist and decolonial activism and analysis in opposition to ‘carceral feminism’.

Police violence against LGBTQIA communities has a long history and continues today—openly in many places. For example, in Turkey the annual Gay Pride parade has been banned since 2014. The LGBTQIA community continues to gather for the procession in Istanbul to be met by police repression. In June 2021, battalions of Turkish police in riot gear fired tear gas and rubber bullets at the crowds attempting to take part in the parade. In June 2022 police began arresting people before the march started, raiding cafes and bars in the area and detaining nearly 400 people. Other Pride rallies internationally have challenged the participation of police in Pride parades (for example, the Sydney Mardi Gras), and other groups such as the No Pride in Policing Coalition in Toronto have called for the defunding of the police. LGBTQIA groups have been frequent participants in BLM marches (Cunneen, 2023: 130–131).

As argued elsewhere, the failure of police responses to properly investigate anti-queer /transgender murders provide a window on how police discretion impacts on investigations and how at a deeper level the structures of heteronormativity are policed. Unsolved homicides which were dismissed as accidents, suicides, or low priority killings by police, reflected the view by police of LGBTQIA people as *unworthy* victims. Subsequent judicial reinvestigations were highly critical of the original police investigations, including ineptitude, poor practices, stereotypes of the murder victims as ‘paedophiles’ and the potential impact of police corruption (Cunneen, 2023: 59–61).

Decolonial feminists have been critical of a criminal legal approach with a reliance on criminalization that furthers the colonial and patriarchal continuities of punishment within countries of the global south and north. In addition, trans and queer theorists have argued that colonialism produces

what we come to know as normative gender and sexuality and must be central to theorization and activism against the violence experienced by trans, queer and gender non-conforming people (for discussion, see Rowe, 2025). For example, as Sahgal (2023: 393) has argued, 'the policing of subaltern sexuality through criminal law in India began during British colonial rule, through Section 377 of the Indian Penal Code 1860 (IPA). What had earlier been regulated by social norms was policed by the state through the threat of criminal sanctions'. Colonial policing of sexuality was exported to other colonies and back to Britain. Section 377 'Unnatural Offences' of the IPA prohibited 'carnal intercourse against the order of nature with any man, woman or animal'. Same-sex consensual intercourse was considered 'unnatural'. In 2018, the Indian Supreme Court ruled that Section 377 was unconstitutional insofar as it criminalized consensual sexual acts between adults, including homosexual acts (see Sahgal, 2023: 393–394).

However, the new criminal laws introduced in India and also in Indonesia in 2023, despite being introduced within a rhetoric of decolonization continue within a model of colonial patriarchy, where, as Kavia and Chouhan (2025: 50) argue, they are 'reinforcing colonial mentality as there is excessive state intervention in private lives of people. Specifically, the criminalization of adultery, contraception, abortion rights, cohabitation before marriage has been criminalized, among other matters' (Kavia & Chouhan, 2025: 50).

The Reformist Dream

It would be a long task to list the major inquiries internationally into policing over the last half century, including those established with the direct purpose of reforming police, and those where police were a major centre of attention (such as some of the Aboriginal focussed investigations in Australia and Canada). Inquiries into police are inevitably driven by the state's need to respond to some egregious crisis or series of crises usually revolving around abuse of power, police killings, corruption, repression or gross incompetence, usually as a result of significant organized pressure from civil society. It is not surprising that the search for establishing legitimacy for the institution is of paramount concern for the state and dominates recommendations to reassure the public, usually through a series of quick fixes. Even a symptomatic reading of some of these inquiries in the US, Australia, Canada, Britain, Northern Ireland, and South Africa reveals a recurring litany of reform proposals (Cunneen, 2023: 147–167). Thus, while these reports have varied in scope and content, there are commonalities in the broad focus of

recommendations, particularly in the need to enhance police legitimacy and change police through a suite of reforms to internal police managerial mechanisms and measures for accountability. Meanwhile, the historical purpose and the broader contemporary functions of police are ‘studiously ignored’ (Moore, 2023: 5).

The key police reform priorities which are often identified and endlessly repeated from one inquiry to the next (see for example, Kaba & Ritchie, 2022: 112–117) include mechanisms for enhancing community policing and police legitimacy, introducing diversity quotas and recruitment initiatives, technical solutions such as body cameras, a greater reliance on evidence-based policing (EBP) and various measures to improve citizen complaints systems and accountability mechanisms. Added to this catalogue are recommendations for investment in the almost never-ending list of training courses: to identify signs and symptoms of dis/ability; in de-escalation techniques; in cross-cultural awareness, anti-racism and unconscious bias; in the use of force and physical restraints; in community policing and community-based crime reduction programs; in responding to domestic violence and sexual assault; and so on. Given the number of inquiries and consistent failure to achieve meaningful change, we need to look elsewhere to understand the function of these inquiries. The liberal reform agenda is successful to the extent that it consistently furthers police power and (even if only momentarily) reconstitutes legitimacy.

The failure of police reform is a failure to understand the structural formation and nature of policing and its systemic links to racism, colonialism and ongoing imperialism. There is a need to decentre the ideology of police reform, particularly the way contemporary police reform mechanisms silence the colonial underpinning of policing. For example, both the Macpherson report in 1999 and the Casey report in 2023 into policing in the UK refer to the problem of institutional racism within police. However, as Elliott-Cooper (2023: 105) has shown this is a watered down liberal definition of institutional racism which is ultimately individualist in its understanding and removed from its origins in the 1960s where institutional racism was seen within a colonial context as part of the normal functioning of an overall racist system. As Elliott-Cooper argues in relation to the Macpherson report, this limited understanding of institutional racism is compounded by three further absences in the analysis of policing and potential for reform: the lack of historical context, the neglect of racial capitalism and the lack of engagement with state power. The same absences can be seen in the more recent Casey Report in the UK.

Challenging the limited and privileged 'official' understandings of police reform is imperative. For the survivors of genocide, dispossession, torture and other forms of state violence, the answer is not self-evidently how do we make policing more efficient. It is not self-evidently a liberal reform agenda to make the institution work better and to bolster police power.

Conclusion: Anti-colonialism and Abolitionism

Can policing as we know it ever be 'decolonized' without being fundamentally challenged and reimagined? Posing this question draws the links between anti-colonial and abolitionist struggles, particularly around the question of police reform. Certainly, there are many abolitionists who would dispute the possibility of reforming the police (for example, Davis et al., 2022; Kaba & Ritchie, 2022; Maher, 2021; Neocleous, 2021; Vitale, 2017). At least from my perspective, and others (for example, Rowe & Dowse, 2023; Shalhoub-Kevorkian & Sheehi, 2023), there is a fundamental connection between the political and intellectual programmes of abolitionism and anti-colonialism. The struggle for anti-colonialism and abolitionism cannot exist one without the other. Indeed, it can be argued that the *historical roots* of both are linked to the fight against slavery, colonial subjugation, racism and dispossession. It is also an argument that recognizes that the foundations of the contemporary institutions of police and penal power are found interdependently in both the global north and south and their entwinement.

Abolitionist thinking inevitably forces us to acknowledge settler colonialism as a necro-carceral state crime. The abolitionist framework—which must always be pointed to political and social action, organization, and mobilizations—requires both micro and macro theorizations of settler colonialism in relation to its state form, claims to sovereignty, juridical and discursive structures that regulate assumed settler legitimacy, and its global context of empire and racial capitalism (Shalhoub-Kevorkian & Sheehi, 2023: 139).

Both abolitionism and anti-colonialism centre the violence of the state and particularly through the police and security forces and carcerality more generally. For most of the world's population, policing, courts, and prisons have been historically synonymous with colonial state violence and are still experienced as violent enterprises today. Criminalization and differing forms of carcerality were and are key to the maintenance of colonial power. Criminal legal systems reproduce the coloniality of power throughout the social body and especially against those groups it has always dehumanized and rendered disposable through intersecting domains of race, gender, sexual and

ableist normativity. The international uprising of activism in 2020 while often rooted in local struggles, showed the importance of and need for international solidarity. And that, indeed, resistance to state violence simultaneously provided opportunities for building solidarity across various groups, including for example, abolitionist and anti-colonial movements, feminists, and human rights, LGBTQIA, Black, Indigenous and disability activists.

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28

Abolition Ancestry

Abigail Henson

If asked about the goal of abolition in the context of the criminal legal system, many in the general public would likely respond, “Letting everyone out of prison and getting rid of police tomorrow.” While an abolitionist agenda seeks to liberate our society of harmful carceral institutions, though not with such immediacy and heedlessness as in that statement, an integral component often missing from people’s perceptions of abolition is the objective of cultural change. In an interview with *Harper’s Bazaar*, distinguished abolitionist, Angela Davis, explained, “Abolition is not just about changing institutions, it’s about changing people’s ideas, it’s about changing prevailing ideology” (Phifer, 2022).

North America was founded upon *mammonism*, or the attitude that the possession of goods greater than any other individual or group is the ultimate sign of prestige, where having more is being more and worthy of respect and honor (Carlyle, 1843; MacDonald, 1997). Mammonism involves worship of and devotion to wealth that can influence “sinister” behaviors (MacDonald, 1997). Colonizers arrived in North America seeking a level of prosperity they had never been able to previously achieve (National Geographic, n.d.).

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Their mammonistic ideology guided the implementation of chattel slavery and provoked the establishment and maintenance of a racial-social hierarchy.

In this chapter, I examine abolition through a historical lens, exploring how ideologies around power and narratives of insecurity have driven the mutation of slavery from chattel systems to convict leasing to today's prison-industrial complex. Calls for liberation echo today from centuries past, but to achieve such an outcome first requires abolishing the cultural pairings of accountability and punishment, Blackness and threat, whiteness and sovereignty, and safety and "crime control." Identifying the power of narrative building highlights how policy implementation, void of preceding cultural change, falls short in attempts to increase equity, decrease victimization, and enhance social well-being. This framework defines abolitionist success not through forced legislation but by changing the prevailing culture of fear and greed to one of security and altruism. To achieve such an outcome, efforts must be made to facilitate dialogues that enhance community cohesion and create opportunities for increased integrative exposure, familiarity, and humanization.

The Origin Story

In search of fame and fortune, Christopher Columbus set out in 1492 from Spain to find a westward route to Asia (Phillips & Phillips, 1992). Instead, however, he made landfall in the Bahamas and journaled about the locals he met,

They... brought us parrots and balls of cotton and spears and many other things, which they exchanged for the glass beads and hawks' bells. They willingly traded everything they owned... They were well-built, with good bodies and handsome features... They would make fine servants... With fifty men we could subjugate them all and make them do whatever we want (Zinn, 2015, p.1).

The greed and pomposity of Columbus and his fellow voyagers blinded them to the humanity of those they encountered upon arrival and colored their blunt objectification of Indigenous peoples. Soon after his return to Spain, Columbus set out in 1493 to continue his colonization project in the Caribbean, and Central and South Americas where he enslaved locals, constructed plantations, searched for gold, and initiated the "Columbian exchange" (Crosby Jr 2003) of plants, animals, human beings, and diseases between the Americas, Africa, and Europe. At this time, the Spanish and Portuguese captured, enslaved, and moved African individuals to the

Caribbean and South America to provide free labor and enhance the productivity and wealth of the colonizing countries.

A little over a century following Columbus' voyage, equally driven by a desire for influence, representatives of England's Virginia Company of London set sail on a mission to colonize North America (Johnson & May, 1997). Arriving in what is now known as the state of Virginia, The Virginia Company established Jamestown in 1607 as the first English settlement in the United States. Settlers faced famine, disease, and conflict with the Algonquian peoples, yet they pushed forward in their pursuit of power. As a result, after decades of experiencing land theft, victimization, and resource drainage, on March 22, 1622, the Powhatan Confederacy, an alliance of Native American tribes in Virginia, launched an attack on the English settlers, killing hundreds. This expression of strength and organization cultivated insecurity and fears that prompted retaliation and intensified efforts of Indigenous suppression and military fortification by the British (Mooney, 1907).

Around this time, settlers discovered growing Tobacco in the Virginia region. The plant was highly lucrative, so, to enhance profits, British colonists enlisted indentured servants to work the fields. These servants signed contracts to enter a labor system for specified lengths of time in exchange for passage to the American colonies from Europe and, sometimes, land or other benefits (Galenson, 1984). The number of (well-armed) indentured servants grew over time to outnumber their masters, limiting the tyranny those in power could inflict. But then, in 1619, an English privateer ship, *the White Lion*, arrived in Virginia with 20–30 enslaved Africans who were captured from a Portuguese slave vessel. The sale by the Dutch to the British colonists marks not only the beginning of chattel slavery, where African individuals were seen as property to be bought, sold, and worked, but also the construction of race and the implementation of a racial hierarchy in the United States.

While indentured servitude persisted through the eighteenth century, improving European economic conditions in the seventeenth and early eighteenth centuries decreased individuals' willingness to travel and work abroad (Galenson, 1984). This lack of influx, in addition to the observed health, strength, and longevity of enslaved Africans, made chattel slavery more favorable and prominent. However, thousands of indentured servants continued to serve at this time alongside enslaved individuals, and their common experiences of subjugation incited fears of collaboration and joint escape in those with power. As a result of this fear, in 1661, the first colonial legislative assembly, the House of Burgesses, drove a wedge between the two groups by instilling Slave Codes, which codified the legal status of enslaved Africans

as property and penalized indentured servants with fines and years of service for “every Negro lost or dead” (Hannah-Jones, 2021). For whites to carry the repercussions of Black action created animosity and distrust, and incentivized impoverished whites to surveil and punish enslaved Blacks’ attempts for liberation (Hannah-Jones, 2021). Further, in 1682, interracial marriage was made punishable by imprisonment to segregate and establish othering (Hannah-Jones, 2021).

Following the creation of the Slave Codes, the transatlantic slave trade boomed, and, despite the criminalization of slave importation in 1808, the Southern population of enslaved Blacks reached 1.1 million by 1810 and over 3.9 million by 1860 (United States. Census Bureau, 1975). As the Black population grew over the eighteenth and nineteenth centuries, Blackness was made synonymous with unintelligence, threat, and unbridled strength. Only five years after his authorship of the *Declaration of Independence* which states, “all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness,” (Jefferson 1776) soon-to-be president, Thomas Jefferson, wrote in his 1781 book, *Notes on the State of Virginia*,

[Blacks] are at least as brave, and more adventuresome. But this may perhaps proceed from a want of forethought, which prevents their seeing a danger till it be present. When present, they do not go through it with more coolness or steadiness than the whites. They are more ardent after their female: but love seems with them to be more an eager desire, than a tender delicate mixture of sentiment and sensation...In general, their existence appears to participate more of sensation than reflection. To this must be ascribed their disposition to sleep when abstracted from their diversions, and unemployed in labour. An animal whose body is at rest, and who does not reflect, must be disposed to sleep of course. Comparing them by their faculties of memory, reason, and imagination, it appears to me, that in memory they are equal to the whites; in reason much inferior...This unfortunate difference of color, and perhaps of faculty, is a powerful obstacle to the emancipation of these people. Many of their advocates, while they wish to vindicate the liberty of human nature, are anxious also to preserve its dignity and beauty. Some of these, embarrassed by the question ‘What further is to be done with them?’ join themselves in opposition with those who are actuated by sordid avarice only. Among the Romans emancipation required but one effort. The slave, when made free, might mix with, without staining the blood of his master. But with us a second is necessary, unknown to history. When freed, he is to be removed beyond the reach of mixture.

Jefferson's unsubstantiated stories exemplified Southern beliefs of Black hypersexuality, impulsivity, stupidity, and animality that necessitated control, management, and segregation.

To ensure adherence to submission and minimize the risk of rebellion, white militia organizations, and official slave patrols were established. These groups were tasked with enforcing the 1661 Slave Codes and, later, the terms of the 1740 Negro Act, which made it illegal for enslaved Blacks to move freely, assemble in groups, grow food, earn money, and learn to read and write (Roberts, 2021). To be self-sufficient, knowledgeable, financially stable, and socially supported was seen as a direct threat to white wealth, power, and privilege. Patrollers were given the right to brutalize, rape, and kill "defiant" or "deviant" enslaved individuals, and their capacity only grew as panic around rebellion swelled following the Insurrection of St. Dominique in 1803 (Muhammad, 2021). In 1820, Thomas Jefferson famously stated, "We have the wolf by the ears, and we can neither hold him nor safely let him go. Justice is in one scale, and self-preservation in the other" (Jefferson, 1820).

Jefferson's sentiment contrasted with the growing abolitionist sentiments of the North. The North held only a fraction of the enslaved Black population compared to the South, and, as industrialization prevailed, the Northern economy became even less reliant on slave labor. Additionally, Quakers and other evangelical groups in the North began to vehemently condemn slavery for its "un-Christian qualities." These sentiments shifted the Northern collective consciousness and, by 1804, all states north of Maryland had abolished chattel slavery (Murphy, 2018). This accomplishment, however, did not end the abolitionist movement. Abolitionist media blossomed in the 1800s as more and more Blacks were freed and able to publish their work and collaborate with white abolitionists such as William Lloyd Garrison, founder of the American Anti-Slavery Association and creator of the newspaper, *The Liberator*, which peddled counternarratives of Black humanity and championed the emancipation of all Blacks.

