Black Lives Matter: The Violence of Indigenous Incarceration in Australia

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Acknowledgements

Firstly, I acknowledge the Australian Aboriginal and Torres Strait Islander peoples as the Traditional Owners of the lands and waters where I live, study and work. I pay my respects to ancestors and Elders, past, present, and future. I am committed to honouring Australian Aboriginal and Torres Strait Islander peoples' unique cultural and spiritual relationships to the land, waters and seas and their rich contribution to our society. Gulu bulmba bama-n Djabuganydji Yirrganydji-djada[1].

To the Indigenous Australian men and women who participated in this research project with me, I would like to say a huge thank you for sharing your experiences with me. I am honoured that you consented to share with me your lived experiences of not only the criminal justice system but of traumatic experiences in other areas of your lives.

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[1] Translation of Yirrganydji: This country [that my university is situated on] belongs to the Traditional Owners, Djabuguy and Yirriganydji.

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Dedication

This thesis is dedicated to the Indigenous Australian men and women who have lost their lives in the criminal justice system, to the Indigenous men and women who continue to be targeted by the criminal justice system today and, finally, to the Indigenous men and women who tirelessly fight for justice for their brothers and sisters being unjustly treated by the criminal justice system. Never give up and never back down.

Abstract

'*Injustice anywhere is a threat to justice everywhere*'

Martin Luther King Jr.

Since the Royal Commission into Aboriginal Deaths in Custody (RCIADIC), over thirty years ago, there have been over 400 Indigenous deaths in custody, with 30% of the Australian prison population identifying as Indigenous. Indigenous over-representation in the criminal justice system continues to be an unresolved issue despite varying attempts to mitigate it. This thesis presents the outcomes of a research project that applied a fresh approach to analysing the violence of Indigenous incarceration using the theory of necropolitics and related concepts. This thesis unveils the forms of, and extent of, violence experienced by Indigenous Australians and the extent to which unequal relations of power between Indigenous Australians and the criminal justice system contribute to this violence.

This thesis makes an important contribution to research and theory by bridging a gap in Indigenous incarceration research; expanding the current understanding of the experiences of violence by Indigenous Australians in the criminal justice system; using the 'criminological imagination' by elevating the voices of Indigenous Australians; and finally, by expanding the theory of necropolitics through the concept of deific authority. Using a mixed method approach, this study used primary (semi-structured interviews with Indigenous Australian former offenders) and secondary (coroner's reports and official statistics) data to conduct thematic and theoretical analysis.

The results of the thematical analysis revealed themes revolving around the early lives of the participants, such as family life, family violence, childhood trauma, educational attainment, and family involvement in the criminal justice system. Further, the thematic analysis unveiled themes around the police (necro-enforcers[2]), courts (soul-destroyers), prisons (death-producers), and community corrections (disintegrators). In respect to the necro-enforcers these included fear and distrust, a dichotomy of policing, juvenile delinquency, and experiences of violence. For the soul-destroyers it was the pressure to plead guilty, racism in sentencing, and a sense of despondency towards the courts. Regarding the death-producers the themes included disconnection from culture, the psychological effects of prison, and power and violence. Finally, the themes emerging from the disintegrators were lack of reintegration support, lack of use of discretion, and difficulties meeting compliance-based parole.

[2] That were given necropolitical identifiers shown here in brackets, which will be explored in further detail in Chapter Five.

The outcomes of the thematical analysis suggest that Indigenous Australians are being 'necropolitically targeted', 'zombified' and transmogrified into *homo sacer* by the criminal justice system. Furthermore, the research has unveiled how the unequal relations of power between Indigenous Australians and the criminal justice system leads to a sense of *Deific Authority*, and because of this, how criminal justice employees[3] can become more prone to inflicting symbolic, systemic, and subjective violence on Indigenous Australians.

This research has elevated, and listened to, the voices, lived experiences, and perceptions of Indigenous Australians in respect to the criminal justice system. In doing so, this research has identified some key recommendations that can assist policymakers, as well as criminal justice staff to achieve a shift from punitive to rehabilitative within the criminal justice system that focus on four core areas, namely: intervention, rehabilitation, reintegration of former prisoners, and adoption of some key findings from deaths in custody to address the forms of violence highlighted in this study.

[3] For the purpose of this thesis, criminal justice employees include police officers, prison officers, medical staff in prisons, community corrections officers, lawyers, and judges.

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1. The Power of Truth-Telling: An Introduction

"It was not black people who should be examined, but white society; it was not a case of educating blacks and whites for integration, but of fighting institutional racism; it was not race relations that was the field for study but racism"

(Bourne, 1980, p. 339)

Since the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) almost thirty years ago, there have been over 400 Indigenous deaths in custody and 30% of the Australian prison population identifies as Indigenous (Australian Bureau of Statistics, 2021d). This chapter contextualises this research within the growing crisis of Indigenous incarceration by firstly, imparting the case of John Pat, whose death in custody featured in the RCIADIC. It then provides the historical context of the crisis, before specifying the issue of Indigenous criminalisation in contemporary Australia; the research purpose, questions, and aim; the significance and scope of the research; the positionality of the researcher, communication of the findings and recommendations; and finally, providing an outline of the remaining chapters of the thesis.

John Pat: A Case Study

Let me begin by taking you back thirty-six years, to the rural town of Roebourne in Western Australia. On the night of 23rd September 1983, sixteen-year-old John Pat, a local Aboriginal youth, was enjoying a night out with friends at The Victoria Hotel – described as the "centre of the town's cultural life" (Grabosky, 1989, p. 79). The Victoria's two bars were segregated by race, "the saloon for whites, the 'armpit' for blacks" (Grabosky, 1989, p. 79). While Pat was in the 'armpit', four off-duty police officers had called into the saloon for a drink after having "six or seven glasses of beer at the Karratha Golf Club" (Grabosky, 1989, p. 80). The Victoria was well known for not being the type of place "to go for a quiet drink" (Grabosky, 1989, p. 79) and as the night wore on this became all too evident. As he was making a purchase at the hotel's bottle shop, local Aboriginal man Ashley James was threatened by one of the police officers (Grabosky, 1989).

As James left the hotel he was attacked by the police officer, and when James retaliated he was subsequently attacked by the other police officers (Grabosky, 1989). A fight then broke out between the police officers and the other Aboriginal men who had also been drinking in the Victoria, including John Pat (Grabosky, 1989). A witness saw Pat being struck in the face by an officer and he fell backwards where his head connected hard with the roadway (Grabosky, 1989). Furthermore, while on the ground Pat was subjected to a vicious kick to the head before being "dragged to a waiting police van, kicked in the face, and thrown in 'like a dead kangaroo'" (Grabosky, 1989, p. 80). Once at the police station Pat and his friends were subjected to a systematic beating where they were punched to the ground and kicked before being picked up and dropped back on the path (Grabosky, 1989).

One witness heard an officer shouting "come on, fight, you bastard" and said she "thought the police had gone mad" (Grabosky, 1989, p. 82). Despite his injuries, Pat was taken to the police lockup rather than to a hospital (Grabosky, 1989).

Less than an hour after being placed in the lockup, Pat was dead (Grabosky, 1989). The coroner's report stated that he died from "a fractured skull, haemorrhage and swelling, as well as bruising and tearing, of the brain" (Grabosky, 1989, p. 82). In addition, the coroner said that Pat had sustained numerous "massive blows to the head" (Grabosky, 1989, p. 82) and sustained the following injuries:

> One bruise at the back of his head was the size of the palm of one's hand; another, above his right ear, was perhaps half that size. Five other bruises were visible on the right side of the head. In addition to the head injuries, he had two broken ribs and a torn aorta, the major blood vessel leading from the heart. (Grabosky, 1989, p. 82).

Pat also had a blood alcohol level of .222, which suggests that not only would he have been almost incapable of walking, but he would also have been incoherent in his speech (Grabosky, 1989).

According to evidence collected by the investigation team, all evidence pointed to Pat having been assaulted by the police and no one else (Grabosky, 1989). Therefore, on 6th February 1984, four police officers and one police aide were committed to stand trial for manslaughter (Grabosky, 1989). The police union supported the officers who were presumed, by them, to be innocent and ensured the officers were provided full pay while they were suspended to ensure their families did not "suffer undue hardship" (Grabosky, 1989, p. 86). Eventually, with a jury of all-white men and women, all the officers were found not guilty of the death of John Pat (Grabosky, 1989). John Pat's death was thirty-six years ago, but elements of his case still echo in Indigenous deaths in custody today.

Indigenous Incarceration: A Historical Context

The circumstances in which Indigenous Australian people find themselves in today is a direct result of settler-colonialism and white patriarchal sovereignty (Moreton-Robinson, 2009, 2015; Wolfe, 2006). Settler-colonialism is different from other forms of colonialism because it does not wish to "extract surplus value from [I]ndigenous labour" (Wolfe, 1999, p. 1), as in the African plantations. Settler-colonialism is based on "displacing indigenes from (or re-placing them on) the land" (Wolfe, 1999, p. 1). Indigenous Australian people found themselves surplus to requirements because the intent of the settler-colonials was to replace them and work the land, therefore, settlement of Australia involved the attempted elimination of Indigenous Australian people (Wolfe, 1999).

This aligns with Achille Mbembe (2003) who suggests that "the ultimate expression of sovereignty" (p. 11) comes from "the power and the capacity to dictate who may live and who must

die" (p. 11). Furthermore, he suggests that "to kill or to allow to live constitute the limits of sovereignty, its fundamental attributes. To exercise sovereignty is to exercise control over mortality and to define life as the deployment and manifestation of power" (pp. 11-12). In exercising this sovereignty through a "concatenation of multiple powers: disciplinary, biopolitical, and necropolitical" (Mbembe, 2003, p. 29) the settler-colonial governance gained total dominance over the invaded territory. What follows this invasion is a '*state of siege'*, which is a state that "allows a modality of killing that does not distinguish between the external and internal enemy" (Mbembe, 2003, p. 30) and results in whole populations becoming a target (Mbembe, 2003).

From the very beginning of settler-colonial control, Australia was in a state of siege with the Indigenous Australian people becoming the enemy within, as demonstrated by the open warfare in the early contact period (Bottoms & Evans, 2013; Cunneen & Tauri, 2017; Elder, 2003; Reynolds, 2001, 2006, 2012, 2013). The number of massacres of Aboriginal people on the Australian mainland is well documented (Bottoms & Evans, 2013; Cunneen, 2007; Cunneen & Tauri, 2017; Elder, 2003; Reynolds, 2001, 2006, 2012, 2013). The last recorded massacre occurred in 1928 in Coniston, Northern Territory where up to 70 Warlpiri people were murdered by a posse of police officers (Cunneen, 2007; Elder, 2003). Those accused of the Coniston killings were cleared of any wrongdoing and the Aboriginal people who survived the massacre were refused any legal representation (Cunneen, 2007). Therefore, it appears that in the nineteenth and twentieth centuries the law would be suspended when it came to the use of arbitrary power and equity before the law (relating to Aboriginal people) (Cunneen, 2007).

During this state of siege, it became apparent that the Indigenous Australian people were not going to be as easy to eliminate as the settler-colonials had initially believed because, as Dunbar-Ortiz states, "[p]eople do not hand over their land, resources, children and futures without a fight" (as cited in Cunneen, 2007, p. 46). Thus, the settler-colonials switched strategies and began institutionalising the violence against the 'internal enemy' by "impos[ing] a colonial system of criminal justice" (Dunbar-Ortiz, as cited in Cunneen, 2007, p. 46). This switch now criminalised Indigenous Australian people by turning them into the 'dangerous classes', so that they could now be subjected to "control, surveillance, and repression" (Sclofsky, 2016, p. 13) by the police – the instruments of state social control.

In the eighteenth and early nineteenth centuries, crimes perceived to have been undertaken by Indigenous Australian people, such as trespassing or killing cattle, were met with harsh penalties (Anthony, 2013). Furthermore, it is posited that this criminalisation was actually a scapegoat that enabled the introduction of policies and legislation, which in turn facilitated further control over the lives of Indigenous Australian people (Anthony, 2013).

Into the late nineteenth and early twentieth centuries, strategies to control the 'enemy within' in the ongoing state of siege turned towards 'protection' and assimilation policies and practices, which included laws that controlled the daily lives of Indigenous Australian people with criminal penalties associated for breaching them (Anthony, 2013; Cunneen, 2007). The basis of these policies and practices was a socially constructed ideology that Indigenous Australian people were "inferior, lesser human beings" (Cunneen, 2007) because they were viewed as being a primitive and uncivilised society (Tedmanson, 2008).

During the late twentieth and early twenty-first centuries there were ongoing attempts to 'civilise' Indigenous Australian people as part of the assimilation policies, and where resistance to these attempts arose, harsh penalties were delivered (Anthony, 2013). Therefore, the continuing criminalisation and punishment of Indigenous Australian people was still viewed as vital to the ongoing success of settler-colonialism and the state of siege. The perspective of the settler-colonial justice system as a mechanism of controlling Indigenous Australian people is summed up accurately by Anthony (2013), who states:

> Dispensing the criminal law was a vehicle for punishing and containing Indigenous people through a seemingly neutral mechanism. Violence dressed up as 'punishment' created a logic that it was the normal response to Indigenous people on the frontier and beyond. Punishment for crimes meant that the repression and restraint of Indigenous people was not an abuse of power, but a justification for the use of power. (p. xii).

As mentioned above, the statistics on Indigenous incarceration in Australia appear to indicate that for Indigenous Australian people little has changed during the last three centuries.

Indigenous Criminalisation in Contemporary Australia

John Pat's death was included in the RCIADIC almost thirty years ago, where it was concluded that the over-representation of Indigenous Australian people in the criminal justice system was fuelling the number of Indigenous deaths in custody (Cunneen & Aboriginal and Torres Strait Islander Commission, 1997). However, today Indigenous Australian people are still massively over-represented in the criminal justice system and are still dying in custody.

Before looking at the over-representation of Indigenous Australians in the criminal justice system, one must first consider the size of the Indigenous Australian population in comparison to the non-Indigenous population. From 2008 through to 2020, the Indigenous population of Australia averaged around 2.9% of the total population (Australian Bureau of Statistics, 2021b, 2021c). The average Indigenous population percentage in comparison with the non-Indigenous population

percentage for each state and territory for the period 2008 to 2020 is shown in Figure 1.

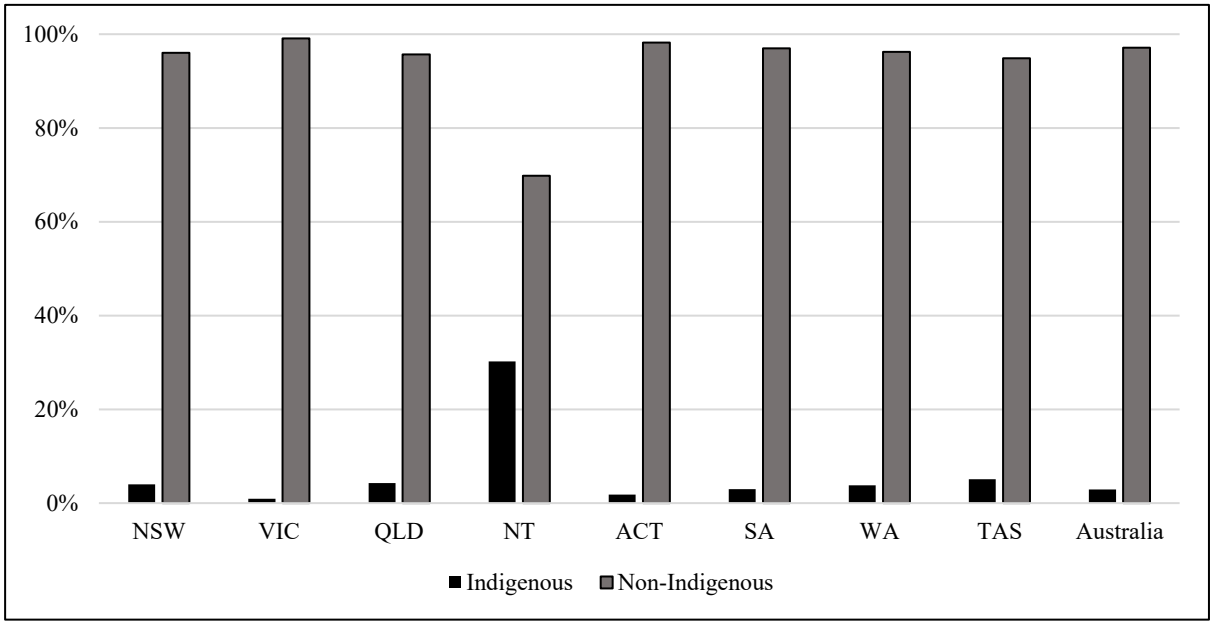

Figure 1 - Average population percentage by Indigenous status by state for 2008 to 2020

Therefore, when examining police interaction with alleged offenders by state one must also consider the size of the Indigenous Australian population for additional perspective. For all states and territories[4], except Northern Territory, non-Indigenous Australians have more interaction with the police than Indigenous Australians (Australian Bureau of Statistics, 2021e). However, when police interactions are viewed alongside Indigenous and non-Indigenous population sizes a different pattern emerges with all states and territories showing a higher interaction rate with Indigenous Australians in comparison to the size of the Indigenous population within those states and territories (Australian Bureau of Statistics, 2021e), as shown in Figure 2.

[4] It is important to note that Western Australia, Victoria, and Tasmania do not record the Indigenous status of offenders.

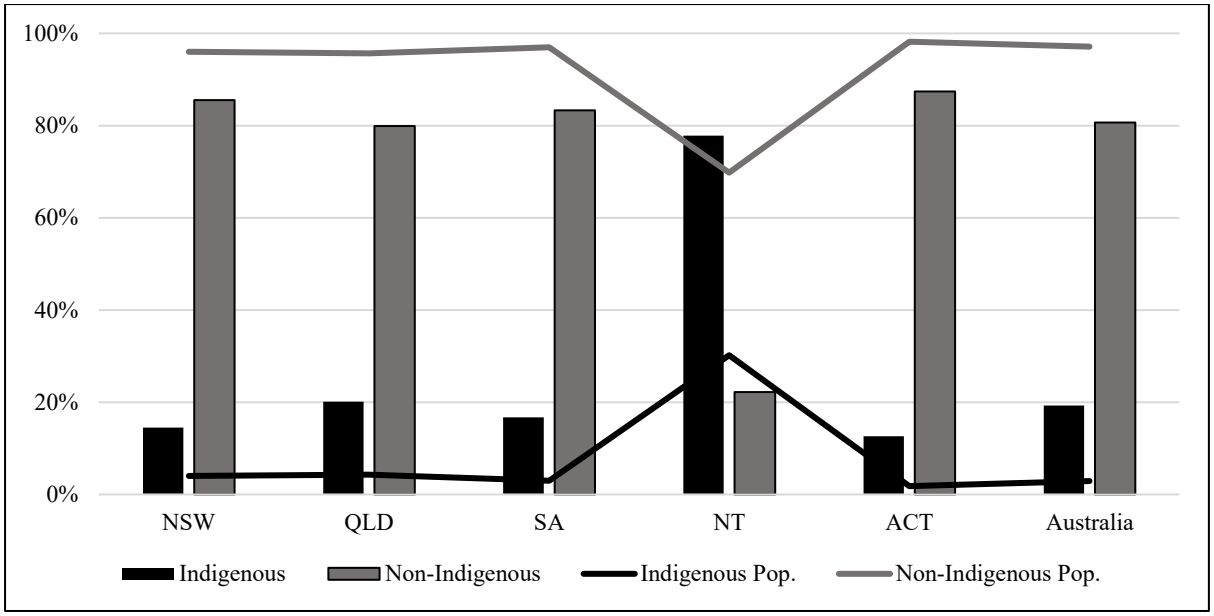

Figure 2 - Average Police Interactions by State, 2008 - 2020

In the June Quarter of 2021, Indigenous Australian people accounted for 30.0% of the total prison population (Australian Bureau of Statistics, 2021d), with three states contributing almost three-quarters of those prisoners. The three states being New South Wales (27.6%), Queensland (26.7%) and Western Australia (20.4%) (Australian Bureau of Statistics, 2021d). On top of these figures, the national average imprisonment rate for Indigenous Australians in 2021 was 2,412 persons per 100,000 Indigenous Australian adults in comparison to 214 persons per 100,000 for non-Indigenous Australian adults (Australian Bureau of Statistics, 2021d).

The highest imprisonment rates, per 100,000 Indigenous Australian adults for 2021 were recorded in:

- Western Australia at 3,954.
- Northern Territory at 2,919.
- South Australia at 2,625 (Australian Bureau of Statistics, 2021d).

Average prison populations (2008-2020) by state and territory alongside Indigenous and non-Indigenous population sizes for those states and territories are illustrated in Figure 3. Again, all states and territories demonstrate higher prison populations for Indigenous Australians in comparison to the size of the Indigenous population within those states or territories.

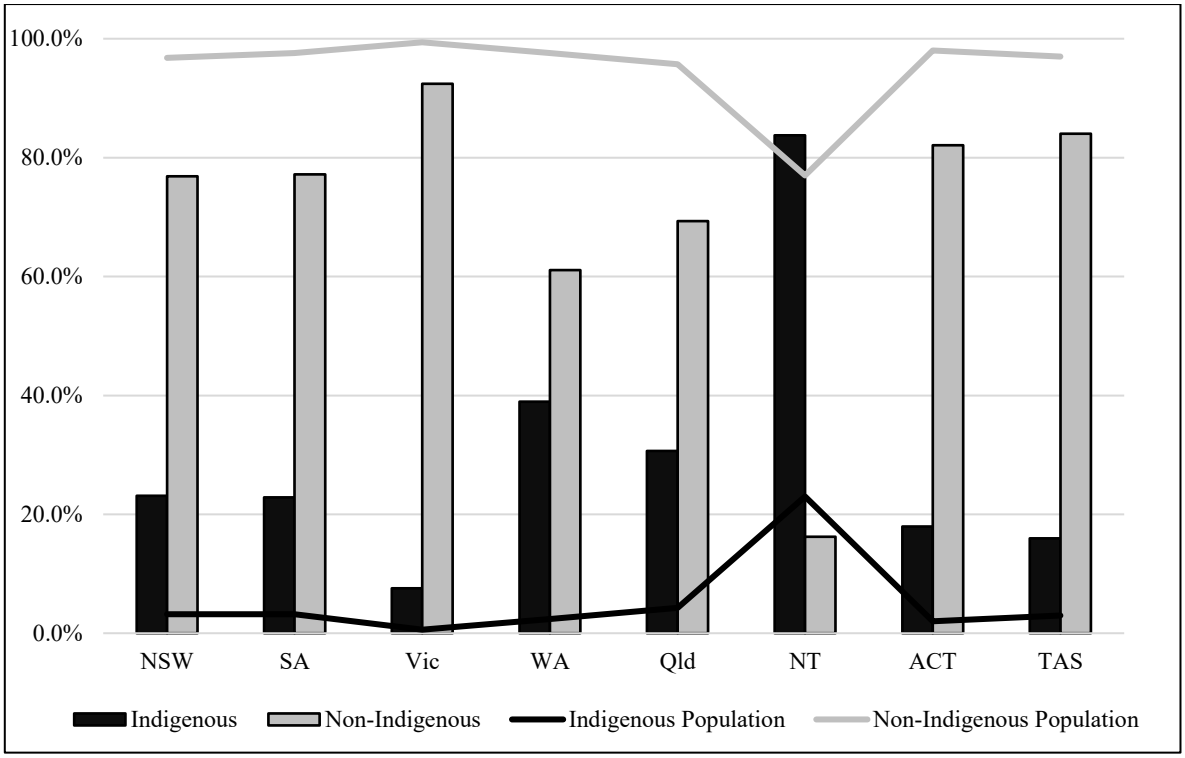

Figure 3 - Australian Prisoners by State, Average 2008 - 2020

These figures taken at face value, without the consideration of the intergenerational impact of colonisation, may not raise alarm. However, when one also considers the 616 custodial deaths of Indigenous Australians between 1980 and 2021 a different trend begins to emerge (Doherty, 2021).

Research Purpose, Questions, and Aim

A Vital Purpose

In 2007, Kenneth Parsons wrote that "the relations between organized patterns of activity (that is structures) and the level of agency of subordinate, oppressed or marginalised groups is under-theorized in terms of struggles over unjust relations of power and relations of violence" (p. 173). Fourteen years later, those relations of power and relations of violence are still vastly under-theorised. Hence, the purpose of this research is to identify the forms of violence experienced by Indigenous Australians in the criminal justice system and the unequal relations of power that contribute to them.

Vital Questions

In order to fulfil its purpose, this thesis has three core research questions:

1. To what extent, and in what form, are Indigenous Australians subjected to violence in the criminal justice system?

2. What is the nature of the relations of power that exist between Indigenous Australians and the criminal justice system?
3. To what extent does the specific nature of the relations of power revealed in Research Question 2, contribute to the violence experienced by Indigenous Australians in the criminal justice system?

A Vital Aim

Over the last quarter of a century most research into crime and criminal justice has been undertaken through methods that have privileged state-centred perspectives and perpetuated the silencing of the Indigenous perspective and voice through omission. Regarding the omission of Indigenous voices in research on Indigenous incarceration, Edney, as cited in Hagan (2017), wrote that:

> It continues to this day in terms of the research conducted on Indigenous imprisonment. Indigenous prisoners in this penal dialogue are viewed as objects, not subjects, and their understanding of imprisonment are neglected. (p. 5).

Therefore, a vital aim of this study is to include the previously silenced voices of Indigenous Australian people by gaining their perceptions and understanding of their lived experiences in the criminal justice system and to ensure that Indigenous Australian voices are no longer silenced through omission. The inclusion of the Indigenous voice is vital to achieving the primary aim of examining the extent to which unequal relations of power contribute to the forms of violence that Indigenous Australian people experience in the criminal justice system.

Significance

In 2009, the *Social Justice Report* stressed a need for Australia to think outside the box on Indigenous offending. However, this has not happened, instead there has been a 'revalorisation' of imprisonment as a frontline criminal justice strategy. The level of Indigenous incarceration is a humanitarian crisis that deserves far greater attention, investigation, and most importantly, action, than it is currently receiving.

I am committed to seeing action, change and implementation of policy as a result of this research because I believe that Indigenous Australian lives matter and that this is not only a struggle over unjust relations of power, but also a watershed moment for social justice in Australia. This project, therefore, has national significance because it emphasises some of the current failures to address pervasive issues in Indigenous incarceration, such as over-representation, as well as enhancing an understanding of how violence across the criminal justice system can be addressed.

This research is also significant because it incorporates what is called the 'criminological imagination', where a wide-spectrum of lived experience is included in the research (Lumsden & Winter, 2014). The 'criminological imagination' is realised through this research because it is critical and reflexive in nature and it is situated within an emancipatory-transformative paradigm that is post-positivist (Lumsden & Winter, 2014). The use of the emancipatory-transformative paradigm allows the 'criminological imagination' to use knowledge from research to change the world being investigated (Humphries, Mertens, & Truman, 2000). The emancipatory-transformative paradigm allows for a deeper understanding of the research participant's lived experience, which is a significant step in research with Indigenous Australian people, particularly within the discipline of criminology (Humphries et al., 2000).

Traditionally, criminology research has favoured quantitative, static methods of research, which are predominantly state-centred and only allow the state's perspective to be heard; thus, silencing the voice of Indigenous Australians. While this project uses quantitative methods, it has done so on a contextual basis through a critical lens. The interviews conducted allow the lived experiences, perspectives, and voices of Indigenous Australian ex-offenders to be heard, so that they are no longer silenced through omission.

Scope

As the lived experience of Indigenous ex-offenders is at the heart of this project it is outside the scope to interview relatives of ex-offenders or Elders from Indigenous communities regarding the far-reaching impact of Indigenous incarceration. However, this is an area that also requires serious attention and may be a consideration for a post-doctoral research project. Furthermore, significant consideration was given to both the geographical and the institutional foci of the project.

The decision to narrow in on Queensland came down to one factor. As a sole researcher I could not realistically expect to conduct Australia-wide interviews and handle the amount of quantitative data for an Australia-wide project, therefore, the decision to focus on the state in which I am based seemed a reasonable one.

The decision to cover all three arms of the criminal justice system was the subject of considerable debate. However, rather than cover one branch of the system I believe, as Jiddu Krishnamurti said in respect to life, that you must understand the whole of something not just one part of something. Thus, my goal is to understand the unequal relations of power within the investigative, judicative, and corrections branches of the system and how they contribute to the forms of violence experienced by Indigenous Australian people within the system as a whole.

Communication of Findings and Recommendations

The findings and recommendations of this study will be disseminated in a variety of formats, each formulated to suit the audience. This research has two main audiences: Indigenous Australian communities, organisations, and individuals on one hand, and on the other, the policy makers, politicians, and officers or medical staff of the criminal justice system. My priority will be to communicate the findings to the participants through an infographic sheet. In addition, a more formal video will be produced and sent to Indigenous Australian community justice organisations, as well as being uploaded to various social media platforms, including Facebook, Linkedin, Twitter, and Youtube.

This thesis will be translated into a report that will be sent to government and non-government agencies in the hope that some, if not all, recommendations are implemented. Finally, formal presentations at academic and non-academic conferences in the criminology, sociology, and Indigenous domains will also assist in disseminating both the findings and the recommendations to a wider audience.

Thesis Outline

The thesis follows a traditional format with ten chapters, including this one, which are as follows:

Chapter 2 is a review of literature pertaining to Indigenous incarceration and Indigenous deaths in custody.

Chapter 3 specifies the rationale behind the choice of theories contained within the theoretical framework used in this thesis, before explaining the process that was undertaken to operationalise the theories into measurable variables.

Chapter 4 details the methodology used in this thesis and its implications for the analysis, as well as the design of the study, the methods used and ethical considerations.

Chapters 5 and 6 present a thematic analysis of the 'voices' of twelve Indigenous Australian former offenders as it follows their journeys through the criminal justice system starting with encounters with the police and experiences of court (Chapter Five) through to interactions with the prison and community corrections[5] system (Chapter Six).

[5] This does not include probation as that is part of the non-custodial sentencing decisions. While the non-custodial sentencing outcomes would be another valuable area of research, it was outside the scope of this present study.

Chapter 7 offers a thematic analysis of the coroner's reports of eight Indigenous Australians who tragically lost their lives while in police or prison custody.

Chapters 8 and 9 present a theoretical analysis of the data through the theoretical framework contained in Chapter Three. Chapter Eight addresses research question one by examining the extent to which three forms of violence are experienced by Indigenous Australians in the criminal justice system. Chapter Nine addresses research questions two and three by exploring the unequal relations of power between Indigenous Australians and the criminal justice system and then analysing how these unequal relations of violence contribute to the violence explored in Chapter Eight.

Chapter 10 concludes the thesis by providing a summary of the outcomes, outlining the research's contribution to research and theory, detailing the limitations of the research, and finally, providing some key recommendations for policy, practice, and further research.

2. Literature Review: Interactions with the Criminal Justice System

"I believe that the power of literature is stronger than the power of tyranny"
- Ma Jian

In 1991, the final report of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) was released revealing a disproportionate number of Aboriginal and Torres Strait Islander people were represented in the criminal justice system compared with other members of the Australian population. Thirty years later, Indigenous people are still vastly over-represented in the criminal justice system (Cunneen, 2009), and the situation is worsening (Weatherburn, 2014).

In the period from March 2017 to March 2018, the Australian Capital Territory (ACT) recorded a 17.0% increase in Indigenous incarceration (Australian Bureau of Statistics, 2018d). In the same period, the only decrease in Indigenous incarceration rates was in South Australia with a 5 percent drop; however, overall, it still ranked in the top three highest imprisonment rates for Indigenous Australians for the March 2018 quarter (Australian Bureau of Statistics, 2018d).

In 2021, 30.0% of the total prison population, that is 13,039, identified as Indigenous and were "imprisoned at a rate 13 times greater than their non-Indigenous counterparts" (Cunneen & Porter, 2017, p. 670). From 30th June 2020 to 30 June 2021, the numbers of prisoners increased by 8.0% for Indigenous Australians and 5.0% for non-Indigenous Australians (Australian Bureau of Statistics, 2021d). Furthermore, in the decade between 2011 and 2021 the ratio of Indigenous to non-Indigenous incarceration has risen from 14.4 to 15.8 (Australian Bureau of Statistics, 2021d). Thus, as Cunneen and Porter (2017) state "while the use of imprisonment has increased for all people, the increase is more pronounced for Indigenous [Australian] people" (pp. 670 – 671). The reasons behind the increase in Indigenous incarceration remain a matter of ongoing debate.

It is argued by Weatherburn (2014) that although there are increasing numbers of people who are identifying as Aboriginal or Torres Strait Islander that may contribute to this increase, it is not a standalone factor. Heffernan (2016) supports Weatherburn's argument with figures showing that there was only a 7.0% increase between 2014 and 2015 of prisoners identifying as Indigenous. A report by the Queensland Government, however, does identify that:

> The age–standardised rate of imprisonment for Queensland Indigenous prisoners was 1,780.1 per 100,000 adult Indigenous population, compared with 167.5 per 100,000 for non-Indigenous adults, making Indigenous persons 11 times more likely than non-Indigenous persons to be in prison at 30 June 2017. The age-standardised Queensland Indigenous imprisonment rate was lower than for Australia as a whole (2,141.6 per 100,000). (2017, p. 1)

On their own these figures may not be alarming, but when Indigenous Australians make up just 2.9% of the whole population of Australia, and just 4.3% of the Queensland population, the concern over Indigenous over-representation in the justice system becomes clear.

Indigenous recidivism rates have been recognised as a rising crisis, which various governments have attempted to address through:

- legislation that targets habitual recidivists, such as the Habitual Criminals Act 1957 in NSW, which "provides for the pronouncement, detention and control of habitual criminals" (Drabsch, 2006, p. 20).
- the diversion of first time or non-serious offenders through cautioning or conferencing (Allard et al., 2010b).
- rehabilitation programs in correctional centres to reduce re-entry to the justice system (Drabsch, 2006).
- magistrate ordered re-direction into community-based substance abuse rehabilitation programs (Drabsch, 2006).
- intensive, supervised probation or parole (Drabsch, 2006).
- vocational education programs (Drabsch, 2006).

Nevertheless, Indigenous incarceration continues to experience exponential growth.

This literature review seeks to evaluate existing literature on the intersection of Indigenous Australians within the criminal justice system; identify gaps in the existing literature; and, finally, to situate the proposed research project within the existing literature. The results were filtered according to key debates surrounding the research questions.

Results

The initial search returned articles covering a range of topics relevant to overarching themes of Indigenous criminal behaviour; however, they were not specific to Indigenous incarceration and over-representation in the criminal justice system. Therefore, although these articles lend themselves well to detailing the extent of criminal behaviour in the lives of Indigenous Australians, they were not relevant to the focus of this literature review.

Indigenous Deaths in Custody

One of the most distressing areas that Indigenous Australians and the criminal justice system intersect is the coroner's office, often due to an untimely death in police or prison custody (Beckett, 1999). Family members of those who have died in custody experience a very different set of circumstances

to those if the person had died outside of custody (Beckett, 1999). The family are stonewalled by the institution with no access to a doctor to ask questions of, and no witnesses to help reconstruct the circumstances of the death (Beckett, 1999). The family becomes fully dependent on the coroner's office to find out what happened to their loved ones (Beckett, 1999) and often this can lead to more questions than answers.

The RCIADIC was, according to Marchetti (2012), "heralded as the inquiry that would transform race politics for Indigenous people in Australia" (p. 19). As the RCIADIC was underway, Reser (1991, 1989a, 1989b) and Goldney and Reser (1989) investigated deaths in custody through a medical lens with a particular focus on suicides. In one article Reser (1989b) queries whether the suicides in custody could be defined as a 'suicide cluster' and argues that they occurred due to external contributing factors, including alcohol and psychological illness. However, it was also suggested by Goldney and Reser (1989) that social scientists, particularly sociologists and psychologists, should be engaged in further research and analysis of Indigenous deaths in custody. Social science disciplines did indeed become invested in researching Indigenous deaths in custody, which brought a wealth of differing perspectives (e.g., Anthony, Bartels, & Hopkins, 2015; Blagg, Tulich, & May, 2019; Cunneen, 2018b; Cunneen & Tauri, 2017; Marchetti & Ransley, 2014; Tubex, Rynne, & Blagg, 2020).

Some academics chose to focus on the RCIADIC, not only in terms of its impact, findings, or recommendations, but also in terms of reviewing the commission itself. It was posited by Cunneen (1992a) that criminal justice policy had not been impacted by the commission because the recommendations were not being implemented and Indigenous incarceration was still rising. In 2006, Cunneen wrote that Indigenous deaths in custody were a "continuing systematic abuse" (p. 37) and that despite the commission the "circumstances leading to deaths in custody…are still routine occurrences" (p. 49). Furthermore, the recommendations, he said, continue to be disregarded (Cunneen, 2006).

The most recent article discussing the failure to implement the RCIADIC's recommendations comes from Professor Marcia Langton who highlights the fact that the two key recommendations: "that imprisonment should be used as a sanction of last resort and those in custody are all owed a legal duty of care by those in authority" (2021, p. 25) are still neglected. Further, she states that where reasonable reforms have been suggested they have been rejected, such as raising the age of criminal responsibility from 10 to 14 (Langton, 2021). While some academics chose to focus on the failure to implement the recommendations coming out of the RCIADIC, some focused on the commission itself.

Both Sackett (1993) and Marchetti (2005, 2006) wrote critiques of the RCIADIC by suggesting it was a continuation of colonisation and oppression. The RCIADIC, according to Sackett (1993), was "an(other) act of state surveillance, and that many of the recommendations, if implemented, would further extend the scrutiny of Aboriginal lives" (p. 229). Furthermore, Sackett believed that "the 'individualizing knowledge' of the deceased was used to control the interpretation of their deaths" (p. 229). Marchetti (2005) compliments Sackett's point of view when she writes that "the procedural constraints imposed upon it [the RCIADIC] by governments affected the degree to which certain information was included and other information was excluded, as well as the types of recommendations that were made" (p. 123). Other academics derided the omission of a female-specific focus in the commission.

From as early as 1995, a feminist gaze was turned towards Indigenous deaths in custody (Collins & Mouzos, 2002; Kerley & Cunneen, 1995; Marchetti, 2012). Alarm was voiced at the Royal Commission's inadequate handling of "issues relat[ing] to Aboriginal and Torres Strait Islander women" (Kerley & Cunneen, 1995, p. 4), suggesting that the "death of Aboriginal and Torres Strait Islander women in custody in Australia remains an untold story" (p. 3). By 2012, Marchetti had written about the eleven Indigenous women who were included in the commission, stating that "females were not considered as *females*" (p. 38, emphasis in original). The focus on saving Indigenous men from state violence was, according to Marchetti, done at the expense of Indigenous women who had suffered "sexual assault and mistreatment…by police" (p. 45). In 2002, a comparison between Indigenous and non-Indigenous deaths in custody with a female-specific analysis identified a need "to be mindful of the differences that exist between male and female deaths and between Indigenous and non-Indigenous female deaths in custody" (Collins & Mouzos, 2002, p. 6). Since the RCIADIC little insight appears to have been gained in respect to the deaths in custody of either females or Indigenous Australians, according to Walsh and Counter (2019).

The most recent article provides a "large-scale documentary analysis of all publicly available coroners' reports on deaths in custody released between 1991 and 2016" (Walsh & Counter, 2019, p. 143). Walsh and Counter (2019) looked at 505 publicly available coroners reports from across Australia and collected quantitative data from them, including "characteristics of deceased person, causes of deaths, type of custody and the state or territory in which they died" (p. 143). They recommend further research on the trends that emerged from their study, particularly that Indigenous Australians and females were under-represented in their sample and that Indigenous status was often not reported by coroners.

Furthermore, they identified that Indigenous people were more likely to die in police custody than in prison custody (Walsh & Counter, 2019). The most important finding from the research

undertaken by Walsh and Counter is that "without reliable information on what a death in custody is and the circumstances in which they occur, any investigation on this topic is difficult to undertake" (p. 160), yet it is vital that the research be undertaken (Walsh & Counter, 2019). The next section reviews the literature that posits that Australia's settler-colonial history directly contributes to the current over-representation of Indigenous Australians because the justice system is a colonial paradigm.

The Justice System as a Colonial Paradigm

The injustices of Australia's settler-colonial past are proposed by some academics to be a direct causal factor in the over-representation of Indigenous Australians in the criminal justice system today (Cunneen, 2016; Cunneen & Porter, 2017; Cunneen & Tauri, 2017; Watson, 2009). One of the foremost proponents of this viewpoint is Chris Cunneen who, in 2009, wrote:

> Colonisers claimed the moral and political right to impose specific systems of law and punishment over Indigenous peoples – systems which were alien to the colonised. In this sense the original 'violence of incarceration' has its roots in dispossession from land and denial over sovereignty. (p. 210)

The view that the distrust between Indigenous Australians and the police stems from the settler-colonial period is not new.

In the 1970s, Charles Rowley, an anthropologist, suggested "…it was still true that in Queensland one [could] be incarcerated either for crime or for being an Aboriginal…" (Cunneen, 2009, p. 211), implying the colonial rule was still in force. Almost 20 years later, in 1991, Barbara Miller also believed this when she wrote that the police were both the historic and contemporary primary enforcers of colonial rule, particularly when it came to the forcible dispossession of Indigenous Australians from their land.

Despite this fact, there is not a great deal of literature on the subject, as is claimed by Gabbidon (2010), who states that the "colonial model is vastly underappreciated as a potent perspective to contextualise the over-representation of racial and ethnic minorities in justice systems around the globe – particularly in post-colonial societies" (p. 1). Those that do value the model believe that Australia's justice system still operates in the colonial paradigm today (Cunneen, 2009; Cunneen & Porter, 2017; Cunneen & Rowe, 2016; Watson, 2009). In other words, the ripples of the structural violence of colonisation are still being felt today (Cunneen, 2009).

Watson (2009) supports Cunneen's view of settler-colonial history impacting on the treatment of Indigenous Australians today, suggesting that Australia was founded on "originary violence" (p. 46). Watson also suggests that the state has a "vested interest in keeping the violence going" (p. 46)

and to continue the marginalisation of Indigenous Australians so the state can maintain its illegitimate colonial sovereignty. The persistent existence of Indigenous people continues to be viewed by the state as a threat to the legitimacy of their sovereignty, especially in respect to land rights (Cunneen, 2016).

Settler-colonial sovereignty was gained through the violent application of colonial systems of law, which were enforced "ambiguously, anomalously, [and] strategically" (Cunneen, 2016, p. 194). The Eurocentric ideology of sovereignty was the foundation of international law, which therefore has roots in colonialism and has a tendency towards the reproduction and reinforcement of colonial methods of social control that are still evident in contemporary times (Banerjee, 2008).

This viewpoint, particularly of Australian law, is supported by Klippmark (2016) who states:

> …the exercise of criminal jurisdiction over Indigenous subjects is central to the continued assertion of settler sovereignty in Australia, where 'incarceration reflects the peculiar centrality of Indigenous people to settler sovereignty'. It follows, then, that the criminal justice system in Australia is another feature of colonial expansion, where the current politicisation of the state's over-incarceration of Indigenous people in public discourse is symptomatic of its repression of Indigenous peoples in Australia. (p. 11)

Furthermore, Klippmark claims that the over-representation of Indigenous Australians in the criminal justice system must be linked to Indigenous Australians' relationship with settler-colonial law as a "continuing colonisation" (p. 14). As mentioned above, this point of view is voiced by Cunneen (2009) who writes:

> The legal system is one that is firmly entrenched in a colonial paradigm and built on assumptions and processes that removed Indigenous peoples from whatever legal protections may have existed for other groups. (p. 211)

By removing these legal protections and replacing them with punitive governance highlighted that justice for Indigenous people was racially defined and arbitrary. The next section discusses literature that argues that justice is still racially defined and, moreover, that racism is firmly entrenched and systemic in the Australian criminal justice system.

Entrenched and Systemic Racism in the Australian Criminal Justice System

Racism is systemic and is firmly entrenched in institutions across Australia and, according to Craigie (1992), it is both "startling and obvious" (p. 13). This is certainly the view of Pattel-Gray (1998), whom, in relation to the criminal justice system's treatment of Indigenous people, posits that it is "clearly evident in the foundation, structure, implementation and accessibility of the Australian legal

system to non-whites, and especially [Indigenous Australians]" (p. 67). It is widely argued that systemic racism is found in all areas of the criminal justice system, however, the majority of the Australian literature focuses on racism within the police and the judiciary (e.g., Anthony et al., 2015; Bond, Jeffries, & Loban, 2013; Brookman & Wiener, 2017; Jeffries & Bond, 2012; Marchetti & Ransley, 2014). A major proponent of this view is Chris Cunneen (1992b) who, over twenty-six years ago, stated:

> [t]here is no doubt that the evidence is in: Aboriginal people are policed in a way different from, and at a level greater than, non-Aboriginal people. Over-policing exists as one of a number of processes which gives life to the structure of racism. (p. 91).

There is, however, a paucity of literature on the experience of racism within the prison and parole system.

The police, being the first point of contact for the criminal justice system, are not only the enforcers of the law, but also a physical embodiment of the law (Linnemann, 2017). Research conducted by Gillian Cowlishaw found that one reason for the high incarceration rates of Indigenous Australians was the inappropriate application of police discretionary powers (Davis, 1999). This view is supported by Cunneen and Porter (2017) who state that police discretionary decisions "work against the interest of Indigenous people" (p. 671). In other words, the police are allowed discretion over who they arrest and why (Cunneen & Porter, 2017; Davis, 1999).

In 2017, the Australian Law Review Commission (ALRC) recommended that "police practices and procedures – particularly the exercise of police discretion – are reviewed by governments so that the law is applied equally and without discrimination with respect to Aboriginal and Torres Strait Islander peoples" (p. 33). This recommendation came after it was found that relations between Indigenous Australians and the police were fragile due to a perception of "poor police practices" (ALRC, 2017, p. 33). Furthermore, the ALRC report suggested that fragile police relations can lead to higher arrest, custody, and incarceration rates of Indigenous Australians. It was reported that in 2016 the four most common offences that Indigenous Australians were arrested and appeared in court for, were "acts intended to cause injury (24%); …public order offences (17%); offences against justice (14%); and theft and related offences (12%)" (Australian Law Reform Commission, 2017b, p. 100). What constitutes a public order offence varies from state to state.

A broad definition provided by the Australian Bureau of Statistics characterises them as:

> Offences involving personal conduct that involves or may lead to a breach of public order and decency, or that is indicative of criminal intent, or that is otherwise regulated or prohibited on moral or ethical grounds. The 'victim' of these offences is the public at large. However, some

> offences such as offensive language and offensive behaviour may occur in a private place. (2008, p. Para 1)

In Queensland and Victoria, public drunkenness is included in the list of public order offences (Behrendt, Cunneen, & Libesman, 2009). Although other states and territories have decriminalised public drunkenness, some, such as the Northern Territory, have introduced 'protective custody powers', which give the police the power to detain an intoxicated person for 'their own protection' (Behrendt et al., 2009; Musk & Walters, 2017). However, public order offences also include, amongst others, begging, vagrancy, streaking, coarse forms of gesticulation, and offences against justice (Australian Bureau of Statistics, 2008).

The first public disorder offence of note for Indigenous Australians is public drunkenness. In the RCIADIC report it was discovered that twenty-seven of the ninety-nine people whose deaths they investigated were in custody for the offence of public drunkenness (Behrendt et al., 2009; Mackay, 1996). In 2017, a leading factor for Indigenous Australians being held in custody was still intoxication (Australian Law Reform Commission, 2017b). Had police discretion been applied in an indiscriminate and equal manner using diversionary tactics the outcome would have been different according to Allard et al. (2010b).

The second public order offence of note is offences against justice, which includes use of offensive language and gestures (Australian Bureau of Statistics, 2008). It is argued by Cunneen (1992b) that the use of this offence, and others of its ilk, are a way for the police to "maintain authority when there has been defiance or disrespect shown towards them by Aboriginal people" (p. 81). It is reported that in Wilcannia, NSW a major offence was "swearing at police" (Cunneen, 1992b, p. 87), but that this was in part aggravated by the police "constantly driving up and down the main streets of the town constantly scrutinising the Aboriginal population" (Cunneen, 1992b, p. 87). Thus, in many Indigenous communities, particularly remote ones, the high level of police presence is viewed by Indigenous Australians as a factor in incarceration rates, not a preventative one (Cunneen, 1992b).

The police to population ratio should be calculated according to the Eric St Johnston ratio that was recommended by the Queensland Fitzgerald Report, which states that the ratio for a population:

- under 5,000 should be 1:1000;
- between 5,000 to 20,000 should be 1:500; and
- over 20,000 should be 1:350. (Human Rights and Equal Opportunity Commission, 1991)

At the time that the National Inquiry into Racist Violence report was released, Wilcannia, whose population numbered a mere 800 people, had eleven police officers instead of the recommended one (Human Rights and Equal Opportunity Commission, 1991). Wilcannia was not the only so-called 'Aboriginal town' in the region to suffer this over-policing with Bourke having thirty officers not three to four, Brewarrina having eleven instead of one or two, and Walgett having twenty-six instead of two or three (Human Rights and Equal Opportunity Commission, 1991). Therefore, as Cunneen (1992) posits Indigenous communities are not just over-policed, but heavily over-policed.

The over-policing of Indigenous communities inevitably leads to the over-representation of Indigenous Australian alleged offenders before the courts, whereby it is posited they receive more punitive sentencing than non-Indigenous alleged offenders (Anthony, 2013; Brookman & Wiener, 2017). Several studies have compared the outcomes in sentencing between Indigenous and non-Indigenous offenders in several states and territories.

In the Northern Territory, Luke and Cunneen (1998), discovered that Indigenous offenders were imprisoned twice as much as non-Indigenous offenders. In addition, they found that Indigenous offenders were sent to prison earlier in their offending history than non-Indigenous offenders (Luke & Cunneen, 1998). A study conducted in New South Wales by Snowball and Weatherburn (2007) found that race had a small influence in the sentencing process, however, they found that "this effect progressively diminishes as more sentence-relevant factors are taken into account" (p. 272). In South Australia, Jeffries and Bond (2009) found that Indigenous Australians were less likely than non-Indigenous Australians to be given custodial sentences. However, they also found that longer sentences were more likely to be handed down to Indigenous offenders than non-Indigenous offenders. In the same year, Bond and Jeffries (2009) also conducted a study in Western Australia that looked at the sentencing of Indigenous women and found that non-Indigenous women were more likely to be given custodial sentences than Indigenous women.

In Queensland, Bond, Jeffries, and Loban (2011) conducted a study for the Department of the Premier and Cabinet and found that there were "some differences across the range of sentencing outcomes" (p. 94). These differences included Indigenous offenders being more likely to receive custodial sentences or a monetary order. However, they also noted that the sentence length and monetary amount indicated "direction positive discrimination" (Bond et al., 2011, p. 94) with Indigenous offenders receiving shorter sentences (including suspended sentences) and lower monetary order amounts. Overall, their findings indicated that the Magistrates' Court held a higher level of disparity than the upper courts in relation to the sentencing of Indigenous offenders (Bond et al., 2011).

In Victoria, the Sentencing Advisory Council (2013) found that Indigenous offenders were "… statistically significantly more likely to receive a custodial sentence in the Magistrates' Court" (p. 59) than non-Indigenous offenders. The Council suggest in this report that a definitive reasoning behind this cannot be identified, therefore, they "cannot conclusively rule out the possibility of racial discrimination" (p. 59). While it is important to note that these studies all utilise different methods across a variety of jurisdictions in different time periods making it difficult to reconcile these results conclusively, the evidence highlights an element of entrenched and systematic racism in the judiciary, particularly in the lower courts across Australia.

The entrenched and systemic racism that exists within the criminal justice system is also evident, according to the literature explored in the next section, in the ongoing criminalisation of Indigenous Australians by both the criminal justice system and the Australian media (Baldry et al., 2018; Baldry & Cunneen, 2014; Domke, 2001).

Criminalisation of Indigenous Australians

From the moment the first fleet arrived in Australia, Indigenous Australians were criminalised, stigmatised, and viewed as deviant because they did not adhere to the new rules created for them by the settler-colonials, the "moral entrepreneurs" (Hopkins Burke, 2009, p. 168). The 'moral entrepreneurs' are those who "create new rules for the 'benefit' of the less fortunate" (Hopkins Burke, 2009, p. 168). These new rules, coupled with an agency of social control (the police) and the 'deviant' label, eventually embed in the collective consciousness becoming the new norm, which creates "negative stereotypes of those labelled 'deviant'" (Hopkins Burke, 2009, p. 168). The impact of this label can have dire consequences for those to whom it is affixed, as attested by Indigenous Australian over-representation in the criminal justice system today (Baldry et al., 2018; Joudo, 2008).

It is argued by some proponents of labelling theory that the reaction of society to deviant behaviour is a causal factor in the pathway to a criminal career (Becker, 1963; Gunnar Bernburg, Krohn, & Rivera, 2006; Lemert, 1967; Tannenbaum, 1938). The theory is that by labelling someone as deviant you push them towards social groups that are deviant because their label and activities are more socially accepted by this group (Becker, 1963; Gunnar Bernburg et al., 2006). Additionally, by being involved in a deviant social group, the individual is protected from those "who react negatively toward the deviant status" (Gunnar Bernburg et al., 2006, p. 68). Thus, by pushing labelled individuals into these groups they are more likely to be involved in further deviant behaviour (Becker, 1963; Gunnar Bernburg et al., 2006). The more enmeshed in the deviant social group an individual becomes the worse their social interaction with non-labelled individuals becomes as it is "characterized by uneasiness, embarrassment, ambiguity, and intense efforts at impression management" (Gunnar Bernburg et al., 2006, p. 69) for both parties.

Another consequence of being labelled deviant, or criminal, is 'secondary deviance', which is where the labelled individual "redefines his self-image in line with the opinions and expectations of others in the community and thereby come to perceive himself as criminal" (Hopkins Burke, 2009, p. 172). A primary deviant is someone who does not consider their deviance as being a central component of themselves and therefore do not view themselves as deviant (Hopkins Burke, 2009). However, the more a primary deviant is confronted by a negative reaction to his deviancy through stereotyping, name calling or labelling then they may begin to accept their status as deviant and "organise their life and identity around the facts of deviance" (Hopkins Burke, 2009, p. 172), thus evolving into a 'secondary deviant'.

It is important to remember, according to Hopkins Burke (2009), that deviance is "simply the end result of a process of human interaction" (p. 172). Secondary deviance is not a forgone conclusion, but rather determined by "the number of criminal transgressions and the intensity and hostility of societal reactions" (Hopkins Burke, 2009, p. 172). Ultimately, the key point is that "*many* offenders *do* internalise their criminal labels and thus stable or career criminality arises out of the reaction of society to them" (Hopkins Burke, 2009, p. 173, emphasis in original). This is fuelled by negative representation of Indigenous Australians[6] in the media (Cannon, 2018; Domke, 2001).

The Australian Human Rights Commission declared that the media has a responsibility to report impartially on race issues (Australian Human Rights Commission, u.d.), however, the media have, and continue to, portray minority groups with inflammatory and derogatory representations. Hall (as cited in Domke, 2001) suggests that "media construct for us a definition of what race is" (p. 317). Furthermore, it is proposed that the media "…often suggests to citizens a normal, even desirable, social and racial order with Whites at the top…" (Domke, 2001, p. 318). Mass media has not only transformed the way people identify themselves and other people, but also the way of understanding how and where we fit into our community, and in turn how we interact with others in that community (Bullimore, 1999).

In Australia, the media's coverage of Indigenous affairs is riddled with "neo-colonial, neo-liberal assimilation and paternalistic ideology" (Cannon, 2018, p. 111) and are, as Jericho (2012) says "[g]atekeepers of the news; providers of the opinions of us all" (p. 7). With those opinions comes the potential to be a major game changer in race relations by breaking down prejudices and building social and racial cohesion (Smith, 2006). However, research shows that Indigenous Australians continue to be criminalised through negative representation in the media by the over-emphasis on

[6] And other minority groups.

"violence, threatening behaviour, unruliness, and inherent criminality" (Sanson et al., 2000, p. 51). As Cunneen (2018a) says:

> …we understand 'race' through discourses about crime and punishment (black men as violent; Indigenous culture as criminogenic) and we understand crime and punishment through images of race (e.g. the dominant cultural image of the violent offender/prisoner as being young, male and from a minority background). (p. 278)

Cunneen (2018a) does point out that some media organisations, such as the ABC and SBS have "played an important role in uncovering injustices against Aboriginal people" (p. 295). However, he goes on to state that the mainstream media maintain a discourse of racialised criminality, rather than focusing on psychological, cognitive, or environmental factors that may contribute to these behaviours. The chapter now moves on to discuss the psychological and cognitive factors that contribute to criminal behaviour.

Psychological and Cognitive Factors in Criminal Behaviour

When discussing psychological factors in criminal behaviour in reference to Indigenous Australians, the trauma inflicted upon members of the Stolen Generation and their families cannot be overlooked, nor underestimated. Especially when the Australian Institute of Health and Welfare reports that in 2014-15 "there were an *estimated* 20,900 *surviving* members of the Indigenous population born before 1972 who reported having been removed from their families" (emphasis added, Australian Institute of Health and Welfare, 2019, p. 61). When compared with Indigenous Australians who were not removed from their families, members of the Stolen Generation demonstrate a disparity in cultural, socio-economic and health outcomes (Australian Institute of Health and Welfare, 2019).

In terms of justice outcomes, key findings from the 2018 report by the Australian Institute of Health and Welfare indicate that members of the Stolen Generation were "3.3 times as likely to have been incarcerated in the last five years; 2.2 times as likely to have ever been formally charged by police; 2 times as likely to have been arrested in the last five years [and] 1.7 times as likely to have been a victim of actual or threatened physical violence in the previous 12 months" (p. 74), and were 1.5 times as likely to have poor mental health.

The impact does not stop at members of the Stolen Generation but continues through the generations with descendants of the Stolen Generation "1.5 times as likely to have been arrested in the last five years…1.4 times as likely to have ever been formally charged by police…[and] 1.3 times as likely to have poor mental health" (Australian Institute of Health and Welfare, 2018, p. 76). According to the Four Cs of Hartman and Gone, historical trauma includes colonial injury, cumulative effect, cross-generational impacts, and collective experience (Kirkmayer, Gone, & Moses, 2014).

Severe historical trauma has been associated with the development of psychological disorders, particularly with post-traumatic stress disorder (Atkinson, Nelson, Brooks, Atkinson, & Ryan, 2014).

The mental health of members of the Stolen Generation and their descendants is compounded by the high likelihood that, when compared with a reference group, they are more likely to use illicit drugs, misuse medications, abuse alcohol and experience high levels of homelessness, as well as living in low-income households with low levels of educational attainment (Australian Institute of Health and Welfare, 2018).

In 2015, the results of a study conducted with 2,731 former New South Wales prisoners with formally diagnosed mental health disorders and cognitive disabilities was released (Baldry, McCausland, Dowse, & McEntyre, 2015; Baldry, McCausland, Dowse, McEntyre, & MacGillivray, 2016). A quarter of this cohort were Aboriginal or Torres Strait Islanders – 583 men and 93 women (Baldry et al., 2015). The study established that for Indigenous Australians in the cohort with mental health diagnoses their contact with the criminal justice system is earlier than that for non-Indigenous Australians, and more frequent (Baldry et al., 2015; Baldry et al., 2016). In addition, the Indigenous Australians within this cohort had additional levels of disadvantage compared to the non-Indigenous Australians (Baldry et al., 2015; Baldry et al., 2016).

Cognitive disabilities include persons with intellectual disability (an IQ of <70), persons with borderline intellectual disability (an IQ between 70 and 80), as well as those with an acquired brain injury (Baldry, Clarence, Dowse, & Trollor, 2013). Individuals with cognitive disabilities, particularly Indigenous Australians, are more likely to have additional complex needs, such as substance abuse and homelessness – both of which are linked with imprisonment (Baldry et al., 2013). One interviewee described her situation as having a ‘double stigma’

> …because not only have they got the label and all of the positive and negative connotations of having an intellectual disability, but they have the ‘dangerous’ and ‘violent’ ‘forensic criminal’ label as well. People then change their perception of that individual dramatically. (Baldry et al., 2016, p. 11)

The results indicate that the needs of Indigenous prisoners with mental and cognitive disabilities are being poorly serviced by programs and policy, both past and present (Baldry et al., 2015).

One cognitive disability that is often undiagnosed and misunderstood is Foetal Alcohol Spectrum Disorder (FASD), which is caused by exposure to alcohol while in utero (Australian Law Reform Commission, 2017b; Blagg et al., 2019). Behaviours associated with FASD are poor impulse control and developmental delays, such as impaired language and communication, social and

emotional delays – all of which affect education and employment opportunities of those with the condition (ALRC, 2017; Blagg et al., 2019).

There is little research in Australia on FASD and the criminal justice system, but the National Indigenous Drug and Alcohol Committee recommends that "FASD should be considered at every stage of the criminal justice system, from offending behaviour, through to court proceedings, as well as throughout incarceration and post-release" (as cited in ALRC, 2017, p. 434). Juveniles with FASD are 19 times more likely to be in prison and experience higher levels of recidivism as adults (ALRC, 2017).

Recent research from 2019, states that the justice model in Australia, which is based on the western model, "assumes defendants to possess basic cognitive and communicative skills… assumptions of free will and individual responsibility" (Blagg et al., 2019, p. 108). The assumptions of the western model are totally incompatible with the disabilities caused by FASD (Blagg et al., 2019).

A study undertaken at Banksia Hill Youth Detention Centre in Western Australia assessed ninety-nine youth inmates aged between thirteen and seventeen years for neuro-developmental disorders – 89.0% had severe neuro-developmental impairment and 36.0% had FASD (Blagg et al., 2019). Out of those identified as having FASD, thirty-four of the thirty-six identified as Indigenous (Blagg et al., 2019). FASD and associated neuro-developmental impairments "impose unique challenges at each stage of the criminal justice process that, if not identified, understood or accommodated, can lead to grave injustice" (Blagg et al., 2019, p. 110) and also to further enmeshment within the criminal justice system. However, it is not only psychological and cognitive factors that impact on criminal behaviour, but also environmental factors as explored in the literature in the next section.

Environmental Factors of Criminal Behaviour

Many researchers have found social determinants in the lives of Indigenous Australians to be a leading causal factor of Indigenous over-representation in the criminal justice system (Heffernan, 2016; Weatherburn & Fitzgerald, 2006; Weatherburn, Fitzgerald, & Hua, 2003). A prominent proponent of this point of view is Don Weatherburn. Weatherburn has voiced his concerns over pinning all the blame for Indigenous over-representation on the colonisation of Australia stating "[t]his is a recipe for keeping Indigenous Australians in a permanent state of victimisation" (2014, p. 158). In collaboration with other researchers, Weatherburn purports that there is not a crisis in Indigenous incarceration rates, rather there is a crisis in Indigenous over-representation in crime (Weatherburn et al., 2003).

Reducing Indigenous Australians' involvement in criminal activities would, according to Weatherburn et al. (2003), reduce incarceration. Furthermore, they recommend focusing on unemployment levels, substance abuse and alcohol management programs and family violence intervention as "the starting point of any agenda on Aboriginal crime prevention" (Weatherburn et al., 2003, p. 70). Research has shown that, on average, Indigenous inmates have lower levels of education and employment, as well as difficulties in accessing quality health care, being members of the Stolen Generation, and being substance users (Heffernan, 2016; Weatherburn et al., 2003).

In 1991, the findings of the RCIADIC announced that Indigenous disadvantage was the leading causal factor of Indigenous over-representation in the justice system (ACTCOSS & Aboriginal Justice Centre, 2008). In 2018, twenty-six years after the RCADIC findings were released, the Australian Law Reform Commission (ALRC) released findings in their report, *Pathways to justice - An inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples* (Pathways Report), that disadvantage, particularly poverty and homelessness, were still leading contributors to Indigenous incarceration rates.

According to the ALRC, disadvantage is "a significant factor in the lives of many Aboriginal and Torres Strait Islander [people] who are incarcerated where: poverty has been shown to magnify the detrimental effect that minor offending has on an offender" (p. 355). Indigenous Australian disadvantage is a complex interaction of a number of factors, but is marked by high levels of poverty, homelessness, poor health status, low education status, family dysfunction, family breakdown, overcrowding, remoteness, and community and family violence (ACTCOSS & Aboriginal Justice Centre, 2008; Altman, 2007; Hil & Dawes, 2000).

Family breakdown has not been studied as a standalone factor in Indigenous Australian juvenile delinquency, which Hogg (2005) attributes to the fact that there is "a tendency to always search for *sui generis* factors to explain Indigenous experience" (p. 347). However, family breakdown has been highlighted as a contributing factor in youth criminal behaviour in general across several global jurisdictions including Australia (Blakemore, Rak, Agllias, Mallett, & McCarthy, 2018; Kennedy, O'Connor, & Western, 2003), Canada (Corrado & Cohen, 2011), the U.S. (Parks, 2013), and the United Kingdom (Duncan Smith, 2007).

