



Guest Editors' Introduction: State Violence—Practices and Responses

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The year 2020 will long be viewed as a threshold of the 21st century. Just as COVID-19 has laid bare contemporary neoliberal failures of healthcare, welfare and aged care, the historical legacies of colonialism have been shown to ruthlessly persist in shaping the experiences of oppressed peoples and their relationship to the state. The eight and a half minutes of state-sponsored public torture that ended American citizen George Floyd's life was televised around the globe in an instant and ignited the most cohesive and widespread expression of anti-colonial resistance witnessed in a generation. Black Lives Matter protests spontaneously erupted in each state of the US, prompting virulent responses in the UK, Europe, Australia and other regions implicated in or victim to colonialism. The historical foundations of Black and First Nations' oppression were symbolically torn asunder as statues of colonial administrators, slave traders and folk heroes were toppled around the West throughout the first half of the year. All of this discontent, rage and exasperation was fermented and expressed in the unique context of a global pandemic and attendant government responses disproportionately affecting marginalised and disenfranchised populations, communities and neighbourhoods. But the social and political context was otherwise far from unique; the movement represents the great unfinished business of civil rights.

In the US, confederate statues were torn down in the South, while statues of Christopher Columbus were toppled or defaced across the country (BBC 2020). Public spaces were renamed to restate sovereignty and Black Liberation. In Tennessee, racist newspaper mogul Edward Ward Carmack's statue was replaced by a banner declaring the public space it had imposed on for 90 years, the *Ida B. Wells Plaza*, to honour the African American investigative journalist and founder of the National Association for the Advancement of Colored People (New York Times 2020). Sometimes the state has participated in these processes of resituating power. In Washington, Mayor Muriel Bowser named a mural painted by the Department of Public Works at the corner of Lafayette Square, *Black Lives Matter Plaza*. In a sensible and welcomed pre-emptive strike, government representatives in Rio Arriba New Mexico removed a statue of brutal Spanish conquistador Juan De Oñate, hours before a protest organised by local residents was to descend on it (Gilbert 2020). As the Seattle Capitol Hill Autonomous Zone has demonstrated, however, the state, its armed officials and their monopoly hold on 'legitimate violence' (Weber 1946) are typically unwelcome and uneasy fits with the organic international movement for decolonisation.

Black Lives Matter protests in Australia were less concerned with colonial statues, although this remains a toxic issue to be resolved (Carlson 2020), and more so with failed justice for families of the Indigenous men and women who have died of abuse and neglect in state custody. In Australia, the dying words of George Floyd – 'I can't breathe' – were painfully familiar to those who understood the perverse situation following the 1991 report of the Royal Commission into Aboriginal Deaths in Custody whereby, in direct contradiction

of its recommendations, First Nations Australians have since been imprisoned at such an accelerated rate as to have become the most incarcerated people on earth (Pearson in Anthony and Baldry 2017). 'I can't breathe' were also the final known words of David Dungay Junior, just one of the 437 First Nations Australians to have died in custody since the release of the Royal Commission's report (Allam, Wahlquist and Evershed 2020). Twenty-six-year-old Dungay died in 2015 after he was sedated and violently dragged by a team of prison guards from the mental health ward of Sydney's Long Bay Gaol, or as the New South Wales Department of Health put it, 'during a use of physical restraint and rapid tranquillisation in an inpatient mental health unit' (Visentin 2016). Chilling footage of Dungay repeatedly pleading that he could not breathe as he was subdued and restrained has forged and strengthened uncomfortable connections and desperate solidarities with Black Lives Matters protests in the US and prompted even greater discursive international recognition of the entwined histories and legacies of commercial slavery and the violence of settler colonialism. As is the case with the other 436 Indigenous men and women to have died in custody since 1991, no one has ever been charged in association with Dungay's death.

