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Out Of Sight… In Plain Sight: How everyday policing practices are reproducing the settler colonial state's territorial claims

Abby Tozer

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Declaration

I certify that this thesis is entirely my own work except where I have given full documented references to the work of others, and that the material contained in this thesis has not been submitted for formal assessment in any formal course and the word length is 14,885.

12th October 2021

(AUTHOR'S SIGNATURE) (DATE)

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Acknowledgements

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Chapter One: Out of sight… in plain sight

At the beginning of 2021, the Australian parliament was plagued with allegations of systematic misogyny and sexual misconduct. Yet whilst media attention remains focused on the misdoings of our political leaders, another injustice continues to unfold away from the public eye. Thirty years on from the Australian Government's Royal Commission into Aboriginal Deaths in Custody[1], over 474 Indigenous people have died under police watch, five of these between the beginning of March and the middle of April this year (Allam et al, 2021, np). In 1991 the Royal Commission was established by then Prime Minister Bob Hawke to investigate why Indigenous people were dying at a greater rate in custody than non-Indigenous people and to make recommendations as to how to prevent future deaths (Wright et al, 2020, np). The Commission found that whilst Indigenous prisoners died in custody at a rate similar to non-Indigenous prisoners, they were far more likely to be incarcerated than their non-Indigenous counterparts (Wright et al, 2020, np). The Commission made 339 recommendations. The sentiment throughout the report was that incarceration should be the last resort for Indigenous people (Wright et al, 2020, np). Yet three decades on, Indigenous incarceration rates have more than doubled from 14% to 29% (Archibald-Binge, 2021, np). As New South Wales (NSW) State Coroner Teresa O'Sullivan asserted in April: 'we cannot separate the issue of First Nations deaths in custody from the over-representation of First Nations people within the criminal justice system, nor can we separate it from the colonial history of this nation' (O'Sullivan. 2021, np).

To understand the disproportionate rise in Indigenous criminalisation and incarceration across Australia, I will draw on the work of prominent critical Indigenous studies scholars, settler colonial scholars, geographers and abolitionists. I aim to shift the emphasis away from incarceration toward everyday over-policing practices designed to control Indigenous peoples. To do so, I employ the work of Canadian geographer Brett Story (2019) who explores how 'carceral power', which she describes as the dispersal of power from the prison structure into everyday public spaces, has 'enabled and incentivized' the neoliberal state's systematic capture, control and confinement of human beings' by the criminal justice system (pg. 4). Throughout this thesis I explore how the everyday policing practices which compose

[1] 'A death in custody includes a death occurring whilst a person is watched or guarded by police. In other words, if that person is not at liberty to come and go as he or she wishes' (Australian Human Rights Commission, 1991, np)

carceral spaces, like discretionary policing and surveillance, are covertly reproducing settler colonialism in Australia. In particular, I examine sites of police surveillance, criminalisation and arrest for Indigenous Australians. Whilst Story's (2019) work focuses on neoliberal America's criminalisation of African Americans, her theorisation of carceral space is highly applicable to Australia's criminalisation of Indigenous peoples. To begin, I will firstly position myself in this thesis. This will be followed by an examination of what settler colonialism and neoliberalism are and how they function in Australia. Carceral space theory will then allow me to show how the settler colonial project continues to covertly operate through criminal justice practices.

I am a young white, settler woman in Australia. I grew up on Wiradjuri, Ngungawal and Wolgalu land, at the foothills of the Snowy Mountains in New South Wales. It was over the course of my teenage years studying at the local high school that I developed an interest in sociology. These interests were undoubtedly shaped by my parents, who were committed to educating my brother and I on global events and local issues. My interests have been significantly influenced by my parents progressive world views. However, it has only been throughout my university studies that I have developed a sustained interest in crime and punishment. My curiosity in this topic was sparked in a class in which we studied the politics of law and order in Australia and the ramifications this has for racial minorities. From here, I became intrigued by the over-policing and incarceration of African-Americans in the USA. Prior to 2020, I had thought very little about the connection between colonial racism and policing in Australia. However, the rise of the 2020 Black Lives Matter movement in Australia made me reflect on how little I knew about the complex relationship between Indigenous imprisonment and the ongoing colonial project. Like many white settler Australians, I share a lack of understanding and consequently, misplaced empathy. My life is very different and with is comes many privileges. One such privilege is the opportunity to undertake this thesis. I therefore want to use this opportunity to listen and learn from Indigenous[2] scholars and activists about their history and ongoing fight in neoliberal Australia. To begin, I will first explore settler colonial theory.

[2] Throughout this thesis, I refer to 'Indigenous peoples' because my research is engaged with both Aboriginal and Torres Strait Islander Australians and, more broadly, the insights, experiences and concerns of Indigenous peoples from around the world.

Unlike plantation colonies, settler colonies were, and still are, premised on the displacement of 'Indigenes from the land' to construct and maintain a liberal regime of power (Wolfe, 1999, pg. 1). Plantation colonies rely on the exploitation of the natives and imported slaves to farm and export goods for the maintenance of wealth in the colonisers place of origin (Shoemaker, 2015, np). Whereas settler colonialism is a distinct type of colonialism in which the colonisers seek to claim the land as their own and in the process dispossess the Indigenous population (Shoemaker, 2015, np). Patrick Wolfe (2006) argues, this 'displacement' or as he calls it the 'elimination' of Indigenous people from their land, is not driven by racism but rather the settler state's one 'irreducible' element which is territory (pg. 388). Thus, whilst the reproduction of natives in a plantation colony elevates the wealth of the colonisers, an increase in the Indigenous population in a settler colony obstructs the settler's access to land, resources and power (Wolfe, 2006, pg. 388). Wolfe (2006) argues that because of this, it cannot be said that race is the driving force behind settler colonialism, rather he concludes that for Indigenous people 'where they are *is* who they are' (pg. 388). Notably, Geonpul scholar Moreton-Robinson (2015) conceptualises that this stolen territory is 'marked by violence and race', which inextricably ties racism to the settler project (pg. xiii). She concludes that the 'dehumanizing impulses of colonization' like violence, slavery and dispossession, are acted upon because racism in settler societies is premised upon the illusion of ownership and legitimacy (Moreton-Robinson, 2015, pg. xiii). In agreeance with Moreton-Robinson (2015), I will argue that the dispossession and violence of territorial expansion in settler colonies is, as described above, a particular form of racism.

Settler colonialism is ongoing and requires reproduction (Wolfe, 1999, pg. 2). Fundamentally, it is the survival of Indigeneity despite ongoing colonial violence and territorial expansion that presents an issue for the state's maintenance of power (Simpson, 2011, pg. 211). The persistence and survival of Indigenous culture, connection to land and traditional law, are seen as a threat by the settler state (Simpson, 2011, pg. 211). As Audra Simpson (2011) theorises, the survival of Indigeneity highlights the settler state's 'precarious claims to sovereignty' and legitimacy (pg. 211). Thus, she argues that the 'disappearance of the "native"' as a political subject is required to overcome this threat and to covertly reproduce settler colonialism (Simpson, 2011, pg. 205). I borrow this idea of 'disappearance' from Simpson (2011) and apply it to Australia's criminal justice context. Fundamentally, I use it to refer to the way the state engages with Indigenous Australians as 'criminals' rather

than autonomous, complex political agents [3], who are subject to ongoing colonialism. As a result, Indigenous people become incapacitated, contained and criminalised in settler Australia. Importantly, Indigenous Australians do not lose their political agency, rather their capacity to engage and participate freely is greatly limited. This is partly achieved through the settler state's pathologisation of the Indigenous population which involves the characterisation of Indigenous people as 'dysfunctional' (Moreton-Robinson, 2009, pg. 67) and a 'social problem' (Strakosch, 2015, pg. 105). In turn, the state has developed a discourse of 'criminality' (Story, 2019, pg. 11) to convince the settler population of this rhetoric and maintain their support. In doing so, the state protects itself from the 'bloody dispossession' of settlement, whilst also reproducing settler colonialism through discriminatory policing practices (Simpson, 2011, pg. 207-208). Therefore, I suggest that the state not only aims to 'disappear' Indigenous peoples' agency but also desires the 'disappearance' of colonialism (Simpson, 2011, pg. 205). I will argue that the state's reproduction of settler colonialism has been aided by the rise of neoliberalism. Importantly, this reproduction has become increasingly more covert throughout the neoliberal era, thus making it a crucial point of research as Indigenous incarceration and criminalisation increase.

The settler state portrays Indigenous people as a threat to both themselves and the broader settler population (Moreton-Robinson, 2009, pg. 77). For decades, Indigenous deaths in custody and the over incarceration of Indigenous peoples have attracted minimal public attention and resistance from the broader Australian public (McQuire, 2020, np). This lack of attention and resistance can be closely tied to the state's sustained pathologisation of the Indigenous population (Moreton-Robinson, 2009, 77). However, following the police murder of African American man George Floyd last year in Minneapolis, USA, the systemic issue of racialised criminalisation and deaths in custody came to the forefront of political and social debate across the Western world (McQuire, 2020, np). Yet as Darambul journalist Amy McQuire (2020) notes, 'in Australia the brutality of the police and justice system takes different forms than the United States – forms that are not easily captured on video' (np). Consequently, McQuire (2020) attributes this lack of local outrage partly to the over incarceration of Indigenous people where they 'are kept contained, out of sight and invisible, and so the violence perpetrated against them is made invisible as well' (np). Importantly, this is also evident in covert policing practices, like stop and searches, which mask the state's

[3] Political agency refers to the power to act and participate independently in society (Tennberg, 2010, pg. 264).

discrimination and violence (McQuire, 2020, np). Additionally, Arrernte activist Celeste Liddle (2020) argues that 'a large part of it comes down to Australia's inability to acknowledge and address its own racism' (np). This became evident throughout the height of the Black Lives Matter protests, in which Australia's Prime Minister stated that he was 'grateful for the wonderful country we live in' and that 'we shouldn't be importing the things happening overseas to Australia' (Hurst, 2020, np). The Prime Minister's comments are representative of a broader settler blindness toward ongoing colonial violence within Australian society. I argue settler Australia's blindness toward colonial violence has been exacerbated by the rise of neoliberalism in the 1990s. This calls for further analysis into how neoliberalism aids the settler project.