In her master's study in the U.S., Parks (2013) found that "adolescents from two-biological-parent families were less likely to participate in crime and deviance compared to youth from cohabitating families" (p. 33) and in the United Kingdom, Duncan Smith (2007) outlined three forms of family breakdown that overlap. These were: "Dissolution (where parents part after having children together), Dysfunction (where parents are not able to provide their children with a sufficiently nurturing environment, and 'Dadlessness' (…many of these dads may never have been committed to

their children's mother and are unable to provide the essential security which children need as their identities form)" (p. 5). In contrast, a 2003 study on youth crime in Australia by Kennedy et al. (2003) pointed out that one must not assume that single parent families provide a lower standard of care than dual-parent families suggesting that "where a high level of care is provided by a sole parent, it has been suggested that there are no deleterious effects on the children" (p. 124). Therefore, they suggest that the process of family breakdown and the ensuing conflict is more of a contributing factor to delinquency than the potential absence of a parent (Kennedy et al., 2003).

In Australia, Youthlaw (2007) suggest that family breakdown is a 'risk factor' for criminal behaviour citing that "41 per cent of young people subject to youth detention in 2014-15 were also involved in child protection in the same year" (p. 16). This is particularly poignant for Indigenous Australian youth who, according to the Australian Institute of Health and Welfare (2019), represented 17,800 of the 45,800 children receiving out-of-home care. Putting those figures in context, it must be remembered that the Indigenous Australian population is considerably more youthful in comparison to the local non-Indigenous populations with 34% (1 in 3) being under the age of 15 (Australian Institute of Health and Welfare, 2019; Hogg, 2005).

In a study conducted in Western Australia that gathered the views of children that had interacted with the Youth Justice Services, Indigenous Australian children described the factors on their path into crime, which included "home environment, experience of family breakdown and dysfunction, pressure from peers, and school disengagement" (Commissioner for Children and Young People Western Australia, 2016, p. 50). This is not a new discovery, in 1999 Sansbury wrote that:

> Social disadvantage and oppression leads to poverty, family breakdown, depression and mental illness. Each of these factors can be linked independently to offending, but in combination the effect on offending rates is multiplied. (as cited in Day, Howells, & Casey, 2003, p. 124)

These non-criminogenic needs are prevalent across many groups of offenders, however, are much more prevalent in the Indigenous offender population (Day et al., 2003). Poverty is also a non-criminogenic need, one that is also often the result of family breakdown as a result of children being raised in single-family households (Najman et al., 2018).

Poverty is unavoidably linked to educational and employment outcomes for Indigenous Australians (Altman & Fogarty, 2010). Socio-economic disadvantage, or poverty, is widespread for Indigenous Australians, but it is also multi-faceted as described by the Productivity Commission who state that "Indigenous people experience poorer outcomes than non-Indigenous people in the areas of education, income, health and housing [and is]…linked to geographic isolation" (Australian Law

Reform Commission, 2017b). The Pathways Report (2017b) puts forward strong evidence of the link between low educational levels, subsequent lack of employment, and the consequential entry into the justice system.

In 2015, across the whole of Australia only 49.0% of Indigenous students in Year 3 had achieved a nationally accepted minimum level of literacy, reading and numeracy (Australian Law Reform Commission, 2017b). In 2014, there was a gap of 24.9% between Indigenous and non-Indigenous students successfully completing Year 12 with the gap widening even further for Indigenous students living in remote areas (Australian Law Reform Commission, 2017b). Additionally, in 2015 only 8.5% of Indigenous students achieved an ATAR of 50.00 or over, compared with 43.8% of non-Indigenous students (Australian Law Reform Commission, 2017b). Disengagement with the education system leading to truancy has been identified as a major causal factor in the low educational achievement figures for Indigenous children (Dickson & Hutchinson, n.d.).

Truancy is often fuelled by low socio-economic background, single-parent households, English as a second language, as well as high levels of student transience (Gray & Beresford, 2008). Truancy does not only affect a child's educational achievement, but also, according to Gray and Beresford (2008), affects a child's sense of belonging at the school, which adds to the motivation for being truant. Furthermore, Gray and Beresford posit that being absent from school "correlates with high rates of juvenile crime" (p. 201). In a study of Indigenous Australian youth and crime, Beresford and Omaji (1996) found that this link was inter-generational with Indigenous Australian parents, who themselves had been excluded socially and economically, telling their children "you can't make a go of it because of what's happened in the past" (p. 132). Children then find it easy to fall into patterns of truancy, delinquency and, eventually, crime (Beresford & Omaji, 1996).

Educational attainment and its link to interaction with the criminal justice system is demonstrated clearly by Weatherburn, Snowball, and Hunter (2006) who revealed that 42.5% of Indigenous Australian respondents in their study had achieved an education level of Year 9 or below with 10.4% incarcerated. Furthermore, 38.8% reached Year 10 or 11, and only 21.0% completed Year 12 with 6.6% and 3.3%, respectively, incarcerated (Weatherburn et al., 2006). Thus, those Indigenous students achieving Year 9 or below have a 1 in 2.6 risk of being charged and 1 in 16 risk of being imprisoned, compared with 1 in 5, and 1 in 30 for those reaching Year 12 (Weatherburn et al., 2006).

In terms of raising the number of Indigenous Australians achieving a Year 12 qualification (or equivalent), the Close the Gap initiative set a target to "halve the gap for Year 12 attainment rates by 2020" (Australian Institute of Health and Welfare, 2019, p. 63) and by 2016 it claims that "65% of

Indigenous 20-24 year olds had a Year 12 or equivalent qualification" (Australian Institute of Health and Welfare, 2019, p. 63). However, the Closing the Gap target of "halving the gap in employment…within a decade is not on track to be met" (Australian Institute of Health and Welfare, 2019, p. 64), but educational attainment is not the only barrier to employment.

Another barrier to employment for Indigenous Australians is the inadequate opportunities for employment, especially in remote areas (Weatherburn et al., 2006). The Centre for Aboriginal Economic Policy Research (CAEPR) has conducted numerous studies on Indigenous employment and economic opportunities in remote communities (see Altman, 2000, 2009; Hunter, 2000). Using figures from 2006, Altman (2009) reported that the ratio of Indigenous to non-Indigenous unemployment rate for 'remote areas' was 4.7 (14.5 to 3.1) and for 'very remote areas' it was 1.2 (10.5 to 8.39), whereas for 'major cities' it was 3.0 (15.0 to 5.0).

By 2016, according to the report *Australia's Welfare 2019,* the number of employed Indigenous Australians was 47.0% of Indigenous Australians between 15-64 years of age being employed in comparison to the 72.0% of non-Indigenous Australians in employment. The more remote the location the larger the levels of Indigenous unemployment with "54% in major cities compared with 31% in *Very* (sic) *remote* areas" (Australian Institute of Health and Welfare, 2019, p. 64). One theory put forward is that many Indigenous Australians living in 'very remote' areas are unwilling to sacrifice their culture or beliefs to take up employment opportunities elsewhere (Dockery, 2010).

It is posited that unemployment is extremely costly, not only financially, but also socially, emotionally, and psychologically because the effects of unemployment leak into the circles of family and other members of a community (Hunter, 2000; Dockery, 2010). Unemployment leading to low socio-economic status was seen as a contributing factor to crime in longitudinal studies conducted in the 1980s (Weatherburn et al., 2006). In 2006, Weatherburn et al., concluded that either being unemployed or being employed on a low salary has a strong influence on the undertaking of income-generating crime.

As mentioned before, poverty is unequivocally linked with a lack of education and a lack of employment opportunities, which in turn creates a barrier to home ownership (ACTCOSS & Aboriginal Justice Centre, 2008). Over 30.0% of the income in Indigenous Australian households in Canberra is allocated to housing costs, and one in five Indigenous Australian households is under financial stress (ACTCOSS & Aboriginal Justice Centre, 2008). A major concern for Indigenous Australians is the availability of affordable housing, with many families experiencing overcrowding in efforts to reduce housing costs (ACTCOSS & Aboriginal Justice Centre, 2008).

Overcrowding, on top of financial pressure, adds to the number of family breakdowns experienced by Indigenous Australians, which in turn leads to either out of home care or homelessness for many Indigenous Australian youth (ACTCOSS & Aboriginal Justice Centre, 2008; Australian Law Reform Commission, 2017b). As families breakdown due to overcrowding many women are faced with continuing to live in situations of family violence because "housing options are extremely limited, with individuals and families remaining on waiting lists for years" (Medland, 2007, p. 31). Thus, it is clear to see how domestic or family violence is a leading factor contributing to homelessness in Australia (Wendt & Baker, 2013).

Homelessness affects the interaction of Indigenous Australians with the criminal justice system in three ways (ALRC, 2017). Firstly, 27.0% of Indigenous Australians were homeless before being picked up by police prior to imprisonment, therefore, homelessness increases the visibility of Indigenous Australians to the police (ALRC, 2017). Secondly, homeless Indigenous Australians are more likely to be denied bail (ALRC, 2017). Thirdly, being homeless on release from prison substantially increases the chance of reoffending (ALRC, 2017).

According to the Australian Law Review Commission (2017), a recent study established that an offender was two times more likely to "return to prison within 9 months if they were homeless" (p. 73). As the Australian Institute for Health and Welfare states "…homelessness is more common among those with a history of contact with the criminal justice system, it lasts for longer, and is more likely to reoccur than for other homeless people" (as cited in ALRC, 2017, p. 72). Thus, for Indigenous Australians who make up 23.0% of Australia's homeless population the chance of interaction with the criminal justice system is high and likely to be a reoccurring experience (Homelessness Australia, 2016).

A study undertaken by Dawes, Davidson, Walden, and Isaacs (2017) of crime and recidivism in two remote Indigenous communities found that a lack of housing or any short-term crisis accommodation fuelled crime and contributed to a lack of community reintegration for offenders post-release from prison. The study established that for many offenders the over-crowded housing at the addresses provided in parole applications did not meet the required standards when assessed by authorities (Dawes et al., 2017). Furthermore, the study established that the over-crowded accommodation was unsuitable for prisoners upon release to "settle into a routine and avoid risks associated with recidivism, for example, social drinking, and gambling" (Dawes et al., 2017, p. 313). Upon release from prison there are insufficient programs for former offenders to support their criminogenic requirements and provide a barrier to recidivism (Dawes et al., 2017).

Another factor that often intersects with both homelessness and the criminal justice system for both Indigenous and non-Indigenous Australians is alcohol (Loxley et al., 2004; Snowball &

Weatherburn, 2008; Weatherburn, Snowball, & Hunter, 2008). The *Pathways Report* (2017b) states that "[m]ost Aboriginal and Torres Strait Islander people do not consume alcohol or do not consume it at a level that poses risks to their health over their lifetimes" (p. 69). However, it also reports that of those Indigenous Australians who do drink, they are "more likely than non-Indigenous to consume alcohol at levels that pose risks to their health over their lifetimes and on single drinking occasions" (p. 69). In a study in 2001, Boyd Hunter found link a between alcohol and arrests of Indigenous Australians.

Alcohol, according to Homel, Lincoln, and Herd (1999), is a prime characteristic of violence occurring in Indigenous communities. Alcohol abusers are more likely to interact with the criminal justice system because alcohol abuse brings with it a higher risk of violent behaviours and those who abuse alcohol are more likely to partake in antisocial behaviours that draw police attention (Weatherburn et al., 2008). In terms of alcohol-fuelled violence, Marcia Langton provided evidence to the RCIADIC that from 1989 to 1990 more Indigenous females were murdered through alcohol-related violence than there were deaths in custody during the same period (Homel et al., 1999).

Both Weatherburn et al. (2008) and the National Congress (as cited in Australian Law Reform Commission, 2017b) are of the opinion that alcohol abuse is a social, economic and health issue, not a criminal justice issue. Weatherburn et al. (2008) suggest that tactics to reduce levels of alcohol abuse in Indigenous communities, in most cases, should be high on the priority list because it is a predictive factor in Indigenous arrests. However, Dawes et al. (2017) point out that interventions that restrict access to alcohol, such as Alcohol Management Plans (AMPs), increases the risk of illegal home brew activities occurring, which increases the risk of arrest; it also sees an increase in the risk of health issues, or even death (Leon, Shkolnikov, & McKee, 2009). Alcohol is not the only vice of choice with many remote Indigenous communities in the grips of cannabis abuse (Bohanna & Clough, 2012; Lee, Conigrave, Clough, et al., 2009; Lee, Conigrave, Patton, & Clough, 2009).

Cannabis abuse in Indigenous communities is, according to Lee, Conigrave, Patton, et al. (2009), at endemic proportions, but is neglected as a major problem in favour of programs aimed at tobacco, alcohol, or petrol sniffing. Since the 1990s, cannabis use in Indigenous communities has become more prominent and the "associated health and social burdens are now being recognised" (Lee, Conigrave, Patton, et al., 2009, p. 228). It is espoused by Lee, Conigrave, Patton, et al. (2009) that although AMPs may be effective in reducing alcohol-related problems, they may be fuelling the increase in cannabis use where it may be easy to obtain.

In 2012, Bohanna and Clough interviewed Indigenous Australians aged between fourteen and fifty years in a remote alcohol-restricted Indigenous community and established high rates of cannabis use.

The study by Bohanna and Clough (2012) found that out of 133 the Indigenous Australians interviewed that 66.2% of males and 30.5% of females were current cannabis users, 12.2% of males and 30.5% of females were former users, and 21.6% of males and 39.0% of females had never used cannabis. Furthermore, 37.3% of the current users were daily users, 34.3% used it less than once per week and 28.4% were using it less than once per week (Bohanna & Clough, 2012). The findings of this study mirror those of similar studies conducted in the Northern Territory, which includes the mental health harms being reported with cannabis use including psychosis, dependence, and suicide (Bohanna & Clough, 2012).

The environmental factors contributing to criminal behaviour in Indigenous Australians have been given a considerable amount of attention in both academic and grey literature, as have the psychological and cognitive factors. However, there appears to be a lack of academic literature on the topic of throughcare, which has a direct link with both environmental and psychological and cognitive factors, as discussed in the next section.

Ineffective Throughcare Strategies

The aim of throughcare projects is to reduce recidivism by scaffolding a prisoner's transition back into the community upon their release (Tubex, 2021), and they are defined as providing "comprehensive case management for a prisoner in the lead up to their release from prison and throughout their transition to life outside" (COAG, as cited in Tubex, 2021, p. 83). It is important to note that while non-Indigenous ex-prisoners experience barriers similar to those of their Indigenous counterparts, there are cultural obligations, such as returning to rural and remote communities that can further exacerbate these barriers for Indigenous Austalians (Baldry et al., 2018). There has been some interest in throughcare projects due to the over-representation of Indigenous Australians in the prison system (Tubex, 2021), however, there is a paucity in academic research on the topic.

In 2016, the Commonwealth of Australia produced a report called *Prison to Work* that focused on "creating positive pathways to employment from prison for all adult Aboriginal and Torres Strait Islanders" (p. 4). The report was based on the provision that "employment provides rich opportunities to break the cycle of offending and reduce recidivism rates" (Commonwealth of Australia, 2016, p. 4). However, one of the main findings of the report was that there was a lack of support in transitioning back to community or throughcare (Commonwealth of Australia, 2016; Tubex, 2021).

In 2017, the Australian Law Review Commission (ALRC) stated its support of throughcare for Indigenous Australians exiting prison, stating:

> The ALRC supports the Aboriginal and Torres Strait Islander led development and delivery of throughcare to Aboriginal and Torres Strait Islander prisoners exiting the prison system as a means of lowering the likelihood of repeat offending within the community. (Australian Law Reform Commission, 2017b, p. 321)

Nevertheless, the ALRC pointed out that models of throughcare for Indigenous Australians had higher chances of success if "they are culturally competent, strength based, and utilise Aboriginal and Torres Strait Islander controlled organisations and/or ex-prisoner organisations" (Australian Law Reform Commission, 2017b, p. 315). Furthermore, the ALRC stated that for Indigenous Australian women the model of throughcare needed to be revised further in respect to the experiences of family violence.

The ALRC also stresses the amount of collaboration required for throughcare strategies to be successful due to the multi-agency involvement. Furthermore, the report stresses that there are additional barriers to successful throughcare implementation for Indigenous Australians, such as limited availability of both housing and services in remote communities (Australian Law Reform Commission, 2017b).

In 2019, an *Adult Through-Care Model for Aboriginal and Torres Strait Islander Peoples* was released by ABT Associates Australia, but funded through the Australian Government (Tubex, 2021). According to Tubex (2021), this model "is guiding the approach and reporting of throughcare services funded by the National Indigenous Australians Agency" (p. 84). Furthermore, the model is espoused as providing "a recommended approach and operational guidance to deliver Adult Through-Care (ATC) for Aboriginal and Torres Strait Islanders" (Tubex, 2021, p. 84). The report raised alarms in the view of Tubex (2021) who stated:

> There is no number or list of stakeholders that were consulted; there are no references for the 'extensive literature review' (other than for web-based definitions I counted two academic sources, both from the UK); and there is no description of the methodology used to develop the model…there is no mention of the consultation following the initial development of the model. (p. 85).

Nonetheless, the model is then described as having the ATC staff identifying and prioritising "those with complex and high needs, at risk of reoffending, and who are motivated to stop reoffending" (Tubex, 2021, p. 85) to participate in the throughcare project. The complex and high needs include family violence, substance abuse, homelessness or housing issues, having no community support network, and mental and/or physical health issues (Tubex, 2021).

In 2019, the Indigenous Justice Clearinghouse published an article on the status of throughcare approaches for Indigenous people in Australia and New Zealand, which also included

identifying key issues (Day, Geia, & Tamatea, 2019). The article found a lack of uniform terminology to describe the programs that were "considered to provide throughcare in Australia and New Zealand" (Day et al., 2019, p. 5). This, along with the diversity in services included in throughcare programs, proved challenging for "evaluation efforts that seek to establish whether programs actually deliver outcomes" (Day et al., 2019, p. 5). Furthermore, they found a paucity in the availability of "methodically robust throughcare evaluations to make any firm judgements about program effectiveness" (Day et al., 2019, p. 5), particularly regarding reducing recidivism.

In 2020, Tubex et al. (2020) wrote the report *Building Effective Throughcare Strategies for Indigenous Offenders in Western Australia and the Northern Territory* for the Criminology Research Advisory Council. The report was the result of community-based research with the findings resulting from "interviews with men and women in communities, with and without lived experience, community Elders and Respected (sic) people and local service providers" (Tubex et al., 2020, p. 7). Listening to Indigenous Australians' perspectives on throughcare informed the authors that "Indigenous experiences with the criminal justice system in general, and with imprisonment in particular, are different, and require a different approach than mainstream service provision" (Tubex et al., 2020, p. 49), an approach that is tailored to Indigenous Australians.

One of the main findings of this report is that effective throughcare for Indigenous Australians from remote, discrete, or more traditional-based communities is "a community-based approach that invests in local initiatives and draws on the authority of Elders and Respected (sic) people from relevant communities" (Tubex et al., 2020, p. 49). Furthermore, they suggest that the throughcare approach should include "extended family members and community members" (Tubex et al., 2020, p. 49) to work in a holistic approach to the social determinants of criminal offending.

The report also found that in the communities in which the research was conducted there was a distinct lack of throughcare provision according to the community and the service providers (Tubex et al., 2020). Service providers that manage non-prison attached throughcare programs said that "even if there are services provided in the prison, they are insufficiently aware of them and there is a lack of communication and collaboration" (Tubex et al., 2020, p. 50). This is not the case across both Western Australia and Northern Territory in their entirety with the authors stating, "we did come across numerous examples of good practice and services, and it is definitely not the case that no good throughcare programs or services are in place" (Tubex et al., 2020, p. 50). Thus far the literature in this section has been a broad-brushed focus on throughcare for Indigenous Australians, however, one report does narrow the scope to throughcare for Indigenous Australians with a disability.

In 2021, a report commissioned by the Centre for Aboriginal Economic Policy Research investigated the support services provided to Indigenous Australians with a disability, which included

those being released from prison (Walsh & Puszka, 2021). The report concluded that "it was unclear whether throughcare initiatives are effective for Indigenous people with a disability" (Walsh & Puszka, 2021, p. 60). The main issue with throughcare for Indigenous people with a disability according to the report is the availability of culturally-safe initiatives (Walsh & Puszka, 2021). Ultimately, for throughcare to be effective for Indigenous Australian offenders it must be culturally safe, have consistent funding, and sound collaboration between the service providers (Tubex et al., 2020).

Conclusion

This literature review has established that there is an increasing crisis in Indigenous incarceration rates. It is contended by some that the number of prisoners identifying as Aboriginal or Torres Strait Islander may be influencing these increases, notably Weatherburn (2014). However, there is agreement that there is not a single contributing factor, rather the literature recognises that there is a myriad of factors that are contributing to this crisis.

Literature regarding Indigenous deaths in custody was dominated by academics debating the impacts, findings, and recommendations of the RICADIC, but from a variety of standpoints. Cunneen (1992a, 2006) writes about a lack of implementation of policy resulting from the commission, which he said is reflected in the continuing rise in Indigenous incarceration rates and that the circumstances in which Indigenous Australians die in custody are still regularly occurring. A viewpoint that continues to be expressed by Langton (2021) who expresses her frustration and dismay that even simple reforms continue to be rejected by both federal and state governments.

Another view of the RCIADIC was that it was a continuation of colonialism and oppression due to the constraints and controls placed upon it, as well as the fact that the recommendations would contribute to ongoing surveillance of Indigenous people (Marchetti, 2005, 2006; Sackett, 1993). A feminist lens was also trained on the commission with authors such as Kerley and Cunneen (1995) and Marchetti (2012) positing a gender-bias reflecting that issues specific to Indigenous women had been neglected by the commission.

Some of the literature on Indigenous deaths in custody was written while the RCIADIC was underway, particularly literature focusing on suicides in custody (Goldney & Reser, 1989; Reser, 1989a, 1989b, 1991). These earlier articles viewed the deaths in custody from a medical standpoint that pointed towards psychological illness combined with alcohol as causal factors in suicides in custody. The most recent article, published in 2019, investigated all deaths in custody, not just Indigenous deaths and found that both Indigenous Australians and females regardless of indigeneity were under-represented in the 505 coroners' reports that were examined (Walsh & Counter, 2019). In

addition, the findings of this study found that Indigenous status was frequently not reported in coroners' reports (Walsh & Counter, 2019).

A proportion of the literature lays the blame squarely at the feet of Australia's settler-colonial past, such as Cunneen (2009), Cunneen and Porter (2017), and Watson (2009). The settler-colonial history of waging war against the Indigenous Australian inhabitants as a means of taking control over land and punishing, often violently, those Indigenous Australians who dared to fight back provided a fertile ground for a criminal justice system that was, and to some extent still is, racially skewed (Watson, 2009). The proponents of this point of view espouse that Indigenous Australians were never under the protection of the law, rather they were under control of the law (Klippmark, 2016; Cunneen, 2009).

A small proportion of literature was dedicated to the criminalisation of Indigenous Australians as a result of being label as 'deviants' because they refused to adhere to the new social norms created by the settler-colonials (Hopkins Burke, 2009). Much of the literature argues that by being labelled as 'deviant' a negative stereotype developed viewing Indigenous Australians as 'inherent criminal', which shows in their over-representation in the criminal justice system (Baldry et al., 2018; Joudo, 2008). A stereotype, according to the literature, that is driven by negative media representation of Indigenous Australians where they are portrayed as inherently criminal with violent tendencies (Cunneen, 2018a; Sanson et al., 2000), while ignoring the psychological, cognitive, or social factors that impact on criminal behaviour.

Mental health is another area that is well covered by the literature with Eileen Baldry being a staunch advocate in this area. Baldry firmly believes that the incarceration rates for Indigenous Australians is increasing due to the rise in mental health issues within Indigenous communities, particularly cognitive disabilities, and Foetal Alcohol Spectrum Disorder (Baldry, 2015; Baldry et al., 2013; Baldry et al., 2015; Baldry et al., 2016). Furthermore, both Baldry and Judge Myers (who chaired the research for the Australian Law Reform Commission report in 2017), suggest that the special requirements of these vulnerable prisoners are not being met by the prison system, which they purport lead to recidivism within this group.

The field that had the largest concentration of literature by far was environmental factors for criminal behaviour. Social determinants, or environmental factors, were suggested by Weatherburn, et al. (2014) as the more dominant factor in the over-representation of Indigenous prisoners than colonisation. Furthermore, Weatherburn, et al., (2003) also indicated that more Indigenous Australians were turning to crime, which was driving the increase. According to Weatherburn and his colleagues, focusing on the social causes of crime in Indigenous communities, such as substance

abuse, alcohol management, unemployment levels and family violence, would substantially reduce the incarceration rates for Indigenous Australians.

Various other authors support Weatherburn's perspective, including the RCIADIC who stated as early as 1991 that social disadvantage was a leading contributing factor to Indigenous incarceration. Twenty-six years on from the RCIADIC, social disadvantage of Indigenous Australians has not improved, thus, the Australian Law Reform Commission state that poverty and homelessness are still leading contributing factors in Indigenous incarceration. The literature establishes that socio-economic factors leading to interaction with the criminal justice system include low educational attainment, truancy, and unemployment, lack of housing, over-crowding, homelessness, family breakdowns, alcohol, and other substance abuse problems.

This chapter has also established that focusing on socio-economic disadvantage and environmental factors alone is a 'blame the victim' mentality. Authors such as Craigie (1992), Pattel-Gray (1998) and Anthony (2012) encourage readers to also look critically at the criminal justice system itself as being a cause of the Indigenous incarceration crisis. Craigie (1992) advises that racism is institutionally entrenched within Australia and that racism is prolific throughout the system from police officers to judges to prison officers and parole officers (Anthony, 2012; Cunneen 1992a; Luke & Cunneen, 1995).

A large amount of literature focused on the link between Indigenous arrests for public order offences and a lack of police discretionary power being utilised (Australian Law Reform Commission, 2017b; Behrendt et al., 2009; Davis, 1999; Musk & Walters, 2017). The ALRC review found that Indigenous Australians were being incarcerated for minor infringements, such as public drunkenness and non-payment of fines (Behrendt et al., 2009; Mackay, 1996). It was found that had police officers initiated their discretionary power then the outcome of many deaths in custody in Australia would have had different outcomes (Allard et al., 2010b).

Finally, it was established that there is a lack of literature surrounding the effectiveness of throughcare strategies, particularly those for Indigenous Australians in remote communities. Much of the literature was grey literature, rather than academic research that focused on the provision of employment opportunities rather than a comprehensive case management approach that incorporated both the social determinants and psychological and cognitive factors that impact on recidivism rates (Tubex, 2021, u.d.; Tubex et al., 2020). Further, it was pointed out that current throughcare strategies do not appear to be effective for Indigenous Australians with a disability (Walsh & Puszka, 2021). It was highlighted by two of the articles that a good model of throughcare for Indigenous Australians would be Indigenous-led, Indigenous-based, and culturally appropriate (Tubex, 2021).

This literature review has established that there is an extensive body of existing literature on Indigenous incarceration that discusses in-custody deaths, the justice system as a colonial paradigm, the criminalisation of Indigenous Australians, the social determinants and psychological and cognitive factors in criminal behaviour, and the ineffectiveness of existing throughcare strategies for Indigenous Australians. Despite this, there are no Australian studies that systematically examines the violence perpetrated against Indigenous Australians within all tiers of the criminal justice system through a necropolitical lens. Going forward the next chapter focuses on the theoretical framework that has formed foundation of this research, as well as providing a brief review of four articles that discuss the violence of Indigenous incarceration in Australia through a necropolitical lens.

3. Framing Indigenous Incarceration: Necropolitics as a Theoretical Framework

'Death is most frightening, since it is a boundary'

- Aristotle

This chapter outlines the theoretical framework, which consists of several theoretical lenses stemming from different disciplines, including sociology, anthropology, and criminology. These theoretical lenses are complementary and, on occasion, overlap. The theory of *necropolitics, death-worlds* and *necropower* come from Mbembe (2003). In addition, the concepts of *Homo sacer* and '*state of exception'* from Agamben (1998, 2003) are also utilised. Finally, the concept of *zombification* from Linnemann, Chancer, Wall, and Green (2014).

This chapter is divided into four sections. The first is structured according to the originators of the concepts and provides a brief introduction to the originators before describing each of the theoretical concepts. The second section explains how the concepts will be operationalised as a framework for analysing the data collected. The third section provides a brief review of four pieces of Australian academic work on Indigenous incarceration using a necropolitical lens. The final section outlines the three forms of violence that I argue are experienced by Indigenous Australians in the criminal justice system.

Necropolitics: A Theoretical Foundation

Mbembe – Necropolitics, Death-worlds, and Necropower

Achilles Mbembe is a political and social theorist, as well as a public intellectual and philosopher (Sithole, 2014). Born in Cameroon, Mbembe writes prolifically on African politics and social issues and is "one of the most original voices in contemporary culture and thought" (Oboe as cited in Sithole, 2014, p. 3). The theories of Mbembe (2003) originate from violence experienced within the African political context.

For Mbembe, violence in Africa is normalised, omnipresent, racialised, and a result of Africa being a colonised country (Sithole, 2014). Mbembe implies that Africa is in a state of war in which "the project of dehumanisation and the configuration of power are still entrenched" (Sithole, 2014, p. 223); a state he refers to as 'necropolitics' (Mbembe, 2003). Necropolitics is defined by Mbembe (2003) as "the material destruction of human bodies and populations" (p. 14), which is achieved by the "subjugation of life to the power of death" (p. 39). The concept of necropolitics demonstrates how a 'power' can operate in areas of exception, a power that holds destruction as its logical *modus operandi* (Bargu, 2016). In other words, necropolitics is the power of the sovereign (or in this thesis, the state) to decide who lives or who dies, who is disposable and who is not, who matters and who does not (Mbembe, 2003; Sclofsky, 2016; Soyinka-Airewele, 2015).

Mbembe (2003) conceptualises death not just as a physical condition, but also as a social and political one. Mbembe's concept of 'necropower' is a transmogrification of Foucault's 'biopower' into power that is applied specifically in the colony and post-colony in situations that are outside the boundaries of the law (Sithole, 2014; Soyinka-Airewele, 2015). Necropower is the power used by the state's technologies of control (judicial system, particularly the police) to subjugate life to the power of death (Alves, 2014; Rana & Rosas, 2006). Necropower operates where the state not only has the right to kill but can also instigate the 'social death' of populations by classifying them as 'inferior' (Tedmanson, 2008).

These deaths occur in what Mbembe (2003) refers to as 'death-worlds' where specific populations "are subjected to the conditions of life conferring upon them the status of the *living dead*" (emphasis in original, p. 17). Mbembe's concept of 'death-worlds' is based on the lives of slaves in African plantations where a slave is scarred by losses: "loss of a 'home', loss of rights over his or her body, and loss of political status" (as cited in Vadasaria, 2015, p. 119). This social and political 'death' creates a body that is 'dead', but is still in possession of a soul (Sithole, 2014); a body that exists in a "state of injury, in a phantomlike world of horrors and intense cruelty and profanity" (Mbembe, 2003, p. 21). Mbembe's three concepts of necropolitics, necropower and death-worlds are founded on the state's objectification and dehumanisation of the African population through the suspension of life through physical, social, and political death. These concepts draw on the earlier work of Giorgio Agamben, particularly the 'state of exception' and '*homo sacer*', which both feature in the theoretical framework of his project.

Agamben – *Homo Sacer* and State of Exception

Giorgio Agamben was an Italian political philosopher whose ambition was, according to one of his translators, to "provide an over-arching account of the history of the West, and use that history to shed light on the contemporary world" (Svirksy, 2017, p. 1). Although his research covers much wider topic areas, including aesthetics, language and theology, Agamben became well known in the 2000s due to a series of books in which he discusses "contemporary issues of sovereignty and violence" (Svirksy, 2017, p. 1); books that centre on the concept of '*homo sacer*' (Agamben, 1998).

Homo sacer, in ancient roman times, was one who was judged by the people to have committed a crime, therefore, their death was not valued by the gods and they could not be sacrificed (Agamben, 1998). However, they could be murdered with impunity because alive they were viewed as having no value in society (Agamben, 1998). Thus, according to Banerjee (2008), *homo sacer* is situated outside of both religious and judicial law because "they were objects of sovereign power but excluded from being its subject" (p. 1544). In other words, *homo sacer* could be murdered without

the risk of a homicide charge being laid upon the perpetrator. Therefore, the murder of *homo sacer* occurs in the 'state of exception'.

The 'state of exception', another concept from Agamben, is represented at the intersection of the state's power being exercised outside the legal jurisdiction by the suspension of the law itself (Agamben, 2003; Soyinka-Airewele, 2015). The state has the power to define what, or who, the exception is (Alves, 2014), therefore it is within the power of the state to decide what value a person's life has; thus, while "the application of the law is suspended, the law remains in force" (Banerjee, 2008). In the state of exception, the state has the power to apply the concept of *homo sacer* to any of its constituents, stripping them of their human and civil rights (Rana & Rosas, 2006).

In the context of necropolitics, necropower, death-worlds, *homo sacer*, and the 'state of exception', the concept of *zombification,* as coined by Linnemann et al. (2014), allows for further exploration of the dehumanisation of populations through physical, social, and political death.

Linneman, Wall and Green – Zombification

Travis Linneman is an Associate Professor in Sociology at the Kansas State University with a focus on the war on drugs and terror, U.S. police violence and representation of crime in popular culture. Tyler Wall is also a Professor in Sociology at the University of Tennessee focusing on police power, and racialised state violence. Edward Green is a Professor at Roosevelt University and focuses on the sociology of punishment, criminological theory, and corrections.

Zombification is described by Linnemann et al. (2014) as a politico-cultural process in which those populations that are deemed not to matter are dehumanised and transformed into the "walking dead" (p. 507). The process occurs because specific populations "never achieve, in the eyes of others, the status of the living" (Sharon Holland, as cited in Linneman, et al., 2014, p. 507). Author, bell hooks, sums up the concept well, stating:

> Reduced to the machinery of bodily physical labor, black people learned to appear before whites as though they were zombies, cultivating the habit of casting the gaze downward so as not to appear uppity. To look directly was an assertion of subjectivity, equality. Safety resided in the pretense of invisibility. (as cited in Linnemann et al., 2014, p. 508)

According to Linnemann et al. (2014), the walking dead are not metaphorical, "rather [they are] the literal embodiment of those dispossessed and socially dead others" (p. 519) and that it is "a long-standing practice of white supremacy and the walking dead, its product" (pp. 507-508). In other words, zombification is the process of dehumanisation inflicted through necropower. The technologies of control practiced by necropolitical governance view the living dead as disposable, bring into question their humanity via 'social death', and brand them as un-belonging (Lytle, 2017).

Today, the necropolitics of zombification continues to be seen in the instruments of social control that are governed by neoliberal, capitalist social orders where "bureaucratic discourse and Western rationality show state-sanctioned killing as justified and something other than murder" (Palacios, 2014, p. 4). In other words, no guilt should be attached to the killing of these zombified 'others' because they are already dead (Linnemann et al., 2014).

Necropolitics and the underlying concepts that are the foundation of this research project create a constant visualisation of settings, from day-to-day interactions through to complex power struggles. Since first discovering necropolitics as an honours student it has permeated not only my thinking, but also my research. There is, however, a notable lack of focus on necropolitics in academic literature in Australia, particularly in reference to the violence of Indigenous incarceration, which is discussed in the next section.

Necropolitical Literature on Indigenous Australian Incarceration

Through the process of reviewing the existing literature on the incarceration of Indigenous Australians, it was identified that there is significant gap in the literature pertaining to the investigation of Indigenous incarceration through the lens of necropolitics. Four Australian papers discuss necropolitical concepts with respect to three separate deaths of Indigenous Australians that occurred in police custody, those of Mr Doomadgee, Ms Dhu, and Mr Briscoe (Holcombe, 2016; Klippmark, 2016; Klippmark & Crawley, 2017; Tedmanson, 2008).

Firstly, there is Deirdre Tedmanson's journal article '*Isle of exception: Sovereign power and Palm Island'* (2008), which focuses on the death in custody of Mr Doomadgee in 2004. Secondly, there is Pauline Klippmark's honours thesis, '*Justice for Ms Dhu: Disrupting the framing of state violence and Indigenous women's deaths in custody through commemoration in the public sphere'* (2016), which centres on the death in custody of Ms Dhu, ten years following the death of Mr Doomadgee.

Thirdly, there is Karen Crawley, with Pauline Klippmark, who wrote '*Justice for Ms Dhu: Accounting for Indigenous deaths in custody in Australia'* (2017), which although still focusing on Ms Dhu's death in custody, addresses gendered, institutional, and structural forms of racism in Australia. Finally, Sarah Holcombe's work '*Human Rights, colonial criminality, and the death of Kwementyaye Briscoe in custody: A Central Australian case study'* (2016), which analyses the death of Mr Briscoe from a human rights, necropolitical, and colonial criminality stance.

In her article, Tedmanson (2008) states that "Australia is a modern democratic country where it is assumed everyone enjoys citizenship rights but for Indigenous Australians, there are at times states of exception where sovereignty and citizenship becomes ambiguous and law/non-law is

blurred" (p. 143). Applying the theories of Agamben in a way unique to the postcolonial Australian context, Tedmanson extends the understandings of the Indigenous Australian perspective of the justice system in postcolonial Australia.

Drawing upon the historical context of Palm Island as a former Indigenous prison island, Tedmanson uses Agamben's theories of *homo sacer* and state of exception to highlight the subversion of Indigenous citizenship on Palm Island, particularly their "sovereignty, governance structures and organisations" (p. 142). According to Tedmanson, state violence is used to control Indigenous governance and the effects of historical exclusion have filtered through to "animate the power relations that effect the life and death experiences of Indigenous Australians today" (p. 142). Ultimately, Tedmanson viewed the circumstances of Mr Doomadgee's death and the treatment of the Palm Island community following his death as exemplifying the continuing classification of Indigenous people as *homo sacer*, as 'bare life'.

The thesis by Klippmark, as well as the article by Klippmark and Crawley, both frame Ms Dhu's death squarely in the necropolitical space. According to Klippmark and Crawley (2017), prison and police cells are necropolitical spaces due to the fact that they "produce death for those destined to abandonment, deprivation and neglect" (p. 7). Building on this foundation of neglect, Klippmark posits that Ms Dhu was stereotyped as a "destructible life" (p. 2) by the police officers and medical staff with whom she had contact during the 48 hours of incarceration leading up to her death.

In addition, Klippmark proposes that Ms Dhu's death resulted from institutional racism stemming from settler-colonialism's history of dispossession, punitive penal measures, and enforced assimilation. This is supported in the article by Klippmark and Crawley who state that Australia's sovereignty rests on its "dispossession, over-incarceration and biopolitical management of its Indigenous peoples" (p. 4). However, these matters are, according to Klippmark, written off as Indigenous pathology as opposed to an issue of state violence.

In her article analysing the death of Mr Briscoe, Holcombe (2016) also borrows from Agamben, but focuses on his concept of 'bare life'. Holcombe reports that the death of Mr Briscoe, who died from "the effects of acute alcohol intoxication, positional asphyxia and aspiration" (p. 104) was preventable and should not have occurred. According to Holcombe, Mr Briscoe and other Indigenous Australians from Alice Springs were vulnerable to the "police culture of complacent disregard for human life, where degrading and disrespectful treatment was the norm and where Aboriginal inmates are reduced to 'bare life'" (p. 104). Bare life is not the only concept used by Holcombe.

Holcombe also discusses Mr Briscoe's death in the Australian historical context by stating that the British, through the establishment of sovereignty, established a state of exception by deciding that Indigenous people were non-citizens, or non-people, effectively relegating them to the status of *homo sacer* - "people without rights" (Holcombe, 2016, p. 105). According to Holcombe, Indigenous Australians were "deliberately written out" (p. 105) of the Australian constitution, effectively ensuring that the law of the state defined the rights of included citizens and made clear the absence of rights of the non-citizens.

The combination of Agamben's concepts with a focus on human rights brings a unique angle to Holcombe's work that separates it from that of Tedmanson, Klippmark and Crawley and Klippmark. However, all four articles highlight the continuing imbalance in relations of power and violence within the Australian criminal justice system.

This brief review has highlighted that this thesis will add to the literary canon on necropolitics within the criminal justice system in Australia by not only analysing Indigenous deaths in custody, but also scrutinising the intersection of Indigenous Australians when interacting within all spheres of the criminal justice system. However, in order to use the theory of necropolitics and the associated concepts outlined above they first had to be operationalised, as explained in the next section.

Operationalisation

To develop a framework for analysing the data in this research the theoretical concepts had to be operationalised. In other words, the abstract, theoretical concepts described above had to be converted into variables with operationalised definitions (Harvey & MacDonald, 1993). Different definitions lead to different variables and, therefore, different results (Harvey & MacDonald, 1993). As such, the validity of the research is dependent upon the abstract concepts being operationalised into defined variables (Harvey & MacDonald, 1993)

The goal was to devise operations that actually measure the concepts mentioned above, in other words, to achieve measurement validity (Neuman & Wiegand, 2000). There are three steps in operationalisation, which are:

1. Choose the concept to be operationalised, e.g, *homo sacer*.
2. Choose a variable, or variables, to represent that concept, e.g., non-citizen and powerless.
3. Measure the variable with responses to questions, or indicators, e.g., non-citizen can be measured by asking 'to what extent are Indigenous Australians viewed as objects of State power (manifested through the law) but excluded from being their subjects (and hence having both obligations as well as rights under the law)?'. (adapted from Neuman & Wiegand, 2000)

There are many options available to social researchers when it comes to operationalisation of concepts and the measures of variables can be based on a range of activities, including asking people questions, reading archival documents, or observation of social interactions (Bachman & Schutt, 2003). The table below demonstrates the operationalisation of the concepts within the theoretical framework for this project. This table is designed to evolve with the research through the data analysis phase and will be expanded upon in the theoretical analysis chapters later in the thesis.

Theoretical Concept	**Definition of Concept**[7]	**Variable/s**	**Definition of Variable**[8]
Necropolitics	The right of the sovereign (or State) to decide which citizens are valuable and which ones are not, as well as which citizens are expendable and which ones are not (Mbembe, 2003). In this thesis, necropolitics refers to the politics of death – political, social, cultural, and physical.	Neutrality	The maintenance of an attitude of neutrality towards Indigenous Australians.
		Uniformity	The quality or state of being the same. In this thesis, the variable 'uniformity' focuses on the level of consistency in how Australian states and territories treat Indigenous Australians.
Necropower	Power that is utilised to subjugate life to the power of death (Mbembe, 2003) – political, social, cultural, and physical.	Power	As per Felix Oppenheim "to be able to subject others to one's control or to limit their freedom" (as cited in Walter, 1964, p. 351). In this thesis, the variable 'power' refers to how criminal justice employees can impose their will or control over Indigenous Australians or limit their freedom.

[7] As defined for use in this thesis.
[8] As defined for use in this thesis

Theoretical Concept	Definition of Concept[7]	Variable/s	Definition of Variable[8]
Zombification	A politico-cultural process whereby groups of people, usually minority or marginalised groups, are conferred the status of the 'living dead' because they are viewed as the dispossessed, socially and politically dead 'others'.	Dehumanisation	Perception of Indigenous Australians as being less than human; to deny them as possessing human qualities, personality, or dignity; to divest them of individuality.
State of Exception	In this thesis, the state of exception is a necropolitical strategy that appears to operate inside of the law, but in reality, functions outside of the law by temporarily suspending it.	Suspension of law	Temporarily sidestepping, ignoring, or marginalising a law that allows the guilty party to walk free. In this thesis, this refers to the lack of accountability imposed on criminal justice officers who break the law in respect to their violent treatment of Indigenous Australians.
Death-worlds	A form of social existence whereby vast populations, usually minority or marginalised peoples, are subjugated to a life of social, cultural, and physical death (Mbembe, 2003).	Exclusion	The act of deliberately not allowing Indigenous Australians to be part of their families, communities, or society.
		Genocide	The physical, psychological, and cultural destruction of Indigenous Australians as a population.

Theoretical Concept	Definition of Concept[7]	Variable/s	Definition of Variable[8]
Homo sacer	A 'citizen' bound by the sovereign's (State's) laws, but who has no rights; who can be killed, but not murdered; who exemplifies the sovereign (State) power, but who is also powerless (Agamben, 1998; Tedmanson, 2008)	Non-citizen	Refers to Indigenous Australians being denied certain inalienable rights[9] to which all humans are entitled.
		Powerless	Refers to Indigenous Australians being without the autonomy, influence, or ability to stop being unfairly treated by the criminal justice system.

Table 1 - Operationalisation of Theoretical Concepts

Forms of Violence

Violence and coercive behaviours have long been a feature of social control, particularly in so-called post-colonial countries (Comaroff & Comaroff, 2006; Cunneen & Tauri, 2017). Indeed, Mbembe's theory of necropolitics, including necropower and death-worlds, originates from the violence experienced within the African political context, which indicates that violence is a fundamental part of necropolitics. Further, the other theoretical concepts used in this project include complex notions of violence. Therefore, I argue that to investigate Indigenous Australian incarceration through the lens of necropolitics, one must also incorporate the forms of violence being experienced. This section of the chapter explores the three types of violence that I argue are experienced by Indigenous Australians in the criminal justice system due to unequal relations of power. These are subjective, symbolic, and systemic violence.

Subjective violence is the most easily identifiable of this trio of violence (Žižek, 2009). According to Žižek, it is violence that occurs between subjects where there is "a clearly identifable agent" (2009, p. 8) against whom accountability can be held (van der Linden, 2012; Zirnsak, 2019; Žižek, 2009). Žižek calls these agents "social agents, evil individuals, disciplined repressive apparatus, fanatical crowds" (2009, p. 16). Thus, at its core, subjective violence is physical violence, whereby the perpetrators "generate physical force through their own body (stabbing, hitting, etc.) or an immediate extention of their bodies (shooting), and this physical force then strikes the victim" (van

[9] As detailed by the Universal Declaration of Human Rights, 1948

der Linden, 2012, p. 47). To make matters worse, it is not only the act of subjective violence that is physical but also the end results, which include injuries to the body (which can be fatal), as well as causing psychological distress (van der Linden, 2012).

Subjective violence also leaves a psychological footprint on its victims, such as "fear, shock, paralysis, and helplessness" (van der Linden, 2012, p. 50). Furthermore, the trauma resulting from subjective violence is compounded by "the very realisation that another human being is intent on physically harming or killing them, disrupting the everyday trust in minimal human decency and cooperation" (van der Linden, 2012, p. 50). Žižek (2009) argues that to focus on subjective violence alone is to ignore, or potentially participate in, the causal factors that create the conditions in which subjective violence thrives.

As disturbingly explicit as subjective violence is, the mass public view it "as a departure from the normal 'peaceful' state of things" (Žižek, 2009, p. 9). However, in many communities this is not the case with subjective violence a regular occurance that has become "a socially acceptable behaviour" (Pieterse, Straford, & Nel, 2018, p. 41). In these communities, subjective violence reaffirms how vulnerable populations, such as Indigenous peoples, minority groups, and refugees, are made to feel, which is "that they are unwanted, third-class citizens" (Pieterse et al., 2018, p. 41). Thus, subjective violence is reinforced by the objective forms of social control, such as symbolic and systemic violence, creating a cycle of violence (Greene, 2015; Pieterse et al., 2018; Zirnsak, 2019).

Subjective violence, as a means of social control, thrives when symbolic and systemic forms of violence are no longer effective (Pieterse et al., 2018; Žižek, 2009). In the trifecta of violence referred to in this thesis, symbolic and systemic violence are the least visible mainly due to the media's fetishistic focus on subjective violence in order to distract from the causal factors for the physical manifestation of subjective violence (Zirnsak, 2019; Žižek, 2009). Although both symbolic and systemic violence are objective in nature, they operate with very different *modus operandi*.

The term symbolic violence was coined by Pierre Bourdieu who saw it as "a gentle violence, imperceptible and invisible even to its victims" (1998, p. 1). Bourdieu implies that symbolic violence is undetectable by both parties involved, however, Roumbanis (2019) argues that it is not impossible to detect, only difficult to detect. For Bourdieu, symbolic violence is "exerted for the most part through the purely symbolic channels of communication and cognition" (1998, p. 2). In other words, through language and understanding.

This thesis follows the thinking of Everett (2002), who says that to understand symbolic violence one must "understand language and the role it plays in the social world" (p. 67). Therefore, symbolic violence in this thesis is essential for examining the "innately violent nature of human

communication" (Taylor, as cited in Legassick, 2012, p. 3). The structure of language is embedded with symbolic violence because "[l]anguage is the mechanism of violence and, as the medium of expression and communication, attention must be paid to its effects" (Drahos, 2012, p. 18). Language and its associated uses are formed through the process of socialisation, which includes forming dispositions towards others (Legassick, 2012), what Drahos (2012) calls "inscription of difference" (p. 18). For example, the use of racial epithets/slurs that are used to signal that those 'others' are excluded from 'normal' society. Therefore, language, and the way it is wielded, can include or it can exclude, which has huge implications in relations of power (Thapar-Bjorkert, Samelius, & Sanghera, 2016).

In this respect, symbolic violence is, as Roumbanis (2019) says, "a subtle form of power that can make its way into human relationships, and do so in a relatively indiscernible manner" (p. 202). Roumbanis (2019) contends that "symbolic violence is fundamentally based on organizational structures of domination and asymmetrical social relations" (p. 202). This is why for Bourdieu symbolic violence was essential in examining how the inequalities in social classes were created (Connolly & Healy, 2004).

Interestingly, Bourdieu wrote that symbolic violence "is the coercion which is set up only through the consent that the dominated cannot fail to give the dominator" (Bourdieu as cited in Burawoy, 2019, p. 48). In other words, the efficacy of language only occurs if the person being subjected to it views the perpetrator as being authorised to do so (Bourdieu, 1991). Therefore, it is easy to see how, as Drahos (2012) says, "[s]ymbolic violence is the invisible obscurant of systemic violence" (p. 19), hidden in the language of policies and practice that create and/or maintain a social order of domination, including those that use the threat of violence (Žižek, 2009).

Systemic violence, according to Ruggiero (2020), "reproduces inequality, immobility, injustice and misery, and … is implicit in the ordinary functioning of economic and political systems" (p. 5). Ruggiero (2020) describes systemic violence as "entail[ing] the treatment of masses of people as human remnants, useless residues, not as a result of subjective choice made by violent actors, but as the consequence of the rules governing the distribution of power and resources" (p. 5). Systemic violence is, therefore, the harm caused to people due to the social structure, as well as the "institutions sustaining and reproducing it" (Ruggiero, 2020, p. 11), such as the criminal justice system.

Systemic violence incorporates "institutionalised ageism, classism, elitism, ethnocentrism, nationalism, anthropocentrism and sexism" (Ruggiero, 2020, p. 11), as well as racism (Bernasconi, 2014a). This makes systemic violence, as Bernasconi (2014a) explains, "not only hard to see, but hard to make sense of" (p. 82), especially when its effects are twisted to appear as though they are the result of the victim's own actions (Ruggiero, 2020). This is further compounded by the media's

continual portrayal of systemic violence as a 'counter-violence' (Bernasconi, 2014b) with particular groups being portrayed as "the criminal type" (Bernasconi, 2014b, p. 151). This means, therefore, that it is the mere existence of these groups that causes them to be targeted, not their behaviour (Bernasconi, 2014b), such as attitudes towards Sudanese refugees in Melbourne.

The use of the word 'violence' in this context can be contentious. Galtung asked, "[c]an we talk about violence when no physical or biological object is hurt?…can we talk about violence when nobody is committing direct violence…?" (Galtung, 1969, p. 169 & 170). Tilly describes systemic violence as 'nonviolent violence' (Ruggiero, 2020). However, systemic violence can lead to disability, cruel death, and immense suffering (Bernasconi, 2014a; Galtung, 1969; Ruggiero, 2020).

Conclusion

This chapter specified the rationale behind the choice of theories contained within the theoretical framework used in this thesis, before explaining the process that was undertaken to operationalise the theories into measurable variables. It highlighted why key variables influenced the phenomenon being examined in this research study and why this phenomenon was examined using this particular theoretical framework.

4. Empowering Indigenous Voices: The Methodology

'...empowerment does not exist as the gift of a few who have it to be delivered to those who do not; people can only empower themselves'

- Pablo Freire (1972).

This chapter details the methodology used in this thesis and its implications for the analysis, as well as the design of the study, the methods used, and ethical considerations. The chapter begins by detailing my positionality as a non-Indigenous Australian researcher and the influence that power can have in the context of research with vulnerable populations.

From there the chapter briefly describes the relationship between criminology and Indigenous Australian people before going on to detail the reasoning behind the adoption of an emancipatory-transformative paradigm together with post-positivist, phenomenological, and critical criminology elements. Following this, it outlines the mix-methods framework, the research sample, the data collection, and data analysis techniques. The chapter finishes by detailing the ethical issues involved in delivering tangible research benefits, particularly within vulnerable populations and discussing the limitations of the research.

Positionality as a Non-Indigenous Australian Researcher

Before going further, I feel it is important to acknowledge the dynamics of power and positionality that exist within research. Research, by its very nature, is a political act, and no matter which paradigmatic stance a researcher takes they must be aware of this fact and manage the position of power they are in as a researcher (O'Leary, 2004). Furthermore, it is important for researchers to fully comprehend the influence that power can have in the process of research (O'Leary, 2004).

The age-old adage 'with great power comes great responsibility' holds especially true with respect to research; particularly research that is being conducted with vulnerable populations. Power is defined by Foucault as:

> A total structure of actions…it incites, it seduces, it makes easier or more difficult; in the extreme it constrains or forbids absolutely; it is nevertheless always a way of acting upon an acting subject or acting subjects by virtue of their acting or being capable of action. A set of actions upon other actions. (Foucault, 1983, p. 220)

Researchers must be aware of power dynamics and how they can influence the outcome of the research by continually looking to redress any imbalances of power that arise where the voice of the participants could be further silenced (W. Rowe, 2014).

Positionality on the other hand is the researcher being aware of their "political emotions" (Hage, as cited in Petray, 2012, p. 556) in relation to the context, both socially and politically, of the project (W. Rowe, 2014). Political emotions, according to Hage, are "those emotions related to our sense of power over ourselves and our environments as we pursue those goals, ideals and activities that give our life a meaning" (as cited in Petray, 2012, p. 556). Thus, political emotions will differ from person to person given that social realities and identities also vary from person to person (Petray, 2012). For those researchers working with vulnerable people, it is important to recognise that many of those people "outwardly struggle against some kind of oppression and injustice" (Petray, 2012, p. 556), which in turn requires reflexivity on the part of the researcher.

It is suggested by Petray (2012) that to become part of this community "requires us to empathise with the injustice, which often entails identifying the 'oppressor' and developing negative emotions towards them" (p. 556). However, Petray also warns against the influence that this positionality can have on the research and recommends that the researcher examines where their political emotions are emanating from so that they can "remain an engaged researcher, embedded in the cause and an advocate for [their] participants, while not experiencing things in the same way [as the participants]" (p. 561). Ultimately, the positionality of the researcher has the ability to impact the outcomes of the research, i.e., whose voices will be heard in the final product (W. Rowe, 2014).

To this end, I acknowledge that my reality, and therefore my positionality, not only as a researcher, but as a white, British, middle-class, well-educated woman may well, in most cases, be in distinct opposition to the reality of my participants. Throughout this research, from the initial proposal to the ethics process, to the formulation of the semi-structured interview questions, to the analysis of the data, I have kept my positionality in mind.

Prior to commencing tertiary studies in 2014, I was employed for a time by the Queensland Police Service (QPS) as a Communications Officer, which involved answering the emergency calls for the Cairns regional area. During my two years in this position, I was shocked and dismayed at the levels of racism directed towards and regarding Indigenous Australian people who encountered the police (and some civilian employees taking emergency calls). Directly before joining QPS, I worked for the Royal Flying Doctor Service, where I actively worked with Indigenous Australians and their communities to close gaps on health issues, including the effects of racism on health. Therefore, the whole QPS experience left a bitter taste in my mouth and a lasting imprint on my mind.

In 2014, I commenced an undergraduate degree in Indigenous Australian Studies to gain more insight into Indigenous Australian contexts and perspectives. Through these studies I gained a wider understanding of the positionality of Indigenous Australian peoples and gained many Indigenous

Australian friends and colleagues who were willing to assist me in my thirst for knowledge of Indigenous Australian worldviews, contexts, and perspectives.

My passion for social justice and inherent dislike of authoritarian worldviews saw the conception of the proposal for this research in the final year of my undergraduate degree. My drive behind this project mirrors wholeheartedly that of Simone Rowe who in her honours thesis states:

> …I am an outsider to the Indigenous colonised experience, an allied 'other' driven by a desire to expose and transform the myriad injustices that continue to oppress, objectify, dehumanise and criminalise Indigenous people…This project gave me an opportunity to reinvigorate, and at least partially realise, that aim" (S. Rowe, 2014).

I, therefore, aim to ensure that my research is conducted *with* and not *on* Indigenous Australians. My stance throughout this research and this thesis is inherently *political* as encouraged by Cunneen and Tauri (2017) because it:

- Privileges the perspectives, experiences and issues of Indigenous [Australian] peoples;
- Critically analyses the activities of the powerful, such as policy makers…and criminal justice institutions;
- Offers [recommendations] to [criminal justice institutions] and policy praxis that empowers Indigenous [Australian] peoples in their attempts at self-determination. (p. 35)

Criminology and Indigenous Australian Peoples

A vast majority of criminological research is performed on behalf of the powerful, those people and institutions that create, maintain, and control the "definitions, labels and boundaries of crime and markers of criminality" (Lumsden & Winter, 2014, p. 1). Criminology, of all disciplines in the social sciences has "the most dangerous relationship to power" (Hudson, as cited in Lumsden & Winter, 2014, p. 1). This is due to its prolonging of stereotypes of the criminal, which affect the persons to whom these labels are applied and robs them of the rights and liberties to which they are due (Lumsden & Winter, 2014).

It is posited by Lynch that "the history of criminology has been the story of humanly created methods of oppression told from the oppressor perspective" (as cited in Cunneen & Tauri, 2017, p. 25). Furthermore, Lynch postulated that criminology was designed to control the "free and unfettered creativity of the criminal classes" (Cunneen & Tauri, 2017, p. 26). This is supported by Biko Agozino (2010) who states that criminology is a "control-freak discipline", that is a "technology designed for the control of others" (p. ii); and a "science of oppression" (Lynch as cited in Cunneen &

Tauri, 2017, p. 26). These views stem from a criminology discipline that emerged from positivist approaches to law and criminology that saw crime as a "breach of state criminal law" (Cunneen, 2011a, p. 260) and where statistics on crime are created by state agencies (Cunneen, 2011a).

By extending criminology past the positivist approach one can start to conceptualise the nature and extent of state crime (Cunneen, 2011a). This extension of criminology has allowed critical criminology to develop, whereby researchers can start to investigate how the criminal justice system continues to colonise, marginalise, and stigmatise Indigenous Australians (Cunneen, 2011a; Cunneen & Tauri, 2017).

Critical criminology, pioneered by Jock Young, challenges the positivist and normative criminology that dominates criminological research and advocates for a 'criminological imagination' (Lumsden & Winter, 2014). Criminologists such as Janet Chan (2000b), Chris Cunneen (2011b), and Thalia Anthony (2009) support Young's call for research that "uses an optic which envisages the wide spectrum of human experience: the crime and law-abiding citizen, the deviant and the supposedly normal – the whole round of human life" (Lumsden & Winter, 2014, p. 1). For this 'criminological imagination' to be realised, research must be both critical and reflexive and sit within an emancipatory-transformative paradigm, which is post-positivist by nature (Lumsden & Winter, 2014; McCabe & Holmes, 2009; O'Leary, 2004; Oliver, 1992). With this in mind, I adopted an emancipatory-transformative paradigm together with post-positivist and phenomenological elements for my research.

The Emancipatory-transformative Paradigm

The roots of the emancipatory research paradigm can be traced to the disabled rights movement (Ali, Campbell, Branley, & James, 2004). In 1997, in relation to disability research, Priestley outlined six principles for the emancipatory research paradigm, which I have adapted below to suit the purpose of this research, but the underlying message remains the same:

1. A social model should be the foundation upon which the research is conducted.
2. Researchers should work towards the empowerment of Indigenous Australians and their communities by abandoning all claims of objectivity.
3. Research should not be done for research's sake but conducted only when there is a potential research benefit to Indigenous Australians, particularly those included in the research.
4. Where possible, let Indigenous Australians control the design and management of the research.

5. Ensure individual Indigenous Australians' voices are heard throughout the research, as well as shining a light on the institutional barriers imposed on Indigenous Australians.
6. Use various data collection methods and analytical methods. (adapted from Priestley in Ali et al., 2004)

Although the emancipatory paradigm has several attractive features as outlined above, number five, which points to reflexivity in research, is most crucial.

Every writer gives a different meaning to reflexivity with it being used differently in more than five ways in contemporary social theory (Chan, 2000b). However, there are two common approaches to using reflexivity in research (Chan, 2000b). The first is that the researcher is invited to focus on their personal point of view in researching a specific subject, and the second focuses on the repetitive nature of the way that systems, discussions, and people reproduce themselves (Chan, 2000b).

Researcher reflexivity, according to McCabe and Holmes (2009), allows the researcher to analyse "how various elements affect and transform the research" (p. 1520). Furthermore, they state that reflexivity requires the researcher to focus on their ability to be unbiased and to see how their presence may have a consequence on the research process, as well as how they may affect the participants (McCabe & Holmes, 2009). It also requires them to think about how their participants may also affect the research (McCabe & Holmes, 2009).

Therefore, according to McCabe and Holmes (2009), during the interview process the participant should be encouraged to be reflexive to uncover the dominant discourses, power struggles, and structures with the assistance of the researcher. Furthermore, they advocate that this awareness allows the participants to re-direct their activities in response to this newly found knowledge (McCabe & Holmes, 2009). This suggests that reflexivity can allow participants in research to transform themselves through their own thoughts and actions (McCabe & Holmes, 2009). McCabe and Holmes (2009) are, however, quick to state that this can only occur if the researcher is fully aware of their position of control and the potential for their moral influence on the participant.

A researcher may exert some moral influence to help their participants view themselves and their actions from a different point of view by identifying "dominating power relations and truths" (McCabe & Holmes, 2009, p. 1522). In other words, when a group view themselves in a different light true emancipation can be achieved (McCabe & Holmes, 2009). However, emancipation cannot be forced upon participants, but should naturally emerge through the process of the research (McCabe & Holmes, 2009).

A researcher may begin the research with a political axe to grind in respect to the treatment of a specific marginalised group, however, true emancipation only occurs through:

> …the process of stringent self-examination, exposure of dominating ideologies and the subsequent actions taken by participants themselves to move towards a new way of being. (McCabe & Holmes, 2009, pp. 1523-1524)

Therefore, emancipation is only successful through the employment of pastoral power and reflexivity during the interview process and through the research process (McCabe & Holmes, 2009).

Oliver (1992) differs in his view of emancipatory research to that of McCabe and Holmes (2009) by stating that "emancipatory research is not, as is sometimes implied, to help the researched to understand themselves better" (p. 111). Oliver believes that the researcher using emancipatory research develops a better understanding of the lived experience of their participants, which he suggests is a "dialectical process in which research can play a significant part" (p. 111). Oliver's reasoning for this point of view is that research has historically, and is presently, undertaken by people who hold power upon those who do not.

As an example, Oliver quotes Liazos who, in 1972, criticised sociological research for its power relations due to its being the "sociology of nuts, sluts and perverts" (p. 110). Furthermore, Oliver purports that social science research must avoid its history of an "underdog mentality" (1992, p. 110), with the over-studied masses including "people who are poor, unemployed, mentally ill, women, black people, disabled people and children" (1992, p. 110); all of whom are viewed to be lacking in power.

Oliver aptly shines a light on the imbalance in research subjects stating that little, if any, research is done on "psychiatrists, bank managers, policemen, politicians, policy makers, political terrorists…or even researchers themselves" (1992, p. 110). This highlights the relations of power within the research field because "the powerful are so rarely studied because they have the resources to protect themselves from scrutiny" (Taylor, as cited in Oliver, 1992, p. 110). Thus, an emancipatory paradigm is not only studying relations of power or oppression, but actively confronting and challenging them (Oliver, 1992).

To support his viewpoint of the transformative power of an emancipatory paradigm, Oliver cites Peter Reason who states that it establishes:

> …a dialogue between research workers and the grassroots people with whom they work, in order to discover and realise the practical and cultural needs of those people. Research here becomes part of a developmental process including education and political action. (1992, p. 112)

The ontological assumption here is that there are multiple realities that are constructed by values that are socially, politically, culturally, economically, and racially informed (Chilisa & Kawulich, 2012).

Political and social action born out of political and social research has the potential not only to inform policy, but also to inform epistemology (Ali et al., 2004). As advocated by Chilisa and Kawulich (2012), an emancipatory paradigm has the highest potential to destroy myths and to empower marginalised groups to change society.

The transformative role of emancipatory research is also highlighted by Humphries et al. (2000) in their book chapter '*Arguments for an 'emancipatory' research paradigm'*. Drawing from Harvey, they suggest that knowledge is more than just exploring the world around us, but also about changing it. Essentially, they promote the view that the researcher must engage with the oppressive social structures they are studying, as well as analysing participants as a potential for group action against those oppressive structures. They maintain that only when the researcher engages can they create "further development and transformation of knowledge" (Humphries et al., 2000, p. 7) because knowledge is an everyday occurrence that changes with praxis.