"Slave narratives" and protest pamphlets grew in popularity throughout the mid-1800s. In 1845, Frederick Douglass published his autobiography that described his experiences as an enslaved child on the plantation, an enslaved city worker in Baltimore, and an escapee and free man. In 1852, Harriet Becher Stowe wrote the novel, *Uncle Tom's Cabin*, which was highly influential in rallying antislavery sentiments (Brophy, 1996), and, in 1861, Harriet A. Jacobs wrote her autobiography, *Incidents in the Life of a Slave Girl*, which pulled on the heartstrings of women in the North as she detailed her experiences of sexual assault, motherhood, and search for and attainment of freedom (Foreman, 1990). Black anti-slavery activism was largely the bedrock

of emancipation. Storytelling had a significant impact on shifting perceptions of Blackness and slavery, leading the People's (Republican) Party to adopt an abolitionist belief system (Hannah-Jones, 2021). This cultural change took hold of the American people, and in November 1860, Abraham Lincoln, a Republican, was voted in as president by the majority (Hannah-Jones, 2021).

The inauguration of an abolitionist ultimately led the South to secede and initiated the Civil War. Resources and industrial capacity led to victory in the North and, in 1863, Lincoln signed the Emancipation Proclamation intending to free all enslaved Blacks. In 1865, the 13th amendment of the United States Constitution was created stating, "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction" (U.S. Const., Amend. Xiii). In 1870, voting became legal for Black men, and in 1868, the 14th amendment of the United States Constitution was created granting citizenship to all persons "born or naturalized in the United States," including formerly enslaved people, and provided all citizens with "equal protection under the laws" (U.S. Const., Amend. Xiii). While these policies signify a step forward in progress toward racial equity, the defeat of the South did not shepherd instantaneous acceptance of Blacks by racist Southern whites, in fact, quite the opposite.

Without changing the culture of fear and desire for power and supremacy, the same year that the Thirteenth Amendment signed into action, two steps back were taken when Confederate veterans formed the Klu Klux Klan (KKK). The popularity of the terrorist group, which used violence and intimidation to quash Black liberation, spread quickly across the South. Not long after the Reconstruction Act of 1867, Confederates returned to power in the South and instilled the Black Codes and Jim Crow laws that prohibited Blacks from owning property, conducting business, buying and selling land, enrolling in school, traveling freely, marrying, and being unemployed (Alexander, 2010). This legislation deemed "slavery by another name" (Blackmon, 2008), criminalized Blackness and was enforced by both the KKK and Sheriff departments across Southern states, leading to dramatic racial disproportionalities in lynchings and imprisonment.

In 1889, Phillip A. Bruce, a respected historian from Virginia authored the book, *The Plantation Negro as a Freeman*, which stood on the grounds of "impartiality" and characterized Blacks as inherently "evil." In this text, Bruce (1889) described Blacks as "careless," "morally deficient," "impulsive," "callous," "sexually impure," "unfaithful," "intellectually ignorant," "personally unclean," and latently "furious" with "little self-control." He described Black men as lacking the ingenuity to carry out a robbery but as eager to

rape (white women) and lash out with brute force while indifferent “to the suffering of others” (Bruce, 1889, p.80). Under the guise of science, Bruce legitimized the surveillance, criminalization, and oppression of Blacks.

Bruce (1889) goes on to acknowledge the concept and prominence of white supremacy,

Until all the traditions and emotions which their superiority of mental and moral character, and differences of race and condition have created have been destroyed, they will continue to feel as they do now. Until then, even to discuss the probability of a change of sentiment, will be accounted as insult to justify such a change will be considered as heinous as defending incest and rape; and to predict it with confidence, will be taken as a proof that the speaker, if white, is an event of his people, who should, therefore, be condemned and avoided (p.49).

It is this culture of fear and insecurity and a desire for power to assuage these feelings of discomfort that inspired the mutation of slavery into the criminal legal system.

The Mutation of Slavery

The hyperincarceration of Blacks was never attributed to racism or discriminatory practices but was attributed to the inherent criminality of the Black race (Cunningham, 1894). In 1896, Frederick L. Hoffman, a German statistician raised in the American South who worked as an actuary for Prudential, a New Jersey-based insurance company, published *Race Traits and Tendencies of the American Negro*. In this text, Hoffman replicated and even cited Bruce’s (1889) sentiments stating, “Crime, pauperism, and sexual immorality are without question” (p.217). Black engagement in crime was determined as pathological and integral to the Black body, while white engagement in crime was contextualized through poverty, proximity to Black communities, and unemployment (Muhammad, 2010). Although some attempts were made to challenge these racist and scientifically inaccurate narratives (see correspondence with M.V. Ball, 1894), the criminalization of race was already baked, burned, and branded into American culture. As a result, while Blacks made up only 13% of the U.S. population at the time, they made up 95% of the Southern prisoner population by the late 1870s (Delaney et al., 2018).

As a means of stabilizing the damaged economy following the Civil War, Southern states began to take up convict leasing, where predominantly Black prisoners, which were abundant following the hyper-criminalization of Black

life through Jim Crow laws, were leased by penal institutions to plantations, lumberyards, railroads, and other Southern corporations for free labor (1901b. "The Spawn of Slavery: The Convict-Lease System in the South." *Missionary Review of the World* 14:737–45). This act was constitutional given the clause of the 13th Amendment permitting slavery as punishment. The conditions of convict labor were so heinous that workers were dying prematurely; therefore, the practice was slowly phased out and replaced with prisons situated upon plantations with prisoners forced to pick cotton (Alexander, 2010). This became a popular model and, by 1928, Texas alone was running 12 prison plantations and making the equivalent of millions of dollars in profit, with nearly 100% Black prisoners (Delaney et al., 2018).

The racist and terrorizing conditions of the South led over six million Black individuals to migrate North between 1910 and 1950 to cities that promised prosperity. While more welcoming than the South, Northerners were not immune to narratives of Black threat. These fears, along with a short burst of increased violence (Eriksson, 2019), resulted in a quickly expanding prison population with racial disparities in prisons across the U.S. doubling over this period and free manual labor becoming a defining staple of the carceral experience (Alexander, 2010; Eriksson, 2019). According to Census Bureau Reports, in 1910, there were 58 state- and only three federal prisons nationwide (Cahalan & Parsons, 1986). Only 40 years later, by 1950, there were 127 state- and 31 federal institutions. Carcerality was seen as the answer to the declining economy and perceived threats to white supremacy. Blacks consistently received sentences three years longer than whites convicted of the same act and Black youth at the time were more than twice as likely as white youth to be sent to an adult prison than a juvenile detention center, thus increasing the Black prisoner workforce nationwide (Cahalan & Parsons, 1986).

While the carceral state began to expand, counternarratives to Black threat grew throughout the 1920s as Black excellence became more visible. Creatives like Louis Armstrong, Zora Neale Hurston, and Bessie Smith rose in popularity, the Negro National Baseball League was formed, and Black politicians like Oscar De Priest and Arthur Wergs Mitchell were elected to office. Black leaders advocated for civil rights, and Black inventors like Garrett Morgan and academics such as W.E.B. DuBois shaped American behavior and thought. This demonstration of power, however, again triggered fear and insecurity in many whites who, over the next several decades, acted in retaliation against feelings of emasculation (Austermuhle, 2018) and the prospect of racial equality through both violence and legislation.

One of the most harmful and oppressive federal practices was redlining, which sprung out of Franklin D. Roosevelt's 1930s New Deal. The federal government created a map of every metropolitan area in the country that was then color-coded by the Home Owners Loan Corp, followed by the Federal Housing Administration. The colors signified neighborhoods that were safe to insure mortgages, and any predominantly Black area was colored red to signal to appraisers that the neighborhoods were "too risky" (Rothstein, 2017). This practice is one of the root causes of the vast contemporary wealth gap between whites and Blacks, as Black families were not able to invest and multiply their money in the same ways (Choi, 2020). What resulted was the creation of impoverished and under-resourced Black communities that were disenfranchised and coined "ghettos" and "slums" (Rothstein, 2017). However, as validated by Jim Crow legislation banning group gatherings, there is power in numbers, and the congregation of Blacks in different neighborhoods across the country led to organized protests and advocacy for liberation.

With support from Black and women-led organizations, such as the National Association for the Advancement of Colored People (NAACP) and National Organization for Women (NOW), came the 1954 ruling of *Brown v. Board of Education*, the Civil Rights Act of 1964, and the Fair Housing Act of 1968; the outcomes of which fostered desegregation, prohibition of racial discrimination in businesses, equal voting rights, equal employment opportunities, and equal opportunities to rent, sell, and finance homes. In standard American fashion, however, with one step forward came two steps back. Originating as slave patrols, the intention of the police to suppress Black freedom never shifted (Williams, 2015). Images of state troopers and local enforcement officers beating, clubbing, and siccing dogs on Black students, children, and civil protesters became prominent on nightly news throughout the 1950s and '60 s. Absurd acts of violence by white mobs and members of the KKK, such as the Tulsa Massacre and Rosewood Massacre were not seen as exhibits of poor morals or an inherently criminal character. Rather, these acts were normalized, politicized, and justified (Muhammad, 2010). Alternatively, Black rebellion over the same period, and often in response to acts of police violence, was constructed in the media as an example of the deviance and irrationality that Bruce (1889) described in his text over a half-century prior (Muhammad, 2010).

Because of this contradictory perception of violence and criminality, in 1965, President Lyndon Johnson declared a war on "crime." He stated in a speech made to police policymakers in 1966, "If we wish to rid this country of crime, if we wish to stop hacking at its branches only, we must cut its roots and drain its swampy breeding ground, the slum" (Lepore, 2020).

The four thousand lynchings by white mobs and brutal harassment by the police were not seen as “crimes.” “Crime” was and remains a social construct most attributed to those impoverished and minoritized, living in “the slum.” In truth, “crime” is simply acts deemed criminal by those in power and is contextual, with its definition and application fluctuating depending upon its actor. As Ball (1894) stated, “All lawbreakers are not sent to prison, and the more influential the criminal, the less likelihood of conviction” (Muhammad, 2010).

Eventually, Johnson got his *Omnibus Crime Control and Safe Streets Act* passed by Congress in 1968, which militarized and emboldened law enforcement, leading to an inevitable increase in police violence toward Blacks (Alexander, 2010). One year before the passage of the Omnibus Act, Johnson had formed and tasked the *National Advisory Commission on Civil Disorders* to create a report on why there had been an increase in racial uprisings. The report, published in 1968, found severe segregation, poverty, joblessness, lack of housing and economic opportunities, job discrimination, and police violence and harassment to be the causes (Kerner et al., 1968). However, the next year when Nixon entered the presidential office, he did not address these contextual origins but rather perpetuated a personal responsibility narrative driven by beliefs not far from those previously spoken by President Jefferson and Frederick Hoffman (Alexander & Alexander, 2021).

Years of Mass Incarceration

Throughout the twentieth century, drugs were used as a scapegoat to hyper-surveil and criminalize “the other.” Opium was tied to Chinese workers, Cocaine was tied to Black workers, and Marijuana was tied to Mexican workers and Black creatives (Butler, 2009; Vitale, 2022). Prohibitionism was promoted with racist undertones and outcomes, leading to further police involvement and the ever-expansion of the racially disparate U.S. criminal legal system (Alexander, 2011; Butler, 2009; Hart, 2021). By the start of the Nixon era in 1969, Black abolitionist efforts were in full force; the Black Panthers had over 2000 members nationwide and civil rights legislation empowered Black individuals to live more freely. Nixon saw this as a problem, and so, just as Johnson disguised his war on the minoritized as a war on “crime,” Nixon chose drugs as his veil.

John Ehrlichman, Nixon’s chief domestic policy advisor, stated in an interview,

We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did (Baum, 2016, p.1).

Civil Rights legislation gave police less opportunity to surveil, arrest, and manage Black individuals, but drug legislation ramped opportunity right back up, and this is where we see the birth of mass incarceration.

The next 50 years are characterized by ballooning incarceration rates stemming from strengthened police forces (Williams, 2015), mandatory minimum sentencing guidelines (Tonry, 2017), drug enforcement (Alexander, 2010), broken windows policing tactics (Howell, 2009), and the never-ending media-perpetuated equation of Blackness with danger (Chricos & Eschholz, 2002). From 1970 to 2000, incarceration rates grew by 400 percent, resulting in the U.S. holding the highest incarceration rate in the world (Gottschalk, 2011) with Black individuals five times more likely to be incarcerated than white individuals (Pettit, 2012). Some argue that the racial disparities found at every single step of the criminal legal system, from police stops (Pierson et al., 2020) to arrests (D'Alessio & Stolzenberg, 2003; Mitchell & Caudy, 2015) to convictions (Spohn, 2013) to sentence lengths (Feldmeyer & Ulmer 2011) to reincarceration rates (Reisig et al., 2007) are due to differential involvement in illegal activity (Hindelang, 1978; Kirk, 2008). However, numerous empirical studies disprove this theory and find that racial discrimination accounts for a significant portion of the disparity, particularly for property and drug offenses (Beck & Blumstein, 2018; Huang, 2018; Piquero, 2008).

Scholars have attributed mass incarceration to a "culture of control" (Garland, 2001) that seeks to use carcerality to surveil and manage the most othered and most in need. Disparities exist at almost every stage of the criminal legal system for Black, indigenous, and Hispanic individuals (Crutchfield et al., 2010; Sampson & Lauritsen, 1997). Those with mental health disorders make up 56.2% of the prison population compared to 11% of the general public (James & Glaze, 2006; Kaba et al., 2015). The median annual income prior to incarceration is \$19,185, 41% less than nonincarcerated people of similar ages (Rabuy and Kopf 2015). Forty-one percent of the prison population has not completed high school compared to 18% of the general population (Harlow, 2003; Wang et al., 2022). Fifteen percent of the incarcerated population experienced homelessness in the year before their admission compared to only 2% of the general population (Couloute, 2018).

And those in prison have higher rates of PTSD, exposure to violence, high blood pressure, asthma, cancer, tuberculosis, arthritis, and HIV compared to the general population (Baranyi et al., 2018; Dumont et al., 2012; Maruschak & Beavers, 2009; Sánchez et al., 2016).

With all of this in mind, calls for abolition are not just centered around ending slavery but liberation from stereotypes; the opportunity to individuate and not be seen as “exceptional” when challenging negative stereotypes (“Speaking Freely: bell hooks,” 2002). The desire to defund the police is not to allow for chaos in the community. Rather these calls acknowledge that (1) police are predominantly reactionary, not preventative (Vitale, 2021), (2) there are better means of decreasing victimization (Vitale, 2021), (3) police have persistently been used to hypercriminalize and oppress Black communities (Muhammad, 2010; Vitale, 2021), (4) police cause more stress and burden to the communities they more regularly patrol than instill feelings of safety (Chalfin et al., 2022), and (5) this system is not even working for the very officers it employs, as police officers have higher rates of suicide, mortality, substance abuse, heart disease, PTSD, anxiety, depression, and divorce than the general population (Chae & Boyle, 2013; Cross & Ashley, 2004; Waters & Ussery, 2007).

Although there is some data to suggest that the absence of police can negatively impact certain neighborhoods (Sherman & Eck 2002, see MacDonald et al., 2016 for counter-findings), this research is largely reflective of a context in which the only structural change to a neighborhood was decreased police activity without preceding or concurrent increases in resources, equitable housing and employment opportunities, and health care access. As long-time abolitionist Ruth Wilson Gilmore explained in a *New York Times Magazine* interview, in addition to removing carceral institutions, abolition includes “vital systems of support that many communities lack. Instead of asking how...we will deal with so-called violent people, abolitionists ask how we resolve inequalities and get people the resources they need long before the hypothetical moment when...they ‘mess up’” (Kushner, 2019). As stated earlier, those who are most in need and under-resourced are more likely to end up in police custody than those with most of their needs met (Kaba, 2021). Access, support, and privilege are protective factors against justice involvement (Lyons & Walsh, 2010), not heightened policing. This is why wealthy neighborhoods have minimal police presence *and* limited interaction with the criminal legal system (Wu et al., 2009).

Just as with calls for abolishing the police, calls for prison abolition do not support a lack of accountability for harm-doing or the imprudent release of unstable individuals who are an immediate threat to themselves or others.

Rather, these calls acknowledge that (1) retributive justice creates harm for the community (Clear, 2009) and the victimized individual(s) (Orth, 2002; Patterson, 2011), (2) prison time leads to stigma, trauma, and reintegrative failures for returning citizens, which contribute to their reincarceration (Miller, 2021), (3) there are alternative means of holding accountability found to be effective and healing (Sherman et al., 2015), and (5) the carceral environment is detrimental to even those who work there, as correctional officers have higher rates of suicide, mortality, PTSD, anxiety, and depression than the general population (Lavender & Todak, 2021; St. Louis et al., 2023).