Following the 1991 Royal Commission, the rapid increase in incarceration rates was simultaneous with the state's transition toward neoliberal governance (Strakosch, 2015, pg. 104). From the mid 1970s through to the mid 1990s the Federal government was driven by an agenda of self-determination and self-management (Strakosch, 2015, pg. 104). The Aboriginal and Torres Strait Islander Commission (ATSIC) ran this policy regime and acted as an 'authentic Indigenous political voice' (Strakosch, 2015, pg. 104). Importantly, because the social liberal era saw Indigenous peoples 'positioned as disadvantaged through collective historical exclusion', it was the government's responsibility to provide support and social welfare to the Indigenous community (Strakosch, 2015, pg. 104). The Federal government's acknowledgement of Indigenous disadvantage as a product of racism and colonialism was progressive for the period (Strakosch, 2015, pg. 104). This shift in attitude coincided with a reconciliation agenda which sought to 'reform mainstream attitudes and address past injustices' (Strakosch, 2015, pg. 104). The fundamental difference between the social liberal era and neoliberalism was its framing of the 'Indigenous 'problem' as one of continued exclusion', whereas neoliberalism repositioned Indigenous people as 'already included and politically equivalent' (Strakosch, 2015, pg. 105). This transformed the way the state portrayed Indigenous peoples and the way the settler population viewed and treated the broader Indigenous community.

The state's transition toward individual responsibility therefore contributed to the framing of the Indigenous community as 'dysfunctional' (Strakosch, 2015, pg. 1) and a 'social problem' in need of state control and intervention (Strakosch, 2015, pg. 105). To then persuade the broader settler population that the withdrawal of welfare and autonomy were valid, the

government enshrined Indigenous disentitlement as 'natural' and 'legitimate' (Story, 2019, pg. 11). This rhetoric enabled the government to lay blame on the Indigenous community for not taking responsibility for their own disadvantage and for 'taking more than their fair share of entitlements' (Moreton-Robinson, 2009, pg. 62). Moreton-Robinson (2009) refers to this as a 'discourse of pathology' which has been deployed by the neoliberal state to gain the support of the settler population (pg. 77). She emphasises that it is through 'race and rights' that the state exercises its power to socially differentiate Indigenous people from non-Indigenous people and label them 'inferior' in neoliberal Australia, thus portraying them as inherently more 'criminogenic' (Moreton-Robinson, 2009, pg. 77). The portrayal of Indigenous 'dysfunction' and 'danger' enables the state and, more specifically the criminal justice system to legitimise their ongoing violent treatment and containment of Indigenous Australians.

The settler state's violent treatment of Indigenous Australians has dramatically transformed since colonisation. As Hogg (2001) evidences, the state has transitioned from overt forms of violence in the early 20th century, like floggings, the use of neck chains and mass killings, toward more covert forms of violence and containment in the neoliberal era, like the over-policing [4] of minor offences, increased surveillance and discretionary power (pg. 370). Furthermore, Hogg (2001) argues, the rise in incarceration and over-policing as a means to control the Indigenous population began to increase as the neoliberal state started to engage in 'law and order' discourses designed to incite fear in the settler population (pg. 370). He further asserts, that these discourses, which exaggerate rates of crime, particularly in racialised communities, have been designed to emit an emotional response within society, whether that be fear, anger or worry (Hogg, 2001, pg. 370). Arguably, this enables the state to covertly retain power through the construction of an 'internal' war, whereby 'society... must be defended' from 'the other race' (Stone, 2013, pg. 363), which in this case is the 'threatening' Indigenous population. This shift from overt to covert forms of violence and containment has seen the state develop as Amanda Porter describes, a carceral addiction (Media Futures UNSW, 2021), referring not only to the states addiction to incarcerating Indigenous people but also refugees and other marginalised communities (Media Futures UNSW, 2021). This is particularly evident as welfare budgets continue to decline, whilst law

[4] Over-policing refers to the practice of excessive police contact and visibility in public spaces (Story, 2019, pg. 1-3).

enforcement budgets continue to grow exponentially (Carr et al, 2017, np). Despite growing international calls for the defunding of police budgets, the NSW government allocated the NSW Police Force a record $4.8 billion in the 2019/20 budget (NSW Liberal, 2020, np). Budgets of this magnitude attract little resistance in Australia, mainly because policing and imprisonment have long been accepted methods of punishment in settler societies. As Porter (2020) points out, Australian police forces were founded on settler colonial violence and continue to covertly perpetrate this violence, with public support, through over-policing practices (Gregoire, 2020, np). The allocation of large budgets signifies the neoliberal state's reliance on the criminal justice system to maintain settler colonial claims to sovereignty and reinforce authority over First Nation peoples and public spaces.

As urban precincts become gentrified and regional towns expand, I argue, a central objective of the state is the containment and marginalisation of Indigenous Australians in public spaces. By applying Story's (2019) concept of carceral space, we can begin to see how the neoliberal state's use of everyday policing practices in urban spaces, like discretionary stop and searches and move on orders, are reproducing settler colonial territorial claims. Story (2019) explores how racialised power relations, which render some lives disposable, are reproduced through space in neoliberal societies (pg. 6). She applies Foucault's conceptualisation of space, in which he understands space as relational and, thus power relations are replicated (Crampton, 2021, pg. 3). For example, separating and excluding those who are deemed 'undesirables' (Crampton, 2012, pg. 3). When I use the term territory, I am referring to how the state imposes colonial order across all geographic spaces. Story (2019) argues that certain geographical spaces become ideologically and politically driven (Story, 2019, pg. 4), thus we must ask how resources are distributed between suburbs, why police are more powerful in some areas and who is impacted by their heightened visibility (pg. 5). Story (2019) offers the example of Ferguson, a small town in the USA which became a 'flashpoint' for the Black Lives Matter movement (pg. 3-4). She argues, that rather than simply looking at 'so called incidental or exceptional police violence' we must recast our gaze to examine a broader narrative, one which considers the dispersal of penal infrastructure outside of the prison and its relationship to capitalism (Story, 2019, pg. 5). Fundamentally, carceral space is premised upon the assertion that the prison as a 'set of relationships' is 'dispersed across a set of landscapes we don't always view… as carceral' (Story, 2019, pg. 6). Story (2019) conceptualises this dispersal of carceral power out of the prison and into urban spaces, as 'the sites and relations of power that enable and incentivize the systematic capture, control and

confinement of human beings through structures of immobility and dispossession' (pg. 4). Specifically, the spaces I seek to emphasise are the geographic sites of police harassment, criminalisation and arrest for Indigenous Australians (Story, 2019, pg. 4) which are often overlooked in the broader incarceration debate. To do this, I will firstly highlight Australia's rising rates of Indigenous criminalisation. I want to flag here, that in Chapter Two, I will explore why simply focusing on rates of incarceration is problematic. However, for the purposes of my argument it is important to firstly understand the growing disparity between non-Indigenous and Indigenous incarceration rates.

The recent anniversary of the 1991 Royal Commission illuminated the nation's lack of progress in reducing rates of Indigenous incarceration and criminalisation. A key finding of the Royal Commission, and a significant issue three decades on, is the over incarceration of the Indigenous population. Recommendation 87a of the 1991 Royal Commission states 'all police should adopt and apply the principle of arrest being the sanction of last resort in dealing with offenders' (AustLII, 1991, np). Yet Indigenous offenders continue to be disproportionately imprisoned at a far greater rate than non-Indigenous offenders. Since 2004, despite crime rates plateauing (Cunneen, 2011, pg. 10), the rate of Indigenous peoples in custody has risen by 88%, compared to 28% for non-Indigenous Australians (Korff, 2021, np). Moreover, the NSW Bureau of Crime Statistics and Research (Boscar) found that between 2001 and 2015 rates of Indigenous remand rose by 283%, despite rates of arrest dropping (Whalquist, 2016, np). Moreover, 40% of those held on remand did not even receive a prison sentence at trial (Whalquist, 2016, np). These statistics represent a stark contrast to the recommendations handed down by the Royal Commission. To understand these poor statistics requires an investigation into how neoliberalism aids the reproduction of the settler colonial project. As I have established, by exploring the policing practices which compose carceral space, like discretionary police power, we can begin to see how the two interact in contemporary Australia.

Australia's criminal justice system is a settler colonial institution in which police discretion can be used as an invisible weapon to contain and remove Indigenous peoples from public spaces. As discussed earlier, unlike the more overtly violent frontier days, more subtle weapons are now used to contain and capture Indigenous people in public spaces (Hogg, 2001, pg. 370). For example, in Victoria in 2017 Indigenous women were ten times more likely to be targeted for public drunkenness than non-Indigenous women (HRLC, 2019, np).

Yet in 1991 the Royal Commission into Aboriginal Deaths in Custody recommended that public drunkenness not be occasion for arrest or charge but be treated as a public health response instead (AustLII, 1991, np). Thirty years on, public order offences which are heavily reliant on police discretion continue to frustrate and anger the Indigenous community. As Belinda Stevens, daughter of Tanya Day, who was arrested for public drunkenness on a train to Melbourne and died in custody, states, 'the fact that our mum was an Aboriginal woman most certainly contributed to her adverse treatment. We as a society cannot allow laws that discriminate against Aboriginal people to continue' (HRLC, 2019, np). I will go onto argue that in situations like Tanya Day's, where a minor offence has been committed, discretion can become an invisible weapon used by the settler state to manage public spaces.

Indigenous Australians continue to be disproportionately charged and arrested for trivial offences like swearing. In 2018, despite accounting for just 3% of the total national population (ALRC, 2018, np), Indigenous people made up approximately one-third of those charged or taken to court for offensive language (Sarre, 2020, np). This follows the recommendations handed down by the 1991 Royal Commission which highlighted the discriminatory application of offensive language charges (AustLII, 1991, np). Recommendation 86a of the Commission stated that 'the use of offensive language in circumstances of intervention initiated by police should not normally be occasion for an arrest or charge' (AustLII, 1991, np). Rob White (2002) argues that the continued criminalisation of offensive language in public spaces largely acts 'to criminalize the street activities of young Indigenous people' (pg. 21). Through the discretionary application of offensive language fines, we can begin to see how everyday policing practices are reproducing settler colonialism in Australia.