We consider the Black Lives Matter protests of 2020 to constitute a threshold in that they reflect the tipping point of a minority social movement coming to shape and represent mainstream concerns about state violence. In 2020 the Pew Research Centre recorded that in the context of the Trump Presidency, two-thirds of all adult Americans supported the Black Lives Matter movement, with this support apparent across racial, gender, class and partisan lines. Sixty per cent of white Americans expressed support for Black Lives Matter protests and condemned President Trump's incendiary responses to them (Pew 2020). In Australia, protests that were initially conceived of as a vigil for the families of those who had died in custody, exploded into displays of mass solidarity and support, defying COVID-19 public health restrictions against public gatherings to demand individual justice responses, call for an end to the mass incarceration of First Nations Australians and recognition of the systemic racism of over-policing Indigenous communities, a militaristic tactic with a direct lineage to unending colonial violence. What the state in each country chooses to do with this unprecedented widespread momentum remains to be seen, particularly in the context of the Biden administration.

In the shadow of Black Lives Matter, authors in this special issue consider current international practices of state violence in the context of the legacies of colonialism and racism, patriarchy and oppression. This context is further evident in the continued transgressions by the state globally – in the suppression of democratic processes by the state in various parts of the world, the use of military violence by the state against its citizens, in state sanctioned use of torture, and in the unlawful detainment of those seeking refuge and asylum. It is also evident in the continued failure by states to respond to the recommendation of public inquiries into mistreatment and violence perpetrated by state instrumentalities against vulnerable populations, including Aboriginal deaths in custody and the abuse of children in the care of the state, and state-like institutions, such as major religions. Together the authors examine the ways in which regulatory regimes, legal practices, and policy frameworks enact violence on vulnerable citizens in broad and differentiated contexts. Through the examination of Australian and international case studies including institutions of penal welfarism, state 'care', prisons, and the mechanisms by which they are regulated and held to account (in particular, inquests and public inquiries), the articles in this special issue illustrate the complex web of factors influencing the factors that allow state violence to flourish, from multidisciplinary standpoints.

Traditional theories of the state hold that its primary defining feature is its monopoly of legitimate violence. In political philosophy and sociology, forms of modernity and modernisation arise in tandem with the state's singular right to use, or authorise the use of, physical force (for example (Hobbes 1651/2010, Weber 1921/1978). In classical political philosophy, it is this singular right that is a civilising force within a social order, a necessary check against the arbitrary use of violence by individuals. Legitimate uses of state violence include not only the specific application of physical force (such as that exercised by the military and the police), but also the imminent potential to use violence that undergirds the force of law in general (Schinkel 2010).

In most cases, the state's exclusive use of violence is directed against its own citizens, specifically those said to have breached social mores deemed so essential for social functioning that their violation is considered a transgression against society itself (Durkheim 1895/1982). In particular, classical political theories conceive of this function of the state as an essential form of counter violence to the use of non-legitimate private violence, whether that be perpetrated by individuals or groups. The most obvious example of this is the imprisonment of persons who have committed a crime, which, according to these theories not only has the aims of punishment and rehabilitation but also reconfirming the 'moral order' or the 'common good'. On this basis, social order is preserved by distinguishing between legitimate state violence and illegitimate private violence (Schinkel 2010).

The articles in this special issue question this distinction on at least two fronts: First, that all violence perpetrated by the state is legitimate and second, that the use of state violence is entirely a response to the illegitimate use of private violence. Several of the articles document how state instrumentalities have used violence to degrade, suppress, violate and destroy groups in ways that do not serve the interests of society as a whole, but maintain the privilege of certain groups over others. Furthermore, the articles demonstrate that state violence is constitutive of the moral order, by establishing the juridical boundaries for what is legitimate and not, and even more pointedly, who is legitimate and not. That is, the use of violence by the state, and the imminent threat of the use of that violence as an omnipresent feature of social life, also serves to constitute what is expected of the modern subject of the state.