Reincarceration rates have remained at about 60% over the last several decades (Alper et al., 2018) and while general crime rates are down across the U.S. (Gramlich, 2024), police-involved homicides have increased over the last several years (Washington Post, 2024). If the carceral system intends to enhance safety, and if we define safety as the absence of “crime,” or, better yet, as well-being, then this data demonstrates a failure to achieve said goals. If 65% or more students, particularly the minoritized students, failed a teacher’s class year after year, that teacher would likely receive a scathing evaluation. If this remained consistent for decades, that teacher would likely be fired. There would also likely be criticism of the institutional actors upholding the teacher despite the students’ failures. If the criminal legal system is not achieving safety and if there is a wealth of data demonstrating that the carceral system *decreases* wellbeing (Clear, 2009), we must ask, why then have we not fired this system? The concept of abolition encourages us to ask these questions, hold ourselves responsible for being the institutional actors upholding a failing and harmful system, and seek alternative means of holding accountability for harm-doing without further perpetuating harm (Davis, 2011, Kaba, 2021; Vitale, 2021).

Abolition in Practice

Beyond theory and provocation is abolition in practice. A key tenet of abolition is to make the current mutation of slavery obsolete (Davis, 2011). Beyond attempts to directly impact the scale of the carceral state by decreasing police and corrections budgets, there are several modes of abolition in practice, including police response alternatives, community violence interventions, opportunities for equity, and environmental design. These modalities fit the abolitionist agenda as they challenge cultural understandings of threat, safety, and accountability.

Alternatives to Police

One of the reasons our carceral state has captured so many of those in need is because, over time, police have been tasked with responding to innumerable social issues including addiction, mental illness, and homelessness. Inadequate training and resources have led to high rates of those with mental health disorders dying at the hands of police (Baker & Pillinger, 2020; Washington Post, 2024) and the perpetual cycling in and out of jail for those suffering from homelessness and substance abuse disorders (Greenberg & Rosenheck, 2008). To counter these outcomes, there has been an emergence of programs, such as CAHOOTS in Eugene, OR, STAR in Denver, CO, B-HEARD in New York City, HOME team in San Francisco, CA, and Street Response in Portland, OR that attempt to remove police from non-life-threatening emergencies. Certain calls to 911 and 988 dispatch get diverted to these programs that offer a collaborative response from a crisis worker and a medic. This team stabilizes those in need and provides “assessment, information, referral, advocacy, and, in some cases, transportation to the next step in treatment” (CAHOOTS, n.d.). Evaluations have found decreased property crimes in the program treatment areas as well as massive financial savings from law enforcement expenses and averted emergency room costs (Reising et al., 2023).

Community Violence Intervention

Beyond response, local community-violence intervention (CVI) organizations have cropped up in cities nationwide to *prevent* emergencies. These organizations, such as Cure Violence, Roca, Advance Peace, and Save Our Streets, rely on credible messengers who are well-respected community members or leaders, some of whom have been formerly incarcerated (Fader et al., 2022; Lesnick et al., 2023). These individuals intervene after receiving information about an individual in crisis or on the verge of engaging in violence. These programs typically take a holistic approach, understanding that violence often results from untreated trauma and resource deprivation. With this framework, the messenger serves as a bridge to program resources, which can include therapy, employment opportunities, parenting classes, housing assistance, and more. Evaluations of community violence interventions have found decreases in gun violence, recidivism, and engagement in harmful behavior amongst participants (Adams & Maguire, 2023; Buggs, 2018; Delgado et al., 2017).

Opportunities for Equity

In line with the CVI logic model are programs and policies that address the “root causes” of justice involvement. Harm reduction strategies, drug legalization, housing subsidies, and employment opportunities fall within this category. As an act of destigmatization, harm reduction efforts include safe needle exchanges, free Narcan distribution, and supervised injection facilities. These efforts challenge the moral absolutism stemming from the war on drugs and try to enhance the safety of inevitable drug use (Vitale, 2021). Similarly, advocates of drug legalization attempt to remove the criminalization of drug use and to legitimize and regulate drug distribution to both reduce racial disparities in the criminal legal system and reduce deaths and diseases from contaminated products (Hart, 2022).

Another public health approach that halts the criminalization of those in need is the Housing-First model and housing subsidies. Rather than providing short-term shelter or contingencies for long-term housing, Housing-First provides immediate permanent housing to the homeless along with support services to increase stability (Vitale, 2021). States such as Virginia, Utah, and Colorado have adopted this model and seen significant decreases in overall and chronic homelessness and arrests, jail time, and detoxification center use amongst participants (Cunningham et al., 2021; Vitale, 2021).

When basic needs are met, engagement in illegal and harmful activity decreases (Anwar et al., 2022; Cunningham et al., 2021). Therefore, in addition to housing, employment is vital for enhanced well-being and safety (Blizard & Sheetz, 2023). Programs such as One Summer Chicago and the Boston Summer Youth Employment Program provide disadvantaged youth with summer employment, resulting in reduced violence and increased socioemotional skills among participants (Heller, 2014; Modestino, 2019). Other job readiness programs for adults, such as New Orleans Career Pathways increase the likelihood of obtaining higher-paid employment and result in lower arrest rates for participants with prior criminal records (Anwar et al., 2022).

Investing in neighborhoods through economic opportunity and environmental design significantly decreases victimization (Branas et al., 2018; Farrington and Welsh 2002), not criminal legal investment. Research shows that improved street lighting, accessible and beautiful green spaces, and an absence of blighted vacant lots can decrease gun violence and assaults in an area (Branas et al., 2018; Farrington and Welsh 2002). Contrary to Johnson’s statement, it is not the individuals living in the slums that need to be

drained, but rather the harmful conditions of the “slums” and the policies that construct them. The design of scarcity embedded in these environments catalyzes engagement in illegal activity, as the desire for resources and power is driven by desperation for survival (Anderson, 1999; Henson, 2022).

Cultural Abolition

Despite data supporting abolitionist efforts and demonstrating the centuries-long failures and racism baked into the criminal legal system, there is still a popular perception that police and prisons are integral to the safety of our society (Gramlich, 2021; Hartig & Daniller, 2023). In a research project I conducted with police officers in a small Southwest city, I asked whether they felt their role was to cultivate enough safety that they were no longer needed. All thirty-five officers responded, “No,” saying they had never considered the concept. This chapter reveals that the goal of the criminal legal system has never been to curate an environment that prevents harm and decreases victimization. Rather, the role of the criminal legal system has predominantly been to establish and maintain a social hierarchy and cause harm to those perceived as “deserving.” Victims of crime do not even find solace in the legal process. Those victimized are likely to be secondarily victimized by criminal legal actors (Orth, 2002; Patterson, 2011) and, when surveyed, are more supportive of shorter sentences and rehabilitative and preventative approaches than those that are punitive (Courtney & Pelletier, 2016).

Belief in the need for our criminal legal system is guided by ignorance of other preventative and intervening methods and influenced by true crime podcasts, murder mystery documentaries, gonzo-style prison and jail shows, detective series, and mainstream news coverage that tend to focus on the most extreme and “worst” cases. Indeed, work is still needed to discern how to best handle those who are a direct threat to themselves and others if not through prison, but this population makes up only a small portion of those justice-involved (Mears et al., 2013). Ninety-five percent of the almost two million people in prison today will be returning to the community (James, 2014), only more traumatized, stigmatized, and ostracized than they were before their incarceration. If data show that unmet needs are a main source of illegal activity (Anderson, 1999; Henson, 2022; Kawachi et al., 1999), why do we advocate for a system that cultivates only more needs upon release?

Changing collective consciousness requires heightened exposure to counternarratives through integrative efforts, media, and conversation. Pop culture campaigns, such as Meek Mill’s public fight for freedom, documentaries, such as *13th*, books like *The New Jim Crow*, and shows like *Blackish*, *Insecure*, and

Atlanta provide alternative stories that expose the injustices of our justice system and challenge stereotypes of Black threat and danger. More counternarratives are needed, more humanizing stories of those justice-involved, more Black actors in powerful roles, more Black newscasters, more Black executives, more Black criminologists, more classroom exposure to Black theorists, more education on the true history of the United States, more Black home ownership, more Black business holdings, etc., etc. But forcing diversity does not necessarily foster anti-racism (Kendi, 2023; Thomas et al., 2021; Solomon et al., 2021; see Watson, 2024 on anti-DEI). This is exemplified by the minimal positive impact diversifying police forces has on use of force and racially disproportionate stops and arrests (McElvain & Kposowa, 2008; Nicholson-Crotty et al., 2017; Smith, 2003). So, how do you get the masses to *want* diversity and to bolster less harmful modes of addressing harm when it means diminishing white power? How do we achieve equity when mammonism, or the desire for power and wealth, is so deeply woven in the American fabric?

At this point in our history, achieving equity requires altruism, which data show is strongly motivated by reciprocity (Fehr & Fischbacher, 2003). Just like the negative impact of criminal legal institutions on those who work for them, research finds that white supremacy can harm whites as well (albeit in diverse ways and to differing degrees) (Deaton & Case 2021). Stress due to threats to power has increased mortality rates of middle-aged men in the last several decades. Fear and anxiety of white deprivation are leading to high rates of suicide, substance abuse, and heart disease among whites (Bowser & Hunt, 1996; Deaton & Case, 2021; Siddiqi et al., 2019). Equity can therefore possibly be motivated by longevity and health because abolition and liberation are for the well-being of all. The cultural parsing of accountability and punishment, Blackness and threat, whiteness and sovereignty, and safety and “crime control” will ultimately lead to a healthier and happier society.

We are all accountable for upholding a system that contributes to sickness and sadness. But what we learned through the COVID-19 pandemic is that we are highly contagious; if you infect one person, they will likely infect another, and the chain goes on. Narratives are equally contagious, and we can change culture by simply conversing about these topics. By speaking with others about what you learned in this chapter, you may spark a conversation that sparks another conversation that gets the masses to become more knowledgeable and critical, and hopefully for those in power to become more altruistic. So, who are you going to tell and what are you going to say?

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29

Make America Great Again... Again: Race, Counter-Resistance, and “Anti-Wokeness” as a Political Movement Toward Hegemonic Social Control

Zoe Spencer-Harris

Reconciling Class, Race and the Social Contract: A Socio-historic Perspective

To explore the manner in which political rhetoric, like “Make America Great *Again*,” resonates with the American public in politically dissimilar ways, one must first examine the significance of Jean Jacques Rousseau’s (1947) idea of the social contract and explore the ideological and class premises inherent in the historical materialist framework of class, race, and the state. Each provides a means of contextualizing how historic social order, racial hierarchies, and *false consciousness* guide public perception of America’s greatness and its decline.

Jean Jacques Rousseau was aware of the divergent class interests that fractured otherwise homogenous societies. He understood that the private ownership of property and the means of production, inherent in the development of industrial capitalism or “civil society,” produced irreconcilable class differences that threatened the stability of capitalism and the state. Somewhat analogous to Marx’s historical materialist foundation, Rousseau agreed

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that private ownership was the root of human alienation, and alienation was the root of class struggle (Rousseau, 1947).¹ As Engels (1884) contends:

...The state is the recognition that this society has become entangled in an irresoluble contradiction with itself, that it is divided into irreconcilable antagonisms which it is powerless to escape. But in order that these antagonisms, classes with conflicting economic interests, might not devour each other and society in sterile struggle, a power seemingly above society became necessary for the purpose of moderating the conflict, keeping it within the bounds of 'order'". (pp. 177–178)

The *Social Contract* was Rousseau's idea of "moderating the conflict" and "keeping it within the bounds of order" (ibid.). Through it, he proposed-what Marx argued could not be done- reconciling class struggle within the confines of the capitalist state. Thus, he defined the social contract as the necessary act of sacrificing personal interests and individual will in order to establish a *general will* that he believed necessary to create and sustain balance and order in society. He understood that "it is what is common in these different interests that form the social bond, and if there was not some point in which they all unanimously centered, no society could exist" (Rousseau, 1947, p. 23). Accordingly, Rousseau contended, "the idea of the general will provided a unifying symbol which joined the scattered discontents of men of different classes" (xviii).

During Rousseau's era, not only did the general will seem "to promise an end to factionalism;" for Rousseau, it provided the foundation for the transition from "pseudo-societies" that were "built on selfishness and calculation" to societies that created "a genuine community built on spontaneous love of country" (ibid. xv). Patriotism, and its bond to capitalist-democracy ideals, follow this form. Rousseau posits:

So long as several men unite and consider themselves as one body, they have but one will, which is to promote the common safety and general well-being. While this union continues, all the springs of the State will be vigorous and simple, the maxims by which they are regulated will be clear and comprehensible; and there will be no jarring, opposing interests; the common good will then be everywhere evident, and nothing will be necessary but a sound understanding to perceive it. (ibid., p. xviii)

¹ As proposed in the various works of Antonio Gramsci, Frederick Engels, Paulo Freire, and Karl Marx, while the theorists themselves do not critically examine race, this work utilizes the theory to critically analyze race as a preserving construct of class throughout capitalist development in the United States.

Rousseau powerfully concludes: “For peace, union, and equality are enemies of political subtleties” (ibid., p. xviii). This, seemingly contradictory, assertion is rooted in his conceptualization of sovereignty in relation to absolute power. Unlike other philosophers, Rousseau strongly believed that no individual or government could/should hold absolute power. He argued that absolute power rests with the people- the community- whose interests must converge to form the general will, while the government’s sole authority is to carry out, and protect the interest and will of the people (Rousseau, 1947). In Rousseau’s estimation, however, it was not that each individual interest would be included in the general will. Similar to Marx’s idea of *alienation*, Rousseau contended that the sovereignty of power rests in each individual being willing to give up his individual will to bond to the collective- form the social contract- and create and become a member of the Sovereign. In such, “each individual, contracting, as it were, with himself, is engaged as a double character; that is, a member of the Sovereign engaging with individuals, and as a member of the State engaged with the Sovereign” (Rousseau, 1947, p. 17).

While the concept of the Social Contract arguably provides a powerful symbolic tool for social order, the ability to form an allegiance to, even the perception, of a common interest rests on the ability to find a *uniting ideology* that forms the foundation of the social bond, especially where class antagonisms exist. Rousseau (1947) explains why this is an important parameter that serves as one of the conceptual foundations of this work:

The body politic, or the Sovereign, which derives its existence from the sacredness of the contract, can never bind itself, even towards outsiders, in anything that would derogate from the original act, such as alienating any portion of itself, or submitting to another Sovereign...Further, the Sovereign, being formed only of the individuals who compose it, neither has, nor can have, any interest contrary to theirs...The Sovereign, by its nature, is always everything it ought to be”. (p. 17)

When Rousseau first published *The Social Contract* in 1762, Africans were already relegated to the institution of enslavement throughout the diaspora, especially in European colonies. Before the Trans-Atlantic Slave Trade was formally abolished in 1808, over 12.5 million African people were kidnapped from their homeland and transported across the Atlantic to be bought and sold in slave markets globally (Hannah-Jones, 2021; Williford, n.d). North American enslavement, specifically, distorted historical fact and exploited stereotypical fallacies and pseudo-scientific ideologies and theories of biological, intellectual, and cultural inferiority, in order to justify the enslavement

(Kendi, 2016). This helped shape America's perceptions of Africa and African people and created the condition for the dehumanization, objectification, exploitation and commodification of Black bodies, Black labor, and Black production—from the production of natural resources to the reproduction of Black babies born into enslavement (Hannah-Jones, 2021; Kendi, 2016; Payne et al., 2019; Plous & Williams, 1995; Spencer, 2011; Spencer and Perlow, 2018).

Both Rousseau and Marx refer to this process as alienation, wherein, “the worker alienated from his product is at the same time alienated from himself. His labour itself becomes no longer his own, and the fact that it becomes the property of another speaks an expropriation that touches the very essence of man” (Fanon, 1967, p. 4).

“Alienation manifests itself both through the fact that my means of subsistence belongs to another, that the object of my desire is the inaccessible property of another, and through the fact that each object as well as my own activity is alien to itself” (Marx, 2007, p. 266).

Institutionalizing generational bondage, through the state and its apparatus, was justified by exploiting the biological differences that created a tangible dichotomy between enslaved and free Africans and European colonists in America (Fanon, 1967). Differences in skin complexion, hair texture, facial features, and body types, that would become the foundation for the conceptualization of *race*, made those tangible differences exploitable (Ray & DeLoatch, 2016). The dialectical racial dichotomy that the slave trade created in America, coupled with its dehumanizing fallacies about African people, precipitated the condition for redirecting the focus on class struggle that Marx argues is inherent in capitalism, toward a focus on racial hierarchy, privilege, and domination. It is the presence of Black life in America that “unanimously centered” the White race as “one body with one will to promote the common safety and general well-being” (Rousseau, 1947). As Hannah-Jones (2021) argues:

It was precisely because white colonists so well understood the degradations of actual slavery that the metaphor of slavery held so much power to consolidate their disparate interests: no matter a colonist's politics, background, or class, by being white, he could never fall as low as the Black people who were held in bondage. (p. 13)

Slave codes, Black codes, convict leasing, Jim Crow laws, segregation, federal and state legislation, and Supreme Court rulings that reinforced the racial hierarchy, solidified both the social order and exclusion that denied African Americans access to freedom and opportunity to actualize. Having

the *privilege* of not being subject to enslavement or racial subjugation/ domination by way of one's racial affiliation, no matter one's class status, created the bonding force Rousseau deemed essential. At the same time, preserving and sustaining the racial hierarchy and racialized labor relations became the "common interest" that united the white race across class lines and established a social contract to which white society could commit. Thus, "Whiteness proved a powerful unifying elixir for the burgeoning nation. Whether laborer or elite planter, neither was a slave. And both were equal in not being slaves.' And so it served the interests of both groups to defend slavery" (Hanna-Jones, 2021, p. 19).