The view of research as both transformative and emancipatory is also held by Dawes et al. (2017) in the context of Indigenous Australian justice research. They posit that research that is transformative has huge potential for emancipatory benefits (Dawes et al., 2017). Moreover, they suggest that by including the previously silenced voices of Indigenous Australians in the research process it provides them with a vehicle in which to express their lived experiences regarding issues that are important to them, such as the crisis in Indigenous incarceration (Dawes et al., 2017). Dawes et al. (2017) view the reflexive nature of emancipatory and transformative research as "produc[ing] slight differences to accommodate the changing nature of a research project as it progresses" (p. 20), particularly in reference to cultural safety and protocols in the Indigenous Australian context.

I agree that emancipatory research needs to not only study the relations of power in any given situation, but to also challenge that power. I also agree that emancipatory research should empower the participants and the wider audience to gain a potentially deeper understanding of the topic than they may already have and by doing so arm them with information and evidence to assist them on the road to political and social action.

Ultimately, I see the need for research that is reflexive, transformative, and empowering, which, for vulnerable groups within society, means the research must also be emancipatory. As Giroux says regarding researchers and transformative academics:

> [they] need to understand how subjectivities are produced and regulated through historically produced social forms and how these forms carry and embody particular interests. At the

> core of this position is the need to develop modes of enquiry that not only investigate how experience is shaped, lived and endured within particular social forms…but also how certain apparatuses of power produced forms of knowledge that legitimate a particular kind of truth and way of life. (as cited in Oliver, 1992, pp. 110-111)

Therefore, I will ensure that the knowledge that this research produces will be made available in multiple formats not only to the research participants to use as they see fit, but also to other Indigenous communities and organisations who see value in the findings and recommendations.

The next section details the methods chosen for inclusion in the mixed methods framework. It was vital that the methods used were carefully considered to ensure that the voices, perceptions, and experiences of the Indigenous Australians involved in this project, as well as those that can no longer speak for themselves, were heard.

Mixed Methods Framework

This research used a mixed methods framework employing both quantitative and qualitative data address the research questions. The reason for selecting this framework is that although quantitative methods have historically been viewed as more reliable than qualitative methods. However, for some research questions it can only answer part of the question; particularly those in the social sciences where an individual's concerns, attitudes, and experiences cannot be translated from numbers (Turner, Ireland, Krenus, & Pointon, 2011). Below, I detail the features of qualitative and quantitative methods that appeal to social scientists who, according to Mackenzie and Knipe (2006), have "come to abandon the spurious choice between qualitative and quantitative data" (p. 193) in favour of combing the methods to build on the strengths of each method.

Qualitative Research

Qualitative researchers view an individual's lived experience as the most valuable form of data, which they consider to be both unique and dependent upon the context in which they were formed (Judd, Smith, & Kidder, 1991; Neuman & Wiegand, 2000; Rose & Glass, 2008). Qualitative researchers are interested in recording the actual words of a participant as opposed to using a scale to record a participant's thoughts or feelings on a particular topic (Judd et al., 1991).

Qualitative researchers are able to convey the contexts that have informed, developed, and influenced their participants' experiences, particularly in the area of crime and punishment (Neuman & Wiegand, 2000). Regarding crime research, Block and Chambliss advocate "carefully and relentlessly emphasizing the lives of people in the context of a political economy viewed 'from the bottom up' as a necessary palliative to conventional viewpoints" (as cited in Neuman & Wiegand, 2000, p. 310). This is particularly important when working with Indigenous and marginalised peoples

in criminological research because, as Block and Chambliss suggest, "[b]y grounding studies in notions of political economy, the symbiotic relationships at the centre of criminality, law creation, and law enforcement within particular historical epochs are illuminated" (as cited in Neuman & Wiegand, 2000, p. 310). Thus, qualitative researchers should not be distracted by the institutional standpoint on crime and criminal behaviour portrayed in 'official statistics' but must develop an in-depth understanding of the people at the heart of their research, which qualitative data offers (Neuman & Wiegand, 2000).

Qualitative data is interpretive (Atieno, 2009). In other words, it is based on real-world events and lived experiences of these events (Atieno, 2009). Qualitative research allows for the simplification and management of data without its complexity or context being damaged (Atieno, 2009). All qualitative methods generate new ways of understanding and viewing existing data, but all differ in their uses (Atieno, 2009). For example, if a researcher's purpose is to understand a phenomenon in more detail then they should utilise methods that allow "for the discovery of central themes and analysis of core concerns" (Atieno, 2009, p. 16). Alternatively, if a researcher wishes to reflect reality through the construction of a theory, then they should use methods "that assist in the discovery of theory in the data" (p. 16). Due to their grounding in contextual awareness of the environment in which the research is being undertaken, qualitative methods allow for the analysis to be grounded in the worldview and perspectives of the research participants (Spicer, 2004).

A huge advantage to qualitative research methods is that they can inform the research design by "framing interview questions using appropriate language to minimize the possibility of misunderstanding and to avoid sensitive or offensive questions" (Spicer, 2004, p. 301). Ultimately, the biggest strength of qualitative methods for use in research with vulnerable peoples is that the participants can relay "a setting or a process the way *they* experienced it, the meanings *they* put on it, and how *they* interpret what *they* experience" (extra emphasis added, Atieno, 2009, p. 16). Essentially, it brings the voices of the participants to the forefront of the research, which supports the key aim of this research project.

Quantitative Research

Numbers, according to Rose, hold "an unmistakable power within technologies of government" (as cited in Bansel, 2012, p. 1). Numbers operate within the neoliberal political sphere as a diagnostic instrument, which is supposed to "align public authority with the values, beliefs and well-being of citizens" (Bansel, 2012, pp. 1-2). According to Neuman and Wiegand (2000) "once cited, statistical facts drive the machinery of political persuasion" (p. 102), which they do through being circulated in conversation and through debate among academics and scientists (Neuman & Wiegand, 2000). Sadly, legislative issues are orchestrated based on 'official' statistics that are given the "power to define what is real and what can be done to change it" (Neuman & Wiegand, 2000, p. 102). In other words, statistics, particularly 'official' statistics, can be manipulated to show a false picture of economic, political, or social reality (Georgiou, 2021).

It is said that as the foundations for statistics vanish, then the "decisions, facts, truths and realities they give rise to become ever more normalised, naturalised, obvious and self-evident" (Bansel, 2012, p. 3). Certainly, what is measured is replaced with numbers, so that what is measured becomes no more than a "spectral presence in the tabulated metrics they are reduced to" (Bansel, 2012, p. 3). Thus, as one sets about interpreting statistical data one must investigate the methodological details that constructed the 'fact', which Harrington argued is the only way to deal with statistical data democratically (Neuman & Wiegand, 2000).

Quantitative data, such as the official statistics used in this research project, are useful in identifying patterns that can be subsequently researched using in-depth qualitative methods (Spicer, 2004). As Atieno (2009) attests, "numbers in and of themselves can't be interpreted without understanding the assumptions which underlie them" (p. 17). As Bansel states "[t]his is finally, a question of ethics of numbers, of who or what counts in a social order that fetishes individuality and quantity" (p. 7). It is, therefore, important to understand the drivers behind potential manipulation of official statistics, particularly the incentives and motivations of those who wield enough power and authority to change the way official statistics are produced (Georgiou, 2021).

Data Triangulation

Triangulation is a technique for validating observational data that is advocated by Denzin (Seale, 2004). Denzin outlined four types of triangulation: data, investigator, theory and methodological (Seale, 2004). The data approach to triangulation is used in this theory, which, according to Seale (2004), "involves using diverse sources of data, so that one seeks out instances of a phenomena in several different settings, at different points in time or space" (p. 77). In other words, the researcher investigates their topic from different angles and points of view to get a fix on the true results

(Neuman & Wiegand, 2000). What ensues from this is a richer, fuller, and thicker description of the phenomena under investigation (Seale, 2004).

Every quantitative and qualitative method has unique strengths and weaknesses, and both yield a different view of reality (Spicer, 2004). However, a study using data triangulation should allow these different views to emerge because it is a "fully grounded interpretive research approach" (Denzin, as cited in Spicer, 2004, p. 298). In addition, an objective reality is not obtainable because a deep understanding, not necessarily validity, is what a researcher truly seeks in an interpretive study (Spicer, 2004). By using both methods, a research question that covers a broad range of issues can be more successfully answered than by using a single method.

The Research Sample

Primary Voices: Semi-structured Interviews

The semi-structured interviews were undertaken with nine Indigenous former offenders in North Queensland in partnership with Lives Lived Well (LLW). LLW is a non-governmental organisation that provides services across Queensland that are designed to reduce individual and social harms. To do this, they address addiction; advocate and support healthy lifestyles; and build capacity for individuals and communities.

Key criteria for participants were that they identified as an Aboriginal or Torres Strait Islander person, had a history of recidivism (therefore, they had been through the system more than once to allow for a variety of experiences), and were over 18 years old (a mixed-aged was preferred to allow for a variety of perspectives).

Secondary Voices: Secondary Data Forms

Secondary data forms are an in-depth investigation of a problem in one or more real-life settings, in this case within the criminal justice system in Queensland. The strength of this research method is that it provides capability to uncover a wide range of social, cultural, and political factors, which may relate to the area of research.

Queensland Coroner's Reports

A death in prison custody is defined by the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) as "deaths that occur in prison or youth detention facilities. This also includes the deaths that occur during transfer to or from prison or youth detention centres, or in medical facilities following transfer from adult and youth detention centres" (Gannoni & Bricknell, 2019, p. 2). Deaths in police custody are split into two categories:

> **Category 1a:** Deaths in institutional settings (e.g., police stations or lockups, police vehicles, during transfer to or from such an institution, or in hospitals, following from an institution).
>
> **Category 1b:** Other deaths in police operations where officers were in close contact with the deceased. This would include most raids and shootings by police. However, it would not include most sieges where a perimeter was established around a premise, but officers did not have such close contact with the person to be able to significantly influence or control the person's behaviour.
>
> **Category 2:** Other deaths during custody-related operations. This would cover situations where officers did not have such close contact with the person to be able to significantly influence or control the person's behaviour. It would include most sieges, as described above, and in most cases where officers were attempting to detain a person – for example, a pursuit. (Gannoni & Bricknell, 2019, p. 2)

Coroner's reports relating to in-custody deaths were obtained from the Queensland Courts website for the years 2006 to 2019 and separated according to Indigenous status before being separated further by cause of death.

A total of 26 Indigenous and 111 non-Indigenous coroner's reports were downloaded and filtered into three categories: inadequate medical attention, natural causes, and officer-related/other causes. Of the 26 Indigenous deaths in custody, 13 were attributed to natural causes, nine to officer-related/other causes, and four to inadequate medical attention. Deaths that occurred at hospital due to inadequate medical care at the hospital were excluded from this research as it was deemed to be outside the scope, however, this is an area that warrants further investigation.

Data Collection Techniques

Over the last quarter century most research into crime has been undertaken through quantitative and static methods, which have privileged state-centred perspectives and perpetuated the silencing of Indigenous Australian voices through omission. By interviewing Indigenous Australian former offenders, I have prioritised the voices and perspectives of Indigenous Australians. The next section details the two phases of data collection for this project.

Phase 1: Quantitative Data

The quantitative data used in this project is used to provide a contextual basis for the qualitative data to ensure the voices of 'those that are measured' by the official statistics are heard. The details of the

five sources of quantitative data collected during this project, what type of data was collected, the dates and locations for the data collected and what the data was used for within the project are shown in Table 2.

Source	What	Description
Queensland Sentencing Information Service (QSIS)	Statistics on the sentences handed down by courts for specific offences broken down by Indigenous status	Dates: 2014-2018 Queensland
Queensland Court Data	Statistics on cases seen by the Queensland courts	Dates: 2016-17 Queensland
National Deaths in Custody Program	Statistics on the cause and manner of deaths in custody of Indigenous Australians.	Dates: 2018 Nationwide and Queensland
Prison Statistics (Australian Bureau of Statistics)	Statistics on the incarceration rates and levels of Indigenous Australian prisoners.	Dates: as at 30/6/18 Queensland
Queensland Police Service Statistics	Statistics on the offences Indigenous Australians were arrested for.	Dates: 2016-17 Queensland

Table 2 - Quantitative data used in this study.

Phase 2: Qualitative Data

Ethics approval (number H7569) to undertake semi-structured interviews was granted on 30th October 2018. However, due to unforeseen circumstances two of the non-government organisations (NGO) that had initially agreed to undertake participant recruitment had to withdraw, and as a result a new NGO, Lives Lived Well, had to be recruited. This meant that the initial ethics request was amended to include Lives Lived Well, and this was approved on 9th April 2019.

Lives Lived Well is a registered charity that provides support throughout Queensland and New South Wales for people who are affected by alcohol or drugs, as well as those struggling with mental health problems. The organisation takes a "holistic, compassionate and harm minimisation approach to help people live their lives well" (Lives Lived Well, 2017, para 1). Most participants were recruited through the organisation's rehabilitation facility in Mareeba, which limited the number of participants.

The participant recruitment process undertaken with Lives Lived Well was a four-step process:

1. The Service Manager for Lives Lived Well in Cairns was provided with detailed criteria and characteristics of suitable Indigenous Australians to invite to participate in the interviews. The criteria were:
    i. Indigenous Australians who have been incarcerated (as opposed to those who were on remand) and/or paroled.
    ii. A history of recidivism.
    iii. Aged from 18 upwards (with an even spread of ages preferred i.e., young adults, middle-aged adults, and elderly, if possible).
2. Lives Lived Well contacted potential interviewees who met the criteria and arranged a suitable time and date for interviews to be conducted.
3. At that time and date, the potential interviewee was taken through the details of the project, informed of what would happen with the information they provided and finally, they were taken through the informed consent sheet.
4. If the potential interviewee was happy to proceed, then the interviews took place.

The interviews were conducted at the offices of Lives Lived Well in Cairns and Mareeba from July 2019 to March 2020. Prior to commencing the interviews, the researcher asked the participant if they understood the aims of the project, how their answers would be used, and what measures had been put in place to protect their privacy and confidentiality. Finally, interviewees were reminded that they were free to withdraw from the interview at any time and that the interview may cause them distress due to the nature of the questions.

The informed consent for the project was provided to each participant in a plain English format (these have not been included as an appendix to protect the identity of interviewees). Where an interviewee struggled with literacy, the researcher read out the informed consent form before ensuring that the participant had a thorough understanding of what was contained in the form before signing. Finally, the participants were asked if they had any concerns or questions before signing the consent form.

In addition to signing the consent form, participants were asked to provide verbal consent. When it had been established that the participant understood and fully consented to being part of the project they were asked if the interview could be recorded so that a transcript of the interview could be produced for analysis purposes. Each interview was between 30 to 60 minutes long and all participants gave their permission to have the sessions recorded, with participant names and any

identifying characteristics omitted to protect their privacy. Interviewees were allocated a code, e.g., CNS01 would be Cairns, interviewee number one. A confidential, password protected spreadsheet contains the participants real names and their allocated codes and only myself and my advisors have the password for this document.

The key interview questions endeavoured to gain an insight into the participant's interaction with the criminal justice system. Additionally, the participants were asked questions regarding the attitudes and behaviours of criminal justice employees towards them to gain first-hand experiences and perspectives on the relationship between Indigenous offenders and criminal justice employees, particularly in relation to various forms of violence (including, but not limited to, structural, symbolic, and subjective).

Interviewees were assured that the information would be strictly confidential, therefore, they should not fear any retaliation from criminal justice employees for speaking about any violence they may have experienced. Finally, participants were asked questions that would potentially identify the factors that exist within the criminal justice system that may create a criminogenic environment. A full list of questions is included in Appendix A. However, key questions included:

- How old were you when you first had contact with the police?
- How many times have you been arrested?
- Did you understand the charges being made against you?
- Can you describe any incidences of physical mistreatment you may have experienced from police staff during your arrest and time in custody?
- How were you told to plead? If guilty, were you told this would ensure a quicker process?
- When you were in prison could your family visit easily?
- Can you describe any incidences of verbal mistreatment you may have experienced?
- Were you ever placed in solitary confinement?
- After release did you face any challenges in settling back into the community?
- Have you ever breached parole? If yes, what was the reason?

Data Analysis: What is the Data Saying?

Data analysis is the process by which researchers reduce large amounts of qualitative and quantitative data into sizeable amounts before creating a narrative that can be interpreted with the aim of answering the research question/s at the core of their research project (LeCompte & Schensul, 2010). Both thematical and theoretical analysis has been used in this research, as shown in Table 3.

Data	Analysis Method
Semi-structured interviews	Thematical Theoretical
Coroner's reports	Thematical Theoretical
Official statistics	Theoretical
Official documents	Theoretical

Table 3 - Data Types and Analysis Methods

Phase 1: Thematic Analysis

Situating the voices of Indigenous Australians was at the forefront of this research, therefore, thematic analysis was first conducted on the semi-structured interviews and coroner's reports. Thematic analysis is defined as "identifying and analysing patterns (themes) within qualitative data and is a form of pattern recognition within the data" (Gray, 2014, p. 609). Therefore, thematic analysis allowed the themes to emerge purely from Indigenous Australian perceptions and understandings of their lived experience of the criminal justice system. The thematic analysis was conducted in two stages.

The first stage followed the approach of Chase (as cited in Rudestam & Newton, 2007) who suggests "absorbing the voices and stories of the participants, not deciphering their narratives as if they were responses to questions posted by the interviewer" (pp. 187-188). In this respect, the interview transcripts and coroner's reports were deconstructed and reconstructed into individual narratives.

The second stage involved inductive coding where key words or phrases from each narrative were highlighted and used to create a code book (Appendix B), allowing themes to emerge across the narratives. Codes can be a single word or a phrase, but one that is relevant to a category or an idea (Franzosi, 1998). In other words, coding is arranging similar data into bundles of themes (Braun & Clarke, 2006). It is essential for themes to revolve around the central premise of the research for the analysis to be considered strong and convincing (Gray, 2014).

Phase 2: Theoretical Analysis

Theoretical analysis is, according to Collins and Stockton (2018), a "valuable tool to the coherence and depth of a study" (p. 2). Theoretical analysis can be defined as "the process of constructing a theoretical explanation that we arrive at by way of directly *translating* descriptive categories into theoretical categories" (emphasis in original, Shkedi, 2007, p. 627). In other words, theoretical analysis makes sense of and finds meaning in the data collected via the chosen theoretical framework.

A theoretical analysis was undertaken of the qualitative and quantitative data, as well as the results of the thematic data analysis with a view to interpreting through the lens of the chosen theoretical framework and existing research. Whereas the thematic coding allowed codes to emerge inductively from the narratives, the theoretical coding was undertaken through the use of deductive *a priori* coding. Therefore, the codes were established from the theoretical framework prior to analysis being conducted (Stemler, 2001).

The decision to use *a priori* coding developed as a response to the theoretical framework that underpins not only the research questions, but also the way the data was collected and structured (Elliot, 2018). The advantages to *a priori* coding for theoretical analysis is that categories are pre-determined, therefore, they remain consistent (Elliot, 2018).

The qualitative analysis was undertaken with the assistance of Nvivo qualitative analysis software because it is a single location for the storage of all the project's qualitative data, and can deal with large "amounts of data with consistent coding themes" (Bergin, 2011, p. 6). Additionally, it allows for the systematic application of codes and themes across the materials to represent the research subject and to control researcher bias while also creating consistency in the theoretical aims of the project where findings can be tied to a relevant variable (Bergin, 2011; O'Leary, 2004).

While disadvantages for using Nvivo have been suggested, such as that it creates a distance between the researcher and the data, and that it creates a tendency in researchers to cut corners, it is advocated that those who do not use the software will be "hindered in comparison with those who do" (Bergin, 2011, p. 6). Ultimately, when using software to assist in data analysis one should be reminded that "it is not the computer that interprets the text but the person" (Gibbs as cited in Bergin, 2011, p. 7). Consequently, the auto-coding functionality of Nvivo was not utilised and the coding was all performed manually.

Ethical Issues: How Will the Voices be Heard?

Research that aims to deliver tangible research benefits by influencing changes in policy has no option but to interact with the political framework. Due to the real potential for governmental change every few years, when and how research findings are released can be of vital importance (Walt, 1994). It is little wonder, therefore, that Indigenous Australians view research as "serv[ing] the academic, political or professional needs of researchers" (Bainbridge et al., 2015, p. 2). Thus, it is vital that research projects with Indigenous Australians (and other vulnerable populations) are designed with accountability, transparency, morality, and ethics as integral components.

Research continues to be a pinch point in the interface of Indigenous and Western ways of knowing, which indicates that ethical research practices are not at the core of creating beneficial

research findings (Smith, 2012). Often researchers are questioned by Indigenous activists over the purpose of the research, whether it will make a real difference, who owns the research, how it will be disseminated, or who will benefit from it (Smith, 2012; Thomson & Taylor, 2009). The RCIADIC recommended, among other things, that research findings were disseminated to the community involved in a format that was understandable, which allows local Aboriginal groups and communities to put proposals forward for further action (Fredericks, 2007).

There are several factors that contribute to the effectiveness of research dissemination, but the most vital is for the method of dissemination to be orientated towards the audience being targeted. In this case the audience is twofold. On the one hand, I will disseminate the data back to an audience of Indigenous Australian communities, organisations and individuals who participated in the research. On the other, I will also target policy makers, politicians, and officers of the criminal justice system to impact and make changes to policies.

First and foremost, an infographic of the findings and any recommendations arising from this research will be sent to the offices of Lives Lived Well in both Cairns and Mareeba for both interviewees and staff involved in the research. More formally, the findings and recommendations will be recorded in an edited 30-minute video that will be sent to various Indigenous community justice organisations, which allows for a permanent record to be held in communities, whereby members of the communities can access the video and watch it in a time suitable to them. In addition, the video will be submitted to social media, such as Linkedin, Facebook, Twitter, and Youtube to allow a wider audience to be educated and to engage in social action. The thesis will be translated into a report that will also be sent to community organisations for those who wish to have an in-depth examination of the research.

Similarly, the findings and any recommendations will be sent via a report to a variety of government and non-government agencies, including Queensland Police Service, Queensland Correctional Services, the Department of Cabinet and Premier and the Department of Cabinet and Prime Minister in the hope that some, if not all, of the recommendations can be implemented to address the problems of rising Indigenous incarceration rates in Australia. In addition, formal presentations at conferences in both the criminology and Indigenous domain will be utilised to disseminate the findings and any recommendations to government agencies, non-government agencies, academics, and other interested parties.

Limitations of the Study: Accessing the Voices

Several variables needed to be considered with regards to how, when, and where to recruit possible participants for this research. Firstly, I had to consider the safety of not only myself, but also of the participants when recruiting for interviews, which is why participants were recruited through a

registered non-governmental organisation (NGO). The limitation of this approach was that I was entirely reliant upon an external party for recruiting my participants, which was further limited by the Coronavirus (COVID-19) pandemic. The pandemic limited data collection through the NGO on three fronts. Initially, the rehabilitation centre was forced to close completely due to the pandemic, but when it finally re-opened, they had to reduce visitations to essential workers only, and although this restriction was eventually lifted, the number of permitted residents was lower, therefore, the pool of potential participants was diminished significantly.

Since this is a PhD research project, time and resources were also limited, which limited the number of participants that could be recruited. Although higher numbers of participants would have been preferable in terms of reliability, the utilisation of the data triangulation technique allowed the data to be approached from different angles providing support to the limited number of interviews. In their research into homelessness in the Indigenous Australian community, Browne-Yung, Ziersch, Baum, and Gallaher (2016), wrote "[w]hile the small number of participants limits this research, it does offer a unique insight into the lived experiences of a group of individuals…who often go unrepresented in homelessness research" (p. 15). This statement also rings true for this research, where, as previously mentioned, Indigenous Australian voices and perspectives are all too often omitted.

As mentioned above, official statistics can help in identifying unusual observations that can be indicative of a pattern or trend that can then be supported using qualitative data. However, there are a few caveats when using official statistics, which are:

- Official statistics provided by government bodies can be manipulated to reflect the bias of those in power.
- Official statistics from different states or organisations may differ in the way they are recorded.
- Official statistics can change in the way they are recorded over time.
- Official statistics can be difficult to access within specific time constraints. (Stockwell, 1965)

In addition to these caveats, it must also be mentioned here that there are often barriers to accessing information from government agencies.

Conclusion

This chapter set out to provide an in-depth account of the methodology and methods used in this thesis. It did so by examining the emancipatory-transformative paradigm in which the study is conducted, in addition to the post-positivist, phenomenological and critical criminology areas that the study also incorporates. It also detailed the complexities of the mixed-method framework, which included the study's limitations and the ethical issues of conducting research with vulnerable populations.

The next three chapters are the first steps towards answering the research questions by employing the 'voices' of Indigenous Australians that were gathered through semi-structured interviews and through coroner's reports in order to uncover major themes through the thematic analysis process.

5. Speaking Truth to Power: Being Heard Over Necropower

"Power of our own truth, truth of our own power"

- Moana Jackson, AITSIS Conference (2017)

As mentioned in Chapter One of this thesis, the purpose of this research was to identify the forms of violence experienced by Indigenous Australian people in the criminal justice system and the unequal relations of power that contribute to them. To achieve this purpose three research questions were posed, which to reiterate are:

1. To what extent, and in what form, are Indigenous Australians subjected to violence in the criminal justice system?
2. What is the nature of the relations of power that exist between Indigenous Australians and the criminal justice system?
3. To what extent does the specific nature of the relations of power revealed in Research Question 2, contribute to the violence experienced by Indigenous Australians in the criminal justice system?

As well as fulfilling the purpose of the research by answering the research questions, this research also aimed to challenge traditionally conducted criminological research, which privileges state-centred perspectives, by elevating the voices of Indigenous Australians and ensuring their perspectives of Indigenous incarceration are at the forefront of the research.

With this in mind, Chapter Five covers the participants' early childhood years, their interactions with the police, as well as their involvement with the courts. Chapter Six carries this thematical analysis on by analysing the experiences of the participants in prison, as well as their perceptions and experiences of community corrections. Chapter Seven provides an insight into the in-custody deaths of eight Indigenous Australians in Queensland through a thematic analysis of the coroner's reports into those deaths. These three chapters are the first steps towards answering the research questions above.

Chapters Five and Six are linear narratives that are structured according to a standard trajectory through the criminal justice system, which uncovered major themes through the thematic analysis process. As expected, some of the emergent themes intersected with the literature contained within the literature review, which will be referenced as appropriate. The themes that emerged from the interview transcripts were organised under five necropolitical identifiers: precarity, necro-enforcers, soul-destroyers, death-worlds, and disintegrators and these were each structured according to the sub-themes, as shown in Table 4 below.

Necropolitical identifier	Themes
Precarity	Family life Family violence and childhood trauma Education Family and the criminal justice system
Necro-enforcers	Addiction and recidivism Early interactions Forms of violence by police Fear and distrust Good and bad
Soul-destroyers	Aboriginal and Torres Strait Islander Legal Service (ATSILS) Despondency Racism
Death-producers	Health and hygiene Violence Loneliness Programs Racism Culture
Disintegrators	Reintegration Discretion Conditions

Table 4 - Emergent Themes and Sub-themes from Interviews

This chapter begins with a brief introduction to the participants of the semi-structured interviews to give the reader a better sense of who the participants are. It then details the early lives of the participants to provide a context to the environmental factors that influenced their early interactions with the criminal justice system, both as innocent bystanders and as juvenile offenders.

The chapter then outlines the interviewees' perceptions of the police drawing on their lived experiences and interactions with the police as Indigenous Australians. The experiences that the participants had with the courts and their perceptions of the courts are then examined. Chapter Six continues this linear narrative by detailing the participants' cycle into the prison through to parole, which will be detailed further in the introduction to that chapter.

Chapter Seven begins with a brief introduction to the eight Indigenous Australians whose lives were tragically lost within the criminal justice system in Queensland between 2001 and 2015[10]. It then outlines the themes that emerged from the coroner's reports with a focus on pervasive issues within the criminal justice system that were found to have contributed, in some part, to the deaths under investigation, as well as the experiences of the identified forms of violence.

Chapters Five, Six, and Seven also foreshadow how the empirical data will be analysed using the theoretical concepts previously discussed in Chapter Three and repeated here in Table 5. Such matters will, of course, be expounded in greater detail in the succeeding analysis chapters.

Concept	**Variable**
Necropolitics	Neutrality Uniformity
Necropower	Power
State of exception	Suspension of law
Homo sacer	Non-citizens Powerless
Death-worlds	Exclusion Genocide
Zombification	Dehumanisation

Table 5 - Theoretical Concepts and Variables

The People Behind the Voices[11]

The purpose of this section is to introduce the participants in terms of their demographics and their personalities. A total of twelve people were interviewed: eleven men and one woman.

John

'John' is a 31-year-old Aboriginal man who has no children and comes from a small Aboriginal community in Far North Queensland. While John was keen to participate in the interview, he is an incredibly shy man who spoke softly, looking at the floor often with occasional glances for reassurance that he was doing well.

Joe

[10] This does not include death by natural causes, or death in a medical institution while in custody.
[11] Pseudonyms have been used to protect the confidentiality of the participants.

'Joe' is a 27-year-old Aboriginal man with four children from a rural town in Far North Queensland. Joe is a pleasant young man, who spoke about his experiences in a no holds barred approach and although there was an undertone of anger, this is not surprising given the content of Joe's interview.

Liam

'Liam' is 49-year-old Aboriginal man, originally from South Queensland, who has one child. At first glance, Liam is an intimidating sight with tattoos covering every inch of his arms, legs, face, and neck and a long 'rat's tail' hanging down his back. However, on getting to know Liam you realise he is a caring man who now wishes to give back to the rehabilitation community that was there for him.

Ian

'Ian' is a 46-year-old Aboriginal man from Far North Queensland who has one child. Ian dresses in a very bohemian style with baggy trousers, tie-die shirts and a draw-string bag and embraces non-traditional views on the criminalisation of black youth in America and in Australia.

Mike

'Mike' is a 40-year-old Wiradjuri man from New South Wales who has two young children. Mike exudes a self-confidence that belies his past struggles with low self-esteem and addiction. Now a professional motivational speaker, Mike is very experienced in sharing his story.

Steve

'Steve' is a 36-year-old father of three who relocated from South Queensland to Far North Queensland three years ago. Steve is a tall, slim Bundjalung man who is quick to smile and who, after recovering from alcohol and drug addiction, runs marathons. Although nervous about being interviewed, Steve relaxed as the interview progressed.

Sarah

'Sarah' is a 22-year-old mother of two and is from a remote Indigenous community in the Gulf of Carpentaria, Queensland. Sarah is a quiet, but confident young woman with a radiant smile and an infectious laugh.

Frank

'Frank' has four children and lives in a remote Indigenous community in Far North Queensland. As soon as Frank came into the interview room, he launched straight into talking about mental health within the prison system. This is a subject that Frank is incredibly passionate about, particularly since he has a diagnosis of schizophrenia.

Colin

'Colin' is a 33-year-old man with four children and has resided in Far North Queensland his whole life. Colin is a friendly, welcoming man who loves baseball caps and wearing socks with his sandals in the cool weather. Colin is in his last few weeks at the residential centre and has recently taken up regular exercise with the aim of joining a local Indigenous running group.

Peter

'Peter' is a 40-year-old Yalanji man from Far North Queensland who has three sons and a daughter. 'Peter' is an easy-going man who is full of warmth, humour, and patience. Peter is rarely seen without his baseball cap and Aboriginal-designed t-shirt.

Grant

'Grant' is a 50-year-old man from Cape York Peninsula but was born on Thursday Island. Grant has no children "*at the moment"*. Grant is a very unassuming man who is often sitting in the background watching the world go by and he has a very soft, gentle voice. Grant is very passionate about reintroducing his community's language and has since left the rehabilitation centre to work with someone in Cairns on this project.

Ron

'Ron' is a 46-year-old man from South Queensland and has one daughter. Ron has severe epilepsy and uses a wheelie walker for mobility. His shaved head is covered in scars from where he has fallen and hit his head during his epileptic fits.

A Precarious Life: Participant's Early Years

Young people who are born into disadvantaged families are often born into a life of precarity due to the social and environmental factors they face, particularly those around childhood trauma (Boddy, Bakketeig, & Ostergaard, 2020). These childhood traumas pose challenges as they transition into young adulthood, especially around family relationships and mental health (Boddy et al., 2020). Although social and environmental disadvantage is experienced by many families, the literature review in this thesis has established that for Indigenous Australians, it is a large factor behind Indigenous over-representation in the criminal justice system. This section of the chapter explores the social and environmental factors in the early lives of the participants in this research, which includes family stability, family violence, educational attainment, and family involvement with the criminal justice system.

Family Life

As discussed in the literature review, there is a known connection between family breakdown and youth delinquency with the overlapping factors of 'dadlessness', dysfunction, and dissolution as contributing 'risk factors' (Duncan Smith, 2007). 'Dadlessness' was a common thread among the interviewees with five having been brought up by single mothers and having little, or no, interaction with their fathers.

One interviewee, Colin, was adopted, so he said, "*I don't know my [biological] mum and dad*", and, therefore, he said, he knows little of his Indigenous heritage. Three participants had their fathers in their lives until they were between six and eight, and one participant was brought up by his grandparents from the age of 11 to 13. Only one interviewee had a continuous relationship with his father, although his father was often absent from the home due to work. One interviewee did not discuss his childhood and therefore there is no record of his family situation. In addition, three of the participants spoke of violence in the family home, either between their parents or directed at them.

Five of the participants had no interaction with their fathers since they were babies but knew of both parent's heritage. Although he grew up in Cairns, Mount Isa and Yarrabah, Ian said his mother is originally from Palm Island, however, of his father, he said, "*I don't know much about him*", but he knows "*he was Irish*". Mike was also brought up by his mum, a Wiradjuri lady, but he said of his father, "*my dad, um, the little bit I do know of him, he was a white man that grew up in Sydney. You know, didn't get him to meet him as much as I would like to, so I don't know much about his side of the family*". Sarah grew up in Lockhart River, but now lives in Normanton. Sarah said her father left "*me, well me and mum when I was three days old, went back into Normanton*" and she has had little contact with him.

Peter said, "*I never had a relationship with my dad"*, however, he said he had a "*great childhood*" in Mossman growing up with "*extended families*". Further, he said that although he never grew up with his dad, he did grow up with his dad's family, "*his brothers, and extended cousins and his sisters*". Peter has extensive knowledge of his grandparent's heritage. Peter's maternal grandmother came from the area around Black Mountain / Wujal Wujal and his maternal grandfather was from the Coen/ Lockhart area. Peter's paternal grandfather is from Daintree and his paternal grandmother is from the area around Daintree, Black Mountain and Rossville. Peter identifies as belonging to two Aboriginal nations, those of the Yalanji nation and the Kaanju nation.

Liam, Steve, and John were older when their parents separated. Steve's dad, he said, "*left when I was about six, I think*" and John's parents, he said, *"split up when I was 8/9"*. Steve describes his interaction with his father as, "*sort of stagnant, if that is the word for it. Just here and there,*

maybe once a year". When asked how having little contact with his dad had impacted him, Steve reflected:

> *I never thought about it till I started recovery actually and I got a clear head and I started to look at my life and at the time because mum was looking after us that was all that mattered, like I didn't look outside that, but now looking back him being there would have helped, definitely would have helped, yeah*.

Regarding being raised by a single parent, John said, "*I found that a bit hard, yeah, my mum raised me. She was like a father figure to me",* but he also had his grandfather in his life. Of his childhood, Liam said, "*memories of growing up is vague… only bits of pieces here and there I remember clearly*", but he added, "*I think I went to a home when I was about six, when they split up. I think my mother was trying to get a house or something"* and "*I didn't see my father again till I was about 14*".

Joe is the only participant that was brought up by extended family, which for Joe was his grandparents. Joe reported, "*I left my father when I was 11",* after which he said, "*I grew up with my old people [grandparents] and when they sort of left, I went into criminal activities, it was pretty hard for me."* Grant was the only interviewee who had a continuous relationship with his father, but his father was a Naval Officer and was based in Adelaide, so Grant was with his mother and extended family most of the time. Grant said that he learnt respect for his Elders in that environment and he never smoked marijuana or even a cigarette because "*grandad or dad tell you this is not good, you do this*". When asked if he had extended family around him when he was growing up, he replied sadly, "*yeah, extended family, yeah, when alcohol comes in that is when everything went downhill"*. The experiences of the research cohort of having dysfunctional family relationships can lead to the development of trauma as discussed in the next section.

Family Violence and Childhood Trauma

Adverse childhood experiences (ACE) in early childhood, particularly family and domestic violence, leave children at high risk of "developing long-lasting trauma symptoms, which can subsequently affect their own children's lives" (Lunneman, Van der Horst, Prinzie, & Luijk, 2019, p. 104; Public Health Wales NHS Trust, 2015). Furthermore, these children can perpetuate the cycle of intergenerational trauma because they are a high risk of becoming a victim of, or perpetrator of, family and domestic violence as adults (Lunneman et al., 2019; Public Health Wales NHS Trust, 2015). Although not all children that have ACEs will become violent in adulthood, there is, according to Lunneman et al. (2019), "a substantial risk that violence in the family is transferred from generation to generation" (p. 105). Three participants, Steve, Liam, and John, spoke of growing up in violent homes where domestic violence was common and John spoke of the childhood trauma of discovering, at around the age of nine, a person who had suicided.

The childhoods of both Steve and Liam were filled with alcohol, drugs, and violence. Steve described his mum and dad "*drinking and fighting"*, so when the police came, he viewed them as "*coming to save us*" because of the violence at home. To Steve, that was "*when police should come, what I was seeing, so when they come that would tell me it was going to stop and that I was safe again*". Steve added that when his dad left "*the police stopped coming*".

Liam explained that his family was "*dysfunctional…my father is an alcoholic [and] abusive, so very volatile family"*. Around the age of 14, Liam had limited contact with his father again, but said prior to that "*I obviously had no contact with him as I dislike him completely because I had a pretty violent childhood prior to it"*. Sadly, his father was not the only violent parent with his mother beating him regularly until he was 18 years old. Liam recalled "*she used to beat me, hit me, right until I was 18 years old, the beatings I can remember from a kid, cords, sticks, whatever, but pulling your shorts to your knees to cover the marks on the back of your legs*".

John also experienced physical violence at home, at the hands of his grandfather. He described an incident where his grandfather "*tried to choke me to death*" because he caught John "*looking in the fridge when I was starving and I got nearly choked to death"*. The event, he said, left him "*a bit traumatised*", especially because "*I couldn't breathe and when my mother tried to stop him, he punched my mother, my grandfather*". He said of the incident, "*I think that thing there, you know, is stuck in my head for the rest of my life, you know*".

This was not the only traumatic incident to happen to John during his childhood. When he was around 8 or 9 years old, the same year he lost his "*great-great-grandfather*, *my grandmother's father*", he was "*collecting these little Pokemon cards down the beach early morning, what people get out of those packets, and I came across this person on the beach hanging on a tree*". This too, he said, "*is stuck in my head for the rest of my life*" even though "*I went to counselling and that"*. Asked if it was someone known to him, John said:

> *No. I just saw him hanging on a tree and that and when I run up to tell my mum it wasn't like it was me walking up. I was in shock, yeah, I was in shock like. I ran up to the house and I can just remember that – it had, like, a shock – it felt like it wasn't me walking up. I remember it, yeah. I went counselling over it. It was pretty sad for me, like.*

With early childhoods such as those described here by the participants it is not surprising that many found themselves exiting the education system early.

Education

Most of the research cohort had a record of educational disengagement, which is a common factor leading to involvement in the criminal justice system as highlighted by the Australian Law Reform Commission (2017b); Beresford and Omaji (1996); Gray and Beresford (2008); Weatherburn et al. (2006). One participant did not discuss his schooling at all, therefore, there is no record of his level of education. John, Mike, and Colin were all expelled from school, Steve left due to poverty, Grant left due to his addiction to alcohol and Joe, Ian, and Sarah left school to work. Only Liam and Peter remained in school through to Year 12.

Mike was experimenting with drugs and alcohol by Year 6 because it had been normalized in a home environment where he would regularly wake up "*at three or four in the morning, three or four days out of the week and see a lot of drinking and drug addiction around the table".* As a result, Mike's "*school career unfortunately ended halfway through Year 8*" when he was expelled. Colin was initially suspended from school in Year 8 for fighting, but along with some friends who were also involved in the fight, he returned to the school at night and smashed the windows of the principal's office, as well as spraying the walls with graffiti, which got him expelled. He said, "*I couldn't get into another school, so I ended up going to a program called Boys to Men*". Colin described this program as "*just picking up teenage boys to get them to do something constructive instead of riding their pushbikes, doing silly stuff, you know. So, they'd pick us up and take us out swimming, yeah there would be some schoolwork involved but not much*".

John stayed in school only a fraction longer than both Mike and Colin and was expelled in Year 9 because he "*got caught in the school, smoking dope*", which he attributed back to the trauma he experienced due to the domestic violence at home. He said, "*I could still have those flashbacks, I couldn't go back to school. I couldn't succeed and I couldn't succeed my growing up and that*". Steve also stayed in school to Year 9, however, he left because "*mum couldn't afford the textbooks that I needed so the teacher was giving me shit about it, so I just got up and walked out*". Grant attended primary school in the remote township of Bamaga, which is located at the tip of Cape York, but attended high school in Cairns where he initially stayed with relatives until his mother could join him there. He said he stayed in school until he was around 16 but became disengaged because "*I really got into alcohol*".

Joe, Ian, and Sarah all left school to go to work. However, Sarah "*never went to high school*", instead she "*started working at 14, at the retail store and doing cleaning at the school, teacher aide*" in the small Aboriginal community where she grew up. Both Joe and Ian went through to Year 11, although Ian said he was "*kicked out of a lot of schools*" because, he said, he was "*you know bit of a ratbag*". Joe left because "*there was racism, so I went to work"*.

Only Liam and Peter attended school until they were 18 years old. However, Liam said he "*went to a lot of different schools*" because his family moved around a lot, whereas Peter attended both primary and high school in the predominantly Aboriginal community where he grew up. Both Liam and Peter had plans beyond school, but these plans soon changed. Peter said, "*I moved away down to Toowoomba…* [and] *did a tech course*" because "*I had big plans to have a trade. I wanted to be a plumber*"; however, he soon grew homesick and returned to Mossman. After finishing school Liam gained an apprenticeship in horticultural management down in Victoria. However, his first probation in Queensland had a condition that he must not leave the state. He said, "*so I wasn't meant to leave Queensland to go back to Victoria to finish my apprenticeship off. I did tell them, I'm from Victoria, I've got a job down there and they just said, 'if you leave the state, we'll put a warrant out for you'"*. For many of the research cohort the trajectory into the criminal justice system is family affair with most of the participants having several family members also previously, or currently, incarcerated as examined in the next section.

Family and the Criminal Justice System

Serving time in prison is often seen as a 'rite of passage' in many families where involvement in crime has become normalised behaviour (Dawes, 2007, 2011; Dawes et al., 2017; Western Australian Centre for Rural Health, 2020). In a study undertaken by Dawes (2007), the risk of further offending was "accepted and normalised in families" (p. 126). Furthermore, the fear of being sent to prison, particularly an adult prison as a young adult, did not worry the participants in the study because many of them had family members in prison who would watch out for them (Dawes, 2007).

A majority of the cohort involved in this research reported having family members who had also been through, or were currently involved with, the criminal justice system. John, Frank, and Ian did not discuss any family connection with the criminal justice system. Most of the participants mentioned brothers that were either in prison or had been through prison, although some also spoke of their sisters, aunties, and uncles also having been, or currently being, incarcerated.

Grant has three siblings, two of whom have been incarcerated with one of his younger brothers having just come out of prison recently after doing an 8-year sentence, and he added that his sister, himself, and his younger brother have all "*been in there for a while*". However, he said the youngest brother has "*never been in prison yet*". Grant's uncle is currently in Lotus Glen on his second murder charge, which Grant reflected on:

> *My father's youngest brother. That is his second murder charge he is doing. He put a knife through an auntie back in the 80s, early 80s, killed her. She was pregnant. This one, he came out on parole, he went back to Lockhart and this young girl did something wrong, so he said to her 'let's go down to Cairns'. They came down to Cairns…made up a fire, she was on*

> *the other side of the fire, my uncle on the other side, [he] was sharpening a knife, she don't realise the knife he is sharpening it for her, so uncle did a murder there and walk up to the service station and said 'I just killed my girlfriend'. Something that I can sort of think of like, the more you spend time in there, there is nothing out here for you.*

For Sarah, it was "*my two brothers, oh, three of them went to jail*". For Colin, it was his adoptive brother, who is also Indigenous but from the Northern Territory, whom he said was often "*incarcerated at the same time*" as him. Joe also had a brother to support him when he was sent to the prison, as he explained "*I had my big brother waiting there for me anyway, yeah. He said, 'you coming with me, you sharing a cell with me'"*. Although Joe added that he is the youngest in the family and has "*one sister, four brothers"* and "*I sort of don't hang around with my brothers and sisters, I sort of do my own thing. I'm sort of the black sheep of the family".*

Steve, Peter, and Liam had many family members who have been or are entangled in the criminal justice system. Many of Peter's extended family have been through the criminal justice system including, he said with great sorrow in his voice, "*my brothers, my sister, my extended family and coming through the younger generation*". As for Steve, he put his family's interaction with the criminal justice system into the context of "*we hung around with family and we did crime with family, drugs with family, drinking with family, it was all with family*", therefore, he said, "*a lot of my family, a lot of cousins. Out of my brothers, I'm one of five, two are in jail now, but yeah, a lot of family. Everyone, uncles, aunties*". Liam's story is similar where he said, "*I've been through lots of raids as a kid at home because my mother was on the crime at the time*", he has been mistaken by police for his brother who was wanted for extradition from Victoria to Queensland. His younger brother committed suicide aged 18 while they were both incarcerated in Brisbane Correctional Centre (BCC).

In Summary

This section has highlighted the environmental and social elements that are experienced by many children, not just Indigenous Australians. However, the adverse childhood events illustrated by the participants in this section, such as poverty, low educational attainment, family violence, family breakdown, suicide, and family involvement in crime are experienced at higher rates by marginalised populations, particularly Indigenous Australians.

The experiences of the participants recounted here, in combination with the literature on social determinants of criminal involvement contained in Chapter Two, contribute further to demonstrating that adverse childhood events strongly contribute to the potential for a child to come into contact with the criminal justice system, particularly the police.

Necro-enforcers: Perceptions of the Police

The police force, as a technology of control, was originally established by a bourgeois order that "implied the control, surveillance, and repression of the dangerous classes" (Sclofsky, 2016, p. 13). The use of lethal force being at the discretion of the officer (Sclofsky, 2016), as alluded to earlier, "[t]he police do not simply 'enforce the law' but stand rather as the 'embodied force' of the law" (Linnemann, 2017, p. 9). From a necropolitical point of view, this positions the police as necro-enforcers, those that enforce the state's laws that subjugate the lives of Indigenous Australians to the power of death.

This makes policing, as proposed by Porter (2018), "a political activity" (p. 445). This is particularly true, Porter (2018) said, when it comes to "the policing of Aboriginal and Torres Strait Islander communities" (p. 445) where they "represent the gatekeepers of the criminal justice system" (p. 445). As established in the introduction chapter of this thesis, the regime of colonial policing was, from its inception in Australia, set up to assist in the struggle against the 'enemy within'. As such, policing of Indigenous communities consisted largely of "efforts to contain, suppress and even attempt genocide" (Porter, 2018, p. 446) of the Indigenous Australian population.

Today, colonial forms of policing can still be seen in the "expansion of police powers of arrest, over-surveillance, harassment, heavy-handed policing, under-policing of domestic and family violence, deaths in custody, and so on" (Porter, 2018, p. 446). The sections that follow are themes that emerged from discussions with the research cohort regarding their experiences and perceptions of the police.

The Historical Legacy of Fear and Distrust

Australia was not settled peacefully, as Stan Grant said, "[f]or the purposes of Australian settlement, blacks simply had no rights" (2004, p. 104). As discussed in the literature review, the police were the force behind colonial rule over Indigenous Australians, which has continued in the centuries since the first fleet's arrival (see Cunneen & Porter, 2017; Cunneen & Rowe, 2016; Watson, 2009).

Not only have the police been instruments of colonial rule, they are also heavily associated with the removal of Indigenous Australian children from their families under the guise of 'protection', particularly in the 1900s when a whole generation of Indigenous Australian children became known as the Stolen Generation (Green & Saggers, 2001; Tominson, 2001). For Indigenous Australians, Australia's colonial history, as well as the historical manipulation of 'protection' legislation to fit the political agenda of "eras[ing] Aboriginal people out of the history books" (Bessarab, 2000, p. 79), has left a terrible intergenerational legacy of fear and distrust of 'authority' figures, particularly the police.

Some of the participants were asked how they felt if they encounter a police officer on the street as they are going about their day-to-day activities. The responses ranged from angry to wary to guilty to fear. While speaking to Joe, there was an underlying tone of anger and frustration about the system as a whole, he said, "*I just get very angry. Something needs to be done*". At the other end of the spectrum, John said, "*I get a bit wary from them, eh? I feel they would walk up to me and arrest me"*.

Unsurprisingly, given Liam's extensive and often brutal encounters with the police, he said, "*you'd shit yourself"* and that "*you're conscious as well because they are stopping, and they are going to drag you around and do whatever they doing to do to you*". He said, even now in Brisbane, "*I couldn't go to the shopping centre and 100%, well maybe not 100%, they will walk up to you and do the full thing on you*". He said in Cairns he "*did get a couple of looks*" from police, but that in Brisbane "*it's like boom, its automatic*".

Although Peter never had any physical altercations, nor any abusive language from the police, when asked the question, he responded:

> *I still feel a bit touchy, honestly. It's like, I'm looking at myself, am I dressed right, am I? I've got to hold myself high to let these fellas know that I'm not that person, I'm not that person that they can judge, you know and that is a great question because I still feel nervous around them. Even when I'm driving my car. I have to remind myself, well if they are behind me, why am I feeling nervous, I got nothing to hide, I got no drugs in this car, I'm not drinking, I'm not driving [under the influence], so whatever. So, got to remind myself all the time, you know.*

For Steve's family, the police were like "*the enemy from a young age, we looked at them like the enemy*", but he could not remember when the police shifted from saviour (from the domestic violence at home) to enemy, stating "*I can't really remember when it shifted, but it shifted badly*". When Steve was out on the street he would be worrying about the police, thinking "*Where are they? When do I think they are going to come? How, when do I think I should leave before them come. Like, my life would revolve around what they were doing sort of*". Since moving to Cairns three years ago, Steve has had less interaction with the police, but on seeing the police he said, "*just that heart pump straight away, say a year ago I was checking myself to see what I had on me. Not a good feeling, nah*".

After reading the accounts provided by the participants it should not come as a shock to know that Indigenous Australian children are taught to fear the police (Briggs, 2016), which is supported by Joe, who was told to come straight home from school and to "*watch out for them [police], just get home early"*. It should also come as no shock that Indigenous Australian parents are fearful for their

children's futures, as Keenan Mundine, founder of Deadly Connections, told the ABC "I worry about them [his sons] growing older and being arrested by the police and being taken to prison" (Khalil, 2020, para 23). It is no wonder, then, that the majority of Indigenous Australians have an inherent fear and distrust of the policing community in Australia. Nonetheless, many of the participants of this study were keen to point out that there is a contrast in policing styles with many older, more experienced officers looking to work with Indigenous communities rather than against them, whereas young 'rookie' officers fresh out of the academy appeared to bring unsuitable attributes, such as attitudes of superiority and automatic authority.

A Dichotomy in Policing

The Queensland Police Service states that attributes for suitability as a police officer include "life experience; work experience; education and qualifications; volunteer/community service; verbal, non-verbal and written communication; assertiveness; personal qualities (e.g. trustworthiness, empathy, tolerance, responsibility)" (Queensland Police Service, 2020a, para 8). The dichotomy between the attributes of a 'good' police officer and those of a 'bad' police officer have been the subject of much debate (Chan, 2000a; Cunneen, 1992c; Miller, 2004; Wolfe & Piquero, 2011).

For example, Cunneen (1992c) asks "[s]o where do we attack racism by the police? At the individual level? The institutional level?" (p. 26). For Cunneen, the 'bad apple' theory ignores the fact "that the institution itself may be racist" and that theory implies that the police "cannot be held responsible for the actions for some of its members" (1992, p. 26). This approach is in direct conflict with the view of Miles-Johnson (2019) who believes that "background characteristics such as upbringing, parent imprinting, morals, and values also influence an officer's judgements" (p. 4). This is supported by Miller (2004) who posits that some officers have slipped through the screening net that have personality disorders with traits that include "impulsivity, unpredictability, a sense of entitlement, lack of empathy, heightened suspiciousness, emotional instability, and difficulty following orders and rules" (p. 33). Furthermore, he suggests that these officers are more likely to use excessive force or to be involved in other forms of misconduct (Miller, 2004).

Perceptions of the police from the research cohort were mixed with not all interactions with the police being bad, but those that were bad were extremely bad. Ian voiced a popular line that "*there's going to be bad apples in every cart".* Overall, however, most of the cohort shared the belief that the police treat Indigenous Australians unfairly. The perspectives shared by Mike, Steve, Joe, Colin, and Peter below indicate that when given positions of 'power' some judicial officers are more capable than others of being neutral no matter who they are dealing with; a concept analysed in greater depth in Chapter Nine.

Mike made it clear he was not anti-police, declaring "*I'm not going to sit here and say they're all, all these police, no matter what, are really bad police, because that's not the case"*, but added "*I'm gonna call a spade a spade, some really corrupt police officers growing up as an adult in Wellington [NSW]"*. Mike recalled having good dealings with some police in his community and fondly remembered one community-based police officer that ran a program for Aboriginal children called Way Cool at the PCYC. What made this officer different, according to Mike, was that he "*grew up around Indigenous people at school and his mates were Indigenous*" and that made him part of those "*good police officers that wanted change for us Indigenous people in that community"*.

Steve, Joe, Colin, and Peter also spoke of 'good' and 'bad' police. For instance, to Steve, there is no difference between the police officers on the Gold Coast and those in Cairns because, he said, "*the attitudes the same, they're pretty much exactly the same … you get your good and your bad in the police*". Colin provided more detail on his view of the different attitudes within the police, he explained, "*I've been arrested by police that are fair but I've been arrested by police that, you know, like taunt you and push you and, you know, try to get you to snap*". The fair police officers, he explained, "*sit there and talk to me, calm me down and tell me what's going to happen, 'look, you're going to go to the watchhouse and then you're maybe going to go to jail from there'"*. For Colin, if the police treat him fair then he isn't going to "*arc up*", but that "*sometimes, you can see, especially the detectives I found, they pushed, they liked to push"*.

Joe, however, viewed the difference in terms of the experience of the officers. He announced, "*you get good cops, and you get fucking dickhead cops. The dickhead cops are the academy or the fellas that have a star there [points to shoulder]*". Furthermore, he added:

> *Fellas that know me from old school, they respect me, but when the academies come in and talk shit. They say, hey we know him since he was a boy, so yeah. There is a lot of little academy dickheads coming up, bringing they* [sic] *attitudes and the old coppers, they sort of know that. They seen us grow up.*

Peter associated the dichotomy in the attitudes of the police with the length they stayed in the community, stating, "*police that come and go in Mossman and you had the ones who stuck around for a long time*".

Moreover, Peter said the police that come and go have "*lot of power plays, you know, I think everyone is trying to work their way up the ranks*", but the ones that stick around "*they have been really helpful, like they come and talk to you"*. Peter even visits the Sergeant at Mossman, he said, "*I've sat down with him and had a cup of coffee with him and he's like 'you've come a long way, you know, it's good to see you'*". Regarding the police in Mossman when he was growing up, he said he

can "*speak highly of the police there*" because "*there was a couple of police that stuck around for a long time and they knew the parents, so they worked with us*".

A common thread appears to be that the new 'fresh out of the academy' officers carry with them more attitude and less cultural awareness than the older officers who have 'been around the block'. This is supported by research conducted by Dawes, Chong, Mitchell, and Henni (2019) who found that Indigenous offenders felt that "[t]hey need to learn how we act and our backgrounds. Them old crew, them old policemen, they know us" (p. 72). However, their research also found that there were more inexperienced officers in the position of Field Training Officer, which means that less valuable knowledge is being passed on to new officers out of the academy (Dawes et al., 2019).

From the evidence here, there is an obvious dichotomy in policing with some officers working to break down barriers between the police and Indigenous Australians while others bring prejudices and bias with them.

Juvenile Delinquency: Early Contact with the Juvenile Justice System

According to the Commissioner for Children and Young People in Western Australia, "Aboriginal young people are also more likely to have their first contact with the system at a young age, to have multiple contacts, and to experience multiple episodes of supervision" (2016, p. 10). This is supported by the Australian Welfare 2019 report that shows that in the year 2017-18, there were "472 Indigenous youth…supervised in youth detention on an average day…a rate 23 times as high as non-Indigenous youth" (p. 69). A majority of the research participants of this current study were under the age of 16 when they began to get in trouble with the police. Just under half of the research cohort got into trouble for breaking and entering, two for stealing cars, one for underage drinking and one for stealing parts from people's bikes.

John first began interacting with the police around the age of "*11/12 or something*" for the minor offence of "*stripping people's bicycles*". He said, "*I went to the police station over it. Went to court [but] I got out of it*". He said the experience was frightening, saying "*I felt scared – I thought I was gonna go to jail and that*".

Colin, Sarah, Joe, and Mike were all arrested for some form of 'break and enter'. Sarah was the youngest saying she had contact with the police around the age "*about 10, or 9*" when she would be picked up for "*just being young when I hang out with friends, but most of my friends were in trouble all the time with the police – break and enter*". Mike and Joe were both around 13 years of age when they began getting in trouble for breaking and entering, although Joe was also stealing cars. Joe explained that it was, for him, a matter of survival, saying "*'cause that's how I knew how…, that's the only way I could survive with money, if I didn't".*

For Mike, it started with minor incidents, such as *"jumping the [public] pool fence, being kicked out, and jumping back in again*" where initially he was "*driven home, just started with just jumping in [and] them driving you home*". However, gradually, he said, "*knowing that there wasn't gonna be a great big feed when we got home*" it gradually escalated to theft. When he got "*caught thieving*" soft drinks or chocolate bars on the way home from the pool, the police changed tactics to "*we need to take you to question you*". When asked if he was arrested more than he was given cautions, Mike said that "*as a kid it was a lot of targeted arrests for minor and petty crimes, there weren't a lot of chances happening".* Peter was slightly older than the others, but by the age of 15 he was getting arrested for break and enters, which he attributed to "*growing up in Mossman, just a small town, boredom and other kids, sort of copying".*

Both Steve and Grant got arrested as juveniles for car theft; Grant was 16 and Steve was only 13. Steve recalled, "*they took us in, in separate rooms, no lawyers, and interviewed, like interrogated us, pretty much"* and he added "*now that I look back it's not the way it should've went…no parents*". Steve recalled the situation only got worse:

> *I was in there I reckon five hours both of us and because the stories weren't matching up because I didn't know what to say and he didn't know what to say and they knew, so they just kept going back and forth till they got a story that suited them, which I give them in the end.*

Grant, however, had a different reason behind his stealing of a car. He said, "*I saw young fellas come out of prison, I was only sixteen, they were muscular*", so he "*stole a car"* and when he went to the police station he decided to lie about his age, which he described:

> *I went in there and I said 'ok, this is my time to be a man', so when they asked me when I was born, I said '1969'. I was born 1970, so I went in January 1987, February I turned 17 in prison*.

Grant, Peter, Sarah, and Steve all mentioned being in the company of, or being influenced by, their peers and it has been established that pressure from peers can lead to involvement in both substance abuse and crime (Dawes, 2007; France, Bottrell, & Armstrong, 2012; Sellwood, Dinan-Thompson, & Pembroke, 2004).

'Delinquent friends', suggests Farrington, are "a risk factor for development of criminal careers" (as cited in France et al., 2012, p. 80). This was substantiated by participants in the study conducted by Dawes in 2007 who indicated that young people were concerned with "re-establishing links with peers, resorting to substance abuse" (p. 125). Peer pressure combined with the lack of discretion used by police officers when dealing with Indigenous youth, as indicated by Mike above, can contribute to Indigenous youth becoming stuck in a cycle of recidivist behaviour. This is

particularly true in cases of failure by police to use discretion in terms of youth diversionary strategies (see Allard et al., 2010a; Allard et al., 2010b; Snowball, 2008; Wundersitz, 2005). Another area where police fail to use diversionary strategies with either juveniles or adults is in drug and alcohol diversion.

The connection between substance abuse and involvement with the criminal justice system is well documented, particularly with regards to Indigenous offenders (see Loxley et al., 2004; Pearson, 2001; Snowball & Weatherburn, 2008; Weatherburn et al., 2008). However, tackling substance abuse fueled crime in Indigenous communities is not a straight forward task as pointed out by Dawes et al. (2017), particularly surrounding Alcohol Management Plans that increase the risk of arrest and illegal home brew activities.

All participants, including those not recruited through the rehab, have or are continuing to battle with substance abuse, be it alcohol, drugs, or a combination of the two. Five of the participants attributed their recidivism to addiction, one to mental health issues, one to stigmatisation and four did not discuss their recidivism or addiction. Peter, Liam, Steve, and Mike all attributed their recidivism to addiction. Peter said there was "*drug and alcohol involved"*, Liam said of his past violent behaviour – "*It was drugged fuelled*", for Mike, he said, "*I didn't care what I had to do to feed my habit"* and, when asked about his recidivism, Steve said, "*intoxicated, drunk"*.

As a teenager, Peter said he suffered the "*trauma [of] not having contact with my father"* and he would "*ask questions and that is when as a teenager I started rebelling because I didn't have answers and mum couldn't give me answers*". Slowly, Peter slipped into addiction. He explained, "*I was finding it hard to sleep, I was drugging and, you know, sometimes didn't sleep, on 'speed' and 'acid' and just staying awake and just fighting the demon inside*". He ascribed this drug use to:

> *...searching for answers and I think I hit rock bottom when my mother passed away and her having a heart attack and, you know, in my arms, so that and my relationship with my kids' mother fell apart at the same time and in the same month my kids' mother walked away and my mum died in my arms and that was really hard for me to take on board, so I was really angry, and I blamed everyone and I blamed myself.*

As Peter's addiction and anger grew, so did his interactions with the police until he found himself in the prison system in his 30s.

Mike, however, explained that at the age of 16 he had his first taste of heroin and before long he said, "*I was a full-blown addict*". As an adult, Mike started encountering the law more often especially in his late 20s when he "*didn't care what [he] did to feed [his] habit*" and he started to steal from family and friends until "*no one could trust [him]*".

Although Steve also said his recidivism was fueled by intoxication, he also said that his attitude when he was young did not help. He said, as a youngster he *"just didn't care, didn't care at all, like, it never occurred to me, I'll go back to jail, it's not a problem and it sort of wasn't too bad in there*". However, as he got older, he said his attitude began to change - "*I couldn't even remember what I had done I would just wake up in the police station the next day or something and … get the charge and read what I've done and still not remember and then I'm like 'fuck, what've I done"*". While Grant never implicitly tied his reoffending to his alcohol and drug use, he did say he was arrested for "*mainly just drinking in public"*.

Violence at the Hands of the Police

Violence and displays of force are a common occurrence for Indigenous Australians, not least in terms of the frontier violence mentioned in the introduction of this thesis, but also in terms of racist organisations, including the Ku Klux Klan (KKK) as mentioned by Joe. The KKK was also mentioned in the NIRV although the inquiry stated "[w]hile there is no evidence that the KKK exists at an organisational level in Australia, it is clear from the evidence that individuals in particular areas throughout Australia have taken on the trappings of the Ku Klux Klan to intimidate and threaten Aboriginal people" (Human Rights and Equal Opportunity Commission, 1991, p. 78). This included Mareeba and Kuranda in Far North Queensland where the inquiry heard evidence of "an elderly Aboriginal man [being] abducted by two persons wearing KKK outfits" (Human Rights and Equal Opportunity Commission, 1991, p. 78), three months after the incident, a police investigation corroborated the event had occurred.

Although the intimidatory practices of the KKK in Australia appears to have diminished, the tactics of fear and intimidation do not appear to have diminished in the realm of the police service with complaints of police harassment, intimidation, and violence continuing to be heard (Australia, 2017; Cunneen, 1991, 1992c, 2001; Royal Commission into Aboriginal Deaths in Custody, 1998; Yang, 2015). Indeed, Cunneen (2001) reminds one that an important factor in understanding police violence against Indigenous Australians "is the role of the police as a state institution with 'legitimate' access to the use of force" (p. 109). These actions of subjective, symbolic, and systemic violence continue today, which was confirmed by over half of the research cohort who have either experienced some form of violence at the hands of the police, or witnessed others being assaulted by police.

Subjective Violence

Subjective violence, as outlined in Chapter Three, occurs where there is an agent that can be clearly identified, which in this section would be a police officer. It is also violence that generates a physical force that results in some form of harm, whether physical or psychological, or both. What follows are

experiences of subjective violence at the hands of police officers described by the participants of this research.

Although Mike has never been assaulted by the police, he reported that "*a lot of my mates been brutally bashed by police*". Therefore, he said, "*there was a lot of police officers that I believe that were in the wrong positions"*, as the recollections of the participants herein can attest. Both Grant and Ian were around their late teens when they were assaulted. Therefore, both incidents were some time ago, but Grant said "*I remember getting bashed one time because I was yelling or something. That is the last time I can remember, I was drunk*". However, Grant also said that he was not given any medical treatment, saying "*they left me"*.