Carceral spaces draw my attention toward the prison abolition movement. There have been growing calls from the Indigenous community to combat the state's discretionary over-policing and incarceration of Indigenous peoples through the abolishment of the criminal justice system (Brooks et al, 2021, np). Formerly incarcerated Indigenous woman Tabitha Lean (2021), describes abolition:

> As an opportunity to imagine a future free of punishment, imprisonment and exile… It's about dismantling policies, practices and institutions that make people disposable… we want to bring together communities to develop revolutionary and

> transformative community-based responses to violence and safety issues, rather than relying on systems that reinforce and perpetuate violence… (Brooks et al, 2021, pg. 4)

Abolition is therefore not a call to reform existing criminal justice practices, rather it is described as a 'revolutionary anti-capitalist struggle' predicated on the dismantling of the current colonial system and the rebuilding of a new system (Brooks et al, 2021, np). Abolitionist's reject the notion of reform primarily because the criminal justice system is built for colonial purposes and has proven to be unable to part itself from the racism and dispossession of the settler project (Brooks et al, 2021, np). According to Lean, this has ultimately inhibited any transformative structural change (Brooks et al, 2021, np). As American abolitionist Angela Davis (2003) theorises, the criminal justice system has become an 'abstract site into which undesirables are deposited' (pg. 16). Story (2019) supports this, arguing that the production of the racialised 'criminal' acts as a 'powerful legitimizing' cover for the continuation of violence and dispossession in neoliberal societies (pg. 11). Fundamentally, abolitionist's recognise that settler colonialism continues to be reproduced through the criminal justice system. Thus, their ideas are crucial if Australia is to reduce rates of incarceration. Throughout this thesis, I will return to abolitionist ideas and introduce their solutions to rising rates of Indigenous imprisonment.

Australia's criminalisation and incarceration of Indigenous peoples cannot be separated from the colonial history of this nation (O'Sullivan, 2021, np). For this reason, we must shift our gaze from incarceration toward the neoliberal state's deployment of weapons designed to contain, capture and manage Indigenous peoples. These weapons include discretionary police power, over-policing practices, surveillance and containment (Story, 2019, pg. 6), all of which work to categorise Indigenous people as 'criminogenic' and therefore, 'disposable' in settler Australia (Story, 2019, pg. 11). These practices which constitute carceral space, are driven by the neoliberal state's pathologisation of Indigenous peoples as a 'social problem' (Strakosch, 2015, pg. 105). Consequently, I argue this reproduces settler colonialism, thus leading to the states maintenance of legitimacy through the management of public space and the containment of 'undesirables' (Story, 2019, pg. 16). I welcome the opportunity to engage with the complexity of these ideas and contribute to a greater conversation around ***how systems and the practices they employ*** lead to the incarceration of Indigenous people.

Chapter Two: ‘To make disappear…’

In July 2016 an ABC *Four Corners* investigation shone the spotlight on the violent and degrading treatment of Indigenous youth in Don Dale Youth Detention Centre, Northern Territory. The footage showed Indigenous children as young as 11-years-old being violently stripped naked by prison officers, forcibly restrained and tear gassed (Gibson, 2021). In response, the then Prime Minister Malcolm Turnbull announced a Royal Commission into the Protection and Detention of Children in the Northern Territory (Fitz-Gibbon, 2018, pg. 100-101). The Commission made over 230 recommendations to the Australian Government (Davidson, 2017, np). Commissioners Margaret White and Mick Gooda called for the immediate closure of the Don Dale juvenile facility (Davidson, 2017, np). In the report, they described the high security cells in use at Don Dale as ‘wholly inappropriate, oppressive, prison-like… that is detrimental to [the] health, wellbeing and prospects of rehabilitation’ (Davidson, 2017, np). The Minister for Indigenous Affairs Nigel Scullion (2013-2019) told media he suspected facilities like Don Dale were ‘part of the problem’ and ‘not part of the solution’ when it came to youth recidivism rates (Gibson, 2021). Following the Commission, the Government made two promises: to demolish Don Dale and to raise the age of criminal responsibility to 12-years-old from 10-years-old (Gibson, 2021). Neither of these promises have come to fruition (Gibson, 2021). In 2018 in the Northern Territory, 100% of youth in detention were Indigenous (HRLC, 2018, np). In this same period, youth detention was costing the Northern Territory approximately $37.3 million annually (Davidson, 2018, np). Furthermore, three years on, the state’s introduction of tough new bail laws has resulted in a doubling of youth detainees (Thompson, 2021, np). This has led to the reinvestment of $2.5 million into the expansion of the Don Dale facility (Thompson, 2021, np). Dylan Voller, one of the Indigenous children who experienced abuse at Don Dale, instead calls for the reinvestment of criminal justice funds into community-based programs to prevent reoffending and reduce rates of Indigenous youth in prison (Gibson, 2021).

To explore Voller’s appeal further we must first investigate how and why Indigenous people come to be criminalised in neoliberal Australia. For too long, reports released by the Australian Government have predominantly focused on incarceration rates. However, in doing so overlooks the systems and practices which lead to the disproportionate surveillance, criminalisation and incarceration of Indigenous Australians. For this reason, I aim to examine how everyday policing practices which compose carceral space, like discretionary stop and

searches and over-policing, are reproducing settler colonial territorial claims. To do this, I explore how carceral spaces, which Story (2019) describes as 'complex geographies', become sites of management and containment through policing practices (pg. 4). In turn, I argue that to successfully reproduce settler colonialism, the state engages with Indigenous Australians as 'future criminals' in an attempt to 'disappear' them as political subjects (Simpson, 2011, pg. 205). As a result, Indigenous Australians continue to be over-criminalised and over-incarcerated. I will employ a case study approach to identify and show how everyday policing practices reproduce settler colonialism in Australia.

Case studies enable researchers to gain a more detailed understanding of a complex social issue in its real-life setting (Crowe et al, 2011, pg. 1). Crowe et al (2011) argue that case studies are used to 'explain, describe or explore' a phenomena (pg. 4). In this thesis, the reproduction of settler colonialism in the 'everyday contexts in which… [it] occur[s]' (Crowe et al, 2011, pg. 4). Importantly, this approach lends itself to the 'how' and 'why' questions (Crowe et al, 2011, pg. 4), both of which I am exploring in this thesis. As Longhofer et al (2017) discuss, 'it is with the richness' of case studies that authors in the social sciences compel diverse audiences to understand and engage with complex social, cultural and political issues (pg. 195). To do this, I will draw on government statistics, Aboriginal Legal Centre documents, examples of practices of over-policing and existing policy literature to establish a basis for my theoretical analysis. Specifically, I am using a case study approach to highlight how 'micro' everyday policing practices, like discretionary policing, surveillance and the criminalisation of minor offences, can become tools in the reproduction of the systematic operation of colonial power. In particular, I am examining the over-policing of offensive language offences and the practice of stop and searches. I have chosen these two case studies due the disproportionate impact they have on Indigenous people, especially youth. Furthermore, the legislation for both offensive language offences and stop and searches is built on police discretion. Importantly, Story's (2019) theory of carceral space enables us to identify discretion and over-policing as weapons of the neoliberal state. I argue this is an under examined area of Australia's incarceration debate.

Carceral space theory allows for the identification of how criminal justice practices make 'complex geographies' for racialised minorities (Story, 2019, pg. 4). Story (2019) uses the example of St Louis County, USA, a predominantly black subdivision of 15,000 people (pg. 1). This area has been defined by its segregation, whereby zoning rules classify black areas as

industrial and white areas as residential (Story, 2019, pg. 1). This stopped the construction of social housing next to white real estate markets (Story, 2019, pg. 1). Black neighbourhoods have also been destroyed for urban renewal over the past 50 years (Story, 2019, pg. 2). The segregation of black communities from white communities is in some place defined by large concrete street barriers (pg. 2). Police visibility in black neighbourhoods is also far greater (Story, 2019, pg. 3). In the town of Ferguson in 2014, police issued on average three arrest warrants per household (Story, 2019, pg. 3). In turn, Ferguson and the broader St Louis area, rose to public attention following a series of police shootings in which young black men were killed (Story, 2019, pg. 2). Increased media attention shone light on the systematic over-policing of the most socio-economically disadvantaged communities (Story, 2019, pg. 2). In these suburbs, police were cracking down on minor offences at a far greater rate than in white communities (Story, 2019, pg. 3). However, most people in these suburbs lacked the resources to pay their fines which led to them avoiding court and then possibly facing incarceration (Story, 2019, pg. 3). For Story (2019), it is 'complex racial geographies', like those in St Louis County, which she calls 'carceral spaces' (pg. 4). Carceral spaces therefore become sites of management and containment through policing practices (Story, 2019, pg. 4). She asserts that these practices, like discretionary policing, over-policing and surveillance, are conditioned by their local geographies, which means that they are not static across space, rather they are ever changing to suit the aims and goals of the state (Story, 2019, pg. 4). In Australia, the neoliberal state's policing practices are partly conditioned by settler colonial territorial claims. Overall, these practices work to immobilise, manage and dispossess racialised minorities across neoliberal societies (Story, 2019, pg. 4).

Political power is not static; therefore, we cannot simply analyse the prison in isolation from other state institutions (Story, 2019, pg. 6). As touched on in the St Louis example, the criminal justice system reinforces the capitalist relations which organise and run life in neoliberal societies (Story, 2019, pg. 5). Story (2019) therefore argues, that rather than focusing on prison structures, we need to recast our gaze to how the carceral system has become bound up in matters like urban restructuring, racial ordering and citizenship (pg. 5). Ultimately, she argues that the carceral system has become foundational to the survival of capitalism (Story, 2019, pg. 6). Specifically, the criminal justice system works to enshrine racial inequality as 'natural rather than produced' which she asserts legitimises the exploitation and criminalisation of some and the wealth and 'success' of others (Story, 2019, pg. 6). Story (2019) therefore sees the prison as a 'set of relationships dispersed across

landscapes we don't always view… as carceral (Story, 2019, pg. 6). Thus, the often-overlooked elements of the incarceration debate, like the sites of police surveillance, criminalisation and arrest, become important in understanding how political power operates through everyday policing practices in public spaces (Story, 2019, pg. 6). Whilst Story (2019) identifies a variety of practices which compose carceral space, I will specifically explore discretion, surveillance and over-policing. These practices are employed by the state to consign Indigenous Australians a 'criminal status' which as Story (2019) argues, categorises them as 'disposable' in the capitalist state (pg. 11).