Consequently, neither did Rousseau's conceptualization of the social contract, nor the American framers' conceptualization of the Declaration of Independence and Constitution-embodiment the African American struggle or include African American interests. To the contrary, as Hannah-Jones (2021) posits:

...when it came time to draft the Constitution, the framers carefully constructed a document that preserved and protected slavery without ever using the word...The Constitution protected the 'property' of those who enslaved Black people, prohibited the federal government from intervening to end the importation of enslaved people from Africa for a term of twenty years, allowed Congress to mobilize the militia to put down insurrections by the enslaved, and forced states that outlawed slavery to turn over enslaved people who had escaped and sought refuge there". (p. 19)

Rousseau made clear, "the Sovereign, being formed *only* of the individuals who compose it, neither has, nor can have, any interest contrary to theirs...The Sovereign, by its nature, is always everything it ought to be" (1947, p. 17). Consequently, where the social contract and the state rely upon the institutionalization of an exploitative racial ideology, the African American struggle to reconcile the social order and reclaim their liberation will always threaten to upend the social contract as it was. This accounts for racial and state resistance to each period of Black progress, from Emancipation and the culminating Civil War, Black reconstruction and the culminating Jim Crow, Civil Rights movement and the culminating state resistance, and the George Floyd Protest and the culminating Anti-Woke campaign.

This work posits, *Make America Great Again* refers to returning to a time when "the Sovereign" racial hierarchy in America did not have to burden itself with protecting itself from "anything that would derogate from the original act, such as alienating any portion of itself, or submitting to another Sovereign" (Rousseau, 1947, p. 7). There is duality in the purpose

of protecting the ideal of white supremacy. White supremacy is both the *ideological and cultural hegemony* that undergirds the social contract. It is the framework that unites the White race in America and creates the foundation for the “false consciousness” that the state, as the apparatus of the ruling class, manipulates in order to preserve ruling class domination.

False consciousness emerges from “a distorted and limited form of experience in society that could be applied to all social groups and classes; ideology was applied to those explanations offered by intellectuals to legitimate such experience...” (Eyerman, 1981, p. 43). Just as the imposition of white supremacy and the ideology of race saved capitalist evolution in colonial America, the racial divide remains capitalism’s greatest ally at each point of socio-political and economic crisis. While racial tension at any time may create tension within society, it does not threaten capitalist social order or the state apparatus that preserves it.

This work certainly does *not* argue that Rousseau supported the inequality of races or enslavement. Nor does it suggest that Rousseau, himself, intended the social contract to serve as the blueprint for white supremacy. This work merely posits that applying Rousseau’s social contract provides an invaluable point of analysis for the examination of anti-Woke politics and its contemporary catalyst to *Make America Great again*.

The Awakening: George Floyd as a Movement Toward Critical Class Consciousness and Racial Solidarity

Before the public *neo lynching* of George Floyd in 2020, for many, slave and lynching narratives that illustrated America’s savage violence against Black bodies became a part of American history most desired to, simply, relegate to an inconsequential shelf in America’s past (Muhammad, 2003; Rubin, 2017). America’s denial and repression of the vile historic facts *and* photos untethered the centuries of brutality against Black bodies from the present-day social conscience and detached them from their contemporary relevance (see: the infamous 1863 photo of “Poor Peter,” with his “scourged back” the 1920 Duluth Lynching, and the 1930 lynching of Rubin Stacy, illustrating hundreds, even thousands, of White men, women, and children, festively gathered to witness and celebrate the spectacle of Black torture). This misapprehension of the lingering consequences of the history of systemic racism

served as the ideological foundation for the myth of color-blindness (Bonilla-Silva, 2017) and the post racial society (Bhopal, 2018), especially in the post Obama era.

Through the socio-political imposition of these myths as fact, America was free to promote the idea that Black people had arrived at racial equity and free to deny the ways in which systemic racism continued to impact the lives and lived experiences of Black people in historically tangible ways (Bonilla-Silva, 2017 p. 262). Those myths centered a false reconciliation of America's brutal disregard for Black life and minimized the power and relevance of the volumes of contemporary literature (see Alexander, 2010; Blackmon, 2009; Bonilla-Silva, 2017; Feagin, 2006; Kendi, 2016) that made the correlation between America's past and its present. Arguably, before the death of George Floyd, the movement's failure to systematically link contemporary acts of state sponsored violence to America's racist past negated the transformative power of prior protests and neutralized the momentum to demand systemic change.

In the infancy of, what would become, the Black Lives Matter Movement and the Movement for Black Lives, families sought public support to seek accountability for the individual deaths of their loved ones. Consequently, direct action and demands from the protest movement focused mainly on enforcing police accountability for the excessive use of force that denied Black men, boys, women, and girls equal protection and due process under Eighth and Fourteenth Amendments of the United States Constitution (Crusto, 2020). Thus, in most cases, once law enforcement and/or rogue white actors/agents were arrested and charged for their crimes, the movement met its goal, and the protest ended.

Perhaps, it was witnessing a White male state agent in uniform, postured atop of a strong, dominant featured Black man, with his knee and the weight of his body placed firmly on his neck- like a hunter on his prize-unrelenting, unsympathetic, and unmoved, as George Floyd gasped for air, pleaded for his life, repeatedly uttered the words that we heard Eric Garner plead, "I can't breathe," and then call for his mother until his body went lifeless, that conjured global outrage across racial, ethnic, and geographical lines. The very same narratives and visuals of America's brutal history of racial terror that Americans yearned to forget, especially that of young Emmett Till, now created the piercing lens that situated the manner of George Floyd's death and turned the myth of colorblindness and the post racial society on its head. It resurrected the fact that, as Embrick (2015) emphasized, "The US has long had (sic) a fascination with black bodies. From days of slavery to the years of Jim Crow to the post-Civil Rights Era, black and brown bodies have been

controlled and put on display as an affirmation of white superiority. This fixation is particularly notable when it comes to black male bodies” (p. 838).

The death of George Floyd undoubtedly sparked one of the most significant movements since Bacon’s Rebellion in Jamestown Virginia in 1676² (see Zinn & Arno, 2014). Michelle Alexander (2010) explains why:

The events in Jamestown were alarming to the planter elite, who were deeply fearful of the multiracial alliance of [indentured servants] and slaves... In an effort to protect their superior status and economic position, the planters shifted their strategy for maintaining dominance. They abandoned their heavy reliance on indentured servants in favor of the importation of more black slaves. (p. 46)

The social restlessness, precipitated by the long period of COVID-19 lockdown, arguably created the perfect condition for the raging movement that ensued. If nothing else, it gave the masses a meaningful reason to defy global Stay at Home and Social Distancing orders that were in place at the time. Smart phones, the popularity of social media, and the Black Lives Matter movement had already converged to produce the condition for global movement that united people around the issue of race and police brutality in the many deaths of unarmed Black and Brown victims of state sponsored violence before. Thus, the Black Lives Matter (BLM) banner/hashtag provided the organizational framework-the rally cry- under which independent organizers were able to mobilize hundreds and thousands of people in direct action protests in response to Floyd’s brutal death. Floyd became the unwitting martyr that magnified the *deeper root* of the relationship between race and police brutality.

While the organizers of direct action protests across the nation were largely young Black women (Blaine, 2020), according to 2020 protest demographic data, collected, by Mobilewalla in four major cities, New York, Los Angeles, Atlanta, and Minneapolis, in each of these cities, up to 85% of the protestors were White, more than 60% of the protestors were between the ages range of 18-34, and over 50% of the protestors were male (Mobilewalla, 2020). This intersectional movement unified all people across racial, gender, gender identity, status, age, religious, ethnic, geographical, and even political lines. In such, it allowed the converging masses to see through the social constructs that otherwise divided them and realize the common, yet unspoken, root

² While we acknowledge the value of the organization of poor white farmers and black indentured servants and enslaved people against the property owning class, we pay homage to the indigenous people who also fought to defend their land and secure their liberation during the colonial genocide of their people.

of their intersecting oppressions-the capitalist state. As Dana Fisher (2022) highlighted in her commentary:

This moment in the struggle against systemic racism in the U.S. provides important insights into how to get a critical mass in the streets that has the potential to motivate greater social change. By combining solidarity, identity, and moral shock, the movement was able to mobilize the masses and sustain their engagement throughout the summer of 2020. (para. 6)

Unlike the protest responses in the past, this movement had a vision and an ideological base that centered the capitalist economy, the state, and its apparatus as the root of the systemic oppression and state sponsored violence against black bodies (Apata, 2020; Etsey, 2020). It rooted the violence against Black people in the historic ways that capitalism required the commodification and exploitation of black bodies for production, profit, and power, and exposed the state and its institutions as its accomplice. In kind, the state provided validity to the analysis by calling on the same militaristic and policing apparatus (that the masses were protesting) to invoke its violent response to otherwise peaceful and constitutionally protected protest and nonviolent resistance. In keeping with the violent militaristic responses across the nation, on June 2, 2020, as CNN reported, *then* President, Donald Trump "...turned security forces on peaceful protesters in front of the White House, as tear gas and rubber bullets flew, before declaring himself the "law and order" President. Then, in one of the most bizarre moments in modern presidential history, he strode across the park to stand in front of an iconic church holding a Bible aloft in a striking photo op" (Collinson, 2020, para. 2).

White people, from all "walks of life," including reporters who dared to cover the protests, got a chance to experience the violent response to resistance and peaceful protests that Black people had endured for centuries in their quest for freedom, inclusion, and equality, which made it real and true. The protest and the state's response to it were pivotal to the evolution from false consciousness to class-consciousness. Lanning (2002) provides the conceptual framework for understanding this evolution when he posits:

...the actions and development of the working-class demand concentrated organization of consciousness that leads to effective resistance to capitalism and to explorations of alternatives to it. But such organization cannot be well founded without addressing the problem presented by the formation of what Lukács called the "inward barrier" that resists the development of consciousness. (p. 10)

As Alexander (2010) and others (Rice, 2013; Wertenbaker, 2011; Zinn, 2015) who have studied and written about Bacon's Rebellion affirm, the ruling class has always been fearful of a multi-racial working-class movement. White supremacy and the fallacy of privilege create the "inward barrier that resists the development of consciousness" by sustaining the belief that racial hierarchy, racial division, and even racial hate are necessary to achieve and/or sustain class privilege in a capitalist state. As stated before, racial division does not threaten the capitalist state. Therefore, it has been a powerful weapon for the superstructure.

The George Floyd movement achieved class-consciousness. "Class...arises from the recognition of common interests and circumstances, from struggle, and from the impetus gained through shaping institutions to meet people's needs and to entrench new levels of power derived from ongoing struggles for the development of consciousness" (Lanning, 2002, p. 156). In such, the movement's demands transcended merely calling for the arrest of Chauvin and his accomplices. While not transformative or revolutionary in eliminating the capitalist state, the movement united around the call to end systemic racism and intersectional oppression, which, on its own, implicated the class divide that systemic racism has sustained since 1619 (Kendi, 2016 & Hannah-Jones, 2021). In keeping, the radical reform agenda also called to dismantle the systems that sustain it, which included the call to defund the police, address mass incarceration, change the Eurocentric curriculum within the schools' systems, and address systemic racism in corporations, Universities, and the political sphere through implementing diversity, equity, inclusion, and justice training and mandates.

It disrupted the racist heroism of the confederacy by calling for the removal of the names of confederate generals and soldiers from streets and buildings, and toppling and defacing their statues in cities across the nation. It simultaneously called for legislation that defunded and redirected funds from militarized policing, banned the use of oppressive and violent police tactics like chokeholds, no-knock warrants, racially motivated police stops, and legislation that required training in de-escalation, mental health, and cultural competence, and established measures that promoted greater accountability like dash and body-worn cameras and citizen review boards (Amnesty International Report, 2020).

President Trump's continued public disregard for protesters, the racial political decline, and the brutal death of George Floyd did not help. The protest movement created the condition for an unparalleled voter mobilization drive as the Presidential elections approached. As CNBC reported, voter registration drives, donations to the Democratic Party, and volunteerism

surged during and after the protest. To name a few, news outlets like NPR, Washington Post, and Time Magazine reported on the adverse impact that Trump's response would have on his White voter base. On June 20, 2020, a profound article published in Slate characterized the moment succinctly.

Donald Trump has spent his life stoking white racial fears. He has done it as a businessman, as a candidate, and as president... But Trump has a problem: Most white Americans don't agree with him. Polls taken since George Floyd's death are showing a profound change in public opinion: White Americans, on balance, now perceive systemic racism and reject Trump's law-and-order message as inadequate (Saletan, 2020, para. 2).

Ultimately, Donald Trump lost the election to Joe Biden, making him one of just a handful of Presidential incumbents to lose their second term. In analyzing whether the protest and/or Trump's response may have influenced the loss, a quantitative study, conducted by Tufts University in 2021 concluded:

There were two primary pathways by which George Floyd's murder could have affected voter registration. First, individuals who attended a protest or who lived in close geographic proximity to a protest may have been directly mobilized to register through their fellow protestors and parallel organizational groups that latched themselves onto this organized protest movement. Indeed, we have quite a bit of qualitative evidence that this registration driven focus played a key role in some areas that had George Floyd protests. (Holbein et. al, 2021 pp. 5–6)

The George Floyd era represented an epoch of *awakening*, unity, solidarity that tested Rousseau's proposition that, "peace, unity, and equality are enemies of political subtleties" (Rousseau, 1947, p. xviii). This movement-*passive revolution*- fractured the original social contract that the old American social order was based upon and threatened to create "another Sovereign," that encompassed those who had originally been excluded. It shattered white supremacist, patriarchal, and Christian nationalist ideologies, and honed in on one of the most fundamental injustices of capitalism, systematic racism. The movement represented "...the specific point of class consciousness defined in this analysis: the necessity for an organized political and ethical response to the injustices of capitalism (Lanning, 2002, p.110). Thus, when analyzed within the socio-historic and theoretical frames presented in this work, one can conceptualize why this movement, this paradigmatic shift, was the greatest threat to the social contract and the capitalist state in centuries, and why the movement would have been imperative for the opposition to quell.

The Big Pay Back: A Theoretical Critique of Counter-Resistance, and “Anti-Wokeness” as a Political Movement Toward Hegemonic Social Control

While those who supported and participated in the movement were rejoicing in the massive wins, others recognized the movement as the dismantling of the social contract and the old social order that once preserved white privilege, identity, pride, and stability (Bonilla-Silva, 2017). Like Bacon’s Rebellion, the capitalist class also recognized the movement as a threat to the political economy and the superstructure that it was. Just as it had when Lincoln signed the Emancipation Proclamation, when the Supreme Court ruled in favor of *Brown v. Board of Education*, and when Congress passed the Civil Rights Act of 1964, the “conservative” White working class saw the movement as a dismantling of their racial identity, their bond to the cultural arm of the superstructure, and a dismantling of the ideologies that upheld the “racialized social structures” that sustained their “privilege” (Silva, 2003 p. 214). This precipitated the immense anger and fear that sparked the condition for counter-resistance to the George Floyd Movement that mimics the *exact* same ideological and practical perspective, propagandized by George Wallace in 1964. In that representation of “white interests,” George Wallace declared the Civil Rights Act “a fraud, a scam, a hoax...tragic.” Then in his reference to the social contract, he staunchly furthered, “It dishonors the memory of countless thousands of our dead who offered up their very lives in defense of principles which this bill destroys. Never in the history of this nation have so many human and property rights been destroyed by a single enactment of the Congress” (Wallace, July 4, 1964). Accordingly, the *Anti-Woke* campaign/movement that developed out of what Carole Anderson (2016) terms, *white rage*, is designed to restore the *traditional conservative* culture that honors and re-institutionalizes both the racial and patriarchal hierarchy.