Ian, however, recalled the incident quite clearly stating "*I nearly got killed by a policeman before*". He said that the police were chasing "*this white kid who was on a BMX"*. When the police stopped and asked Ian and his friends where the 'white kid' was, Ian said, "*we didn't say where he was as we were protecting him*". He went on to say that when the 'white kid' reappeared on his bike across the road Ian and his friends "*were cheering then*", so the "*coppers pulled up and arrested me for cheering*". When he was in the car with the police officers he recalled:

> *I was going off in the car, telling them they were Nazis and swearing at them and stuff and back at the station I got done for it you know. I don't know what charge they could possibly put me under, but they put me under some charge, resisting arrest, you know, something like that*.

Then, exclaimed Ian, "*this guy [police officer] just grabbed me and flipped me over…he flipped me over my head backwards and nearly killed me*", and added, "*I remember that I charged him for that, but he never got done for it*".

Ian and Grant were not the only participants who experienced physical abuse from the police due to agitated behaviour. Steve was also agitated, as he explained, "*I was riled up and blind drunk I didn't know what I was doing*", so the police officers "*ended up flogging me*". The Officer in Charge came, which Steve described, "*I remember him sort of, well he made the decision to send me to the hospital because I remember him saying… 'oh here he is here' and he's lifted my head up and he's looking and he's like 'he needs stitches, I can drop him off at the hospital'*". Steve was dropped off outside the hospital doors and no charges were ever laid against him. Steve added, "*I didn't say anything, and they didn't say anything, and that's how it happens*". This incident occurred in Mildura, Victoria, but Steve has also been assaulted by police on the Gold Coast. However, he said the Victoria incident was the worst and that "*local coppers on the Gold Coast know me, so they're not going to send me home to my mother all bloody because it is gonna cause a problem"*.

John, on the other hand, was not riled up or drunk when the police in the remote Aboriginal community of Wujal Wujal in Far North Queensland started being aggressive with him. He explained:

> *Once I got abused up at Wujal Wujal. I didn't actually steal that vehicle. They was forcing aggression against me. They shoved me against the troopie[12], and I tried to tell them that I didn't steal the truck, it was my 'nother three cousin's. It was a copper from a previous past that, he knows me from Yarrabah and he was working at Wujal, he used to lock me up 'n that…. He came out there and then he started abusing me eh, pushing me against the cop car…I can remember where that was, where I got abused.*

For Joe and Liam, the physical assaults began when they were young with Joe explaining, "*I was getting rough handled at a young age"*, which fell on deaf ears. He said, "*you try and explain that to your case worker 'n that, the youth justice mob and there's nothing done, you know".* Liam recalled that as a child their houses would be raided by the police who were looking for stolen goods. He recalled having the police "*stamping your feet and squashing your feet into the ground with their boots on*". As both men got older the 'rough handling' got rougher.

Joe recalled that he was once "*hit by a torch, [participant showed a prominent scar on his head]",* and when asked what help he received, he said, "*they just made me wait till it was dry, you know – big split. I could have got a blood clot from those things. I got hit with force"*. Joe described what was going through his mind as this was happening:

> *I was scared... I said I'm gonna die here, they gonna kill me…, the racism, you know. All them things. Something need to be done about the police and what they are doing. You talk to … that bullie's[13] boss, and he still don't do nothing. 'Can you tell one of your workers' and they still pin you, pin you, pin you, pin you.*

Joe also described an incident that he witnessed while he was in police custody "*for my warrant"*. He said, "*one of my mates came in…for a warrant out*", and that he was "*put in my cell*" where they were "*waiting for dinner to come*". He recalled that his friend threw the food on the floor, and he described how the rest of the event unfolded:

> *…they just came in with force about fucking five of 'em…six of them came in with force and they said '[Joe] turn your back around and face the fucking wall'… they are fucking*

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[12] Troopie – short for troop carrier, a type of vehicle
[13] Bullie – short for bullyman – a term used by Indigenous Australians when referring to policemen

> *roughhousing him right in front of me. Fucking nearly snapped his fucking wrist…after they bashed him and dragged him, he come in that fucked up sore you could see all red marks over him now. [The officer] said to him 'pick up every fucking scrap up you little black cunt' and I was watching from the cell and I said 'Brother, you don't do that. That's their fucking jobs, the cleaners'. He [the officer] said 'you better fucking do it or I'm gonna f…'. He said, 'now I'm gonna hit him again' and he hit him with force again… they could've fucking killed him, man.*

Liam's interaction with the police has been extensive and, quite often, confrontational. On one occasion in Ipswich, Southeast Queensland the police came across Liam asleep at an intersection in a stolen car. On being woken up by an officer banging his torch on the window, Liam took off in the car but when the tires blew on the car he jumped out and ran. He told the story of what happened when the officers caught up to him:

> *…they put me on the ground where one was choking me on the ground, and I got up and then I remember him getting out his stick and he fully busted both me shins. I had jeans on and there was just blood coming down my knee like that and I've hit the ground and he was still hitting me … and then his mate come out of nowhere and dived on me and he choked me that much, and obviously my heart was going flat out 'cos I'd been running and that. He was choking me on the ground. He was an Indian bloke who was holding me to the ground while the other fella was cuffing me. Even when I was cuffed, they took me from here to their car which was probably nearly out to the road there, he has got my arms up like that [indicates arms right behind his back at almost shoulder height] and the other one is still choking me to the car. When we get to the car, he's slammed my head against the back of the car and then pushed me in*.

It has been almost 30 years since both the RCIADIC and NIRV reports were released with both discussing the treatment of Indigenous alleged offenders by police. This treatment included being "hit, punched, kicked, or slapped" (Human Rights and Equal Opportunity Commission, 1991, p. 96), as well as being hit with objects such as "batons, telephone books, torches, and other objects" (Human Rights and Equal Opportunity Commission, 1991, p. 96). As with the use of derogatory language and racial slurs, from the experiences of the participants of this research, it appears little has changed with the use of, and displays of, force still being freely used today, albeit in varying degrees. It is not only subjective violence that has the potential to be destructive. Symbolic and systemic violence can be as equally destructive although psychologically rather than physically.

Symbolic Violence

As explained in Chapter Three, symbolic violence is perpetrated through symbolic channels of communication and cognition and emerges in areas of asymmetrical relationships, such as between Indigenous Australians and the police. These asymmetrical relations of power allow the 'powerful' to victimise, oppress, and violate the 'powerless' making them "lose their voice" (Pieterse et al., 2018, p. 33). This section returns the 'voice' of the participants by providing a platform for their experiences of symbolic violence to be heard.

During the process of socialisation, language forms our disposition towards others (Legassick, 2012). Therefore, being labelled as 'deviant' or as a 'criminal', as stipulated by Hopkins Burke (2009), has substantial consequences for those given that label. This was supported by many of the research cohort, albeit indirectly. Although not realising what they were describing, many of the participants spoke of being labelled by the police and how that stigma pushed some of them from primary to secondary deviance, a form of symbolic violence.

Liam said that to the police, Indigenous Australian families were criminals. He explained, "*you always going to be treated like a criminal, that's how I grew up. Why try and grow up to be something else when you're going to be treated the same way?*". Labelling of Indigenous Australians as 'deviant' also labels them as 'inferior', as if they are not worthy of life, thereby continuing the process of zombification. Like zombies from the films, Indigenous Australians are viewed as a threat to the social order and are, therefore, targeted for isolation and marginalisation from society due to their 'deviation from the norm'. This 'inscription of difference' (Drahos, 2012) by using the label 'criminal' or 'deviant' demonstrates the exclusionary power of language and its implications in power relations.

Due to Australia's violent settler-colonial history, the dominated (Indigenous Australians[14]) unwittingly give consent for the dominator (in this situation, the police) to use coercion upon them through a belief that the police have the authority to do so. For example, Joe and Mike felt that once the police viewed you as a criminal, there was no escaping that label, so you just accept it.

Joe explained that "*you got that target on your back, that's for life. Don't matter if you off parole 'n that, you trying to do good. They still pick on you, I get blamed, I get pulled up for nothing all the time"*. Joe quantified this with a description of an incident in January 2019, when he was walking home from the park. He recalled, "*I was just walking home, just walking home and four*

[14] And some might argue other minority groups, such as Africans and Muslims.

[police officers] *jump out and I said, 'what do you want?'. 'Oh, we gonna charge you for public nuisance'. I said, 'what for, I'm just walking home, I'm drunk, intoxicated'. 'You're coming with us'".* Mike seconded this view when he declared, "*my head was always put on show, didn't matter if I was doing good or doing bad"*, as if "*my head's become sort of a target"* and then he "*started coming into contact a lot more with the police in the community"*. Even when he was "*just walking from one place to another*" the police would pull up alongside him saying "*oh what's [Mike] up to today?"*.

By labelling individuals as 'criminals' or 'deviant' the more enmeshed those individuals become with criminal or deviant groups, further embedding their own deviant habits. As the participants above have said, if you continue to be labelled a 'criminal' or 'deviant' and treated as such, where is the incentive to 'go straight'? Through this continued labelling the police are directly fueling the individual's drive into secondary deviance, where their 'criminality' becomes embedded into their identity (Hopkins Burke, 2009). Ultimately, they take on the label and live the life of the 'criminal', submitting to the symbolic violence, especially when it is reinforced through racial and derogatory language (Hopkins Burke, 2009).

In 1991, the *National Inquiry into Racist Violence in Australia* (NIRV) announced that "[r]acist verbal abuse by police officers is an extensive problem!" (Human Rights and Equal Opportunity Commission, 1991, p. 99). According to the submissions received by the inquiry, Indigenous Australians were the target of this racist verbal abuse in Western Australia and South Australia with submissions that juveniles were being "harassed by police and subjected by some police to racist language and abuse…[and] verbally abused by police while being detained" (Human Rights and Equal Opportunity Commission, 1991, p. 95). From the narratives that follow it appears that little has changed since the NIRV report was released.

Joe, John, Steve, and Peter all reported the use of the word 'cunt' or the phrase 'black cunt' by police officers towards Indigenous Australians. Joe and John have both had this slur directed at them with Joe saying the police "*say things like black cunts 'n all them things"* and John explaining that he "*got sick of it…how the police treat me in Cairns*", especially because they would "*pull me up and harass me, yeah, call me a naughty cunt*". Joe also recalled an incident in a watchhouse where the police said to his friend, following an incident over food, "*'ah, what you go 'n do that for you little black little cunt?"*". Neither Peter nor Steve was on the receiving end of any racial slurs, however, they did hear that phrase being used against other Indigenous Australians.

Peter said he was never on the receiving end of any racial slurs or derogatory language because, "*I just shut my mouth, you know, I've done the deed so just shut your mouth and go to jail*". However, he said, "*I've heard slurs against other people in there 'black c', 'you're an idiot'*". Steve

said he would not often be taunted with racial slurs from the police because, he said, "*I don't look like my cousins and like a normal Aboriginal person looks*", which he puts down to the fact that "*my dad is Spanish/Irish, and my mum is Aboriginal/Scottish*". However, when he was with his cousins who he said are "*a lot darker than I am*", the police would often use racial slurs calling them "*black cunts"* and pulling alongside them and calling out "*what are you black cunts doing?"*. He summed it up perfectly saying:

> *So, if I was by myself and they didn't know I was Aboriginal they'd treat me not differently for sure, 100%, but if they know, then it's a completely different story. Like, they just don't give you nothing. It's clear. So, I can't say they look at me, but us as a whole, it's different.*

By not treating Indigenous Australian people with the same respectful treatment provided to other human beings the police strip them bare of positive human qualities, beginning the process of zombification, which will be fleshed out in greater detail in Chapter Nine. Derogatory comments not involving the c-word, but also of a racial nature, were also spoken about by both Frank and Grant.

Frank recalled his treatment in the police watchhouse when getting his methadone. He said he was "*treated like no good, like they just throw your feet in the door, when they walk you for your medication [methadone], they check your mouth, they make you sit on the table for ten minutes. They treated us like pigs*". When Frank said to the police officer, "*you're going a bit overboard here aren't you*?" the police officer replied, "*this is how we treat black people*". Grant was despondent with tears in his eyes when asked about verbal insults by police, saying he was called "*Anything under the sun, you know, colour skin, something that you don't want to think about eh".*

For Colin and Steve, two participants who described themselves as 'light-skinned' Aboriginal men, the insults were generalised with the intention of provoking reactions from them. Colin remembered that as a juvenile the police would "*try and get us to bite back*" and asked if he ever did bite back, he coyly replied, "*yeah, a couple of times"*. Steve, who was either intoxicated or had been using drugs at the time of his arrests, said, "*your state of mind it plays a big part*" because the police can either "*make you calm or make you go off your head"*. He said often they "*try and get you to bite*". Steve said this is something that "*you just got to learn*" and that "*we learnt just to keep quiet. The less you say the better it is, so yeah, by the end of it I wasn't even listening to them by the end*". These examples demonstrate the "innately violent nature of human interaction" that is espoused by Taylor (as cited in Legassick, 2012, p. 3).

By evoking disrespectful and evocative language to provoke a reaction, the police officers are employing necropower. This is done through the threat towards Colin and Steve of potentially being locked up in the watchhouse for longer or facing jail time for reacting to any provocation. This

essentially subjugates their lives to the power of social death, which is explored in greater detail in Chapters Eight and Nine.

The RCIADIC found similar findings with Recommendation 60 citing that the police "take all possible steps to eliminate…violent or rough treatment or verbal abuse of Aboriginal persons…by police officers" (1998, volume 5, para 60). This, along with many of the other recommendations, appears not to have been acted upon. Furthermore, in some cases, derogatory language and taunting behaviour on the part of the police is a tactic intended to provoke a reaction that ultimately resulted in an arrest (Pilkington, 2009; Trollip, McNamara, & Gibbon, 2019; Walsh, 2005).

From the experiences shared by the participants above, it is clear that neither the NIRV nor Recommendation 60 of the RCIADIC have had any impact in the last thirty years with many of the research cohort reporting that police used derogatory language either directly at them, to Indigenous Australians around them, or about Indigenous Australians in general.

Systemic Violence

As stated in the theoretical framework, systemic violence is viewed as a consequence of the "smooth functioning of our economic and political systems" (Žižek, 2009, p. 8), of which the criminal justice system is part of. Moreover, it is

> …non-behavioural in the sense that cannot normally be ascribed to decisions made by individuals or groups. Arrangements are systemic or structural because they are embedded in the specific organization of a certain socio-economic and political order, and are violent because, through autonomous processes and forces, they determine personal and collective injury. (Ruggiero, 2020, p. 12)

The smooth functioning of Australia's economic and political order today stems from its settler-colonial history, one in which Indigenous Australians were viewed, as attested to in Chapter One, as 'the enemy within'.

As Bernasconi (2014a) states, "[t]he tendency is to demonize one's enemies. This demonization promotes further violence in a process that escalates to the point at which the enemy is declared (deemed?) unfit for life" (p. 87). As suggested earlier in Chapter Three, the mere existence of specific groups, in this case Indigenous Australians, is enough for them to become targets of the police. Ian, Steve, and Liam spoke of being targeted due to their indigeneity.

Ian declared that the police make Indigenous Australians "*feel as if, you know, we were the criminals, you know, black people were the criminals, we're bad, we're bad guys you know".* Steve was asked if being one of the few Indigenous families in the area he grew up made his family a bigger

target for the police, to which he replied, "*yeah, definitely*". He revealed that even when he had done nothing wrong, he was getting pulled in for interviews "*like they are trying to get someone*". If he was sitting in a park, they would always pull up to have a closer look to see what he was doing and "*how you're talking to them [and] if you are blind drunk you would probably get taken in*". When he has been out with his cousins, Steve said of the police "*they judged ya*" and that "*they're telling you what you've done without knowing what's going on, like they've got no idea, but they've come up with a story on the way there and that is what they run with*".

For Liam, he felt it was the intersection of his indigeneity and his membership of a motorcycle club that saw him targeted by the police, often with the threat of violence. For example, in 2018, Liam was living in a caravan at the back of his sister's house when a fully armed tactical squad raided the house and the gardens looking to arrest him. The reason for this arrest, and for the use of a fully armed squad? It was for "*a return to prison warrant for a dirty UT [urine test]*". Liam was woken up to bashing on the door, he recalled, "*I remember pulling back the curtain up from the door and they are bashing on the door and all I see is a squad, full helmets, glasses, machine guns, full suited up, screaming at us like"*. Liam shouted to them "*I'm not fucking coming out, I'm not dressed, let me put some shorts on*". The door was burst open, and Liam was rushed out in his underwear.

Liam said to them "*what are you fucking doing, I'm not even doing anything, I'm not even resisting"*, but the police continued to "*wrestle [him] to the ground*". Liam said he tried to reason with them saying, "*listen, I'm not going anywhere, first I'm going to put some shorts on and a t-shirt on, I'm telling you I'm not resisting"*. However, "*they kept coming and they got me in handcuffs"*. Liam tried to reason with them again at this point saying, "*all I'm asking youse to do is let me put some fucking clothes on to be dignified…I'm standing here in a pair of boxer shorts*".

Another area of systemic violence that Indigenous Australians are often subjected to is that of strip searches with many being conducted in "public places" (Grewcock & Sentas, 2019, p. 5). This was certainly the experience of Liam on not one, but on two separate occasions. Liam described the first incident as follows:

> *It was a full strip search in the cells to where I was left in my jocks – they took my jocks off and then gave them back to me. They left me in the room and didn't bring me no clothes back, so I had to sit in a cell with my jocks on and it was freezing cold, the air cons up full. I was saying to them 'where's my clothes, where's my clothes, where's a blanket'.*

Eventually, Liam was moved to another cell that was closer to the front desk where he was given a pair of watch house shorts. Liam said:

> *A few hours passed and all they did was like they had stuck me in a, like you're in a zoo or something because copper after copper coming in and say 'yeah, that's him'. I think they saw me as a menace in the Ipswich area to where they were saying 'this is him', like I was on display… It was just like 'what are they doing?'. It was just like one after another, detectives and that coming in and looking at me saying 'oh, yeah'.*

The second incident was in a highly public area, that of a busy road. Liam explained that he had been with another man and had been caught in a stolen car "*behind the service station in Goodna, there is a service station right in the middle of the highway, so a little suburb where lots of traffic comes fast"*. He said the police had:

> *…me out behind the car against their car, they stripped me naked for a strip search. In public, and I was standing there, and I had to fight them for me jocks back, like to where they had me in the car and finally got me jocks back and finally got my trousers back*.

According to the Queensland Government website '*Being Searched*', the police "must respect your privacy during the search" (para 35). In addition, they "must allow you to remain partly clothed while conducting the search – for example, allowing you to keep your pants on while your chest is bare and your shirt on while your pants or skirt are off" (para 36). Moreover, they must "allow you to dress as soon as possible after they have finished" (para 38). From the descriptions provided by Liam of his experiences, several of his rights appear to be violated during these searches.

Very few people know their rights when they are arrested and even if they are advised of their rights, due to the high stress nature of the situation, as well as the complicated and technical language used, many will still not be able to fully comprehend them (Law Reform Commission of Western Australia, 2006). This results in an inability to adequately defend themselves or challenge the reasons behind their arrest, as they do not fully know how to exercise their rights.

Unlike in the U.S., Australian police do not have to read an offender their 'Miranda Rights'[15], however, it is an officer's duty to make sure that offenders understand their basic rights (Russo Lawyers, u.d.). Basic rights include the right to make a phone call without being listened to by the police, to decline questioning and interviews before they have spoken with a lawyer (with whom they

[15] "On June 13, 1966, the U.S. Supreme Court hands down its decision in Miranda v. Arizona, establishing the principal tht all criminal suspects must be advised of their rights before interrogation. Now considered standard police procedure, 'You have the right to remain silent. Anything you say can, and will, be used against you in court of law. You have the right to attorney. If you cannot afford one, one will be appointed to you'" (Onion, Sullivan, & Mullen, 2020para 1)

are also entitled to speak with privately), to request an interpreter and the right to remain silent (Russo Lawyers, u.d.). It appears from the experiences recounted by some of the participants of this study that many Indigenous Australians are unaware of their basic rights upon being arrested and this is taken advantage of by some officers.

As metaphorical zombies, as dehumanised entities, Indigenous offenders are at risk of becoming *homo sacer*, whose lives can be taken by the state with impunity. As *homo sacer* they become a person without rights who is viewed as an object of the state's power, but not viewed as being a 'true citizen' and due to their zombification, they define the state's power, but are powerless to withstand that power. This occurs because of the state's portrayal of Indigenous Australians, as with the figurative 'zombies', as something to be feared, as a threat to the status quo, but in reality, they are defending their position of power (Paige, 2020).

Sarah, Steve, and Mike, all of whom speak English as their first language, spoke of not understanding their rights, and therefore, how to defend themselves against charges that were being laid against them. By not understanding their rights or being informed of their rights, Sarah, Steve, Mike, and Liam highlight their powerlessness against the power of the police.

Mike's early recollection of visits to the police station was that there was almost always no adult representative present. Mike said throughout his interactions with the police, "*I wasn't informed about my rights, it was like I didn't exist*". Sarah, when asked if she had a representative from the Aboriginal and Torres Strait Islander Legal Service (ATSILS) at the police station, said "*no, they never asked me if I needed someone there with me*". Furthermore, she did not understand the charges saying, "*no, not really, but they just told me I had a couple of breaches of bail and missing court*".

Steve also never understood the charges being laid against him, or his rights in terms of fighting the charges because "*no one understood law, the laws*". When asked about having representation when dealing with the police the conversation with Steve went as follows:

Steve: "*So, no matter what, because there was no lawyer there, ever*".

Researcher: "Ever?"

Steve: "*I've never had a lawyer in with me when I am talking to the police ever, so".*

Researcher: "Were you offered ATSILS?"

Steve: "*No, none of that*".

Steve said he had no idea "*what I can and can't say, if I'm safe or unsafe*". The only options available that he knew were "*saying something or say nothing*". He would usually opt for "*nothing*

and give me my charge, whatever, yup, let me go" because "*I'd just want to get out there as quick as possible*". Steve said that he would plead guilty if it meant he got out of the station quicker, stating "*Yeah, for sure. I would rather get out of the police station and take a charge that I haven't even done. I would do that to get out*".

Mike never used the Aboriginal Legal Service either because, he clarified, "*I didn't know my rights in there [police station], I didn't know what access I had, and I didn't*". Mike, like Steve, also found himself taking charges and doing time for things he did not do. He said:

> *As an Aboriginal man, I was just going in and doing my time and it's pretty common. That is pretty common, I'm just going in and doing my time…Even when we went in there for something we didn't do, we cop it on the chin and say, 'ah well, just cop it sweet' and do the time*.

Liam on the other hand, was more aware of his rights and his rights were blatantly being withheld, such as making phone calls. Liam was in the watchhouse for eight days without access to a phone and he "*watched everyone else going out and use the phones that [he] wasn't allowed to use*". Every change of police shift he would ask for a phone call and was told "*nah, nah*", but other people were using them.

The recollections by the participants highlight the need to ensure that everyone that encounters the law "has a means to understand it and participate fully in processes which affect them" (Ward, 2011, p. 5). The adage of 'equal before the eyes of the law' should be more than rhetoric, it should be automatic and unequivocal. Equality before the eyes of the law was not extended to Colin, Mike, John, or Peter who all described disturbing incidences of systemic violence during their interaction with police officers.

Colin described a disturbing incident in which he had been arrested for a break and enter in Cairns in Far North Queensland where temperatures reach in excess of 25 degrees, even in winter. Colin explained:

> *I've been left in a car with no aircon on, in the back of, not a paddywagon, just a normal patrol car, in the hot sun for at least an hour while they was chasing something up. I was arrested at a house and they were still going through the house but I was sitting in that car for a long time and I started getting claustrophobic because you're in handcuffs* [indicated behind his back] *... and there's a sheet of Perspex right where your legs are and you're just sitting in there like that. They can be arseholes*.

Mike spoke of an incident when he was a minor that occurred where no adult representative was present after he had stolen a car. When he was taken to the police station "*there were no adults there*

and there were men…allowed to [verbally] abuse me from the cell. The owner of the car standing outside the cell abused me". Mike followed this up with "*that's the sort of thing that happened as a kid back home".*

John told of a strange incident that occurred in Mossman, an Aboriginal community approximately 80km north of Cairns, following a domestic violence incident with his partner:

> *They lock me up, but they never even put me in a cell at night, they just driving me, driving me around in the cop van. Driving around for a few hours. I remember I was staying at Mossman. I committed a DV up there. They was driving me around for a few hours in the cop van. I was really cold, and I was shivering. They wouldn't put me in the watchhouse, so they turn around and put me back where I stayed. It was a bit funny how they was treating me*.

Almost the opposite occurred to Peter, where he recalled having once spent two months in the Cairns watchhouse before being sent to Lotus Glen prison. He described the experience of being held at the watchhouse:

> *You know, you see punch ups in there and people coming off drugs and alcohol and people just with mental health in there, in a little cage and you can't see the sunlight in the watchhouse and people just frustrated with what time it is because, all you know is you get breakfast, get lunch and you get tea and there is this exercise yard that is probably as big as this* [indicates room we were in – not large] *and everyone is cramped in here. So, you come out for exercise for about an hour, two hours and then head back in and locked in there till tomorrow morning.*

These disturbing incidents of systemic violence demonstrate what Bernasconi (2014a) means when he writes "it has been said that societies choose their dead in the sense that it determines who is to be deprived on the resources for life" (p. 85). It also supports the theory at the heart of this thesis that suggests that the state chooses who lives and who dies, who is disposable and who is not, who matters and who does not.

The actions described above mirror Kwate and Threadcraft's (2018) viewpoint that necropower can also occur through "pervasive disrespect, humiliation and physical aggression" (p. 549). These events, as recounted by the participants, involving disrespectful treatment, physical violence, aggression, humiliation, and inhumane treatment occurred in varying locations across Queensland, Victoria, and New South Wales.

In summary

This section has illustrated that interactions between the police and Indigenous Australians are fraught with tension from the outset and not without good reason. Although there are some police officers who are working to break down the barrier of fear that has been embedded in police-Indigenous interactions since the establishment of a police force in Australia, there are still officers who over-step their authority. The results of the early interactions of police with young Indigenous Australians, particularly those with addictions, have also been discussed.

Most importantly, this section has identified the three types of violence experienced by Indigenous Australians in their interactions with the police. The subjective violence used by police officers to exert their authority when they feel it is being challenged has been identified. Further, it discussed how symbolic violence was used against participants explaining how they are treated as criminals before they have even interacted with the police and been dehumanised with racially derogatory slurs.

Finally, this section identified areas of systemic violence that contribute to the over-representation of Indigenous Australians in the criminal justice system through a violation of their civic rights, as well as practices and procedures such as being threatened with fully-armed tactical squads for minor infringements, humiliated in public by being strip searched or being treated inhumanely in custody.

The experiences of the participants relayed in this section have shown the level of violence exerted on Indigenous Australian people by the police. They have revealed the indiscriminate use of racist language, intimidation, violence, and stereotyping against Indigenous Australians by police. The next section explores the participants' experiences and perceptions of the court system and the forms of violence that emerged from these experiences.

Soul-destroyers: Perceptions of Court

Since the early banding together of humans into communities and societies, there has been a necessity for mechanisms of dispute resolution, which overtime has developed into the three pronged system we have today; the legislature (law creation), the executive (law implementation) and the judiciary (dispute resolution) (Downes, 2007). The largest role that the courts have, by far, is that of their criminal jurisdiction whereby courts resolve disputes that challenge social order, which it does by determining whether the relevant party is guilty or innocent and, where necessary, imposing relevant penalties (Downes, 2007).

The fairness, or otherwise, of these institutions with respect to Indigenous Australians was discussed in Chapter Two, where it was found using different methods of examination across several jurisdictions that there is an element of systemic racism in the judiciary, particularly in the Magistrates' Courts. Racism has a direct effect on the wellbeing of Indigenous Australians whereby they can "internalise negative evaluations and stereotypes" (Aboriginal Health Policy Directorate, 2017, p. 3), that can result in anxiety and depression. From a necropolitical point of view, the courts can be categorised as soul-destroyers. Those that destroy emotions and feelings through the recreation of inequality and injustice, which in turn develops a sense of despondency and hopelessness in Indigenous Australians within the criminal justice system. This section of the chapter investigates the perceptions of courts in Australia held by the research cohort.

Innocent Until Proven Guilty?

Australia has a set of minimum guarantees for offenders embroiled in criminal proceedings, which are outlined on the Attorney-General's Department website (Attorney-General's Department, u.d.). These include being promptly informed of the charges, having adequate time to prepare a defence and discussing the case with a lawyer (Attorney-General's Department, u.d.). Most importantly though, it includes "legal assistance and to have legal assistance assigned to the accused, where the interests of justice so require, and with payment if the accused is unable to pay for it" (Attorney-General's Department, u.d., para 2). In Australia, there are two services available: Aboriginal and Torres Strait Islander Legal Service (ATSILS) and Legal Aid.

ATSILS, according to their website, www.atsils.org.au, are "a community-based organisation established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander people across Queensland" (para 1). Their mission, it said, "is to foster collaborative partnerships with our communities, key government and non-government stakeholders to influence positive change and deliver high quality legal services for our people within or exposed to the justice system" (para 2). However, the majority of participants did not have a favourable view on the services provided by ATSILS with most being told to plead guilty rather than fight the charges.

When asked if he was being represented by ATSILS in his upcoming court appearance, Ian replied, "y*ou normally go to jail with ATSILS. They just normally tell you to plead guilty…so I went with Legal Aid*". Ian was asked why he thought ATSILS would tell people to plead guilty and he said, "*so, they can get paid I suppose…quicker process and less time. They actually tell you that it's better to plead guilty…even if you can beat the case*". This was certainly the case for Colin who was told by ATSILS to plead guilty because "*it would look better in front of the judge*".

When Joe was asked if he used the ATSILS service, he replied, "*you really tell ATSILS, but where does it go, throw it in the bin".* Joe was told by ATSILS to plead guilty and when asked why

he thought they told him to plead guilty, he said, "*they sort of make you plead guilty you stay on remand, but that's just the old sell, just the old sell. It's been going on for years and years from back decades".* John also spoke of being told to plead guilty, stating "*I made a big mistake you know, in some of my previous relationships*", but "*I can't get my own rights you know when it comes to court day. They force me to plead guilty…I told them you didn't identify any evidence, you know*". Moreover, he said, "*I told them a few times that you got no evidence and you just making your own statement and how come you are making me plead guilty, you know*". John reflected on this, stating:

> *Made me feel like I'm a bad person. I keep thinking every day like from that [inaudible] crimes that happened in there, that crime when I went in jail. I just feel like self-harming myself. It's like I wasn't getting much help from ATSILS and that.*

Liam, like many other of the participants, said that "*it doesn't help when you to Aboriginal Legal Aid [ATSILS]"* because they "*just do the required amount to get paid"*, so they "*look for the guilty plea real quick 'cos it's easy work for them every day*". Liam was also told to plead guilty to get a shorter sentence rather than have them defend his innocence.

In Steve's early court appearances, he would represent himself, but when asked how that went, he replied with a laugh, "*not well, I'd advise against it*". Steve thought that it would be an easy case and "*thought I was gonna leave and it wasn't as bad as it was and I just went in and represented myself and yeah, they gave me 12 months that day*". However, Steve's experience of ATSILS was that "*they don't care about you at all, and they just want to get you in and out*" because "*the more they can get through the more money they get*". With ATSILS, Steve found that they "*just look at your charge and they just tell you what you're gonna get [sentence]*" because "*pleading not guilty isn't on the table because…they're going to have to do something like actual work*".

At the age of around sixteen, Peter had his first experience of court, where he said, "*you don't know or you don't really know the system, you don't really understand why you are there*". In terms of ATSILS, Peter had a strong opinion that they are an industry based on Aboriginal incarceration, he said, "*…it's all part of employment. Everything is employment to them, everyone gets paid*" and, he added, "[*ATSILS] are supposed to be there to represent our people, you know, but they are set up to create employment for themselves*". Furthermore, he said, "*there is a catchphrase [ATSILS] use…as soon as they say, 'do you understand?'... When you say, 'I understand', they've got you"*. Peter added, "*I don't trust the system, I don't trust ATSILS*".

From the participants' narratives, it could be argued that ATSILS are not fighting for the rights of their clients, and hence it is arguable that ATSILS, through this systemic violence, are furthering the zombification process of Indigenous offenders, rendering them non-citizens. This in

turn, funnels Indigenous offenders into the prison death-worlds because they are powerless to withstand the power of the courts. The concept of death-worlds is discussed in relation to the prison journey more in Chapter Six and in further theoretical detail in Chapter Nine. The difference between having a legal team that is willing to stand up for your rights was relayed by Steve, who at one point accessed Legal Aid rather than ATSILS.

Steve said he accessed Legal Aid because "*what I found out is the government when legal aid is too full or busy, they contract work out to the lawyers around town*", to which he added "*I got sent to a lawyer, an actual lawyer… when you get them, they do their job"*. Of one incident he said:

> *I've got off charges like walked out with nothing, not even got in there [court] because they've talked to the prosecutor and they've just dropped it because the lawyer is like this happened and this happened, blah blah blah and the coppers, they are expecting you to plead guilty, so they are not ready for not guilty, at all*.

He said this changes the situation for the police because "*they've got to go back to the beginning and start again*". He said that without a "*real lawyer to say, 'you can beat this', you might take that step…we'd have no idea … and that is where they get you because we don't know*".

A study conducted by Cunneen and Schwartz in 2008 compared funding for the Northern Territory Legal Aid Commission (NTLAC) and the Northern Australian Aboriginal Justice Agency (NAAJA) and found the NTLAC to have a 59.0% larger budget than that of the NAAJA (Australian Human Rights Commission, 2009). This is despite the NAAJA "undertaking three times as many criminal matters, as well as a greater total number of criminal, civil and family law matters combined" (Australian Human Rights Commission, 2009, p. 7). The NAAJA is not alone in being underfunded and overworked (Australian Human Rights Commission, 2009).

In 2009, the Australian Human Rights Commission reported that ATSILS are underfunded and that the funding has not increased with the workload. Further, they stated that the criminal cases alone for "ATSILS between 1998 and 2003 increased by 67%, however, funding did not increase substantially during this period" (Australian Human Rights Commission, 2009, p. 7). This means that the lawyers at ATSILS have less resources for each case, which impacts on the quality of legal services than can be offered (Australian Human Rights Commission, 2009). However, even if ATSILS were to support their clients fully and have their day in court without pleading guilty, there is no accounting for the outcome if there is a racial bias in the courts, specifically in respect to sentencing.

Racism in Sentencing

A variety of studies and reports, as shown in Chapter Two, have pointed to racism being embedded in every stage of the criminal justice system, particularly in respect to the discretionary powers held by those in positions of 'power'. (Anthony, 2012; Australian Law Reform Commission, 2017b; Cunneen, 2008; Cunneen & Porter, 2017).

Only Joe and Liam spoke directly to the question of racism in the courts. Both compared the outcome of their sentencing to that of a 'white' person under similar circumstances. One of Liam's charges was attempted murder, but he said, "*I didn't shoot to hurt him, I shot behind him, so that's what I'll admit to*" because he "*fired to stop this bloke killing this fella 'cos he had already shot him once and he was lining him up*". The charge was downgraded to 'intent to maim' and he got sentenced to ten years. Liam recalled that a few weeks later a "*white fella, same court got done for maiming, he shot a fella in the knee, he got six years with a two-year bottom [parole time]*". To this, Liam said, "*how do you figure that, bigger sentence?*". Liam also said there was no chance of him ever getting bail on any of his charges because "*I have three fail to appears, but they just keep staying with me, like I can never get bail*". However, in terms of non-Indigenous Australians getting bail he said, "*I've known other people, white people, who get plenty of fucking time, but still get bail, get bail and bail*".

Joe was on remand for "*nearly three and half years"* and when he got to court, he said, "*I didn't get released on bail. They sent me back and I had to do another 11 months. That was court ordered you know…I just shook my head and said I just remanded on three years*". Joe described his response to these events*, "I said nah, there's something fucking wrong here. If a white fella was thing* [*sic*] *he would have got bang straight out. Yeah, I sort of freaked out".*

According to the Queensland Sentencing Advisory Council (2019), there are five purposes behind a sentence, which are punishment, rehabilitation, deterrence, denunciation or community protection, or a combination of all. Furthermore, it is the judge's discretion as to which purpose fits the offender's actions (Queensland Sentencing Advisory Council, 2019). The courts, by law, must consider a number of factors in determining a sentence for an adult, which are shown in Figure 4.

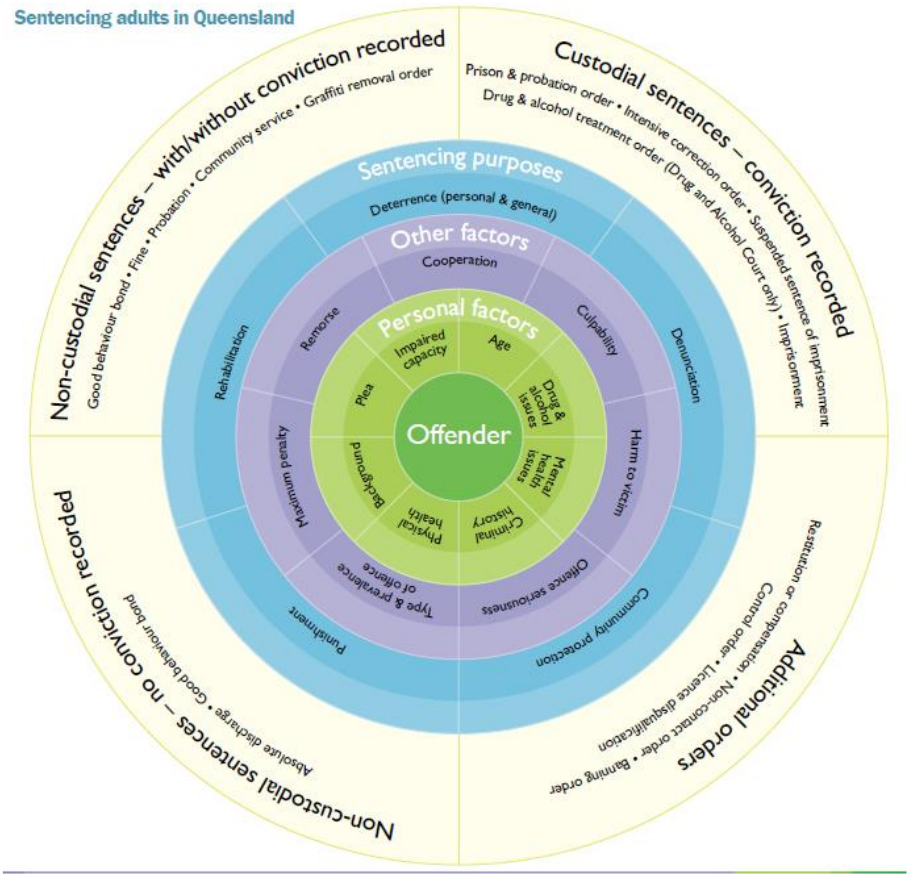

Figure 4 - Factors influencing sentencing of adults in Queensland[16]

Thus, despite Joe and Liam both expressing a racial bias in the length of the sentences they were given, this could in fact have been due to other factors, as shown in the figure above. Either way, the despondency experienced by Indigenous Australians towards the court system is definitely understandable under the circumstances described in the above sub-sections.

Despondency Towards the Courts

Many Indigenous offenders express feelings of despondency towards the judicial system because they often feel that non-custodial sentences are beyond their reach (Apted, Hew, & Sinha, 2013; Jones, 2019). Moreover, many of the research project cohort viewed the court system pessimistically, as if there was no hope for them.

[16] (Queensland Sentencing Advisory Council, 2019)

Mike and Frank were viewed as habitual criminals who were never going to change, Liam was restricted from returning to his apprenticeship in a different state, and Steve was always preparing himself to go to jail. The experiences of Frank, Mike, Liam, and Steve reflect a version of systemic violence that fits with Weber's view that political communities (which include the judicial system) "impose 'values towards which associated conduct might be orientated and the interrelations of the inhabitants of the territory regulated'" (as cited in Ruggiero, 2020, p. 18). In other words, the judicial system is playing the game of identity politics of racism in which minority and migrant groups are mostly targeted (Ruggiero, 2020). By doing so, the system becomes a tool that further defines the "natural and divine difference from the other" (Ruggiero, 2020, p. 16), specifically the deviant, criminal other.

In court, Mike said, "*most of the time it was just do not pass go*", although occasionally he would "*get a decent judge on or a judge who really had time for us Indigenous people to veer down the right track, we would get the chance*". When asked if the judges would ask Mike about his background or his homelife he said:

> *[they] don't wanna hear it, he's forever committing crimes, he's forever reoffending, he's gotta learn, he's gotta learn, it wasn't like ok then let's dig a bit deeper here, why you reoffending, what's going on at home, let's dig deep and see what's happening? There was never none of that. It was just ok, you've done the crime, do the time. We don't wanna hear it and that's how it was most of my criminal life.*

When asked if there was, for him at least, a mindset of 'what is the point of fighting if they've already found me guilty', Mike said:

> *Yeah, that's right. They've found me guilty anyway… then you've got to go through another process and retrial and fight again and it's just, by the time I've done all that I could have had my time done and so it's just the attitude you kind of have when you're in that situation…couldn't be bothered fighting, couldn't be bothered going through the system, too much of a headache, I'll just do my time, I'll just do the time*.

This was the same story for Frank, who said that the judges never want to hear his story in court, saying "*the judge didn't ask for that*".

At Frank's last court appearance, he said, "*the judge wanted to give me 10 years because I was a repeat offender for armed robbery charges*" and the DPP and Police Statement said, "*he's a repeat offender, he won't change, he keeps doing what he's doing*". Frank did appeal the sentence saying, "*I done an interview with mental health, they went in and put in a statement how I struggled with mental health for quite some time, I'm on medication and sometimes I stop my medication"*. The

judge on this occasion "*dropped that sentence to four years eight months*" and Frank explained "*I was lucky on that side*".

Ian, however, reported that "*judges are alright sometimes, you know. Sometimes they are pretty good. Sometimes I've just had a fine and I've had contraband in the house*", however, he added, "*always get a conviction recorded, every single time".* Asked whether it was as if the system had 'no faith in him', Ian answered with, "*No, no, no, no faith in me whatsoever. My experience is that they don't want to hear my side of the story, they just want to charge me and throw me in jail. I've done about 10 years of jail if I added it all up. Different offences*".

In court, Steve never took much "*notice of the judges because I'm that nervous, I'm just freaking out pretty much and again, I just wanna get out of there*". He describes the feeling of walking into court as "*like walking into jail, you're getting ready for your cell and that's not a good feeling*". Every time Steve was in a police station or in court his mind was preparing to go to jail, as he said "*you might as well be sitting in jail. You're getting ready, your mental mind state for the next bit*".

The research participants have spoken here about the lack of faith in them displayed by the courts, with judges viewing them as being on the never-ending cycle of recidivism and addiction. They have spoken about the internalisation of being unable or unwilling to fight the system, instead doing time for crimes they did not commit. It is little wonder, then, that Indigenous Australians display such despondency and pessimism towards the criminal justice system, feeling that the outcome is inevitable no matter what they say or do.

In Summary

This section has shown that systemic violence is littered throughout the court system. It has ascertained that from the outset of the judiciary process Indigenous Australians are preparing themselves for the worst with many of the research cohort indicating that those involved in the court system, not only care little for the truth of their innocence or guilt, but also place little stock in the mitigating circumstances of any offending behaviour. The culmination of systemic violence has left many of the participants with a despondent attitude towards the court system believing that it contributes to their criminalisation and, thus, to the rising levels of Indigenous incarceration.

Conclusion

This chapter has introduced the participants of this study, as well as providing an insight into the precarious lives that many Indigenous Australians find themselves born into. The participants' lives have been made precarious through their experiences of 'dadlessness', family violence, drug and alcohol addiction, family involvement in the criminal justice system, and low educational attainment.

These early experiences described by the participants provided the environmental context for their early involvement with the criminal justice system.

The chapter also recalled the historical legacy that has contributed to the fear and distrust that Indigenous Australians, as exemplified by the participants, have of the police in Australia. Although, it also demonstrated that there are pockets of hope with some of the participants declaring that not all police officers are 'bad', but the balance still leans too heavily on the negative side as some young officers straight out of the academy bring attitudes of superiority with them. Through the 'voices' of the participants it also explained how young Indigenous Australians become involved with the police, often as a result of minor crime where discretion could have been, but was not, exercised. The largest section of this chapter detailed the three forms of violence experienced by the participants as a result of their interaction with the police force, with systemic violence coming out as the most extensively experienced form.

In terms of the court system, the chapter outlined how the court destroys the soul of Indigenous Australian alleged offenders through the subtle application of systemic violence. This chapter demonstrated that by pushing Indigenous Australian alleged offenders to plead guilty, regardless of their guilt or innocence, the judicial system is slowly crushing their will to fight with despondency taking over.

Ultimately, this chapter has taken the first steps towards determining that relations of power are unequal from the very first interaction that an Indigenous Australian has with the criminal justice system and that this has contributed significantly towards the three forms of violence experienced by the participants of this study.

Chapter Six is the second step towards answering the research questions by examining the participants' perceptions of the prison and parole system as a result of their experiences. Chapter Six outlines the cultural, psychological, physiological, and emotional effects of incarceration from an Indigenous Australian viewpoint.

Chapter Seven is the final step towards answering the research questions by investigating the in-custody deaths of eight Indigenous Australians, particularly focusing on pervasive issues within the criminal justice system that have contributed to the deaths, as well as the experiences of forms of violence.

6. The Living Dead: Voices from a Death-World

"For now they kill me with a living death"

- William Shakespeare, Richard III, Act 1 Scene 2

It is important to reiterate here that prisoners identifying as Indigenous make up 30.0% of the prison population although Indigenous Australians constitute only 2.9% of the overall Australian population (Australian Bureau of Statistics, 2021b, 2021c, 2021d). It is also important to remember that across Australia during the period 2008 to 2020, Indigenous Australians were 9.0 times more likely to be incarcerated than non-Indigenous Australians (Australian Bureau of Statistics, 2021d). Furthermore, within each state and territory Indigenous Australians were always more likely to be incarcerated than non-Indigenous Australians during this period (Australian Bureau of Statistics, 2021d).

The starkest disparities were in Western Australia and Victoria with Indigenous Australians 26.4 and 15.6 times more likely to be incarcerated than non-Indigenous Australians (Australian Bureau of Statistics, 2021d). The accounts of prison contained in this chapter are focused on experiences in prisons across Queensland and New South Wales in which Indigenous Australians were 10.1 and 9.3 times more likely to be incarcerated than their non-Indigenous Australian counterparts (Australian Bureau of Statistics, 2021d).

This chapter flows on from Chapter Five by detailing the participants' cycle into the prison system and through to community corrections. The chapter relays the experiences of prison and community corrections from an Indigenous Australian viewpoint through the voices of the twelve participants. It begins by exploring the institutional racism within the prison system with a particular focus on the cultural appropriateness of prison programs offered to Indigenous Australians and the effect that this has on maintaining cultural identity while incarcerated.

It then investigates the psychological effects of prison, specifically in respect to social connectedness with family when separated by immense distances, as well as the damaging effects of solitary confinement. Further, it examines the treatment of Indigenous offenders with mental health issues and substance abuse issues. It then draws on the framework from Chapter Three to look at the three forms of violence and how they are experienced within the walls of the prison system.

The final part of this chapter studies the participants' cycle out of prison, whether through reintegration straight into society or through community corrections. The first section discusses the gap in support for prisoners leaving prison in terms of assisting them to reintegrate successfully back into the community. The second section looks at the discretion, or lack thereof, displayed by community corrections officers when dealing with parole breaches that either led to participants going

through a revolving door back into prison, or led them to an Indigenous-based rehabilitation facility. The final section looks at the difficulties experienced by the participants to meet the compliance-based parole conditions and how this affected their reintegration back into the community.

Death-producers: Perceptions of Prison

As mentioned in Chapter Three, Achilles Mbembe describes death-worlds as places where specific populations are "subjected to conditions of life conferring upon them the status of the living dead" (Mbembe, 2003, p. 40) where they are alive, but socially, politically, and I would add here, culturally, dead. Thus, not only can prisons be described as death-worlds, but those that work within them can be ascribed the category of death-producers. Death-producers are those people that instigate the social, political, cultural and, at times, physical death of Indigenous Australians behind prison walls. The narratives that follow contain details of cultural, psychological, physiological, and emotional deprivation as a result of incarceration that not only emphasise prisons as death-worlds but point to the further zombification of Indigenous Australians by the criminal justice system.

In Australia, prisons are operated by both the government and private contractors, which can lead to not only a wide difference in the operational budget of the prison, but also in the prison quality. The quality of prisons refers to "those aspects of a prisoner's mainly interpersonal and material treatment that render a term of imprisonment more or less dehumanising and/or painful" (Liebling, as cited in Rynne & Cassematis, 2015, p. 96). There is, however, little research into the quality of Australian prisons and even less into the experience of prison quality by Indigenous Australians (Rynne & Cassematis, 2015). This section explores the quality of prisons from an Indigenous Australian perspective and provides a glimpse into life in prison as an Indigenous Australian and the long-term effects that can occur as a result.

The Cultural (Dis)-Connection

As mentioned in Chapter Two, there is a paucity of information on the experience of racism experienced by Indigenous Australians within the prison system (Rynne & Cassematis, 2015). However, Gavin Mooney (as cited in Davis, 2006) posits that institutionalised racism is rife in Australian public institutions, stating "[g]overnment institutions in Australia are racist in their interaction with Indigenous peoples. This institutional racism is contextualized by a recent history in which Australian society has shown itself to lack compassion" (p. 143). Institutional racism, according to Davis (2006), is "the laws, the systems, that were put in place pursuant to the laws which operate every day, whether the people who operate the system are well meaning and helpful or personally racist" (p. 142). Colin, Joe, Frank, and Mike spoke of racist attitudes towards Indigenous prisoners in both Queensland and New South Wales prisons.

Colin reported that as a light-skinned Indigenous Australian he never experienced issues in prison because, "*I don't think they even knew I had Aboriginal blood in me*". However, he added that the Aboriginal men from the communities who have darker skin than him would be treated by the guards as if "*they are a bit slow and don't know what's going on*". Joe said of prison officers, *"They racist too",* which he elaborated to mean "*They can spoil you*[17]*, they can run down a useless fella. They can just lock him down"*.

Frank supported Joe's perspective when he said prison officers think Indigenous inmates "*are always up to no good, think you're trying to cause trouble or you're doing this or you're doing that"*. Frank said that the treatment of Indigenous prisoners is different than that of non-Indigenous prisoners, for example, he said:

> *Like, if you get into a fight or if you get into an argument with an officer for whatever reason, like, they write you up or they send a squad in for you, whatever, and when there is a white person who does that they just go there cuff them and walk them out. You know, and it's totally different the way they treat us in there, especially if you've got dark skin, it's terrible, the way they treat you in there, they just treat you like an animal.*

This is particularly true, he said, of "*Indigenous people who are on methadone or subloxone*". He said:

> *…the way that we're treated was just disgraceful, but every time they think every Indigenous person's going to divert their medication and they watch you, when you're a black fella, especially if you've got dark skin they make…watch every move you make, where you walk and do, who you're talking to, who you're hanging out with, you know what I mean.*

Mike spent time in prisons that had culturally segregated yards because he said, "*when you got too many different multi-cultures in the same system, in the same yard, there is so much conflict*". However, Mike felt that Indigenous inmates, "*were left behind a lot of other cultural inmates…for days on end, locked down in cells, buy-ups taken off us, no phone calls*". These experiences of racism are indicative of the symbolic violence that comes with the creation of the 'implicit other' (Drahos, 2012), done here through the implication that Indigenous Australians are inherently deviant, which will be explored in further detail in Chapter Eight.

[17] Not meant in a positive way

The experiences of Mike, Joe, Colin, and Frank support what Morseu-Diop (2017) advocates in her book, that "Indigenous identity formation and self-definition as Indigenous are linked to the multifaceted challenges facing Indigenous people in custody in terms of acceptance and recognition, not only among other incarcerated people, but also by the custodial officers" (p. 143). These accounts are also indicative of institutional racism occurring within prisons in Queensland and New South Wales because they display evidence of the lack of compassion and operation of systems that are in accordance with discriminatory practices (Davis, 2006). The lack of engagement with providing consistent quality cultural activities in prisons lends further weight to the issue of institutional racism within the correction system.

There is evidence to suggest that Indigenous offenders globally express concerns about a lack of access to cultural activities during incarceration (Howard-Wagner & Evans, 2020). This is concerning because strong cultural identity has been shown to "bolster personal agency and reduce distress in custody" (Shepherd, 2018, p. 154), and when a connection to culture is provided it can lower the chances of future violence (Shepherd, 2018). Providing access to cultural events and activities allows a cultural connection that enhances and grows a strong cultural identity, which in turn fosters resilience and healthy coping mechanisms (Shepherd, Delgado, Sherwood, & Paradies, 2018).

Research undertaken by Shepherd et al. (2018) demonstrated that although cultural activities were available in some prisons they were "subject to client inaccessibility, irregularity, understaffing, underfunding and vagaries of the institutional decision-making" (p. 56). In terms of cultural activities, a few participants spoke briefly of painting, however, three of the participants talked of NAIDOC[18] Day celebrations and the 'vagaries of decision-making', specifically the punitive cancellation of the celebrations.

Mike said that "*sometimes they wouldn't even have NAIDOC week for us in the prisons, you know*", particularly if some inmates "*mucked up in that month coming up to NAIDOC then they'd wipe NAIDOC altogether, you know"*. He recalled one incident from 2007/8:

> *I can remember…there was a couple of boys that mucked up, fighting with the Lebanese community and they made us all sacrifice for it and wipe NAIDOC altogether. And it's something we look forward to every year in prison, like, because all of us brothers come together then and do cook ups and hearing our inspirational singers and leaders coming in*

[18] National Aborigines and Islander Day Observance Committee

> *and to get that taken away. It was a kick in the guts. Something we look forward to all year and then a month out they say, nah…*

Some prisons Mike was housed in did not have Indigenous Liaison Officers, instead they had "*Koori delegates*", who were Indigenous inmates that acted as liaisons between the prison management and the Indigenous inmates. Mike relayed that "*…the inmates are sort of allocated that role, so that if there's any conflict with Koori [Indigenous] inmates, you go to him, and he would go and sit down with the people that run the jail or the officers in the office*". However, he added that "*he was just like one of us… it was pretty common to see him escorted out the yard with handcuffs, himself*". All the prison had to do was give the 'delegates' extra supplies because "*that kind of stuff is like gold when you're behind them walls, when you're getting extra milk or extra food, you know it's really, it's like gold*". The scheme also caused tension between Indigenous inmates because other inmates felt the 'Koori delegate' was "*the yes sir man"* and, as Mike wistfully noted, "*it was just a band-aid solution to patch up the solution and [they] can tick that box*".

Steve was asked if culturally appropriate programs were offered to him while he was in prison, to which he replied, "*I got two NAIDOC days in there"*, but he added "*one day there was just like a couple of dancers come in and we had steak and sausages on a barbie, and they asked if any of the inmates wanted to sing a song, it wasn't too bad actually, but that was probably about it"*. He said that NAIDOC was "*one day that they'll do something, but every other day it's the same thing*".

Peter did not participate in any programs, although he did some Indigenous painting. However, he recalled having a 'cultural day' at Lotus Glen, a prison on the Atherton Tablelands in Far North Queensland. He recalled the men were grouped together according to different regions, so "*Mossman, Kuranda, Mareeba we all joined together and Yarrabah*", and "*the boys from the Cape, the Western Cape and the Eastern Cape they all joined together and then all the islands"*. He added, "*man, the power of culture in there, woah, the energy of fellas dancing in there. We really danced from the heart you know*". Recalling the incident, he said, *"…you can feel that energy, that masculine energy of men, I can't explain it, it gives me goosebumps*".

Both Peter and John talked about the Indigenous Liaison Officers in the prison at Lotus Glen, although Peter said there were also "*all these Christian people that come in and talk to you, you know… they send all these Christian people in to save your soul"*. Peter was asked if the Cultural Liaison Officers brought much culture to the Indigenous prisoners, or did he see them as 'a token' Indigenous person for Indigenous prisoners to talk to and he replied:

> *That is a good question. Honestly, that is a really good question because they are just jackyjackys[19]. They are not there…they are there for the people but when you ask them for help, when you ask them to support you in there, I didn't find them helpful at all. They…I just thought well you guys are here for show, you guys are here just to tick the box that they have got 'cultural liaison officers' in there*.

As well as doing the Positive Futures program, John was supported by "*talking to them Indigenous screw officers like that help out there*", as well as having the option to work in "*the farm*[20]" and "*talking to Elders*". When asked what advice he received from the Elders, John said "*they are telling me to just keep at it – prison and stop getting in trouble 'n that*".

Cultural affiliation, according to Morseu-Diop (2017), is "often what sustains [Indigenous Australians] inside the prison walls and keeps them going from day to day" (p. 145). Therefore, the cancellation of much anticipated cultural celebrations is not only a punitive measure, but one that will have a detrimental impact on the cultural wellbeing of the Indigenous prison population. In addition, the programs being offered to Indigenous Australians within the prison system have been found to be lacking in cultural appropriateness with many being run by 'white' service providers.

Although the majority of programs being run in prisons have been created with the view of reducing recidivism (Heseltine, Day, & Sarre, 2011b), there is also some evidence that some programs also target the self-esteem of prisoners (Heseltine, Day, & Sarre, 2011a). How many of these programs are culturally appropriate for Indigenous Australian offenders is something that has been given some consideration (Day et al., 2003; Howard-Wagner & Evans, 2020; Jones, Masters, Griffiths, & Moulday, 2002). A study conducted by Willis (2008) found that key stakeholders in prison programs believed that an "absence of Indigenous-specific content in core programs was thought to reduce the effectiveness of interventions by lowering the responsiveness of Indigenous offenders to treatment" (p. 5). Indeed, a study conducted in Western Australia found that "certain concepts in mainstream rehabilitation programs seemed alien and incomprehensible to Aboriginal participants" (Day et al., 2003, p. 128). A similar finding was made of a study conducted in Queensland investigating gaps in rehabilitation programs within prisons (Morseu-Diop, 2017).

Moreover, a study conducted by Morseu-Diop (2017) that aimed to identify gaps in rehabilitation programs that were offered in facilities in Queensland prisons found a "lack of support

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[19] A name for an Indigenous collaborator with colonialists adding to Indigenous problems.
[20] "Prison Farm with a capacity for 115 "open security" inmates...Although not necessarily put to "hard labour" the inmates are expected to work the farms, allowing them time to develop skills and escape the daily routine of the prison".

for Indigenous-specific initiatives and […] misunderstandings of Indigenous concepts and practices" (p. 285). Morseu-Diop also found that lack of support from the Department of Corrective Services led to the termination of one program, and for one Indigenous worker, his role in the delivering another program, was terminated. This subsection details the experiences of the participants of programs they participated in while they were incarcerated with specific focus on their cultural appropriateness.

Joe, John, and Sarah all participated in programs while incarcerated, however, Steve said he was not in prison long enough to warrant access to any courses that would be of benefit to him after he left the prison. Although, even if there was, Steve said he was thinking, "*I'm not here long enough for that to help me*". Joe undertook an anger management program but said, "*it was from a white perspective"* and John took part in the Positive Futures program at Lotus Glen but said, "*a white woman that did Positive Futures course".* John recalled a conversation with the 'white woman', which he relayed as follows:

> *I remember saying this 'if you grow up in my community, if you was me and I was you, you would be seeing this pattern, like what I'm going through. I am not actually getting treated fairly at this justice system'... She sort of reacted, she sort of react and she didn't know what to say, see from, like an Indigenous kind. But I told her that in prison. If you were my colour and I was your colour you would see the outcomes where our people are not being treated fairly by the system in this prison and at courts 'n that. They are getting pumped a lot of money – in court and in prison. Getting paid a lot of money to put us in jail. We are not getting much help from them, eh.*

Sarah too said she "*had a white lady teaching us*" and that she did "*a couple of programs, parenting course, FSK [Foundations Skills]*". Sarah said that the parenting course particularly was "*helpful, …for my two boys, and proving to child safety that I can do that to get my boys back*". However, Sarah said that "*they offered me counselling and D&A [drug and alcohol] program but I was doing FSK and parenting course the same time, so I couldn't skip, I didn't want to skip a day or two*".

Mike remembered undertaking a program in Bathhurst prison called Brick Lane, "*we got Brick Lane certificates, so there was a bit of Brick Lane going there, but that was in C2 class though, that was in the minimum part. I think I completed a SMART program*", however, he said "*nothing was cultural based*". He said that this was the way prisons were back then, but "*these days I believe they are worse"* and that in 2020 there should be "*more programs, there should be a lot more monitoring of the mental health, there should be a lot more*".

The accounts provided by the participants of the lack of cultural sensitivity in the prison programs offered displays not only a level of institutional racism (discussed in more detail below), but a 'contextual illiteracy', also known as ethnocentrism (Jones et al., 2002). The programs are established from a Western perspective to allow for a Western understanding of the issue at hand.

This, according to Jones et al. (2002), can "render invisible the needs of people whose values and world views lie beyond one's own experiences" (p. 188). Contextual illiteracy is a barrier to Indigenous Australians participating fully in prison programs, thus providing little opportunity for rehabilitation to occur. It has been suggested that programs for Indigenous offenders be innovatively delivered through different mediums including art, storytelling, song, music, talking circles, dance, traditional rituals and the use of traditional language, which is particularly pertinent for Indigenous Australians with low levels of literacy (Day et al., 2003).

The lived experiences shared here further indicate prisons as death-worlds due to the lack of cultural connection for Indigenous prisoners. The systemic violence inherent in the policies and practices that contribute to this cultural genocide are further compounded by the psychologically detrimental effects of incarceration.

Psychological Effects of Prison

As discussed in Chapter Two, psychological and cognitive disorders are proven factors in Indigenous Australian involvement in criminal activities, particularly mental health caused by intergenerational trauma associated with the Stolen Generation, as well as Foetal Alcohol Spectrum Disorder (FASD). When it comes to psychological and mental health problems, they are not only a risk factor for incarceration, but can also be an outcome of incarceration (Kelly, Dudgeon, Gee, & Glaskin, 2009).

Research by Schneider et al. (2011) found that among other variables being Indigenous was associated with psychological distress in the prison populations they researched, which is supported by findings of a study of culturally and linguistically diverse (CALD) prisoners by Rose et al. (2019). Rose et al. (2019) found that Indigenous Australian prisoners were significantly more distressed and had worse rates of wellbeing than other CALD prisoners or those from 'English speaking backgrounds', which was based on Indigenous prisoners "exhibiting significantly higher symptom levels of insomnia/anxiety and depression" (Rose et al., 2019, p. 897). In severe cases, prisoners have been known take their own lives as a reaction to the psychological stress they suffer during their incarceration (Haney, 2012a). Mental health, including suicide, came up in discussions with Frank, Steve, Peter, and Mike. In fact, Frank made it clear at the beginning of the interview that his main interest in participating in the study was to discuss the treatment of Indigenous Australians with a mental illness within the prison system.

Frank has spent around 14 years of his life in prison and reported that inside prison his experiences as an Indigenous man with mental health issues were just as tumultuous as on the outside. Frank has a history of self-harm, saying "*when I was diagnosed with schizophrenia, I still do it, but I used to self-harm a lot"*. After the death of his partner, Frank asked to see an Indigenous Liaison Officer (ILO) before he started cutting himself, but he said this was not reported by the medical team. Frank said, "*they should have reported that straight away to the medical team, saying 'he's suicidal and this and that' and they left it*" and he was found "*in a cell half dead with both my wrists cut*". He added "*I reckon the treatment we get for mental health or for suicidal… is disgraceful. I'm not happy with it, eh*".

Frank asked to see the Indigenous Liaison Officer because "*I'd rather talk to an Indigenous person, Indigenous worker than a white person, I feel more comfortable because I feel like I'm getting judged when I speak to a white person, a white nurse or whatever*". Following this incident, Frank said, "*all they done was lock me up in a room with a TV and just left me there for two weeks, they didn't even come and talk to me or anything. Just locked me in and made sure I had a TV and made sure I had my buy-up*". Frank was locked up in what he referred to as a "*one out cell*", where he was allowed out for one hour a day for "*a smoke, shower and exercise*".

For the first two weeks, Frank said, "*they wouldn't allow me to make no phone calls or anything…I had to put in a complaint…just to get that phone call to speak to my family, to speak to my kids and that's not right*". On the death of Frank's partner, he said, "*they didn't even try and help me like get a card or anything sent to the funeral, flowers, they didn't help me with anything like that*". Frank was housed like this for "*about four, five months*".

During Frank's various prison sentences, he said very little mental health support was offered and what was offered was "*only counselling and that was through a white nurse, the counsellor was white*" and when he asked to see an Indigenous counsellor, he was told "*they didn't have any working in the jail*". Frank asked to see an ILO, but, he said, "*it still took nearly a month for that worker to come and see me*". On top of this, when asked if he was offered any programs to assist him with his mental health issues, Frank replied, "*nah, they just put me on medication, they just give me my mental health medication every night*".

Mike and Steve both supported Frank's assessment of the treatment of inmates with mental health issues. When asked if he accessed a counsellor while in prison, Mike disclosed:

> *…there was nothing…all that time I spent in prison, not once did I get access or the option to sit down with a counsellor, to sit down with a trauma/grief counsellor, anything like, that, there was no support like that whatsoever*.

