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Containment & COVID-19 in the Settler State: Indigenous Incarceration and Immigration Detention in Canada and Australia

by

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Honours Bachelor of Arts, University of Toronto, 2014

THESIS

Submitted to the Department of Geography and Environmental Studies

in partial fulfilment of the requirements for

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Sensitivity Warning: Aboriginal and Torres Strait Islanders people should be aware this document contains the names of people who have passed away.

Abstract

Canada and Australia each have long histories of containing Indigenous peoples and migrants. The overincarceration of Indigenous peoples continues to worsen in both countries, despite targeted reforms. Migrant detention is on the rise worldwide, with Canada and Australia's systems understood as among the harshest. This thesis explores why Canada and Australia contain these populations by examining these practices through the lens of contemporary settler colonialism. Like most everything, containment by states has undergone rapid changes as a result of the COVID-19 pandemic. This study aims to understand how COVID-19 impacted those within carceral institutions, and contextualize that treatment within the same settler colonial logics and histories that animate their containment in the first place.

My methodology consists of a literature review and a comparative study of Canada and Australia's responses to COVID-19 in carceral institutions. The literature review summarizes theories of settler colonialism and the settler state, and traces Canada and Australia's containment practices through to the contemporary overincarceration of Indigenous peoples and detention of migrants. My comparative study utilized publicly available data, media sources, and literature to map the policy responses to COVID-19 in carceral spaces, and interpret the implications of those policies. This data was sourced from published statics from the Canadian and Australian government and affiliated institutions, independent reports from domestic and international bodies, and works published by independent researchers and journalists.

This thesis concludes that people held in carceral institutions in both Canada and Australia were severely impacted by the COVID-19 pandemic beyond the negative impacts felt by the general public. In Australia, while cases of COVID-19 remained low, the rights of those

in prisons and immigration detention centres were substantially eroded as a result of the pandemic, and for some even basic sustenance and medical needs were interrupted. In Canada, COVID-19 was rampant in carceral facilities, with higher case counts per 1,000 people among those contained in comparison with the general Canadian population. While finalizing this thesis, COVID-19 remains an active threat to both countries and their incarcerated populations, particularly in the wake of the Delta variant.

From this study, I find that contemporary settler colonial logics work to keep Indigenous peoples and migrants incarcerated and renders them as ‘less grievable’; a framing which ultimately exposed those contained to both a greater risk of infection from the virus, but also maltreatment in the name of public health. Crucially, this understanding of those within carceral facilities as less grievable rendered them less worthy of protection. This apprehension of these lives as less grievable has further allowed Canada and Australia to maintain their domestic and international identity as progressive, liberal democracies, while enforcing decidedly anti-progressive policies within carceral institutions. In spite of this, this study found isolated instances of decarceration, which may one day serve as important precedent on the road to abolition.

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Another world is not only possible, she is on her way. On a quiet day, I can hear her breathing.

- Arundhati Roy

Chapter 1: Introduction

The advent of the global COVID-19 pandemic saw massive, abrupt changes to the daily lives of people across the world. Many found themselves suddenly grappling with a new normal that unfolded over screens as working, schooling, and socializing took place remotely. Others, including hospital workers, first responders, grocery store clerks, and janitors, found themselves in the midst of a maelstrom as they were suddenly made 'frontline' workers. Existing inequities were worsened by the pandemic, not least of which for those all too familiar with confinement, quarantine, and lockdown – people held in carceral institutions.

In both Canada and Australia, the incarceration of the 'other' has been steadily rising. Indigenous peoples are locked up in prisons and jails at unprecedented rates. Migrants are placed in mandatory and indefinite immigration detention. In each of these countries, Indigenous peoples and migrants are consistently and deliberately othered, a destructive feedback loop. Once a group is othered, the state can more easily justify these groups' containment. They are framed as deviants, as dangerous groups that require incarceration. Containment only reinforces their otherness, now not just racial 'others' but societal 'others' (i.e. as 'criminals' or 'illegals').

In Canada, Indigenous peoples accounted for 17.6% of the incarcerated population in 2001; by 2020, that number had risen to over 30%, yet Indigenous peoples make up only 5% of the total general population (Bell, 2020). The story in Australia is harrowingly similar. The percentage of Indigenous peoples in Australian custody jumped 88% between 2004 and 2015, in comparison with a 28% increase for non-Indigenous detainees (Bailes, 2015). While making up 3% of Australia's total population, Indigenous peoples represent 29% of those incarcerated

(Korff, 2020). The issue of Indigenous incarceration has been referred to as “national travesty” by the chief commissioner of the Canadian Human Rights Commission, and a “national tragedy” by the CEO of the Australian Red Cross (Bronskill, 2020; Tickner, 2018).

The disparity proves even higher for Indigenous women. In Canada, Indigenous women represent 42% of all women in federal custody (Bellrichard, 2020). In Australia, Indigenous women are 21.2 times more likely to be imprisoned than a non-Indigenous woman (compared to Indigenous men who are 14.7 times more likely to be imprisoned vs. non-Indigenous men) (Tickner, 2020). This immense imbalance is driven by multiple factors, inclusive of the reality that Indigenous women are “underprotected and overpoliced” (Bellrichard, 2018). In Australia, 80% of incarcerated Indigenous women are mothers (Wahlquist, 2017). This exacerbates the harmful ways in which incarceration disrupts families and communities and condemns “future generations to cycles of entrenched disadvantage and offending” (Wahlquist, 2017).

Much like the criminal justice systems in Canada and Australia incarcerate Indigenous and other racialized bodies at alarming rates, the immigration detention system furthers this agenda of containing the ‘other’. Canada and Australia are known to have particularly harsh immigration detention systems, so characterized because of their use of mandatory and indefinite detention. Migrants are detained with no known end date, and may remain in detention for years. While this form of detention is an administrative mechanism, and therefore not intended to be punitive, nearly a third of migrant detainees in Canada are held in facilities intended for a criminal population (CBSA, Q4 2018-2019). Existing literature finds consensus that detention “inflicts irreparable psychological, physical, and social damage” beyond the deprivation of liberty (Silverman & Molnar, 2016, p. 109). Research demonstrates that immigration detention systems in Canada and Australia perpetrate human rights violations and cause considerable,

lasting harm (Gros & van Groll, 2017; Nethery & Holman, 2016). While rates of detention have fluctuated, statistics from both countries indicated an increase prior to COVID-19 (CBSA Annual Statistics, 2019; Home Affairs, 2020).

Canada and Australia demonstrate significant overlap across their detention processes, but the intention here is not to suggest that they are more alike than they are divergent. Rather, "given how distinct migration, migration policies, enforcement practices, and detention landscapes are across national settings, it is perhaps even more remarkable that an identifiable set of processes operate across and meaningfully connect carceral landscapes transnationally" (Mountz et al., 2012, p. 525). This thesis will explore what prompts these similar identifiable processes in Canada and Australia, how these similarities have contributed to the overincarceration of Indigenous peoples and increasing detention of migrants (in spite of reform efforts from both governments), and what similarities and divergences can be observed in both countries' treatment of incarcerated 'others' throughout the COVID-19 pandemic.

As incarcerated people, organizers, advocates, and public health experts feared, COVID-19 disproportionately impacted those contained in prisons and immigration detention centres. This impact ranged from people becoming infected with, and sometimes dying from, COVID-19, to considerable barriers to accessing justice and significant disruption to basic needs. This thesis will investigate how Canada and Australia's status as settler states continues to drive these forms of containment. By contextualizing the containment of these groups as an outcome of contemporary colonialism, the treatment of those in prison and detention centres throughout the COVID-19 pandemic becomes legible as colonial violence

My work is animated by an abolitionist imagination. Abolition pleads for us to imagine a world in which people are supported rather than incarcerated, a world which would be safer for

all. If ultimately the goal is ending all incarceration, which I argue it is, it may feel moot to discuss the *over*-incarceration of Indigenous peoples. If incarceration statistics suddenly accurately reflected the racial makeup of the population, this would not undue the immense harm that incarceration inflicts. Rather, I think it is useful to focus on the disproportionate containment of certain communities to help emphasize how these outcomes are the product of the settler state. It is not just that overincarceration is an issue in and of itself, but that persistent overincarceration in the face of reform is indicative of the settler logics that drive all incarceration.

Terms

There are several terms that I use repeatedly throughout this thesis that serve to identify groups of people. Whenever language seeks to categorize people, we must tread with caution. It is necessary to recognize that even by providing space in this thesis to define these terms as I understand and employ them, these definitions have been arrived at through engagement with a complex and ongoing discussion, not all of which can be captured here.

People who are incarcerated/detained: I do not exclusively use this term, but I do try to avoid relying on 'prisoner' or 'detainee.' By specifying that they are people first and that incarceration/detention is a condition they are experiencing second, this language re-humanizes those that the state seeks to de-humanize. This is in line with "people first" language movements that began in disability studies in the 1970s (Cox, 2020). Often writing out 'people who are incarcerated' feels clunkier than 'prisoners,' which I feel is a direct result of being taught English in a settler state where this de-humanizing rhetoric is the dominant discourse.