Throughout this work, I have utilized the terms class and class-consciousness. To be clear, unlike other theoretical paradigms, *historical materialism* posits, *class* is not relative to jobs, status, socioeconomic hierarchy, or even wealth itself, but is, rather, the relationship between labor-power and capital that is created by individuals’ collective relation to the forces of production. The paradigm argues that capitalism produces an inherently oppressive relationship between two classes: the *ruling class*-or those who own and control land, labor, and the tools of production; and the *working class* -or those who must sell their labor power, to produce wealth for the ruling

class. In the *wage labor* relationship, the working class exchange their labor power for a wage they must then rely upon for their subsistence and survival (Marx, 1859a, 1859b). As discussed above, Marx argues that this relationship creates alienation by separating humans from their labor power and all their labor produces. Then, “the totality of these relations of production constitutes the economic structure of society, the real basis from which rises a legal and political superstructure, and to which correspond specific forms of social consciousness” (Marx, 1859a, 1859b, pp. 159–160). It is this relationship, not merit, that is the reason why, as Hannah-Jones (2021) asserts:

Today, America has grown into one of the most inequitable societies. Today, the richest 10 percent of Americans own over 75% of the country’s wealth, with the top 1 percent owning well over a third. Many of the political systems, legal arrangements, cultural beliefs, and economic structures that uphold and promote this level of inequality trace their roots back to slavery and its aftermath”. (p. 185)

For the enslaved class, there were no wages exchanged. Instead, the labor power of the enslaved is exploited with no connection to the commodities and profits that their labor power produces. Consequently, enslavement, unlike working-class relations, had to be sustained through the brutal and coercive arm of the superstructure, which included the brutality of ideology, culture, the state, and its institutions. However, for the working-class colonists in early America, especially during the colonial period, the use of coercion as a method of control exacerbated the threat of class conflict and the destabilization of capitalist evolution in the United States. In this instance then:

The capitalist relation of exploitation is unique... its key elements, labor-power and capital, both assume the form of commodities. This enables a structure of domination and surplus extraction to assume an outward form of personal (individual) equality and voluntary (rational) choice, a form that is not merely a disguise or illusion, but is objectively present in the social experience of the actors in this drama. Understood in this way, the capitalist market is a uniquely powerful engine of coercion and exploitation. (Laibman, 2006, p. 98)

Defining and isolating *class* in this way diffuses the relevance of race in the capitalist state, be it during the antebellum period or any period in post-colonial America. This contextualizes the importance of Bacon’s Rebellion and the contemporary movement toward class-consciousness (Zinn, 2015).

Historically, when white supremacy has been challenged, racist ideologies come to the fore and racial boundaries harden. This has been true since the early days of English colonization, when Virginia planters responded to the threat posed by the interracial alliance of poor whites and enslaved blacks during Bacon's rebellion by institutionalizing enslavement and expanding participation in the Atlantic Slave trade (Doan 2020, p. 20).

To explain why this history is relevant, I defer to Antonio Gramsci's work on ideological hegemony as the theoretical underpinning of my analysis of *anti-woke*ness as counter-resistance and the move toward the reclamation of hegemonic social control. Unlike Marx, Gramsci focused on the importance of the cultural superstructure (Studdart, 2007) through his examination of the exploitation of culture and ideology *over* the use of coercion in sustaining social stability in an inherently oppressive capitalist state when he argued:

Hegemonic power works to convince individuals and social classes to subscribe to the social values and norms of an inherently exploitative system. It is a form of social power that relies on voluntarism and participation, rather than the threat of punishment for disobedience. Hegemony appears as the 'common sense' that guides our everyday, mundane understanding of the world. It is a view of the world that is 'inherited from the past and uncritically absorbed' and which tends to reproduce a sort of social homeostasis, or 'moral and political passivity'. (Gramsci, 1971, p. 333)

As this work posits, white supremacy *is* the ideological hegemony that forms the identity of the cultural superstructure in America. Preserving and protecting white supremacy, especially as it relates to insulating capitalist interests, has always been the foundation of the social contract. White supremacy has historically grounded false consciousness by creating an alternate explanation for class struggle- *race*. Consequently, racism and the racial hierarchy have been long since perceived to be the necessary tool in the preservation of the general wellbeing of not only white society, but also, the capitalist state.

Without centering race, class and thus capitalism, becomes exposed as the foundation of class oppression.³ For, as the historical materialist paradigm suggests, the working class of all races works hard. However, the distribution of wealth and power is not theirs to control. The labor- power capital relationship, between the ruling class and labor is at the heart of class struggle and

³ Creating propaganda around the materialist analysis of class, by labeling it "communist" or "Marxist," and decontextualizing terms such as "oppressor" and "oppressed" by labeling them "divisive" has been a historic form.

conflict (Marx, 1859a, 1859b), *not race or ethnicity*. Therefore, true meritocracy can be neither tangible nor static within the capitalist framework. For that reason, at every point of economic decline and threat to the capitalist state, the hegemonic arm of the superstructure *must* arise to reclaim itself through the exploitation of the vulnerability of the masses; hence, the state response to Bacon's Rebellion in 1676 *and* the conservative response to George Floyd today.

White supremacy, as an ideological framework for ruling class domination, only sustains itself through the agreement, complicity, and participation of the white masses who are invited to perceive it as their common interest and general will. In such, the white working-class masses *must* become a necessary part of the cultural realm of the superstructure if capitalism is to survive. Consequently, the manner in which the Floyd movement galvanized the White masses (liberals), who rallied *against* anti-Black racism *and* its root-capitalism, was not only a threat to the state, the social contract, and capitalism; for many *other* White folks (conservatives), it was also a threat to their identity, racial pride, and the future of the familiarity of the racial hierarchy. This is especially true amongst white populations who believe in the absoluteness of meritocracy yet have not actualized the socio-economic status and wealth that the capitalist democracy falsely promises all White Americans.

In an article published by CNN aptly titled, "Are Whites Racially Oppressed?" Tim Wise explains. "Many white Americans have lived under the assumption that if they worked hard, they would be rewarded. Now more white Americans are sharing unemployment lines with 'those People'—black and brown" (Wise as cited in Edwards, 2012 para. 20). In such race, not the inherent nature of capitalism, grounds the manner in which *they* analyze *their* social reality. To the question, "are Whites racially oppressed?" The materialist answer is *yes*, as are all working-class people regardless of social constructs. However, false consciousness prevents working-class White people from being able to find the commonality in struggle with other races. Instead, they blame them and maintain the class divisions that work against their own interests and general wellbeing. As Freire (1970) explains:

This does not necessarily mean that the oppressed are unaware that they are downtrodden. But their perception of themselves as oppressed is impaired by their submersion in the reality of oppression. At this level, their perception of themselves as opposites of the oppressor does not yet signify engagement in a struggle to overcome the contradiction; the one pole aspires not to liberation, but to identification with its opposite pole. (p. 79)

This is why the state's response to Bacon's Rebellion was such a brilliant and necessary historic means of establishing cultural hegemony, which reflects the ways in which the superstructure actualizes the ideology and establishes the racial hierarchy through the state and its institutions, especially education, media, and politics (Tatum, 2017). White supremacy created the social contract that facilitated the white working classes bond to their racial affiliation above their class affiliation. Through that lens, they cannot see themselves being oppressed by its opposite pole, the ruling class and its capitalist state. Instead, they seek to identify with them both, rather than identify with the Black working class. Thus, during periods of economic crisis, and especially in communities where economic deprivation exists, the White working-class poor find solidarity and power in their racial pride, instead of seeking their own liberation from that which truly oppresses them.

For them, in a meritorious society, those who work hard will win in America. However, because of the longstanding, unchallenged, and culturally indoctrinating racial fallacies of intellectual and biological inferiority, Black people, who work hard, including the enslaved, are not only believed to be inherently *incapable* of winning by merit in this country; but, they are also viewed as unworthy of even having access and opportunity to do so, from their lens. Thus, movements, legislation, and even court rulings that create equitable opportunity and spark racial progress, and any ideologies and socio-political reforms or shifts associated with them, must be dismantled to preserve the "general wellbeing" of the white race. This incites *counter-resistance*.

The goal of the counter-resistance movements that have occurred throughout the history of the African American struggle for liberation in America-from Emancipation to George Floyd- is to seek to restore hegemonic foundations that subjugate Black bodies, undo all forms of racial progress, and disrupt critical class-consciousness and racial solidarity. Counter resistance is predicated on the belief that reclaiming racial dominance, hence the power to remove and/or neutralize competition, will ease white working-class burden and give them greater access to the false promise of the American Dream. The *Anti-Woke* movement is the Floyd movement's *counter-resistance*. *Anti-woke* is the ideological platform that undergirds the return to hegemonic social control and serves as the conservative battle cry to *Make America Great Again.... again*. As Doane cautioned in her 2020 work.

I would like to suggest that we need to recognize the existence of the 'new white nationalism' as a distinct racial ideology that has emerged to contest 'color blindness' in the political and public sphere...What I am claiming is

that it has emerged as an alternative that needs to be taken into account in the analyses of contemporary racism in the United States (p. 33).

The Anti-Woke campaign is exactly what Doane described, ‘the new white nationalism’ designed to reclaim the old racial order that, once again, insulates capitalism from scrutiny. So let us apply a critical examination of “anti-wokeness” as white nationalist rhetoric.

To understand the relevance and distortion of the term “anti-woke”, one must first provide proper context and definition for both the origin and the term “woke” itself. *Woke* is an urban vernacular, used as a verb or an adjective, that arose from the Black struggle for freedom and liberation in America. Culturally, one can equate the phrase “stay woke” to “be vigilant,” which relates to the constant familial and social caution of and for Black people to be vigilant when navigating spaces where racial violence was prevalent and in calling for freedom and liberation- from the antebellum period to the present.

The earliest reference can be found in Frederick Douglass’ work, published in 1845, where it was written: “Be faithful, *be vigilant*, be untiring in your efforts to break every yoke, and let the oppressed go free.”⁴ As Romano (2020) suggests, “the earliest known examples of wokeness as a concept revolve around the idea of Black consciousness “waking up” to a new reality or activist framework” (para. 11).

Throughout the movement for freedom, liberation, equity, and justice, key figures have consistently referenced “waking up” and “awakening” to mean becoming critically aware of one’s power and the root of racial oppression-*consciousness* (Hegel as translated by Pinkard 2018). In that sense, *woke* refers to being *conscious* as a verb or a *conscious* person as an adjective. This is found in messaging from Marcus Garvey who called upon the Negro in America and African people to “wake up.” This call undoubtedly referred to two things. He called on the Negro in America to reach consciousness about the root of his oppression and the necessity of “knowing thyself.” He also called upon African people to reach consciousness about the growing threat of aggressive colonial and imperial attacks on Africa, and the necessity of uniting Africans who had been dispersed throughout the diaspora through the institution of enslavement (Clark, 2011; Rabaka, 2020; Vincent, 2006). For example, Garvey wrote. “Awake! The day is upon you, go forth in the name of the race and build yourselves a nation, redeem your country Africa, the land from whence you came, and prove yourselves men worthy of the recognition of others” (George Philp, n.d., para. 4). To Africa, he wrote, “Wake up Ethiopia! Wake up Africa! Let us work towards the one glorious end of a

⁴ A quote in *The Narrative of the Life of Frederick Douglass*, written by Douglass in 1845, credit for the citation is given to William Lloyd Garrison, perhaps as an introduction to that work.

free, redeemed, and mighty nation. Let Africa be a bright star among the constellation of nations" (ibid.).

Even Malcom X referenced waking up in his many writings and speeches on the condition of Blacks in America. Most notably, he attested: "The greatest mistake of the movement has been trying to organize a sleeping people around specific goals. You have to wake the people up first, then you'll get action" (Breitman, 1995, p. 16). This quote centers on the path of achieving consciousness before being able to organize and mobilize the people around the goals of a movement. It is, perhaps, this lesson that shaped the evolution of the George Floyd movement.

One can now situate the political rhetoric and political goals, of "anti-woke" and "anti- wokeness," within the context of the true origin and cultural meaning of the term *woke*. This then contextualizes the contemporary appropriation and exploitation of the term as *white nationalist rhetoric*. As Doan (2020) argues, "politically, groups, 'weaponize' racial ideologies to attack or defend the existing racial order, for they provide the rationale for social policies and the organizing ideas for social movements. In this political struggle, racial ideologies are used strategically to attract and mobilize supporters and to neutralize and discredit opponents" (p. 28). Thus, if *woke* demonstrably refers to the *negation* of racial and state-sponsored domination and opposition to the violence and brutality the Black race has continually experienced in America, *anti-woke*, undoubtedly refers to the *negation of the negation*, or a return to the hegemonic domination and violence against Black bodies that undergirds white power, white privilege, and white comfort in the racialized society. *So here*, we will call it what it is.

Clark (2020) points out how the reclamation is achieved in his article, "*How White Supremacy Returned to Mainstream Politics*." In it, he underscores. "Most politicians know that being directly associated with white nationalism harms their reputation, so they use dog whistles, or euphemisms, to appeal to white nationalist supporters without alienating more moderate ones" (para. 10). "Anti-woke" is the language-the rally cry- the *dog whistle and euphemism*- of white nationalism. It has been repurposed to isolate and contain anything that has to do with critical consciousness as it pointedly relates to all forms of anti-black racism-from Black history and historical fact, Black political inclusion, and racial and class consciousness and solidarity. Moreover, as Doan (2020) establishes, anti-wokeness has been exploited to attack racial progress, repose it as a threat to the social contract, and mobilize the conservative base to organize to restore the old socio-racial order and hierarchy. With that established, the counter-resistance movement's goals, aims, and politics become more clearly situated within its white nationalist framework.

The Anti-Woke counter resistance's first goal was not only to attack but also to exploit the state to outlaw and criminalize the ideological framework of the George Floyd movement that ushered the White masses to critical consciousness-Critical Race Theory (CRT). While contemporary scholars give credit to Kimberlee Crenshaw, who undoubtedly built upon the established concept, it was Derrick Bell who originally developed the theory. As Cobbs argues, through his work:

“he drew an unsettling conclusion: racism is so deeply rooted in the makeup of American society that it has been able to reassert itself after each successive wave of reform aimed at eliminating it...His ideas proved foundational to a body of thought that, in the nineteen-eighties, came to be known as critical race theory”. (Cobb, 2021, para. 4)

While the theory, as developed by Crenshaw (Crenshaw et al., 1996) argues that racism is embedded in the social institutions of America and thus extend beyond mere prejudice, the Anti-Woke movement, through its mass and well-funded media and political campaigns, sought to blatantly misrepresent and propagandize its true definition and meaning. Consequently, news outlets flooded the media with claims that CRT was being utilized as a tool to indoctrinate white children, promote white guilt and divisiveness, and dismantle Patriotism. Politicians then rushed to harness the propaganda to rally the support of conservative white voters, especially working-class White mothers. CRT became the “boogeyman” that conservatives used to re-invoke a historic racialized fear and legitimize the “restoration of racism,” ironically in the exact same manner the theory posits.

In Virginia, Governor Glen Youngkin successfully ran his campaign on an anti-CRT platform. By confounding critical race theory (CRT) with culturally responsive teaching (CRT), Youngkin, a relatively unknown newcomer to the political scene, was able to stir mass support from the conservative base around CRT propaganda, even though the Virginia Department of Education (VDOE) produced *absolutely no proof* that critical race theory was even a consideration in curricular development, much less being taught as a theoretical base, in *any* public school system in the State. The undercutting of one ideological base, thus, served as the foundation for another (Colletti, 1972).

The deliberate and intentional fallacious distortion of Critical Race Theory served as the ideological foundation of the anti-woke crusade. As Christopher E. Rufo, an activist who launched the recent crusade, said on Twitter, the goal from the start was to distort the idea into an absurdist touchstone. “We have successfully frozen their brand— ‘critical race theory’—into the public

conversation and are steadily driving up negative perceptions. We will eventually turn it toxic, as we put all of the various cultural insanities under that brand category,” he wrote. Accordingly, C.R.T. has been defined as Black-supremacist racism, false history, and the terrible apotheosis of wokeness (Cobb, 2021, para. 5).

Arguably, Ron DeSantis led the movement in declaring a “War on Woke” and establishing Florida as the state where “Woke Goes to Die.” His Anti-Woke campaign was the rhetorical platform that he used to promote the 2022 Individual Freedom Act, Fla Stat. § 768.10(8) (also known as HB7 or the “Stop WOKE Act”), wherein he repurposed WOKE as an acronym for “war on *our* kids and employees.” Under its banner, legislation and executive orders not only banned, but criminalized: teaching Black history and anti-racist curricula in schools and Universities; defunded and banned diversity, equity, inclusion, and justice initiatives and offices, both in the public and private sectors; removed sociology from University general education curriculum; and, established a state reporting and policing mandate to ensure that the “anti-woke” agenda was vigorously enforced, setting a radical example for other States (Luscombe, 2024).

Although, on March 4, 2024, the 11th circuit Court of Appeals upheld the lower court’s decision declaring Florida’s Individual Freedom/Stop WOKE Act, Fla Stat. § 768.10(8) unconstitutional, to date the counter-resistance has been highly successful and picking up steam as the country moves into the 2024 Presidential elections. Since 2021, bans on Critical Race Theory have been presented in 44 States (Schwartz, 2021). As of 2024, 18 of those States, including Virginia, have signed bills that ban training and teaching CRT into law (Critical Race Theory Ban States).