The state's push to gentrify urban landscapes has increasingly resulted in new forms of socio-spatial exclusion (Story, 219, pg. 15). As inner-city suburbs become increasingly sought after in Sydney, the public spaces which have for decades been occupied by racially diverse groups of people, particularly Indigenous Australians, have become highly contested landscapes (Burton-Bradley, 2016, np). Bender et al (2001) define contested landscapes as dynamic and evolving spaces in which the inhabitants clash in their understanding of its purpose and significance (pg. 3). Specifically, in the contested suburb of Redfern, the median price of a house has risen from $592,000 in 2007 to $1.325 million in 2016; the Indigenous population has fallen from 35,000 in 1968 to just 300 in 2011 (Burton-Bradley, 2016, np). To manage and control these spaces, the neoliberal state has increased police visibility and discretionary power (Story, 2019, pg. 15). This is particularly evident in areas where the Indigenous community is highly visible, for example in Surry Hills and Redfern, where police harassment is high and rates of criminalisation for minor offences disproportionately impact Indigenous peoples (Bavas et al, 2020, np). This is evidenced by data obtained by NSW Greens Minister David Shoebridge, of the NSW Police Force's Suspect Target Management Plan (STMP) (Pandolfini, 2017, pg. 1). The STMP is a 'blacklist' designed to enhance police power to conduct surveillance, harass and search 'future criminals' and previous offenders in public spaces (Pandolfini, 2019, pg. 1). Indigenous youth between 9 and 18 years of age, who readily frequent public spaces, were 18.9 times more likely to be on the list than their non-Indigenous counterparts (Blanco, 2018, np). Which for one 15-year-old, with minor graffiti offence records, meant 23 searches in 10 months (Amato et al, 2017, pg. 7). Indigenous support worker Kenny Edwards reported witnessing police harassment in Redfern and Waterloo 'every day, every night' (Bavas et al, 2020, np). Through covert operations like the STMP, increased discretionary searches, over-policing and surveillance,

all carceral practices (Story, 2019, pg. 15), become weapons of the neoliberal state in their management and control of people in urban spaces.

Urban restructuring requires that some lives are made 'disposable' (Story, 2019, pg. 7), hence some suburbs become gentrified for some and carceral spaces for others. The designation of Indigenous people as 'dysfunctional' and 'dangerous' then legitimises the state's carceral practices (Story, 2019, pg. 11). This leads to the production of the racialised 'criminal' (Story, 2019, pg. 11). Consequently, the consignment of criminal status to Indigenous Australians enables the neoliberal state to both legitimise the ongoing use of policing practices to perpetrate violence and portray Indigenous disadvantage as 'natural rather than produced' (Story, 2019, pg. 11). Importantly, Story (2019) argues that the idea of 'the criminal' has become a 'paradigmatic category of disposability in capitalist' societies (pg. 11). She emphasises that this has occurred because it is too hard for settlers to divest from the neoliberal ideal of individual responsibility (Story, 2019, pg. 11). Specifically, settlers struggle to acknowledge the causal factors of crime in Australia, like historical exclusion, intergenerational trauma and the inequality of opportunity. Thus, the meritocratic principles which drive neoliberal ideology mask Indigenous disadvantage as a product of their own 'dysfunction', rather than a product of ongoing state violence and dispossession (Strakosch, 2015, pg. 105). The effect this discourse has on Indigenous peoples becomes seemingly more evident when we address how carceral practices operate to manage public drunkenness. Despite public drunkenness being decriminalised in all states other than Queensland and Victoria, Indigenous people continue to be disproportionately detained for failing to move on due to intoxication, or alternatively to 'sober up' compared to non-Indigenous people (Seeing the Clear Light of Day, 2020, pg. 34). In the Northern Territory where public intoxication has been decriminalised since 1974, Indigenous people account for 92% of people detained under 'protective custody laws', despite accounting for less than half the population (Seeing the Clear Light of Day, 2020, pg. 34). As Ruth Barson, Legal Director at the Human Rights Law Centre points out, public drunkenness move on orders and 'laws currently criminalise behaviour for some people that is completely overlooked for others. People don't die in custody coming home from the Melbourne Cup' (HRLC, 2019, np). Public drunkenness related statistics shine a spotlight on how the discourse of 'disposability' can be powerful in managing Indigenous peoples in public spaces, whilst largely overlooking the same behaviour in the non-Indigenous population.

The pathologisation of Indigenous peoples is required to reproduce settler colonialism in Australia (Moreton-Robinson, 2009, pg. 68). As neoliberalism took a hold in Australian politics in the late 1990s, then Prime Minister John Howard promised the Australian public that funding for Indigenous affairs would be cut and Indigenous rights controlled (Moreton-Robinson, 2009, pg. 66). Following his successful election in 1996, Howard worked to reconfigure the representation of Indigenous people as having received more than their fair share of entitlements as citizens and as 'not taking responsibility for… 'dysfunctional' behaviour' (Moreton-Robinson, 2009, pg. 67). This repositioning of the 'Indigenous 'problem'' as 'already included and politically equivalent' (Strakosch, 2015, pg. 105) not only enabled the withdrawal of welfare but also reinforced the ideals of meritocracy[5] and individual responsibility (Strakosch, 2015, pg. 105). In turn, Indigenous disadvantage became a non-issue for the state (Strakosch, 2015, pg. 105). Instead, Howard's discourse worked to demonise the Indigenous population as 'failed' citizens (Moreton-Robinson, 2009, pg. 67). Ultimately, this reorientated the way the settler population began to view and treat the broader Indigenous community (Strakosch, 2015, pg. 105). Specifically, the progress made throughout the social liberal era, whereby Indigenous people were positioned as disadvantaged through 'collective historical exclusion', was replaced by a growing divide between the Indigenous and non-Indigenous population (Strakosch, 2015, pg. 105). Meritocratic principles are still alive today in Australian politics, with current Prime Minister Scott Morrison employing them to socially differentiate between the disadvantaged and the wealthy:

> I believe in a fair go for those who have a go, and what that means is part of the promise we all keep as Australians is that we make a contribution and don't seek to take one (Murphy, 2019, np).

What neoliberal ideology does not take into consideration is inequality of opportunity, historical circumstances, intergenerational trauma or power relations. Instead, Indigenous people are portrayed, by association, as 'failed' citizens (Moreton-Robinson, 2009, pg. 67). As Moreton-Robinson (2009) argues:

[5] Meritocracy is foundational to neoliberal governance. People believe that power, jobs and money should be distributed according to effort and skill rather than taking into account systematic disadvantages like gender, race and disability (Mark, 2020, np).

> The individualism of neoliberalism informs the discourse of pathology within the race war enabling the impoverished conditions under which Indigenous people live to be rationalised as a product of dysfunctional cultural traditions and individual bad behaviour (pg. 68).

Whilst the economic, social and political impact of this pathologisation is immense, I specifically focus on the effect this has on the criminal justice system and policing practices.

Foucault (1975-76) argues that the ideological and political organisation of civil society is driven by what he describes as 'state racism' (Stone, 2013, pg. 363). Specifically, he theorises that the 'other' race is no longer one that came from another sovereign state, rather it is a 'race' which is 'permanently, ceaselessly infiltrating the social body' within a state (Stone, 2013, pg. 363). To conceptualise this, Foucault (1975-76) recasts his gaze to view a state's population as one group of people who are then divided into those who 'must live and those who are allowed to die' (Stone, 2013, pg. 363). He argues that this differentiation of people is not limited to skin colour, rather can include sexuality, levels of ability, socio-economic status and in some cases political persuasion (Stone, 2013, pg. 365). It is this idea of 'letting die' which I would like to apply to the issue of Indigenous criminalisation. If as Foucault contends, 'racism is the precondition that makes killing acceptable' in capitalist societies (Stone, 2013, pg. 366), then as I have argued, settler colonialism is fundamentally a form of racism which is reliant on neoliberal practices to succeed. The overwhelming goal of racism is to eliminate a threat (Stone, 2013, pg. 366), thus Indigenous Australians are a threat to white settler claims to sovereignty and legitimacy. To do this, state racism becomes embedded within the criminal justice system. It is within this institution that policing practices and incarceration are used against Indigenous people to position them as 'criminogenic' and therefore 'allowed to die' (Stone, 2013, pg. 363-366). An example of this being the rising rates of Indigenous deaths in custody. As discussed in Chapter one, these deaths are often met with little settler resistance. To understand the lack of resistance, I borrow from Foucault (1975-76), who argues that state racism relies on the ignorance of the broader population (Stone, 2013, pg. 366). In Australia, this ignorance correlates with the state's pathologisation of the Indigenous community. Foucault (1975-76) theorises that members of the dominant race, in Australia's case white settlers, are often unaware of the 'power forces at work' in both themselves and their communities (pg. 366). It then becomes easy for settlers to buy the state's discourse of Indigenous 'criminality'. In turn, very few

settlers challenge the discourse and as a result Indigenous people continue to be over-policed and criminalised for minor offences in public spaces.

Story (2019) asserts that a central role of the neoliberal state is to secure and broaden class power, whilst ensuring the ongoing cohesion of broader civil society (pg. 16). In Australia, in the Howard era, the state retreated from welfare and reduced state influence in the economy (Moreton-Robinson, 2009, pg. 66). However, this economic 'retreat' masked the state's organisation, restructuring and expansion of punishment, criminalisation and consequently, incarceration as new methods of social and economic control (Story, 2019, pg. 16). This occurred in Australia in the late 1990s which coincided with rising rates of Indigenous imprisonment. As Peck argues, 'in terms of the regulation of poverty and poor subjects, this is not less government but *different* government' (Story, 2019, pg. 16). Importantly, this restructuring of the neoliberal state as 'less involved' has enhanced the state's ability to covertly employ policing practices which work to reproduce settler colonialism in Australia.