Indigenous peoples: This term refers to the first inhabitants of the land. This collective term serves to unify diverse groups who have been subjugated to colonial rule and structural violence. As Sámi academic Troy Storfjell argues: "Indigeneity is an analytic, not an identity…Indigeneity describes a certain set of relationships to colonialism, anticolonialism and specific lands and places" (2020). This collective term can essentialize groups as a monocultural block, which they very much are not. In both Canada and Australia, the term Indigenous peoples captures diverse populations, with distinct cultures and languages. While some Indigenous peoples may share significant cultural similarities, others may share very little. Their relationship to one another as Indigenous peoples is a result of their colonial relationship to the state, as opposed to some unifying Indigenous cultural components.

Numerous terms exist in Canada to refer to Indigenous peoples. The terms Indian, Native, or Aboriginal have all been used in Canada. The term Indian is widely considered pejorative, although some Indigenous peoples continue to self-identify as Indian (as is their right), and some Canadian legal and political mechanisms, namely the Indian Act, continue to employ this term (Joseph, 2016). Similarly, some organizations and individuals continue to use the term Aboriginal despite notable renunciations of this term. In 2014, the Assembly of Manitoba Chiefs and the Anishinabek of Ontario represented 42 First Nations in a public rejection of the term Aboriginal (Marks, 2014). In Australia, the term Aboriginal remains widely used and acceptable when referring to the original inhabitants of mainland Australia. The term First Nations people is increasingly popular in Australia to refer to both Aboriginal people and Torres Strait Islanders.

It must be emphasized that individual Indigenous peoples may have differing opinions on their preferred terms, and individual choices must be respected. It is also important to recognize

that there are some terms that Indigenous people may use when referring to themselves that should not be used by non-Indigenous peoples. Typically, these instances are terms that were used (and possibly are still used) as slurs, but have been reclaimed by some Indigenous groups or individual Indigenous people (Common Ground, 2021).

In the case of the northern part of Turtle Island (Canada), Indigenous peoples refers to First Nations, Métis, and Inuit. Indigenous peoples live across the continent, and many of their nations are arbitrarily bifurcated by the Canadian-American border. The creation and enforcement of settler state borders, which limit Indigenous mobility on their lands and split Indigenous nations, hints at how Indigenous and migrant justice are intimately intertwined. Indigenous peoples in Australia refers to the first inhabitants of the land, Torres Strait Islanders and Aboriginal peoples. The Torres Strait Islands are north of mainland Australia. Indigenous peoples may live anywhere in either Canada or Australia from fly-in communities, to reserves, to urban centres like Toronto or Sydney, to small towns. While now widely understood to be untrue and hurtful, many Indigenous peoples are cast as somehow more or less 'authentically' Indigenous depending on where they live. It is important to resist this narrative, which is racist and a settler colonial tool of Indigenous erasure.

As a White, settler Canadian, I am listening to the majority of Indigenous voices that have expressed a preference for the term Indigenous. There is immense power in language to dismiss, to harm, or to empower. It is no wonder that language related to identity evokes such strong, personal feelings. While this thesis uses Indigenous, it remains an imperfect term, as King points out "there has never been a good collective noun because there never was a collective to begin with" (King, 2013, p. 15). The collective term is utilitarian for uniting the first peoples who have been harmed by the settler state, but nonetheless it should be understood as

inadequate for capturing the immense diversity amongst these groups. While in 2021 Indigenous remains the preferred term globally, it is necessary to continue to listen to Indigenous peoples and recognizes the ever-evolving nature of language, and adapt accordingly. In the case of individuals, I will respect whatever identifiers they choose and will reject using a collective term such as 'Indigenous' when I can more accurately identify them with their nation or community.

Settlers: The term settler, much like the term Indigenous, forms a rather clumsy collective. Settlers are those who have come with the intention of permanently occupying Indigenous lands, and their descendants.[1] This definition is useful for emphasizing that participation in a settler society and its land-use means everyone who is non-Indigenous benefits from Indigenous peoples' dispossession. Yet even with this definition, it must be recognized that any benefits settlers receive are heavily racialized and mediated by additional factors such as economic class, geographic location, gender, and ableness. The term settler has been complicated by Indigenous and Black scholars, among others, who have called for a more nuanced definition. Nehiyaw (Plains Cree) scholar Matthew Wildcat calls for a narrower definition, and employs "'settler' to refer exclusively to populations that propagate settler colonialism" (2015, p. 394). In doing so, Wildcat's hope "in narrowing the use of 'settler' is that it helps to focus our discussion on processes and practices that seek to 'eliminate' Indigenous peoples. Additionally, equating settler with a set of practices allows for the possibility of settler decolonization" (2015, p. 394). The discussion surrounding the term settler is especially animated around ensuring the term is not erasing the suffering of other groups. How can the descendants of Black people transported to a settler state against their will be settlers? How are refugees, forced to flee civil war and violence,

[1] To define what living in a settler state 'permanently' means is yet another complex exercise. Many migrants or children of migrants may be viewed as 'permanent' in some contexts and 'precarious' in others.

settlers for seeking safety? Increasingly the term settler is being more strictly applied to White people, particularly those descended from Europeans.[2]

It is also necessary to reflect on what a settler/Indigenous binary suggests about the act of migration. By casting all migrants as settlers, the implication is that all migration is a colonial act (Sharma & Wright, 2008). As Gomez skillfully summarizes in a reflective article, by casting all migrants as settlers, the experiences of violence, poverty, and abuse that prompt many people to migrate risk being downplayed (2020). It also significantly minimizes the experience of race and class in settler states, which are felt more deeply by some migrants. In this way, the settler/Indigenous binary oversimplifies complex questions of identity. This binary has been used to demonstrate solidarity with both Indigenous peoples ("we are all on your stolen land") and migrants ("we are all migrants here"). While effective and snappy rally cries at protests, it is necessary for allies (especially White people) to reckon with the limitations and inequity of categorizing all non-Indigenous peoples as settlers, and the Indigenous erasure of claiming we are all migrants.

The term arrivant serves to nuance this binary (Byrd, 2002). Arrivants exist on the spectrum between Indigenous and settler, although is it not only a racial categorization. "Arrivants are also analytically distinct in terms of their labouring capacities, desired and exploited by the state" (Wong, 2019, p. 93). Arrivants participate in the settler colonial project by inhabiting Indigenous lands, but arrivants are also made subordinate by the settler state. Settler states may allow 'desirable' arrivants to assimilate, but this is done only when it benefits

[2] It seems a good opportunity to address capitalization as an extension of terminology. It has become fairly standard to capitalize Black, but there remains some debate over whether or not to capitalize White (due in part due to anxieties around the fact that White supremacy movements have done so maliciously). I am taking cues from Black scholars such as Eve Ewing who have noted the importance of capitalizing White, lest we perpetuate "the dangerous myth that White people in America [and other settler states] do not have a racial identity" (2020).

the settler colonial project (Wong, 2019). By nuancing the spectrum between Indigenous and settler to include arrivants, the realities of racialized people's existence in the settler state and the exploitation of migrant labour, are recognized.

Through embracing the term arrivant, settler becomes a narrower term, referring to White European settlers and their descendants. This is not to say that the experiences of White newcomers to Canada are free from persecution or hardship (bear with me if you are now bristling at what sounds like it might lead to an 'all lives matter' discourse – it will not). My own family is Ukrainian. My great-grandfather, Elias Motkaluk, arrived in to Canada in 1913. Ukraine was not yet independent and so he, along with many other Ukrainians, travelled on an Austrian passport. As a result, when Canada went to war with Germany and Austria in 1914, many Ukrainians were labelled as Enemy Aliens. My great-grandfather was one of thousands interred in prison camps. He was most likely at the Kapuskasing camp, near his home in Sault Ste. Marie. His parole papers indicate that he worked at Magpie Mines from 1917-1919. Paroled internees were either slaves or paid meagre wages.

I share this personal history not to position myself as anything other than a settler. Rather I share it to highlight the complexities of identity, containment, and the inadequacies in capturing all these intricacies in terms like Indigenous, settler, or arrivant. My family's history overlaps with the trauma and experiences of arrivants, yet we undeniably experience benefits from the settler colonial project as a direct result of our Whiteness. This complexity of identity is central to this thesis. The settler state is highly aware of certain forms of identity, and actively involved in their (re)production. It is necessary to contend with these White histories in Canada, Australia, and other settler states and recognize that, despite how some may feel, these experiences do not absolve or lessen White peoples' role as settlers.

For those engaged in social justice or inequality studies and movements it will seem obvious that hardship does not erase White privilege, but I find it instructive to reflect on what drives the resistance to this concept in others. The idea that White people are now oppressed is pervasive not just in alt-right circles but in mainstream media and political thought. While writing this thesis, White supremacists have stormed the U.S. Capitol, Neo-Nazis gathered and chanted slurs on Australia Day in Victoria, and a Muslim family was brutally murdered by a White supremacist in Ontario. I am driven and inspired by the rise in imagining an abolitionist future, but I am wary of the accompanying rise of public displays and sympathy for fascism and White supremacists.

With these terms and the complex ideas bound within them in mind, I have developed the following methodology to trace historical colonial logics which have led to modern day forms of containment for Indigenous peoples and migrants in both Canada and Australia and their maltreatment throughout the COVID-19 pandemic.