The counter resistance also targeted diversity, equity, inclusion, and justice (DEIJ) initiatives, by labeling the terms *divisive concepts* and propagandizing the intent of each. In keeping, the movement collectively promoted anti-DEIJ legislation that banned any training, education, work, efforts, or legislation designed to bring about greater access and opportunity for the Black working class who have historically been excluded and denied access to even the wage labor relationship as a result of America’s long history of racial domination, violence, exclusion, *inequity*, and *injustice*. Consequently, legislation that imposes bans on DEIJ work serve to erase progress that resulted, not just from the influence of the George Floyd movement, but racial progress that has been achieved throughout the history of the United States over time. According to Bill Chappel (2024), “since 2023, 80 anti-DEI bills have been introduced in 28 states and Congress, according to *The Chronicle of Higher Education*. Measures have been signed into law in eight states” (para. 5).

To add, in a crushing blow to racial inclusion, on June 29, 2023, the Supreme Court overturned *race conscious* Affirmative Action in the consideration of college admissions in a country that, to this day, engages in patterns of systematic racial exclusion in higher education that necessitated the need for the Historically Black College and University (HBCU) and affirmative action in the first place. In the decision, Chief Justice Roberts relied upon his interpretation of the 14th Amendment, which was necessary to ensure that States could not deny formerly enslaved Black people equal protection and rights, especially the right to vote in 1866, to rule that- today, that same Amendment is unconstitutional to Asians and the same White people whose disparate access made the Amendment and affirmative action necessary.

The Anti-Woke campaign has not just confined itself to law, policy, institutions, and organizations; its agenda also includes waging fierce attacks to publicly dishonor, shame, and neutralize the influence and mobility of prominent scholars and leaders of the Movement and DEIJ Initiatives (Blackstock, 1975; Hoban, 2021). Most recently, in a disturbing and all too familiar trend, taken directly from the FBI's Counter Intelligence Program (COINTELPRO) playbook (Blackstock, 1975), largely anonymous claims of plagiarism, perjury, fraud, conflicts of interests, and speech, brought about by intense scrutiny and surveillance, have been the contemporary tools the counter resistance has established to target and neutralize scholars, politicians, activists, and leaders of DEIJ offices, especially within prestigious higher education institutions. By exploiting the media, conservative organizations have been able to wage smear campaigns and claims of wrongdoing to pressure the public, legislators, law enforcement and court systems, Universities, funders, and even private businesses to take action to have targets removed from their positions in very public ways. In most instances, to avoid bringing public scrutiny to the organization, office, institution, or the targets themselves, the targets generally step into obscurity without further press, leaving the narratives and speculation about their guilt or innocence rife for continued exploitation.

Operation *COINTELPRO-BLACK HATE*,⁵ specifically, was an arm of the COINTELPRO operation, that had the goal "according to an FBI memo: to expose, disrupt, misdirect, discredit, or otherwise neutralize" the radical

⁵ While COINTELPRO, like the Patriot Act and its categorization of Black Identity Extremism, labeled Black organizations seeking equity, inclusion, liberation from racial domination, hate groups, violent, militant etc., the Civil Rights movement and their organizers were largely peaceful movements who, when provoked by white violence, defended itself against racial and state sponsored violence. COINTELPRO-BLACK HATE, may be a shortened version of "Black Hate Groups;" but, this work rejects the characterization of movements seeking equality and inclusion, as "hate" to the system or group.

fight for Black rights — and Black power” (Hoban, 2021, p. 1). Today, the counter-resistance has employed the exact same strategies as COINTELPRO including: waging media smear campaigns, publicizing false allegations, initiating futile investigations in order to discredit targets- both amongst and within their support networks and organizations and the general public; surveilling and illegally seizing documents to form the foundation for investigations (fishing expeditions); and exploiting the legal system to bring false charges, harass, and place economic burden on individuals in order to drain assets; all in order to undermine the individual and that which she leads and/or is affiliated with (Blackstock, 1975).

A few examples include: Kimberlee Crenshaw, Scholar and developer of Critical Race Theory, Patrice Cullors, the Executive Director of the Black Lives Matter Movement (*accused* of misappropriating BLM funds), Fani Willis, the District Attorney (DA) of Fulton County (*accused* of conflict of interest), and Harvard University’s Claudine Gay, former President, Shirley Greene, former Chief DEI Officer, Sherri Charleston, former Title IX Officer, and Alade McKen, DEI Chief Columbia University, who were *all accused* of plagiarism. It is no coincidence that they are all African Americans in roles that white supremacy and patriarchy could not fathom they achieved meritoriously in the first place. Hence, the selected allegations undermine their qualifications, capability, and more importantly their ethical and moral code, which reinforce the historic tropes of inherent racial inferiority and simultaneously disrupt the idea of equity and inclusion as being detrimental to the common interest. While Marilyn Mosby, the former District Attorney (DA) of Baltimore, who dared prosecute and try five Baltimore police officers for the death of Freddie Gray case, may have been convicted of perjury and *making a false statement on a mortgage application*; the outcome, itself, does not detach the means of surveilling her to acquire the means to justify the goal. Like others, who would never have been under scrutiny, but for their role in advancing racial justice, the means of surveilling her in order to acquire the documents to bring charges against her situates well within the COINTELPRO blueprint (Hoban, 2021).

Project 2025, the conservative policy agenda, gives the most critical affirmation of the ways Donald Trump’s 2024 Presidential bid is essential to making America great again...*again* and sums up and affirms the analysis of this work. Perhaps, hope in Trump’s leadership rests on the unfulfilled and unrealized promises that the symbolisms of his leadership did not manifest from 2016–2020, especially for the working-class poor whose conditions did not change during his reign. Maybe, it is discontent with racial progress and the threat of the implication of critical class-consciousness converging ruling

class interest and working class hope as evidenced on the front page of the Project 2025 website. In all, it summarizes the point of this work when it states:

The actions of liberal politicians in Washington have created a desperate need and unique opportunity for conservatives to start undoing the damage the Left has wrought and build a better country for all Americans in 2025...If we are going to rescue the country from the grip of the radical Left, we need both a governing agenda and the right people in place, ready to carry this agenda out on day one of the next conservative Administration...With the right conservative policy recommendations and properly vetted and trained personnel to implement them, we will take back our government (p. 1).

This is where Rousseau's social contract and historical materialism collide to form the finality of the analysis. Included terms like, "damage the Left has wrought," "build a better country for *all* Americans," "rescue the country from the *grip* of the radical left," are all catchwords and phrases for restoring *the old* social order and *the old* racial hierarchy that was inherent in *the old* social contract. Rousseau established "the Sovereign, being formed *only* of the individuals who compose it, neither has, nor can have, any interest contrary to theirs...The Sovereign, by its nature, is always everything it ought to be" (1947, p. 17). *Make America Great Again* is the call to restore it.

The White working class, especially those who are economically disenfranchised, are roused by the symbolism of racial identity and racial pride that does not benefit them in the real world of class struggle. Trump's political rhetoric reaffirms false consciousness and gives them false hope. O'Connor highlights this in his (2020) article, *Who exactly is Trump's 'base'? Why white, working-class voters could be key to the US election*, where he underscores:

Trump has a very narrow path to victory that will require high voter turnout by so-called 'working-class whites' in Pennsylvania, Ohio, Florida, Wisconsin and Michigan...This is because Trump's support among other voters has slipped. According to the Pew Research Centre, he still holds a 60-34% lead over Democratic challenger Joe Biden among whites without a college degree, but Biden has substantial leads among college-educated white voters, as well as Black, Hispanic and Asian voters. (para. 2)

Vucci's claims held true in 2024. Trump swept the 2024 Primary Elections where the White rural middle-aged voters without a college degree, who represented most of Trump's conservative base, led him to an easy defeat of his opponents, including Ron DeSantis (Perry, 2024). This work argues that it is this ideological foundation that kept the 2024 Presidential election extremely

close despite the unprecedented legal and financial issues that loomed over Trump during his presidential bid.

The End: Love *Is* a Revolutionary Act

The George Floyd movement came remarkably close to critical class-consciousness and a revolutionary class solidarity—the necessary step toward actualizing our collective humanity. The movement realized Freire’s (1985) prophecy because *oppression*:

...is a distortion of being more fully human, sooner or later being less human leads the oppressed to struggle against those who made them so. In order for this struggle to have meaning, the oppressed must not, in seeking to regain their humanity (which is a way to create it), become in turn oppressors of the oppressors, but rather restorers of the humanity of both. This, then, is the great humanistic and historical task of the oppressed: to liberate themselves and their oppressors as well. (1921, p. 43)

Through the lens of George Floyd’s unconscionable death, performed in historic lynching fashion, the masses were able to realize the dehumanization of one race is the dehumanization of all, and in such, see the humanity in the Black race and the commonality of class struggle. It was a unifying movement that exposed the history of racism in America and uncovered the ways in which white supremacy sustains capitalism and thus threatens America’s collective ability to be fully human. The *still lingering*, multi-racial and diverse class solidarity that disrupted the superstructure proved to be a powerful “enemy of political subtleties.”

Nevertheless, the conservative White working class are not yet able and/or willing to see and thus free themselves from that which truly oppresses them. Consequently, the ideological and cultural hegemony of white supremacy that has framed the social contract for centuries *continue* to be the folly the ruling class exploits to protect their capitalist interests from class scrutiny. *Movement* always reveals man’s contradictions and forces him to “pick a side.” How he chooses depends on how he shapes his consciousness and how he defines both his humanity and his reality. While some seek liberation through humanizing, for others, “their ideal is to be men; but for them, to be men is to be oppressors” (ibid.). White supremacy and the social contract have ensured that to be sub-oppressors would become “their model of humanity” (ibid.). As Freire (1921) explains:

The process of transforming the world, which reveals this presence of man, can lead to his humanization as well as his dehumanization, to his growth or diminution. These alternatives reveal to man his problematic nature and pose a problem for him, requiring that he choose one path or the other. Often this very process of transformation ensnares man and his freedom to choose. (p. 70)

In choosing counter-resistance as their idea of liberation, the ruling class was able to rely upon the legal, legislative, and political arm of the superstructure to construct an *anti-woke* response to the George Floyd movement in order to disrupt the ideological framework that shaped the critical class-consciousness of the masses and threatened the capitalist state. Most importantly, it was able to rely upon the conservative White working class, who have reached neither consciousness nor class-consciousness, to organize political leadership and carry out their historic function of being racial sub-oppressors. The Anti-Woke movement is nothing more than the ruling class's movement to regain hegemonic social control and protect capitalism, and the White working-class conservative's movement to regain the historic symbolisms of racial hierarchy, domination, and pride that they believe made America great in the past.

To and for them, true inclusion, equity, equality, and justice for *all* Americans, simply does not and will never include Black Americans, no matter the post racial and colorblind rhetoric. Thus, they must work to ensure that Black American interests never become a part of the "common interest," "the general will," or the social contract in its truest form, because the history of white supremacy leads them to believe that the African American struggle to be included in the "common interest" of inclusion, equity, and justice are a contradiction and threat to their own. False consciousness leads them to the fear that justifies both the resistance to racial progress (counter-resistance) and the divisiveness and hate that is at the center of their racial identity.

This may sound cliché; but the irony is love is truly the most revolutionary act. It espouses consciousness, unity and solidarity in struggle by its very nature. George Floyd's death was not in vain, because it led us to both. It showed us what was possible. The movement that his death generated proved that racial unity and a collective interest in humanity and its wellbeing could transcend the social constructs that divide us. It allowed the masses to understand that, by the nature of capitalism itself, one group's privilege is not, by its nature, tied to another group's oppression within the working-class frame. Conversely, though, the anti-thesis of love is hate and racial hate is *still* deeply embedded in the fiber of this nation. On the other hand, it espouses division, domination, and even death. Thus, *Anti-awokeness*, as the political

movement toward hegemonic social control, proves, that to the detriment of us all, “old habits die hard.”

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30

Forging Resistance Against Coloniality: Transforming Racialised Institutions

Rekgotsofetse Chikane

Investigations on the nature of racialised institutions related to governance have primarily focused on the way these institutions have privileged, erased, discriminated, and created a predefined “other” in relation to the “ideal” human (Dussel, 2000; Grell-Brisk, 2022; Grosfoguel, 2004; Patel, 2022; Wynter, 2003). While focus has been placed on understanding the creation and maintenance of these institutions at both a local, nation-state, and world-systems level, renewed emphasis has been placed on the resistance against them and the resurgence of groupings opposed to their continued proliferation.

The strategies used by social movements and groupings to combat racialised institutions are often seen as unique and specific to localised contexts while also translocally linked to broader campaigns related to principles of ideal and non-ideal justice of those considered to be “the other”. These strategies are frequently extrapolated towards possible universal approaches designed to compete with the coloniality exhibited within governance institutions across transnational circumstances. Though approaches to these investigations range across academic disciplines, this chapter focuses on the racialisation of institutions through the lens of coloniality.

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The chapter views the participants and actors within racialised institutions, not through their biological markers of race, but instead, through “the idea of race” as a recent invention; “a figure not yet two centuries old, a wrinkle in our knowledge, and that will disappear again as soon as that knowledge has discovered a new form” (Foucault, 2005, p. xxv). This idea results from the evolving colonial relationship between the European ideal description of the human (henceforth, the ideal) and the non-European description of the non-ideal human (henceforth, the non-ideal/other). This view borrows from Sylvia Wynter’s work regarding the ontological genesis of what and who is considered human and “the ways in which the architectures of colonial juridical- economic power are encoded, and thus sustain, what it means to be human” (Ferreira da Silva, 2015, p. 93). These architectures inform human interactions, which in turn inform these institutions.

This chapter examines race as an evolving social construct, rooted in the historical context of European colonial expansion. This expansion prompted a significant ideological shift, moving away from a Judeo-Christian understanding of humanity towards a conception that is associated with rationality (Wynter, 2003). This shift necessitated the use of reason and rationality as a marker of a universal ideal, with other modes of being human symbolically disavowed and considered non-ideal (Ferreira da Silva, 2015). The evolving distinction between the ideal human and the non-ideal human has seen the logic and justification for discriminating against the non-ideal shift from a theological rationale towards a biological marker and, in more contemporary times, a more secular argument, which, by extension, functions as the socio-economic perspective currently cultivated and perpetuated by contemporary institutions.

This chapter proposes understanding coloniality as a form of emergence to provide a conceptual framing for the strategies employed to combat coloniality within racialised institutions and provide the means to translate decolonisation as a metaphor into decolonisation as a policy activity to be utilised by the “non-ideal”. The framing of institutions and decolonial thinking within the current dialectical relationship between the ideal and non-ideal creates a narrow understanding of the available strategies related to self-determination. This limited perspective only focuses on the epistemological and ontological expression of peripheral voices within institutions, which can deny researchers the ability to address coloniality within institutions through continuous public policy interventions designed to combat the creation of non-existence rather than absence.

Race, Coloniality and Contemporary Institutions

Contemporary institutions within the logic of Wallerstein's world-systems theory have created *absent* what modernity has determined to be *non-existent*. In this context, race as a marker of a global hierarchy of superiority and inferiority functions as a historical artefact within the modernist perspective, whose utility within the modernist project can be delimited to an earlier phase of modernist development (Escobar, 2011; Grosfoguel, 2006; Wynter, 2003). By removing its function as an explanatory mechanism for ordering individuals, racism operates solely as the most extreme form of hatred, thus standing out as an anomaly within society's generally non-racist norms (Harrison, 2019, p. 642). Consequently, race functions as an absent presence, suggesting its contemporary existence. This detachment causes race to be relegated to the periphery, becoming obscured by modernist logic (Mignolo, 2007a). However, its absence does not mean that it can not be retrieved. As Harrison (2019, p. 642) argues, it remains "tacit [in its] ways of encoding and indexing race in contexts where racism exists without the acknowledgement or sustained visible presence of race and admitted racial identities".

The outcomes of centring absences within contemporary institutions, whether by conscious or unconscious design, inhibit those considered as the non-ideal from exercising "their capacities and express their needs, thoughts, and feelings" (Young, 2014, p. 4), making the non-ideal absent within these institutions. This leads to the experiences of disadvantage and injustice experienced by some, not as the result of a tyrannical power but through the "everyday practices of a well-intentioned liberal society" (Young, 2014, p. 5).

Elias and Paradies (2021, p. 47) argue that these "practices, procedures, patterns, and policies...operate as a means to privilege members of particular racial groups in every aspect of society". This view remains appropriate if one seeks to only understand racism within institutions as the result of the constituent elements of said institutions or the activities of those participating within it. It implies that to contend with the structural nature of racism—which Elias and Paradies (2021, p. 47) describe as the formal and informal "production of racial discrimination and inequities" by "various corporate bodies such as governments, organisations, corporations, or state institutions"—then focus should be placed on the act of racism produced by the institution itself or the individuals within it.

This conception of institutional racism at an organisational level provides the rationale to view systemic racism within society as the resultant outcome of the culmination of various instances and acts of institutional racism.