Carceral practices are designed to 'disappear' Indigenous people as political subjects (Simpson, 2011, pg. 205). As Simpson (2011) conceptualises, white settler populations are inherently fearful of what the 'survival' of Indigenous peoples means for the settler state (pg. 210). She argues that these fears focus on Indigenous people reacquiring their land, accumulating capital and governing themselves 'under the sign of nationhood and sovereignty' (Simpson, 2011, pg. 210). Specifically, it is Indigenous political power and membership which she theorises makes the settler population most uneasy (Simpson, 2011, pg. 211). Therefore, Simpson (2011) maintains that the state has disguised the force of the colonial project in laws to ultimately prevent the accumulation of Indigenous power in the neoliberal period (pg. 212). In Australia, criminal justice practices and laws have become valuable in disempowering Indigenous peoples in the political, social and economic sphere. Importantly, the settler colonial state plays a central role in defining and managing power relations between settler Australians and Indigenous Australians (Tennberg, 2010, pg. 265). Thus, to maintain colonial power relations, the state engages with Indigenous Australians as 'dysfunctional' 'criminals', which works to legitimise the over-policing and criminalisation of the Indigenous population. As a result, Indigenous Australians become incapacitated by carceral practices which ultimately limit their freedom to participate in the public sphere without the fear of police intervention. Therefore, I propose that the neoliberal state's use of

covert carceral practices have become crucial to the maintenance of settler power and sovereignty in Australia.

The interrelationship between carceral space, neoliberalism and settler colonialism is fundamental to understanding the high rates of Indigenous criminalisation. Story's (2019) theory of carceral space enables me to identify neoliberal policing practices which compose these spaces in Australia, for example pathologisation, discretionary policing, over-policing and surveillance. I argue that these practices have become powerful in the reproduction of settler colonialism. Specifically, the covert continuation of the colonial project through policing practices can be seen through the application of Story's (2019) carceral space theory. This will be explored further in Chapter Three and Chapter Four.

To return to Dylan Voller's call to reduce rates of imprisonment through the improvement of support systems (Gibson, 2021), we can see how these ideas align with those of the growing abolition movement (Brooks et al, 2021, np). Notably, the abolition movement calls for the reinvestment of criminal justice funds into social and economic infrastructure (Brooks et al, 2021, np). Brooks et al (2021) draw on the current Covid-19 pandemic to highlight the 'infrastructural inequalities' which have become normalised across neoliberal societies in the last half century (np). In Australia, there is a significant social divide, along class, race and gender lines, which sees access to healthcare, education, social housing and employment services unfairly distributed (Brooks et al, 2021, np). In turn, Davis (2020) argues that we cannot simply focus on the prison in neoliberal societies, rather we need to understand social justice issues as interrelated and multifaceted (Brooks et al, 2021, np). Therefore, abolitionists argue we must create strong social support systems – economic support, education opportunities, healthcare access and employment services – to prevent vulnerable Indigenous people, as young as 10-years-old, from coming into contact with police and the criminal justice system (Brooks et al, 2021, np). As Tabitha Lean discusses, 'the key to health, safety, stability, and liberation has never and will never be found in punishment and imprisonment (Brooks et al, 2021, np). As established in Chapter One, calls for the reinvestment of funds accompany a broader argument which centres on the reimagining of the criminal justice system to reduce rates of Indigenous incarceration. The following case studies allow me to demonstrate the practices of carceral space and show how colonial violence remains embedded with the neoliberal state.

Chapter Three: Offensive Language Case Study

Fuck.

Swearing is part of everyday vernacular in Australia, used by politicians, professionals and police officers alike, however if you are homeless, socio-economically disadvantaged or Indigenous, these commonplace words could land you a hefty fine or time in prison. Despite making up just 3% of the total national population, in 2020 Indigenous Australians accounted for approximately one third of those charged and taken to court for offensive language in NSW (Sarre, 2020, np). Elyse Methven (2018) argues that the continuation of offensive language laws in Australia has entrenched many 'common sense' assumptions within broader settler society (pg. 70). Specifically, that offensive language laws have led to a greater acceptance of police authority in public spaces and therefore, greater support for the preservation of the current social structure which sees police in a place of authority, and those that challenge it as destabilising the social order (Methven, 2018, pg. 70). Furthermore, she argues that police officers routinely show disrespect toward the public with little to no consequences (Methven , 2018, pg. 70). This maintains unequal power relations, which she theorises shouldn't be reproduced through criminal justice practices (Methven, 2018, pg. 70). Similarly, Rob White (2002) argues offensive language offences which predominantly criminalise Indigenous people, have become an important tool employed by 'state authorities in efforts to clean up the streets' (pg. 22). Both Methven (2018) and White (2002) agree that the criminalisation of offensive language in Australia is disproportionately impacting Indigenous Australians. In this chapter, I will build upon their work to demonstrate how the policing of offensive language is being used to reproduce settler colonialism. In particular, I explore how the pathologisation of Indigenous Australians as 'criminals' drives the discriminatory policing of offensive language.

As discussed in Chapter Two, carceral spaces refer to the sites of police harassment, surveillance, criminalisation and arrest for racialised minorities (Story, 2019, pg. 4). In Australia, this is predominantly achieved through discretionary practices, like offensive language offences. Indigenous Australians are disproportionately represented in this category across the country (ALRC, 2018, np). Importantly, there is not significant statistical data focused on offensive language charges and arrests across states and territories, however there

is sufficient evidence suggesting that this offence is highly prejudicial in its application (Walsh, 2005, pg. 123-124). Walsh (2005) attributes this lack of statistical evidence to the few charges challenged, whereby defendants instead plead guilty and receive their fines or time in prison (pg. 123). In Queensland, Indigenous Australians are up to 12 times more likely to be charged with offensive language than their non-Indigenous counterparts (ALRC, 2018, np). Meanwhile, despite accounting for just 3% of the total national population (ALRC, 2018, np), the NSW Ombudsman found that in 2017, 17% of criminal infringement notices (CINS) were issued to Indigenous peoples, as opposed to 11% in 2008 (ALRC, 2018, np). CINs are on the spot fines which enable police officers to become both the judge and jury (Methven, 2014, np). In 2014, after a seven-year trial, the NSW Government raised CINs from $150 to $500 with no explanation for the dramatic increase (Methven, 2014, pg. 251-52). NSW Minister for Police and Emergency Services at the time, Michael Gallacher, stated that anti-social behaviour would be met with 'very expensive [fines]… to remember their actions' (Methven, 2014, pg. 250). However, without judicial oversight, these far-reaching discretionary fines have arguably become a crucial mechanism of control for the neoliberal state (Story, 2019, pg. 15). Offensive language CINs enable the state to disguise their criminalisation of 'undesirable' groups as a form of 'protection' against 'threatening' people in public spaces (Story, 2019, pg. 15). However, this rhetoric is not supported by statistics which show that between 2002-2007 of the offensive language charges handed out, 70% of swearing was directed solely at police (Methven, 2018, pg. 60). The rollout of offensive language CINs in the early 21st century aligned with a dramatic rise in carceral space across Australia and consequently, the over extension of police authority.

CINs are a practice of carceral spaces which limit the participation of Indigenous peoples in the public sphere. The rise of highly punitive fines for minor offences, like swearing, are representative of the continuation of colonial control through more covert methods of policing. These new strategies of policing have become tools in the management of Indigenous people within public spaces (Story, 2019, pg. 15). The case of Melissa Jane Couchy represents how offensive language charges can be employed in public spaces to contain and manage Indigenous peoples' participation. Methven (2018) recounts the case:

> At approximately 4am on 21 September 2000, in inner-city Brisbane, an intoxicated, homeless, disoriented Indigenous woman, Melissa Jane Couchy ('Couchy'), was approached by a male police officer, Sergeant McGahey. McGahey asked Couchy if

> she wanted to go to 'the compound'—a nearby shelter. Couchy replied, 'Sarge, the Compound is for fucking dogs.' A nearby female police officer then asked Couchy to state her full name and address. Couchy replied, 'You fucking cunt'. Couchy was arrested for using insulting words in a public place, and on 7 December 2000 was sentenced in Brisbane Magistrates Court to three weeks imprisonment. The District Court of Queensland dismissed Couchy's appeal against conviction but reduced her sentence to seven days (pg. 9).

Methven (2019) argues that cases like this continue to occur with little public scrutiny (pg. 7). In NSW, laws governing 'offensive' language have existed since the mid nineteenth century and have subsequently been adopted by all states and territories (Methven, 2019, pg. 1). In all jurisdictions other than the Australian Capital Territory, New South Wales and Western Australia, a prison sentence can be imposed for the use of offensive language (ALRC, 2018, np). Depending on which state the offence is committed, penalties can include CINs ranging from $110 in Queensland to $500 in New South Wales, fines imposed by the courts can range from $660 in New South Wales to $6000 in Western Australia (ALRC, 2018, np). In the Northern Territory, Queensland and Victoria, an offensive language charge can lead to a six-month prison sentence and in both Tasmania and South Australia the maximum penalty is three months in prison (Methven, 2019, pg. 2-4). Additionally, all states and territories slightly differ in their description of 'offensive language' and the locality in which the offence is committed (Methven, 2019, 2-4). However, the main sentiment in all state laws, is the prohibition of 'offensive, obscene, objectionable, indecent, profane, threatening, abusive or insulting language, either in, near, or within the view or hearing of a person in a public place' (Methven, 2019, pg. 1). However, these terms have never been defined in legislation. Therefore, with no specific guidelines, police officers and judges are handed a significant amount of discretionary power to enforce offensive language laws (Methven, 2019, pg. 2). Methven (2019) argues that the most frequently used definition of 'offensive language' by both courts and police officers is 'that provided in the Supreme Court of Victoria case *Worcester v Smith*, where O'Bryan J defined offensive as, "such as is calculated to wound the feelings, arouse anger or resentment or disgust or outrage in the mind of a reasonable person"' (pg. 2). Additionally, police do not require a complaint from the public prior to laying charges (Walsh, 2005, pg. 126). The discretionary nature of offensive language charges and their impact on the Indigenous community were scrutinised by the 1991 Royal Commission into Aboriginal Deaths in Custody.