Methodology

My methodology includes a literature review and comparative study of Australia and Canada's responses to COVID-19 in carceral institutions. The literature review summarizes theories of settler colonialism and the settler state, and traces Canada and Australia's containment practices through to the contemporary overincarceration of Indigenous peoples and detention of migrants. I relied on publicly available data, media sources, and literature to map the policy response and the implications of those policies. The data I reviewed included statistics published by the Australian and Canadian state and relevant institutions, as well as independent

reports from both domestic and international bodies and individuals (such as the Royal Society of Canada, Amnesty International, independent researchers, and journalists).[3]

This study focuses on two forms of containment and two countries. While I justify this choice by pointing to the meaningful insights a comparison of this nature can offer, I recognize this limits the depth of my analysis. "Comparison encourages analysis to travel and calls attention to understudied points of convergence" (Coddington, 2014, p. 6). I believe that comparing incarceration and migrant detention across two jurisdictions has proven fruitful in revealing such convergences.

It is also necessary to consider the limitations of my positionality as a White settler Canadian citizen. I acknowledge that this research is self-serving, as it fulfills a requirement for my Master's program. I am continuously challenging myself to consider how research can be completed in a way that serves to highlight injustice and offer feasible solutions through the conclusions drawn from research. There is a complex history of academics operating in ways that are exploitative, abusive, and voyeuristic. I am continuously learning how to ensure my research methods provide the greatest return to those who the research centers on, and conduct research in the most ethical, sensitive, and caring manner. I believe this learning requires I go beyond satisfying institutional ethics requirements and calls for a deeper consideration of my personal belief system as a scholar, which I expect to be a lifelong effort.

[3] I initially intended to complete interviews for this thesis and received ethics approval. Due to impacts of COVID-19, I forewent interviews.

Chapter 2: Settler States

The Canadian and Australian settler colonial projects overlap in many salient ways, lending them readily to a comparative study. There have been many instances of notable shared approaches to immigration policies and incarceration practices across these two countries, and thus they have long been studied by migration and Indigenous rights scholars (Hawkins, 1991; Hamlin, 2014; Hazelhurst, 1995; Poirier, 2011, Buti, 2002; Marchetti & Anthony, 2016). Many of these similarities are rooted in Canada and Australia's status as settler states. The settler state is a contemporary, federal state "organized around the settlers' political domination over the indigenous population" (Weitzer, 1990, p. 25). This domination is achieved and, critically, is sustained through violence. Wolfe's seminal work identifies this as the logic of elimination, wherein settler colonialism "destroys to replace" (2006, p. 388). The Canadian and Australian state were founded through the forcible and violent dispossession of Indigenous peoples from those lands and they are maintained through the same means. This chapter provides a summary of the rich literature on settler states and contemporary colonialism in order to contextualize the modern-day containment of Indigenous peoples and migrants as an outcome of these logics.

Contemporary Colonialism: Modern Day Settler States

Canada and Australia are often cast as 'postcolonial' and while held accountable for benefiting from colonialism, it is thought these are enduring benefits from past actions. Postcolonial literature offers many important learnings, particularly through efforts to expose the ways that historical colonialism continues to traumatize and disenfranchise vulnerable populations. To declare a state postcolonial, however, suggests colonialism has ended and posits present-day injustices as colonial aftermath. The wounds of past violences: of land theft, of the Stolen Generation, of residential schools, continue to fester, all while new wounds are inflicted.

Settler states are able to achieve this moniker of postcolonial "due to a lack of resemblance with earlier imperial and colonial forms" (Barker, 2009, p. 334). The Canadian and Australian state are engaged in colonial acts, but they are now creatively camouflaged as modern statecraft. Rather than a postcolonial state, Canada and Australia remain active colonial powers, a fact obfuscated by the "shapeshifting" nature of contemporary colonialism (Alfred & Corntassel, 2005). This creates a complex web of subjugation for Indigenous peoples who are grappling with intergenerational trauma while concurrently facing modern-day colonialism.

Settler state literature identifies the ways in which the state employs contemporary colonialism. "Settler colonialism is a continuously unfolding project of empire that is enabled by and through specific racial configurations that are tied to geographies of white supremacy" (Inwood & Bonds, 2016, p. 521). Both Canada and Australia continue to rely on policies that subjugate Indigenous peoples and uphold geographies of White supremacy. New, insidious forms of containment carry on the work of preceding iterations and yield new damages of their own.

> Contemporary Settlers follow the mandate provided for them by their imperial forefathers' colonial legacy, not by attempting to eradicate the physical signs of Indigenous peoples as human bodies, but by trying to eradicate their existence as peoples through erasure of the histories and geographies that provide the foundation for Indigenous cultural identities and sense of self (Alfred & Corntassel, 2005, p. 598).

While more overtly brutal forms of colonialism have given way to subtler forms, they should not be misconstrued as any less harmful. A move from the eradication of Indigenous bodies to Indigenous histories and geographies has created policies of forced assimilation and displacement that have resulted in immeasurable pain and suffering. These policies are lethal in

their own right, although the state has carefully distanced itself from this lethality. In Canada, this is clear in the stories of missing and murdered Indigenous women and girls, the heartbreakingly high suicide rates among Indigenous youth, and the bodies of school children found in the rivers of Thunder Bay. In Australia, this pattern repeats. Suicide rates, particularly among Indigenous youth, are extremely high. Indigenous women are also going missing in Australia, but a lack of tracking leaves many without adequate data to know the enormity of the problem. "In Canada they're calling it a genocide, but in Australia some states aren't even keeping count" (Higgins & Collard, 2019). These violences and the deaths that result are not always associated with the state, yet settler state policies and actions are inextricably linked to them.

Deliberate inaction by the state has worsened numerous social determinants of health in Indigenous peoples, resulting in lower life expectancies (Tjepkema, Busnik & Bougie, 2019; AIHW, 2021). In isolation, suicides, poor health, and high murder rates may not always appear to be the work of contemporary colonialism, but combined they paint a distressing portrait of systematic failure and structural violence. This persisting violence against Indigenous peoples is a requirement of the settler state, which is continuously re-asserting its dominance over the land. This helps explain why the treatment of Indigenous peoples in these countries is so irreconcilable with the identity many Canadians and Australians have internalized of being humanitarians and global peacekeepers. Ultimately Indigenous peoples – their rights, their sovereignty, their very existence – is irreconcilable with the settler state.

The shift that Alfred & Corntassel identify of eradicating Indigenous histories and geographies does not suggest that Indigenous bodies are not still targeted for eradication. What contemporary colonialism allows for is a newfound distance to those killings, even when carried

out by state actors. Police killings and deaths in custody offer an example. After the United States, Canada and Australia have the 2nd and 3rd highest rates of civilians being killed by police, with Indigenous and Black people disproportionately represented in those fatalities (Statista, 2021; Singh, 2020; Doherty & Bricknell, 2020). Troublingly, in Canada the ethnicities of those killed by police officers are not formally tracked by the state. It is only through external databases kept by journalists, researchers, and rights organizations that we find the data tells a familiar, damning, tale (Simpson, 2020). "Policing is one site where white men and women (as well as those aspiring to whiteness), can enact racial hierarchy on behalf of the colonial state with impunity" (Razack, 2020, p. 1). Despite the clear role of the state in these killings, the space that policing occupies in the settler state allows the state to distance itself from this lethality by casting these killings as self-defense, or the individual psychopathology of 'one bad apple' officer (Razack, 2020). In this way, Indigenous bodies continue to be eradicated by the state, but their deaths are framed as necessary (self-defense) or somehow an aberration (a bad apple).

The project of the settler state has mutated beyond frontier killings and the removal and relocation of Indigenous bodies, instead it now encompasses numerous forms of domination over racialized, gendered, and disabled bodies. The settler state's ongoing securitization of a White, heteromasculine society relies on "hierarchies that enable the coherence of an imagined nation with clearly marked inclusions and exclusions" (Inwood & Bonds, 2016, p. 524). Othering Indigenous peoples and migrants is a necessary tool of the settler state, ensuring they are clearly marked for exclusion and strategically marked for inclusion.[4] Migrants are included, for

[4] This practice of strategic inclusion and exclusion is a known tactic of the settler state. In addition to the inclusion and exclusion of certain identities, geographies are included and excluded readily by settler states. Christmas Island is Australian territory when it is convenient to detain migrants there, but somehow not Australian territory when migrants arrive there independently (Chambers, 2011). Guantánamo is simultaneously American territory when it comes to controlling the prison camp there, and yet somehow not American territory when it comes to answering for breaches of international law (Kaplan, 2005).

example, when their arrival and labour are used by the state to further dispossess Indigenous peoples from their lands. "Canada's fabricated history as a welcoming 'nation of immigrants' is a cover for its ongoing genocide of Indigenous peoples" (Silverman, 2021, p.177). Migrants' physical bodies are used as sovereign pawns, strengthening the colony's occupation of the land through sheer numbers. Here again the Indigenous and migrant experience in settle states overlap in a recognizable way. While migrants' arrival in settler states serves the broader goal of sustaining the colony and re-asserting control over the land, Indigenous bodies have been forcibly used by settler states seeking to assert sovereign claims, such as Canada's relocations of Inuit to the High Arctic (Tester & Kulchyski, 1994).