Even if an inmate got to see a counsellor or psychologist, Steve said, "*I don't think that person really cares*" because all they do is give them medication "*to knock them out*". He explained:

> *…half them fellas walking around were off their heads, like you can't even talk to them so…just sedating them for their prison term, so when they get out they've got another problem. That was pretty sad that part because yeah, you don't know who they are, they don't know who they are*.

When asked if there was anybody he would call upon in prison if he was 'at a low point', Steve answered "*other inmates*", but then added "*you wouldn't sort of tell anyone I don't think*". Steve never experienced a low point because he said, "*I wasn't doing that long*", but while he was in prison another inmate hung himself. Steve recalled:

> *…there was one inmate that hung himself a few cells up and I didn't know he was going to do that. I had no idea, like before we got locked in he was normal, the way he always was, laughing, joking around, you just wouldn't have picked it and I don't think he told anyone because the way he was it just didn't make sense. The next day we were all like 'what the fuck'. He wasn't talking to anyone, and he mustn't have because no one knew anything.*

He reflected that "*it was a complete act, the way he was, and I think that's what everyone does*". Furthermore, he said conversations were guarded because:

> *…no one wants to have them serious conversations about kids, and family because it upsets us, so you don't talk about it because everyone in there's got kids and they've got family and I think we all know that we fucked up, we shouldn't be here, we should be out there looking after our kids and with our families*.

Steve pointed out, however, that it is a two-way street because "*they [prison] could direct you, but you've got to wanna listen too*". Steve was asked whether he thought there should be mandatory mental health sessions, either in groups or one-on-one, for all inmates, whether they open up or not. He replied:

> *Yeah, 100%, 100%. If someone, especially if there is someone there that wants to do something but doesn't know how to, could be that one that doesn't come back, so, … even if they're doing 3 months or 6 months or 9 months, you don't want them to get used to it and come back and do more* [time].

During his time in prison Steve experienced some traumatic events, but he said, "*some of the things I've seen…I don't think about much because, and maybe I should, but I just like block it…but it probably has impacted*". As a recovering addict and alcoholic of "*nearly 20 years"*, he said that

"*trauma is … what we're blocking and that's why we use*" and that "*until you get off all the drugs and all the alcohol and clear your head you'll never even think about the trauma"*.

In 1983, according to Nigel Walker, the literature on the side-effects of incarceration had "the most remarkable omission" (p. 70), which was no "attempt to find out to what extent the harm in question is permanent or lasting…particularly so where psychological harm is concerned" (p. 70). This paucity of literature continues with much of the literature coming out of America, predominantly by Craig Haney, who believes that post-release the psychological impact of prison can produce long-lasting effects (Haney, 2012a).

While this study did not set out to investigate the long-term effects of incarceration, the experiences relayed thus far accord with what Haney (2003b) calls the 'pains of imprisonment', therefore, the long-lasting effects of incarceration, particularly within the Indigenous Australian population warrants further investigation. The psychological effects of incarceration are not surprising given the accounts of psychological deprivation by the research cohort, particularly around contact with family and friends.

There is a wealth of information on how incarceration affects the family of those incarcerated both negatively (e.g., Farkas & Miller, 2007; Turanovic, Rodriguez, & Pratt, 2012) and positively (e.g., Smith, 2014; Wakefield & Powell, 2016). However, there is a paucity of information on the effects on the offenders themselves (Condry & Minson, 2020; Taylor, Payer, & Barnes, 2018), especially Indigenous offenders whose kinship systems are more intricate than those of 'nuclear' family relationships (Dennison, Smallbone, Stewart, Freiberg, & Teague, 2014).

A study conducted by Dennison, et al. in 2014 found, unsurprisingly, that male inmates "found it difficult to be involved as a father from prison" (p. 1098). One impact of this on the incarcerated parent is that they have less opportunity to "think and behave in parentally generative ways" (Dennison et al., 2014, p. 1100). The main barrier to Indigenous Australians forming strong parental bonds with their children is that they are sent to prisons too far away for face-to-face visits due to travel costs involved for the families (Dennison et al., 2014). The cost of long-distance phone calls and poor literacy among many Indigenous inmates further exacerbates this barrier and increases the emotional distance between them and their children (Dennison et al., 2014).

Half of the research cohort spoke of how difficult it was not only being separated from family by being in prison, but also of being in prisons that were a considerable distance away from their home. John and Peter were both lucky enough to be in prisons that their family could visit, however, for their families this meant a round trip of 264km and 200km, respectively. Mike, Sarah, Grant, and Frank were sent to prisons that were even further away from their families.

Both John and Peter were incarcerated in Lotus Glen Prison in Mareeba, which is 86km west of Cairns and 97km east of Mossman. There is no public transport from Cairns or Mossman to Lotus Glen, therefore, for anyone to visit they must have access to a car. Having limited visiting times made Peter "*miss home*", but he said when people first come and visit you in the prison they usually say "'*you look good' because you're not drinking and not drugging and they actually see your skin glow, you put on a bit of weight and you're looking good*". Peter also said that the Mossman Elders used to make the 200km round trip to visit, but he said, they *"made you feel shame, guilty*". These Elders included his "*extended aunties, cousins, and grandmothers and grandfathers*". When the Elders or his family left, he was left inside where, he said:

> *...you start to think about the bad things you did, you start to think about your family, your kids. At that time, I had those three boys, I just thinking about my kids, you know, thinking if mothers feeding them. Just thinking about things like that and getting angry, but you know that they're being taken care of, but it's just you start, I guess you start to channel your negative energy towards someone or something*.

Fortunately, John's family were able to visit him, and his ex-partner brought his stepchildren, and he said, "*I kiss and hug 'em every day and ... I just give them a big fat hug".*

Lotus Glen prison was not built when Grant was first sentenced to prison, so instead he was sent to a facility called Stuart Creek, which was based in Townsville, a four-hour drive from Cairns. Grant said. "*16, 17, 18, 19, 20, half my life was in Stuart Creek*" and when asked what it was like being away from his family, he said, "*oh, heartbreaking".* Initially, however, when he found out that his father's brother was also in Stuart Creek he said, "*I sort of felt a bit lightened".* Sarah was sent straight to Townsville Women's Correctional Centre where she was in custody for four and a half months. Not only is Townsville a four-hour drive from Cairns where Sarah's mother was living, but it is also approximately four hours by plane from both Lockhart River and Normanton where the rest of Sarah's family is based. As the prison is so far away from where Sarah's families are based, she said "*no one came*". Sarah recalled:

> *…my friend's family came along and visit and walked past and just say hello, but I felt that they was my family too, but it was upsetting seeing other ladies have their family there…It was frustrating, upset, like, broken down in tears every night, thinking that I'm never going to see them again* [her children].

In addition, Sarah said that it was "*a bit hard in there, don't have much money to call up home, or mum*" and "*about one and a half months I was in there, I started to call my mum, when I had a bit of money*".

Frank was also incarcerated far from home, and he too had issues with phone calls while in prison. Frank was incarcerated at Metropolitan Remand and Reception Centre (MRRC) at the Silverwater Correctional Complex, which is located 414km, about a four-hour drive, from where Frank was living at the time. While he was there, Frank's partner died from a heroin overdose. Frank reported that, in his experience, when a prisoner's family member passes away "*they don't come straight away, if you what I mean, it takes two/three weeks for them to come give you a phone call back home*". Understandably, Frank was upset as he stated, "*they knew I had just lost my partner, they're the ones who got the confirmation before I did*".

All of Mike's time in prison was spent at prisons like Bathurst, Parklea and Silverwater that were 149km, 315km and 332km from his hometown, which Mike said was further punishment because:

> *…when you get sent away from your hometown, it's very rarely that you're gonna be getting visits, it's very rarely you're going to be seeing family and there is a purpose to why they send you away from your own community, to punish you for your crimes, and it's just, yeah, it's just so wrong*.

Mike's last experience of prison was almost 11 years ago, which he described as being a "*sad, lonely life*" and reflected poignantly on his time in prison:

> *…the way I described my life, I can relate to a dog that's been in the pound, a dog that's locked on a chain. If you lock a dog on a chain for some time, they become feral and nothing to do with boredom and they start to go mad*.

This punishment through separation is exacerbated because many inmates rely on phone calls from landlines in the prison unit, however, high demand for the calls, as well as the expense involved can prevent many inmates remaining in touch with their loved ones (Rose et al., 2019). However, it is not only through separation from family members that causes psychological harm. Placing an inmate in solitary confinement, regardless of the reasoning, separates them from the friends, and for some, family members, that they have inside the prison, thereby causing them further psychological harm, as well as the harm of solitary confinement itself.

Although each prison will vary, solitary confinement is described by Grassian (2006) as "the confinement of a prisoner alone in a cell for all, or nearly all, of the day with minimal environmental stimulation and minimal opportunity for social interaction" (p. 327). The use of solitary confinement is, according to Scharff Smith (2006), "a means to maintain prison order: as disciplinary punishment or as an administrative measure for inmates who are considered an escape risk or a risk to themselves or to prison order in general" (p. 442). Although, some offenders at high risk of being assaulted in

prison, such as sex offenders, will request solitary confinement (Scharff Smith, 2006). There is overwhelming evidence that there are psychological consequences to the use of solitary confinement (see Arrigo & Bullock, 2008; Grassian, 1983, 2006; Haney, 2003a; Haney & Lynch, 1997).

In 1997, Haney and Lynch wrote that "the empirical record compels an unmistakable conclusion: this experience is psychologically painful, can be traumatic and harmful, and puts many of those who have been subjected to it at risk of long-term emotional and even physical damage" (p. 500). The level of damage varies between each person, however, the most severely damaged are usually those that suffer from "subtle neurological or attention deficit disorder, or with some other vulnerability" (Grassian, 2006, p. 332). The damage can manifest in "states of florid psychotic delirium, marked by severe hallucinatory confusion, disorientation, and even incoherence, and by intense agitation and paranoia" (Grassian, 2006, p. 332), as well as other psychological and physical manifestations.

Other consequences include "a degree of stupor, difficulties with thinking and concentration, obsessional thinking, agitation, irritability, and difficulty tolerating external stimuli" (Grassian, 2006, p. 332). When solitary confinement ends the majority of those confined will experience permanent harm, even those who did not display overt psychological symptoms (Grassian, 2006). Only two of the research cohort experienced solitary confinement while in prison, however, another describes lockdown situations that are akin to the solitary process.

Joe and Liam both spent time in solitary confinement and described what the experience was like. For Joe it was a few weeks, but for Liam it was around four months. Joe said "*they strip you off naked and bash you, man and leave you there. When it's time for shower its cold"*. Joe said that he was in solitary for "*about two/three weeks"* and that *"it's happening still today with other inmates"*. Following an incident in which Liam was caught up in a 'riot' style incident, he was taken to the detention unit where, he recalled:

> *...they opened the door and threw me on the floor. I hit the ground, but I was waiting for them to get the zip ties off, but they came back in like an hour and a half later where they attempted to get the zip tie off, but they couldn't cut it. The knives they got wouldn't cut straight away so then they ended up getting a pair of pliers or something and they cut it, so when they cut it, like I said I had dip marks from the zip ties on my wrists that deep and that is when I lost the feeling in both thumbs and the first two fingers and I lost the feeling for over a month and a half.*

During Liam's seven-year sentence in Gatton Prison, the then Premier of Queensland, Campbell Newman, brought in the VLAD (Vicious Lawless Association Disestablishment) laws and

because of Liam's association with a motorcycle club in Brisbane he fell under their remit. During this time, the prison went on lockdown for a day and all 'bikies', including Liam, were transferred to the detention unit where he remained initially for six weeks. Everything under the VLAD laws in the detention unit was different, which Liam described:

> *…when you go to DU they have a DU thing where you can only spend $80 or whatever it is $60, … but then they made up a new one for this VLAD thing … where you could spend $30 or $20 dollars and I wasn't smoking, I hadn't smoked since 2008, that's when I started up smoking again 'cos they had nothing else. There was a list that they'd give us. There was a choice, I think it was a soap choice, 1 soap, 1 shampoo, you could have razors, but they had to stay out of your room. Over the weeks, had to argue to add things on the buy up… they'd let us buy a big block of chocolate which is like $4 or $5, certain packet of chips and that's it, so, or that or cigarettes. You couldn't buy like snacks, like biscuits, Jatz or anything like that*.

But it was not just the lack of buy-up choices that were different. In terms of the food, Liam said:

> *What we were getting was just shit, like, I don't know what the hell it was, but fruit…some days you would get a decent bit of fruit and other days just green or gone rotten. Whether they were just giving us shit in that unit, I don't know. I said again, everything we were allowed to buy was the dearest thing on their buy-up list and limited to what you could have*.

Liam added that "*the only exercise was the yard that's joined on to it [the cell] and they let you out one hour, they come and unlock it and let you go out there"* and "*we never even got visits"*.

Soon Liam was transferred to the detention unit in Woodford Prison where he, and other motorcycle club members, remained for a further two and a half months. Although Liam was allowed visits again, they were all non-contact, and he was still under strict conditions where "*I wasn't allowed to work…I wasn't allowed to go to the gym, got to stay in the unit…I wasn't allowed to have a haircut*". He summed it up saying "*So, boom, pretty much stuck me in a cell, I would have been out of my cell maybe four hours a day if I was lucky*". Premier Newman had ensured that Woodford Prison had a detention unit specifically for the VLAD laws and when a 'bikie' was moved to or from the DU they were accompanied by "*full escort, like 10 screws around one person each time…One person, ten screws, dog squad up to the unit*". In relation to the "*pink clothes, pink shorts, pink t-shirt, pink overalls"* the bikies were given to wear while in this unit, Liam asked himself:

> *What was he doing? Was he trying to humiliate us? ... Why would you use pink? It didn't bother me, actually, when I actually got sentenced, I had a white with a pink stripped long sleeve shirt on, so it didn't matter, but what was his thoughts behind this? To demoralise or to humiliate you?*

Liam said that there were "*different clubs, like six different bike clubs and they wouldn't let you out at the same time*", so he often found himself confined longer to avoid conflicts and "*the longest I spent in the room was 31 or 32 hours before I got out to the exercise yard*". This was in a room where the windows were "*sealed up so you couldn't look out and talk to other people in the unit*" and "*a one six-minute phone call to outside a day, that's it*". Although, non-contact visits were allowed at Woodford for the bikies during this time, Liam recalls "*going down the walkway … and we got other inmates whistling at us cos we've got pink clothes on and shit like that. It's just the bullshit we went through*".

While in the detention unit, Liam suffered two migraine related seizures because the prison claimed not to know he required migraine medication. To deal with his migraines Liam had to "*sit in the shower, like cloth over my face and rubbing my head and just let the shower on my head*", which he says, "*that's torture, not giving you the right medication and then try to lie to me that they didn't know I was on migraine medication*". It was not just migraine medication, he also said, "*depression tablets, wasn't allowed to get that, wasn't allowed to get my anxiety stuff*".

While Mike was never put in solitary confinement, he said that being "*locked down for three and four days at a time, I think it's just on par, if not worse than solitary, at least in solitary you're out for an hour out of every day in a little yard*". Mike said that these lock downs are the result of "*suspicions there's drugs getting around or if there is suspicion that there's a knife getting around, or intel have got suspicion that, I don't know, that there's been drugs chucked over the fence and they'll lock the whole jail down*". After the inmates are locked down, Mike said the next step is what is known as 'ramping', which he explained is where "*they'll send a squad in and turn your cell upside down and strip you naked and make you bend over, doing all this kind of stuff…and that's the sad reality of it*".

The conditions of solitary confinement and lockdown described here by Liam, Joe, and Mike support the idea put forward by Porporino (as cited in Haney & Lynch, 1997) that "such measures may increase the motivation to engage in violence or prod the ingenuity of inmates and result in more extreme violence" (p. 526). In other words, violence begets violence (systemic violence begetting subjective violence). In terms of subjective violence, the research cohort pointed out that violence in the prison could be 'legitimate', i.e., officer-on-inmate, or it could be 'illegitimate', i.e., inmate-on-inmate.

Power and Violence

The power to punish is a central tenet of Western society, but one that has also been the focus of intense scrutiny due to its abuse and misuse (McIlwain, 2005). The balance of power in a prison is heavily weighted towards that of the prison officers since prisoners are deemed to have lost their right to "personal choice, freedom or privacy" (Cianchi, 2009, p. 3), and thus are rendered powerless.

Furthermore, it is the task of the officers to maintain order in the prison and as recently as the 1970s this was done through "the systematic use of brutal physical force [to] ensure that prison routine was observed" (Woodham as cited in Cianchi, 2009, p. 5). However, Cianchi (2009) posits that equal distribution of power within a prison stems from "the consent of the actors and legitimate exercise of prison officer authority" (p. 24). In other words, if the prisoners view the prison authority as fair then they will deem it legitimate, which comes not only from the system itself, but also how prisoners are treated by prison officers (Cianchi, 2009).

This view of legitimate power is also supported by Woolredge and Steiner (2016) who suggest that when perceptions of legitimate power are positive then it will "promote order and safety in the inmate population" (p. 127) because they are more likely to be compliant. When power is not viewed as legitimate it can lead to non-compliance, which in turn leads prison officers to revert to coercion and force to assert their authority and legitimacy, which in turn further weakens the position of the officers and their claim of a 'right to rule' (Woolredge & Steiner, 2016). This then turns into a struggle to maintain power and control with the outcome being types of violence being perpetrated against the prisoners (Cianchi, 2009; McIlwain, 2005).

Interestingly, although Steve spoke of violence against inmates by the prison guards, he also inadvertently supported the theory that the balance of power in prisons is due to the relationships that guards maintain with inmates. Steve spent his two prison sentences in different prisons, one in New South Wales and one in Queensland. He described the New South Wales prison of Grafton as being worse than the prison in Rockhampton, Queensland, primarily due to occasional "*scuffles between guards and prisoners*" with the prisoners getting "*flogged…more of a couple of hits just to put him down*". Although, he quickly added, that the guards "*won't go out of their way to start something with us because it's not just one, we're like a group*". He said of the guards:

> *…it's funny, the guards, it was like an unwritten law, where you got to meet halfway. If they treat us good, we'll behave pretty much, and the long timers, the way they talk to guards is like they are talking to a mate because they've been there for that long, they actually know each other personally*.

Ian also experienced cordial relations with the guards in Lotus Glen, Queensland, where he said, "*the screws…they treat you ok. Like in Lotus Glen, they're great you pretty good 'cos they know you. You are a common face, and you keep going back and you're 97% of the population [Indigenous Australians] and they buddy on with you*".

Sarah, whose time was also spent in a Queensland jail, but in Townsville, had mixed experiences with the guards, saying "*I was shocked when I first went in there*" because of "*the way they [officers] spoke, shouting and swearing*", but she added "*some of them was nice and some of them just, yeah bad, and just…being a bit racist"*. Joe, John, Liam, and Mike on the other hand, spoke of unfair, belittling, and intimidating behaviour, as well as physical ill-treatment by prison officers.

Joe spoke of "*growing up going through youth detention centres – Cleveland [Townsville Youth Detention]*" and that the guards began using scare tactics on him when he was being transferred to adult prison when he was 17. He said, "*when you come from boys' home, they try to scare you, the screws there [the youth detention] – 'watch out when you get there', you know*".

Mike also spoke of the guards as being protagonists towards inmates saying, "*they come in and they wanna be smart and want to sort of chuck smart comments around and you retaliate, they take your stuff off you just for being smart back to them*". He added that guards were quick to remove a prisoner's privileges for petty incidences, such as "*back chatting the officers, language or just stuff that is bound to happen*" because, as he pointed out, "*it's jail, you know, it's not a college*". The incidences relayed by Joe and Mike are examples, not only of the violence inherent in human communication that embodies symbolic violence, but also of the asymmetrical relation of power between the guards and the detainees.

John also spoke of the guards being intimidating, saying "*when I'm sleeping, you know when they shouting in the rooms, they would just bang real hard you know and yeah, sort of bugger up my hearing 'n that…I can't sort of hear, and I am sort of losing my hearing because of all those door banging real hard in the cell 'n that"*. Then he added, "*like, I just got no good hearing and not getting much assistance from the medical staff in there and what I am trying to get provided and since I was inside, I get abused though from, not from them mate [medical staff], from the screws 'n that in there*". When John was asked what sort of abuse he suffered, he replied, "*They would just shout 'n all and this and that*".

As a heroin user, Mike was placed on the methadone program while in prison, as well as being on other prescription medication and, therefore, also had frequent interactions with the prison healthcare teams. When the nurses came around each night Mike said, "*they've got the squad next to*

them to give you your medication" and while on the methadone program he recalled, "*they would stretch that out for us, you know. If there is a bit of conflict happening sometimes, we wouldn't get it until nighttime even though we were supposed to get it in the morning*".

Liam described Brisbane Correctional Centre (BCC) as being, "*real military*" because it is government run and while he was there, "*had so many bad things happen*". Liam spoke of physical violence at the hands of prison officers while he was in BCC due to a disagreement with the 'manager' over a haircut he gave a fellow prisoner because it was considered a "*gang related*" style. The manager then ordered everyone in the unit into the yard and Liam recalled that within minutes the yard was filled with a squad of prison officers with dogs and turned it into a riot situation.

Liam remembered the 'manager' coming down and yelling "*where's Johnson*[21]*, where's Johnson?*" then suddenly "*there was two dogs behind me, I could just feel them breathing on the back of my legs like boom*". After he had been handcuffed, the officer said to him, "*go on Johnson make a move*" to which Liam said, "*'I'm not doing fucking nothing*" and then, "*bang he kicked my legs from underneath me*". Liam described what happened next:

> *So they put these big zip ties round…and I was…kneeled on the ground, head against the wall, so face down and they kept coming over and saying 'go on fucking make a move Johnson, and wait for you to do something and then fifty minutes later foomf, off the ground again by the wrists…where they literarily drag you…they are dragging you backwards, so you're dragging your knees or your toes on the ground.*

The accounts given by more than half of the research cohort demonstrate the fine line between legitimate power and coercive power. Some participants described a balance of power through the building of trust and legitimate power, but others outlined overt displays of power through the use of force. However, it is not only guard-on-inmate violence that is of concern to those who are incarcerated with inmate-on-inmate violence also being an issue for some.

Steve was the only participant who spoke of the violence that he witnessed behind prison walls between prisoners and how this impacted his life. Steve reported that in Grafton Prison in New South Wales "*every three days there'd be a fight, but usually it'd be a fight between two inmates*". He said that prisoners would use anything they could as an improvised weapon, such as "*mop buckets, they were used a fair bit and they were pretty heavy and you could fill them up with water, like they can do damage*". He added that "*some guys, if they are having a disagreement, they got books in*

[21] Not participant's real name.

their shorts, that's so they can't get stabbed", but he said, "*you don't see too many knives because no one wants to show anyone that they've got one, so mop buckets, fists normally*". With respect to this inmate-on-inmate violence, Steve said:

> *It's pretty full on, so you sort of expect a fight at any moment, or for yourself, to protect yourself, so it doesn't become a matter of will I fight, it's when because you gotta if you want to survive. Even if you fight and lose you still get respect for that. If you fight and cover up to yourself on the ground like a girl and, that is the way they look at it, that is not acceptable. So, then you're going to make things difficult for yourself. So, it's just, it's a different world.*

When asked what impact prison had on Steve's life he said, "*I haven't really thought about it because I didn't do long*", but that "*the only thing that I can think of would be loud noises, things like that, I get startled, even quick hand movements, I'm like wary, that sorts of gets me jumpy*.

The participants that relayed experiences of violence have described acts of symbolic and subjective violence at the hands of the guards meant to protect them, but also the threat of subjective violence from other inmates. Violence by prison officers against prisoners was not the only form of indignity and humiliation suffered by the participants with three of the research cohort also describing ongoing systemic violence.

As mentioned in Chapter Three, systemic violence occurs as a result of the "consequence of the rules governing the distribution of power and resources" (Ruggiero, 2020, p. 5). Although excluded from society due to their incarceration, prisoners are still citizens who have the right to have their most basic needs met. However, it seems that some prisons do not share that view with some of the research cohort describing poor living conditions and fights over basic food resources.

Lotus Glen, whose Indigenous population sits at around 71% (Queensland Government, 2012a) was described by John as "*just overcrowded*", which fit in with Peter's description of the atmosphere at night in the prison:

> *When you're getting locked in a six o'clock at night, you're actually getting locked in and not let out till seven in the morning, your mind starts to race, so the only thing you can do in a little cage is exercise, you know, watch TV, but it's so cold in there, it's so cold, and it's dark and the only way you can really communicate with fellas is you're looking through little box windows and then you're singing out to the person across the room or up there and 'you ok?'... 'yep'. You know you've got people with mental health in there that are singing out and sometimes you can't sleep because they're singing out, they're screaming and the slamming of doors every hour, you know.*

Joe described the conditions in Lotus Glen as being dirty and designed to cause trouble. He said, *"you got to start from S2. S2 is the one you come in, the reception. It's filthy – it's the filthiest unit. Hardly no sugar, milk, tea bags. Floor is black. Not hygienic, you know. One razor, one toothbrush, one little Colgate and one little soap. How you gonna survive?"*. Joe was asked if you have to do a certain amount of time in that unit, to which he replied, "*Yeah, well if you sort of fuck up you stay in Unit 2 for two, three, four, six months. [that is] why they put people in S2, 'cos there's not much bread 'n that and people fight. Fight and fight. That's all they do".*

The systemic violence that occurs behind the closed doors of an institution, such as a prison, allows a comfortable life for those 'non-deviant' members of society, therefore, it is ignored by most of society (Žižek, 2009). However, as Ruggiero (2020) says, "[a] society that allows bad cops [or criminal justice employees] to mistreat or even in some cases kill members of a racial minority… is a sick one" (p. 86), particularly because the criminal justice system is a representative of society and society authorises their existence and therefore their actions.

In Summary

Walker wrote that "[i]mprisonment is almost always boring, irksome and humiliating; in some prisons it is also squalid, and some prisoners suffer from grievances or anxieties" (1983, pp. 69-70). This statement was written in 1983, but he could easily have been writing about the experiences of the participants of this research.

This section of the chapter has demonstrated how Indigenous offenders are kept in the stasis of zombification through their internment in death-worlds where they continue to be deprived of social, cultural, or political status. By depriving Indigenous offenders of their right to culturally sound programs and by fostering a culture of institutional racism Australian prisons are severing cultural connections and denying Indigenous Australians cultural identity, effectively rendering them culturally dead.

Furthermore, it has shown that by placing Indigenous offenders in prisons considerable distances from their communities they are causing psychological damage not only to the families, but to the prisoners themselves. Not only this, by using solitary confinement for reasons other than a prisoner's safety the prison is creating a further psychological harm, and depriving inmates of much needed social interaction. Both these policies further contribute to rendering Indigenous Australians socially dead.

Finally, it has established that violence within the prison system, be it symbolic, systemic, or subjective, contributes to long-term physiological and psychological harm to inmates whether perpetrated by prison management, prison officers, or other inmates. The next section explores the

perspectives of the community corrections system by members of the research cohort that had been released on parole at any stage in their criminal justice journey.

Disintegrators: Perceptions of Reintegration and Parole

The parole system in Australia was established in 1963, not only out of concern for rates of recidivism and with the hope of rehabilitating offenders, but also due to concerns of overcrowding and the burgeoning budgets association with prisons (Williams, 2015). Furthermore, it was, according to Lackner (2012), also created to "foster prisoner reformation, rehabilitation and reintegration" (p. 93). Reintegration involves the concept of throughcare, which is the planning, coordinating, and providing of services and programs to prisoners (including those on remand) while they are the responsibility of Corrective Services, including parole (van Aaken, 2019; Williams, 2015).

As discussed in Chapter Two, reintegration, or throughcare, for Indigenous Australians leaving prison is sporadically funded, often culturally unsafe, and has little interconnection between service providers. Thus, from a necropolitical viewpoint, those who provide reintegration or throughcare, including parole services, can be categorised as 'disintegrators' – those that contribute to Indigenous Australians' loss of cohesion and unity with their communities and the rest of society upon their release from prison. The following sections detail the research cohort's perceptions and experiences of reintegration and parole in terms of the lack of pre- and post-release support, the use of discretion by community corrections officers and the difficulties of compliance-based supervision.

Support, What Support?

The provision of structured transitional support programs pre- and post-release is viewed as a mechanism that may reduce recidivist behaviour (Willis & Moore, 2008). While the support offered should vary according to the specific needs of individuals, the common goal of reducing the impact of the person's social and personal disadvantage should remain the same (Willis & Moore, 2008). The ideology behind this is that the support will then enable ex-prisoners to live a law-abiding lifestyle, thus, enabling successful reintegration (Willis & Moore, 2008).

Sadly, the availability of post-release support programs is suffering from "weakening and reduction" (Williams, 2015, p. 66). This could be down to the move from community corrections playing a supportive role to a monitoring and surveillance role in certain jurisdictions as a result of the 'tough on crime' rhetoric of particular governments (Lackner, 2012). This was the experience of Mike, Steve, and Peter who discussed their 'reintegration' back into community following their release from prison.

Mike recalled that on release day it was "*pretty common*" while waiting for the gate of the prison to open to hear conversations like "'*how long do you give him?' 'I'll put a hundred [dollars]*

he'll be back next week"". On hearing these conversations Mike reported that, "*it's all you can do to [participant demonstrates controlling temper], you feel that low*". Steve was asked about his experience of reintegrating back into the community and of the support he received. The conversation went as follows:

> **Researcher**: "Did you face any challenges coming back into the community?"
>
> **Steve**: "*Not really. It's a bit weird and everyone knows and talks about it, them first few weeks when you get out, and again I think the longer you've been in the harder it is obviously, but I don't know, even for a week I didn't feel right 'cos you sort of get used to it, used to the jail, used to your mates, you become mates and you're sort of thinking of that for the first few days and then you break away from that and it just takes a bit of time to get used to everything. One beer and you're drunk and then trouble starts*".
>
> **Researcher**: "Was it basically 'here's some cash, off you go?"
>
> **Steve**: "Y*eah, straight out the front gate*"
>
> **Researcher**: "No walk through of support services like housing, jobs, social/emotional?"
>
> **Steve**: "*Nah, nothing like that, straight out the gate onto a street I'd never been on before*".

Peter also got no support, stating that "*they give you the details, your release papers, so you go to Centrelink and straight away they give you your money, but there are no programs, no programs put in place. There is no continuous support, like I say, it's just a cliff*". Peter expressed the opinion that "*it is a correctional centre and they are supposed to help you correct yourself from your mistakes, you know, when you leave it's like a big cliff, you just [indicates dropping off the edge], no one is there to catch you. There needs to be programs put in there to help men and women to be stronger in there and have a goal or a vision when they come out".*

The experiences of 'reintegration' relayed here by Mike, Steve, and Peter imply a pervasive use of necropower by corrective services in which they are exposing Indigenous Australians to systemic violence through the deprivation of a quality human existence. This also indicates that the process of zombification continues through incarceration and through to community corrections. The concept of necropower is explored in more detail in Chapter Nine.

Peter also said he was one of the lucky ones because he "*was fortunate enough to have a good lady on the outside*", so when he came out, he "*had somebody, and somebody that was strong…she had her head on her shoulders".* Therefore, coming out of prison was an easier transition for him because, he said, "*I come out and I had a good friend, basically a great friend that supported me and also I looked for work straight away, I start working in the construction site when I got out and, so I*

had a job, I had a good friend". For those who do not have this support network, Peter suggested a transitionary healing centre because, he said, "*I think people, dwell in the past and they can't deal with it and I think that is why they continue down that road, they come out and there is no support out here*". A healing centre would support people by asking them "*what do you really want to do with your life?"* and would help them achieve this through "*six months there doing programs and getting their life sorted, setting goals*".

In 2015, Megan Williams wrote that the implementation of an *Offender Reintegration Support Service* (ORSS) by the Queensland Government had just begun, however, at that time it was not "targeted to Aboriginal people, and nor was it available for those on short sentences or deemed high risk of reoffending" (p. 64). According to the Queensland Government website, these services are operated by non-government organisations (NGOs) and there are three service models: CREST, Mara, and Borallon Throughcare (Queensland Government, 2018).

However, given that in January 2018 Indigenous Australians in North and Far North Queensland were 11.5 times more likely to have their parole breached than their non-Indigenous Australian counterparts (Queensland Corrective Services, personal communication, December 2, 2019), it appears that the ORRS system is falling short of expectations, specifically for Indigenous Australians. The responsibility for the success of community corrections and reintegration does not fall solely at the feet of the government or mechanisms such as ORSS, it is also dependent upon the use of discretion by individual community corrections officers who play a significant role in whether a person returns to prison or not.

The Better Part of Valour

There are conflicting attitudes towards offenders by the community corrections office with some sticking by the directives provided by the appropriate Probation and Parole Act for their jurisdiction and others referring their clients to specialist service providers, as well as offering them support and counselling (van Aaken, 2019). Of particular issue for many community corrections officers is apparently the pressure to meet "performance requirements of managerialism" (van Aaken, 2019, p. 52). This was pointed out in 2009 by Ashworth (as cited in van Aaken, 2019), who asked:

> …how could such abstract concepts and processes be rendered concrete enough to indicate good or bad performance? Within the probation service, for instance, the suggestion that what they did could be reduced to measurable and clearly definable performance indicators was anathema to many probation officers. (p. 52)

This question of 'managerialism' and 'performance indicators' was brought up by Mike who queried the pressure 'from above' experienced by community corrections officers. Mike, Frank, and Colin all

found the same dichotomy of 'good' and 'bad' community corrections officers that was a perception of both the police and prison officers. Only Liam had a totally negative view of community corrections, which is covered both here and in the subsequent subsection.

Mike found a general lack of care or compassion from community corrections officers he dealt with. He explained, "*they are only in it to collect that wage every week. We've all got to be paid for our services and that's fine, but it* [community corrections] *is there to tick the boxes*". Supporting the points made by Ashworth and van Aaken above, Mike posited that:

> *There are a lot of boxes that need to be ticked, a lot of KPI and a lot of all this information needs to be collected for data and you know tick, tick, tick, tick and a lot of parole are pressured by the hierarchies that need the status and all the results. 100% I feel that there is so much pressure from hierarchies.*

He also stated that, "*a lot of people are in it for the wrong reasons as well*", which contributes to the reasons for parole being revoked upon breach rather than digging to find the reason behind the breaches. However, Mike found "*that one parole officer that cared made a huge difference*" who offered Mike the chance to be paroled to a culturally based drug and alcohol rehabilitation centre in New South Wales, which is where, he said, "*I found my feet, is where I found my purpose and here I am 10 years later and still going*".

Frank was quite honest about his breaches of parole saying, "*well, with parole I have to blame myself*" and that "*90% of them* [community corrections officers] *have been good*". In New South Wales, Frank was given warnings by the community corrections officers, he said, "*I don't blame them, they gave me warnings, 'you're going to get breached, stop what you're doing, I want to check, want to make sure your levels are getting lower'. It just got worse, and I blame myself for that*". However, Frank had a contrasting experience with the Queensland parole office when he wished to transfer from the Rockhampton to Yarrabah community corrections.

Even to visit Yarrabah on holiday was a long process, he said that "*after about nine months they give me permission for two weeks leave to come up, went back and I had to wait another month for another visit to come up [to Yarrabah]*". Frank applied to transfer his parole from Rockhampton to Yarrabah but said, "*they knocked it back three times*". The reason given for this was "*because it [Yarrabah] was an Aboriginal community the chances of my reoffending were very high ri*sk". After complaining about this racist remark and assistance from the Yarrabah community corrections officer Frank was eventually allowed to transfer to Yarrabah community corrections.

Colin also found that there were community corrections officers prepared to use their discretion. He said, "*I've had some good parole officers that give me a lot of chances*", however, he

also said that overall, "*I've had no luck with parole*". He also described the officers that were disinclined to use discretion saying, "*I had ones that would just…straight by the book, you know, no chances, sort of set you up for a fail*". Setting him up to fail included sending him to a halfway house in Cairns rather than paroling him to his sister's address. He explained:

> *…here, we gonna put you in here, you can go there, it's a halfway house, that's where you gotta go. Can't get parole to your sister's, no we're not giving you parole to your sister's, but you can go there to Bunting Street, when my sister's got a house. Anyway, I get put in Bunting Street and I mean, everyone in Bunting Street is on parole or homeless or you know and there is a lot of alcohol and drugs going on in there, you know, your straight back on it. I found that I was being set up to fail*.

Liam's account of his first breach of parole, supports Colin's feelings of being set up to fail with a parole officer who failed to use her discretion.

Liam's first breach of parole was for 'failure to report', however, community corrections had told him that "*they were coming to my house to do a home visit 'cos I ended up in my own unit*", but he waited in all day and they "*never turned up, didn't even ring*". Liam was informed by his "*19-year-old, straight out of uni*" community corrections officer that he was actually "*meant to be in the next day and then she breached me on it, for not reporting"*. Liam said to her "*so, it's alright for you guys to not turn up and not notify me but 'cos I didn't turn up at this time I'm breached, now I got six months*". Liam said he had barely been out of prison before he found himself back inside again.

There have been two elements that have been identified as improving parole outcomes. The first is establishing a relationship based on trust, collaboration and respect with personal autonomy being valued (Galouzis, Meyer, & Day, 2020). The second is the idea that an effective community corrections officer is one that is "skilled in the use of motivational interviewing and cognitive behavioural techniques" (Galouzis et al., 2020, p. 1229). The accounts provided above demonstrate that these elements are missing in some community corrections officers in New South Wales and Queensland. Further, they illustrate that the use of compliance-based parole as opposed to rehabilitation-based parole makes it hard for Indigenous Australian parolees to comply with the conditions of their parole without adequate support.

Difficulties Meeting Compliance-based Parole

Parole grants a prisoner early release before they have served their full sentence, however, this release is conditional on the prisoner meeting specific post-release conditions (Bartels, 2013). Each state in Australia has its own set of 'core' parole conditions ranging from three in New South Wales to 15 in

Tasmania and the Australian Capital Territory[22] (Bartels, 2013). It has been suggested by Apted et al. (2013) that many parolees who were sent to prison for a breach of parole did so by "breaching the technical conditions of their parole orders" (p. 15), which means they failed to meet one of the core parole conditions.

In a study conducted by Dawes et al. (2017), 70.0% of the research cohort had been returned to prison four or more times for breaching parole conditions. In the same study, many participants or their family members explained that "they often did not understand parole conditions or that some parole conditions were unrealistic" (Dawes et al., 2017, p. iv). Of particular note in this study is that participants mention "pressure from family or peers to drink alcohol while on parole" (Dawes et al., 2017, p. 49) and that one man had been breached for failing to report because he was working in the mines and could not contact his community corrections officer. Both of these issues were mentioned by Peter, who discussed the pressure of trying to maintain a '9-5 job' while also trying to fit in parole appointments without losing your job.

Peter said, "*I've had a good education, so I'm sort of switched on, but a lot of them, a lot of men and women don't understand*". He said this is particularly true of those who enter back into the cycle of drugs and alcohol where they "*might be walking down the street and they bump into that circle, jump in that circle and they're down the river drinking and they go 'I've got to get up to report, ah, fuck it' and then it just continues".* Peter's main issue with community corrections was that they were "*very strict*", and he received "*a few letters and got called into the office to say 'hey, you didn't report'".* The conversation regarding this went as follows:

> **Peter*:*** "*I was like 'well, I'm working full-time', you need to cut me some slack and be a bit more flexible with me*".
>
> **Researcher*:*** "And were they?"
>
> **Peter*:*** "*No, I had to talk to my boss and say 'hey, I'm on parole, la la la' and he's like 'well, you've got a job to do, so'*".
>
> **Researcher*:*** "So that makes it difficult for you?"

[22] See Appendix C for options for parole conditions in different states and territories.

> **Peter:** "*Yeah, [his boss] - 'I'm paying you every time, you're onsite to this time'. I sort of had to argue with the parole and say, 'I finish work at five thirty / six o'clock sometimes and by then you guys are closed, I'm working on a construction site'. It was hard*".

As well as the usual alcohol and drug testing requirements, Peter also had the restriction of not entering Mossman for twelve months, but he said, "*that was alright because I didn't want to go back to Mossman, you know*".

Sarah, John, Steve, and Joe spoke of parole conditions as being easy to understand and to adhere to. However, both Sarah and John were on court-ordered parole in Shanty Creek Rehabilitation Centre and, therefore, many of the conditions did not affect them. For example, John said he had a "*curfew in place"* but when asked if he ever breached that curfew by accident, he replied "*Nah, I was in here then – rehab*". Having said that, John also described parole as "*a trap*", adding "*I was bored on parole"*. Sarah was released on a parole order, which she described as "*a board order, dry parole, not allowed to drink, smoke [presumably marijuana], or get into any violence*", which, she said, is why "*I am in rehab*". Asked if she came straight from prison to Shanty Creek, she replied "*yes, I did, yeah, parole transferred me here*".

Steve had one parole that lasted nine months and when asked if he understood the conditions of his parole he said "*Yeah, well, because I was in jail when I got the conditions, I went through them and they were pretty simple, pretty clear*". Although Steve said, with a nervous laugh, "*I never got caught doing anything*". Joe also said he never breached his parole due to conditions because "*I stayed off the drugs, fucking alcohol and kept on working, working, working"*. Liam, however, did not have a good experience of the parole system, with much of his prison time being based on breach of parole.

Liam recounted an incident in which he reported to his parole officer that he was using drugs again because "*you gonna find out sooner rather than later, this is what I've used, I'm dealing with the death of my sister, so I said it all hit me now*". Liam told the parole officer "*I've been trying to get myself into detox, being trying to get to a rehab*", to which the parole officer replied "*'why do you want to go to rehab?"*. Liam was surprised because "*she didn't know much about it*". When he told the parole board they were pleased and said, "*that's great whatever we can do to help you [Liam], we'll do it"*. He said that the parole board were understanding and put him on a bracelet "*so that we know exactly where you are and you are on curfew … and that will stop us, the police won't come to your house and raid you. We'll just call you in because you've been upfront with us*". However, the 2018 raid on Liam described earlier occurred shortly after this and, as he said, "*they didn't ring me up and they totally assured me they were going to ring me up and say 'Liam' you need to come in because you…*". What frustrated Liam most was that he had been honest, saying:

> *I committed no other crimes, I'd been straight forward about the using, why I used and each time I used and … I was seeing my psychologist. I was seeing my GP and I was seeing another support counsellor on the side. So, as much as I was still using on those days, I was still … ringing all these rehabs.*

This left Liam angry and disappointed saying "*that return to prison warrant got me four months, like four months was a waste of time*".

The accounts of parole conditions provided here support the suggestion of Willis and Moore (2008) that "there is little evidence of crime reduction benefits when low-risk offenders are reimprisoned for technical violations of parole conditions" (p. 51). Furthermore, according to Willis and Moore, some Indigenous Australian prisoners refuse parole "as they are unwilling or unable to comply with parole conditions" (p. 92). For example, many parolees who return to Indigenous communities have difficulty meeting reporting requirements due to the remote locations, particularly through lack of transportation if the parolee's driving license has been suspended (Willis & Moore, 2008). As suggested by Peter and Liam, conditions around drug and alcohol have high expectations of compliance when fellow community members are drinking or using drugs and place pressure on the parolee to join in through lack of understanding of the parole conditions.

In Summary

As Peter described above, for many prisoners leaving prison is like falling off the edge of a cliff with no one to catch you. This is exacerbated by a lack of support on leaving prison, whether it be programs, halfway houses, transition programs, rehabilitation centres, or the parole system. The provision of ORRS in Queensland through NGOs will be a system based on funding and grant allocations, therefore, the stability, quality, and long-term prospects of these services should be carefully considered.

Discretion in community corrections, as with other areas of the justice system discussed herein, is unequally distributed and, as always, comes down to the attitude of the individual community corrections officer in question. However, for some of the participants of this study at least, there appears to have been a level of discretion used. Had this discretion been implemented at earlier stages in their journeys through the criminal justice system, perhaps their trajectories could have been changed earlier.

Although many of the participants of this study had no difficulty in adhering to the parole conditions they were set, this is certainly not the case for all Indigenous Australians as experienced by Liam and Peter. Parole conditions for Indigenous Australians appear to have been set with little regard to cultural awareness and without any ongoing structured support.

Conclusion

This chapter has demonstrated that the violence experienced during interactions with the police and the court system were not stand-alone instances, but that symbolic, systemic, and subjective violence are also experienced in the prison and the community corrections system. Furthermore, it has discussed how, as death-worlds, prisons are perpetuating the cycle of zombification by creating living conditions that render Indigenous offenders socially and culturally dead. The chapter explained how disconnecting Indigenous Australians from their culture through culturally inappropriate programs and lack of cultural engagement has serious consequences for the cultural identity of an already vulnerable population.

It has shown how mentally ill Indigenous offenders are being stripped of their humanity and their dignity, further igniting the image of the zombified person. Moreover, it has demonstrated that through psychological deprivation of social stimulation the prison system is furthering the social death of this vulnerable population of prisoners.

Finally, it has established that although some reintegration services are offered, they fall far short of what is required to allow Indigenous Australians to avoid the revolving door that leads them back into the prison system. As with police and prison officers, it has shown that some community corrections officers are willing to use their discretion to keep their charges out of the system, however, too often discretion is not used and an opportunity for rehabilitation is missed. This is particularly so when policies of corrective services set the compliance-based parole standards at impossibly high levels, almost setting up Indigenous Australians to fail.

With Chapters Five and Six in mind, the next chapter presents the second stage of thematic analysis. Chapter Seven introduces seven Indigenous men and one Indigenous woman who tragically died in police or prison custody and provides an analysis of the themes that emerged from the coroner's reports.

7. Power and Authority: The Brutal Consequences

'*For ours is a battle not for wealth or for power. It is a battle for freedom. It is a battle for the reclamation of the human personality*'.

Dr B. R Ambedkar[23]

This chapter, along with Chapters Five and Six, are the first steps towards answering the research questions outlined in earlier chapters. This chapter investigates the deaths of eight Indigenous Australians who died in police or prison custody in Queensland through a thematical analysis of the coroner's reports. The themes focus on pervasive issues within the criminal justice system that were found to have contributed, in some part, to the deaths under investigation, as well as the experiences of forms of violence.

Since the Royal Commission into Aboriginal Deaths in Custody in 1991, there have been more than 400 Indigenous deaths in custody (Wahlquist, 2016) and during the period 2010 to 2019, Indigenous Australians were 7.5 times more likely to die in custody than non-Indigenous Australians[24]. It is important to reiterate here that Indigenous Australians constitute approximately 2.9% of the overall Australian population (Australian Bureau of Statistics, 2021b, 2021c). It is also a fitting time to reiterate the aim of this research is to elevate Indigenous Australian lived experiences and perspectives of the criminal justice system to challenge dominant criminological research that favours state-centred perspectives.

As Stan Grant writes in his book *Talking to My Country* "[t]o criminologists these are statistics; to us they are mothers, fathers, uncles and aunties, brothers and sisters, sons and daughters. These numbers have names and faces" (p. 106). This chapter begins with eight brief eulogies in commemoration of those whose deaths are being explored within this chapter, which also allows for a better sense of who they were as people.

The chapter then explores behaviour displayed by criminal justice employees through their lack of compassion to alleviate the suffering of another human being. It then investigates the lack of duty of care by some criminal justice system employees in their treatment of vulnerable persons for whom they had legal responsibility for. The chapter then moves on to examine the lack of discretion

[23] As cited in (Khatib, 2018, p. 20).
[24] Data obtained from the National Deaths in Custody Database.

used by some criminal justice employees that have resulted in brutal consequences for some Indigenous Australians. Finally, it explores the systemic failures that have occurred in five out of the eight deaths in custody examined in this chapter.

As with the thematical analysis undertaken for Chapters Five and Six, the thematical coding of the coroner's reports was done in two stages. The first stage was to create a narrative that detailed the major events leading up to the individual's death and then the events following their death. The second stage was to highlight key words and phrases from each narrative that would become the basis of the emergent themes[25]. The themes were gathered under four main themes: lack of duty of care, lack of compassion, lack of discretion, and systemic failure.

This chapter also assists in validating the primary data contained in Chapters Six and Seven through the process of data triangulation mentioned in the methodology chapter. Furthermore, this chapter will also foreshadow how the empirical data relating to Indigenous Australian deaths in custody will be analysed in the theoretical analysis chapters.

Tarpitch[26]: In Remembrance

FJV

FJV was a 26-year-old man who was in a long-term relationship, which bore him one son and a stepdaughter. FJV was a difficult patient to manage due to his ongoing anxiety and aggressive behaviour, and had previously been diagnosed with post-traumatic stress disorder stemming from abuses he had suffered as a child. FJV was found hanging in his cell at Borollan Correctional Centre (BORCC) in 2001 and, tragically, could not be revived (Queensland Government, 2015).

CMD

CMD was a 36-year-old father of one who is described as having had a "*positive outlook on life*" and who was "*proud to provide for his family and friends by his skills as a fisherman and hunter*" (Queensland Government, 2006, p. 2). CMD died in a police cell as a result of "*intra-abdominal haemorrhage, due to the ruptured liver and portal vein*" (Queensland Government, 2006, p. 7).

[25] See codebook in Appendix B.

[26] In many Aboriginal communities the name of a person that had died cannot be spoken until the family of that person decides it can be used again. For example, in the community of Aurukun in the Cape York Peninsula of Queensland, the word '*tarpitch*' is substituted for the name of the person that has died. This also includes anyone who bears the same name as the deceased person (Harold Ludwick, personal comms, October 15, 2020). Although none of those whose deaths are investigated in this chapter were from Aurukun, it is with the protocol of 'tarpitch' in mind, and out of respect, that only the initials of those who have died in custody are used in this thesis.

AJB

AJB was a 16-year-old boy whose criminal activity was limited to a small number of relatively minor crimes in his early teens, and who had always been in paid employment in a variety of manual or factory jobs. AJB died as a result of being struck by a car after being left handcuffed by police in the middle of a street in Ipswich in 2009 (Queensland Government, 2010).

TLI

TLI was a 37-year-old woman who loved art and music, and who was very close to her son. TLI had some experiences in her life that were traumatic and left her suffering from depression. TLI was found unconscious in her prison cell with self-inflicted wounds at Townsville Women's Correctional Centre (TWCC) in 2010; sadly, attempts at resuscitation were unsuccessful (Queensland Government, 2011b).

HJM

HJM was a 51-year-old man who had one daughter. HJM had a history of alcoholism with several stays in rehabilitation centres and on his last stay in the Stagpole Street facility had reportedly been doing well. However, in 2011, after discharging himself suddenly, HJM died in police custody a week later as a result of hypoxic brain damage, cardiorespiratory failure and alcohol toxicity (Queensland Government, 2012b).

CWB

CWB was a 44-year-old man who, according to his mother, was "*not a saint*" (Queensland Government, 2019b, p. 3), however, she believed he had "*fallen through the cracks*" (Queensland Government, 2019b, p. 3). CWB had a long history of both polysubstance abuse and mental health diagnoses, including antisocial and borderline personality disorder. CWB was found hanged in his cell in the High Dependency Unit (HDU) of Brisbane Correctional Centre (BCC) in 2015 (Queensland Government, 2019b).

GRA

GRA was a 48-year-old man who had a long history of drug use and mental illness, specifically schizophrenia. GRA and his partner of seven years had been planning on getting married on his release from prison. GRA died in prison custody as a result of self-inflicted wounds from a prison-issued razor in 2015 (Queensland Government, 2019a).

SCC

SCC was a 33-year-old man who lived with his twin sister. Two years previous to his death, SCC's brother died from respiratory and cardiac failure when being restrained by security officers at Logan Hospital. SCC died in 2015 while being restrained by police officers and being administered a sedative by paramedics (Queensland Government, 2019c).

Lack of Compassion: Denying Humanity

Lack of compassion was found to be an emerging theme in the treatment of detainees in half of the deaths in custody being examined. Many definitions of compassion view it as "concerned with suffering by any sentient being" (Feenan, 2017, p. 123) with some suggesting that it "requires action to alleviate suffering" (Feenan, 2017, p. 123). Most, however, agree that there is, at the very least, a desire to alleviate the suffering of another (Eldergill, 2015; Feenan, 2017; Singer & Klimecki, 2014).

The interactions in the lead up to the deaths in custody explored below suggest that the police and prison officers, or the medical staff involved were neither concerned with the person's suffering, nor put in place any actions to alleviate it. This, it could be argued, was because the officers and medical staff denied them as possessing any positive human qualities, personality, or dignity, and in fact, through the process of zombification viewed them with disgust, or fear, rather than with any degree of empathy. As zombified people, Indigenous Australians are viewed by some criminal justice employees as not being worthy of compassion. A lack of compassion can be seen in the cases of CMD, HJM, and SCC.

During his arrest, CMD was dragged by police officers on two occasions, and on both occasions, he had allegedly just been struck by Senior Sergeant Hurley. The first occurred whilst CMD was being removed from the police vehicle where he struck Hurley who responded by hitting CMD "*in the side, or the rib"* (Queensland Government, 2006, p. 4). Following this, a witness said that CMD responded verbally to being hit, but then remained silent and was "*dragged in by two arms with his feet dragging*" (Queensland Government, 2006, p. 4).

The second incident was following CMD's alleged assault by Hurley following a fall through the police station doorway where he was dragged "*ten to twelve metres*" (Queensland Government, 2006, p. 15) down the hallway with Hurley on one side and another officer "*on the other hand and both have dragged him by his wrists with his legs dragging"* (Queensland Government, 2006, p. 16). HJM was also dragged in a semi-conscious, severely intoxicated state into the police station while being taken into custody.

The report that instigated police interaction with HJM was of a man lying face-down with "*one hand under his body, and the other behind him*" (Queensland Government, 2012b, p. 12). The

police originally took HJM to the diversionary centre where police officers "*heard a thump and looked into the dormitory to see HJM lying face down on the floor. It was apparent he had fallen from the bed*" (Queensland Government, 2012b, p. 5). Therefore, it could be assumed that between the initial interaction at 11:00am and his arrival at the police station at 11:55am, HJM had potentially had two falls that could have caused him injury[27].

It therefore shows a lack of desire to alleviate any suffering for the police officers to transport HJM to the police station rather than to a hospital. Particularly because "*[t]he cctv recorded vision shows that HJM was largely carried into the watch house by Watch house* [*sic*] *Officer Thompson, who carried most of HJM's body weight, allowing his feet to trail"* (Queensland Government, 2012b, p. 5) before being "*laid on the floor near the charge counter"* (Queensland Government, 2012b, p. 5). According to one officer, "*it was obvious that by this stage he couldn't walk by himself and was unable to answer the usual health assessment questions*" (Queensland Government, 2012b, p. 5). At this stage in their interactions with HJM the officers had failed to show any compassion towards HJM, and one must consider whether HJM's intersection of indigeneity and sex offender status compounded his zombification and status as *homo sacer*, which will be expounded in greater detail in Chapter Nine.

Due to their levels of intoxication and semi-consciousness, both HJM and CMD unwittingly gave their consent to the symbolic violence being inflicted upon them. The manner in which both men were dragged into and through the police stations reflects power being exerted over them when they were both powerless to resist, a topic that will be fleshed out in greater depth in Chapter Nine.

In SCC's case, he was dragged "*out of the bathroom by his legs*" (Queensland Government, 2019c, p. 6) because the officers were having difficulty in restraining him during his psychotic episode. During this episode he was "*yelling and calling for his mother and his deceased brother, saying 'forgive me for my sins'*" (Queensland Government, 2019c, p. 5) and "*banging his head on the floor and the door frame*" (Queensland Government, 2019c, p. 5). Following his removal from the bathroom it was reported that SCC was "*moving less at that time and appeared to be very tired as he had been thrashing about for five minutes*" (Queensland Government, 2019c, p. 6). SCC was then restrained using handcuffs while officers had their knees on various parts of his body while he was in a prone position.

[27] This is also substantiated by the coroner's report that found although some rib fractures were consistent with extended CPR it was less likely the cause of rib fractures "*in left ribs 3, 4 and 5 in the anterior axillary line*" (Queensland Government, 2012b, p. 9)

Although SCC appeared to have settled and was not struggling, the decision to sedate him was still made and the officer reported that he could feel SCC's body relax. SCC's sister then requested several times that the handcuffs be removed. A request that was repeatedly denied because SCC was "*acting violently*" (Queensland Government, 2012b, p. 8). Although at that point in time SCC had been administered a sedative and was visibly calmer. Thus, SCC was being treated as a criminal, and objectified as something to be feared, when in fact he was, as the coroner determined, in need of "*urgent medical attention*" (Queensland Government, 2012b, p. 27). Thus, highlighting his status as *homo sacer* as will be discussed further in Chapter Nine. The lack of compassion demonstrated by the police officers in the cases here is mirrored in the dismissal of ill health symptoms displayed by TLI by medical staff and prison officers.

Although TLI had told the nurse that she had been prescribed Panadeine Forte (2 tablets, twice a day) she was only given Panadol prn (as required), as well as Brufen tablets. In fact, TLI was described by one doctor as "*hunting more p forte*" (Queensland Government, 2011b, p. 5). Even after TLI's doctor confirmed that she had been prescribed Panadeine Forte as she had said, the coroner noted that, "[*i]t appears no action was taken in relation to that advice*" (Queensland Government, 2011b, p. 8). TLI met with a doctor at the prison to discuss her pain management, but the doctor suggested that TLI's pain was "*neuropathic in origin*" (Queensland Government, 2011b, p. 8), which the coroner explained meant that the doctor "*did not believe [TLI] had chronic or severe pain*" (Queensland Government, 2011b, p. 8). According to prisoners on TLI's block, she "*was frequently in severe pain, leaning against the cold cell block wall when she couldn't sleep*" (Queensland Government, 2011b, p. 8).

The zombification of TLI by the medical staff can be seen in their portrayal of TLI as someone 'hunting' for pain medication because it painted her as lacking in positive human qualities, personality, or dignity. Furthermore, the concept of *homo sacer* can be seen in TLI's situation because being a prisoner she had committed a crime and, therefore, she was viewed by some staff members as having no value to society. Thus, as a non-citizen she was deemed as not deserving of compassion and, as a prisoner, she was powerless to fight that unfair assessment and treatment.

Lack of Duty of Care: Denying the Necessaries of Life

Closely linked with the theme of lack of compassion is the theme of 'lack of duty of care', which came through in seven of the deaths in custody. Although the *Code of Conduct for the Queensland Public Service* (2011a) states that public servants, who include police and prison officers, should "apply due care in [their] work" (p. 12), Shircore (2012) states that the scope of 'duty of care' for police officers has "uncertain boundaries" (p. 255). However, Chapter 16 of the Queensland Police

Service's *Operation Procedures Manual* states that officers have "a duty of care to those persons in their custody…derived from notions of common humanity" (2020b, p. 6). More specifically, it:

> imposes the same duty on one having charge of another who is unable by reason of that person's detention to provide themselves with the necessaries of life, as it does on a parent in relation to that parent's child. Therefore, the people to whom necessaries are being provided are the persons who are being detained. (Queensland Police Service, 2020b, p. 6).

Although CMD and SCC died under differing circumstances, all the officers involved displayed not only a lack of duty of care by failing to ensure adequate 'necessaries of life', but also a disregard for any 'notion of shared humanity'.

In CMD's case, following a fall through the police station door with Hurley, he was then allegedly assaulted by Hurley. A witness stated he saw Hurley "*bending over [CMD] with his elbow going up and down three times"* (Queensland Government, 2006, p. 26). This was accompanied, according to the witness, with Hurley saying "*'Do you want more [CMD], do you want more?'*" (Queensland Government, 2006, p. 26). As a clearly identifiable agent and the perpetrator of the 'alleged' assaults on CMD, Hurley was committing an act of subjective violence, an act of violence that will be expanded on further in the next chapter.

Following this incident, CMD was deposited in a cell with another man who comforted CMD when he later cried out in pain. It was put to Hurley that CMD had cried out in pain from the cells to which he said, "*he did not hear [CMD] call out from the cells that day*" (Queensland Government, 2006, p. 22). However, the coroner reported that she had "*no doubt that one particular cry out for help by [CMD] must have been heard in the police station. Indeed this is consistent with a brief visit to the cells a short time later*" (Queensland Government, 2006, p. 22). In this respect, Hurley failed in his duty of care to check on CMD in order to ensure he had the 'necessaries of life'.

Most crucially, in respect to providing 'necessaries of life' there was indecision over whether CMD was in fact deceased when he was found. Hurley was initially informed by Sergeant Leafe that "*there was no pulse*" (Queensland Government, 2006, p. 18), however during the investigation Hurley said he "*thought he felt a pulse*" (Queensland Government, 2006, p. 18). Despite this, Hurley told the inquest that "*he did not attempt resuscitation because he believed [CMD] was deceased*" (Queensland Government, 2006, p. 18).

Furthermore, Hurley stated that although he thought CMD was deceased he "*would get the ambulance to try to revive him*" (Queensland Government, 2006, p. 18). This begs the question, why would Hurley get the paramedic to try to revive CMD, but not start resuscitation himself? This further highlights the lack of duty of care provided to CMD by Hurley. When the police and paramedics are

involved in a detainment at the same time, the lines of responsibility for duty of care can become blurred, as in the circumstances of SCC's death.

In respect to SCC, the lack of duty of care fell between the cracks of both the police officers and the paramedics who attended the scene where he was having "*a violent episode*" (Queensland Government, 2019c, p. 5). The police officers who attended restrained SCC by handcuffing him in a prone position to "*allow paramedics to provide him with medical treatment*" (Queensland Government, 2019c, p. 7), which included the administration of a sedative.

After being restrained, but prior to the administration of the sedative, a paramedic had noted that SCC "*had become quiet and less resistant*" (Queensland Government, 2019c, p. 10). At this point in time, both the police officers and the paramedics failed to view SCC with any notion of shared humanity, thus neglecting to provide the basic necessaries of life by failing to note SCC's vital signs.

The lack of duty of care shown towards SCC by the police officers, as well as the paramedics was noted by the coroner who stated that "*although the police officers were attempting to monitor his pulse and breathing, [SCC's] vital signs were not adequately checked or monitored during the restraint despite the presence of two advanced care paramedics and a critical care paramedic*" (Queensland Government, 2019c, p. 27). Moreover, he reported that "[t]*here was a basic failure to recognise and respond to his clinical deterioration*" (Queensland Government, 2019c, p. 27).

It was admitted that prior to the sedation "*paramedics had not checked [SCC's] blood pressure, heart rate or ECG. Nor did they check his airway*" (Queensland Government, 2019c, p. 9). The coroner also noted that the police officers "*should have recognised from their own observations in relation to [SCC's] pulse, breathing and vomiting that restraint was no longer required*" (Queensland Government, 2019c, p. 27). However, the sedative was administered and, soon after, SCC began to experience breathing difficulties.

Under these conditions, it can be argued that SCC and CMD embody the concept of *homo sacer* because they were judged to have committed a crime (use of an illegal substance and public nuisance, respectively). Therefore, they were viewed as having no value to society and their deaths would not be classified as murder (or manslaughter). As *homo sacer*, both men became non-citizens and powerless. They were not only denied, as non-citizens, the inalienable rights to which all humans are entitled while in custody (i.e., duty of care), they were also powerless to influence the unfair treatment with which they were treated.

In the prison setting, prisoners are viewed as vulnerable people who require "a special duty of care" (Morrison, 2007, p. 8) that requires protecting "prisoners from their own acts of self-harm and

from assaults by fellow prisoners" (Morrison, 2007, p. 8). It must be noted here that in the prison setting duty of care does not fall to prison officers alone, but also to the medical and mental health staff.

According to the Australian Medical Association (2012), the main guiding principle for health in the criminal justice system is that "prisoners and detainees have the same right to access, equity and quality of healthcare as the general population" (p. 4). Furthermore, the second principle suggests that prison health services should meet the health needs of prisoners and detainees, but more importantly, "should accommodate the diverse and complex needs of vulnerable and highly disadvantaged subgroups" (Australian Medical Association, 2012, p. 4). The medical treatment that TLI received while at TWCC demonstrated a lack of duty of care considering the two principles mentioned above. TLI had "*a complex medical and psychiatric history*" (Queensland Government, 2011b, p. 1), including "*suicidal ideation, depression and chronic pain*" (Queensland Government, 2011b, p. 1). By failing to provide TLI with adequate pain relief for her chronic pain as a result of "*injuries suffered in a motor vehicle accident*" (Queensland Government, 2011b, p. 1), the medical team denied her the right to the same quality of healthcare that is provided to the general population.

This was supported by the coroner who stated, "*I completely agree with Dr Hoskins' observation: 'we do people a great disservice if they have a genuine need for pain relief and we fail to prescribe it when they are deprived of their liberty*'" (Queensland Government, 2011b, p. 11). Support also came from Matilda Alexander of the Prisoner Legal Service, who argued:

> If you're on the outside community, you could just go to another doctor, get a second opinion, you could access those health records yourself and prove that you were actually in that much pain. But for somebody who's in prison, their means of seeking a second opinion and their means of being believed is drastically reduced. (as cited in Wordsworth, 2011, paras 23-24)

Furthermore, the sleep deprivation from the pain, along with the pain itself compounded TLI's existing depression. As TLI herself stated in a medication request form:

> *I have been patient. You've got the faxes from the doctors in Cairns. I am in constant pain. I don't ever have heavy pain killers, but due to the breaks I have got I need pain killers to have a decent sleep. I have been patient and now you have gone through the process, I am still suffering for no reason.* (Queensland Government, 2011b, p. 8)

By not factoring in TLI's diverse and complex needs, the medical team also failed to uphold the second principle of duty of care mentioned above.