Phil Scraton's article questions the distinction between state and private violence, and therefore the legitimacy of state violence, by documenting examples of when state violence has manifested as private violence. This includes the use of brute force by police against citizens and the mistreatment of prisoners in the custody of the state. His article outlines a critical methodology for capturing the perspectives of those who have been subjected to such violence and, more broadly, individuals and groups who have been subject to tyranny, oppression and marginalisation. Drawing on various traditions of critical theory, with the aim of documenting and providing a forum for what Scraton describes as 'testimonies "from below"', his article outlines examples of structural and physical violence imposed by the state, through the power of the state to incarcerate and implement administrative processes of investigation into contested deaths that obfuscate, delay and complicate answers. While the effect of this violence against individuals is harrowing, Scraton also demonstrates the lengths which state instrumentalities go to cover up and evade democratic accountability. He contrasts this with his critical investigative research on prisons, the aftermath of the Hillsborough tragedy and the legacy of the protracted war in the North of Ireland, through which he 'bearing witness to the pain of others', by documenting and prioritising the perspectives of individuals who have been subjected to forms of state violence. While Scraton draws our attention to the role that state institutions play in reproducing structural inequalities, the article also provides a deeply personal account of a life's work committed to social justice and social scientific rigour.

Deena Haydon's article on children detained in secure care and custody in England and Wales also examines the function of structural inequalities, in this case generational inequalities between children and adults. Drawing on new childhood studies, children's rights discourse and theories of vulnerability, Haydon outlines how the state's capacity to exercise violence is essential for establishing what is considered legitimate and illegitimate behaviour amongst its citizens. The labelling of some children as 'troubled or troublesome' and others as not, Haydon argues, is an expression of children's structural vulnerability within society, vis-à-vis adults. This structural vulnerability, Haydon demonstrates, is founded on children's age-specific vulnerability which is used to provide a justification for ignoring children's agency. However, the labelling of some children as 'troubled' also ignores children's age-specific vulnerabilities and justifies state intervention in certain children's lives, with the low age of criminal responsibility providing a mechanism for the state to incarcerate children. In analysing the situation in England and Wales, Haydon discusses how, despite guidelines that regulate the conditions in which children are detained, children are nonetheless exposed to violence and rights violations within custodial institutions, including deprivation of liberty; use of force and

restraint; isolation, separation and segregation; and the use of solitary confinement. The parallels with rights violations of children in detention in Australia are clear, as detailed in the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory (2017), as are what Haydon refers to as 'situational vulnerabilities' – the social and economic factors that make certain groups of children, such as Aboriginal children in the Australian context, more vulnerable to being detained in secure care.

Through Haydon's discussion of situational vulnerabilities, we might usefully refer to structural violence and the role of the state in perpetuating and failing to redress structural violence, which is a theme that runs throughout several of the contributions in this special issue. Structural violence is a feature of social systems, arising from the differentiation between and functioning of social sub-systems, such as the economy, the state and the household. The social inequalities that result from the functioning of these sub-systems also manifest in forms of structural violence, such as the deprivations and inequalities experienced by, for example Black and First Nations people, as outlined at the outset of this introduction. Through government policy and the functioning of its instrumentalities, the state has a distinct role to play in perpetuating or ameliorating structural violence in any given society. However, more often than not, as Foucault has documented (1979), structural violence exists as the normal state of affairs, as the way things are.

In her article, Kate Gleeson considers responses to violence enacted by state-like entities with state-like privileges such as the international organisation that is the Catholic Church. By examining the example of the trial of the most high-profile Catholic leader ever to face child sexual abuse charges, Australia's Cardinal George Pell, Gleeson considers the cultural hegemony of elite and powerful institutions that have historically been given all but free rein to act as quasi-arms of the state through monopolies on governmentality exercised via the cultural institutions of education, health and welfare. The nature of this hegemony is such that throughout the 20th century and beyond it is apparent that the Catholic Church, in particular, has benefited from a reflexive immunity from prosecution and, until very recently, cultural sanction for the egregious torture of children. Gleeson examines this immunity through the prism of criminologist Stanley Cohen's theories of cultural denial to gain an understanding for how and why the general community might be implicated in failures to recognise and respond to child sexual abuse, particularly that perpetrated in the context of powerful institutions. To come to terms with the ethical implications of this denial, Gleeson turns to the political theories of Hannah Arendt and Simone de Beauvoir developed in the context of war tribunals as sources of authority for the identification of mass and individual responsibility for atrocities.