That is to say, systemic racism within a society is the permeation and reproduction of racial discrimination through the constituent acts of racialisation associated with society's "institutional structures (practices, policies, climate), (b) social structures (state/federal programs, laws, culture), (c) individual mental structures (e.g., learning, memory, attitudes, beliefs, values), and (d) everyday interaction patterns (norms, scripts, habits)" (Banaji et al., 2021, p. 2). It weaves and connects racialised acts, norms, beliefs, laws, and activities into a holistic system of hierarchical interactions between those distinguished as ideal and those determined as non-ideal. When connected through a globalised view of racism, both institutional and systemic racism within nation-states can be considered to be the resultant outcome of global structures of racialised discrimination.

The roots of this globalised structure of discrimination, at least when viewed through the lens of only race, are often argued to have found their origins with the imposition of Christianity and the subsequent expulsion of Jewish and Muslim communities residing in Spain in 1478 and 1498, and continued through the expansion of Europe through colonisation the world over (Mignolo & Ennis, 2001, p. 21; Wynter, 2003, p. 308). These interconnected structures of global expansion by Europe eventually culminated in world-systems of systematised oppression such as the transatlantic slave trade (Grell-Brisk, 2022; Wallerstein, 1995, 2017); the policy and moral articulation of the "color line" not only in the United States of America but globally; the division of Africa during the Berlin Conference of 1885 (Adebajo, 2014); and the determination of the world as either developed and ideal or under-developed and non-ideal through both the Truman Doctrine and Truman's Point Four Programme (Escobar, 2011; McVety, 2012).

While this is by no means an exhaustive list, what should be noted is the continued evolution of racialisation in the twenty-first century that has created a new dialectic between the ideal occidental Western world and those now defined as "the jobless, the homeless, the Poor...all as the category of the economically damnes" (Wynter, 2003, p. 321). This extension of thinking about globalised forms of racialisation that exist in both transnational and localised contexts provides the means of analysing the phenomenon outside the confines of the social construction of race alone but also through the lens of non-ideal human whose societal construction strongly corresponds with the societal construction of race but is not its exclusive preponderance. This view opens the means to understand how institutional racism can be perpetuated by not only the ideal human but also by, as Bhabha would describe, the non-ideal who considers themselves to be reformed and recognisable to the ideal and who functions as a political subject whose markers of difference are

almost the same when considered against other non-ideal humans, but not quite (Bhabha, 1994, p. 127).

The purpose of this differentiation is to delink conversations of racial prejudice within institutions as the sole prerogative of those considered to be minorities within majority white countries or ontologically hegemonic conceptions of race relations conceived within the global north. Instead, one can view resistance to institutional racism through the use of coloniality and begin to elaborate or argue for modes of resistance that respect localised contexts but equally provide the means to transnationally connect the strategies of resistance deployed by those within the global north and global majority. Without the latter connection, all forms of resistance—whether they arise locally within an organisation or community or transnationally across borders—are destined to be ineffective. This ineffectiveness stems from their emphasis on the concept of absence rather than the recognition of non-existence.

The reason for this perhaps lies in the tendency to extrapolate local strategies of resistance into universal frameworks. This point will be returned to when discussing the dominant scales of universalisation and globalisation. When this occurs, instead of challenging the structural foundations of discriminatory power, these strategies may inadvertently reinforce the existing logic of this power and, by extension, coloniality by viewing everyday acts of racism as aberrations of the modernist project rather than its constituent element. As a result, movements that emerge to resist oppression often become rationalised within the overarching structure of racially discriminatory institutions. This means that their original intent—to create meaningful change and dismantle the systems of oppression—may become co-opted into the very system they seek to challenge.

In essence, adapting localised resistance efforts within an organisation to a broader context can lead to their absorption into a narrative that supports coloniality rather than dismantling it. This dynamic illustrates how coloniality, understood as an institutional construct of modernity, effectively perpetuates a sense of non-existence among marginalised groups. These institutions maintain dominance by creating a framework that renders certain identities and experiences invisible, thus undermining the potential for genuine counter-movements to achieve equity and justice.

Coloniality here refers to the complex array of interactions and relationships between political, economic, and sociocultural institutions that mediate and determine the relationship between the ideal and non-ideal human. It refers to how social power relations of today are “organised, constituted, and conditioned by centuries of Western colonial expansion” (Grosfoguel, 2004,

p. 319). However, unlike colonial institutions related to colonial rule, coloniality “translates administrative hierarchies into a racial/ethnic division of labour; and it is more encompassing than modern European colonialism alone, in that it transfers both the racial/ethnic hierarchies—the ‘colonial difference’—and the international division of labour produced during the time of direct or indirect colonial rule into post-independence times” (Boatcă, 2021, p. 1984).

Contending coloniality can be best understood through decoloniality, which works towards deciphering what it means to be colonially different and how to imagine the world from this area of difference. Decoloniality provides the means to pursue decolonisation beyond the ambits of the moment of self-determination and, instead, view it as an ongoing process beyond removing a colonial administration. It provides the opportunity to think from this position of difference within institutions that do not overtly portray traits linked to discrimination but maintain hierarchies of being.

So, while “the claim to self-determination often encapsulates the hopes of ethnic peoples and other groups for freedom and independence” (Weller, 2009, p. 111), its conception within a modernist framing limits the claim to the moment of the claim, i.e. decolonisation. At a localised level, and arguably at a nation-state level, this results in activities centred on combating institutional racism that focuses on instances of absence creation and enunciations of presences.

However, this linear conception of self-determination limits the notion of decolonisation to a singular act or a series of singular activities that are temporally locked into a particular idea of race at that moment. It fails to contend with how the continuing evolution of the relations between the ideal and the non-ideal encapsulates these activities into the logic of these institutions—the maintenance of the hierarchical relation between ideal and non-ideal. At a world-system level, focusing on what has created absence, while at times useful, ultimately fails to acknowledge that at that scale, the purpose of Institutional racism makes the non-ideal non-existent and the ideal the only notion of existence. Theorists of institutional resistance should ideally acknowledge that these two challenges exist and be informed about how they actualise forms of resistance.

Through this lens, decolonisation should be viewed as the process of understanding and undoing these relations, which are often limited to self-determination—the activity of making oneself present with regard to those who deem you absent. However, as will be argued in this chapter, making oneself present ensures your acknowledgement of the ideal as the present non-ideal. It does not make the non-ideal into something more ideal or

restructure the non-ideal's positionality in relation to the ideal. The onus of the restructuring depends on the ideal's willingness to engage in such an activity. A willingness that is often consciously or unconsciously subdued or ignored. Therefore allowing for the racialising logic of institutions to evolve and maintain, even within the presence of actors continually claiming their presence.

Challenges Posed by Post-racialism and Modernity to Forms of Institutional Resistance

The above provides a variety of challenges for those who wish to dismantle or challenge both localised and transnational structures of institutional racialism through institutional resistance. The first relates to the use of modernist notions and expressions of racism couched in the language of reductionism. This problem relates to how racism is conceived to be the sum of racialised activities or acts by those in power against the oppressed, and as a result, to contend with this form of racism, resistance must challenge the constitutive elements of racism within institutions. The problem with this attempt to resist institutional racism is its reliance on conceiving racism as the systemic outcome of racist activities rather than the emergent outcome of these activities. Furthermore, it forces the contestation of racism to be focused on the universalist logic of racism to be utilised by all equally.

The second challenge relates to how race is understood in two states: (1) temporally frozen or (2) contemporarily generalised across differentiated circumstances (Lentin, 2016, p. 35). This problem relates to how resistance towards racialised institutions often results in attempting to identify acts of discrimination rather than the creation of absence and non-existence. The creation of absence and non-existence results from how justice is understood within institutions informed by coloniality and modernity.

Both problems create a third challenge: the inability to form sustainable and formidable translocal and transnational assemblages of resistance meant to contend with the emergent nature of institutional racism and coloniality at both a local and global level. To do this requires a break from viewing institutional racism through a reductionist lens and establishing the means to create forms of resistance that purposefully break away from the attractors of coloniality that maintain current dialectical relations.

Modernity and Institutional Racism

While modernity can be understood in a variety of ways for this chapter, the concept is understood as the “rationalisation, centralisation, specialisation, bureaucratisation and industrialisation” (Bogason, 2005, p. 235) of society as a means of controlling and monitoring the progress of society through the use of “universal” centres of knowledge and power (Bogason, 2005, p. 236). The danger posed by modernity, particularly within development and the creation of institutions in a postcolonial context, is the result of it being prone to “reductionist bias, whereby simplistic monocausal explanations are sought for complex development realities. Within such explanations, there is little room for plurality; much of the richness and diversity of societies that produce different trajectories of development is excluded from analysis” (Brohman, 1995, p. 122).

This process of creating universal at the expense of the plural is currently couched within the language of globalisation and, as de Sousa Santos (2001, p. 189) argues, functions as a process of reducing the plurality of the world’s social relations into a universal logic. This process necessitates a conflict between social worlds that results in winners and losers, where winners enunciate their social reality as universally applicable by creating the losers as non-existent at a universal level but plural at the local (de Sousa Santos, 2001).

Contestations by non-ideal social movements and groupings led by the non-ideal to this universal conception of social systems at both local and universal levels can be characterised into two groupings of institutional resistance towards the creation of absence: (1) politics of equality and (2) politics of difference (de Sousa Santos, 2001). The politics of equality relates to the idea that “universality of citizenship in the sense of citizenship for all implies a universality of citizenship in the sense that citizenship status transcends particularity and difference” (Young, 1989, p. 250). Advocating for equality in this sense implies two considerations. The first is that citizenship is predicated on becoming equal. Within the discourse of those considered ideal and non-ideal, equality required the emancipation of the non-ideal from unjust or arbitrary servitude.

Calls for institutional resistance, premised on the politics of equality, can be seen as far back as the French and American revolutions and the various historical processes that influenced political and economic changes during and towards the end of the eighteenth century. Wallerstein (2017), in particular, highlights the continued influence of the French Revolution on conceptions of institutional change and resistance within historically

frozen institutions of the time. He argues that the French Revolution brought modern ideologies of right-wing conservatism, centrist liberalism, and left-wing radicalism within the context of modernity (Wallerstein, 2017). However, the movements that were created and conceptually linked to these divergent modern ideologies were divided in how they define groupings associated with the non-ideal and displayed differing priorities about how one achieves their outcomes (Wallerstein, 2017).

Subsequent to this, at least within Western Europe and the United States of America, colonial empires expanded violently, new social classes emerged, and aristocracy declined. The distinction between religious and political authority became sharper, and government and other social institutions became more rationalised and bureaucratic. Scientific methods dominated human knowledge, and popular participation in government increased in occidental states (Acemoglu et al., 2005; Bendix, 1967; Grosfoguel, 2013; Kamil, 2017; Monatschrift & Aufklärung, 1984; Polanyi, 2001; Portes, 1973; Weigel, 2016). This period also allowed for the opening of an “infinite number of possible varieties in cultural patterns, beliefs, and commitments”, all of which remained encompassed within a universalising logic of modernity (Wittrock, 2000, p. 32). Within this opening saw the emergence of anti-systemic social and national movements during the second half of the nineteenth century, which focused their attention on struggles “against the established power structures to bring into existence a more democratic, more egalitarian historical system than the existing one” present at the time (Wallerstein, 2017).

The second is the creation of institutions premised on the impartial treatment of people regardless of their differences to create a universal idea of a citizen that encapsulates the plurality of citizens locally. The plurality of differences within this context must be made subservient or constitutive to the institutional impartiality of society. In contrast, the politics of difference suggests that a good society does not “eliminate or transcend group difference, but ensures that there is equality among socially and culturally differentiated groups, who mutually respect one another and affirm one another in their differences” (Healy, 2015, p. 16).

It stands to reason that an initial contestation regarding the politics of equality would be necessary to engage in a politics of difference. However, this logic ensures that the recognition of differences is mediated by the impartial institutions created through the advocacy for equality. While these institutions may seek to be impartial, this does not mean that they are incapable of being racist or discriminatory in their logic. In fact, the foundational logic of these impartial institutions may be informed by the need to discriminate to

maintain their logic. As Banaji et al. (2021, p. 3) explain: “The most fundamental feature of any system may be so completely pervasive that it ceases to be perceptible or, when perceptible, fails to be recognised in its true form”.

The challenge of contesting institutional racism by first pursuing equality rather than recognising differences is that it assumes that racial bias within institutions can be curtailed through impartiality of the procedures that inform the permitted behaviours and norms within an institutional setting. Much of the pursuit for impartiality can be linked to the idea that institutional outcomes can be delinked from adverse individual actions. That is to say, that discriminatory acts by individuals are rendered moot by the procedures placed to ensure the impartiality of the outcome. The assumption made is that by asserting that justice, and in this case equality, is important. Then, it is equally important to create a set of possible procedures or rules that, if followed, allow for the outcomes generated to be accepted, not on their own merits, but on the merits of the process itself. In a Rawlsian sense, “a fair procedure translates its fairness to the outcome only when it is carried out” (Rawls, 1999, p. 74). Therefore, the impartiality created by procedural justice maintains a focus on the outcome of decisions made by following the procedure at hand; no one in this system has more or less of a right to win than the other, and there are no necessary or sufficient conditions to be met to determine whether the outcome is just (Lafont, 2003, p. 165). As Lafont (2003, p. 165) explains, “if the procedure is just, the outcome is just, whatever it may be”.

The root cause of the challenges related to embarking on resistance predicated on equality is the predominance of Eurocentric modernity to define the universal human on which equality is based and, thus, the procedures to achieve this form of equality. This form of modernity has worked to create an overarching imaginary of the modern world system that centred Europe, thus making Europe the planetary epistemological standard while simultaneously subalternising the knowledge and possibility of being for those who do not meet the standards of the ideal (Mignolo, 2000, p. 60). It is why the conception of equality of this sort, as explained by Mignolo (2007b, p. 455), struggles to reconcile with historical events such as the Haitian revolution, the Zapatista’s revolution in Mexico, FeesMustFall in South Africa because these movements and agitations for change focused less on the universal emancipatory claims “grounded in liberal and socialist traditions of the European enlightenment” and focused on the decentring from dominant emancipatory approaches (Mignolo, 2007b, p. 455). These forms of institutional resistance focused on the rejection of “binary and dialectical thinking in favour of “border thinking”, a methodology which postulates that thought or

reason must be ethical, epistemology must be “geographical in its historicity”, knowledge must be situated, theory must emerge from material context or embodied lived experience, and that excluded or barbarian knowledge must be valued for theoretical insights” (Krishnaswamy, 2022, p. 1214). Border thinking places the politics of difference ahead of the politics of equality.

Contending Post-Racialism in Racialised Institutions

Contending within racialised institutions requires a clear distinction between viewing racism as a distinct and exceptional event vis-a-vis understanding it as a fluid and mobile construct that has been universalised. Lentin (2016) provides a useful means of articulating this difference by describing racism as frozen and motile. She argues that racism, when viewed as frozen, becomes conceptually and ontologically linked to the historical attitudes and actions of singular regimes and individuals, such as Apartheid or Nazi Germany (Lentin, 2016). By locking the notion of racism to historical regimes and actions that hold universal agreement in their immorality, it then makes racism in a contemporary period an exceptional rather than structural phenomenon. By conceptualising racism as frozen in the past provides the means to characterise contemporary society as having progressed from race. In this sense, racial progress asserts “that racial thinking and racial solutions are no longer needed because the nation has “made great strides,” achieved a historic accomplishment, or transcended racial divisions of past generations.” (Cho, 2008, p. 1601).

In addition to this, it inculcates racism within contemporary institutions as an abnormality that can be identified through a procedural assessment designed to ascertain whether its occurrence meets the criteria of racism of the past. Therefore, if the act or activities and behaviours related to racism do not match the criteria of the conception of racism that is historically locked and frozen, then said act or activities can be dismissed as not racist because it is not akin to forms of past racism. Instead, it functions as “an unfortunate echo of a residual but fast fading legacy” (Valluvan, 2016, p. 2241).

In terms of motility, Lentin (2016) explains that freezing racism allows for its applicability to highly differentiated circumstances and is made available to be universally evoked by all through the logic of post-racialism. The logic of post-racialism provides the rationale to identify “hegemonic ideas and systems of representation that shape the means through which racism itself becomes normalised and concealed, reinforced and reproduced every day in interactions and institutions” (Da Costa, 2016b, p. 477). It functions to delegitimise and eliminate racial differences and “their effects from the focus of

academic scholarship, activist struggle, public debate, and state policy” (Da Costa, 2016a).

This process of fixating racism onto past regimes and events to universalise and create a moral equivalence in the experience of it amongst all within a society leads to imagining and reproducing racism in contemporary institutions that simultaneously decontextualises and dehistoricises the idea of race (Lentin, 2016). It creates the implication that racism can be reduced to the actions of bad actors—whether individual, institutional, or state-sanctioned—whose policies or views can be purged through targeted interventions or excising the offending *de jure* rules (Powell, 2008, p. 786). This framing ensures that racism is limited to an individualist frame of analysis, within which one can argue that if you do not engage in conscious acts of racism or claim not to see race, then no racism or racialisation could take place (Powell, 2008). This outcome within contemporary institutions creates what Cho (2008) argues to be racial transcendence and distancing. Racial transcendence refers to the “elimination of race-based remedies in favor of more seemingly universal solutions” (Cho, 2008, p. 1601), and distancing refers to the perversion towards speaking about race, a regression that privileges race as a means of “classifying, dividing, and discriminating members of a population” (Da Costa, 2016a, p. 500).