This was to some extent supported by the corner who noted "*it is impossible to know the extent to which insufficient analgesia and the resulting sleep deprivation contributed to* [TLI's]

decision to end her life, but they were probably factors" (Queensland Government, 2011b, p. 11). It can also be argued that failure to accommodate the diverse and complex needs of vulnerable prisoners was also a factor in the decision of FJV to take his own life.

FJV had diagnoses of "*Mixed Personality Disorder (antisocial and borderline types), polysubstance abuse (amphetamines, cannabis), opiate dependence as well as possible Post Traumatic Stress Disorder or an Anxiety Disorder*" (Queensland Government, 2015, p. 3). In terms of the main guiding principle for health professionals mentioned above, FJV appears to have been receiving equal access to healthcare with a number of appointments with both Prison Mental Health Service (PMHS) and Gallang Place[28].

In one appointment with PMHS he indicated that he was concerned about a number of things including his father who had received a lung cancer diagnosis, his partner, and his parole application. In an appointment with Gallang Place he denied suicidal ideation, however, he stated his "*frustration and report[ing] he 'felt victimised by the system', 'was fed up' and that 'everything he wanted to do fell on deaf ears'*" (Queensland Government, 2015, p. 6). These stressors "*were seemingly leading to increased levels of anxiety*" (Queensland Government, 2015, p. 4). Nonetheless, it appears because FJV continued to deny having suicidal thoughts he was not deemed an 'at-risk' prisoner, therefore there was "*no reason to place him on a formal observation regime*" (Queensland Government, 2015, p. 7). This shows a total disregard for FJV's 'diverse and complex needs' as a vulnerable prisoner, thus failing in their duty of care according to the second principle mentioned earlier.

It could, therefore, be argued that the police and prison officers, and the medical staff had already deemed CMD, SCC, TLI, and FJV as less than human. Thus, as zombified persons who had transmogrified into *homo sacer,* they did not matter and were disposable. Further, this leaves them open to having their lives subjugated to the power of necropower, which is explored further in Chapter Nine.

Lack of Discretion: A Display of Power

When a person has the freedom to decide what occurs in a given situation, they are exercising their discretion. When this discretion is exercised in the context of the criminal justice system it is done "in order to influence criminal justice outcomes" (Kessler & Morrison Piehl, 1997, p. 3). Discretion is

[28] Aboriginal and Torres Strait Islander Counselling Service

often viewed as being exercised on the side of leniency and as a 'soft on crime' rhetoric (Kessler & Morrison Piehl, 1997).

In an Indigenous Australian context, police discretion is a key factor in policing decisions when an officer will "consider not only the illegality of the offense but also contextual and mitigating factors" (Wortley, as cited in Australian Law Reform Commission, 2018, para 4). It is viewed that "[s]trict adherence to the letter of the law in many cases would be too harsh and justice may be better served not introducing an offender into the criminal justice system" (Wortley, as cited in Australian Law Reform Commission, 2018, para 4). In other words, a police officer can decide whether to initiate a response to a minor incident or can choose a diversionary path (Australian Law Reform Commission, 2018).

The use of discretion by officers of the law "can work in favour of, or against, a person suspected of criminal conduct" (Australian Law Reform Commission, 2017b, p. 452), which is supported by the participants' experiences in Chapters Five and Six of this thesis. However, when the appropriate exercise of discretion is not used, it can lead to brutal consequences, as seen in the case of CMD and SCC.

The morning that CMD was arrested, he was walking along the road when he encountered an Indigenous Police Liaison Officer (PLO) who was assisting in the arrest of another Indigenous man. CMD, whom it had been indicated was intoxicated, asked the PLO "*why he should help lock up his own people*" (Queensland Government, 2006, p. 2). Hurley had not heard the interaction between the two, but upon asking the PLO what had occurred between the two of them "*Hurley's response was that he would lock him up*" (Queensland Government, 2006, p. 2). The only other incident that occurred to incite CMD's arrest was that he "*turned and swore at the police officers*" (Queensland Government, 2006, p. 2). It is important to note here that CMD "*was not a trouble maker and had never been arrested on the Island*" (Queensland Government, 2006, p. 2). At this point, Hurley could have used his discretion and allowed CMD to continue on his way and overlooked this minor incident. However, Hurley immediately drove to CMD and arrested him.

The coroner noted that although the arrest of CMD itself was not unlawful, she did say that *"[i]t was completely unjustified to decide to arrest, particularly if that decision was solely influenced by a desire to check the computer for outstanding warrants. This is not a basis for arrest*" (Queensland Government, 2006, p. 3). Furthermore, she added that discretion could have been used because CMD "*had walked away and was clearly not impeding anyone* [therefore] *there was always the discretion to do nothing or simply speak with* [CMD]" (Queensland Government, 2006, p. 3). (Queensland Government, 2006, p. 3). The lack of discretion exercised by Hurley saw CMD taken to the police station with tragic consequences.

In making the decision to arrest CMD, Hurley exerted necropower by imposing his will and control over CMD that saw his life subjugated to the power of social death in the short-term and physical death in the long-term. Some criminal justice employees believe that their positions within the criminal justice system give them a legitimate superiority over 'ordinary' people, ordaining them with an almost god-like, ultimate authority that I call '*deific authority'*, which will be expounded in greater detail in Chapter Nine. By exerting this power over CMD, Hurley not only inflicted symbolic violence that is reflected in the asymmetric relations of power between himself and CMD, but also exposed Hurley's sense of deific authority. This is particularly emphasised by Hurley's position as the most senior officer on the small island on which he and CMD resided, which was viewed as the "*ultimate figure of power and authority*" (Queensland Government, 2006, p. 2). The coroner also felt that Hurley "*felt the need to exert his authority"* (Queensland Government, 2006, p. 3). While the lack of discretion in CMD's case was subtle, the lack of discretion in the restraint of SCC was even more so, but the failure to exercise it was nonetheless fatal.

There were at least three opportunities during the restraint of SCC for the officers involved to have exercised their discretion. The first is that "*[SCC] had become quiet and less resistant* ***before*** *the [sedative] was administered*" (emphasis added, Queensland Government, 2019c, p. 10) and, therefore, the officers could have decided not to have the sedative administered, or at least have waited to be sure it was still required.

The second was after the administration of the sedative when Constable Truter said he felt SCC's "*muscles relax*" (Queensland Government, 2019c, p. 8). This was a sign that SCC should have been moved on to his side, something the coroner pointed out was achievable even with the handcuffs on, stating "[*w*]*hile I acknowledge that Constable Truter made efforts to keep [SCC's] shoulder off the floor, it should have been possible to roll him on to his side with the handcuffs in place*" (Queensland Government, 2019c, p. 27).

The final opportunity to use discretion was during the three times that SCC's sister requested that the handcuffs be removed. Although the corner agreed the initial restraint "*was authorised and it was necessary to apply force to maintain the restraint in the interests of [SCC's] safety and the safety of the first responders*" (Queensland Government, 2019c, p. 26), he also stated that

> *It is clear from the review of the body worn camera footage that while [SCC] was restrained in a prone position for almost 10 minutes, he only struggled for a very short time at the beginning of this period*. (Queensland Government, 2019c, p. 26)

Therefore, the coroner highlighted that "*restraint was not required from two minutes after Constable Wallis arrived*" (Queensland Government, 2019c, p. 27), illustrating a lack of discretion on the part of

the officers involved. Furthermore, had discretion been exercised the "*contribution of the restraint to [SCC's] death could have been minimised if [he] was moved from the prone position after he stopped resisting, and his vital signs were continuously monitored*" (Queensland Government, 2019c, p. 27).

The lack of discretion exhibited by the officers in the situations involving CMD and SCC were subtle in their actions, which it can be argued were acts of symbolic violence in which the officers abused the symmetries of power because CMD and SCC were powerless to resist; further cementing their transmogrification from zombified person into *homo sacer*, which are explored further in the next two chapters.

Systemic Failure: A Flaw in the System

A systemic failure is defined by Sethi and Sethi (2014) as "a failure due to a flaw or flaws in a system" (p. 1). The flaw that causes systemic failure in the criminal justice system is viewed as involving an omission, or a failure to act on the part of an 'official' (Crofts, 2016). However, it is noted that rather than a moral duty, a person must have a legal duty to act before they can be held accountable for the flaw or the omission (Crofts, 2016). Systemic failure, or flaws in the system, can be seen in the deaths of five out of the eight in-custody deaths examined in this chapter: one in police custody and four in prison custody.

Several flaws with police communications can be seen in the events leading up to the detainment of AJB. These systemic failures in communications prior to and following AJB's death are illustrative of symbolic violence. As explained in Chapter Three, they show how language can include or exclude and how it informs the relations of power between Indigenous Australians and the criminal justice system.

The first two flaws reflect the 'failure to act component' of a systemic failure as described above. The first flaw involves the communication between the emergency operator and the member of the public who called reporting, "*someone out here with um a, looks like a machete or something*" (Queensland Government, 2010, p. 5), when, in fact, it was a bat. The emergency operator did not verify with the caller that he was sure that AJB was indeed carrying a machete but put a call for assistance out over the radio regarding "*a male standing in that front yard armed with a machete and are going off*" (Queensland Government, 2010, p. 5).

The second flaw is that the officers responded to the call immediately and "*did not wait to verify the information*" (Queensland Government, 2010, p. 13) but instead "*merely assumed it was accurate and acted accordingly*" (Queensland Government, 2010, p. 13). This demonstrates an institutional flaw whereby police officers are trained not to question what is conveyed by the radio

operator. Therefore, as the coroner states "*they spent no time considering the most appropriate means of addressing the threat they assumed he posed but leapt into action with little regard to the consequences*" (Queensland Government, 2010, p. 13).

The third flaw is the failure of the officers involved to act truthfully when asked to relay their version of the events on the night that AJB was detained. Initially, Senior Constable Ward stated that "*when they first came upon* [AJB] *he was facing away from them and the officers both alighted from the vehicle at which time he called out; "This is the police", which caused* [AJB] *to turn to face them*" (Queensland Government, 2010, p. 6). Whereas, Senior Constable Brett said that upon alighting the car AJB "*raised the object he was carrying in his right hand above his head*" (Queensland Government, 2010, p. 6). It is important to note here that a witness "*denied* [AJB] *ever advanced on the officers or threatened them with the object he had in his hands*" (Queensland Government, 2010, p. 6). Interestingly, when Ward was interviewed "*the next afternoon*" (Queensland Government, 2010, p. 6), his version of events changed to say that AJB was "*making aggressive remarks, which he could not understand, and…was advancing towards Senior Constable Brett with an object held at head height*" (Queensland Government, 2010, p. 6).

This statement by Ward instantly zombifies AJB by painting a picture of him as something to be feared, a non-human dispossessed of human qualities, personality, or dignity. Furthermore, these failures reflect the sense of deific authority that sees some criminal justice employees believing that they are inherently superior to 'ordinary' humans, and even more so to zombified Indigenous Australians.

Within the prison system, the events leading up to the decisions of FJV, TLI, CWB, and GRA to take their own lives indicate a number of flaws in prison practices, particularly regarding mental health, thus classing them as systemic failures. In the deaths of FJV, TLI, and GRA three major systemic failures occurred: inadequate Initial Risk and Needs Assessment (IRNA); inaccessible/incomplete Integrated Offender Management System (IOMS) records; or not following Intensive Management Plan (IMP) process.

The inquiries into the deaths of GRA and TLI and the subsequent coroner's reports emphasise that IRNAs only focus on a short historical timescale, which means that important mental and psychiatric history is missed. For example, the IRNA conducted with TLI only focused on "*mental health issues in the past six months*" (Queensland Government, 2011b, p. 7), which meant that her "*previous admissions for mental health problems at Cairns Hospital*" (Queensland Government, 2011b, p. 7) were not included in the IRNA assessment. This was also the case for GRA, as the prison psychologist pointed out when she stated that, "*the IRNA process assesses prisoners on how they present at that point in time*" (Queensland Government, 2019a, p. 6).

The quality of the IRNA conducted with TLI was inadequate because the junior psychologist who conducted the IRNA was unaware of the "*significance of the adopted baby*" (Queensland Government, 2011b, p. 7) that was clearly indicated in TLI's previous IRNA. The junior psychologist "*acknowledged his reference to the most recent IRNA must have been incomplete*" (Queensland Government, 2011b, p. 7). Moreover, he stated that he did not access the IOMS during the IRNA because he "*had received no training in relation to and did not know how to access parole and probation service contact reports which were recorded on IOMS*" (Queensland Government, 2011b, p. 7).

There were also flaws in the use of the IOMS recorded in the events leading up to the deaths of FJV and GRA. An IOMS is:

> a cooperative and coordinated approach to the management of offenders that supports a goal of reduced re-offending, and also aims to ensure that the safety, security, health and welfare needs of prisoners and detainees are addressed in an effective manner. (Tasmanian Government, 2014, para 1).

As part of the IRNA process, the IOMS must be accessed to "*ascertain the prisoner's self-harm and suicidal behavioural history and psychiatric and psychological history*" (Queensland Government, 2019a). However, the records must be in the IOMS for the psychologist to refer to. GRA self-reported hearing voices on 30th April 2015, but this was not entered into the IOMS before the IRNA was conducted the next day on 1st May 2015. It must be pointed out though that GRA "*denied hearing voices*" (Queensland Government, 2019a, p. 7) at the time of the IRNA, however, had the information been available through IOMS the psychologist could have adjusted the outcome accordingly. Issues with the IOMS also featured in the case of FJV.

A notice of concern was raised in relation to FJV reaching out to a corrective supervisor in "*a tearful state*" (Queensland Government, 2015, p. 7), however, the notice of concern was not entered into the IOMS. This is against Queensland Correctional Services procedure that requires "*that a NOC [notice of concern] that does not result in an initial response plan be entered in a prisoner's case notes and not the Self Harm specific records in IOMS*" (Queensland Government, 2015, p. 11). Had the notice of concern been registered in the IOMS then perhaps FJV would not have been placed in a cell with a potential ligature point.

The RCIADIC recommended that ligature points be eliminated from prisons and police cells (Grant, 2013). While significant changes have been made to address this through "the development of 'safe cell' technology" (Grant, 2013, p. 47), some ligature points still remain. A prisoner with a history of self-harming or suicidal behaviour should be *"accommodated in a suicide-resistant cell*

unless other reasonable factors warrant against such placement" (Queensland Government, 2019a, p. 6).

FJV was initially housed in a suicide-resistant cell, however, he was later moved to "*cell blocks, B5, B4 and C9 in order to be with two prisoners he had nominated as being either family or able to provide support*" (Queensland Government, 2015, p. 5). At the time of his death, FJV was in Block C9, which has no suicide-resistant cells, however, at this time he was not deemed an 'at-risk' prisoner. It was not only software and system issues that were highlighted as systemic failures, but also failures in the praxis of prison officers, as highlighted in the case of CWB.

A systemic failure in the death of CWB was the quality of observations being undertaken in the High Dependency Unit in which he was housed. One of the officers on duty at the time of CWB's death described the conduct of physical observations:

> *… physical observations were conducted by looking through the window of the cell door to check on the welfare of the prisoner. He said that if the prisoner was asleep, he would not wake them. He said that prisoners in S3 were vulnerable and he thought it important not to cause upset by disturbing their sleep. If the prisoner was awake he would get an acknowledgement from the prisoner*. (Queensland Government, 2019b, p. 14)

At 12:53pm, a physical observation was conducted during a meal delivery to CWB's cell, but six minutes later, he had "*started to adapt the electrical cord attached to his cell's television to fashion a ligature"* (Queensland Government, 2019b, p. 15).

According to the CCTV footage, which was reviewed later, CWB "*can be seen to take position under the desk in the cell from which he does not get back up. While his legs can be seen in the footage, his upper body and head cannot*" (Queensland Government, 2019b, p. 15) and by 1.07pm, "*CWB had ceased all movement*" (Queensland Government, 2019b, p. 15). The coroner pointed out, however, that this did not mean "*this is the point that CWB died*" (Queensland Government, 2019b, p. 15), as he could have *survived for up to 20 minutes from the point when compression was first applied to his neck*" (Queensland Government, 2019b, p. 15).

From the time CWB began to make the ligature to the point at which he stopped moving was approximately 8 minutes. While CWB lay dead or dying, a 'muster' was conducted at 1.30pm and no one raised any concerns that he was missing. At 2.00pm the hourly observation was conducted where the officer reported "*he saw [CWB], who appeared to be asleep on the floor beside his bed [and] that it was not unusual for prisoners to sleep on the floor of their cells as it was cooler and darker there"* (Queensland Government, 2019b, p. 16). This also raises concerns about the environment in which prisoners are living if prisoners prefer to sleep on the floor of their cells. It was not until 2.48pm that

CWB's death was discovered and only because the officer physically entered the cell to speak with CWB "*about a possible move to unit S5"* (Queensland Government, 2019b, p. 16).

Systemic failures, by their very nature, place people in precarious positions. This is intensified when taken in the context of the criminal justice system, particularly with vulnerable groups, such as Indigenous Australians and those with mental health issues.

Conclusion

By examining the deaths of eight Indigenous Australians who died in police and prison custody, this chapter has shown how the lives of Indigenous Australians are subjected to the power of death. It has also highlighted how the lives of the twelve research participants have, and continue to be, subject to the power of death, therefore, highlighting that any one of the twelve could have ended up as a death in police or prison custody.

It has demonstrated that within the ranks of police and prison officers, and medical staff there are some who objectify Indigenous prisoners as something to be disgusted by or to be feared, thus, they have no compassion or empathy for them. Through this lack of compassion, dignity and respect, Indigenous Australians are effectively treated as though they are already dead; they become zombified.

This chapter has also illustrated that as a person who has become zombified, Indigenous Australians within the criminal justice system have no value to society and as such, some criminal justice employees believe they do not require any duty of care. To some employees within the criminal justice system, Indigenous Australians have no positive human qualities and are divested of individuality, therefore, there is no notion of a shared humanity with them. Hence, there is no desire to alleviate suffering or to provide the necessaries of life.

The chapter also explored how a lack of discretion sees Indigenous Australians placed in custody for minor offences that could easily have been dealt with by discretionary powers. It also established that Indigenous Australians in need of medical attention can be failed due to a lack of discretion. In other words, a lack of discretion exercised within the criminal justice system can lead to brutal consequences for Indigenous Australian people. It established that if discretion were used in at least two of the deaths investigated in this chapter, the consequences could potentially have been less brutal.

Finally, the chapter demonstrated how systematic flaws within the criminal justice system, however small or subtle, can contribute to a death in custody. It demonstrated that systemic flaws could flow from human error through a 'failure to act component' or a failure to act truthfully. It also established that systemic flaws could come from an institutional level, such as lack of adequate

training, poorly designed information systems, inadequate communication, or failure to remove ligature points.

The eight Indigenous Australians whose deaths in custody were explored in this chapter can be said to be *homo sacer,* whose deaths were neither lawful nor unlawful because they occurred in the 'state of exception'. The state of exception, as mentioned in Chapter Three, is where the law is suspended, and the exception is applied. The law is suspended to protect the criminal justice system, which makes Indigenous Australians the exception and removes their civil and human rights as citizens. As with *homo sacer*, the state of exception will be examined in greater detail in Chapter Nine.

The next chapter is the first of two theoretical analysis chapters that aim to answer the research questions by analysing the primary and secondary data through the theoretical lens of necropolitics as outlined in chapter Three. Chapter Eight provides an insight into how the analysis was undertaken by outlining the theoretical coding that was applied to the data before addressing the first research question. Chapter Nine follows on from this by addressing the second and third research questions.

8. A System of Violence: Theoretical Analysis Part 1

'See, people with power understand exactly one thing: violence"

- Noam Chomsky

Introduction

The thematic analysis conducted in the previous three chapters was the first step towards addressing the research questions posed at the start of this thesis. The next two chapters aim to further answer the three research questions by analysing the primary (interviews) and secondary (official statistics and coroner's reports) data using the theoretical lens of necropolitics, and the associated concepts, as outlined in Chapter Three. While the research questions have been drafted broadly, at least from a geographical perspective, it should be noted that the empirical focus of this thesis will be trained primarily on what is occurring in Queensland, although the implications may extend across Australia. With that in mind, this chapter is divided into four main sections.

The first section provides a brief glimpse into how the analysis was conducted using the theoretical framework employed in this research. The second section addresses the first research question: '*to what extent, and in what form, are Indigenous Australians subjected to violence in the criminal justice system*?' It does this by using the participants' exposition of the extent and type of violence they experienced in the criminal justice system and the coroner's reports to highlight forms of violence experienced by Indigenous Australians that have died in custody. In addition, it uses the official statistics to provide a broad-brushed, quantitative account of the plight of Indigenous Australians in the system.

Theoretical Coding

The information obtained from the interviews (primary data) and official statistics (secondary data), as well as the coroner's reports (secondary data), was coded according to the definitional parameters of the six theoretical concepts of necropolitics (and their operationalised variables). For an example of this, refer to Table 6.

Theoretical Concept	Definition of Concept	Variable/s	Definition of Variable	Qualitative Evidence
Necropolitics	The right of the sovereign (or state) to decide which citizens are valuable and which ones are not, as well as which citizens are expendable and which ones are not (Mbembe, 2003). In this thesis, necropolitics refers to the politics of death – political, social, cultural, and physical.	Neutrality	The maintenance of an attitude of neutrality towards Indigenous Australians.	*"If you were my colour and I was your colour you would see the outcomes where our people are not being treated fairly by the system in this prison and at courts 'n that"* - John
		Uniformity	The quality or state of being the same. In this thesis, the variable 'uniformity' focuses on the level of consistency in how Australian states and territories treat Indigenous Australians.	*"A couple of times on the Gold Coast but not like that, that was a bad one, but that was in Mildura down in Victoria as well, so. The local coppers in the Gold Coast know me, so they're not going to send me home to my mother all bloody because its gonna cause a problem"* – Steve

Theoretical Concept	Definition of Concept	Variable/s	Definition of Variable	Qualitative Evidence
Necropower	Power that is utilised to subjugate life to the power of death (Mbembe, 2003) – political, social, cultural, and physical.	Power	As per Felix Oppenheim "to be able to subject others to one's control or to limit their freedom" (as cited in Walter, 1964, p. 351). In this thesis, the variable 'power' refers to how criminal justice employees can impose their will or control over Indigenous Australians or limit their freedom.	"*They had me out behind the car against their car, they stripped me naked for a strip search. In public, and I was standing there"* - Liam
Zombification	A politico-cultural process whereby groups of people, usually minority or marginalised groups, are conferred the status of the 'living dead' because they are viewed as the dispossessed socially and politically dead 'others'.	Dehumanisation	Perception of Indigenous Australians as being less than human; to deny them as possessing human qualities, personality, or dignity; or to divest them of individuality.	"*To be honest they treat Aboriginals bad. Some of us, we got good hearts, but the way they treat us is like shit, it is shit. All of us human beings, we don't have to get treated differently because of our skin colour or we Aboriginal. We all human beings and it's hard*".

Theoretical Concept	Definition of Concept	Variable/s	Definition of Variable	Qualitative Evidence
State of Exception	In this thesis, the state of exception is a necropolitical strategy that appears to operate inside of the law, but really, functions outside of the law by temporarily suspending it.	Suspension of law	Temporarily sidestepping, ignoring, or marginalising a law that allows the guilty party to walk free. In this thesis, this refers to the lack of accountability imposed on criminal justice officers who break the law in respect to their violent treatment of Indigenous Australians.	*"I can speak for my brother. There was footage where a police officer got into a cell and…the citizen…, he was allowed into the dock to my brother. It was all on CCTV footage and still got chucked out of court and stuff like that"* – Mike
Death-worlds	A form of social existence whereby vast populations, usually minority or marginalised peoples, are subjugated to a life of social, cultural, and physical death (Mbembe, 2003).	Exclusion	The act of deliberately not allowing Indigenous Australians to be part of their families, communities, or society.	*"Cells are only about as wide as that wall to that door frame [small], maybe not that wide, maybe skinnier with just a cell window at the back. The window, the doors have windows on the front, they sealed them up so you couldn't look out and talk to other people in the unit"* – Liam

Theoretical Concept	Definition of Concept	Variable/s	Definition of Variable	Qualitative Evidence
		Genocide	The physical, psychological, and cultural destruction of Indigenous Australians as a population.	*"…it was really behind the walls of the jail system, it was a really sad, lonely life. It was like, you know, the way I described my life, I can relate to a dog that's been in the pound, a dog that's locked on a chain. If you lock a dog on a chain for some time, they become feral and nothing to do with boredom and they start to go mad"* - Mike
Homo sacer	A 'citizen' bound by the sovereign's (state's) laws, but who has no rights; who can be killed, but not murdered; who exemplifies the sovereign (state) power, but who is also powerless (Agamben, 1998; Tedmanson, 2008)	Non-citizen	Refers to Indigenous Australians being denied certain inalienable rights to which all humans are entitled.	"*No, they never asked me if I needed someone there with me"* - Sarah
		Powerless	Refers to Indigenous Australians being without the autonomy, influence, or ability to stop being unfairly treated by the criminal justice system.	"*Always get a conviction recorded, every single time"* - Ian

Table 6 - Examples of data coded to theoretical concepts and operationalised variables

Question One: Violence in the Criminal Justice System Experienced by Indigenous Australians

Using the interviews, coroner's reports, and official statistics, this section of the chapter aims to answer the first research question by analysing the extent to which Indigenous Australians are subjected to violence in the criminal justice system and exploring the forms in which this violence manifests. Violence emerged as a key theme in Chapters Five and Six with all twelve Indigenous Australian participants relaying experiences of some form of violence. Experiences of violence were also evident throughout the coroner's reports into the eight Indigenous Australians whose deaths in custody were investigated in Chapter Seven. However, the *extent* to which Indigenous Australians experience forms of violence within the criminal justice system is most clearly ascertained through the official statistics.

The term violence, according to Valentic (2016), "usually stands for forceful human destruction of property or injury to persons, usually intentional, and forceful verbal and emotional abuse that harms others" (p. 1). The forms in which this violence manifests are both objective and subjective, as well as being a matter of debate regarding whether some can be classed as violence at all (Galtung, 1969; Ruggiero, 2020).

As explained in Chapter Five, the branches of the criminal justice system were allocated necropolitical thematical identifiers. These identifiers, to reiterate, were:

- ***Necro-enforcers***: those that enforce the state's laws that subjugate the lives of Indigenous Australians to the power of death.
- ***Soul-destroyers***: those that destroy the emotions and feelings of Indigenous Australians through the recreation of inequality and injustice in the courtroom.
- ***Death-producers***: those that instigate the social, political, cultural and, at times, physical death of Indigenous Australians behind prison walls.
- ***Disintegrators***: those that contribute to Indigenous Australians' loss of cohesion and unity with their communities and the rest of society upon their release from prison.

This section is first divided according to the three forms of violence under examination in this thesis: symbolic, systemic, and subjective. Thereafter, each of these three parts is further sub-divided according to which part of the criminal justice system these forms of violence are perpetrated by, namely the necro-enforcers, soul-destroyers, death-producers, and disintegrators.

Symbolic: Mimetic Violence

Symbolic violence, as outlined in Chapter Three, involves the use of "symbolic channels of communication and cognition" (Bourdieu, 1998, p. 2). To understand how symbolic violence occurs we must, as Everett (2002) said, "understand language and the role it plays in the social world" (p. 67),

which for Taylor includes "the innately violent nature of human communication" (as cited in Legassick, 2012, p. 3). Symbolic violence, therefore, occurs in relationships between humans in an indiscernible way (Roumbanis, 2019).

This section of the chapter reveals communication by criminal justice employees with or about Indigenous Australians that signifies the extent to which symbolic violence is experienced by Indigenous Australians in the criminal justice system. The data revealed that symbolic violence is most extensively experienced by Indigenous Australians in their interactions with police officers due to their prominent position as the 'gatekeepers' to the overall system, however, some symbolic violence is experienced within prisons[29].

Necro-enforcers

Under the *Police Roles and Responsibilities Act 2000 (Qld)* (hereafter, *PPR Act (Qld)*), a police officer can arrest an individual for "using offensive, obscene, indecent, abusive or threatening language" (p. 99), which now falls under the umbrella of 'public nuisance' (Walsh, 2005). Research undertaken by Tamara Walsh and submitted to the Australian Law Review Commission in 2017, indicated that Indigenous Australians in Queensland were "up to 12 times more likely to be charged with, or receive infringement notices for, public nuisance in Queensland" (Walsh, 2017, p. 9). These notices usually stem from "allegations that the person said something that offended or insulted a police officer" (p. 9). Further, Walsh reported in 2014 that "over 2000 infringement notices were issued for 'language offences directed at police officers" (p. 9). It is interesting to note, then, that many of the research cohort had the experience of obscene and racist language being directed at them by police officers.

As detailed in Chapter Five, most of the research cohort described experiences of being taunted with racial slurs or foul language, particularly the use of the c-word, such as Joe, John, Steve, and Peter who all recollected being, or hearing other Indigenous Australians, called a variation of "*black cunts*", "*naughty cunt*", or "*little cunt*" in their interactions with the police. This exemplifies what Hoffman says of symbolic violence, that it is "the subtle interactions, behaviours, and modes of conduct that allow for the normalization and perpetuation of inequality and domination" (2017, p. 228). This includes the language used in the labelling of 'others', those who are viewed as a threat to the current hegemony (Drahos, 2012).

[29] From the data obtained for this research, symbolic violence was not revealed within the court system, however, I believe this is an area that requires further research involving data collection that was outside the scope of this project due to time and budget considerations, such as observation of court cases and accessing court transcripts.

Language inherently creates, according to Drahos (2012), an "implicit other" (p. 20). Drahos provides the example of the term 'boat people' used to describe asylum seekers, saying the term sees them as "not really people per se, but a sub-class of subject, the barely visible transgressors" (p. 21). In Australia, being Indigenous is enough to be singled out as the 'implicit other' that is a threat to the "possessive logics of patriarchal white sovereignty" (Moreton-Robinson, 2015, p. xi), let alone the additional burden of being labelled as a criminal from a young age. Additionally, the term 'cunt', which is a derogatory description of a woman's vagina, that is used by some police officers against some of the male Indigenous Australians in this study, could be viewed as a form of patriarchal subjugation or 'othering' because the label imposed by the former, symbolically emasculates or feminises, the latter.

During his stay in a watchhouse where he received his methadone, the intersection of Frank's indigeneity with other 'labels', such as 'addict', and 'offender' saw him singled out as the 'implicit other'. Frank explained that Indigenous Australians were treated differently and when he questioned the treatment he received, the officer responded, "[*t*]*his is how we treat black people*". Others in the research cohort described being labelled as criminals, which resulted in being harassed by police regularly for no specific reason. For example, Liam stated, "…*you always going to be treated like a criminal, that's how I grew up. Why try and grow up to be something else when you're going to be treated the same way*" or Joe who explained, "…*you got that target on your back, that's for life. Don't matter if you off parole 'n that, you trying to do good. They still pick on you, I get blamed, I get pulled up for nothing all the time*".

The implication of the 'implicit other' can also be seen in the aftermath of the death of AJB in which one of the police officers changed his statement to align with that of his colleague (Queensland Government, 2010). As set out in Chapter Seven, Senior Constable Ward changed his statement from AJB being passive and compliant to "*making aggressive remarks, which he could not understand*" (Queensland Government, 2010, p. 6). This illustrates a form of symbolic violence in which language is not only altered but used to frame the 'implicit other' as a direct threat. In this instance, the implication that AJB was using aggressive language that the officer could not understand since it was incomprehensible or unintelligible, contributes to the view of AJB as sub-human, instantly zombifying him. The process of zombification is explored in more detail in the next chapter.

Death-producers

In a recent showing of the television show Australian Survivor, New South Wales corrections officer, Dani Beale, announced that "The Australian Outback might be fierce, but it's no match to the snakes I deal with every single day" (Marie Claire, 2021, para 12). This sentiment, although not expressly aimed at Indigenous Australian prisoners, is a prime example of the inherently violent nature of human

communication within the criminal justice system, as well as the creation of the implicit other through language.

In this research, symbolic violence was evident in corrective services, albeit less prevalent and more subtle in its manifestation than in the police service. Many of the research cohort described communication as being provocative and confrontational, such as Joe who described the guards in the youth detention centre as trying to "*scare you*" if you were being moved to the adult prison saying, "*watch out when you get there*". Mike added to this by pointing out that the officers would "*chuck smart comments around*", however, if someone retaliated "*they take your stuff off you just for being smart back to them*". Sarah said that she was surprised by the way the officers spoke, stating "*I was shocked when I first went in there…the way they spoke, shouting and swearing*", as well as "*being a bit racist*".

The racism extended not only to the way corrections officers spoke to Indigenous Australians in the prisons, but to the way prison officers branded Indigenous Australians as especially troublesome. For example, Frank stated, "*they* [prison officers] *think you* [Indigenous Australians] *are always up to no good, think you're trying to cause trouble or you're doing this or you're doing that*". Frank also added that an argument with a prison officer can see an Indigenous Australian face being written up (a record of the incident on file) or having a squad sent in for them, whereas, he said, "*a white person who does that they just go in there and cuff them and walk them out*".

As with some police officers, it appears that some prison officers view Indigenous Australians as having an inherently deviant and criminal nature (as evidenced by the opinions of some of this study's participants), which further cements their status as the 'implicit other', not only within society, but also within the prison. This status within the prison walls as the 'implicit other' leaves Indigenous Australians vulnerable to the process of zombification, as discussed further in Chapter Nine.

Through the primary data (interviews), this section has explored the extent to which symbolic violence is experienced by Indigenous Australians in the criminal justice system. It has established that symbolic violence, in this study, was primarily experienced in interactions with the police, with some police officers using provocative, offensive, and indecent language, particularly racial slurs, towards Indigenous Australians. However, it also established that some police officers are subjecting Indigenous Australians to symbolic violence by using language to frame them as the 'implicit other' by labelling Indigenous Australians as criminals, or as possessing an inherent deviancy.

Additionally, this section has established that symbolic violence also occurs within the prison system with some prison officers and medical staff also using provocative and racist language, as well as using communication and cognition to mould the image of Indigenous Australians as the 'implicit other'. The use of symbolic violence by some police and prison officers and some medical staff in

framing Indigenous Australians as the 'implicit other', as *personas non gratis* if you will, provides a foundation for systemic violence towards Indigenous Australians in the criminal justice system.

Systemic: Invisible Violence

Of the three types of violence examined in this thesis, systemic violence is the most pervasive being perpetrated by necro-enforcers, soul-destroyers, death-producers, and disintegrators. As explained in Chapter Three, systemic violence results as a consequence of the ordinary, day-to-day operations of society's various systems, for example, its economic, political, educational, and more particularly for this thesis, its criminal justice system. For society to function normally, the criminal justice system endows its criminal justice employees with power and discretion to discharge certain responsibilities that relate to the maintenance of order, enforcement of the law, and the safety of the community.

Such powers and discretions include, but are not limited to, the power to caution, arrest, and prosecute; determine whether there has been a breach of a community corrections order[30]; issue medication; detain, imprison, or impose solitary confinement. Systemic violence stems from how these legitimate powers and discretions are exercised in a way that, though not illegal, nevertheless leads to or "reproduces inequality, immobility, injustice and misery" (Ruggiero, 2020, p. 5) for particular demographic groups within the community. Using the primary (interviews) and secondary (coroner's reports and official statistics) data, the next three sections reveal how systemic violence is experienced by Indigenous Australians in the criminal justice system.

Necro-enforcers

Necro-enforcers, in the form of the police, are legally imbued through the *PPR Act (Qld)*[31] with a range of powers and discretions that are relevant to this thesis. Some of these key statutory powers/discretions will be analysed below. This section focuses on sections 365 (arrest without warrant), 368 (arrest of person given notice to appear or summons), and 369 (arrest under warrant).

An alleged adult offender can have several types of actions taken against them by the police, which include arrest, summons, notice to appear, or warrant (issued by a judge for police to action) (Queensland Police Service, 2018). In the period 2016-2017[32], in Queensland, Indigenous Australians accused or suspected of being an offender were 1.4 times more likely to be arrested than non-Indigenous Australians (Queensland Police Service, 2018). However, Indigenous Australians are as

[30] Includes parole, probation, intensive correction order, community service order.
[31] Although this section does include statistics from other states and territories the main focus of the thesis is Queensland, thus the legislation for this state was the main focus.
[32] The most recent statistics available for Queensland Police Service.

likely (1.0 times) to have a warrant issued for their arrest and less likely to be given a notice to appear (0.8 times) than non-Indigenous Australians (Queensland Police Service, 2018).

These numbers appear relatively low. However, this must be understood in the context that Indigenous Australians are more likely to be proceeded against (i.e., be charged with an offence) than non-Indigenous Australians. Between 2009 – 2020, Indigenous Australians across Australia were 6.4 times more likely to be proceeded against by the police than non-Indigenous Australians [33] (Australian Bureau of Statistics, 2021e). Within the five states and territories for which such data is available, there is statistical variability with the lowest being New South Wales at 5.0 times and the highest being Northern Territory at 11.7 times more likely (Australian Bureau of Statistics, 2021e). In Queensland, the central focus of this thesis, Indigenous Australians were 5.6 times more likely to be proceeded against than non-Indigenous Australians (Australian Bureau of Statistics, 2021e).

Further investigation of the data, specifically focusing on Queensland, demonstrates that in the year 2016-17[34], 10- to 14-year-old Indigenous Australian children were 16.4 times more likely to be proceeded against by the police than their non-Indigenous counterparts (Queensland Police Service, 2018). This was reflected in Chapter Five in terms of the police interacting with Indigenous Australian children as young as 10-years-old for minor infractions, as pointed out by Mike, who explained, "*as a kid it was a lot of targeted arrests for minor and petty crimes, there weren't a lot of chances happening*". In fact, the data for Queensland demonstrated that for *all* age groups, Indigenous Australians were more likely to be interacted with by the police than their non-Indigenous counterparts during 2016-17[35] (Queensland Police Service, 2018).

Not only are Indigenous Australians more likely to be proceeded against by the police, but they are also more likely to be proceeded against more than once in comparison to non-Indigenous Australians (Australian Bureau of Statistics, 2021e). This disparity rises the more times an offender is proceeded against. For the period 2019-20, Indigenous Australians in Queensland were 2.1 times more likely to have been proceeded against by the police more than five times in comparison to non-Indigenous Australians (Australian Bureau of Statistics, 2021e). Across the rest of Australia, where data was available, the pattern was the same with Indigenous Australians in South Australia, Northern Territory, Australian Capital Territory, and New South Wales being 2.1, 2.7, 3.4, and 2.1 times more

[33] Not including Victoria, Tasmania, and Western Australia for whom interaction data is not available as they do not record the Indigenous status of alleged offenders.
[34] The most recent statistics available for Queensland Police Service.
[35] Appendix D contains a graph with further details.

likely to be proceeded against five times or more than non-Indigenous Australians, respectively (Australian Bureau of Statistics, 2021e).

It is not surprising, therefore, that the participants of this doctoral study described their fear of being arrested on seeing a police officer. For example, John, who said, "*I get a bit wary from them, eh? I feel they would walk up to me and arrest me*", or Liam who said "*you're conscious as well because they are stopping, and they are going to drag you around and do whatever they doing to do to you"* and that in Brisbane "*I couldn't go to the shopping centre and 100%, well maybe not 100%, they will walk up to you and do the full thing on you*".

The right to stop and search is another power held by the police under Section 29 of the *PPR Act (Qld)*. This, however, does not allow for strip searches to be conducted in public. Despite this, there have been some high-profile cases of Indigenous Australians being strip-searched in public places in other states, including an Aboriginal elder on a busy Sydney street and an Aboriginal man on an Adelaide street (Gregoire, 2019; Welcome to country, 2017a, 2017b). In Chapter Five, one of the research cohort, Liam, had been subjected to not one but two humiliating public strip searches in Queensland.

One of these searches found Liam completely naked in public where, he said, "*I had to fight to get me jocks back*". It was only once he was in the police car that he was given his "*jocks back and finally got my trousers back*". These incidences should have resulted in a charge of misconduct according to Section 7 of the *PPR Act (Qld)*. However, due to the state of exception that exists within the criminal justice system whereby a law appears to be suspended temporarily in favour of criminal justice employees, this mistreatment of Indigenous Australians continues unabated, a topic that is expounded further in the next chapter.

The primary and secondary data above outline the extent to which systemic violence is being exercised against Indigenous Australians through powers, discretions, and responsibilities that are being exercised in a manner that although technically not illegal, reproduces inequality, injustice, and misery for Indigenous Australians. Furthermore, I argue that they indicate that Indigenous Australians are being necropolitically targeted by the police, which will be explored in more detail in the next chapter.

It is argued by Ruggiero (2020) that systemic violence "is not the outcome of individually or collectively planned cruelty, although its impact affects life and causes cruel death" (p. 5). In the lives of the research cohort, as well as those Indigenous Australian people behind the statistics outlined above, systemic violence committed by the police certainly impacted their lives, if not physically, then certainly psychologically. Tragically, for many Indigenous Australians who become ensnared in the

criminal justice system, the systemic violence they experience due to the ordinary functioning of the system can sometimes lead to a cruel death[36].

As a result of the power to arrest, during the period 2010 – 2019, Indigenous Australians were 7.8 times more likely to die in police custody than non-Indigenous Australians (Australian Institute of Criminology, u.d.; Baker & Cussen, 2015; Gannoni & Bricknell, 2017, 2019; Lyneham & Chan, 2013; Lyneham, Larsen, & Beacroft, 2008; Ticehurst, Napier, & Bricknell, 2018). The circumstances in which Indigenous Australians died in custody during this period included in an institution, such as a police cell or psychiatric ward (2.3 times more likely), in 'other'[37] (2.1 times more likely), and while being detained (1.3 times more likely) (Australian Institute of Criminology, u.d.; Baker & Cussen, 2015; Gannoni & Bricknell, 2017, 2019; Lyneham & Chan, 2013; Lyneham et al., 2008; Ticehurst et al., 2018).

Furthermore, Indigenous Australians during this same period were 7.4 times more likely to die from a head injury than their non-Indigenous Australian counterparts, and 2.8 times more likely to die from 'other/multiple'[38] injuries (Australian Institute of Criminology, u.d.; Baker & Cussen, 2015; Gannoni & Bricknell, 2017, 2019; Lyneham & Chan, 2013; Lyneham et al., 2008; Ticehurst et al., 2018). The state or territory with the highest likelihood of deaths in police custody during the period 2009-2019, was South Australia where Indigenous Australians were 9.6 times more likely to die in police custody, and the lowest was the Australian Capital Territory and Tasmania where they were no more likely to die at 0.0 (Australian Institute of Criminology, u.d.; Baker & Cussen, 2015; Gannoni & Bricknell, 2017, 2019; Lyneham & Chan, 2013; Lyneham et al., 2008; Ticehurst et al., 2018).

From these statistics, it can be argued that systemic violence through the power to arrest and restrain was experienced by, and contributed to the deaths in custody of, SCC, HJM, CMD, and AJB. Although these four men were arrested for different reasons under the *PPR Act (Qld)*[39], their arrest and/or restraint resulted in their deaths. Arguably, the use of these police powers generally inflicts significant systemic violence on Indigenous Australians, and hence tragically, increased the likelihood of the deaths of these four men while under restraint or in custody.

Law enforcement is not the only area of the criminal justice system to have issues with systemic violence. The court processes also inflict systemic violence, as seen through the arguably

[36] Some of these deaths will also be linked to subjective violence dependent upon the cause of death.
[37] No official definition is provided for 'other' circumstances in the National Deaths in Custody program
[38] No official definition is provided for 'other' causes in the National Deaths in Custody program
[39] AJB and SCC were arrested without a warrant under the S365/1G; HJM was arrested under S53BC/L; and CMD was arrested ostensibly under S53BC/B.

inequitable consequences resulting from the exercise of various legal powers to prosecute, convict, and sentence.

Soul-destroyers

Once the police have collected their evidence against an alleged offender for more serious offences, it is sent over to the Director of Public Prosecutions (DPP)[40], who, under section 10 of the *Director of Public Prosecutions Act 2006 (Qld)*[41](hereafter, *DPP Act (Qld)*), has the power to "prepare, institute and conduct on behalf of and in the name of Her Majesty (i) criminal proceedings". Once the decision has been taken to prosecute and the case goes to court, the outcome is dependent on the powers and responsibilities endowed upon the judges, juries, and the defendant's lawyers.

In Queensland, before a case goes to court, an Indigenous Australian defendant is entitled to access legal support from the National Aboriginal and Torres Strait Islander Legal Service (NATSILS). Each state or territory has a branch of NATSILS, such as the North Australian Aboriginal Justice Agency in Northern Territory or Aboriginal and Torres Strait Islander Legal Service in Queensland (ATSILS). As detailed in Chapter Five, ATSILS was established to provide a legal service that was not only professional, but also culturally safe and appropriate. Furthermore, criminal defence lawyers have a responsibility to "argue that the prosecution has failed to prove one of the elements beyond reasonable doubt" (Makela, 2017, para 2). When one turns to the qualitative data garnered in this present study, however, many of the participants relayed that they were being informed, if not pressured by ATSILS to plead guilty regardless of their innocence or guilt.

This was exemplified by Ian and Colin. Ian stated that ATSILS "*actually tell you that it's better to plead guilty…even if you can beat the case*", which Colin reinforced stating that ATSILS told him that, "*it would look better in front of the judge*". According to several participants, the reason provided by ATSILS for pleading guilty is that they will get a lesser sentence, whereas pleading not guilty, but being found guilty by the court would get them a longer sentence. As explained by Ian, Steve, and Liam:

"[ATSILS] *just said OK if I plead guilty, I'd get a shorter sentence*" – Liam

"…*quicker process and less time*" – Ian

[40] Or the Commonwealth Director of Public Prosecutions for some cases against Commonwealth law.
[41] Or equivalent legislation for each state and territory.

> "*They* [ATSILS] *just look at your charge and they just tell you what you're gonna get pretty much"* – Steve.

The statistics, however, did not support the qualitative data with Indigenous Australians in the period 2016-18 no more likely to plead guilty than non-Indigenous Australians in New South Wales, Queensland and South Australia and only marginally more likely in the Northern Territory (Australian Bureau of Statistics, 2018b, 2019b).

In the Magistrates' Court, the power to find a plaintiff guilty or not guilty falls to the judge, whereas in the Supreme/District Court the decision falls to a jury (Commonwealth Director of Public Prosecutions, u.d.). It is the prosecution's responsibility to prove beyond reasonable doubt that the accused committed the crimes for which they are being prosecuted, but the power to decide whether 'beyond reasonable doubt' has been achieved falls to the judge or the jury (Commonwealth Director of Public Prosecutions, u.d.). The power to find a person guilty appears, according to the statistics, to be disproportionately used against Indigenous Australian defendants.

In the period 2011-2018, Indigenous Australians in Queensland were 12.4 times more likely to be found guilty than to have their cases acquitted or withdrawn (Australian Bureau of Statistics, 2014b, 2015b, 2016b, 2017b, 2018b, 2019b). This pattern was similar across New South Wales, South Australia, and Northern Territory with Indigenous Australians being respectively 5.1, 3.1, and 5.8 times more likely to be found guilty than to have their cases acquitted or withdrawn (Australian Bureau of Statistics, 2014b, 2015b, 2016b, 2017b, 2018b, 2019b). It is not surprising then that this level of systemic violence creates the level of despondency expressed by the research cohort in Chapter Five.

After pleading guilty or being found guilty, the accused person (or more accurately, the 'convicted' person) then receives their sentence. The power to impose a sentence is endowed under Section 3 of the *Penalties and Sentences Act 1992 (Qld)* (hereafter, *PS Act (Qld)*), which provides "general powers of courts to sentence offenders". Furthermore, under Section 12 of the act, the court (judge) has the power to "exercise discretion to record or not record a conviction". The relevant statistics demonstrate that Indigenous Australians are more likely to be on the receiving end of a recorded conviction than non-Indigenous Australians.

The statistics reveal that in the Magistrates' Courts of Queensland, Indigenous Australians are 1.2 times more likely than non-Indigenous Australians to be handed down a custodial sentence, although it should be noted that they were no more likely to be handed down a custodial sentence in the Supreme/District Courts of Queensland (Judicial Commission of New South Wales, 2021). Even when an Indigenous Australian is given a non-custodial sentence by a Queensland Magistrates' Court, they are 1.7 times more likely to have a conviction recorded than non-Indigenous Australians and 1.1

times more likely to have one recorded in the District/Supreme Courts (Judicial Commission of New South Wales, 2021). These statistics support Ian's statement that he, "*always get a conviction recorded, every single time"* and when asked if he would get a conviction recorded when he was taken to court, Grant said, "*yeah. I'm happy to show you my criminal files*".

Systemic violence creates a despondency towards the courts that results from the mental and emotional harm experienced by Indigenous Australians who are funnelled through the courts and into the prison system where further exposure to systemic violence (as well as the other forms of violence mentioned herein) await them.

Death-producers

Incarceration does not occur in a vacuum. It requires the involvement of the police and the courts, which means it is inextricably linked with the exercise of legitimate powers and discretions of both the police and the courts mentioned above. Thus, it is arguable that the high rate of Indigenous incarceration across Australia is a continuation of the systemic violence that flows from the police through the courts and onto the prison system.

During the period 2009-2020, Indigenous Australians were 9.0 times more likely to be in prison than non-Indigenous Australians (Australian Bureau of Statistics, 2009, 2010, 2011, 2012, 2013, 2014a, 2015a, 2016a, 2017a, 2018a, 2019a, 2020). Furthermore, in all states and territories during this period, Indigenous Australians were always more likely to be in prison than non-Indigenous Australians, with the highest disparity being in Western Australia where Indigenous Australians were 26.4 times more likely to be in prison (Australian Bureau of Statistics, 2009, 2010, 2011, 2012, 2013, 2014a, 2015a, 2016a, 2017a, 2018a, 2019a, 2020). The lowest disparity, but still high, was in Tasmania with Indigenous Australians being 6.3 times more likely to be in prison (Australian Bureau of Statistics, 2009, 2010, 2011, 2012, 2013, 2014a, 2015a, 2016a, 2017a, 2018a, 2019a, 2020). Indigenous Australians in Queensland, the central focus of this thesis, were 10.1 times more likely to be imprisoned than their non-Indigenous Australian counterparts (Australian Bureau of Statistics, 2009, 2010, 2011, 2012, 2013, 2014a, 2015a, 2016a, 2017a, 2018a, 2019a, 2020).

Given that Indigenous Australians are more likely to be proceeded against five or more times by the police, as mentioned previously, it is not surprising to find that Indigenous Australian prisoners in all states and territories are also more likely to have experience of prior incarceration. As of December 2018, Indigenous Australian prisoners across Australia were 1.7 times more likely to have been incarcerated previously (Australian Bureau of Statistics, 2018c). When drilling down to the state and territory level data, the highest disparity was highlighted in the Northern Territory where Indigenous Australians were 2.9 times more likely to have been incarcerated and the lowest disparity was in Tasmania at 1.2 times (Australian Bureau of Statistics, 2018c).

Although this systemic violence is flowing into the prison from external sources (i.e., the police and the courts), this is not to say that systemic violence does not also occur within prisons due to the powers endowed upon prison officers and medical staff who work in the prisons. Within the prison walls, the smooth functioning of the prison system primarily falls to the prison officers. To maintain the security and good order of the prison, the prison officers are endowed with specific powers under the *Corrective Services Act 2006 (Qld)*[42]. This includes the power under Section 121 to place people within the detention unit, which is more widely referred to as solitary confinement.

The use of solitary confinement for any reason is a matter of great debate, as discussed in Chapter Six, but it is a display of systemic violence that places the recipient in a potential situation of physical, psychological, and emotional harm (Grassian, 1983, 2006; Grassian & Friedman, 1986; Haney, 2002). Through a Right to Information request[43], statistics for the use of solitary confinement were obtained for Lotus Glen Correctional Centre (Lotus Glen) and Borallon Correctional Centre (BCC) for the period of January 2018[44]. In both prisons, Indigenous Australians were 1.5 times more likely than non-Indigenous prisoners to be sent to solitary for security/good order of the prison than non-Indigenous Australians, but no more likely to be sent there due to accommodation requirements or risk of harm to self or others (Queensland Corrective Services, personal communication, December 2, 2019).

Both Liam and Joe experienced solitary confinement but in different prisons, one in Far North Queensland and one in Southeast Queensland. In the few weeks that Joe spent in solitary, he was stripped naked, assaulted, and then told to have a cold shower, "*they strip you off naked and bash you, man and leave you there. When it's time for shower it's cold"*. For four months, Liam said that he, "*never even got visits*", which is emotionally harmful, but in addition, the only exercise he got was, "*in the yard that's joined on to it [the cell]*" and the officers only, "*let you out for one hour*", which is physically and psychologically damaging.

In respect to the treatment of physical and psychological trauma, it is the responsibility of the medical staff (i.e., doctors, nurses, psychologists) to "make the care of patients their first concern" (Medical Board of Australia, 2020, p. 5). This includes the "responsibility to protect and promote the health of individuals" (Medical Board of Australia, 2020, p. 5) because "[g]ood medical practice is

[42] Or relevant legislation within each state or territory.
[43] This is an area that highlights the limitations of official statistics, particularly when access to extensive statistical information through a Right to Information request is denied or has the scope of the request scaled back significantly.
[44] The original right to information request was rejected with the recommendation that the timescale originally requested (Jan – Dec 2018) be scaled back to one month for two prisons.

patient-centred" (Medical Board of Australia, 2020, p. 5). According to the *Standards for Health Services in Australian Prisons*, however, prisons present health practitioners with "a significant challenge for the delivery of high-quality primary healthcare" (p. 2). Despite this, they go on to state that there is a responsibility to provide "respectful and culturally appropriate care to patients" (The Royal Australian College of General Practitioners, 2011, p. 49), which includes "not discriminat[ing] against patients based on their gender, race, disability, indigenous [*sic*] status…criminal convictions or medical condition" (The Royal Australian College of General Practitioners, 2011, p. 49). In other words, medical staff have a responsibility to provide the same level of medical care that can be expected outside of the prison.

This is particularly poignant given that 24.2% of all deaths in custody during 2010 – 2019, regardless of Indigenous status, were the result of self-inflicted injuries (Australian Institute of Criminology, u.d.; Baker & Cussen, 2015; Gannoni & Bricknell, 2017, 2019; Lyneham & Chan, 2013; Ticehurst et al., 2018). One would, therefore, consider that the mental health of prisoners would be a priority for corrective services. Not so, according to some of the research project cohort, particularly Frank, who said it "*is disgraceful*".

When feeling compelled to self-harm Frank reached out for help and said he was "*lock[ed] up in a room with a TV and just left me there for two weeks, they didn't even come and talk to me or anything. Just locked me in and made sure I had a TV and made sure I had my buy-up*[45]". Moreover, no programs were offered to Frank, he said, "*nah, they just put me on medication*". This concurs with what Steve said about the level of treatment of mental illness when he stated, "*I don't think that person really cares…just sedating them for their prison term, so when they get out, they've got another problem*". As discussed above in the necro-enforcer section, systemic violence can lead to a cruel death, and, as the thematic name suggests, it is no different within the realm of the death-producers.

Nationally, Indigenous Australians are 7.7 times more likely to die in prison custody than non-Indigenous Australians (Australian Institute of Criminology, u.d.; Baker & Cussen, 2015; Gannoni & Bricknell, 2017, 2019; Lyneham & Chan, 2013; Ticehurst et al., 2018). In terms of the cause of deaths in prison custody, Indigenous Australians are 2.6 times more likely than non-Indigenous Australians to die as a result of 'other/multiple[46]' injuries, and 2.6 times more likely to die in a manner that is classified as 'not determined' (Australian Institute of Criminology, u.d.; Baker &

[45] A system that allows prisoners to buy additional items using either their wages or money put into their prison account by family and friends.
[46] Other is not officially defined in the National Deaths in Custody program

Cussen, 2015; Gannoni & Bricknell, 2017, 2019; Lyneham & Chan, 2013; Ticehurst et al., 2018). Interestingly, although Indigenous Australians in Western Australia over the period 2009-2020 were 26.4 times more likely to be incarcerated, they were 1.1 times more likely to die in prison custody (Australian Institute of Criminology, u.d.; Baker & Cussen, 2015; Gannoni & Bricknell, 2017, 2019; Lyneham & Chan, 2013; Ticehurst et al., 2018).

The state or territory with the highest likelihood of Indigenous deaths in custody was Queensland where, during the period 2009-2019, Indigenous Australians were 9.5 times more likely to die in prison and the lowest was the Australian Capital Territory where there were no Indigenous deaths in custody during this period (Australian Institute of Criminology, u.d.; Baker & Cussen, 2015; Gannoni & Bricknell, 2017, 2019; Lyneham & Chan, 2013; Ticehurst et al., 2018).

It could be argued that some Indigenous deaths in custody are occurring as a result of prison officers and medical staff failing in their responsibilities regarding vulnerable prisoners, particularly Indigenous Australians with mental illness. This can be evidenced, in part, by four of the in-custody deaths of Indigenous Australians considered in this thesis. Although all four deaths occurred due to self-inflicted injuries, it can be reasonably contended that the systemic violence stemming from prison officers and medical staff failing in their responsibilities contributed to the decision to take their own lives, as alluded to by the coroner in the inquest into the death of TLI:

> *It is impossible to know the extent to which insufficient analgesia and the resulting sleep deprivation contributed to her decision to end her life, but they were probably factors. I say this not to apportion blame for* [her] *death to those responsible for her health care but to remind them, if that's necessary, of how far reaching the effects of their decisions can be*. (Queensland Government, 2011b, p. 11)

In the days leading up to his death, FJV had expressed feelings of "*frustration and report[ing] he 'felt victimised by the system', 'was fed up' and that 'everything he wanted to do fell on deaf ears'*" (Queensland Government, 2015, p. 6), as well as being found at one point in "*a tearful state*" (Queensland Government, 2015, p. 7). However, despite a mental health diagnosis that included Post Traumatic Stress Disorder and mixed personality disorder, the medical staff did not place FJV on an observation regime because he denied having suicidal thoughts. Thus, the medical staff failed in their responsibility to provide a duty of care to a vulnerable prisoner. A day later, FJV was found "*hanging from the bars above his door*" (Queensland Government, 2015, p. 9).

In the case of CWB, there were multiple failings. Firstly, in the application of risk management by medical staff, and secondly, by the prison officers conducting the observations and prisoner musters. Before his death, CWB expressed concerns about being moved to another unit and indicated, "*he would self-harm if that was a means to stay in unit S3*" (Queensland Government,

2019b, p. 12). A psychologist assessed CWB as "*being at moderate risk of suicide*" (Queensland Government, 2019b, p. 6), however, she admits she took "*a conservative approach to risk management*" (Queensland Government, 2019b, p. 6) despite CWB having a record of three previous suicide attempts. Around 12:59pm, in the High Dependency Unit where CWB was being 'observed', he "*started to adapt the electrical cord attached to his cell's television to fashion a ligature*" (Queensland Government, 2019b, p. 15). However, it was not until 2:48pm that his body was discovered, even though a muster had been conducted at 1:30pm and an 'observation' was undertaken at 2:00pm (Queensland Government, 2019b). Observation logs are recorded individually for each prisoner and "*are signed by the officer conducting the observation*" (Queensland Government, 2019b, p. 15). Interestingly, CWB's observation log, which should have been hanging outside his cell, "*could not be located after his death*" (Queensland Government, 2019b, p. 15). Furthermore, CWB's body was only discovered because a prison officer physically entered the cell to speak with CWB "*about a possible move to unit S5*" (Queensland Government, 2019b, p. 16).

On the morning of GRA's death, he informed a prison officer "*that there had been prisoners tunnelling into his cell the previous night and pointed to the pin board on his wall to indicate where the tunnelling had occurred*" (Queensland Government, 2019a, p. 8), but, like FJV, he denied thoughts of suicide. The officer did not raise a Notice of Concern on observing GRA's unusual behaviour, but instead allowed GRA to return to his cell to rest, unobserved (Queensland Government, 2019a). Later that day, prisoners heard someone "*calling for help*" (Queensland Government, 2019a, p. 8), however, it was another prisoner who went to check on GRA, at which point he "*observed blood coming from under the cell door*" (Queensland Government, 2019a, p. 8). The prison officer stated that he was unaware of GRA's status as a schizophrenic and that had he been aware of this, his response would have been different (Queensland Government, 2019a). This highlights not only a lack of mental health awareness by the officer, but also a failure in the communication systems within the prison that may have prevented GRA's death.

On her admission to prison, TLI had a medical assessment conducted that noted that she had been involved in a traffic accident that left her with multiple, serious fractures that continued to contribute to her chronic pain condition (Queensland Government, 2011b). However, as detailed in the coroner's report into TLI's death, it appears the medical team 'treating' her saw fit to continuously deny her request for adequate pain medication, contravening the responsibility to provide medical treatment equal to that offered outside of the prison (Queensland Government, 2011b; The Royal Australian College of General Practitioners, 2011).

In a display of deific authority, that will be explored in more detail in the next chapter, the doctor declared TLI's pain to be "*neuropathic in origin*" (Queensland Government, 2011b, p. 8),

which the coroner explained meant that the doctor "*did not believe [TLI] had chronic or severe pain*" (Queensland Government, 2011b, p. 8). As the coroner detailed TLI "*was receiving more effective medication when she was in the community*" (Queensland Government, 2011b, p. 11) and that the prison health service had failed to "*give an adequate standard of care mean[ing] the service failed to comply with the standard the government had set for it*" (Queensland Government, 2011b, p. 11). Moreover, the coroner qualified these failures meant that TLI had inadequate pain medication for the duration of her incarceration (Queensland Government, 2011b).

From these examples, it can be argued that the systemic violence perpetrated by prison officers and medical staff through their failure to fulfil their responsibilities to vulnerable prisoners, can be a potential factor in the decision of a vulnerable prisoner to take their own life. Dr Hoskins, as cited in the coroner's report for TLI, sums it up adequately, "*we do people a great disservice if they have a genuine need for pain relief and we fail to prescribe it when they are deprived of their liberty*" (Queensland Government, 2011b, p. 11).

It has been discussed here that systemic violence flows through the criminal justice system from the police into the courts and then into the prisons. Likewise, it is arguable that it does not end with the prisons but flows into community corrections who have the power to (a) amend or suspend the parole order should the relevant officer (via the delegatory powers of the Chief Executive) be of the opinion that the parolee has breached any of the parole conditions; or (b) amend, suspend or cancel the Parole Order should the Parole Board be of the opinion that the parolee had breached any of the parole conditions. It will be argued here that this happens disproportionately to Indigenous Australians who are on parole orders.

Disintegrators

There are two different types of parole that an individual can be released on. One is court ordered parole and the other is parole from prison. When an individual is on either type of parole, they are supervised in the community by a community corrections officer who has the responsibility under the *Corrective Services Act 2006 (Qld)* to ensure they adhere to the conditions of their parole[47]. It is the community corrections officer who has the discretionary power in terms of the "administration of contravention documentation [and]…breach documentation" (Queensland Government, 2021, p. 2). In other words, it is down to the discretion of the individual community corrections officer whether or not to report a breach or contravention of parole to the Parole Board.

[47] See Appendix C for options for parole conditions in different states and territories.

Such community corrections officers are also, when delegated to do so by the Chief Executive, empowered to amend or suspend the parole orders of those they suspect of having contravened their parole conditions (see Sections 201 and 271). Mr Sofronoff QC posits that "suspending offenders and returning them to custody should be used as a last resort when the risk to the community becomes intolerable" (Queensland Government, 2019d, p. 55). However, in Far North Queensland[48] and North Queensland[49] regions, the power to breach parole is used disproportionately against Indigenous Australians[50].

In the period January 2018[51], Indigenous Australians in Far North Queensland and North Queensland were 11.5 times more likely to be recorded in breach of parole than non-Indigenous Australians (Queensland Corrective Services, personal communication, December 2, 2019). In terms of the reasons for the breaches, Indigenous Australians were 1.2 times more likely to be in breach for 'failure to report' than non-Indigenous Australians and only Indigenous Australians were in breach for 'multiple reasons' (Queensland Corrective Services, personal communication, December 2, 2019).

As pointed out in Chapter Six by Liam, who was breached for a failure to report when the community corrections officer, according to Liam, turned up on the wrong day, the power to breach can be used arbitrarily. Liam also found that when he was doing the right thing and informing the parole board of his minor drug use due to the death of his sister, the community corrections officer breached him. Liam found himself exasperated, particularly as he had been trying to get into a rehab centre, he said:

> *I committed no other crimes, I'd been straightforward about the using, why I used, and each time I used and … I was seeing my psychologist; I was seeing my GP and I was seeing another support counsellor on the side. So as much as I was still using on those days, I was still … ringing all these rehabs.*

Furthermore, it has been noted elsewhere that some community corrections officers implement this power to breach with little consideration to the cultural difference between Indigenous Australian

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[48] Cairns and surrounding areas, including Cape York Peninsula

[49] Townsville and surrounding areas.

[50] The data did not cover how many of these breaches resulted in a return to prison, however, this is an area that could benefit from further independent research.

[51] The original right to information request was rejected with the recommendation that the timescale originally requested was scaled back from January to April 2018 to one month and for only two regions of Queensland.

parolees and non-Indigenous Australian parolees, particularly in response to family gatherings where there is often pressure to drink alcohol (Dawes et al., 2017).