Recommendation 86a of the 1991 Royal Commission found that 'the use of offensive language in circumstances of intervention initiated by police should not normally be occasion for an arrest or charge (AustLII, 1991, np). Commissioner Wootten stated:

> It is surely time that police learnt to ignore mere abuse, let alone simple 'bad language'. In this day and age many words that were once considered bad language have become commonplace and are in general use amongst police no less than amongst other people. Maintaining the pretence that they are sensitive persons offended by such language … does nothing for respect for the police (Walsh, 2005, pg. 141).

In 2018, the Australian Law Reform Commission also published an inquiry into the incarceration rates of Indigenous peoples, in which they too highlighted the impact of these charges on the Indigenous population and recommended the repeal or narrowing of offensive language charges in Australia (ALRC, 2018, np). Yet despite these recommendations, offensive language laws continue to disproportionately impact Indigenous Australians.

The discriminatory criminalisation of offensive language is arguably driven by the pathologisation of Indigenous Australians. Since the rise of neoliberalism in the 1990s, the state has consistently portrayed the Indigenous community as 'threatening' and 'dysfunctional' (Moreton-Robinson, 2009, pg. 67). In turn, this has led to within the broader settler population a greater acceptance for heightened police budgets and greater police power to curb 'rising' crime rates and intervene in the lives of Indigenous peoples (Monterosso, 2015, pg. 15). The neoliberal state then began to develop more covert policing practices to control and manage public spaces (Hogg, 2001, pg. 370). This led to the dispersal of carceral power out of the prison (Story, 2019, pg. 4) and into Australia's parks, streets and onto public transport. As a result, police discretionary power increased (Story, 2019, pg. 4). Consequently, offensive language laws have become an important example of how the neoliberal state's discourse of 'Indigenous criminality' is materialised through criminal justice practices. The police force's power to discretionarily charge and apprehend people for swearing with no judicial oversight or clear legislation is as White (2002) argues, less about crime and more about the management of Indigenous people in public spaces (pg. 22). This is evidenced by charges laid against a young Indigenous man in inner Sydney near Central

Station (Williams, 2017, np). The young man noticed some police officers in the same vicinity as him and his friends and started rapping NWA's *'Fuk Tha Police'* (Williams, 2017, np). In response, one of the police officers tried to arrest him for offensive language, which culminated in a struggle and the police officer spraying him with capsicum spray (Williams, 2017, np). Both this case and Couchy's case allow us to see how the discretionary criminalisation of minor offences, like swearing, does little to 'protect' society. Instead, this practice works to manage Indigenous participation in public spaces. Thus, offensive language offences have become a weapon of the neoliberal state in the reproduction of settler colonialism.

The rise of increasingly discriminatory offensive language charges cannot be blamed on individual police officers. Instead, we must view police collectively as part of the broader state. As Foucault (1975-76) theorises, power always operates with a 'series of aims and objectives', however it is often not a result of an individual subject's choice (Stone, 2013, pg. 355). Thus, there are far more covert mechanisms of power at play within Australia's criminal justice system (Story, 2019, pg. 11). This has largely been driven by the rise of neoliberalism and the subsequent dispersal of carceral power into 'complex geographies' (Story, 2019, pg. 6). In turn, the power relations and practices which compose carceral space become disguised within the settler state's colonial project. Specifically, the discrete policing of the Indigenous community has become a modern from of colonial violence (Hogg, 2001, pg. 370). Thus, the officers that charge Indigenous people for swearing in trivial circumstances may argue they are upholding the law; however, the law is inherently discriminatory because it targets Indigenous people (Blagg et al, 2005, pg. 7). This form of institutionalised racism means that the dominant race, white settler people, are rarely charged for their use of offensive language (Methven, 2019, pg. 12). For example, an Indigenous man was arrested for saying to police 'don't tell me to get fucked' (Methven, 2019, pg. 12). Importantly, the resistance shown by the Indigenous man and the repercussions of it, to some extent highlight the precarity of the power relations at force (Stone, 2013, pg. 356). As Simpson (2011) argues, the political agency of Indigenous peoples becomes a threat to the neoliberal state's maintenance of power and legitimacy (pg. 210). Ultimately, the practice of over-policing offensive language is a way to resist this threat.

Discretionary offensive language offences have become a powerful tool of the neoliberal state in the reproduction of settler colonialism. The pathologisation of Indigenous people

drives this discriminatory policing and helps maintain power relations between settler Australians and Indigenous Australians. Specifically, these power relations pose a significant issue for policy makers tasked with reducing rates of Indigenous incarceration. Criminal justice reform primarily focuses on legislation, however when a system is built on colonial violence and designed to fail the Indigenous community, legislative changes do little to transform the systemic racism which is embedded within every level of the institution (Brooks et al, 2021, np). As Kilroy argues, 'there will never be justice in a… white legal system' (Brooks et al, 2021, np). Consequently, this is why Brooks et al (2021) propose that to deal with the 'tentacles' of carceral power and ongoing colonial violence, the system must be dismantled, and criminal justice funds redistributed (Brooks et al, 2021, np). In the case of homeless Indigenous woman Melissa Jane Couchy, the redistribution of police budgets into social and economic infrastructure may have led to her avoiding police contact. This reinvestment of funds would disrupt the state's sustained project of Indigenous criminalisation and ultimately reduce rates of incarceration for minor offences. However, until this happens, carceral practices which reproduce settler colonialism, will continue to disproportionately criminalise Indigenous Australians.

Chapter Four: Stop and Search Case Study

In 2019, the New South Wales government faced widespread condemnation following the release of alarming stop and search figures. The figures highlighted a clear racial disparity in searches conducted in previous decade. At the time, NSW Police Minister David Elliott announced to the public:

> I've got young children and if they were at risk of doing something wrong, I'd want them strip-searched (McGowen, 2019, np).

Elliott's personalisation of the political situation was heavily scrutinised for being both insensitive and ignorant. Moreover, statistics tell us that Elliott's white settler children have a far smaller risk of being stopped and searched by police officers in NSW compared to Indigenous youth (Smart, 2020, np). Despite accounting for just 5.6% of all children in NSW (Blanco, 2018, np), Indigenous youth comprised 21% of all stop and searches conducted on children in 2019-20 (Smart, 2020, np) and more alarmingly, accounted for 78% of all youth subjected to full body strip searches in 2018 (Hickey, 2020, np). Human Rights lawyer George Newhouse, has argued that the discretion accorded to police to stop and search people in public places, has resulted in what he describes as 'prejudiced policing…', arguing that 'what we've done is we've given the police extreme powers, and they don't exercise those powers fairly. They exercise their discretion against Aboriginal people…' (Wellington, 2020, np). In 2017, NSW Greens Minister David Shoebridge obtained evidence relating to the NSW Police Force's secret 'blacklist' (Pandolfini, 2-17, pg.1). This 'blacklist' has enabled greater surveillance measures and increased searches of those deemed at risk of offending or those identified as possible 'future' criminals (Pandolfini, 2017, pg. 1). The operation of the Suspect Target Management Plan (STMP) has been condemned for its lack of transparency due to the Force's repeated refusal to publish the criteria and legislation regarding the plan (Blanco, 2018, np). Officers add unknowing suspects to the blacklist with little oversight which has led to a lack of police accountability (Blanco, 2018, np). Arguably, the operation of programs like the STMP, are reproducing the racism of the colonial period through more covert means. This is evidenced by the fact Indigenous youth account for 51.5% of children between the ages of 9 and 18 on the blacklist, which makes them 18.9 times more likely to be on it than a non-Indigenous child (Blanco, 2018, np). As Shoebridge argues:

> Our research found that the STMP entrenches systemic forms of institutionalised racism that mean that Aboriginal communities are over policed rather than partners in real solutions to address the causes of offending (Blanco, 2018, np).

A major element of the STMP is its unlawful abuse of power which enables police to directly target, stop, search and interrogate young Indigenous people with no reasonable basis, other than the fact they have been added to the system (Blanco, 2018, np). The NSW Police Force argue that this sort of policing is used to 'divert individuals away from criminal behaviour', however I argue all it does is create carceral spaces. In turn, Indigenous youth experience greater levels of police harassment, charges for minor offences and harsher punishments (Blanco, 2018, np). When asked about increasing rates of strip searches on young children, NSW Police Commissioner Mick Fuller stated that 'they [children] need to have respect and a little bit of fear for law enforcement' (SBS, 2019, np). The STMP represents a new covert strategy employed by NSW Police to racially profile and illegally search Indigenous peoples without reasonable suspicion, which has led to the increased criminalisation and social control of the Indigenous community across urban spaces (Story, 2019, pg. 15). In this chapter, I will draw on both Newhouse and Shoebridge, who assert that contemporary policing is systematically racist, to argue that the discretionary and discriminatory practice of stop and searches is employed by the neoliberal state to render Indigenous lives 'disposable' (Story, 2019, pg. 11). As a result, Indigenous peoples' capacity to engage in public spaces as political subjects is significantly disrupted, thus leading to their containment.