Migrant bodies are used by settler states not only for the physical presence, but for the labour their bodies can provide. The same logic of elimination that drives the settler state to violently dispose of Indigenous bodies also drives the brutal extraction of labour from migrants, who are concurrently deemed unworthy of citizenship (Stasiulis, 2020). Migrants are therefore indispensable to the settler project, which requires their cheap labour and uses their physical bodies to continuously re-establish the colony (Stasiulis, 2020). Yet, despite this indispensability, individual migrants are repeatedly seen as disposable by the state. This disposability is evidenced in sectors like agriculture, where migrants are brought to settler states for growing seasons, where they labour in brutal conditions for minimal pay, and are unceremoniously cast out once those seasons end. Razack describes the horrific disposability transformation asylum seekers go through in detention, where they are made into human waste (Razack, 2017).

The shapeshifting nature of colonialism ensures that these logics driving the elimination of Indigenous peoples and the extraction of use from migrants continue to reformulate and adapt. "Even as overt racism is eschewed, taken for granted socioeconomic hierarchies, racial

exploitation, and the redistribution of wealth reproduce and sustain white supremacy" (Inwood & Bonds, 2016, p. 524). These mutating logics frequently result in the containment of these groups in prison and detention centres.

This ongoing violence by the settler state against Indigenous peoples, migrants, and all others removed from the ideal settler citizen, is rooted in colonial perturbation. "Colonies, designed as safety nets and havens, are never safe. Such settlements called 'colonies' are nodes of anxious, uneasy circulations; settlements that are not settled at all." (Stoler, 2016, p. 121). Canada and Australia are constantly re-affirming their sovereign dominance in response to the anxiety that it could be challenged. In addition to this spatial understanding of a colony as a settled-but-never-really-settled place, a colony is also a political concept. For Stoler, colonies are conceptually

> *a principle of managed mobilities*, mobilizing and immobilizing populations according to a set of changing rules and hierarchies that orders social kinds: those eligible for recruitment, for resettlement, for disposal, for aid, or for coerced labour and those who are forcibly confined (2016, p. 117).

Canada and Australia manage the mobilities of Indigenous peoples and migrants through forcible containment as a means of re-establishing dominance over the land, resources, and people.

Containment as Colonial Violence

Containment is a longstanding tool of colonialism, with similar political technologies of control identifiable through much of history (Tazzioli, 2020). Modern-day practices are echoes

of familiar tactics like residential schools and Indigenous reserves.[5] Incarceration and detention are used by the state to physically contain othered bodies and hide them, pushing them further to society's margins. Prisons and detention centres, which in some cases are the same physical building, are rendered remote by the state. Even those held in facilities in major urban centres are made distant and difficult to reach. Spatial remoteness plays a critical role, particularly in Australia where some migrants are detained offshore, thousands of kilometers from the Australian mainland.[6] This geographic distance contributes to a lack of oversight (as centres are difficult to access), and an element of 'out-of-sight, out-of-mind' – both for the Australian public and policy makers, but also an internalized feeling of being forgotten that is experienced by those in detention (Smyth, 2019).

While onshore detention facilities may be less physical remote, their nature as closed institutions can have a comparable impact. There are "similar forms of isolation, dispersal, detachment and remoteness at work internally, even when facilities [are] not located remotely offshore" (Conlon et al., 2017, p. 3.). Visitations, access to a phone or an internet connection, and the ability to receive legal counsel are all strictly controlled (Jesuit Social Services, 2019; Gros & van Groll, 20153). This securitization has been steadily increasing. While onshore immigration detention rates in Australia have fallen, "visitors, organisations and people formerly detained all describe conditions that have grown increasingly harsh" (Jesuit Social Services, 2019). In Canada and Australia, prisons and detention centres have begun swabbing visitors for

[5] Reserves were established by governments in both Canada and Australia as a means of separating the Indigenous population from 'mainstream', White society. Despite the hardships suffered on reserves, they are also places of "cultural survival, where Indigenous languages are spoken and taught in schools and cultural practices are thriving" (Wilson, 2018). This complexity animates the reality of such spaces, not unlike prisons or detention centres. There is colonial rule and hardship, but resistance and resilience too.
[6] Remoteness here should not be equated with emptiness, but as physically distant from the imprisoning state. I clarify this, as Giannacopolous & Loughnan do in their writing, "the claim of remoteness *as* emptiness is, at its core, a colonial claim" (2020, p. 5).

traces of illicit substances. Both countries have seen issues of false positives from these tests and yet continue to use them and even revoke visitation privileges based on the flawed results (De Angelis, 2019; Jesuit Social Services, 2019).

Carceral facilities are, of course, designed to keep incarcerated bodies in, but they are equally invested in keeping other people out. The mobility of the non-incarcerated public is also manipulated by carceral facilities, as the policies of these spaces, enforced by their staff, control who can enter these facilities and when. Indeed, they even control who can enter remotely (e.g. via phone or Zoom). Thus, the remoteness of these institutions relies not only on the securitized physical nature and location of their buildings, but also a carefully fabricated remoteness rendered through strict controls on information and on the mobility of those not imprisoned. This creates a kind of dual securitization on either side of the carceral border, not only preventing them from leaving, but preventing others from arriving. This remoteness is critical to contemporary colonialism, which seeks to reframe colonial violences as justified, achieved in part by removing much of it from the public's view.

Fracturing the Settler State

It is clear that the settler state uses containment to further achieve what Alfred and Corntassel call eradication and what Wolfe dubbed elimination. Indigenous peoples are not only massively overrepresented in carceral systems across many colonial countries, they face harsher sentencing, more frequent denial of bail, longer periods spent in solitary confinement, and higher rates of recidivism (Chartrand, 2019). Migrant detainees have no trial, no sentencing, and no substantive appeal process (Gros & van Groll, 2015). Without a sentence, they live in a terrifying, anxious state of limbo. Containment through detention and incarceration have known negative impacts that ripple beyond the individual imprisoned, affecting families and

communities. For Indigenous peoples, incarceration can lead "to a loss of culture, identity, and connection to the land" (PWC, 2017, p. 5). The disproportionate incarceration of Indigenous peoples and detention of migrants hardens cycles of poverty and intergenerational trauma that are already made systematically near impossible to break out from.

Academics and advocates alike see the overincarceration of Indigenous peoples as a deliberate new iteration of Indigenous containment, a tactical mainstay of settler states (Finlay, 2016; Macdonald, 2016; Nichols, 2018). It is clear that migrant detention is employed to achieve similar goals as incarceration. Migrant detention is the continuation of Canada and Australia's history of rejecting and detaining "undesirable, foreign others in the name of nation-building while endeavouring to maintain its character as a white settler colony" (Coligado, 2018, p. 25). Research has found that families are negatively impacted and victimized by the detention of a loved one (Molnar & Silverman, 2018). By identifying these violences experienced by others in Canada and Australia as the result of contemporary colonialism, the state is implicated. The settler state's foundations in White supremacy have dictated the state's historical and contemporary treatment of 'others', including non-citizens (Price, 2013). This framing holds settler states accountable, both for actions and deliberate inaction, that result in harm. This implication of the state and its institutions demonstrate that often these violences are avoidable, and thus structural (Galtung, 1969). The settler state imbues its institutions with the power to harm in order to further their objective of continuously re-establishing the colony.

While it may seem simple to implicate the state, it can be difficult to identify perpetrators and hold them accountable when dealing with a structure as large as the state. "The *state* is actually a diverse array of actors from bureaucratic leaders down to the front-line staff implementing policy, each with their own (shifting) penal preferences and concerns" (Rubin &

Phelps, 2017, p. 434). Or as Desbiens et al. suggest, "the state is not a unitary object but is, rather, a set of practices enacted through relationships between people, places, and institutions" (2004, p. 242). While both Canada and Australia are settler states, they are comprised of their own unique and complex set of actors, practices, and relationships. Rubin and Phelps have called for the fracturing of the penal state, noting that by deconstructing the penal state into its varying parts we are better able to understand how the penal state operates.[7] This call for a more fragmented understanding of the larger apparatus of the state has been taken on by many scholars, with significant literature emerging, particularly in political geography.[8]

This thesis aims to fracture the settler state by specifying the 'who' within the larger framework of the settler state that is responsible for perpetrating the injustices being discussed, but admittedly this thesis frequently fall short of this goal. As Ruth Wilson Gilmore cautions, "Watch out for fetishizing the state... The state doesn't think and do. People enliven the state to think and do" (2018). Identifying the 'who' does not always ascribe blame to particular individuals or roles, but rather allows for a more nuanced understanding of the outcomes produced by everyone from high-ranking political leaders to front-line government staff to everyday citizens.

This fracturing is necessary to expose the role various actors play and what their individual actions collectively achieve, precisely because bureaucracies are designed to obscure that collective achievement:

> I think the brilliance of any bureaucratic system whose net result is fear and trauma is that it is big enough to break it down such that everyone just thinks they're only moving

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[7] Rubin & Phelps use the word penal as a way of recognizing the variety of non-custodial punishments in their analysis of criminal justice and the state (2017). I opt for the term carceral over penal, as I am focused specifically on the use of custody, even when no crime has been committed.
[8] See Painter's exploration of the daily mundane and the state's role (2006) as just one example.

> papers, or only doing a little piece, and a very small number of people at the top have designed the system such that an incredible amount of terror or trauma results, but most people are completely divorced from that…their job has been siphoned off in such a way that maybe what they see day-to-day-to-day seems justified. But when you add up all the people just doing their job it becomes this crazy, terrorizing system (Heller, 2020).