In her article, Joanne Faulkner examines the legacies of illegitimate sovereignty declared on the lands and lives of First Nations Australians as embodied in the legal fiction of *Terra Nullius* and the 'elimination logic' of the state violence of settler colonialism. Through an examination of the novel *The Swan Book* by Waanyi woman Alexis Wright, Faulkner creatively applies methods of literary theory to bring to life longstanding First Nations' critiques of the legality of settler colonialism such as those developed by Tanganekald, Meintang-Bunganditj woman, Professor Irene Watson. Faulkner considers the example of the 'wounded Aboriginal child' in the form of Oblivia, the protagonist of *The Swan Book*, as an allegory not only for the treatment of First Nations children within the realpolitik of contemporary Australia, but as representative of the mediation point between two conflicting forms of sovereignty, which respectively condemn and legitimise the violence of the Australian state. In the context of Italian philosopher Antonio Agamben's theories of potentiality and children, Faulkner elucidates the boundaries of First Nations sovereignty as organically grounded in an enduring connection to land over the millennia, as compared to the sovereignty of settler colonialism, imposed by means of the structural violence of legal and political apparatus. Faulkner acutely demonstrates how the 'governance' of First Nations children through child protection and juvenile justice performs a necessary occlusion of First Nations sovereignty through the erasure of children's Aboriginality and ties to culture and land. In this example, the protection of the state is not possible to discern from its structural violence that is legitimised only by an illegitimate sovereignty.

In their article, Anthea Vogl and Elyse Methven apply criminological theories of 'crimmigration' to examine the Australian government's treatment of asylum seekers who arrive by boat, under the powers of the

Australian *Asylum Seeker Code of Behaviour* established in 2013. Crimmigration refers to the criminalisation of immigration practices, often through mechanisms which themselves represent an unchecked extension of the carceral state, in this case through the administrative powers of the Code of Behaviour. Unique and unreplicated anywhere in the world, the *Asylum Seeker Code of Behaviour* represents the ultimate extension of the punitive, repellent and often unlawful Australian approach to asylum seekers and refugees that has intensified since 2001. Through a close and original examination of government data representing reported breaches of the Code of Behaviour, Vogl and Methven demonstrate the intrusion and over-reach of criminal justice approaches and responses into the realm of administrative law, without any of the safeguards and presumptions of innocence associated with criminal processes. The heightened criminalisation of seeking asylum in Australia is now performed via techniques of surveillance, visa cancellation and denial of services for asylum seekers living in the community, in a regime of discretionary treatment that is not experienced by any other sector of Australian society. Through combining legal and criminological analysis Vogl and Methven illustrate the various techniques available to the state to extend its reach and perpetuation of human rights abuses under the guise of political motives such as control of the Australian border.

In their article, George Newhouse, Daniel Ghezelbash and Alison Whittaker examine the failures of the coronial inquest system in Australia in the context of the unimplemented recommendations of the Royal Commission into Aboriginal Deaths in Custody. As legal practitioners and advocates who have worked closely with First Nations families propelled into the coronial system following the death of a loved one, the authors draw on their unique personal knowledge of the trauma that inquests incur on the bereaved. Upheld as legalistic responses to state violence, coronial inquests promise to deliver justice and answers for families and the whole of society who have an interest in holding arms of the state to account for lethal abuses of power. Australian coroners courts claim to have responded to some the widely-known criticisms of the Royal Commission into Aboriginal Deaths in Custody, but as the authors demonstrate, the process itself all too often performs a secondary traumatisation of families that reinscribes the power of the state to act largely with impunity. By connecting their personal experiences of representing families with longstanding First Nations' critiques of the settler-colonial legal system imposed through colonialism, the authors connect to the themes elucidated in Joanne Faulkner's article (this issue) on the violence of Imperial sovereignty. Newhouse, Ghezelbash and Whittaker demonstrate that Imperial sovereignty, which is sustained by legal regimes maintaining the ultimate claim to legitimacy in Australia, remains the foundation for the contemporary, reformed coronial system that has as yet been resistant to a transformation that meets the justice needs of families in investigating deaths in custody.