This section of the chapter, using the primary (interviews) and secondary data (official statistics and coroner's reports) has evidenced, not only the extent of the systemic violence experienced by Indigenous Australians in the criminal justice system, but it has also illustrated the cyclical nature of systemic violence where it flows from the police - to courts - to prison - to community corrections - and often back to the police again. It has shown that this systemic violence is a consequence of the powers, discretion, and responsibilities that are endowed upon criminal justice employees as part of the ordinary functioning of the criminal justice system. It has also revealed that failure to uphold those same powers and responsibilities also contributes to the systemic violence experienced by Indigenous Australians within this system. The next section explores how subjective violence is experienced by Indigenous Australians within the criminal justice system.

Subjective: Physical Violence

As indicated in Chapter Three, subjective violence is the most obvious form of violence because it physically marks the body, is often brutal, and can have fatal consequences for the victim. It is committed by a perpetrator through physical force using their own body or an immediate extension of their body, i.e., a gun or knife, to strike their victim (van der Linden, 2012). However, it is not only the action of subjective violence that is physical, but often the end results can also manifest in acute psychological trauma (van der Linden, 2012). In this research, subjective violence was experienced most often in interactions with the police, but also occurred within the prison environment. That said, it should be noted that in the prison setting it was two-pronged, either prisoner-on-prisoner or officer-on-prisoner. Subjective violence was not, however, evident within the courts or community corrections.

As stated in Chapter Four, some questions cannot be fully answered by the quantitative data alone, and the question of subjective violence is a great example. As stated above, Indigenous Australians are 7.5 times more likely to die in custody than non-Indigenous Australians, however, when one examines this data for signs of subjective violence then one must take a closer look at the manner of death.

This is where such issues get complicated due to the categories assigned to the manner of death, which also masks the grim reality of the extent of the physical violence. For example, in Queensland between 2010 and 2019, Indigenous Australians who died in police custody were 2.2 times more likely to die as a result of an 'accident' and 2.8 times more likely to have their cause of death recorded as 'other/multiple injuries' than non-Indigenous Australians (Australian Institute of Criminology, u.d.; Baker & Cussen, 2015; Gannoni & Bricknell, 2017, 2019; Lyneham & Chan, 2013;

Ticehurst et al., 2018). In Queensland prisons during the same period, Indigenous Australians were 2.6 times more likely to have the manner of their death recorded as 'not determined' and were 2.6 times more likely to die from 'other/multiple' injuries (Australian Institute of Criminology, u.d.; Baker & Cussen, 2015; Gannoni & Bricknell, 2017, 2019; Lyneham & Chan, 2013; Ticehurst et al., 2018).

There is no official definition of 'other' provided in the national deaths in custody database reports, which begs the questions, how did these people die and who, if anyone, may have been involved? Moreover, questions arise regarding other categories of the manner of death, such as what constitutes an 'accident', what exactly does 'other' entail, and does 'natural causes' include, say, cardiac arrest or positional asphyxia during restraint? In other words, the 'story' behind the statistics is hidden unless one can outlay $2,500 a year for basic level access to the National Coronial Information System (NCIS), which is beyond the budget of many research projects (Walsh & Counter, 2019).

This is not to detract from the serious issue of deaths in custody, nor to suggest that this issue should not be researched. It does, however, highlight the complexities and barriers involved in researching the extent to which subjective violence occurs within the criminal justice system, particularly when viewed from a purely positivist, quantitative viewpoint.

Furthermore, the depth of detail concerning subjective violence through quantitative data is difficult to achieve when, for example, the Queensland Police Service does not register the Indigenous status of complainants who file complaints against the police (Queensland Police Service, personal communication, November 20, 2019). It was, therefore, impossible to obtain details of complaints of physical violence made by Indigenous Australians against police officers in Queensland. The sub-sections below are, therefore, based solely on the qualitative data of the present study that explore the research cohort's experiences of subjective violence in the criminal justice system.

Necro-enforcers

As detailed in Chapter Five, interactions with the police for Liam, Steve, Grant, and Joe were certainly brutal and left bodily marks. Liam's encounter with two police officers after a short chase resulted in one police officer "*getting out his stick and he fully busted both me shins…there was just blood coming down my knee*" and another officer, he recalled, "*was choking me on the ground*".

Steve's incident occurred inside the police station in a cell where the police", he said, "*ended up flogging me*". Steve was so badly injured that the Officer in Charge indicated to the officers involved that Steve "*needs stitches*" and that he would "*drop him off at the hospital*". Steve was one of the lucky ones in that he was taken to a hospital, albeit being dropped at the doors outside. Both Joe and Grant were offered no treatment for the injuries they received from police officers.

Joe's interaction with a police officer resulted in a head injury after he was "*hit by a torch*" by the officer and Grant was "*bashed one time because I was yelling or something*". Neither man was offered medical treatment with Grant saying, "*they left me*" and Joe, who showed the prominent scar he had as a reminder of his assault, said, "*they just made me wait till it was dry, you know – big split*". John and Ian both described incidents of physical aggression with subjective violence as a result of police interactions. On two occasions in the small Aboriginal community of Wujal Wujal in Far North Queensland, John had been physically manhandled by the police by being *"shoved…against the troopie [and] pushing me against the cop car*". Ian, on the other hand, was "*flipped over me head backwards*", which he says, *"nearly killed me*".

As well as the bodily harm caused from this subjective violence, all these men carry varying degrees of psychological trauma as a result, for example, Joe said "*I was scared…I said I'm gonna die here, they gonna kill me*". It is not surprising, then, that there is a deep-seated fear and distrust of the police, as uncovered in Chapter Five. This fear of the police is compounded by incidences of subjective violence where it has been alleged to have contributed to the deaths of Indigenous Australians in custody.

One high-profile example is the death of CMD, who according to witnesses, was allegedly the victim of subjective violence, not once, but twice by former Senior Sergeant Hurley. The first incident was outside the police station when Hurley allegedly punched CMD, whereafter the witness "*did not hear anything more from* [CMD]" (Queensland Government, 2006, p. 4) before he was dragged by his arms into the police station. The second incident of subjective violence was after the fall through the police station door, where Hurley allegedly punched CMD three times before dragging him to a cell.

In her 2006 report, the coroner found that Hurley "*hit [CMD] whilst he was on the floor a number of times in a direct response to himself having been hit in the jaw and then falling to the floor*" (Queensland Government, 2006, p. 27). In this report, the coroner highlights Hurley as an identifiable agent against whom accountability can be held, however, although manslaughter charges were laid against Hurley, he was found not guilty at trial by an all-white jury (Tedmanson, 2008). As mentioned in Chapter Three, subjective violence perpetrated by the criminal justice system reaffirms the symbolic and systemic violence that has seen the zombification of Indigenous Australians. As zombified persons, as *persona non grata,* Indigenous Australians endure the process of transmogrification into *homo sacer*, which is explored in more detail in Chapter Nine.

As mentioned above, it is not just interactions with the police that see Indigenous Australians experience subjective violence in the criminal justice system, but also interactions with prison officers and with other fellow prisoners while incarcerated.

Death-producers

As discussed in Chapter Six, subjective violence in the prison falls into two categories: officer-on-prisoner and prisoner-on-prisoner. From the interviews, it appears that the latter is more frequent than the former[52] because, as Steve highlighted, "[the officers] *won't go out of their way to start something with us because it's not just one, we're like a group*". Although Steve did witness a couple of incidents of officer-on-prisoner violence, he described it as someone getting "*flogged…more of a couple of hits just to put him down*".

Liam, however, experienced "*so many bad things*" in prison with subjective violence being one of them, such as an officer who "*kicked my legs out from underneath me*" and then having his hands cuffed behind him with zip ties before "*they are dragging you backwards so your knees or your toes on the ground*". Both Joe and Steve described incidents of prisoner-on-prisoner violence that can leave a prisoner on edge long after they have left prison.

Joe attributed this to a lack of basic supplies, such as tea, coffee, and milk that results in prisoners fighting, he said "*fight and fight, that's all they do*". Steve said that in the prison in Grafton, New South Wales there would be fights every three days between "*two inmates*" using "*mop buckets*" because "*they were pretty heavy and you could fill them up with water, like they can do damage*". However, he said that "*you don't see many knives because no one wants to show anyone that they've got one*", but usually an inmate who has had a disagreement with another inmate will have "*books in their shorts, that's so they can't get stabbed*".

This fear of physical violence, whether it be officer-on-prisoner or prisoner-on-prisoner can cause psychological harm, as Steve explained, "*it's pretty full-on, so you sort of expect a fight at any moment, or for yourself, to protect yourself*". Moreover, Steve explained that after leaving prison "*loud noises, things like that, I get startled, even quick hand movements, I'm like wary, that sort of gets me jumpy*", demonstrating that the psychological harm of experiencing or even witnessing subjective violence (in this case being hyper-vigilant) is carried long after leaving prison.

This section, using the primary (interviews) and secondary (coroner's reports and official statistics) data, discussed the experiences of Indigenous Australians of subjective violence in the criminal justice system. However, it has also highlighted the barriers to finding the full extent of the

[52] It was outside the scope of this study to undertake a comparative analysis of these two categories. In addition, quantitative data to further substantiate these findings would require extensive research through Right to Information Requests and interrogation of deaths in custody data, which, as already established, has extensive cost implications. This, however, could be the basis of a post-doctoral research project.

subjective violence experienced by Indigenous Australians in the criminal justice system using quantitative data alone, particularly in respect to deaths in custody, but also in respect to allegations of subjective violence. Moreover, by relaying the experiences of some of the research cohort, as well as that of an Indigenous Australian who died in police custody due to 'alleged' acts of subjective violence, this section has shown that subjective violence, as posited by Žižek (2009), leaves a physical mark, is often brutal and can be fatal.

In Summary

This chapter set out to answer the question '*to what extent, and in what form, are Indigenous Australians subject to violence in the criminal justice system"*? It has done this by establishing that not only do Indigenous Australians experience violence in the criminal justice system in gross proportions, but also by revealing how Indigenous Australians experience symbolic, systemic, and subjective violence within the system.

This chapter established that two branches of the criminal justice system, the necro-enforcers (police officers) and the death-producers (prison officers and medical staff) subject Indigenous Australians to symbolic violence through the use of provocative, offensive, obscene, and threatening language. Furthermore, it demonstrated that they also used language and "symbolic channels of communication and cognition" (Bourdieu, 1998, p. 2) to emasculate and/or frame Indigenous Australians as inherently deviant, cementing their status as the 'implicit other', which makes them even more vulnerable to systemic violence.

It has also shown that systemic violence is perpetrated across the entire criminal justice system and can be cyclical, flowing from police - to courts - to prison - to community corrections - and often back to the police again. It has shown how some police and prison officers, judicial officers, and some medical staff within the criminal justice system inflict systemic violence on Indigenous Australians through the disproportionate application of their legally imbued powers, discretions, and responsibilities on Indigenous Australians, which tragically causes inequality, injustice, immobility, and misery.

Finally, it has demonstrated that subjective violence is being perpetrated on Indigenous Australians by some necro-enforcers (police officers) and death-producers (prison officers). However, it also established that there are limitations in uncovering the true extent of subjective violence in the criminal justice system using quantitative statistics alone.

Conclusion

This chapter has explained how the theoretical analysis was conducted for the two theoretical chapters (this and the next chapter). It has also addressed the first research question by using the participants'

exposition of the extent and types of violence they experienced in the criminal justice system, as well as using the coroner's reports to explore forms of violence experienced in the in-custody deaths of Indigenous Australians. Further, it explored the plight of Indigenous Australians in the criminal justice system through a broad-brushed, quantitative account.

The following chapter addresses the second and third research questions using concepts from the theoretical framework set out in Chapter Three. Firstly, it will consider how Indigenous Australians are, in general, being systemically necropolitically targeted and more particularly, zombified by the criminal justice system, as well as examining how, as zombified persons, Indigenous Australians are entombed in death-worlds. It then examines how the combination of necropolitical targeting, zombification, and death-worlds transmogrifies Indigenous Australians into *homo sacer*, which is upheld through the state of exception that exists in the criminal justice system.

Secondly, it considers the link between power, violence, and authority to highlight how a sense of deific authority develops in some criminal justice employees due to the unequal relations of power between Indigenous Australians and the criminal justice system. Finally, it considers how this sense of deific authority makes some criminal justice employees more prone to inflicting symbolic, systemic, and subjective violence on Indigenous Australians in the criminal justice system.

9. The Politics of Death: Theoretical Analysis Part 2

"*But constant experience shows us that every man invested with power is apt to abuse it, and to carry his authority as far as it will go"*

- Charles de Montesquieu

Introduction

This is the second of the two theoretical analysis chapters that aim to answer the three research questions at the heart of this thesis. While the previous chapter addressed the first research question, this chapter addresses the second and third research questions using the primary (interviews) and secondary (coroner's reports and official statistics) data. Again, it is important to reiterate that the empirical focus of this thesis is trained primarily on Queensland, although there may be implications that extend across Australia. This chapter is separated into two main sections.

The first section addresses the second research question: '*What is the nature of the relations of power that exist between Indigenous Australians and the criminal justice system*?' It does this through a theoretical analysis of the participants' interviews, the official statistics, and coroner's reports using a theoretical framework to better discern the actual power dynamics and the relations of power that exist between Indigenous Australians and the criminal justice system. This section uncovers how Indigenous Australians are being systematically 'necropolitically targeted', 'zombified', and transmogrified into *homo sacer* by the criminal justice system. Finally, it reveals the state of exception that exists within the criminal justice system in respect to criminal justice employees who break the law in respect to their treatment of Indigenous Australians, thus creating and/or maintaining unequal relations of power between Indigenous Australians and the criminal justice system.

The second section addresses the third research question: '*To what extent does the specific nature of the relations of power revealed in the answer to the second research question, contribute to the violence experienced by Indigenous Australians in the criminal justice system*?'. It does this by initially exploring the link between power, violence, and authority before revealing how the unequal relations of power revealed in question two (if present), give rise to what I term as *Deific Authority*, and, as a result, how some criminal justice employees become more prone to inflicting systemic, symbolic, and subjective violence on Indigenous Australians.

Question Two: Necropolitics as The Politics of Death

Using the primary and secondary data, this section of the chapter addresses the second research question by examining the nature of power relations between Indigenous Australians and the criminal justice system. It reveals that Indigenous Australians are being systemically necropolitically targeted by the criminal justice system, which is achieved through the application of necropower. It also

uncovers a legacy of colonial dehumanisation according to race that is still embedded within the criminal justice system where power is exerted arbitrarily on Indigenous Australians, conferring upon them the status of the '*living dead*' through the process of zombification.

Furthermore, it shows that as zombified persons, Indigenous Australians are relegated to the realm of 'death-worlds' whereby they are subjugated to social, political, and cultural death. Consequently, due to the combination of necropolitical targeting, zombification, and death-worlds many Indigenous Australians have invariably become non-citizens, who are powerless against the system and are thus transmogrified into *homo sacer*. Lastly, it explores the state of exception that exists within the criminal justice system. This state of exception is not only an unequal relation of power in and of itself but is also an enabler for the other unequal relations of power to continue.

Relations of Power

Power is defined by Felix Oppenheim (as cited in Walter, 1964) as the capacity to punish or to restrain. In other words, "to be able to subject others to one's control or to limit their freedom" (Oppenheim as cited in Walter, 1964, p. 351). When one party (or more) has a degree of power over another it becomes a relation of power, however, not all parties will control the same thing, nor will they all have the same degree of control (Walter, 1964). This causes a relation of power where one party initiates actions that aim to control the behaviour of other parties (Walter, 1964). It also initiates the oppressed parties' resistance to this exercise of power (Walter, 1964). When looking at the relations of power in Australia, one must consider the historical precedents that have shaped the relationships that Indigenous Australians experience today: at the heart of settler-colonialism is a sovereign that has a desire to extend the reach of their domain by seizing political control of another country (Broadfield, 2021).

This adheres to Hobbes' notion of "an exclusive authority exercised by an absolute sovereign power" (Robbins, 2010, p. 258). This 'absolute sovereign power', unlike those of liberal or contractarian conceptions of sovereignty, is based on "the material destruction of human bodies and populations" (Mbembe, 2003, p. 14). This is what Mbembe refers to as necropolitics. This 'absolute sovereign power' has the capacity to "define who matters and who does not, who is disposable and who is not" (Mbembe, 2003, p. 27). In other words, the necropolitical sovereign decides who must die so that others may live. A necropolitical power dynamic structures power around "the right to kill and around death" (Chakkour, 2015, p. 55). Thus, life and death become political mechanisms where power circulates (Chakkour, 2015), the exercise of which is known as necropower (Mbembe, 2003). As mentioned in Chapter Three, necropower is a formation of power that allows the state to subjugate the lives of targeted populations to the power of death (Mbembe, 2003). Consequently, necropolitics is, in essence, the politics of death.

It is clearly arguable that the settler-colonial invasion of Australia was inherently necropolitical because British sovereignty at that time was based on "possessive logics of patriarchal white sovereignty" (Moreton-Robinson, 2015, p. xi). Furthermore, the British sovereignty was "a regime of power that derive[d] from the illegal act of possession" (Moreton-Robinson, 2015, p. 34). This is evidenced by the illegitimate assignment of the doctrine of *terra nullius* to Australia, as a result of the opinion that Indigenous Australian peoples were "without government, law or property" (Macintyre, 2016, p. 35), and were thus, in a state of nature (Macintyre, 2016).

In declaring Indigenous Australians to be 'in a state of nature', the British sovereignty established a "biological caesura between one and the others" (Mbembe, 2003, p. 17), one in which Indigenous Australians were positioned as "'inferior, less than human" (Tedmanson, 2008, p. 146). Thus, as I have argued elsewhere, the violence levelled at Indigenous Australians by the British sovereign is "racialized, omnipresent and normalised" (Broadfield, 2021, p. 67). The legacy of colonial dehumanisation of Indigenous Australians, as well as other marginalised groups, is still evident in the necropolitical governance of today's political, economic, and justice structures.

A Necropolitical Target

The police force was established as an agent of social control in the 19th century on behalf of the bourgeois class who demanded, "the control, surveillance, and repression of the dangerous classes" (Sclofsky, 2016, p. 13). The term 'dangerous classes' was invented by Honorè Antoine Frègier in 1840 in which he defined them as "thieves, bandits and murderers, of drinkers, beggars, prostitutes, sexual offenders, vagrants and other 'depraved' kinds of people, whose only common feature was to be an 'enemy of society'" (as cited in Scheu, 2011, p. 116). In Australia, as an 'enemy of settler-colonial society', Indigenous Australians fell within the ambit of the 'dangerous classes' (Sclofsky, 2016) and, thus, were subject to the surveillance and control of the Australian constabulary. It can, therefore, be contended that the criminal justice system was operating on a logic of necropolitical targeting from the outset.

Necropolitical targeting is where specific populations are deemed to be superfluous to the political, economic, and social fabric of society and are therefore relegated to being disposable because they do not matter. An example of such a population would be those that fall within the 'dangerous classes'. Although the term 'dangerous classes' has now become more associated with widespread precarity (Standing, 2011), in the post-colonial context it still operates through the criminalisation of populations who belong to a certain social order and are still viewed as an 'enemy of society'; such as Indigenous and minority groups (Broadfield, 2021; Hitchens, 2017; Lytle, 2017).

It can be argued that at an institutional level, Australia still adopts the 'dangerous classes' mentality, and hence, necropolitical targeting, still operates in this country, specifically against

Indigenous Australians as evidenced by their being over-policed (Cunneen, 1992b, 1992c), over-represented in the official criminal justice statistics (Cunneen & Tauri, 2017), and facing an increased likelihood of dying in police or prison custody (Broadfield, 2021). Thus, it can also be asserted that there is a connection between necropolitical targeting and the ongoing oppression of Indigenous Australian rights[53] in the Australian criminal justice system due to Australia's settler-colonial history ("*it's not broken, it was built that way*" - Mike), along with the continued subjugation of Indigenous Australians to racial marginalisation, stigmatisation, and violence, as well as death ("*they treat Aboriginals bad…treat us like shit*" - Sarah). In necropolitics, the State's power over death is placed at the political frontier (Broadfield, 2021).

Although speaking of what is occurring in the U.S., Hitchens (2017) posits that to be part of a minority group, specifically a black minority group, is often viewed as a death sentence. Given that between 2008 and 2020, Indigenous Australians were 7.5 times more likely to die in custody than non-Indigenous Australians (Australian Institute of Criminology, u.d.; Baker & Cussen, 2015; Gannoni & Bricknell, 2017, 2019; Lyneham & Chan, 2013; Lyneham et al., 2008; Ticehurst et al., 2018), Hitchens could easily have been referring to Australia as well.

The increased probability of Indigenous deaths in custody are a direct consequence of the over-representation of Indigenous Australians at every stage in the criminal justice system. This over-representation highlights gross disparity in negative outcomes for Indigenous Australians in the criminal justice system, which can be argued as indicative of systemic necropolitical targeting. In this thesis, necropolitical targeting is measured using the two operationalised variables for necropolitics, those of neutrality and uniformity.

To reiterate, neutrality is defined here as 'the maintenance of an attitude of impartiality towards Indigenous Australians', and uniformity is defined in this thesis as 'the level of consistency in how Australian states and territories treat Indigenous Australians.[54]'. Undoubtedly, the over-representation, and therefore the necropolitical targeting, starts with the police (necro-enforcers) due to their status as the gatekeepers of the criminal justice system. Necropolitical targeting by the police is evidenced in both the quantitative and qualitative data collected for this research through the inability of some police officers to maintain an attitude of objectivity towards Indigenous Australians. Furthermore, the data also reflects a uniformity in this necropolitical targeting across Australian states

[53] And one might also argue other minority groups, e.g., black Africans, Muslims.
[54] Within the criminal justice system

and territories[55]. The first point at which necropolitical targeting can be seen is in the likelihood of a person being proceeded against by the police.

As mentioned previously, Indigenous Australians during the period 2009 to 2020 were 6.4 times more likely to be proceeded against by the police than non-Indigenous Australians (Australian Bureau of Statistics, 2021e). During the same period, in the states and territories of Queensland, New South Wales, South Australia, Northern Territory, and the Australian Capital Territory, Indigenous Australians were always more likely to be proceeded against by the police, demonstrating a level of uniformity in the treatment of Indigenous Australians across these states and territories (Australian Bureau of Statistics, 2021e). The level of difference in this necropolitical targeting across these states and territories is significant with the highest level being the Northern Territory at 11.7 times more likely and the lowest being New South Wales at 5.0 times more likely (Australian Bureau of Statistics, 2021e).

For Queensland, the central focus of this thesis, Indigenous Australians were 5.5 times more likely to be proceeded against than non-Indigenous Australians (Australian Bureau of Statistics, 2021e). It is not surprising then that some of the research cohort voiced the opinion that, as Indigenous Australians, they were being targeted by the police:

> "*…you got that target on your back, that's for life. Don't matter if you off parole 'n that, you try to do good. They still pick on you*" – Joe.

> "*My head was always put on show, didn't matter if I was doing good or bad…my head's become sort of a target*" – Mike.

> "*If I was by myself and they didn't know I was Aboriginal they'd treat me not differently for sure, 100%. But if they know* [about my indigeneity]*, then it's a completely different story. Like, they don't give you nothing. It's clear. So, I can't say they look at me, but us as a whole, it's different*" – Steve.

This is also supported by the fact that when looking at the age groups of people in Queensland being proceeded against by the police in 2016-17, Indigenous Australians were over-represented across all twelve age categories (Queensland Police Service, 2018).

[55] For states and territories where data was available

For example, the group most likely to be proceeded against by Queensland Police more than their non-Indigenous counterparts were 10-14 year old Indigenous Australians at 16.7 times more likely (Queensland Police Service, 2018). This was supported by the narratives of the interviewees with many of them having interactions with police before the age of 14, as Mike recalls "*as a kid, it was a lot of targeted arrests for minor and petty crimes, there weren't a lot of chances happening*". As a result of being proceeded against, there is an over-representation of Indigenous Australians in the Australian court system (soul-destroyers) where the necropolitical targeting continues, albeit to a lesser extent.

In the Magistrates' and District/Supreme Courts[56] during the period 2011 to 2018, Indigenous Australians were 6.9 times more likely to be proven guilty rather than be acquitted or have their case withdrawn (Australian Bureau of Statistics, 2014b, 2015b, 2016b, 2017b, 2018b, 2019b, 2021a). As with the police, this figure suggests an attitude of discrimination towards Indigenous Australians that is indicative of necropolitical targeting. This supports Mike's view that occasionally "*you get a decent judge on or a judge who really had time for us Indigenous people to veer down the right track, we would get the chance"*, however, he said that most of the judges viewed him as a habitual criminal and "*most of the time it was just do not pass go*".

Again, as with the police, the statistics across the four states and territories[57] demonstrate a uniformity in this necropolitical targeting with Indigenous Australians always being more likely to be proven guilty than acquitted or withdrawn (Australian Bureau of Statistics, 2014b, 2015b, 2016b, 2017b, 2018b, 2019b, 2021a). The state or territory with the highest level was South Australia with Indigenous Australians 24.6 times more likely to be found guilty and the lowest level was found in Queensland at 7.5 times more likely (Australian Bureau of Statistics, 2014b, 2015b, 2016b, 2017b, 2018b, 2019b, 2021a).

As well as being more likely to be proven guilty in Queensland courts, Indigenous Australians were also more likely, albeit marginally, to be given a custodial sentence by both the District/Supreme and Magistrates' Courts in Queensland (1.1 times[58] and 1.7 times[59] more likely respectively) (Judicial Commission of New South Wales, 2021). Just as the flow of sentenced persons from the courts (soul-destroyers) into the prisons (death-producers) is not incontrovertibly indicative of systemic violence,

[56] For states and territories where data was available, which were Queensland, Northern Territory, New South Wales, and South Australia.
[57] For which data was available.
[58] Between 2011-2018
[59] Between 2014-2018

as discussed in the previous section, it is also not indicative of necropolitical targeting by the prison system (death-producers). However, it is arguable that the clearest indicator for necropolitical targeting within prisons would be the imposition of solitary confinement. That said, the only way to access statistical information for this is through a Right To Information request. Consequently, a Right To Information request was undertaken as part of this research, however, the Queensland Correctional Services would only provide one month's worth of data for two prisons; a much narrower scope than the original request.

Collectively, for the period January 2018, the two prisons, Borallon Correctional Centre (Southeast Queensland) and Lotus Glen Correctional Centre (Far North Queensland), Indigenous Australian prisoners were 1.5 times more likely to be sent to solitary confinement for the reason of 'security/good order of prison' (Queensland Corrective Services, personal communication, December 2, 2019). Although this statistic shows a slight indication towards necropolitical targeting within these two prisons; Indigenous Australians were no more likely to be put in solitary confinement for the reasons of 'accommodation requirements' or 'risk of harm to self or others' than non-Indigenous Australians (Queensland Correctional Services, personal communication, December 2, 2019). That said, this is a small time period of only two prisons in Queensland, therefore, this is an area that could benefit from further research in the future.

Connected to both courts and the prison systems is the community corrections (disintegrators) regime, which within Queensland at least, also potentially demonstrates a level of necropolitical targeting. The request for information on breaches of parole from Queensland Correctional Services was scaled back to statistics for North Queensland (Townsville region) and Far North Queensland (Cairns region) for one month (January 2018)[60]. Notwithstanding this small window into breaches of parole for both regions, Indigenous Australians were still 11.5 times more likely to be breached for parole contraventions than non-Indigenous Australians (Queensland Correctional Services, personal communication, December 2, 2019). Breaches of parole can occur for several reasons, but as previously mentioned, there is a level of discretion available to the community correction officer to decide whether to breach or not breach the parolee.

For the period January 2018, Indigenous Australian parolees in North and Far North Queensland were breached 1.2 times more than non-Indigenous Australian parolees for 'failure to report', but less likely (0.9 times) than non-Indigenous Australians to be breached on 'additional charges' (Queensland Correctional Services, personal communication, December 2, 2019). However,

[60] At the request of Queensland Corrective Services

only Indigenous Australians were breached due to 'multiple reasons' (Queensland Correctional Services, personal communication, December 2, 2019). One of the research cohort, Colin, felt that it did not matter what he did because community corrections "*set you up to fail*".

Colin explained that he had tried to get paroled to his sister's house, but he was rejected with community corrections stating "*here we gonna put you here, you can go here, it's a halfway house, that's where you gotta go. Can't get parole to your sister's, no we're not giving you parole to your sister's, but you can go there to Bunting Street*". The reason Colin did not wish to stay at Bunting Street was because "*everyone in Bunting Street is on parole or homeless … and there is a lot of alcohol and drugs going on there, you know, you're straight back on it. I found I was being set up to fail*".

Hidden within these statistics is necropower, which in this thesis, has one operationalised variable, that of 'power', and defined as '*how criminal justice employees can impose their will or control over Indigenous Australians or to limit their freedom*'. Necropower operates where the state not only has the right to kill (e.g., 'justifiable homicide' by police), but can also instigate the social, political, and cultural deaths of populations (Broadfield, Dawes, & Chong, 2021; Tedmanson, 2008). Thus, through the application of necropower, Indigenous Australians are conferred the status of the '*living dead*' (Mbembe, 2003); biologically alive, but socially, politically, and I would argue, culturally, dead.

Making the Human Inhuman

The zombie, or the myth of the '*living dead*', originated in Haiti through the belief that corpses could be reanimated through a supernatural power by Voudoun (Voodoo) priests called *bokors*, wherein the former would be forced to work as slaves for the latter (Davis, 1983). Today, any group with the conferred status of the '*living dead*' are created through the politico-cultural process of zombification (Linnemann et al., 2014), whereby they are viewed as having a human appearance, but not possessing human qualities like sentience and morality, just like zombies (Ramey, 2013, p. 47). Using the operationalised variable of 'dehumanisation' this section of the chapter argues that Indigenous Australians are being zombified by the criminal justice system because the system perceives Indigenous Australians as less than human, and because of that, seeks to deny them of possessing any intrinsic human qualities, personality or dignity, and strips them of their individuality and autonomy.

Classically, zombies are depicted in science-fiction television shows and movies, such as *The Walking Dead (2003-ongoing),* and *The Night of the Living Dead (1968)* as wandering aimlessly in groups but developing a mob-mentality when presented with the opportunity to attack the living. Thus, zombies are a direct threat to the living through "their desire for human flesh" (Joyce, 2014, p. 101), as well as being monsters that have transgressed the boundaries of humanity creating a "disturbance of

the 'natural order'" (Crofts & Vogl, 2019, p. 30). Consequently, the zombie is, as posited by Lauro and Embry (2008), a useful metaphor for revealing how particular groups in society are marked as "inferior subjects as unworthy of life" (p. 87). However, I, and other academics, posit that the zombie is not a metaphor, but rather the embodied manifestation of the ongoing dehumanisation of the 'implicit other' (Canavan, 2010; Linnemann et al., 2014).

Unlike the movies or the television shows, the real world is devoid of horror-style zombies. The only zombies that do exist are "the ones we ourselves have made out of the excluded, the forgotten, the cast-out and the walled-off" (Canavan, 2010, p. 450); the dehumanised 'implicit other'. Dehumanisation is characterised by the denying of people the status of being human, usually by viewing them as less than human, and devoid of humanity, which is reflected in the way they are portrayed or treated (de Ruiter, 2021). Traditionally, as something that lives after death, zombies are portrayed as monsters that are less than human, sub-human or not even human. Consequently, there is nothing about them with which other 'true' or 'real' human beings can relate to, sympathise or empathise with (Pokornowski, 2016; Ramey, 2013).

It can be argued that some of those working within the criminal justice system have no sympathy or empathy for Indigenous Australians believing them to be less than human, thus contributing to the process of zombification. Certainly, participants in this present research expressed the perspective that they are treated as less than human, sub-human or not human at all by the system:

> *"They treated us like pigs"* – Frank
>
> *"Treat me like I'm an animal"* – Frank
>
> *"They treat Aboriginals bad…the way they treat us like shit, it is shit. All of us human beings, we don't have to get treated differently because of our skin colour or we Aboriginal"* – Sarah
>
> *"Like you're in a zoo or something" – Liam*

Being treated as being less than human is a "special type of humiliation" according to Avishai Margalit (as cited in de Ruiter, 2021, p. 5), particularly for those already viewed as having no feelings or emotions as they are already 'dead'.

As a dangerous sub-human creature that is devoid of humanity, lacking in intrinsic human qualities, personality, or dignity, and bereft of individuality and autonomy, zombies are a threat. Therefore, 'killing them' is viewed as imperative to personal survival of other 'true' or 'real' human beings (Ramey, 2013). Once a zombie has been identified, according to Canavan (2010) "they must be killed immediately" (p. 437) and it is something that can be killed with no remorse or regret attached (Canavan, 2010). It can be argued then that, as zombified persons, Indigenous Australians

are viewed instinctively as a threat, and as such, some police officers may perceive it as imperative to their survival (as well as that of the community) to constrain, contain, injure, or even kill Indigenous Australians.

Although not part of my data, the shooting death of JC, an Indigenous Australian woman, by a police officer in the streets of a Western Australian town supports this argument. JC, a mother-of-one, suffered from schizophrenia and Foetal Alcohol Spectrum Disorder (FASD) and had recently been released from prison with no mental health support (Trigger, 2021; Trigger & Harradine, 2021). Police were called when JC was observed walking along a suburban street with a knife and a pair of scissors in her hands (Trigger, 2021; Trigger & Harradine, 2021). There were eight officers on the scene, however only three had alighted their vehicles and only one of these three drew a gun (Trigger, 2021). According to Trigger (2021) "it took just 16 seconds between the officer getting out of his vehicle and him firing his gun" (para 39). Within 16 seconds the officer in question had zombified JC by failing to view her as a human, by perceiving her immediately as a threat that could not be negotiated with and by making the decision that she needed to be "taken down" (Trigger, 2021, para 62). The officer was found not guilty of murder or manslaughter by an all-white jury (Trigger, 2021), just like Hurley in his trial for the killing of CMD (Tedmanson, 2008).

During his arrest CMD was not only allegedly assaulted, but also suffered abject humiliation, as did HJM, and SCC. During his arrest, CMD was taken to the police station where he was 'allegedly' assaulted by the arresting officer after which two police officers "*dragged him by his wrists with his legs dragging*" (Queensland Government, 2006, p. 16). This is reminiscent of John Pat being thrown into the back of a police van "like a dead kangaroo" (Grabosky, 1989, p. 80). CMD was dragged "*ten to twelve metres*" (Queensland Government, 2006, p. 15) down the hallway and deposited in a cell where he "*just laid there*" (Queensland Government, 2006, p. 16).

Similar humiliation awaited both HJM and SCC. For HJM it was when he was "*largely carried into the watch house by Watch House Officer Thompson, who carried most of HJM's body weight, allowing his feet to trail*" (Queensland Government, 2012b, p. 5) whereupon he was "*laid on the floor near the charge counter*" (Queensland Government, 2012b, p. 5). For SCC it was during his interaction with the police, where a witness stated that he saw an officer "*drag* [SCC] *out of the bathroom by his legs*" (Queensland Government, 2019c, p. 6) after which SCC was restrained face down by two officers (Queensland Government, 2019c) .

These incidents of dehumanising and degrading treatment are demonstrative of zombification in which these three men were denied dignity and divested of their autonomy. These three men, as zombified persons, exemplify Mbembe's (2013) statement that they are

"abandoned subjects, relegated to a role of 'superfluous humanity'" (p. 3). Studies have shown that fewer human traits are assigned to members of an 'outgroup', thus casting the group as less human, or sub-human (Cage, Di Monaco, & Newell, 2018).

It is therefore not surprising then that 'outgroups', usually minority or marginalised groups, are most often subjected to necropower in the form of dehumanisation (Cage et al., 2018). Within the horror genre, zombies are dehumanised through the portrayal that they lack sentience, morality, individuality and autonomy having only the singular thought of 'feeding on human flesh' (Knox, 2015). Through the process of zombification, Indigenous Australians are also being divested of individuality and autonomy by the criminal justice system, which was evident from the findings of this present study's semi-structured interviews:

> *"that's the way we treat black people*" – Ian relaying what a police officer said to him.
>
> "*If they know* [that you are Indigenous] *then it's a completely different story. Like, they just don't give you nothing. It's clear. So, I can't say they look at me, but us as a whole, it's different*" – Steve
>
> "[parole officer stated that] *because it was an Aboriginal community the chances of me reoffending were very high*" – Frank
>
> "*They think black kids are a problem you know*" – Ian

It can be argued then that as zombified persons with no sentience, morality, individuality or autonomy, Indigenous Australians are unable to be "recognized, accommodated, or negotiated with" (Canavan, 2010, p. 437) and are thus denied the recognition of being co-humans by some criminal justice employees (Mbembe, 2013).

More particularly to Australia's colonial past, colonisation is viewed by Depstre as "the process of man's general zombification" (as cited in Canavan, 2011, p. 177), perhaps because minority and marginalised groups, such as Indigenous Australians, are the literal embodiment of the zombie – the dispossessed, and socially dead 'others'. To protect society against those who threaten the status quo, such as those dispossessed and socially dead 'others', they are labelled as socially deviant, which legally justifies their exclusion from society through, for example, imprisonment (Lamble, 2013) and hence relegation to the realm of the death-world.

Entombed in Death-worlds

For Mbembe (2003), death-worlds are spaces where a living death is instigated through specific conditions being imposed upon targeted populations. Building upon Mbembe's description, Sithole (2014) posits that death-worlds are produced by "technologies of destruction wherein the destruction

reduces a body into a mere thing – an object" (p. 250). According to McLellan (2016), any space, be it a whole country, a state, a park, an individual building or an institution, that has been branded a death-world are zones that exist "outside the borders of civilization" (p. 11). The power of social, political, and cultural death confines the living dead to death-worlds. Thus, as Sharman (2014) posits, incarceration is a necropolitical tool used to not only bring about death, but also to prolong it.

As already zombified persons entering the prison system, incarceration functions as a death-world that further subjugates Indigenous Australians to the power of cultural, social, and political death; thus, prolonging their '*living dead*' status (both in prison and post-release). It is argued in this thesis that this is achieved through exclusion whereby Indigenous Australians are deliberately cut off from their families, communities, and society, as well as through the psychological, physiological, and cultural decimation of the Indigenous Australian population.

As part of the criminal justice system, prisons sit within an institution that harms prisoners by separating them from their children, extended families and other people with whom they have social bonds (Price, 2015). This aligns with Orlando Patterson's concept of social death in terms of Indigenous Australian prisoners' "dislocation from community and their natal alienation from the family/tribe they were born to" (Kralova, 2015, p. 236). Furthermore, the separation of prisoners from their families and communities creates the socially dead who have "solitude and solitariness of existence impressed on [them]" (Price, 2015, p. 25). However, it is not only the prisoner who is affected by this social death, the harm is experienced by everyone who is socially or emotionally connected to the prisoner (Price, 2015).

As touched upon in Chapter Six regarding the effects of incarceration on the family of those incarcerated both negatively (e.g., Farkas & Miller, 2007; Hagan & Dinovitzer, 1999; Turanovic et al., 2012) and positively (e.g., Turney, 2015; Wakefield & Powell, 2016; Wakefield & Wildeman, 2014), Chapter Six also discusses that there is a shortage in literature about how being separated from family and friends affects the offenders themselves (Condry & Minson, 2020; Taylor et al., 2018). This is especially true of Indigenous Australian offenders who, as mentioned in Chapter Six, have more intricate and culturally complex kinship systems than those of non-Indigenous Australian 'nuclear' family relationships (Dennison et al., 2014).

Half of the research cohort of this study spoke of how difficult it was not only being separated from family by being in prison, but also of being in prisons that were a considerable distance away from their home. For John and Peter, being incarcerated in Lotus Glen Correctional Centre meant a round trip of 264km and 200km for their respective families or Elders to visit them. Sarah was sent to the Townsville Women's Correctional Centre, which is a four-hour drive from Cairns where Sarah's

mother was living, but it is also approximately four hours away by plane from both Lockhart River and Normanton where the rest of Sarah's family is based.

The distance to travel is not the only thing compounding the social separation, but also the cost involved in travel. This is particularly applicable where airfares are involved, for example, a typical return airfare from Cairns to Townsville is around $470 for one adult, from Lockhart River to Townsville the prices range around $1500. Even if travelling by road the cost of fuel has become increasingly expensive, not to mention the cost of accommodation that would be required for such long journeys. The costs of these trips, whether by road or by air, are often beyond the reach of many families, which increases the social tension and anxiety of incarceration for both the incarcerated person and their families and loved ones.

All of Mike's time in prison was spent at prisons like Bathurst, Parklea and Silverwater that were 149km, 315km and 332km, respectively, from his hometown. Mike reflected that the decision to send prisoners so far from home was further punishment because:

> "*…when you get sent away from your home town, it's very rarely that you're gonna be getting visits, it's very rarely you're going to be seeing family and there is a purpose to why they send you away from your own community to punish you for your crimes and it's just, yeah, it's just so wrong*".

Sarah and Peter also reflected on the pain of familial separation stating:

> "*…it was upsetting seeing other ladies have their family there…It was frustrating, upset, like, broken down in tears every night, thinking that I'm never going to see them again* [her children]" – Sarah

> "*…about one and a half months I was in there, I started to call my mum, when I had a bit of money*" – Sarah

> "*...you start to think about the bad things you did, you start to think about your family, your kids. At that time, I had those three boys, I just thinking about my kids, you know, thinking if mother's feeding them. Just thinking about things like that and getting angry, … I guess you start to channel your negative energy towards someone or something*" – Peter

This social death through separation is exacerbated because many inmates rely on phone calls from landlines in the prison unit, however, high demand for the calls, as well as the expense involved can prevent many inmates, like Sarah, remaining in touch with their loved ones (Rose et al., 2019).

As discussed in Chapter Six, it is not only separation from external contacts, but also being internally excluded from the prison population through solitary confinement, prison lock downs and

being placed under mental health 'observation'. These sources of social death were experienced by Mike, Liam, Frank, and Joe:

> "*…all they done was lock me up in a room with a TV and just left me there for two weeks, they didn't even come and talk to me or anything. Just locked me in and made sure I had a TV and my buy-up…They wouldn't let me make no phone calls or anything...I had to put in a complaint*" – Frank on being placed in the 'medical wing' for mental health reasons.
>
> "*locked down for three and four days at a time I think it's just on par, if not worse than solitary, at least in solitary you're out for an hour of everyday in a little yard*" – Mike
>
> "*Yeah, I went to DU* [solitary] *and that. They strip you off naked and bash you, man, and leave you there. When it's time for a shower, it's cold*" – Joe.
>
> "*the longest I spent in the room was 31 or 32 hours before I got out to the exercise yard…*[they] *sealed them* [door windows] *up so you couldn't look out and talk to other people in the unit*" – Liam.

As death-worlds, prisons do not only prolong or instigate social death through these strategies, but they also contribute to the cultural, psychological, and physical decimation of the Indigenous Australian population.

The destruction of a population's culture has a variety of phrases attached to it, including 'cultural decimation', 'cultural death', and 'cultural genocide'. The term 'cultural decimation' has been used within academia (Azibo, 2012; Prentiss & Chatters, 2003; Williams, 2011), however, it has not been definitively defined. While the terms, 'cultural death' and 'cultural genocide' are not widely used across academic or grey literature, they have both been definitively defined. The term 'cultural death' was coined by lawyer Raphael Lemkin in 1944 who defined it as:

> …disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups. (as cited in Lempert, 2017, p. 9)

The most well used, but most contested, term is that of 'cultural genocide', which was defined in a 2015 report by the Canadian Truth and Reconciliation Commission as:

> …the destruction of those structures and practices that allow the group to continue as a group. States that engage in cultural genocide set out to destroy the political and social institutions of the targeted group. Land is seized, and populations are forcibly transferred and their movement is restricted. Languages are banned. Spiritual leaders are persecuted, spiritual

> practices are forbidden, and objects of spiritual value are confiscated and destroyed. And most significantly to the issue at hand, families are disrupted to prevent the transmission of cultural values and identity from one generation to another. (as cited in Novic, 2016, p. 42)

This thesis employed the operationalised variable of 'genocide' to investigate the cultural destruction of Indigenous Australian populations through incarceration. Therefore, this section argues that since colonisation, Australia has engaged in cultural genocide by using necropower to subjugate Indigenous Australians to the power of cultural death through mechanisms of social control, including the criminal justice system, that contribute to the cultural decimation of the Indigenous Australian population.

The social control of Indigenous peoples through colonial institutions was referred to by Nicholas Thomas as a 'colonial project' (Tauri & Porou, 2014). Such a colonial project, involves "sequestering Indigenous peoples within state-controlled, closed institutions" (Tauri & Porou, 2014, p. 27), effectively cutting them off from their "cultural context" (Tauri & Porou, 2014, p. 27); thus, initiating cultural death. In Australia, as touched upon in Chapter One, this began with policies of removal of Indigenous Australian children from their families "at official will and sent to a mission or a child welfare institution, or to be fostered with a white family if sufficiently light-skinned" (van Krieken, 2008, p. 132). Resistance to these policies was met with harsh penalties (Anthony, 2013). Thus, the criminal justice system became crucial to the ongoing success of settler colonialism as a mechanism of controlling Indigenous Australian people through cultural death and genocide.

As mentioned earlier, many of the participants of this study did not receive visitors from their families or their communities due to the distance between their hometowns and the prisons in which they were located, which may lead to a cultural death by preventing the traditional knowledge being passed down from generation to generation. This, however, would be dependent upon the frequency in which they were imprisoned, the overall time they have spent in prison, or the conditions of their paroles. For example, Liam said "*..all the time I spent in jail, the longest I've been out of jail since 1993 was this last prison term, which was a year and a half and before then it was weeks or maybe a couple of months*", and Frank said "*...all up I've done about 14 years*", and Peter said "*I wasn't allowed back in Mossman* [his home town] *for 12 months*". To make matters worse, it is arguable that many of the prisons did not make any real attempts to incorporate any cultural input or content into their rehabilitation programs or prisons with Sarah, Frank, and Peter all relaying issues about the lack of cultural competency within the prisons:

> "…*had a white lady teaching us"* – Sarah

> "*…they are just jackyjackys* [CLOs][61]. *They are not there…they are there for the people but when you ask them for help, you ask them to support you in there, I didn't find them helpful at all…I just thought, well, you guys are just here for show, you guys are just here to tick the box"* – Peter
>
> "*…only* [had] *counselling and that was through a white nurse, the counsellor was white"* – Frank

Culture, for any group, is a protective factor and has been described as "central to identity…who we are, how we think, how we communicate, what we value and what is important to us" (PWC Indigenous Consulting, 2017, p. 35). Furthermore, it is "detrimental to development and wellbeing" (PWC Indigenous Consulting, 2017, p. 35) to deny a person their culture.

Every year communities around Australia host NAIDOC[62] week, which celebrates Indigenous Australia's heritage, culture, and history. It is a week that is anticipated with excitement by Indigenous and non-Indigenous Australians alike. However, according to some of the participants of this study, the level of effort put into NAIDOC activities within prison walls continues to erode the cultural connection, leading to cultural death.

As Steve explained "*one day there was like a couple of dancers come in and we had steak and sausages on a barbie, and they asked if any of the inmates wanted to sing a song…that was probably about it*". By cancelling or threatening to cancel NAIDOC cultural celebrations the prisons display their use of necropower by subjugating Indigenous Australians to the power of cultural death as expressed by Mike:

> *Sometimes they wouldn't even have NAIDOC week for us in the prisons…in 2007/08 there were a couple of boys that mucked up fighting with the Lebanese community and they made us sacrifice for it and wiped NAIDOC. It's something we look forward to ever year in prison…because all us brothers come together then and do cook ups and hearing our inspirational singers and leaders coming in and to get that taken away. It was a kick in the guts*.

In light of Indigenous Australian over-representation in the criminal justice system across all age categories, it can be argued that for the Indigenous Australian population, cultural death is two-

[61] Cultural Liaison Officers. Jackyjackys is a term used to describe Indigenous Australians who collaborate with the colonialists and add to Indigenous problems.
[62] National Aborigines and Islanders Day Observance Committee

pronged. Firstly, with less Elders [because many have been or are also incarcerated] to pass down traditional knowledge to the younger generation the culture slowly disappears; and secondly, with less of the younger generation [due to incarceration/detention] to receive the knowledge from the Elders, the culture slowly disappears, with both factors leading to cultural genocide of the population. That said, it is not only cultural genocide that occurs through these death-worlds, but also psychological genocide.

The psychological adjustment required to adapt to life in prison can be difficult for anyone because prison life is dramatically different to that on the outside (Haney, 2003b, 2012b). However, although individuals vary in their resilience to the psychological effects of incarceration, Haney (2003b) points out that "few people leave prison completely unchanged or unscathed by it" (p. 38). This is because, as Haney (2012a) points out, prisons "expose prisoners to severe levels of deprivation, degradation, and danger" (p. 3), which is reflected in the experiences of many of the present research cohort:

> "*S2 is the one you come in, the reception. It's filthy – it's the filthiest unit. Hardly no sugar, milk, tea bags. Floor is black. Not hygienic, you know. One razor, one toothbrush, one little colgate and one little soap. How you gonna survive?*" – Joe
>
> "*…pink clothes, pink shorts, pink t-shirt, pink overalls. What was he doing? Trying to humiliate us? Why would you use pink...To demoralise us or to humiliate you?*" – Liam
>
> "*Every three days there'd be a fight, but usually it'd be between two inmates*" – Steve
>
> "*When you are getting locked in at six o'clock at night, you are actually getting locked in and not let out till seven in the morning, your mind starts to race, so the only thing you can do in a little cage is exercise, you know, watch TV, but it's so cold in there, it's so cold, and its dark and the only way you can really communicate with fellas is you're looking through little box windows and then you're singing out to person across the room or up there 'you ok?'"* – Peter

It was highlighted by Hall and Chong (2018) that prison design "whether benign or beastly, can potentially impact upon the attitudes and subsequent behaviours of both the correctional staff and the inmates" (p. 234). It is argued that the environmental factors, such as "cage-like interiors, bolted-to-the-floor furniture and vandal-resistant surfaces" (Jewkes as cited in Hall & Chong, 2018, p. 234) further conveys the message of inherent deviancy and criminality by saying, "you are animals…you are potential vandals" (Jewkes as cited in Hall & Chong, 2018, p. 234). Therefore, the conditions within prison do not only have the potential to create psychological and mental health issues within prisoners, but they also have the potential to exacerbate existing mental, psychological, and cognitive health conditions (Chong & Fellows, 2014).

It was established in Chapter Two that many Indigenous Australians have existing psychological, mental, and/or cognitive health issues upon entering the criminal justice system (see Baldry, 2015; Baldry et al., 2013; Baldry et al., 2015). Although referring to the U.S., it can be argued that the statement "[m]ass incarceration is one of the most significant drivers of public health in our time" (Olson & Anderson, 2020, p. 12) also can be applied to the psychological genocide of the Indigenous Australian population.

The number of prisoners, particularly Indigenous Australian prisoners, with special needs continues to rise, however, there has been a failure to increase the number of specialised staff, or departments, to meet this growing need (Baffour, Francis, Chong, & Harris, 2021; Chong, Fellows, Jose, Francis, & Williams, 2017; Chong, Forbes, Francis, & Fellows, 2020; Lynch, 2013). This leads to a downward spiral in the behaviour of mentally ill prisoners, which in turn leads to the destruction of the psyche of these vulnerable prisoners. The 'lucky' ones who are seen by the mental health team are often zombified through the use of excessive medication as told by Steve:

> *…half them fellas walking around were off their heads, like you can't even talk to them so…just sedating them for their prison term, so when they get out they've got another problem. That was pretty sad that part because yeah, you don't know who they are, they don't know who they are*.

The unlucky ones who are left untreated usually "manifest in fullblown and highly symptomatic episodes" (Lynch, 2013, p. 248). These episodes can result in not only the psychological decimation of the prisoners, but also in their physical destruction through self-harm as a result of the trauma of incarceration.

It was highlighted in both Chapters Two and Five that many Indigenous Australians who enter the criminal justice system have a history of childhood trauma, which decreases their resilience to the effects of prison and may in fact experience re-traumatisation as a result of incarceration (Baffour, Francis, Chong, & Harris, 2021; Chong et al., 2017; Chong et al., 2020; Haney, 2012a). This decreased resilience means that these vulnerable prisoners are more likely to experience higher rates of suicide and self-harm than other prisoners (Haney, 2012a). As Frank explained:

> *…when I was diagnosed with schizophrenia, I still do it, but I used to self-harm a lot … I tried to explain that to the doctors in mental health … I wanted to see a* [cultural] *liaison officer straight away before I cut myself and they didn't even report it. They should have reported that straight away to the medical team, saying 'he's suicidal and this and that' and they left it and they found me in a cell half dead with both my wrists cut and I reckon the treatment we get for mental health or for suicidal…is disgraceful.*

In fact, this is mirrored in all the deaths in prison custody cases reviewed in this research because all four died by suicide and all four also had a wide variety of psychological and mental health disorders, as well as co-morbidity factors of physical health issues and/or substance abuse that were inadequately managed. However, it should be noted that not all psychological effects manifest within the inmates while they are incarcerated, with some symptoms only manifesting after they are released (Haney, 2012a).

The deleterious effects of incarceration can continue long after a person has been released back into their community (Haney, 2012a). The conditions inflicted upon prisoners, such as those explored in Chapter Six, consistently remind the prisoners of their low social status (through social stigmatic labelling within the community), which "devalues a person's original identity and leaves an indelible mark on them" (Baffour, Francis, Chong, Harris, & Baffour, 2021, p. 305), as Mike explains:

> *...the way I described my life, I can relate to a dog that's been in the pound, a dog that's locked on a chain. If you lock a dog on a chain for some time, they become feral and nothing to do with boredom and they start to go mad*.

This stigmatisation continues upon their release from prison and has become a social justice issue on a global scale (Baffour, Francis, Chong, Harris, et al., 2021). Upon their release from prison this can, for some, lead to "an exacerbation of their psychological problems" (Baffour, Francis, Chong, Harris, et al., 2021, p. 305). This is further compounded for Indigenous Australians being released to rural and remote communities where there is a distinct lack of throughcare as discussed in Chapter Two (see Tubex, 2021; Tubex, u.d.; Tubex et al., 2020), which then impacts the wider community.

This is because the communities into which newly released prisoners return, especially those with markedly reduced throughcare infrastructure, will then be expected to cope with the psychological health disorders that these newly released prisoners bring with them (Haney, 2003b). The over-representation of Indigenous Australians in the prison system through necropolitical targeting means that these issues will disproportionately impact the rural and remote Indigenous communities that they will be returning to. Thus, not only will those persons who have been incarcerated within these death-worlds be subjected to psychological decimation, their home communities may be similarly impacted when the former return. The family of those incarcerated in death-worlds are therefore twice impacted, firstly, as members of the wider community, and secondly, by the immediate trauma of losing a loved one to the system as espoused by Lynch (2013) who states:

> Psychologically, children with incarcerated parents suffer a range of harms, from the psychic trauma of losing a parent in their daily lives, to the added insecurity wrought by the loss of emotional and economic support, to the stigma of having a loved one in prison. (p. 252)

These psychological harms then manifest in behaviours that lead to involvement in the criminal justice system, such as aggression and delinquency; thus, contributing further to the psychological decimation of the Indigenous Australian population because of these death-worlds.

The experience of being trapped in a death-world, combined with the effects of necropolitical targeting and zombification see Indigenous Australians denied certain inalienable rights by the criminal justice system, and highlights the fact that Indigenous Australians are without the power, influence, or capacity to stop this unfair treatment, which effectively transfigures them into *homo sacer*.

The Life and Death of *Homo Sacer*

Social and cultural changes throughout history have, at times, resulted in society becoming more a politicised reality, which, according to Agamben (1998), also creates space for some lives to become politically irrelevant. This provides the conditions for certain persons within society to become *homo sacer*, or 'sacred life', that can be eradicated without fear of punishment. Furthermore, Agamben (1998) posits that every society decides who will be marked as *homo sacer*. *Homo sace*r is:

> …one whom the people have judged on account of a crime. It is not permitted to sacrifice this man, yet he who kills him will not be condemned for homicide; in the first tribunitian law, in fact it is noted that 'if someone kills the one who is sacred, it will not be considered homicide'. This is why it is customary for a bad or impure man to be called sacred. (Agamben, 1998, p. 71)

In other words, *homo sacer* has been deemed as a life not worthy of living, has no value to society, and therefore no longer has the protection of the sovereign, or state (Chakkour, 2015; Stratton, 2011; Tedmanson, 2008). However, *homo sacer* is still bound by the sovereign's law, yet is powerless against those laws. Thus, *homo sacer* becomes a 'non-citizen', a *persona non grata* if you will, in their own country.

Through the denial of certain inalienable rights through the process of necropolitical targeting, zombification, and being entombed in death-worlds, the criminal justice system has transmogrified Indigenous Australians into *homo sacer*, as 'non-citizens' who are effectively 'powerless' to stop this unfair treatment by the system. Human rights are, according to Lechte (2007), "linked to the rights of the citizen" (p. 132), which causes a problem he says because "bare life has no rights" (Lechte, 2007, p. 132). As zombified persons, Indigenous Australians are viewed as 'bare life' through the application of necropower (Mbembe, 2003). Therefore, to some in the criminal justice system, Indigenous Australians are non-citizens, and as such, they have no rights as citizens or even more tragically, as humans (Lechte, 2007).

This view of Indigenous Australians as non-citizens supports Mbembe's (2013) view that "the Black Man [*sic*] is the one (or the thing) that one sees when one sees nothing, when one understands nothing, and above all, when one wishes to understand nothing" (p. 20). This is highlighted by the denial of some of the inalienable rights to which Indigenous Australians should be afforded to as Australian citizens and as human beings. Based on the prior analysis, it is arguable that these denied rights include, but are by no means limited to: a fair trial; freedom from discrimination because of sex, age, race, or disability; protection from arbitrary imprisonment; protection from torture and cruel, inhuman or degrading treatment; right to recognition as a person before the law; and protection from violence (United Nations, 2015).

The concept of *homo sacer* as a powerless non-citizen is most clearly reflected in the deaths in custody examined in Chapter Seven. All eight Indigenous Australians who died in custody were killed, directly or indirectly, by an instrument of the state, but were not classified as murder. They were citizens in terms of the law but were arguably treated as if they were non-citizens who had no rights whilst in custody, and finally, by being powerless against the system or the treatment they received, they highlight the power of the state, as reflected in these statements:

> "…*dragged in by two arms with his feet dragging"* – CMD (Queensland Government, 2006, p. 4)
>
> "…*that it would be safe to leave* [him] *in the watch house provided he was closely monitored*" – HJM (Queensland Government, 2012b, p. 6)
>
> "…*he would have reacted differently had he been aware of* [his] *mental health background. He did not know that he had been diagnosed with schizophrenia, had a history of hallucinations*" – GRA (Queensland Government, 2019a)
>
> "…*paramedics had not checked* [his] *blood pressure, heart rate or ECG. Nor did they check his airway*" – SCC (Queensland Government, 2019c, p. 9)
>
> "…*it was highly concerning that this muster did not locate* [CWB] *hanged in his cell*" – CWB (Queensland Government, 2019b, p. 16)
>
> "…*it appears no action was taken in relation to that advice*" – TLI (Queensland Government, 2011b, p. 8)
>
> "…*get him; get him; hold him down*" – AJB (Queensland Government, 2010, p. 7)
>
> "*While* [FJV] *expressed frustration and reported he felt 'victimised by the system', was 'fed up' and that 'everything he wanted to do fell on deaf ears', [*the counsellor*] did not see any signs that* [FJV] *may have been suicidal*" – FJV (Queensland Government, 2015, p. 6)

Each of the Indigenous Australians whose death in custody was examined as part of this research were powerless to withstand the unfair treatment that they received, due to the intersectionality of their indigeneity, criminalisation, and/or poor mental health.

According to Mayor (2021), "the fact that Indigenous people are proportionately the most incarcerated people on the planet say more about our powerlessness as a people to hold the nation's law and policymakers to account" (para 6). This is also a view that is enshrined in the Uluru Statement:

> Proportionately, we are the most incarcerated people on the planet. We are not an innately criminal people. Our children are alienated from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should be our hope for the future. These dimensions of our crisis tell plainly the structural nature of our problem. This is the torment of our powerlessness. (Mayor, 2021, para 7)

The incidences in which my participants felt powerless and were also effectively treated as non-citizens demonstrate that they had already begun the transformation into *homo sac*er. Thus, as Indigenous Australians, they were, and still are, in danger of being killed by the state as 'sacred men' without the realistic prospect that the perpetrators will be charged with homicide due to the state of exception that exists within the criminal justice system.

The Cycle of Exception

In an interview with Ulrich Raulff (2004), Agamben declares that the state of exception "establishes a hidden but fundamental relationship between law and the absence of law. It is a void, a blank and this empty space is constitutive of the legal system" (p. 609). Therefore, in this void violence can occur without "political or juridical intervention" (Banerjee, 2008, p. 1544) because the application of the law has been temporarily sidestepped, ignored or marginalised while the law still remains in force (Banerjee, 2008). This suspension of the law means that the State has decided "who is outside the law through the suspension of legal rights for certain groups" (Round & Kuznetsova, 2016, p. 1020), which in this thesis is arguably Indigenous Australians.

It is contended here that the state of exception, for example, the side-stepping, marginalisation, or ignoring of the law, is evident in the refusal of the DPP to bring the officers involved in the death of AJB to trial (Queensland Government, 2010). This is because the coroner was of the opinion that under sections 293 and 300 of the *Criminal Code Act (Qld) 1899* a jury might realistically find that:

> *…the officers should reasonably have foreseen that handcuffing* [AJB] *on the road they were placing him in danger of being run over because it was likely a vehicle would come along, he would not be able to get himself off the road and it was possible they would not be able to warn the driver to stop in time*. (Queensland Government, 2010, p. 16)

This matter was thereafter referred to the DPP, who declined to pursue the case as he had found no admissible evidence that the officers acted unlawfully or outside their duties, and hence there was no reasonable prospect of conviction (Marszalek, 2010).

In Australia, there have been over 500 Indigenous deaths in custody since the RCIADIC[63], however, not one person has been held accountable (Allam, 2021). In respect to the deaths in custody explored in this thesis, only one officer was charged with an offence, this being Snr. Sergeant Chris Hurley (Tedmanson, 2008). He was charged with manslaughter and brought to trial, however, an all-white jury found him not guilty (Tedmanson, 2008). Only two other police officers have been charged with a homicide-related charge, one in relation to the death of JC in Western Australia[64] and one in relation to the death of KW in Northern Territory (Goldsworthy, 2021). Both these officers were found not guilty at trial with the Northern Territory officer being found not guilty by an all-'white' jury, bringing the similarities of the Hurley case to mind (Goldsworthy, 2021; Park, 2022; Trigger, 2021; Trigger & Harradine, 2021).

Not long after his trial, Hurley was back at work as a police officer, and it is plausible that this will be the case for the officers found not guilty in the shootings of JC and KW. This apparent 'untouchable' status was written about by a Gunai/Kurnai woman, and former Queensland police officer, Ronnie Gorrie, who writes "[w]hite cops know they can pretty much get away with anything they do" (Gorrie, 2021, p. 194). This mirrors what Coates (as cited in Hitchens, 2017) said regarding U.S. officer-related shootings "[t]he destroyers will rarely be held accountable. Mostly they will receive pensions" (p. 2). In fact, it has been reported by media that this is precisely what has happened in the case of Hurley (i.e., retirement/pension on medical grounds) (Jackson, 2017, July 11).

This illustrates the decision of the state on who matters and who does not, who is disposable and who is not (Mbembe, 2003). It can, therefore, be argued that the 'state of exception' is a necropolitical strategy that exemplifies the disassociation between the equality of that promised by written law and the praxis of the state, and those under their control.

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[63] The announcement of which was made in 1987, and its final report published in 1991
[64] He is not named in the media for the safety of his family.

In Summary

This section of the chapter set out to answer the question '*what is the nature of the relations of power that exist between Indigenous Australians and the criminal justice system*? It has done this by establishing that Indigenous Australians are not only systemically necropolitically targeted by the criminal justice system, but also zombified and transformed into *homo sacer*, which is enabled by the state of exception in the criminal justice system.

Using the quantitative and qualitative data, this section determined that some criminal justice employees are unable to maintain a degree of objectivity when interacting with Indigenous Australians, which reflects the strategy of necropolitical targeting whereby Indigenous Australians are deemed of no value to society and are therefore deigned to be disposable. Moreover, the data demonstrated a consistency in the treatment of Indigenous Australians across the Australian states and territories for which data was available.

It has also shown that Indigenous Australians are zombified by the criminal justice system through the politico-cultural process of zombification. It demonstrated that some staff working within the criminal justice system believe Indigenous Australians to be less than human, thus they express no sympathy or empathy for Indigenous Australians. Furthermore, it has explained how, as zombified persons, Indigenous Australians are viewed by some criminal justice employees as not human, rather they are viewed as something to be feared, as something that cannot be reasoned with, and something that society must be protected against.

Additionally, this section revealed that prisons are death-worlds that prolong the zombification of Indigenous Australians through social death. The act of separating Indigenous Australian prisoners from families and communities by up to several hundred kilometers increases the likelihood of their social deaths, especially as their cultural kinship ties are more complex than those of non-Indigenous families. Furthermore, this section has revealed that Indigenous Australian prisoners are being exposed to cultural death within death-worlds by being cut off from their 'cultural contexts', not only through their social death discussed above, but also through the absence of culturally safe programs, cultural activities, and the denial of their cultural identity.