All this is to say, the state has already cleverly fractured itself. It is purposefully difficult to engage in the kind of fracturing that Rubin and Phelps advocate for. The self-fracturing of the state is done not only to alleviate individual feelings of responsibility and guilt, as Heller noted, but to obfuscate responsibility to outside observers. Canadian provincial prisons offer an example, as they are spaces where migrants are detained and are paradoxically under both federal and provincial jurisdiction, such that "no single government department is clearly accountable for the conditions of confinement, and health and safety of detainees" (Gros & van Groll, 2015, p. 7). Seeking to fracture both the Canadian and Australian state as it pertains to incarceration and detention is a herculean task, one which will not be even close to fully achieved in this thesis. Opportunities to meaningfully chip away at the veneer of the state will be taken whenever possible, however, and some small cracks may begin to form.

Canada and Australia have taken some steps to address their settler colonial past, yet little has been done to reckon with their colonial present. Each country has apologized for their abuses against Indigenous peoples, but it has been said that in "neither the Australian nor the Canadian cases did apologies presage any form of real change on the part of governments, who adopted a rhetoric of change while cementing their hold over national power" (Macdonald, 2015, p. 419). Important initiatives like Canada's Truth and Reconciliation Commission or Australia's Royal Commission into Aboriginal Deaths in Custody have provided opportunities for truth-telling and

state acknowledgment of harm, but without meaningful steps to address the contemporary settler state dynamic these initiatives amount to what Davis identifies as ‘gesture politics’ (2016). The state continues to actively reproduce ‘others’ and incarcerate them, despite targeted reforms to both the criminal justice system and immigration detention.

As this chapter has shown, Canada and Australia remain active settler colonial states. Contemporary colonialism is a key driver of the containment of Indigenous peoples and migrants in both countries. In order to further understand the persistence of these forms of containment, even in the face of research that demonstrates they are ineffectual at achieving their stated goals, it is necessary to consider the historical context in which these practices were forged.

Chapter 3: How Did We Get Here? Australian & Canadian History

The harmful impacts of immigration detention and incarceration are thoroughly researched (Gros & van Groll, 2015; Nethery & Holman, 2016; Bosworth & Turnbull, 2015; Cunneen et al., 2013). Research has further demonstrated that detention does not achieved the stated goals of deterrence or increased community safety (Aiken & Silverman, 2021; Crawley & Hagen-Zanker, 2018), nor do prisons effectively rehabilitate and protect the public (Bartle, 2019; Taylor, 2019). Yet not only do these containment practices continue, their use is increasing. It is understood that the deprivation of liberty, such as that imposed by incarceration/detention, is one of the most serious forms of harm that can be inflicted on a person (Aiken & Silverman, 2021). The need for border enforcement and the rule of law are 'accepted' displays of sovereign power, which has allowed these practices to remain in states like Canada and Australia, while these states are simultaneously able to be apprehended as progressive (both domestically and internationally).

Indigenous Containment & the Road to Overincarceration

Questions of criminality, justice, and containment are central to Australia's colonial history. While Indigenous peoples have lived there since time immemorial, Australia's early colonial settlements were established through penal colonies. For some, this history suggests "Australia should be as committed as any nation to criminal justice policies that focus on rehabilitation over punitive sanctions" (Leigh, A., 2020, p. 2). Australia's carceral past, however, has not softened its carceral present. As a settler state, Australia has repeatedly prioritized containment as a means of eradicating and erasing Indigenous peoples through reserves, child welfare policies, and criminal justice mechanisms, and has ever-expanded their targets to include

those outside of the White, patriarchal, heteronormative, and able-bodied. This history is lengthy and painful. Containment has taken many forms over Australia's history and has led to, among other modern forms, the over-incarceration of Indigenous peoples (Cunneen et al, 2013).

Colonists' arrival in Australia triggered the bloody frontier wars, also known as the killing times. As with many instances of settler colonial violence, it is somewhat disingenuous to refer to these violences as a war. An investigation by *The Guardian* concluded that there were at least 270 frontier massacres over 140 years, "a state-sanctioned and organized attempt to eradicate Aboriginal people" (Allam & Evershed, 2019). These killings were carried out by British soldiers, police, and settlers, with Australian government forces actively engaged in frontier massacres until the late 1920s (Allam & Evershed, 2019). This 'war' was the beginning of the ongoing genocide of Indigenous peoples in Australia. Over time these military and policing institutions have evolved, and so too have their methods. An obvious line can be traced from police actions in the killing times to the role of police and other such institutions in rendering contemporary colonial violence.

Following contact with numerous colonial populations, the land now known as Canada was colonized by French and British settlers and was the site of significant inter-imperial conflict between the two. By the mid-1700s, Canada was under British rule. The period of early settlement (1763-1867) was marked by the emergence of justice and security apparatuses, including police and courts (Chartrand, 2019). In 1834, the Penitentiary Act established prisons in Canada, identifying deterrence and inmate reform as primary goals (Adema, 2016). The prison populations were initially mostly White settlers (Chartrand, 2019). Following confederation, rates of incarceration for Indigenous peoples remained low (between 1% and 8%) until the 1960s (Chartrand, 2019). This period was also marked by the passing of the Indian Act in Canada, an

enduring piece of legislation, which has long been controversial and has been subject to significant amendments. The Indian Act formalized considerable restraints on Indigenous mobility, inclusive of forming the reserve system. The lower rates of incarceration throughout this period are the result of the reliance on other forms of containment, particularly polices and institutions that facilitated the removal of Indigenous children, and reserves which contained Indigenous communities away from settlers.

Early settlement in Australia, by contrast, saw Indigenous incarceration at higher rates than what was observed in Canada. By 1840, a prison specifically for Aboriginal people in Australia was established on Wadjemup, known by most non-Indigenous peoples as Rottnest Island. By the 1880s, the prison was horrendously overcrowded and rife with disease (Melville, 2016). It is the site of the largest known burial ground of Aboriginal people in Australia. Yet today, Rottnest Island is a tourist destination. Touted as "Western Australia's very own island getaway, featuring a casual atmosphere, picturesque scenery and some of the world's finest beaches and bays" (Rottnest Island Authority, 2021). A major campground on the island was, unknown to most holidayers there, built on top of the unmarked graves of at least 373 Aboriginal men (Melville, 2016). "This is the great incongruity of this island – its startling beauty, the way cares just fall away when, on approach, you see its waters and white sands sparkling, and the dark, devastating and embarrassingly invisible history" (Melville, 2016). It took more than 20 years after the initial 'discovery' for the campground to be shut down in 1993[9] (Melville, 2016).

[9] I place 'discovery' in quotation marks throughout this section, because Indigenous peoples have known, or otherwise suspected, for decades that residential schools and other sites of colonial violence had mass, unmarked graves. To say it is a 'discovery' without the quotations would perpetuate the harmful rhetoric that places, people, processes, and practices are only 'discovered' when settlers, or others in power, become aware of them (or choose to finally acknowledge them).

It took an additional 25 years for the Rottnest Island prison to cease operations as a tourist resort (McGlade, 2018).

The horrors of Wadjemup and other prisons shifted in Australia and contact with the ‘mainstream’ criminal justice system decreased as protection legislation emerged in the early 1900s. Between 1909 and 1915, the percentage of Indigenous peoples in the custodial population dropped from 42% to 13% (ALRC, 2018, p. 59). Legislation such as the *Aborigines Protection Act 1909 (NSW)*, legalized the removal of children and controlled Indigenous peoples’ mobility through reserves (ALRC, 2018). “With a view to encouraging the conversion of the children to Christianity and distancing them from their Indigenous lifestyle, children were housed in dormitories and contact with their families strictly limited” (AHRC, 1997, p. 233). Unlike child welfare legislation, the state could remove children under the protection legislation without needing to establish to a court’s satisfaction that the child was being neglected (AHRC, 1997). Couching containment in the language of ‘protection’ is a familiar way of rendering strict controls more palatable to the general public, and it will re-appear in the strict controls put in place in carceral spaces in the wake of COVID-19. The Australian Human Right’s Commission found that “the ultimate purpose of removal was to control the reproduction of Indigenous people” (AHRC, 1997, p. 25). This kind of reproductive control and the forcible removal of children constitute genocide (Barta, 2008).

In the late 1940s there was a shift from protection legislation to child welfare legislation. While now abuse or neglect needed to be established, “the same welfare staff and the same police who had removed children from their families simply because they were Aboriginal now utilised neglect procedures to remove just as many Aboriginal children from their families” (AHRC, 1997, p. 28). The number of children forcibly removed and sent to faraway schools and

missions, or adopted out at birth, continued to increase throughout the 1950s and 1960s (AHRC, 1997). We now know this tragedy as the Stolen Generation. Through 1910 until 1970, between one in three and one in ten Indigenous children were forcibly removed from their families and communities (AHRC, 1997). Children who had mixed heritage were placed in white homes, not "because their 'white blood' made them 'white children' and part of the 'white community'" but rather because "their Aboriginality was 'a problem'" and staying in an Aboriginal home would lead them to adopt Aboriginal culture and traditions (which were understood as undesirable)" (Barta, 2008, p. 207). The removal of Indigenous children continues through child protection policies. In 2019, one in every 16.6 Indigenous children in Australia was in out-of-home-care, with over-representation steadily worsening over the preceding 10 years (Family Matters, 2020).