Structural violence as the 'taken-for-granted' is also the subject of Rebecca Scott Bray's article, in which she discusses processes that challenge how the state frames contested deaths. Her focus is on a criminological reading of the digital media coverage of coronial proceedings in Australia. In several jurisdictions, deaths that go before the coroner include those where the death is sudden or unexpected, or where the cause of death is unknown. Furthermore, reportable deaths, such as those where a medical practitioner is not permitted to issue a death certificate and which are contested, include several categories of deaths in which the use of state violence is implied or which the death is a direct result of violence inflicted by state instrumentalities. In New South Wales, Australia, these include a death in custody, including as a result of, or in the course of, police operations. The coronial process therefore represents an avenue through which different branches of the state may be in contest and police processes and behaviours may ultimately be held to account. Scott Bray draws attention to these different modes of what she calls 'state talk' in the coronial process and argues that these displays, of what we can also describe as displays of state power, are becoming increasingly visible through digital platforms, including public databases, live tweeting and podcasts that contribute to the transparency of inquests and provide a forum for public dialogue. Scott Bray argues that by making the coronial process more accessible, digital platforms contribute 'alternative accounts' of contested deaths through challenging how state apparatus and the mainstream media portray them and the conditions under which they occurred. Scott Bray demonstrates how public electronic forums have the capacity to broaden the scope of inquests and situate their findings in broader context, such as histories of colonial dispossession, racism and structural disadvantage in the case of Indigenous deaths in custody. Digital

processes therefore provide some hope for democratising state processes and calling to account situations where the application of state violence is deemed excessive, unlawful and unjust.

Foucault demonstrates the manner in which the state's institutions operate to subjugate and subjectify individuals through control over the finest of details, with the routinised institutions of prisons, schools, psychiatric wards and hospitals, for example, 'rehabilitating' individuals into docile and desired social subjects. Fattore and Mason, in their historical and sociological analysis of the treatment of women and girls in the Parramatta Female Factory during the early period of Australian colonisation, and the Parramatta Girls Training School and Hay Institution for Girls during the mid-twentieth century, explore how the disciplining practices used in these institutions can also be read as intentional means to humiliate. Rather than rehabilitate and reintegrate women and girls, the conditions inmates were subjected to in these state institutions aimed to humiliate by contrasting their unworthiness with the worthy, upstanding female citizen, and can be interpreted as a means of maintaining the hegemonic moral order of the times. However, Fattore and Mason observe that such attempts at humiliation also invoked practices of individual and collective resistance by the women and girls, defying the authorities' attempts at subjugating them. Fattore and Mason discuss the work of various activist groups, who, by drawing upon the voices of the women and girls incarcerated in institutions such as Parramatta and Hay, have sought redress for survivors of state violence and reframed institutional practices as forms of injustice. As one example, the Parramatta Female Factory Precinct Memory Project has been crucial in providing counter narratives for the girls in Parramatta and Hay.

The collection of articles in this special issue highlights the benefits of interdisciplinarity for understanding the complexities of state violence. The authors include legal and political scholars, criminologists, historians, social workers, sociologists, anthropologists and literary theorists, who, by adapting their disciplinary lenses and international perspectives have provided a fulsome understanding of modes of state violence, its effects on citizens and communities, and ways in which civil society and state instrumentalities may aim to prevent, respond to and seek redress and remedies for the injuries inflicted by the state in this threshold year of 2020.

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