It has also demonstrated that the Indigenous Australian population is being psychologically decimated through their confinement in death-worlds. The adverse conditions experienced in the prisons, as well as the poor treatment received by those entering the prison with existing cognitive, psychological, or mental health issues causes a psychological decimation. It has demonstrated that, as with African Americans in the U.S. penal system, the incarceration rates of Indigenous Australians make a significant contribution towards public health issues.

This section has also shown that the criminal justice system is also causing the physical decimation of the Indigenous Australian population through the disproportionate number of Indigenous deaths in police and prison custody. This is not just the physical violence perpetrated by some criminal justice employees against Indigenous Australians, but also the conditions and poor treatment that impact upon Indigenous Australians' decisions to take their own life while in custody.

Additionally, this section of the chapter has discussed how the combination of necropolitical targeting, zombification, and death-worlds sees Indigenous Australians transformed into *homo sacer.* It has established that in the eyes of some within the criminal justice system, Indigenous Australians are viewed as a life not worthy of living, that they are of no value to society, and therefore are denied the protection of the state, which means they can be killed without it being classified as homicide.

Further, this section also showed that *homo sacer* is most clearly seen in the deaths of Indigenous Australians in custody. Often, Indigenous Australians who die in custody are killed, directly or indirectly, by an agent of the state. However, no person has currently been successfully held accountable through the courts, and lastly, by being in custody they were powerless against the system or the treatment they received, thus, highlighting the power of the state over those who have been effectively zombified.

Lastly, this section has discussed how the state of exception exists in the criminal justice system through the temporary suspension, side-stepping, or marginalisation of the law for some criminal justice employees while remaining in place for 'ordinary' citizens, particularly Indigenous Australians. This is especially highlighted by the fact that not one criminal justice employee has been legally held to account for actions which have contributed to the death or injury of any Indigenous Australians in custody[65].

The next part of this chapter answers the third research question '*to what extent does the specific nature of the relations of power revealed in research question two, contribute to the violence experienced by Indigenous Australians in the criminal justice system?'*. Using concepts from the theoretical framework outlined in Chapter Three, the next part explains how the unequal relations of power revealed above lead to a sense of deific authority, which results in some criminal justice employees being more prone to inflicting violence on Indigenous Australians within the criminal justice system.

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[65] At the time of writing

Question Three: A Propensity Towards Violence

Using the primary and secondary data, this section of the chapter addresses the third research question, *'to what extent does the specific nature of the relations of power revealed in research question two, contribute to the violence experienced by Indigenous Australians in the criminal justice system?*'. It does this by firstly, exploring the link between power, violence, and authority to highlight how unequal relations of power can lead to a sense of deific authority. Secondly, it explains how this sense of deific authority results in some criminal justice employees being more prone to inflicting symbolic, systemic, and subjective violence on Indigenous Australians within the criminal justice system.

Power, Violence and Authority

As mentioned earlier, a relation of power involves one party initiating actions to control the behaviour of other parties, as well as their resistance to the exercise of power (Walter, 1964). Therefore, relations of power are "predicated on the ever-present possibility of resistance" (Mills, 2006, p. 190). Unequal relations of power have existed in Australia since 1788 and actions of control have been met with ever-present resistance, as declared by Mick Dodson "…as we resist – and we have always resisted in many different ways" (Dodson, 2010, p. 15). Sovereignty, after all, is about "power and authority" (Cunneen & Tauri, 2017, p. 17). Power, however, warns Soyinka-Airewele (2015), "tends to mutate towards decay, abuse and violence" (p. 3). Indeed, when looking towards post-colonial countries one only has to "cite the names of the dead to recall the long history of deadly police racial profiling" (Smith, 2015, p. 385) to behold the expression of necropower in the violence it inflicts.

There is nothing more common, according to Arendt (1970), than "the combination of violence and power, nothing less frequent than to find them in their pure and extreme form" (p. 47). It is also posited by Arendt (1970) that power of the state lies not in its ability to enact violence, but in its ability to commit, or facilitate violence without repercussions and that the more power a state has, the greater its capacity to commit, or facilitate greater acts of violence. The previous section of this chapter demonstrated that there are unequal relations of power between Indigenous Australians and the criminal justice system. These unequal relations of power manifest in necropolitical targeting, zombification, death-worlds, *homo sacer*, and in the state of exception.

It could be argued that necropolitical targeting, zombification, and death-worlds emerge as a response by some within the criminal justice system to being "perpetually engaged in a struggle with those who would disobey, disrupt, do harm, agitate, or otherwise upset the just order" (Van Maanen, 1995, p. 308). This is particularly so as some of these men and women believe their positions in the criminal justice system qualify or empower them as being the "most capable of sensing right from wrong; determining who is and who is not respectable' and, most critically, deciding what is to be done about it" (Van Maanen, 1995, p. 308). This belief is reinforced through the unequal relations of

power that manifest through the transmogrification of Indigenous Australians into *homo sacer* and the state of exception that allows criminal justice employees that break the law in respect to their treatment of Indigenous Australians to remain unaccountable. In other words, members of the criminal justice system attempt to impose their "status as legitimate holders and wielders of authority" (James & Warren, 1995, p. 7) in a manner that emphasizes their 'superiority' (Butler & Drake, 2007; Coyle, 2002). This is what I have termed as their sense of 'deific authority'.

"Respect My Authority"[66]

According to the Christian Bible "there is no authority except from God" (Romans 13: 1-4, English Standard Version). However, it is arguable that some criminal justice employees believe that their positions within the criminal justice system give them a legitimate superiority over 'ordinary' people, particularly Indigenous Australians, which confers on them an almost god-like (or deific), ultimate authority. A consequence of this deific authority is that it makes some criminal justice employees more prone to inflicting symbolic, systemic, and subjective violence on Indigenous Australians.

The authority to wield power and legitimacy are intimately connected notions, and legitimacy has become "an established concept in criminological analysis, especially in relation to policing" (Tankebe, 2012, p. 103). Power (and its use) is legitimised when it "…is *acknowledged as rightful* by relevant agents, who include power-holders and their staff, those subject to the power, and third parties who support or recognition may help confirm it" (emphasis in original, Tankebe, 2019, p. 100). Thus, legitimate power is not only recognised as valid by powerful people, but also by the powerless. In the political context, legitimacy is "the right to exercise power" (Tankebe, 2012, p. 103), or "the belief that legal authorities are entitled to be obeyed and that the individual ought to defer to their judgements" (Tyler and Huo, as cited in Tankebe, 2012, p. 105). However, to interrogate legitimacy further, it must be considered in the context of the powerholders.

Powerholders, such as criminal justice employees, are those who demonstrate their "unique prestige, as persons authorised in a manner that *ordinary subjects* are not, as persons set apart to exercise the powers and privileges of [their position]" (Barker, 2004, p. 41, emphasis added). These powerholders, according to Weber, have a need to "persuade *themselves* that their fates [are] deserved and therefore rightful" (as cited in Tankebe, 2019, p. 99, emphasis in original), therefore, they had to develop a form of self-legitimacy. Self-legitimacy is the recognition by a powerholder of "their individual entitlement to power" (Tankebe, 2019, p. 99). As mentioned above, those subjected to the

[66] (Parker, 1998)

power of the powerholders may be inadvertently bolstering the sense of self-legitimacy held by the powerholders (Tankebe, 2019) through the 'obligation-as-legitimacy' approach (Bottoms & Tankebe, 2012; Tankebe, 2019).

An example of this is provided by Tankebe (2019) who wrote, "[s]uppose that people feel an obligation to obey the police [powerholders] because of fear, a sense of powerlessness, or pragmatic acquiescence, but a police agency [powerholder] mistakes those feelings for widespread legitimacy" (p. 106). In this present study, it could be argued that the 'obligation-as-legitimacy' was displayed in some of the research cohort's responses to the question '*how do you feel if you are walking down the street now and you see a police officer?*':

> "*Just the way they look at you, nervous. If I've got an Aboriginal shirt on, like I've got all them Deadly Choices shirts and you walk past them, even though I've got a wheelie walker and can't do anything, they still give you a fair look. You just feel like saying 'what you lot staring at? What's your problem?' But nah, you just shut your mouth because otherwise you'll just end up with them again*" - Ron

> "*It's funny, I'm getting better as time goes on but just that heart pump straight away, say a year ago I was checking myself to see what I had on me. Not a good feeling, nah*" - Steve

> "*I still feel a bit touchy, honestly. It's like, I'm looking at myself, am I dressed right, am I? I've got to hold myself high to let these fellas know that I'm not that person, I'm not that person that they can judge, you know and that is a great question because I still feel nervous around them. Even when I'm driving my car. I have to remind myself, well if they are behind me, why am I feeling nervous, I got nothing to hide, I got no drugs in this car, I'm not drinking, I'm not driving [under the influence], so whatever. So got to remind myself all the time, you know*" – Peter

> "*Yeah, no I get a bit wary from them* [police] *eh? I feel they would walk up to me and arrest me*" - John

> "*You'd shit yourself. Your conscious as well because they are stopping, and they are going to drag you around and do whatever they going to do to you*" – Liam

These quotes demonstrate that support for and the perpetration of oppressive acts of racism through 'obligation-as-legitimacy' reinforces the belief in powerholders of their self-legitimacy. In this way, some criminal justice employees become prone to inflicting systemic violence. Due to the institutional manner in which this mechanism of systemic violence is delivered, it becomes invisible, hard to understand, and is portrayed as being the victim's fault (Ruggiero, 2020; Semmalar, 2017).

Criminal justice employees who believe in the self-legitimacy of their actions are referred to by Bottoms and Tankebe (2012) as 'disconnected' powerholders.

The lived experiences of the research cohort in this study suggest that some of the criminal justice employees that they have interacted with in the criminal justice system are 'disconnected' powerholders, those who have "lost touch with the public he serves" (Bottoms & Tankebe, 2012, p. 154). Furthermore, they suggest that this 'disconnected powerholder' could be a narcissist and that "under certain circumstances, members of both police and prison services can very easily slide into this kind of attitude" (Bottoms & Tankebe, 2012, p. 154). This was reflected in the coroner's report into the death of CMD, when she wrote, "[Hurley was] *clearly surprised at this action which was inconsistent with his experience of the response from Palm Islanders to his authority*" (Queensland Government, 2006, p. 3). Criminal justice employees, such as Hurley, who display these 'disconnected' traits by claiming self-legitimacy are making an assertion to a higher level of legitimacy than that provided to them by the state (Bottoms & Tankebe, 2012), but one not totally disavowed by the state either.

The belief in their self-legitimacy, as well as being 'disconnected' from the public they serve, potentially increases the likelihood that some criminal justice employees will be more prone to also inflicting subjective violence on Indigenous Australians, as experienced by the some of the research cohort in this present study:

> "*I was riled up and blind drunk I didn't know what I was doing,* [the police officers] *ended up flogging me… I didn't say anything, and they didn't say anything, and that's how it happens*" – Steve

> "*It was a copper from a previous past that, he knows me from Yarrabah and he was working at Wujal, he used to lock me up 'n that…. He came out there and then he started abusing me eh, pushing me against the cop car*" – John

> "*I was getting rough handled at a young age…you try and explain that to your case worker 'n that, the youth justice mob and there's nothing done, you know*" - Joe

The officers that display these traits truly believe that "adherence to the norms they espouse is…a necessity for a decent society to survive" (Bottoms & Tankebe, 2012, p. 154). Thus, some criminal justice employees believe they have the self-legitimated right to decide who constitutes a 'decent society' because they believe their positions in the criminal justice system make them legitimately superior to '*ordinary subjects*', particularly Indigenous Australians, in authority, power and status.

This supremacy, this condition in which some criminal justice employees believe that they are superior to all others, specifically Indigenous Australians, can be viewed in the tendency for criminal

justice employees to "classify members of the public into different sub-groups defined by subjective and situational attributes" (Dupont, 2009, p. 45). This classification then determines "the levels of service and attention experienced by citizens…depending on the sub-group to which they are assigned" (Dupont, 2009), and the levels of violence they may be subjected to. This can be seen in the necropolitical targeting and zombification experienced by Indigenous Australians who some criminal justice employees classify as being inherently deviant or as less than human, as discussed earlier in this chapter.

For some police officers in Australia these classifications correspond to the 'thin blue line', a phrase associated with white supremacy (McCulloch, 2021), in which the line is dawn "between suspect and innocent, chaos and order, criminal and victim, friend and foe, us and them, community and other, civilian and enemy" (McCulloch, 2021, p. 7) and is "most deeply etched in 'race'" (McCulloch, 2021, p. 7). This sense of superiority can result in the symbolic violence that was meted out to some of the research cohort by some criminal justice employees through the use of racially charged, offensive language, specifically the term 'black cunt' that was explored in Chapter Five. Symbolic violence as a consequence of this feeling of superiority was also evidenced in the offences of 'black while walking', 'black while driving', or 'black in a public place' that arise out of reading between the lines of criminal charge sheets of Indigenous Australians (McCulloch, 2021). These mindsets of deific authority were experienced by Joe, Mike, and John:

> "*I was just walking home, just walking home and four* [police officers] *jump out and I said, 'what do you want?' and they said 'oh, we gonna charge you for public nuisance'*" – Joe

> "*… just walking from one place to another* [the officers would say] *oh, what's 'Mike' up to today?*" – Mike

> "*I got a bit sick of it…how police treat me in Cairns…pull me up and harass me"* – John

These 'offences', further demonstrate how the sense of deific authority developed by some criminal justice employees lead to them being more prone to subjugating Indigenous Australians to different forms of violence.

As with some police officers, some prison staff also negatively categorise/stereotype the people they deal with on a daily basis, which includes visitors to the prison (Coyle, 2002; Scott, 2011). However, the main stay of the categorisation lies with the prisoners whose classifications include, for example, druggies, scum, wasters, manipulators, 'bad bastards', dangerous, or ill-disciplined (Scott, 2011). Although not always directly voiced towards the prisoners, the implication was there in the actions of the officers, as explained by Frank who said, "*when you're a black fella, especially if you've*

got dark skin they make…watch every move you make, where you walk and do, who you're talking to, who you're hanging out with".

It is claimed by Scott (2011) that prison officers will only have a positive interaction with prisoners if the prisoners "recognise the officer's inherent superiority" (p. 8). This superiority over prisoners, in terms of authority and power, is established by the way in which prison officers inflict systemic violence by targeting the prisoners' mere existence through punitive actions (Ruggiero, 2020; Scott, 2011). These punitive actions were alluded to by Mike, one of the research participants, in his description of 'ramping'. Ramping occurs following a prison lockdown in which he said, "*they'll send a squad in and turn your cell upside down and strip you naked and make you bend over, doing all this kind of stuff…and that's the sad reality of it*".

Other displays of superiority by prison officers as evidenced by the experiences of systemic and symbolic violence being inflicted on the research cohort included:

> "*If they* [prison officers] *come in and they wanna be smart and want to sort of chuck smart comments around and you retaliate, they take your stuff off you just for being smart back to them…It would be just back chatting the officers, language or just stuff that is bound to happen, it's a jail, you know, it's not a college*" – Mike
>
> "*…if you get into a fight or if you get into an argument with an officer for whatever reason, like, they write you up or they send a squad in for you…when there is a white person who does that, they just go there cuff them and walk them out*" – Frank
>
> "*Yeah, I went to DU* [solitary confinement]*, they strip you off naked and bash you man, and leave you there. When it's time for a shower, it's cold*" – Joe
>
> "*…on a day of release, they're sitting in the office* [prison officers] *giggling, saying, 'how long do you give him?', you know like, the conversations are like that…while they are waiting for the gate to open and you've got two or three officers laughing and saying, 'I'll put a hundred* [dollars] *he'll be back next week'*" – Mike

For prison officers, as with the police, use of derogatory language, taunts, and insults "enhances their feelings of superiority and feeds their need for power" (Levine, 1971, p. 218). In other words, this perceived superiority is a means of reinforcing existing power dynamics (Scott, 2011). It was not only in interactions with some police officers and some prison officers that displays of superiority, and consequent violence, were evidenced in this current study, but also in interactions with medical staff in prisons, and community corrections officers.

In academia and other fields of research, much of the discourse on supremacy in the criminal justice system focuses on police and prison officers (e.g., Coyle, 2002; Cunneen, 2009; Scott, 2011) with little attention given to medical staff in prisons or community corrections officers. The findings of this current study, albeit limited, show indications that the actions, or in some cases inaction, of some medical staff and community corrections officers demonstrate their belief that they are superior to Indigenous Australians, which has resulted in the infliction of systemic violence[67].

The doctor 'treating' TLI in the prison medical system viewed her pain as "*neuropathic in origin*" (Queensland Government, 2011b, p. 8). The coroner explained that this meant that the doctor "*did not believe* [TLI] *had chronic or severe pain*" (Queensland Government, 2011b, p. 8) and that she was merely "*hunting more p forte* [Panadeine Forte]" (Queensland Government, 2011b, p. 5). In relation to TLI's request for Panadeine Forte, which her external doctor had confirmed she had been prescribed prior to her incarceration, "[*i*]*t appears no action was taken in relation to that advice*" (Queensland Government, 2011b, p. 8). The coroner described the decision to withhold adequate pain medication from prisoners as "*a great disservice if they have a genuine need for pain relief and we fail to prescribe it when they are deprived of their liberty*" (Queensland Government, 2011b, p. 11). TLI took her own life, dying as a result of exsanguination on 17th or 18th September 2010 (Queensland Government, 2011b) only two weeks after writing a note in a medical request form that "*I am suffering for no reason*" (Queensland Government, 2011b, p. 8).

For GRA, the systemic violence was inflicted as a result of the supremacy exercised by the parole board. In terms of the display of superiority by some corrections officers and parole boards, one can look at the decision to send GRA back to prison (Queensland Government, 2019a). GRA was displaying signs of schizophrenia with his parole officer noting: "*Offender stated that he was hearing voices in his head and he sometimes drinks to take away these voices*" (Queensland Government, 2019a, p. 4), which was compounded by the fact that "*doctors had found a mass in his stomach area and they don't know what it is*" (Queensland Government, 2019a, p. 4). Furthermore, the parole officer noted that GRA presented "*…as sad and nervous, which is reasonable given the circumstances*" (Queensland Government, 2019a, p. 4). When Queensland Police Service attended the office to execute the return to prison warrant the parole officer wrote that "*[GRA] began crying when he was told his order was being suspended*" (Queensland Government, 2019a, p. 4). According to the coroner's report, suspending the parole order "*was not recommended by his supervising parole*

[67] Further studies into the sense of deific authority felt by medical staff in prisons and community corrections officers in terms of both self-legitimacy and supremacy/superiority are highly recommended. The findings of this study could make the basis for a post-doctoral study.

officer" (Queensland Government, 2019a, p. 4). Nevertheless, GRA found himself being received at Brisbane Correctional Centre on 1st May 2015 (Queensland Government, 2019a). GRA took his own life, dying as a result of "*hypovolaemic shock, due to or as a consequence of incised wounds to the arm*" (Queensland Government, 2019a, p. 13) on 9th May 2015.

The term violence, whether it be systemic or not, can be viewed as contentious in these contexts. Systemic violence is described as a nonviolent violence that causes disability, cruel death, and immense suffering (Bernasconi, 2014a; Ruggiero, 2020). It is certainly the case that both GRA and TLI suffered disability and immense suffering before experiencing cruel deaths (Queensland Government, 2011b, 2019a). It can, therefore, be argued that they sustained systemic violence as a result of their treatment as "human remnants, useless residue" (Ruggiero, 2020, p. 5) by workers in the criminal justice system who through the unequal relations of power discussed earlier have lead them to develop a sense of deific authority.

This section has not only revealed that the unequal relations of power unveiled in question two, contribute to the sense of deific authority in some criminal justice employees that makes them more prone to inflicting violence on Indigenous Australians. It can also be argued that it has also established that deific authority, where criminal justice employees believe they have the 'ultimate authority' to decide who matters and who does not, who is disposable and who is not, is a necropolitical strategy. Furthermore, that this deific authority and the resulting violence is a manifestation of necropower within the criminal justice system wherein some criminal justice employees are subjugating Indigenous Australians to the power of death through subjective, systemic, and symbolic violence.

In Summary

This section of the chapter set out to answer the question '*to what extent does the specific nature of the relations of power revealed in research question two, contribute to the violence experienced by Indigenous Australians in the criminal justice system?* It did this by firstly exploring the link between power, violence, and authority to demonstrate how the unequal relations of power revealed earlier in question two lead to a sense of deific authority in some officers or the law and some medical staff within the criminal justice system.

It then demonstrated how the sense of self-legitimacy, the feeling that criminal justice employees are 'entitled to power' because they are authorised to exercise that power in a way that 'ordinary' people are not, which makes them prone to inflicting symbolic, systemic, or subjective violence on Indigenous Australians. It also established that 'obligation-as-legitimation' can reinforce this self-legitimacy by making 'ordinary' citizens, specifically Indigenous Australians feel powerless

to resist the 'authority' of employees of the criminal justice system, thus, making those employees more prone to inflicting violence on Indigenous Australians.

It has also shown that the criminal justice employees who believe in their self-legitimacy, truly believe that they know what is right and wrong and what constitutes a decent society. Thus, they develop a sense of supremacy over 'ordinary' people, but more specifically over Indigenous Australians. It revealed that this supremacy, this sense of superiority, can be seen in the classifications used by some criminal justice employees for the people whom they deal with daily, as well as the levels of responsiveness received by those people from those employees. It explained how this sense of supremacy over Indigenous Australians resulted in the infliction of symbolic, systemic, and subjective violence by some criminal justice employees.

Finally, this section has demonstrated that the deific authority displayed by some criminal justice employees is a necropolitical strategy that emerges from the unequal relations of power between Indigenous Australians and the criminal justice system through the exercising of necropower to subjugate Indigenous Australians to the power of death. Additionally, it has shown how this deific authority makes some criminal justice employees more prone to inflicting violence on Indigenous Australians.

Conclusion

This chapter, the second of two theoretical analysis chapters, addressed the second and third research questions. It addressed the second question by using the theoretical framework outlined in Chapter Three to unveil the unequal relations of power that exist between Indigenous Australians and the criminal justice system. It established that Indigenous Australians are being systemically necropolitically targeted, zombified, and transmogrified into *homo sacer*. Further, it established that there is a state of exception within the criminal justice system that creates and/or maintains these unequal relations of power.

It addressed the third research question by exploring the link between power, violence, and authority before exploring how the unequal relations of power lead to a sense of deific authority developing in some criminal justice employees. Finally, it reveals how this sense of deific authority makes some criminal justice employees more prone to inflicting systemic, symbolic, and subjective violence on Indigenous Australians.

The next, and final, chapter of this thesis provides a summary of the key findings of this research study in relation to the aims, purpose, and research questions. It also discusses the value and contribution of this research, as well as reviewing the limitations of the study and proposing opportunities for future research. Finally, it sets out policy implications that have emerged from the

research for policymakers, politicians, and criminal justice employees in the form of recommendations.

10. Looking Back, Moving Forward: Conclusion and Recommendations

'*You can't move forward until you look back'*

- Cornel West

Introduction

This chapter concludes the thesis by summarising the key research findings in relation to the aims and purpose of the research, as well as the research questions. It also discusses the value and contribution of the research, as well as reviewing the limitations, proposing opportunities for further research, and finally, setting out the implications of the research for professionals working in the criminal justice system in terms of recommendations.

The principal aim of this research was to include the previously silenced voices of Indigenous Australians by gaining *their* perceptions and understanding of *their* lived experiences in the criminal justice system and to ensure that Indigenous Australian voices are no longer silenced through omission. The purpose of this research was to identify the forms of violence experienced by Indigenous Australians in the criminal justice system and the unequal relations of violence that contribute to that violence. To achieve this purpose, three research questions were developed:

1. To what extent, and in what form, are Indigenous Australians subjected to violence in the criminal justice system?
2. What is the nature of the relations of power that exist between Indigenous Australians and the criminal justice system?
3. To what extent does the specific nature of the relations of power revealed in Research Question 2, contribute to the violence experienced by Indigenous Australians in the criminal justice system?

Summary of the Research Outcomes

The research questions were answered using both thematic (Chapters Five, Six, and Seven), and theoretical analysis (Chapters Eight and Nine). Chapter Five contained the thematical findings of the semi-structured interviews regarding the early lives of the participants of this study, as well as their lived experiences and perceptions of both the police (necro-enforcers) and the courts (soul-destroyers). The themes that emerged regarding the early lives of the participants were family life, family violence, childhood trauma, educational attainment, and family involvement in the criminal justice system.

In relation to the participants' experiences and perceptions of the police, four main themes emerged, which included fear and distrust, a dichotomy of policing, juvenile delinquency, and experiences of violence. Three main themes emerged regarding the participants' experiences of the

courts (soul-destroyers), which were the pressure to plead guilty, racism in sentencing, and a sense of despondency towards the courts.

Chapter Six included the thematical findings of the semi-structured interviews regarding the participants' lived experiences and perceptions of prisons (death-producers) and community corrections (disintegrators). The analysis of the interviews saw three themes emerge regarding prisons: disconnection from culture, the psychological effects of prison, and power and violence. The final area of the criminal justice system explored by the participants was community corrections, which saw three themes emerge: lack of reintegration support, lack of use of discretion, and difficulties meeting compliance-based parole.

Chapter Seven investigated the in-custody deaths of eight Indigenous Australians and comprised the thematical findings from the coroner's reports. The themes that emerged focus on pervasive issues within the criminal justice system that it can be argued contributed in part to these deaths in custody. From this analysis, four main themes emerged: lack of compassion, lack of duty of care, lack of discretion, and systemic failure.

Chapter Eight addressed the first research question by exploring the forms of violence experienced by Indigenous Australians in the criminal justice system, as well as the extent to which these forms of violence were experienced. This chapter explored the extent of subjective, symbolic, and systemic violence experienced by Indigenous Australians in greater depth than covered in Chapters Five and Six. It established that some police officers (necro-enforcers) and some prison officers and medical staff (death-producers) inflict symbolic violence on Indigenous Australians through provocative, obscene, offensive, and threatening language, as well as framing them as the 'implicit other'.

Chapter Eight also demonstrated that systemic violence is perpetrated throughout the criminal justice system by some criminal justice employees. Further, this systemic violence is disproportionately applied to Indigenous Australians via the application of legally imbued powers, discretions, and responsibilities that are endowed upon criminal justice employees, which recreates inequality, injustice, immobility, and misery. Finally, it demonstrated that the extent to which subjective violence is perpetrated within the criminal justice system is difficult to ascertain through quantitative statistics alone. However, through the qualitative analysis, it has shown that subjective violence is inflicted by some police officers (necro-enforcers) and prison officers (death-producers).

Chapter Nine addressed the second and third research questions through the lens of necropolitics and the associated concepts detailed in Chapter Three. Firstly, it established that the unequal relations of power that exist between Indigenous Australians and the criminal justice system

manifest in Indigenous Australians being necropolitical targeted, zombified, and transmogrified into *homo sacer*, which is enabled by the state of exception within the criminal justice system.

Secondly, it explored how the link between power, violence, and authority that exists in these unequal relations of power can lead to some criminal justice employees developing what I term as a sense of deific authority. By deific authority, I mean where some criminal justice employees believe they hold a legitimate superiority over 'ordinary' people, specifically Indigenous Australians, which gives them an ultimate authority that makes them more prone to inflicting violence on Indigenous Australians. Finally, it established that deific authority emerges from these unequal relations of power between Indigenous Australians and the criminal justice system and is a necropolitical strategy through the exercising of necropower to subject Indigenous Australians to the power of death.

Contribution to Research and Theory

This thesis makes an important contribution to research and theory by bridging a gap in Indigenous incarceration research; expanding the current understanding of the experiences of violence by Indigenous Australians in the criminal justice system; using the 'criminological imagination' by elevating the voices of Indigenous Australians; and finally, by expanding the theory of necropolitics through the concept of deific authority.

This research makes a significant contribution to research by bridging the gap in existing Indigenous incarceration research that uses the theory of necropolitics. It builds on the work of Tedmanson (2008), Klippmark (2016), Klippmark and Crawley (2017), and Holcombe (2016) by applying the theory of necropolitics to multiple in-custody deaths, as well as applying it to the lived experiences of Indigenous Australians across all tiers of the criminal justice system. In doing so, this research has appreciably expanded the current understanding of the forms of violence experienced by Indigenous Australians in all tiers of the criminal justice system.

Subjective violence is the most obvious of the three forms of violence explored in this thesis, but also the most difficult to ascertain the extent of. It is physical violence that is inflicted by an identifiable through physical force, which leaves the victim injured either physically, psychologically, or both. It was found to have been experienced in interactions with some police and prison officers. Symbolic violence is carried out through cognition and communication, which is innately violent in nature; most often through provocative, offensive, and obscene language, or by marking specific groups as the 'implicit other'. Again, this form of violence was experienced mostly in interactions with police and prison officers, however, evidence of use by medical staff within the prisons was also found. The most pervasive form, systemic violence, is the use of legitimate powers and discretions being exercised in a way that, though not illegal, nevertheless caused inequality, injustice, and misery. Systemic violence was experienced in interactions across all tiers in the criminal justice system.

Additionally, this thesis has extended criminology past the positivist approach by incorporating the 'criminological imagination' by being critical, reflexive and situating itself within an emancipatory-transformative paradigm. It achieved this by elevating the voices of Indigenous Australians by using both thematical (inductive) and theoretical (*a priori*) analysis. The findings of the thematical analysis in Chapters Five, Six, and Seven make an invaluable contribution to research by providing in-depth knowledge about Indigenous Australian former offenders' experiences of the criminal justice system. Furthermore, by incorporating such data in research on sensitive subjects, such as violence and the criminal justice system, it privileges Indigenous voices that may otherwise not have had the opportunity to be heard.

The findings of the theoretical analysis in Chapters Eight and Nine are fundamental to understanding how an analytical framework based on necropolitics has the potential to elevate the previously silenced voices of vulnerable populations, such as Indigenous Australians, within the criminal justice system. Therefore, this thesis emphasises that to gain an accurate understanding of the complexity of Indigenous incarceration, especially by non-Indigenous Australians, there must be a deeper engagement with Indigenous Australians that elevates *their* voices, perspectives, and lived experiences.

Finally, this research has expanded the theory of necropolitics by incorporating the concept I refer to as '*deific authority*' as show in Table 7. It is also worth mentioning here that my concept of deific authority is embryonic in its development and, as Higgins (2004), states "theory, like a child, must be allowed to develop through contact with the world (i.e., data)" (p. 138). Like a child, theoretical concepts should not be abandoned during their development, but encouraged to grow, which occurs through further research (Dankasa, 2015). It is, therefore, my intention to conduct further research that will grow and enhance the concept of deific authority, as well as the theory of necropolitics.

Theoretical Concept	Definition of Concept	Variable/s	Definition of Variable	Qualitative Evidence
Deific Authority	The belief of some criminal justice employees that their position within the criminal justice system gives them a legitimate superiority over 'ordinary' people, ordaining or conferring on the former an almost god-like, ultimate authority.	Supremacy	The state or condition in which criminal justice employees believe they are superior to all others, specifically Indigenous Australians, in authority, power and status.	*"...the way they were treated was just disgraceful, but every time they think every Indigenous person's going to divert their medication and they watch you, when you're a black fella, especially if you've got dark skin they make...watch every move you make, where you walk and do, who you're talking to, who you're hanging out with"* - Frank
		Self-legitimacy	As per Tankebe (2019) "a powerholders' recognition of their individual entitlement to power" (p. 99).	"[S.S. Hurley]*...felt the need to exert his authority*" (Queensland Government, 2006, p. 3)

Table 7 - Concept of Deific Authority

Deific authority stems from the unequal relations of power between Indigenous Australians and the criminal justice system that makes some criminal justice employees believe that their position in the criminal justice system gives them a legitimate superiority over 'ordinary' people, conferring on the former an almost god-like (deific), ultimate authority. Deific authority adds to the theory of necropolitics because it is this belief in their superiority and self-legitimacy that makes some criminal justice employees consider that they are the most capable of deciding who matters, who does not, who is disposable and who is not. In other words, whose lives should be subjugated to the power of death.

Ultimately, this research makes a valuable contribution to the theory and research of Indigenous over-representation and deaths in custody by highlighting the national significance in identifying the necropolitical imperative in the context of the Australian criminal justice system.

Limitations of the Research

All research encounters limitations, whether it be the scope, methodology, ethics, or practical realities, particularly when working with vulnerable groups. Although the limitations of this research were considered as the project progressed, the main limitations were a small research cohort, a gender imbalance in the research cohort and limitations with 'official' statistics.

As a doctoral research project with limited resources, as well as the influence of the Coronavirus (Covid-19) pandemic on participant recruitment, I had to contend with a smaller than anticipated research cohort. It may have been more robust to carry on with participant recruitment, however, phenomenologically, saturation was achieved. It is also important to note that the research cohort is not representative of all Indigenous Australian peoples, nor all Indigenous Queenslanders. Prior to invasion in 1788 there were between 200 and 300 autonomous Indigenous 'nations' (Coghill & Wright, 2012), therefore, no single study could hope to incorporate the cultural mores, voices, and perspectives of each community.

Nonetheless, the recruitment process captured participants with experiences of the criminal justice in New South Wales, Victoria, and Queensland and lends itself to other researchers who wish to use a similar process of recruitment. Although the main focus of the research was Queensland, it did touch upon other states and territories both quantitatively and qualitatively. However, it should be noted that these states and territories have varying approaches to Indigenous over-representation, such as the Australian Capital Territory which has a larger focus on diversionary strategies.

Another issue within the research is 'Baron's paradox' in that "that those who most need to have their stories heard may be least able to tell them" (Booth & Booth, 1996, p. 59). In respects to this study, that would be Indigenous Australian women, who are a growing population in Australia's prison system. However, getting Indigenous Australian women to speak with me was challenging; hence, there is only one female participant in the research cohort. It is important to point out here that the pool of Indigenous women at the rehabilitation was already small due to a small number of female residents at the rehabilitation centre. It was also unclear how many women, if any, fitted the criteria of being recidivist offenders because this information is not held by the rehabilitation centre unless the women are there through court-ordered parole. Even if the women did fit the criteria, they may not have felt comfortable sharing their stories with a white female researcher because they may have felt too much shame associated with their interaction with the criminal justice system, as well as their residency at a drug and alcohol rehabilitation centre.

The feeling of 'shame', which is not as easily defined within Indigenous cultures as it does not fit a 'white' dictionary definition (Mental Health First Aid Australia, u.d.). Shame is described by Brown (as cited in Moana & Elizabeth, 2019/2020) as being an "intensely painful feeling or experience of believing we are flawed and therefore unworthy of acceptance or belonging" (p. 3). In their study Moana and Elizabeth (2019/2020) posit that shame is "strongly related to prevailing discourses on indigenous [*sic*] deficit, that is, the stories that these women had been told about themselves by others" (Moana & Elizabeth, 2019/2020, pp. 2-3). Shame is a strong emotion that can be "overwhelming, disempowering and can also act as a barrier to seeking help" (Mental Health First Aid Australia, u.d., p. 3). However, shame usually occurs through a worry that other people have a low opinion of us (Moana & Elizabeth, 2019/2020).

Spending more time at the rehabilitation centre informally would have allowed for the residents and I to become better acquainted, which would have allowed an element of rapport and trust to be built with both the men and the women, but particularly the women. However, due to the limited budget and resources of a PhD research, as well as the physical distance of the rehabilitation facility from the university this was not something that could be achieved. However, I do believe that additional research to include the voices of Indigenous Australian women in this area would be another invaluable contribution to research and theory.

The limitations with the official statistics were discussed in Chapter Eight, but it is worth mentioning them again here. In the context of this study, the criminal justice system produces the official statistics, which means that they control their transparency (or lack thereof). Obtaining official statistics for this study was a much more onerous task than expected for two main reasons. The first was the accessibility of the data. The statistics for the criminal justice system are held by a variety of institutions. For example, the Queensland Sentencing Information Service holds the sentencing information for Queensland, but to access information on guilty pleas one has to turn to the Australian Bureau of Statistics. As discussed previously, to access to the National Coronial Information System costs around $2500 per year for basic access.

The second was the inconsistency in the way that the information is recorded and made available, particularly in respect to the Australian Bureau of Statistics (ABS) and the National Deaths in Custody Program (NDCP). Accessing the datasets from the ABS for the years 2008 – 2020 for a variety of areas required accessing multiple datasets. Further, many of the datasets varied in their method of reporting and at times where years overlapped in the datasets the data did not correspond. In respect to the NDCP, some years there was no information recorded for specific data, for example between 2011 and 2014 no information was recorded on the circumstances in which a person died in police custody e.g., being detained, escaping or in an institution. From 2008 to 2011 and 2015 to 2017

'missing or not recorded' was not included in the cause of death and during 2015 to 2017 'head injury' was included under 'external/multiple trauma'. Similar gaps and changes can be found within the datasets for deaths in prison custody. Further adding to the complexity and limitations of using official quantitative statistics.

Recommendations for Policy, Practice, and Further Research

When I embarked upon this research, it was my desire to see action, change, and implementation of policy as a result of this project because this is not only a struggle over unjust relations of power and violence, but also a crisis in social justice. I hope that the findings contained herein will contribute to discussions regarding policy and practices within the criminal justice system because, as Doyle, Gardner, and Wells (2021) posit, "[t]he concept that policies should be informed by the people they more directly affect is an important consideration for policy development" (p. 85). Therefore, by listening to my Indigenous Australian participants and reading the coroners' reports of in-custody deaths, I have identified some key recommendations that can assist policymakers, as well as criminal justice staff to achieve a true shift from punitive to rehabilitative, one that is integrated from start to finish, from police right through to community corrections.

The focus for improvement could be on four core areas, namely: intervention, rehabilitation, reintegration of former prisoners, and adoption of some key findings from deaths in custody to address the forms of violence highlighted in this study. The recommendations are shown in Table 8.

Intervention	Rehabilitation	Reintegration	Deaths in Custody
Improved cultural competence training for police.	Improved mental health services for prisoners.	Better throughcare for all prisoners, but also throughcare to meet specific Indigenous needs.	Independent Police Accountability Commission (i.e., no more police policing the police)
Mental health professionals on mental health callouts.	Courses available for prisoners on remand and those on short sentences.	Improved temporary housing options on release.	External, official Indigenous visitors to check on social, mental, and cultural wellbeing of Indigenous Australians.
Justice reinvestment – redirect funds to mental health, social housing, substance abuse rehab services.			Improved de-escalation skills training for police and corrections officers.

Table 8 - Recommendations

Intervention Initiatives

Improved Cultural Competence Training

It is recommended that cultural competence training for criminal justice employees should be a minimum of two days, delivered by an Indigenous person who is authorised to do so (preferably local), ongoing, and reflect a best practice model (Victorian Aboriginal Legal Service Co-operative

Ltd, 2011). Training such as the nationally recognized Centre for Cultural Competence Australia (CCCA), which delivers a competence-based model rather than the outdated awareness model (Centre for Cultural Competence Australia, u.d.). The courses are based on core competences approved by a Registered Training Organisation (RTO) (Centre for Cultural Competence Australia, u.d.). The courses provided by the CCCA are ten hours in duration, delivered online in three separate modules, and structured to be delivered in a one-to-one manner (Centre for Cultural Competence Australia, u.d.).

Mental Health Professionals on Mental Health Callouts

One U.S. city, Eugene in Oregon, has started replacing the police with mental health workers to attend non-criminal emergency calls to 911[68] with the establishment of the CAHOOTS (Crisis Assistance Helping Out On The Streets) program 30 years ago (Thornton, 2020). The CAHOOTS team consists of a mental health crisis worker and a paramedic, who between them have the appropriate skill set and training to deal with a variety of mental health issues and co-morbidities, including substance abuse, homelessness, intoxication, disorientation and dispute resolution (Thornton, 2020).

It is said that the CAHOOTS program "reduces confrontations involving police officers, saves money, and allows police to concentrate on law enforcement" (Thornton, 2020, para 2). Therefore, a program such as CAHOOTS could provide an alternative model in Australia that would not only reduce unnecessary contact with the criminal justice system for Indigenous Australians, but also allow mentally ill persons to get the help, support, and treatment they need.

Justice Reinvestment

The term 'justice reinvestment' was introduced in the U.S. in 2003 and recommended the redirection of a portion of the U.S.'s budget on incarceration towards addressing the causal issues of crime in areas with high crime rates (Schwartz, Brown, & Cunneen, 2017). The idea is that by redirecting the funding into "education, health, job creation and job training" (Schwartz et al., 2017, p. 1) for communities that experience high crime the crime rate will reduce and this will, in turn, reduce the number of people going into the prison system (Schwartz et al., 2017). The place-based focus of justice reinvestment fits well with the calls from Indigenous leaders, such as Mick Gooda, for "place-based and community-driven" (Schwartz et al., 2017, p. 2) initiatives that support Indigenous views on Indigenous governance (Schwartz et al., 2017).

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[68] 000 in Australia.

Justice reinvestment was initiated in the Indigenous communities of Doomadgee and Mornington Island in Far North Queensland as a result of research conducted by Dawes and Davidson (2019). Initiatives from the justice reinvestment plans were established (without funding), such as the 'Keeping on Country' support group that has been designed specifically to support desistence from crime (Dawes & Davidson, 2019). The group "meets weekly and engages in a monthly on country camp" (Dawes & Davidson, 2019, p. 539) and the Indigenous researchers have reported that many families are taking men who return from prison 'on country', as well as removing young men from the community when stressful situations arise to reduce the risk of reoffending (Dawes & Davidson, 2019).

Justice reinvestment can meet the cycle of recidivism and crime head on by providing communities and former offenders with meaningful, contextually informed, place- and community-based support to address social disadvantage. Furthermore, by supporting successful reintegration, justice reinvestment can break down the stigmatisation of individuals by the community and the police.

Rehabilitation Initiatives

A National Planning Framework to Improve Prison Mental Health Services

The findings from this present study highlight some pervasive issues with mental health services in prisons across Queensland and New South Wales. A national survey of Prison Mental Health Services (PMHS) in Australia was conducted by Davidson et al. (2020), which found that only the Australian Capital Territory was adequately funded to provide mental health services that are on par with services provided in the community. Further, they found that PMHS are "severely under-resourced when compared with available benchmarks" (Davidson et al., 2020, p. 442). As discussed in Chapter Eight of this thesis, prisons provide a complex environment in which to provide mental health services.

However, I support the opinion of Davidson et al. (2020) that PMHS should not only be adequately funded and resourced, but also "be designed in a way that facilitates a coordinated response to the complex needs in prisons, and a continuity of care as these individuals transition back to the community" (pp. 442-443). It is therefore recommended that a national planning framework for PMHS be created and implemented to ensure a national approach to PMHS to ensure sustainable and equitable model of services (Clugston, Perrin, Davidson, Heffernan, & Kinner, u.d; Davidson et al., 2020).

Provision of Courses for Prisoners on Remand or with Short Sentences

Programs and courses in prisons are provided by Corrective Services to address the causal factors of offending, such as those discussed in Chapter Five of this thesis. The hope is that these courses can assuage some of these factors and reduce recidivism (Australian Law Reform Commission, 2017a). However, as mentioned by one of this study's participants, prisoners on remand or short sentences are not currently offered any courses (Australian Law Reform Commission, 2017a). According to the Australian Law Reform Commission (2017), there can be both policy and practical reasons behind this.

For example, 'offence-based' programs cannot be offered to a person on remand because the charges against them remain unproven and the prison also do not know when a person will be released, therefore, they may not have the time to complete the program (Australian Law Reform Commission, 2017a). Those on shorter sentences are considered not in prison long enough to "access and complete a prison program" (Australian Law Reform Commission, 2017a, p. 96). It is recommended then that policymakers investigate what programs can be considered for adaption or inclusion for prisons on remand or shorter sentences, such as life skills, literacy/numeracy, drug and alcohol management (relapse prevention). Further, the courses should form part of the pre-release throughcare program.

Reintegration Initiatives

Improved Throughcare/Reintegration

The level of reintegration or throughcare afforded people post-prison, particularly Indigenous Australians in remote communities is limited in scope and requires further investigation. As one of the participant's said, leaving prison is like being pushed off a cliff with nothing to catch you. Other participants of the study also voiced their perspectives of the lack of support they receive pre- and post-release from prison, from being placed in a halfway house with drug and alcohol issues or being left on a street with a few dollars and no way to get home. Further, the literature review conducted as part of this research also highlighted the lack of adequate throughcare, particularly culturally competent and strengths-based that incorporate Indigenous Australian or ex-prisoner organisations (Australian Law Reform Commission, 2017c).

Like Indigenous incarceration, throughcare with an Indigenous focus needs to be approached laterally in an 'outside the box' way. It is therefore a recommendation of this thesis that a holistic approach to throughcare be adopted by policymakers that ensures a good foundation of collaboration between service providers that breaks down the current model of siloisation. Further, policymakers should approach throughcare from an Indigenous Australian viewpoint, which is that it should be

place- and community-based with investment in local initiatives that include family, Elders and community members that addresses the social determinants of criminal offending.

Improved Temporary Housing Post-Release

One of the biggest hurdles for prisoners on release from prison is finding suitable accommodation, particularly for some who were homeless before being incarcerated and for those with strict parole conditions, such as one of the participants of this study who could not return to his hometown for a year. The risk of homelessness and housing instability is, as was discussed in the literature review in Chapter Two, linked with high rates of recidivism. However, gaining secure, safe housing on release from prison can be troublesome for ex-prisoners who have no family, complex needs (mental health or substance abuse) and limited finances, as well as for those with parole conditions that prevent them from returning to their homes (Growns, Kinner, Baldry, Conroy, & Larney, 2016).

There are limited options for ex-prisoners, which include 'halfway houses' where people live as a group in a house or supported housing programs on a scattered site where people live in independent accommodation (Growns et al., 2016). Both options usually follow a therapeutic support program onsite (Growns et al., 2016). There is evidence, according to Growns et al. (2016), that post-release programs that include a residential component are effective in reducing recidivism citing a residential program that included "counselling services, vocational training, education or aftercare" (p. 7). It is a recommendation of this research that residential, reintegration programs (separate for male and female) be available specifically for Indigenous Australians who are high risk of re-offending and homelessness and high needs (i.e., mental health issues, substance abuse, educational and social disadvantage, history of unresolved trauma).

These residential programs would be like that of the Rainbow Lodge in Glebe, NSW whereby it would be a 12-week program that provides tailored services to suit the goals and needs of individual residents, including addiction services, counsellor/psychology, vocational training, assistance in securing employment and future housing (Growns et al., 2016). Further, the service should be a bottom-up approach that does not attempt to 'manage' the residents, but works with the residents to help them be successful in reaching their goals (Growns et al., 2016).

Recommendations from Key Findings in Deaths in Custody

Improved De-escalation Skills Training

Most of the literature on de-escalation skills training for police officers focuses on the U.S. (Oliva, Morgan, & Compton, 2010; Todak & White, 2019) and Canada (Bennell et al., 2020; Deveau, 2021). Mention of de-escalation skills training for the police in Australia returns little academic references. One meta-analysis conducted on the response models of police to people with mental health states that

"police departments in Australia have mainly implemented and operate the mental health intervention team (MHIT) and the police and clinical early response (PACER) models" (Seo, Kim, & Kruis, 2020, p. 183). This article also showed that reviews had been conducted on some of these response models between 2014 and 2019, but not on the de-escalation training of the officers or mental health professionals within these teams (Seo et al., 2020).

It is, therefore, a recommendation that a review to examine the effectiveness of existing de-escalation training practices across the Australian jurisdictions. This should also include a review of evidence-informed practices that may prove relevant to de-escalation and use-of-force training. Furthermore, police and prison services should be encouraged to test these training programs more rigorously in the police and prison training environment to ensure the impact these practices have on the trainees.

Independent Police Accountability Commission

As demonstrated in this thesis, unchecked power comes with the risk of abuse of that power. Further, it has demonstrated that there is an increased need for this power to be monitored and for those that wield it to be held accountable for its use. A call for an independent form of oversight for the police is not new. The Human Rights Law Centre submitted to the Australian Law Reform Commission that "[n]o Australian jurisdiction has established a system for *completely independent* investigations of deaths in police custody or of allegations of torture and mistreatment" (emphasis added, ALRC, 2017, p. 466). The fact that most states or territories in Australia have not implemented this is not because it is not needed, but rather, as O'Brien Butler (2018) points out, that "political will for reform seems lacking" (p. 704). Further reinforcing the need for independent oversight.

My recommendation echoes that of the Human Rights Law Centre, which is that each state or territory establishes an independent agency for investigating complaints and deaths in custody (police and prison) and that these bodies should be "hierarchically, institutionally, and practically independent of police [or prisons]" (Australian Law Reform Commission, 2017b, p. 467). Furthermore, it draws on recommendations from Hopkins (2009), which include:

1. The agency must be independent, not only from police, but also culturally and politically. Therefore, the use of former police officers should be minimal (less than 25%), if used at all.

2. The agency must be complainant focused and orientated with a healthy amount of scepticism of accounts of misconduct from the police.

3. There should be minimal interaction with police to avoid agency capture, therefore, no seconded police officers should be used by the agency.

4. Legislation and regulations must be established that protects the agency from political and police union tampering. Further, key positions in the agency must be long-standing.

5. The agency must have adequate, secure funding.

6. Adequate empowerment to enact its duty must be provided, particularly when confronted by police resistance.

7. The agency must be staffed by a diverse workforce that reflects the diversity within the community, i.e., disability, LGBTIQ, Indigenous Australians, religious and ethnic backgrounds, as well as maintaining an adequate gender balance.

Ultimately, as the investigation into the in-custody deaths of eight Indigenous Australians in this thesis has shown, the decision by a single person working within the criminal justice department, whether it be a police officer, prison officer, a doctor, a nurse, or a community corrections officer, has the capacity to ruin a life. Yet, those that make these decisions are not held accountable, whether that be by the public who pay their wages, or by the laws and legal system that they are supposed to uphold.

A Note on the RCIADIC Recommendations

Many of the findings of this study align with the findings of a paper by Anthony, Jordan, Walsh, Markham, and Williams (2021) who argue that few of the 339 recommendations of the RCIADIC have been implemented. Signs of some of these unimplemented recommendations can be seen in the thematic analysis chapters (Five, Six, and Seven) of this thesis, which include:

- Criminalisation
    - Arrest as a last resort
    - Decriminalisation of offensive language
    - Imprisonment as a sanction of last resort
- Healthcare in custody
    - Aboriginal Health Services to assume leadership roles for reviewing and providing Indigenous prisoner health care.
- Hanging points. (Anthony et al., 2021)

Therefore, I also support the recommendation of the authors for the "development of national independent monitoring of the implementation of the recommendations of the RCIADIC" (p. 16). I would also add that this national independent monitoring also includes monitoring the implementation of recommendations from other sources, such as independent research.

Conclusion

This research has elevated, and listened to, the voices, lived experiences, and perceptions of Indigenous Australians in respect to the criminal justice system. One takeaway message from those voices is that that there is a dichotomy of attitudes within the criminal justice system, that not all police officers, prison officers, medical staff, or community corrections officers are unprofessional. Many of the participants had good experiences, were given 'second chances', or interventions that have changed their lives and a few explained that the trouble they found themselves in, whether it be with police, while in prison, or while on parole, was down to their actions for which they held themselves accountable.

Having said that, this thesis still paints a less than optimistic picture of the criminal justice system's interaction with, and treatment of, Indigenous Australians. I end my thesis with two poignant quotes from Mike in response to the question '*what is your perspective of the criminal justice system overall as an Aboriginal or Torres Strait Islander person?*':

> "*I just want our people to be treated like every other Australian. I don't want much, it's not much to ask, just treat us like every other Australian's being treated*".
>
> *"…it's not broken, it was built that way. I see that quite a lot and I can relate to it so much is that's just the way our country is at this point in time, it's not broken, it was built that way…Like I say, in my talks, we've got to start looking at something because what is in place is not working, we know that and we don't know if that is the way they want it upstairs [government]. I'm not sure but what is in place is not working*".

Appendix A: Interview Questions

Demographics

1. How old are you?
2. Do you have children?
3. Where is your mother and father from?
4. Where did you grow up?
5. What was it like growing up there?
6. Where did you go to school?
7. What grade were you in when you left school?
8. Why did you leave school?
9. Tell me about the jobs you have had?
10. Have any other members of your family been through the criminal justice system?

Arrest/Police Custody

1. How old were you when you first had contact with the police?
2. Can you tell me about that?
    a. What happened?
    b. Who were you with?
3. How many times have you been arrested?
4. What offences have you been arrested for?
5. Where were you when you were arrested, for example, at home, in the street, in a park?
6. Is English your first language? If no, what language do speak most?
7. If no, did you need an interpreter? Was one offered to you?
8. Did you understand the charges against you?
9. Were you fully aware of your rights when they arrested you?
10. Did your family understand your rights?
11. On average, how long were you in police custody?
12. Can you describe any incidences of physical mistreatment you may have experienced from police staff during your arrest or in custody?
    a. How many times did this occur?
    b. Did you suffer a serious injury or health problem as a result?
    c. Did you receive any medical care? How long did that take to arrive?
    d. How did that make you feel?
13. Can you describe any incidences of verbal abuse you may have experienced from police staff during your arrest or in custody?

   a. How many times did this occur?
   b. How did that make you feel?

Courts

14. Did you hire a lawyer, or one was one appointed to you?
15. Did you access to the Aboriginal Legal Aid Service?
16. How long did the solicitor spend with you before you went to court, before you went into court?
17. Do you feel that you get a lot of help from the solicitors?
18. How were you told to plead?
    a. If guilty, were you told this would ensure a quicker process?
19. Did you get offered bail?
    a. If yes, were you able to meet the conditions of bail?
20. Were you held on remand?
    a. If yes, how long were you on remand for?
    b. Were you found guilty or not guilty following your period of remand?
21. Were you in a prison that your family could easily travel to for visits?

Prisons

22. How many times have you been in prison?
23. Can you describe what your experience of prison was like as an Aboriginal or Torres Strait Islander person?
24. Can you describe any incidences of physical mistreatment you may have experienced from staff during your time in prison?
    a. How many times?
    b. Did you suffer a serious injury or health problem as a result?
    c. Did you receive any medical care? How long did that take to arrive?
    d. How did that make you feel?

25. Can you describe any incidences of verbal mistreatment you may have experienced from staff during your time in prison?
    a. How many times?
    b. How did that make you feel?
26. Were you ever placed in solitary confinement?
    a. If yes, how many times
    b. Why did they put you in solitary?

27. Did you have access to rehabilitation/education programs?
    a. If yes, do you feel they were culturally appropriate?
28. What challenges did you face in prison and how did you overcome them?
29. What kind of contact did you have with your family while you were in prison?
30. Did you have the support of your family when you were in prison?
31. What support was offered to you in prison?
32. If you needed to talk to someone in prison who was available for you to talk to?
33. What was the healthcare like in prison?
34. Were any elder or community justice groups available to visit you in prison?
    a. Did you use this service?
    b. Was it useful?
35. Before you were released what was offered to help you get ready to resettle back into the community – mentally, socially or financially?
36. What impact has imprisonment had on your life?

Parole / Post-release

37. After release did you face any challenges settling back into the community?
38. Were you offered financial and material support upon your release from prison?
39. After your first time in prison did you get employment? If yes, was the income enough to meet your basic living needs?
40. What support systems do you have in place now?
41. Have you ever breached parole?
    a. If yes, what were the reasons?

Recidivism

42. Can you tell me what problems were behind your reoffending?

Overall

43. Do you feel that you were treated differently in the criminal justice system because you are an Aboriginal or Torres Strait Islander person?
44. What do you think can be done to stop Aboriginal and Torres Strait Islander peoples from entering the criminal justice system? What can society do better?
45. What are your plans and goals for the future?

Appendix B: Code Book

Nodes\base

Name	Description
Background	Background information relating to the person.
Cultural Rehab	Indigenous-led alcohol and drug rehabilitation centres.
Deific authority	Some people within the criminal justice system believe their positions raise them above 'ordinary' people, thus giving them (in their minds) an almost god-like authority.
Systemic Failure	A flaw or flaws in a system.
Violence	Forms of violence

Nodes\Death-worlds

Name	Description
Death-worlds	Inside prison where person is subjected to social, physical, cultural, or political death.
Genocide	Social, political, and physical death
Exclusion	Where were Indigenous Australians excluded?

Nodes\Demographics

Name	Description
Age	What age was interviewee when they first interacted with the police.
Childhood	What was childhood like for interviewee.
Dependents	Does the interviewee have any dependents?
FamCJS	Have other members of the family been in contact with CJS.
Family life	What was family life like for the interviewee?
Schooling	Level of schooling obtained/quality of schooling.
Siblings	How many?

Nodes\Deaths in Custody Emergent Themes

Name	Description
Lack of Accountability	The fact or condition of being accountable; responsibility.
Lack of Compassion	Sympathetic consciousness of distress in others, together with a desire to alleviate it.
Lack of Discretion	The freedom to decide what should be done in a particular situation.
Lack of Duty of Care	The legal amount of care owed.
Systemic failure	A systemic problem is a problem due to issues inherent in the overall system, rather than due to a specific, individual, isolated factor.

Nodes*Homo Sacer*

Name	Description
Non-citizens	E.g., refusal of rights, access to justice
Powerless	Positions in which Indigenous Australians find themselves with no power to stand against the mistreatment they are being subjected to.

Nodes\Narrative Codes

Name	Description
Addiction	Did the person suffer from addiction?
Age started	The age the person started becoming involved in crime.
Anger	Did they experience anger.
ATSILS	Experiences with ATSILS.
Bail	Experiences of bail.
Breaches	Experiences of parole breaches.
Conditions	Ability to stick to parole conditions.
Criminalisation	Did the person feel criminalised/stigmatised/labelled?
Culture	Was culture included in prison?
Despondency	Expressions of despondency, of no hope.
Discretion	Did they experience people using discretion in their dealings with them?
Drugs	Drugs inside prison.
Fam Sep	Separation from family.

Fear	Did they fear the police?
GCBD	Good Cop / Bad Cop - Experiences of good police versus bad police
Ignored	Did they feel they were not listened to?
Juv Del	Experiences of juvenile justice system.
Language	Derogatory or foul language used against the person.
Living conditions	What were the living conditions like in the prison?
Maltreatment	Was the person maltreated by the system?
manipulation	Was the person manipulated?
MH	Experiences of mental illness.
No fight	No point fighting the system.
Officers	Did they discuss the officers?
Phys Violence	Was physical violence perpetrated against the person?
Programs	What programs were on offer in prison?
Racism	Experiences of racism.
Rehab	Rehab as parole.
Reint	Experiences of reintegration.
Remand	Had they been on extended remand?
Searches	Were strip searches conducted?
Self Rep	Did anyone self-represent?
Sentence	What was their experience of their sentencing?
Solitary	Experiences of solitary in prison.
Support	What support was offered?
SUTF	Set up to fail?
Trauma	Previous trauma or existing trauma.
Treatment	Treatment in prison.
Understand	Did the person understand their rights?
Violence	Types of violence experienced.

Nodes\Necropolitics

Name	Description
Authority	Necropolitics: How closely are decisions that are made by the judicial officers monitored by those who govern, are they fully open to members of the public? How much sway /authority do the judicial officers have over any other branches of government?
Legitimacy	Necropolitics: What is the extent of judicial officers' rights to make the decisions they make under the law? How much support do the police have of the general public it acts for?
Neutrality	Necropolitics: To what extent is the outcome the same no matter who the decision is in regard to?
Uniformity	Necropolitics: To what extent does location impact on the outcome of decisions being made?

Nodes\Necropower

Name	Description
Power	To what extent do the police exercise less discretionary powers with IAs particularly regarding public order offences? How does police negligence of discretionary power act as a subtle tactic that obscures the often-brutal collateral consequences for Indigenous Australians? How does police power 'qualify, measure, appraise and hierarchise'?

Nodes\State of Exception

Name	Description
Suspension of Law	How often do police escape punishment for excessive use of force due to a suspension of the controls and guarantees of judicial order?

Nodes\\Violence

Name	Description
Subjective	Overt, physical violence.
Symbolic	Use of language, power over those who do not have power.
Systemic	Use of legitimate powers and discretions being exercised in a way that, though not illegal, nevertheless caused inequality, injustice, and misery

Nodes\Zombification

Name	Description
Dehumanisation	Made to feel less than human, deprived of human qualities

Appendix C: Standard / Core Parole Conditions

	Vic	NSW	Qld	SA	WA	Tas	NT	ACT
Not break the law/ re-offend/ be of good behaviour	√	√	√	√		√		√
Adapt to normal lawful community life		√						
Notify relevant authority of change of address and/ or employment	√		√		√	√		√
Not leave the jurisdiction without permission	√					√		√
Obey/ carry out the lawful instructions of relevant authority	√		√	√	√	√	√	√
Be under supervision	√		√	√		√	√	
Report as directed	√		√		√	√		√
Make self available for review by relevant authority	√							√
Satisfactorily undertake work and/ or education/ treatment program	√				√	√		
If not employed or undertaking a program, undertake unpaid community work as directed by the regional manager	√							
Reside as directed by relevant authority						√		√
Only engage in employment approved by the parole officer						√		
Obey the parole officer's direction in relation to associates						√		
Not frequent or visit any place specified in a direction by the PO						√		
Authorise the release of relevant medical and other reports to the PO						√		√
Not use/ abuse drugs other than in accordance with legal medical directions						√		√
Undertake drug/alcohol testing			√		√	√		
Not possess a weapon (without				√				√

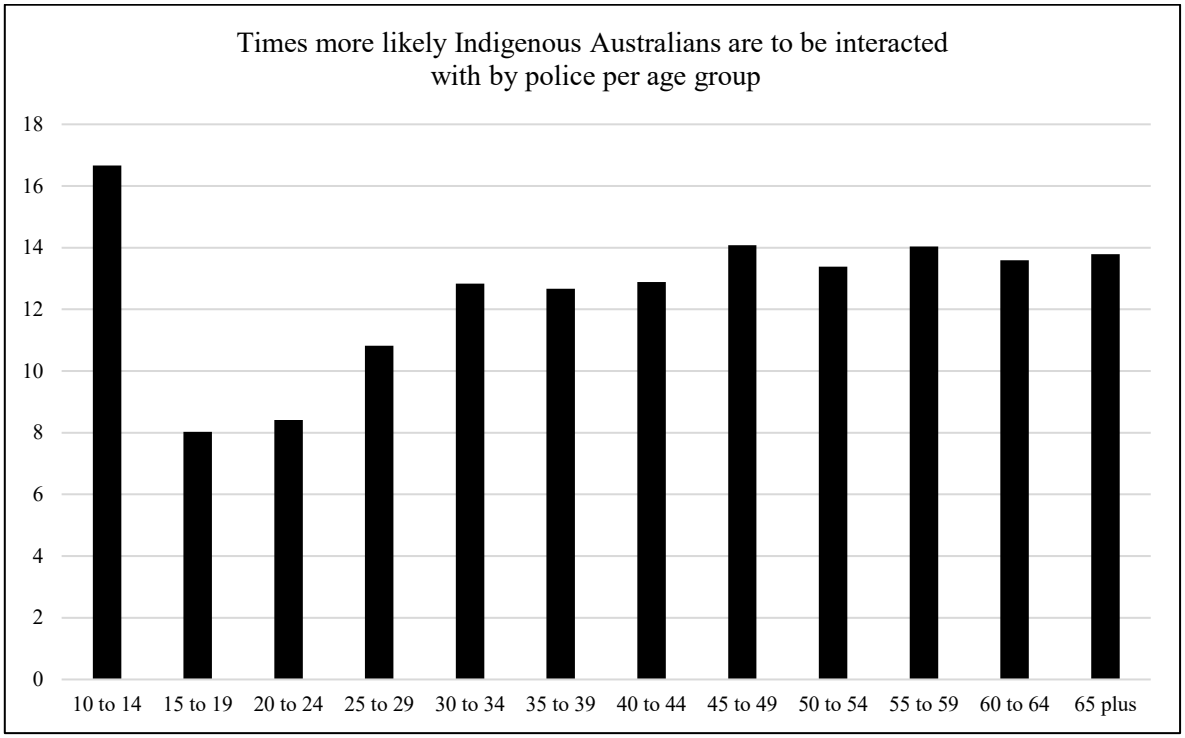
permission)								
Advise of any fresh charges within two days.								√
Number of standard conditions imposed*	10	3	6	4	11	15	2	15

See *Corrections Regulations 2009* (Vic), Sch 4; *Corrective Services Act 2006* (Qld), s 200; *Correctional Services Act 1982* (SA), s 68; *Crimes (Administration of Sentences) Act 1999* (NSW), s 128; *Crimes (Administration of Sentences) Regulation 2008* (NSW), r 224; *Crimes (Sentence Administration) Act 2005* (ACT), s 137; *Crimes (Sentence Administration) Regulation 2006* (ACT), r 4; *Parole of Prisoners Act 1979* (NT), ss 5A-5C; *Sentence Administration Act 2003* (WA), ss 29, 76; Parole Board of Tasmania (PBT), *Annual Report 2011-12* (2012) pp 15-16; VSAC, *Review of the Victorian Adult Parole System: Report* (2012), Appendix 2.

*The total may not add up to the number of conditions listed in the Table but reflect how they are set out in the relevant source document(s).

Source: (Bartels, 2013, pp. 361-362)

Appendix D: Age of Interaction by Age Group



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