When the 'protection era' was dismantled in Australia, Indigenous representation in prisons began to increase (ALRC, 2017). Cunneen et al. identify how these forms of containment morph and evolve, while the end result (which is the containment of Indigenous peoples) remains largely the same. The "growing appearance of Indigenous people in the mainstream prison system needs to be read against the demise of an alternative system of penalty that had been reproduced in protection legislation. The racially defined carceral regime of missions and reserves was increasingly replaced by the mainstream mechanisms of the criminal justice system" (Cunneen et al., 2013, p. 32). The contemporary removal of children and carceral containment are animated by the same settler logics that were at work through the killing times and the protection era.

Canada legislated and facilitated the removal of Indigenous children in much the same way. By the 1860s and 1870s, churches and the state had partnered to operate schools specifically for Indigenous children (TRC Vol. 1, 2015). This network of schools, now known as

residential schools, grew rapidly. By 1930, 80 of these schools were in operation (TRC Vol. 1, 2015). Within residential schools "child neglect was institutionalized, and the lack of supervision created situations where students were prey to sexual and physical abusers" (TRC Vol. 1, 2015, p. 5). The horrors of residential schools have been deeply felt by those who attended them, their families, and their communities. Harrowing stories of physical, mental, and sexual abuse were documented through truth-telling as part of Canada's Truth and Reconciliation Commission.

In the spring of 2021, a survey of the grounds of a former residential school in Kamloops, British Columbia 'discovered' 215 children buried in an unmarked mass grave (Dickson & Watson, 2021). In the following weeks, surveys across the country uncovered hundreds more bodies. Just as the bodies of imprisoned Indigenous men on Wadjemup lay beneath a campground, bodies of children who attended a residential school in Manitoba were found beneath an RV Park (Caruk, 2021). These incidences are not coincidental in their similarity, but rather haunting in their alikeness. The settler state invisibilizes people and histories in order to continuously re-affirm the colony. This process is necessary for the settler state's subjects to be able to camp on the bones of those systematically killed so settlers could vacation there. The effectiveness of this campaign is evidenced by the number of Australians and Canadians who continue to believe their states are peaceful and progressive, and who frame these bodies and their 'discovery' as evidence of past sins but refuse them as contributors to a colonial present. While many Canadians are shocked by these horrific mass graves, many Indigenous peoples are grieving but unsurprised. An entire volume of the Truth and Reconciliation Commission's final report was dedicated to missing children and unmarked burials (TRC Vol. 4, 2015). The pain of residential schools has once again been thrust into mainstream Canadian discourse, but for so many this pain is not new.

As in Australia, child welfare policies were increasingly invoked to remove children from their families and communities in Canada. “As residential schools became discredited, the child welfare system became the new agent of assimilation and colonization” (Alston-O’Connor, 2010, p. 54). Mass removal and adoption of Indigenous children into non-Indigenous homes is now frequently referred to as the Sixties Scoop, although this policy began earlier and was in place until the 1980s. By the 1970s, one in three First Nation children were separated from their family (Sinclair, 2016). The 1985 Kimelman report found that placing Indigenous children in non-Indigenous homes was cultural genocide (Sinclair, 2016). While this report prompted policy changes, Indigenous children continue to be removed at alarming rates. The contemporary welfare system removes children when in the ‘best interests of the child,’ a premise which in this context has been found to be applied dubiously (Sinclair, 2016). As of 2016, 52.2% of children in foster care Indigenous, yet they account for only 7.7% of the total population of children in Canada (Indigenous Services Canada, 2021). This continued removal of Indigenous children, even after the policies of the Sixties Scoop were reformed, has caused many to popularize the term Millennial Scoop.

Alongside welfare policies which facilitated the removal of children, the incarceration of Indigenous peoples was notably increasing in Canada, as it did in Australia. Both welfare and incarceration are more palatable in contemporary settler states than earlier iterations. While driven by the same settler logics, the logic of elimination is repackaged as something necessary and normal to ‘protect’ children and society. “Although the penitentiary was not a part of the initial project of colonizing Indigenous people, given that it was born of the same logics, it quickly replaced the receding of formal assimilation and segregation policies in the latter part of the twentieth century” (Chartrand, 2019, p. 78). In 2021, Australia and Canada continue to have

high numbers of Indigenous children removed from their homes and vast over-representation of both Indigenous youth and adults in prison.

It is necessary to spend time understanding these policies of removal in order to contextualize the contemporary over-incarceration of Indigenous peoples in prison. It is known that “contact with the child protection system and the youth justice system are both risk factors for adult incarceration” (ALRC, 2018). In Australia, Victoria Legal Aid noted that between 2011 and 2016, of the children age 11-17 who were removed from their homes, one in three returned to Victoria Legal Aid at a later juncture for assistance related to a criminal matter (ALRC, 2018). In Canada, the Chief Commissioner of the Ontario Human Rights Commission has called child welfare a pipeline to prison (APTN News, 2020). Child removal is a form of settler control in its own right, and one that is deeply contributing to the over-representation of Indigenous peoples in the criminal justice system. Incarceration achieves many of the same goals as child removal policies – removing both children and adults from their communities.

The rise in incarceration of Indigenous peoples in both Australia and Canada is a deliberate policy choice, not an accident. Nor is the continued removal of Indigenous children from their homes. The rates for the majority of crimes have fallen in both Canada and Australia, yet these states have systematically implemented bail and sentencing laws, alongside policing practices, that have contributed to the rise in incarceration (Macdonald, 2016; Leigh, A., 2020). A prison census did not exist until 1982 in Australia, at which point the data revealed what many already knew, that the over representation of Indigenous peoples in prisons and police custody was staggering (ALRC, 2018). It was at the same point that Canada began to acknowledge over-incarceration, with studies and commissions into this issue starting in the 1980s (Department of

Justice, 2021). Reforms have been implemented in both jurisdictions since this time, but over-incarceration remains a persistent, and worsening, problem.

The Flawed Promise of Criminal Justice Reform

In Canada, the 1996 Sentencing Reform Act added section 718.2(e) to the Criminal Code, which directed judges to consider alternative sanctions to imprisonment for Indigenous peoples.

> In *R v Gladue* (1999), a landmark interpretation of section 718.2(e), the Supreme Court held that widespread discrimination and adverse socio-economic factors serve as the source of Indigenous over-representation in the criminal justice system and that alternatives need to be fully considered in sentencing (Chartrand, 2019, p. 69).

Judges now use the precedent set by the Gladue case and consider the role of systemic discrimination in leading to the offense and may offer alternative sentencing more in line with Indigenous principles of justice (Kerr, 2020). This approach is now often referred to simply as Gladue. While Gladue has benefited some individuals, it is applied with great variation across a range of offenses and geographic locations (Kerr, 2020). There are documented instances of judges trying to implement Gladue, but encountering conflicting mandatory minimums and other sentencing rules "that betray the purpose and principles of Gladue" (Kerr, 2020). In addition to Gladue, Canada has implemented community justice committees in sentencing as a way of including Indigenous principles of justice (Jacobs, 2012). The federal government's Indigenous Justice Program currently funds 197 community-based programs (Department of Justice, 2020).

While Gladue and community-based programming are primarily implemented at the sentencing stage, changes have also been implemented within prisons. Many barriers continue to restrict traditional Indigenous practices within prisons but the ability to practice Indigenous

spirituality and soul healing has improved[10] (Hyatt, 2013). Canada has also opened healing lodges, alternative carceral facilities, which aim to create space for 'healing through culture' (Hyatt, 2013). Inmates held in healing lodges generally show lower rates of recidivism than those held in traditional prisons (Ferreras, 2018). While the outcomes of access to spiritual practices and healing lodges have been modestly positive, Mi'kmaq lawyer Pam Palmater cautions against indigenizing prisons arguing "the solution is our people not going to prison to begin with" (Monkman, 2018). While reforms within the carceral system should be explored for those already there as a stopgap on the path to abolition, the successes of individual reforms should not be understood as a solution to the violence of incarceration. Notably, these reforms have not curbed the rising rates of overincarceration of Indigenous peoples.

Australia has similarly implemented reforms in an effort to address the overrepresentation of Indigenous peoples in prisons. Much like the Gladue framework, sentencing judges in Australia can consider the role of systemic background factors affecting Indigenous offenders, although they are not required to do so (ALRC, 2018). In New South Wales, the courts have what are referred to as the 'Fernando Principles.' While these principles were not formulated explicitly to reduce Indigenous incarceration rates, they work similarly to Gladue in "providing a framework for consideration of the issues and disadvantage often attending subjective circumstances of individual Indigenous offenders" (ALRC Summary, 2018, p.10). The Fernando Principles, as well as the Canadian Criminal Code provisions, were both referenced in an important Australian case *Bugmy v the Queen*.[11] While the Fernando Principles

[10] Soul healing is a process of teaching Indigenous peoples about Indigenous history and the oppression that has caused injury to their soul (Hyatt, 2013). A reminder at this stage of the vastness of peoples and practices that are umbrellaed under 'Indigenous' – this process may not be relevant to all.
[11] "After considering the impact of Aboriginality on sentencing for the first time in 30 years, the High Court found that the fact that Aboriginal Australians 'as a group are subject to social and economic disadvantage measured across a range

and the precedent of Bugmy demonstrate that background factors are sometimes considered, this is not applied consistently. In Victoria, a case may be referred to a Koori Court, which involves Aboriginal Elders in the proceedings (Magistrates' Court of Victoria, 2020). Elders and other respected persons advise on cultural issues and relevant details on how particular crimes may have affected the accused (County Court Victoria, 2020). While these processes have benefited some Indigenous offenders, they are applied unevenly and do not exist uniformly across Australia.