Under freedom of information laws, Redfern Legal Centre obtained data which highlights an alarming rise in Indigenous stop and searches (Hickey, 2020, np). Between 2018-19 and 2019-20 the proportion of searches conducted on Indigenous peoples of all ages rose from 9% to 13% (Hickey, 2020, np). Specifically, in the inner Sydney suburb of Surry Hills, Indigenous people made up 14% of all strip searches and in the Western Sydney suburb of Liverpool Indigenous people accounted for 10% of all strip searches (Hickey, 2020, np). However, as Redfern Legal Centre solicitor Samantha Lee pointed out, there is sufficient evidence to suggest that these numbers could be far higher due to police not recording searches (RLC, 2020, np). Additionally, across broader NSW in the year 2018-19, police were expected to conduct 242,000 searches (Hickey, 2020, np). In this same period, Indigenous people were searched 17,535 times with nothing found in 88% of these searches

(Hickey, 2020, np). Furthermore, Indigenous youth are searched at an even greater rate compared to their adult counterparts, accounting for 21% of all youth stopped and searched in 2019-20, up from 13% the previous year (Smart, 2020, np). Moreover, there has been a twentyfold increase in strip searches [6] over the past 12 years (ALS, 2019, np). Aboriginal Legal Services Chief Executive Karly Warner describes the practice of strip searches as 'deeply intrusive, disempowering and humiliating… even more so for vulnerable Aboriginal people who have too often been the target of discrimination and over-policing' (ALS, 2019, np). These statistics, in conjunction with Warner's comments, highlight that Indigenous people are not only disproportionately targeted for stop and searches but are also disproportionately impacted by this intrusive practice. The following example of a stop and search conducted in the inner Sydney suburb of Glebe, shows how the everyday practice of stop and searches can categorise Indigenous people as 'criminogenic' prior to an offence being committed and therefore, 'disposable' (Story, 2019, pg. 11). Grewcock et al (2019) recounts the case:

> … video footage (taken by a passer-by) was released on social media showing an Indigenous man being strip searched by two plain clothes police officers in broad daylight outside a popular bookshop on Glebe Point Road in Sydney's Inner West. The man was forced to strip down to his underpants, handcuffed and then forcibly pushed up against the wall of the shop. The male officer then ran his fingers around the inside of the man's underwear while the female officer watched. The man was then instructed to sit down. When he refused, he had his legs dragged out from underneath him and he banged his head as he was forced to the ground. He was then questioned about the box of syringes found in the gutter nearby. The man told police he was returning them to a clinic… The police informed the man he was not under arrest but continued to detain him unlawfully for about 15 minutes because the two officers did not have a key for the cuffs and were waiting on a third officer… the male officer, without specifying reasons, told the man he was going to be moved on' (pg. 33).

[6] A 'strip search' allows the officer to ask the person to remove all of their clothes and according to legislation, the officer has the power to ask the person to lift their testicles, part buttock cheeks, lift breasts, open their mouth, shake their hair and squat (NSW Police, 2019, pg. 6)

The Indigenous man followed the move on order[7]. Throughout the search he was recorded saying 'this is the way you've treated black fellas for hundreds of years… this is genocide mate' (Grewcock et al, 2019, pg. 33). The evidence provided by Grewcock et al (2019) suggests that these situations are not uncommon (pg. 48).

In NSW, under the Law Enforcement (Powers and Responsibilities) Act 2002 (LEPRA), stop and searches can be conducted without a warrant or judicial oversight (NSW Government, 2002, np). If a police officer holds a 'reasonable suspicion' that a person has in their possession stolen goods, incriminating evidence, a dangerous weapon or illegal drugs, they have the power to stop, search and detain the person (NSW Government, 2002, np). By law there are two types of searches police can conduct, the first is a 'person search' which enables the officer to examine the person by patting down their clothing, examining the outer edges of clothing and can include the removal of shoes, socks and hats (NSW Police, 2019, pg. 4). A 'personal search' does not permit the removal of all clothing, officers must not inspect the persons genital area or breasts, and these can be conducted in public spaces (NSW Police, 2019, pg. 4). However, a 'strip search' allows the officer to ask the person to remove all of their clothes and according to legislation, the officer has the power to ask the person to lift their testicles, part buttock cheeks, lift breasts, open their mouth, shake their hair and squat (NSW Police, 2019, pg. 6). In order to justify the use of a strip search the officer must 'suspect of reasonable grounds that the strip search is necessary for the purposes of the search and that the seriousness and urgency of the circumstances make the strip search necessary' (NSW Government, 2002, np). Furthermore, these searches can be conducted on children between the ages of 10 and 18 in the presence of a parent or guardian, however if a parent is not available then the police can get another person who is not an officer to represent the child being searched or they can override the requirement altogether if they believe the search is urgent (NSW Police, 2019, pg. 9). Importantly, all strip searches must be conducted in a private area and out of the view of someone of the opposite sex (NSW Police, 2019, pg. 9). The LEPRA Act is a lengthy document with hundreds of clauses, however the most concerning aspect of this legislation is its authorisation of significant police discretionary power. As highlighted in Chapter Three, this is of concern because Australian police are

[7] Section 197(1) of the LEPRA Act states 'that a police officer may give a direction to a person in a public place if he or she believes on reasonable grounds that the person's behaviour or presence in the place'… constitutes harassment or intimidation, is likely to cause fear to another person, is intoxicated or is purchasing or selling drugs (Nedim, 2020, np).

officers of a colonial state which desires the ‘disappearance’ (Simpson, 2011, pg. 205) of Indigenous peoples as political subjects.

Following reports of police misconduct and racial profiling, the media have scrutinised the power accorded to police in stop and searches and the lack of legislative clarity about ‘reasonable suspicion’. ‘Reasonable suspicion’ is not defined in the LEPRA legislation, rather it has been defined in case law. Thus, this term has been defined by past decisions relating to similar cases in the courts and reads as followed:

> a. A reasonable suspicion involves less than a reasonable belief but more than a possibility. A reason to suspect that a fact exists is more than a reason to look into the possibility that a fact exists…
>
> b. Some factual basis for the suspicion must be shown. A suspicion may be based on hearsay material or materials which may be inadmissible in evidence, but the materials must have some probative value (NSW Police, 2019, pg. 2).

In conjunction with this lack of clarity regarding ‘reasonable suspicion’, the words ‘seriousness’ and ‘urgency’ in the strip search legislation are also unclear. Both words are not defined in the LEPRA legislation, nor are they explained in any depth (RLC, 2019, np). Whilst it would be unreasonable of me to argue that some searches do not require further action and discretionary power, the evidence suggests that the lack of legislative clarity means that this discretion can become a weapon used to racially profile, intimidate and contain Indigenous peoples in the public sphere. These concerns have been highlighted by the Law Enforcement Conduct Committee, who in 2020 conducted an inquiry into police misconduct and unlawful strip searches in which they too highlighted the lack of legislative clarity (LECC, 2020, np). The inquiry’s recommendations focused heavily on laws concerning strip searches, for example prohibiting the touching of the person’s breasts, genitals or buttocks during a search, however they also called for regular reviews of the number of Indigenous people searched by police (LECC, 2020, np). Despite the findings of this inquiry, Vickie Sentas, the co-author of a separate inquiry published by the University of NSW stated, ‘none of the changes to police policy and training on strip searches have made a difference for how First Nations people are being policed and it’s only getting worse’

(McGowen, 2020, np). As the statistics show and Sentas argues, the over-policing of Indigenous Australians in NSW is worsening.

Over-policing in the form of stop and searches, is an example of how carceral spaces contribute to the construction of Indigenous lives as 'disposable' in order to legitimise ongoing colonial violence (Story, 2019, pg. 11. As discussed in Chapter Two, by consigning the Indigenous community a 'criminal' status, the state's sustained portrayal of Indigenous 'dysfunction' and 'danger' becomes materialised (Moreton-Robinson, 2009, pg. 68). Consequently, this produces a category of 'disposability' (Story, 2019, pg. 11) within Australian society. Indigenous disadvantage and intergenerational trauma then become masked by this discourse of 'disposability' which portrays them as deserving of police intervention (Story, 2019, pg. 11). It is therefore through stop and searches, that I argue, the neoliberal state makes Indigenous people 'disposable' (Story, 2019, pg. 11). To do this, discretionary power is accorded to police to target and manage the Indigenous population. Ultimately, stop and searches disempower Indigenous Australians in public spaces. For example, the NSW Police Force's Suspect Target Management Plan criminalises Indigenous youth prior to them ever committing an offence (Pandolfini, 2017, pg. 1). This covert blacklist enables the unlawful abuse of police power to target, stop, search and interrogate young Indigenous children with no reasonable basis (Pandolfini, 2017, pg. 1). In the case of the young Indigenous 15-year-old, who had minor graffiti offences and was searched 23 times over 10 months (Amato et al, 2017, pg. 7), the NSW Police Commissioner Mick Fuller commented that 'if your house had not been graffitied as a by-product of that, is it a good result?' (Amato et la, 2017, pg. 7). However, as Greens Minister Shoebridge points out, due to the secrecy of the blacklist this young boy could not work out why he was being constantly targeted by NSW Police (Amato et al, 2017, pg. 10). In one instance, police recorded that they searched him because he was wearing 'Nautica' clothing which police associated with crime (Amato et al, 2017, pg. 10). As Shoebridge argues, Indigenous people do not account for 50% of New South Wales' crime, therefore should not account for over 50% of those listed on the STMP (Amato et al, 2017, pg. 8). A program like the STMP which enables the covert over-policing of the Indigenous community through stop and searches, is an example of how Indigenous 'disposability' is reproduced by the neoliberal state.

Stop and searches have arguably become a tool designed to 'disappear' Indigenous people as political subjects in the public sphere (Simpson, 2011, pg. 205). Specifically, the Indigenous

populations power to act and participate independently in settler society has been impacted by the practice of stop and searches (ALC, 2019, np). Stop and searches work to disrupt and manage Indigenous movement across contested public spaces. This is supported by Former Western Australian police officer Jim Taylor who describes how strip searches are being used by the Western Australian Police Force to strip young Indigenous children and adults of their rights to participate freely in public spaces (Murphy-Oates, 2021, np). In Western Australia, approximately three quarters of youth in detention are Indigenous, which Taylor argues is a direct result of a racist culture within the force (Murphy-Oates, 2021, np). Taylor reports being ordered to strip search a ten-year-old Indigenous boy who had been picked up off the streets for no reason, saying that this was routinely done to just "get them off the streets" (Murphy-Oates, 2021, np). Additionally, Taylor claims that police deliberately provoked Indigenous people with racist language to "arc them up" and legitimise their use of strip searches and arrests (Murphy-Oates, 2021, np). Taylor also explained that in order to inflate arrest numbers, homeless Indigenous people were routinely targeted, which led to greater rates of criminalisation (Murphy-Oates, 2021, np). Whilst this sort of policing works to literally remove Indigenous people, through move on orders and arrests, it primarily disempowers the Indigenous population and disrupts their power to participate freely, without police harassment, in the public sphere.