When considering the nature of racialism within institutions, both transcendence and distancing can be seen as an attempt to hide racialism through the creation of a universal sense of an ideal form of dignity. While the creation of this sense of dignity does not seek to ignore racialism, it does attempt to make racialism absent from the institution. The acts of freezing, motility, racial transcendence, and distancing represent activities available and applicable to all who participate—consciously or unconsciously—within an institution’s norms, behaviours and rules. They represent the need to make racism absent through acts of transcendence informed by both freezing racism in the past and its motility in the present.

The use of post-racialism within institutions to make race absent ensures that the idea of race remains present. While much of this can be attributed to assertions and belief systems underpinned by ideas related to social hierarchies. I would argue that these activities provide the means to maintain the idea of race rather than perpetuate its continued emergence. Much of this emergence, I believe, stems from the arguments related to coloniality within society, which contend with the belief that race can be fixated on the past and that its motility functions as a result of individual activities and the modernist notion.

Sociology of Absences

Boaventura de Sousa Santos's sociology of absences provides an analytical framework for understanding the continued presence of racialism within institutions. For de Sousa Santos (2012), attempting to make race absent or non-existent requires producing the idea of race as non-existent. Non-existence, in this sense, refers to ensuring that certain entities and concepts become "discredited and considered invisible, non-intelligible, or discardable" (de Sousa Santos, 2012, p. 52). According to de Sousa Santos (2012), to make race non-existent, five logics are required: (1) monoculture of knowledge; (2) monoculture of linear time; (3) logic of social classification; (4) the production of non-existence and (5) the logic of productivity.

This first logic pertains to the creation of the modern epistemic object and its tendency to seek domination and control over other epistemes and ontologies. The creation of monoculture, which deserves further elaboration beyond this chapter, can be viewed as a characteristic of modernity which assumes that reason, when properly understood, can rule the world because the pursuit of knowledge also entails the pursuit of the power and the ability to master and possess nature (Gillespie, 1997, p. 537).

The creation of a monoculture of knowledge here, from a decolonial perspective, speaks to the idea proposed by Enrique Dussel that the belief in the idea of "I think, therefore I am" did not create a plurality of modes of existence based on rational thought. Instead, it placed the modern epistemic object at the centre of knowledge, therefore reducing the "manyness" of the world to solely what is considered present. Using modernist reason to create the present has a totalising effect on logic and its impact on society. A totalising effect, which Adorno and Horkheimer claim has led to the atrocities seen in the twentieth century and which, for Foucault, creates hierarchies of information (Adorno & Horkheimer, 1997; Wilkin, 1999).

The logic of a monoculture of time refers to "the idea that history has a unique and well-known meaning and direction" that is linear and upon which one can determine at the end point of "core countries of the world system and, along with them, the dominant knowledge, institutions and forms of sociability" (de Sousa Santos, 2012, p. 52). Wynter describes this totalising effect of time by describing the descriptive statement of humanness and its ever-evolving nature. For McKittrick and Wynter (2015, p. 16), the notion of who is human has evolved from its initial conception as the "Latin-Christian medieval Europe's homo religious Adamic fallen Man as homo politicus" towards a "purely biocentric version of humanness". This was followed by its current iteration; homo economicus.

At the heart of Wynter's argument is that creating the ideal descriptive statement of man necessitated the creation of those who sit subordinate to this statement. Furthermore, the changes to the description of who is human only functions because of the dialectical cultural-historical transformation this statement has with its antithesis, the "other" (Wynter, 2003). However, through time, the other is made unrecognisable and invisible. The production of its non-existence through the use of time is done by describing what is considered as the non-ideal description of human/the "other" as backwards because it is asymmetrical to what time has declared as forward (de Sousa Santos, 2012). Through this, modernity produces non-contemporaneity with what is contemporaneous. The arguments regarding the use of post-racialism within institutions portray the concept of race as being stagnant and unchanging. De Sousa Santos (2012) argues that this portrayal also conceals the historical asymmetries that have led to the current state of race relations. In essence, what is portrayed as non-existent results from many historical and social factors converging over time.

This convergence can be linked to the fourth logic proposed by Santos, which refers to the logic of the dominant scale. According to de Sousa Santos (2012, p. 53):

the scale adopted as primordial determines the irrelevance of all other possible scales. In Western modernity, the dominant scale appears under two different forms: the universal and the global. Universalism is the scale of the entities or realities that prevail regardless of specific contexts. For that reason, they take precedence over all other realities that depend on contexts and are therefore considered particular or vernacular.

Within modern science, this can be seen by the continued dominance of the Newtonian-Baconian-Cartesian ideology, which claimed a universal understanding of science that, for 500 years, positioned itself as the only possible understanding of science (Best, 1991, p. 190; Wallerstein, 1995, p. 486). When this is considered in conjunction with the logic of linear time characterised by enlightenment, it ensures that the totality of the dominant scale would extend towards the modern world's reasoning and developmental structures and institutions (Heylighen et al., 2017; Peters, 2019, p. 886). De Sousa Santos (2012, p. 53) goes on to say that:

Globalisation is the scale that in the last 20 years acquired unprecedented relevance in various social fields. It is the scale that grants privileges to entities or realities that widen their scope to the whole globe, thus earning the prerogative to designate rival entities as local. According to this logic, non-existence

is produced under the form of the particular and the local. The entities or realities defined as particular or local are captured in scales that render them incapable of being credible alternatives to what exists globally and universally
”

In this sense, what is particular and local is considered obscure compared to the universal and the global. Thus, placing the particular and the local on a scale relative to the global and universal, without acknowledging the potential for the pluriversality of modes of being, ensures that social movements that agitate for change within contemporary institutions are often viewed as an attempt to create a system independent of what is deemed universal or global. Responses to these movements can be seen as an attempt to create order within a world of pluriversal truths.

These responses result from the third logic, which speaks to social classification. As Santos (2012) explains, the naturalisation of differences that occurs when populations are distributed along hierarchical categories is often justified by negating the intentionality of creating these hierarchies. These hierarchies in contemporary institutions result from frozen forms of discrimination and thus should be considered untenable within modern institutions. However, as Santos (2012) argues, these hierarchies are simply illustrative of the production of non-existence as a consequence of dominance rather than the cause of it.

Emergence, Reductionism, and Combating Institutional Racism Through Transnational Solidarity

In contemporary institutions, the idea of race is produced as non-existent due to a multitude of factors, but of particular concern for this chapter is the influence of modernist post-racialism and its impact on global institutions informed by modernity. This view does not preclude the prevalence of racism by individuals within institutions. Racism within institutions can result from individual and extra-individual actions (Garcia, 2017; Matthew, 2022). However, within the context of the “descendants of African and Asian former colonial subjects, and their allies in Britain, France, Belgium, Germany, and other former colonial powers” who “are demanding a reckoning with the historical and ongoing harms of colonialism, racism, violence”. Viewing the linkages between global forms of institutional racism that manifest at the local and particular has become an increasingly important area of study.

The contemporary influence of modernity on the understanding of institutions within a post-racial framing can reasonably be considered the emergent outcome of Wynter's ideal human interactions and mechanisation of de Sousa Santos's sociology of absences. If this is correct, then coloniality, whether of power (Alcoff, 2007; Grosfoguel, 2002) or being (Maldonado-Torres, 2007), can also be considered an emergent property of a world system impacted by constituent elements of modernity because coloniality itself is dynamic, changing, and adaptive. To illustrate, Chinua Achebe's (1994) novel *Things Fall Apart* describes how the Igbo culture in Nigeria was changed from its pre-colonial to its colonial state due to the Igbo's constant mediation with their colonisers. The localised interactions between the colonial and soon-to-be colonised agent informed the form of colonialism in that state and the rules that govern the coloniser's interactions with now colonised agents; the latter, of course, were equally (if differently) impacted. The communication and interactions between the colonised and coloniser inform the colonial project's nature, implying that these interactions are part of a self-organising and self-regulating exercise.

While debate exists regarding which of the two, the ideal or non-ideal, carries the most important moral relevance, viewing each one as a component element of racism limits the measures and strategies that can be employed to combat racism. However, viewing racism as the emergent outcome of the interaction between individual and extra-individual actions provides a means to understand racism beyond this dualist perspective and, instead, one that can be best understood as a complex adaptive system.

To do this, I use the framing of coloniality as discussed earlier and view it as the emergent outcome of the actions of both individuals and institutions characterised by racism. Emergence refers to how, through the interaction of a system's component parts, a particular property that could not have been previously predicted based on knowing the characteristics of individual parts will emerge. However, emergence assists in understanding how patterns and behaviours can arise from the interactions between individual components. When the components of a system can be represented by either individual or institutional behaviour, these components, when they interact, can create new properties and behaviours that cannot be predicted based solely on the characteristics of those components. That is to say, understanding the history of racism does not necessarily provide the means to predict how racism will evolve in the future.

These new properties, which this chapter argues to be the various forms of institutional racism prevalent across sectors, can be understood as an emergent property of these interactions, which can be seen and understood at the

level of the system as a whole and can enable complex systems to exhibit surprising and sometimes unexpected behaviours. This property—institutional racism, in this case—feeds into the system and further influences the behaviours of the individual components that initially produced it (Ramalingam et al., 2008, p. 20). The core idea driving emergence is the understanding that the localised interactions of known components within a system often create global phenomena that cannot be reductively understood by analysing the localised interactions of those components.

Returning to Wallerstein's conception of anti-systemic social and national movements that emerged during the nineteenth century. While modernity brought with it social movements characterised by the three aforementioned modern ideologies (right-wing conservatism, centrist liberalism, and left-wing radicalism), they all privileged the conception of change from the perspective of a hegemonic ideal (Wallerstein, 2017). All of which, in one way or another, achieved state power during the second half of the twentieth century through either national liberation—as seen by the rapid occurrence of decolonisation in both Africa and South Asia—or the advent of socialism as a form of state organisation (Escobar, 2013; Wallerstein, 2017).

Anti-systemic social movements delinked from the ideal, who conceived of the previous modernist social movements as imperialist because of their hegemonic disposition towards the ideal. Or as collusive, as while many viewed themselves as progressive, they still maintained the logic of the ideal descriptive state (Wallerstein, 2017). These movements grew out of the increasing realisation that societal changes through movement building can occur from the exterior of modernity and the ideal. In this sense, exteriority does not refer to being outside and untouched by modernity; neither does it refer to being ontologically outside of the ideal (Escobar, 2013, p. 186). Instead, it refers to the exercise of political difference from the hegemony of the ideal, which provides the means to create an ethical discourse of change informed by the non-ideal (Escobar, 2007, p. 186).

Thus, resistance from institutional racism can be conceived as transmodern in that “critical dialogue with alterity, one that fully enables ‘the negation of the negation’ to which the subaltern others have been subjected and one that does not see critical discourse as intrinsically European” (Escobar, 2007, p. 186). The influence of these new social movements towards the end of the twentieth century transformed the geoculture of social movements at a global level (Wallerstein, 2017). Embracing what Icaza (2018, p. 65) argues is a shift towards a form of knowing that privileges border thinking and subjectivities that “allow thinking from concrete incarnated experiences of colonial difference”. For Escobar, this requires a shift from “the sociology of absences

of subaltern knowledge to a politics of emergence of social movement” that examines “contemporary social movements from the perspective of colonial difference” (Escobar, 2013, p. 210).

These transmodern social movements that combat the colonality of institutional racism at a global level are characterised as forms of “self-organising meshworks and largely non-hierarchical structures” that show “emergent properties and complex adaptive behaviour that movements of the past, with their penchant for centralisation and hierarchy, were never able to manifest” (Escobar, 2013, p. 210). However, it should be noted that Escobar’s conception of social movements warns against embarking on a politics of difference that remains predicated on a sociology of absence but instead should be focused on a politics of dignity informed by colonial difference (Escobar, 2013, p. 221).

Examples of this at a nation-state level would be indigenous social movements from Oaxaca province in Mexico and the Movimiento Al Socialismo indigenous movement in Bolivia, which were both characterised by “assembly-style decision-making and demands for autonomy” (Hesketh, 2023, p. 8). Both groupings of movements emerged during a period characterised by the decline of exclusively class-based social movements and the emergence of forms of institutional resistance focused on ethnicity and race alongside class exploitation (Hesketh, 2023, p. 8). While these movements would ordinarily be understood from the perspective of localised transnational resistance, their contestation with the marginalisation of indigenous groupings cannot be delinked from similar calls for recognition made by black South Africans during the FeesMustFall movement in 2015.

The Rhodes Must Fall movement at UCT was initially established by a coalition of students, academic staff, and campus workers in March 2015. The movement aimed to protest institutional racism and patriarchy within the university. Although its focus was originally on removing the statue of Cecil John Rhodes, located at the centre of the university’s upper campus, the movement believed that the removal was merely symbolic. The movement’s central concern was the decolonisation of the university space to make present black students who believed they were non-existent (Chikane, 2018; Daniel et al., 2022). This movement eventually spurred on to create #FeesMustFall, which originated at the University of Witwatersrand later in 2015 and focused on “the need to advance social change in South Africa’s higher educational institutions by advocating for true decolonisation and transformation as a way of uprooting colonial legacies and whiteness that have characterised the educational sector” (Akpojivi, 2023, p. 88).

A third example of a social movement emerged within the efforts to make global justice a universal concept applicable to all while marginalising and erasing the particular and non-ideal. The Indonesian feminist movement Solidaritas Perempuan (Women's Solidarity, SP), established in 1990 in Jakarta, engaged in work related to conflict over natural resources and climate change, food sovereignty, migration and trafficking, religious pluralism and protecting female migrant workers in Indonesia (Anderl, 2022, pp. 8–9). SP functions as an organisation that engages in forms of transnational solidarity within multinational institutions that are not predicated on having a shared relation with all, but instead, through acknowledging that the particular is the non-ideal.

While initially local in their advocacy, this expanded towards more transnational concerns and associated itself with the Global Justice Movement (GJM), which entailed lobbying and working within and alongside the World Bank Group, the Asian Development Bank (ADB) and the World Trade Organization (WTO) (Anderl, 2022). The experience of SP, while not explicitly focused on challenging modes of institutional racism, finds itself work centred on Mohanty's (2003) advocacy for feminism to be viewed as inter-related with race, class, nation and sexuality and not only gender. However, after internal disaffection from the GJM, the SP choice changed its strategic relationship with transnational forms of solidarity predicated on modernity towards a "logic of localization or global justice activism, which particularly led to a specification of the overall agenda" (Anderl, 2022, p. 9). This led to the movement's work towards being grounded in "values of transnational solidarity while putting more emphasis on domestic problems and formulating positions on the basis of the latter" (Anderl, 2022, p. 9).

While all three social movements demonstrated different attempts to combat modernist notions of the ideal and non-ideal. Whether through their advocacy related to recognition within the state in the case of indigenous movements in Mexico, direct contestation of institutional forms of racism within universities by students in South Africa, or the strategic choices of alliances and methods of transnational engagement to ensure resistance against modernist notions of global solidarity, the commonality between all three resides in the understanding that institutional racism and marginalisation do not exist as a solely localised phenomenon but rather as a global logic that poses a hegemonic influence on the institutions in which these movements either participate or are created. The multiplicity of local social movements combating the emergent nature of coloniality thus requires a redetermination of local and transnational forms of resistance that mirror and directly speak to this emergence.

Conclusion

While it is apparent that social movements that emerged towards the end of the twentieth and beginning of the twenty-first century that have displayed forms of institutional resistance against institutional racism are naturally heterogeneous in their goals, ambitions, and strategies. There is a growing consensus that many of these institutions recognise that contemporary institutions perpetuate racial discrimination, often unintentionally, by essentially making non-ideal racial groups non-existent within their institutional and procedural logic. The non-existence is created through the procedural logic of institutions that subsume those considered non-ideal into a universal descriptor of racialism that remains historically locked and contemporary freed to be interpreted and defined by the ideal rather than the non-ideal.

Viewing institutional racism as an outcome of coloniality provides the means to begin understanding the emergence of institutional racism, not as the individual or extra-individual activities of discrimination. This perception forces the strategies and tactics employed by these movements to instrumental activities that have no overall bearing on the evolving and systemic nature of racism. Instead, there is a need to devise ways to create intentional practices aimed at disrupting entrenched colonial frameworks that open new avenues to explore more plural possibilities of existence predicated on difference rather than the insurance of universality.

This approach involves economic, policy, and philosophical analysis to elucidate the epistemological challenges within the discourse on state and institutional formation shaped by coloniality. Integrating both political and economic aspects of decolonial institutional resistance offers a comprehensive perspective that enables researchers to confront coloniality and colonialism more effectively. Creating decolonial outcomes within social movements depends on establishing institutional interactions and structures that foster reciprocal recognition between institutions and individuals, emphasising a conception of reciprocal recognition between the ideal and non-ideal.

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