Since the early 1990s, Australia has acknowledged that the fundamental causes of overrepresentation are not within the criminal justice system, instead pointing to societal factors that contribute to Indigenous offending (ALRC, 2018). As a result, many have advocated for a justice reinvestment approach which seeks to direct resources into communities to address the causes of offending rather than reforming carceral spaces (ALRC, 2018). In addition to this social form of justice reinvestment, this approach calls for reinvestment and redesign within the criminal justice system (ALRC, 2018). The Australian Law Reform Commission notes that "justice reinvestment measures may intervene at all points of the criminal justice spectrum – to prevent people entering into the criminal justice system, as well as diversion from custody" and lowering recidivism (2018, p. 129). Some meaningful justice reinvestment projects are in place in New South Wales, the Northern Territory, and the Australian Capital Territory (YouthLaw). While it is important to acknowledge the root causes of offending, it is also necessary to contend with the discrimination within the criminal justice system at all stages: from policing, to sentencing, to treatment within prison.

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of indices' says 'nothing about a particular Aboriginal offender' but held that a background of social deprivation remains a relevant consideration for repeat offenders." (HLRC, 2013).

Reforms cannot remedy the injustices of the settler state that contribute to Indigenous incarceration, or address the fundamental drivers of incarceration which cause it to be so harmful to all those caught in its web. Indeed, "some reform programs and initiatives may have contributed, directly and indirectly, to the promulgation of discriminatory and punitive practices as well as to an expansion of the penal system" (Baldry, et al., 2014, p. 169). Prison is deadly for many people, Indigenous or not, and exceedingly harmful to those who survive incarceration. While some reforms do offer meaningful benefits, which can lessen the violence of incarceration, ultimately reforms aimed at lowering the over-representation of Indigenous peoples have failed. The introduction of sentencing reforms such as Gladue and Fernando, and additional reforms aimed at lowering offending rates, have not managed to decrease, or even maintain, rates of over-incarceration.

The very existence of a carceral system conflicts with Indigenous sovereignty. "The central role of policing, prisons, and the criminal justice system in the maintenance and reproduction of the state form is therefore challenged in a manner that exceeds the paradigm of overrepresentation" (Nichols, 2018, p. 55). The political function of carceral systems and the policing that supports them is varied, but they are inclusive of the containment of 'others' and the denial of Indigenous political authority. The settler state utilizes structures such as prisons to contain Indigenous bodies, and similarly uses entire systems such as the criminal justice system to contain Indigenous sovereignty. "Indigenous peoples are not colonized in prisons because they are overrepresented; they are colonized because they are represented" (Adema, 2016, p. 13). It is futile to reform a systems of criminal incarceration, and indeed migrant detention, designed to dominate, to subjugate, to assimilate, to contain, and to annihilate.

The 'Non-Punitive' Administrative Detention of Migrants

Australia's policy of mandatory detention requires that anyone in Australia without a valid visa is detained as an 'unlawful citizen' (ABF, 2021). The body responsible for detention is the Australian Border Force (ABF). The ABF's website declares that "immigration detention is a part of strong border control and supports the integrity of Australia's migration program" (2021). Australia's immigration detention system has become particularly infamous through its use of islands in the South Pacific and Indian Ocean. Asylum seekers that approach Australia by boat are intercepted and redirected to an island outside of Australia where they are subjected to "mandatory, indefinite and unreviewable detention" (Nethery & Holman, 2016, p. 1018). This offshore detention regime uses remote, heavily controlled environments, to conduct immigration detention under a cloak of extreme secrecy (Nethery & Holman, 2016).

The Australian policy of detaining migrants in offshore processing centres began with the Pacific Solution policy. This policy was cobbled together and adopted hurriedly in response to the 2001 Tampa affair, where asylum seekers were redirected from the ship to the island of Nauru[12] (Jupp, 2007; Coddington, 2018). This policy formalized a troubling exchange. When Nauru and Papua New Guinea agreed to detain asylum seekers on Australia's behalf, they were promised increased aid funding (Nethery & Holman, 2016). Both Nauru and Papua New Guinea have a history of Australian rule, which significantly contributed to their contemporary need for aid.

[12] The Tampa Affair occurred in 2001 when a Norwegian freighter, the M.V. Tampa, rescued 433 asylum seekers as their boat sunk, and then proceed to try and disembark on Christmas Island (Coddington, 2018). Australia denied entry, in opposition to international law (Davidson, 2016). Australia continued to refused entry for several days, ignoring distress calls and threatening to charge the Captain of the Tampa with human smuggling (Coddington, 2018).

Offshore detention centres remain heavily shrouded in secrecy. Spatial remoteness is perhaps one of the most obvious factors contributing to their surreptitiousness, but this is compounded by numerous policies that restrict the freedoms of staff and media to report on what occurs within these centres. Regulations under the Australian Border Force Act of 2015 make staff reporting information from within detention centres an offense punishable by up to 2 years in prison (Farrell, 2015). Centres on Nauru, Manus, and Christmas Island have been repeatedly closed and re-opened, which render oversight and tracking all the more difficult. Detention centres have become increasingly inaccessible to media. In Nauru, the cost of applying for a journalistic visa jumped in 2014 from AUD$200 to $8000 (Amnesty International, 2014). This fee is non-refundable even if entry is denied, and visas are rarely granted (Nethery & Holman, 2016). Despite these significant measures, the information that is available paints a grim portrait. Two-thousand leaked incident reports from the detention centre in Nauru, referred to as the Nauru Files, lay bare the horror of life in offshore detention.[13] The incident reports detail sexual assaults at the hands of detention centre staff, children self-harming, and squalid living conditions (Farrell et al., 2016).

Onshore detention is similarly harmful. While the onshore network has shrunk, with 11 centres closed between 2013 and 2017, these closures can be understood as at least partially motivated by the redirection of asylum seekers and refugees to offshore detention facilities (Peterie, 2018). Across onshore and offshore detention, research has found that detention has significant negative impacts on migrants physical and mental health (Jesuit Social Services,

[13] "The Nauru files are the largest set of leaked documents published from inside Australia's immigration detention system. They are a set of more than 2,000 incident reports from the Nauru detention centre, written by guards, caseworkers and teachers on the remote Pacific Island. They set out every reportable 'incident' on the island. Such events include attempts at self-harm, sexual assaults, child abuse, hunger strikes, assaults and injuries" (Farrell & Evershed, 2016).

2019; Amnesty International, 2016; Amnesty International, 2014). The average length of detention for migrants detained by Australia is markedly longer than any comparable jurisdiction, including Canada, at over 600 days (HLRC, 2020). In other words, the average length of detention by Australia, in which those imprisoned anxiously await their fate in squalid living conditions which deteriorate their physical and mental health, is almost two years.

In Canada, the number of people in immigration detention has increased each year between 2016 and 2020, with 8,235 people in detention in the 2019-2020 fiscal year (HRW, 2021). As in Australia, detention in Canada is indefinite. Since 2016, more than 300 people have been detained for longer than a year (HRW, 2021). People in detention are held either in Immigration Holding Centres, or placed in provincial prisons. Both are carceral spaces, heavily securitized with the familiar features of punitive spaces: standard-issue jumpsuits, barbed wire circling the tops of perimeter fences, and CCTV. These spaces code migrant detainees as criminals, a deliberate choice by the state (Silverman, 2019; Stumpf, 2006).

Immigration detention is administered and enforced by the Canada Border Services Agency (CBSA) (Gros & van Groll, 2015). A proposal for an external review body did not pass the Senate, leaving CBSA without any oversight and the only public safety agency in Canada without such a body (Tunney, 2019). Oversight may not prevent the wounds inflicted by CBSA, but it would bear important witness to many of them. CBSA makes the decision to detain, and bases those decisions on the criteria outlined in the Immigration and Refugee Protection Act (IRPA) and the Immigration Refugee and Protection Regulations (IRPR). The relevant sections to this Act and Regulations stipulate that CBSA may detain anyone they believe is inadmissible, a danger to the public, or is unlikely to appear for an examination, admissibility hearing, or their

removal, or any foreign national whose identity has not been established (Silverman & Molnar, 2016).

Between 2016 and 2020, approximately 83% of those held in detention were detained because they were seen as a flight risk (HRW, 2021). Detention on the grounds of being a flight risk is problematic, as one counsel summarizes:

> Basically anybody can be seen as a flight risk. If you are a refugee claimant, you're a flight risk because you're scared to return somewhere. If you're a failed refugee claimant you are seen as a flight risk because maybe you are not reliable or are trying to get into Canada. If you have family here you are seen as a flight risk because obviously you want to stay with your family. If you don't have family here, you're a flight risk because you have no ties. Anybody can be seen as a flight risk (Gros & van Groll, 2015, p. 56).

This broad and imprecise criteria for detention, coupled with no oversight of CBSA, allows detention to be employed widely and inconsistently.