Discretionary stop and searches have become a powerful asset of the neoliberal state in the reproduction of settler colonialism. The discriminatory practice is used by the state to both construct Indigenous people as 'disposable' (Story, 2019, pg. 11) and disrupt their capacity to act as free political subjects. Consequently, the Indigenous population's agency to participate freely in public spaces has been greatly impacted (Murphy-Oates, 2021, np). Notably, practices like stop and searches therefore work to disguise Indigenous disadvantage as a product of 'individual bad behaviour' (Moreton-Robinson, 2009, pg. 68). In turn, relieving settler society from critically engaging with the contemporary operation of colonialism. As abolitionist Angela Davis (2003) emphasises, the dispersal of power out of the prison and into urban spaces has 'relieved us of the responsibilities of seriously engaging with the problems of our society, especially those produced by racism…' (pg. 16). This is evidenced by the NSW Police Force's STMP and Jim Taylor's accusations against the Western Australian Police Force. Both examples allow us to see how colonial violence is being masked by the discourse of the 'disposable' Indigenous 'criminal' who is in need of state intervention. Discriminatory carceral practices will continue to disproportionately impact

Indigenous people for as long as the current system remains (Brooks et al, 2021, np). Carceral space theory has shown us how stop and searches have become a crucial weapon of the state in the criminalisation and incarceration of Indigenous Australians.

Conclusion: Dismantling the system

In June 2020, Black Lives Matter protests were held across Australia's capital cities. Thousands of Indigenous and non-Indigenous Australians took to the streets protesting against the injustices of black deaths in custody. At the time, I read an article published in the Washington Post by Darambul journalist Amy McQuire. It was titled 'Australia is outraged over George Floyd. But what about black lives on our shores?' McQuire's words stumped me. She wrote:

> These horrifying stories are reminders that, for all that Australians outsource their outrage on injustices overseas, for decades there has been a national silence when it comes to black lives on our own shores (McQuire, 2020, np).

To date, there have been over 474 Indigenous deaths in custody since 1991 (Allam et al, 2021, np), yet for nearly every one of these deaths, there has been no national outrage. As McQuire (2020) asserts, the voices of Indigenous Australians have been ignored by settler society for too long (np). She argues that there is a 'national forgetting' of Australia's violent history and the continuation of colonialism (np). McQuire's (2020) call for settler Australians to wake up to the racial injustices and violence perpetrated against Indigenous Australians drove me to undertake this thesis. Her words inspired me to listen and learn from both Indigenous and non-Indigenous scholars and activists about the ongoing perpetration of violent and discriminatory policing in contemporary Australia.

Since the 1991 Royal Commission into Aboriginal Deaths in Custody, rates of Indigenous imprisonment have more than doubled from 14% to 29% (Archibald-Binge, 2021, np). Indigenous Australians are imprisoned at 13 times the rate of their non-Indigenous counterparts (Gibson, 2021). These statistics are representative of the continuation of settler colonialism in neoliberal Australia. The state's transition from the overtly violent frontier days to the covert over-policing and surveillance of Indigenous Australians in public spaces is indicative of how deeply entrenched colonial violence and racism are with the contemporary criminal justice system (Gibson, 2021). Through employing everyday policing practices, like discretionary policing, over-policing and surveillance, the neoliberal state covertly reproduces settler colonialism in Australia. Ultimately, this reproduction is achieved

through the state's engagement with Indigenous Australians as 'criminals' rather than complex political agents, subject to ongoing colonialism. As a result, Indigenous Australians continue to be pathologised, criminalised and incarcerated. In turn, the state aims to not only 'disappear' Indigenous agency through carceral practices, but also 'disappear' colonialism (Simpson, 2011, pg. 205). The inclusion of both case studies – offensive language offences and the practice of stop and searches – enables me to demonstrate how 'micro' everyday policing practices can become covert tools in the reproduction of the systematic operation of colonial power. Ultimately, this thesis has highlighted that whilst the current criminal justice system remains, discriminatory policing will continue to occur and as a result, Indigenous criminalisation and incarceration will increase. Australia's criminal justice system is built on colonial violence and dispossession, therefore despite efforts to reform policy, the structure will continue to be driven by colonialism (Brooks et al, 2021, np). Thus, not only does carceral space theory demonstrate how Indigenous people end up incarcerated, but it also highlights the importance of looking beyond the current criminal justice structure and toward the growing abolition movement for change.

To combat rising rates of criminalisation and incarceration, Indigenous abolitionists are calling for the abolishment of Australia's criminal justice system (Brooks et al, 2021, np). A I have established, abolitionists do not call for reform, rather they are committed to dismantling the criminal justice institution (Brooks et al, 2021, np). They call for structural change because Australia's criminal justice system is built on colonial violence and continues to perpetrate this violence through the over-policing and imprisonment of Indigenous people and other marginalised groups (Brooks et al, 2021, np). Their appeal is supported by evidence which confirms prisons do not 'successfully' function as a form of state sanctioned 'rehabilitation' (Gibson, 2021). For example, 60-80% of Indigenous offenders return to prison within a 12-month period (Gibson, 2021). Importantly, these statistics are not representative of a failing system, rather as Don Weatherburn argues, they are the product of a criminal justice system which is designed to push Indigenous people into prisons (Gibson, 2021). Furthermore, as Debbie Kilroy emphasises, police and prisons will continue to be the 'core violent beings of the state' for as long as the current criminal justice system remains (Gibson, 2021). The NSW Police Force's Suspect Target Management Plan and the racist police culture described by former Western Australian police officer Jim Taylor, are examples of how policing continues to be driven by the racist colonial project. Both examples allow us to see how the neoliberal state engages with Indigenous people as 'potential

criminals' rather than autonomous, complex political subjects who are subject to ongoing colonialism.

Australia's social support systems continue to be defunded, whilst billions of dollars are allocated to the nation's criminal justice systems (Gibson, 2021). In NSW alone, the state government allocated the NSW Police Force a record $4.8 billion in the 2019/20 budget (NSW Liberals, 2020, np). During this same period, the incarceration of Indigenous Australians cost the nation $9.7 billion, at current growth rates the costs are projected to reach $19.8 billion annually by 2040 (Gibson, 2021). Additionally, in 2016, the NSW Government invested $330 million to reduce recidivism rates by 5% (Keen, 2019, np). Yet since 2016 the number of people returning to prison has risen 1% annually (Keen, 2019, np). Notably, less than half of the 65,000 prisoners released from Australian prisons each year have access to social housing or rental assistance (Herman, 2021, np). The Australian Housing and Urban Research Institute found that of those ex-offenders given public housing, rates of police incidents dropped 8.9% per year (Herman, 2019, np). Thus, there is a clear connection between access to social housing and recidivism. Unfortunately, those that miss out reoffend just to survive (Keen, 2019, np). For example, one man in Grafton, NSW, left prison with $275 and two nights in a motel (Keen, 2019, np). The Department of Family and Community Services told him he needed to prove he was going to real estate agents for rentals if he was to receive their help (Keen, 2019, np). However, having been in unstable accommodation for three decades, in and out of prison, with no job and no references, he knew rental properties would not accept him (Keen, 2019, np). He admitted prison became a better option, 'I used to get in trouble just to go to jail for winter; a meal' (Keen, 2019, np). Lead researcher Chris Martin describes this as a 'vicious cycle – [a] lot of people enter prison from homelessness and they exit prison into homelessness again' (Hermant, 2021, np). As abolitionist Tabitha Lean points out, 'you're recriminalised because you're homeless' (Brooks et al, 2021, np). The policies and practices implemented by state and federal governments to reduce Indigenous incarceration rates will continue to fail under the current criminal justice structure.

To dismantle the current system, abolitionists agree that the billions of dollars spent annually on policing and incarcerating people must be redistributed into social and economic infrastructure (Brooks et al, 2021, np). Fundamentally, the redistribution of these funds into community-based programs would support the education, housing, employment and health of

Indigenous Australians and thus prevent people from offending and reoffending (Brooks et al, 2021, np). Bourke, a small town in far western NSW, is evidence of just how effective community-based justice reinvestment can be in reducing crime and incarceration (Allam, 2018, np). Developed in 2013, the one-of-a-kind Maranguka justice reinvestment program is run by the Indigenous community with the support of government, police and philanthropic backers (Allam, 2018, np). The program is premised upon the redirection of funds from policing and punishment towards crime prevention programs (Allam, 2018, np). Between 2015-2017, rates of driving offences dropped by 35%, drug offences reduced 39% and assaults dropped 34% (Just Reinvest NSW, 2018, np). During this period, a driver licensing program reduced the number of young people under 25 being charged by police by 72% (Just Reinvest NSW, 2018, np). According to KPMG, the reinvestment of funds into community-based solutions led to a criminal justice saving of $3 million in 2017 (Allam, 2018, np). Chair of Just Reinvest NSW, Sarah Hopkins, acknowledges that there 'is no silver bullet here. The challenge is complex and ongoing' (Allam, 2018, np). However, as Alistair Ferguson, Executive Director of Maranguka, discusses:

> The emerging evidence is confirming what we in the community already know – that justice reinvestment initiatives build local capacity and empower our community to develop local solutions to our local issues (Just Reinvest NSW, 2018, np).

The Maranguka initiative highlights the importance of looking beyond the prison and criminal justice system and instead toward imagining a future free of incarceration, both inside and outside the prison. As abolitionist Tabitha Lean advocates, there is much to be done:

> So, we're doers. We're doing two-pronged work: tearing down and dismantling systems while building up systems. I like this idea of tearing down systems that fuck the life out of us but building up systems that breathe the life back into us. And I think it's a journey. I don't think abolition is a destination that we'll arrive at; I think its constantly being made' (Brooks et al, 2021, np).

The purpose of this thesis was to shift the broader debate away from incarceration and toward how everyday policing practices, which occur right in front of us in public spaces, are reproducing settler colonialism in Australia. The discriminatory and discretionary

criminalisation of offensive language and the practice of stop and searches, both everyday policing practices, have shown how ‘micro’ practices can reproduce the systematic operation of colonial power. Foundational to this study, is also the reimagining of the criminal justice system, whereby vulnerable communities can be supported through education, housing, employment and health, rather than be over-policed and imprisoned. Brett Story’s (2019) carceral space theory has not only allowed me to show how and why Indigenous people are disproportionately imprisoned, but it is through this theory I can now see the vital importance of the abolition movement. As rates of Indigenous criminalisation and incarceration increase, it is time for government, policy makers and broader Australia to listen to the Indigenous community and seriously consider alternatives to a criminal justice system designed to dispossess and contain Indigenous Australians.

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