Lawyers have also found that there is significant inconsistency in how clients are treated based on race (HRW, 2021). The CBSA does not release data on the race of people in immigration detention (HRW, 2021). Without these data, there are limitations to uncovering how people of colour are collectively treated within this system of detention, but individual cases that have been recounted suggest troubling patterns of discrimination. Some lawyers have found that their Black clients were set higher bonds to obtain release, were more likely to be transferred to a prison (vs. an IHC), and more likely to be considered a danger to the public (HRW, 2021). Indeed, research has been unable to determine established criteria for transferring someone in detention from an IHC to a prison (Gros & van Groll, 2015). Counsel has stated they believe that CBSA agents weaponize their ability to transfer detainees, claiming "the considerable discretion

associated with transfers gives IHC guards leverage to threaten immigration detainees with transfer to jail in order to coerce compliance" (Gros & van Groll, 2015, p. 79). This mirrors the practice in Australia, where there is evidence that asylum-seekers are threatened with the transfers to offshore facilities (Zivardar & Tofighian, 2021). Once a transfer is decided, detainees' counsel is not made aware of the transfer, nor are there any mechanisms for them to appeal this decision (Gros & van Groll, 2015).

Unreformable: Immigration Detention as a Colonial Tool

As in the case of incarceration, reforms have been implemented by both the Australian and Canadian governments to address major criticisms of their immigration detention systems, yet reforms fail to prevent the many harms of detention. Canada introduced the National Immigration Detention Framework in 2017 in order to create "a better, fairer immigration detention system that supports the humane and dignified treatment of individuals while protecting public safety" (CBSA, 2021). The emphasis on protecting public safety reinforces coding migrants as criminals and threats, despite most being detained as a result of being a flight risk, not a danger to the public. The framework appeared to initially reduce both the average length of detention and the number of children in detention, but has proven more ineffectual in subsequent years. The average length of detention doubled over the course of the pandemic[14] (HRW, 2021). In the 2019-2020 fiscal year, the number of children in detention increased by 17% from the preceding year (CBSA, 2020b).

[14] CBSA claims this is a result of decarceration efforts (which will be explored in the next chapter). As a result of releasing people from detention due to COVID-19, those remaining in detention are 'higher risk cases' which, according to CBSA, accounts for the longer detention period (HRW, 2021).

Overall, the number of children in detention in Australia has decreased, but this decrease is measured against a sharp increase that occurred in 2013. The official explanation for this massive increase in detention (of both adults and children) at that time was the “rapid increase in illegal maritime arrivals” (Home Affairs, 2020). This language blames asylum seekers for arriving by boat (which is legal) and takes no responsibility for failing to create alternative solutions for children. In both the Canadian and Australian immigration detention systems, children are heavily impacted by the detention of their parents or guardians. Research has demonstrated that children in detention, even for a short period of time, can have long-lasting negative health impacts (Kehler, 2020; AHRC, 2014). In some jurisdictions, there is evidence of extensive self-harm by children in detention. Between January 2013 and March 2014, 128 children in Australian detention self-harmed (AHRC, 2014).

The experience of children within detention, however, does not capture the full spectrum of how detention harms children. CBSA does not collect data on how many children are separated from their parents as a result of immigration detention in Canada (HRW, 2021). The UNHCR has criticized the Australian immigration detention system for separating families (UNHCR, 2018). While statistics are not always available or reliable, it is clear that detention continues to cause family separation in both jurisdictions. As Barrick explores in the American context, all immigration detention can be understood as a form of family separation, as even those who are detained together are frequently separated by detention’s architecture, both that of physical facility, and the architecture of detention policies (Barrick, 2016). This separation of migrant families mirrors the separation of Indigenous families as a result of the removal of Indigenous children, and removal of Indigenous family members through criminal incarceration.

The resistance and ineffectiveness of reforms in both Canada and Australia is increasingly legible when immigration detention is understood as a product of settler states' contemporary colonialism. In Australia, the reforms that have been implemented are often only after court judgements, such as Namah, require it[15] (Giannacopoulos & Loughnan, 2020). "The Australian Government remains hostile towards human rights as international legal norms and has actively sought to shut down avenues to political reform and legal redress" (Essex, 2019, p. 384). It is necessary to reiterate, however, that abolitionists see reforms as fundamentally flawed. Reforms require accepting the premise that some non-citizens are imprisonable under certain circumstances (Aiken & Silverman, 2021).

Immigration detention fits into broader settler colonial agendas of (re)settling the colony through subordinating racialized others and securitizing the colony's illegally obtained lands. Kashyap describes immigration law in the American context as "an extension of settler-established laws designed to control and protect illegally acquired settler-colonial lands from 'unruly' outsiders" (2019, p. 563). Kashyap was exploring the specific ways in which American immigration policy has vilified Muslim men (a practice that Canada and Australia have also engaged in with vigour following 9/11), but all three of these settler state jurisdictions use immigration detention to control racialized migrants, who are less 'desirable' to the settler state than White migrants. Immigration detention fulfills the settler state's goal of eradication by not just containing and regulating migrants, but holding them until the state can facilitate their deportation, thereby removing the 'unwanted others' (Bosworth & Turrnbull, 2015). Boochani

[15] Namah refers to the Papua New Guinea Supreme Court decision, *Belden Norman Namah, MP Leader of the Opposition and Ors v The Independent State of Papua New Guinea.* This decision stated that detention of asylum seekers at the camp on Manus was 'unconstitutional' and so those within the camp were transferred to alternative 'open' accommodation (which were framed as free of restriction, yet in practice were not so). (Giannacopoulos & Loughnan, 2020).

and Tofighian have developed this framing of border violence as colonial violence in Australia through their Manus Prison Theory. This theory reveals "how border violence is rooted in coloniality (in particular, how border politics are part of the same colonial thinking that continues the displacement, dispossession and repression of Aboriginal and Torres Strait Islander peoples)" (Tofighian, 2020, p. 1144). While this theory is the product of Boochani's experience with the Australian detention system, it maps easily onto the Canadian system.

Australia's use of offshore detention speaks to settler colonial logics animated by imperial expansion. The "colonial state now also imagines immigration detention zones as empty and waiting to be filled through the *terra nullifying* strategies of carceral expansion. Key sites used by the Australian state for immigration detention – Manus, Nauru and Christmas Island – have been effectively rendered as empty – geographically, physically, legally" (Giannacopolous & Loughnan, 2020, p. 18). Not only does the conceptual work of *terra nullis* immediately position immigration detention as a tactic of colonialism, but Australia's use of islands as sites of containment is also a familiar tactic to Indigenous peoples in Australia. In addition to the prison for Aboriginal people on Wadjemup (Rottnest Island) described earlier, other island sites were also made into harsh, punitive spaces for Indigenous peoples. Bwgcolman (Palm Island) was the site of an Aboriginal reserve and open-air prison. Between 1918 and 1972, Indigenous peoples across mainland Australia were removed to Palm Island, totalling at least 3,950 documented removals (Queensland Government, 2018). Many Indigenous peoples were removed to Palm Island as punishment for not abiding by the paternalistic laws of protection legislation (Queensland Government, 2018).

Indigenous (Kuku Yalandji, Waanji, Yidinji and Gugu Yimithirr peoples) artist Vernon Ah Kee released a work called *The Island*, exploring Australia's use of islands as spaces of

containment for both Indigenous peoples and detained migrants. In the exhibition notes for this work, Ah Kee writes: “I cannot escape the idea that Palm Island is the prototype for Nauru, Manus or Christmas Islands. I am unwilling, or unable, to separate my own history with what is happening in those places” (Reich, 2020). This observation handily summarizes the points of this chapter, namely that settler colonial logics created past iterations of containment and they now serve to animate the contemporary incarceration of Indigenous peoples and the detention of migrants.

For this reason, it is perhaps predictable, and yet no less worthy of study, that COVID-19 impacted carceral spaces in ways that disproportionately harmed those contained within them. While there are differences across prisons and detention centres, and across the two jurisdictions of Canada and Australia, the settler state’s policies demonstrate that some lives are more valued than others by the state, and those in these carceral spaces lived (and continue to live) through a very a different COVID-19 pandemic than the Canadian and Australian public. The following chapter will detail the realities of COVID-19 in prisons and detention centres across these two settler states.

Chapter 4: COVID-19 in Carceral Spaces

Across the globe countries responded to COVID-19 with lockdowns, curfews, and closures, under the guidance that social distancing will curb the spread of the virus. It is difficult to capture the impact of such prolonged, but sometimes ineffective closures in places like Ontario, or even the intense but effective closures in cities like Melbourne. I have become intimately familiar with my apartment in a way that I never was in the 5 previous years I have lived here. I know the crack in the bedroom window is the same length as my pinky finger. I know the routines of the pigeons who arrive at the park across the road each morning with surprising punctuality. I know that the paint over where there was water damage last year is just the slightest different shade of white, which you can only really see when the sun is low.[16] Like many, this familiarity with my surroundings is tinged with a longing to visit somewhere new, yet there is no denying that I am surrounded by luxuries. I am grateful for this shelter and all the comforts it contains.

It is ludicrous for people to compare their experiences of containment in their homes during this pandemic to those of people contained in prisons or detention centres. I do hope, however, that those who have never thought about the violence of incarceration before might find some empathy. Perhaps this shallowest of glimpses into the psychological toll of containment might allow people to consider the cruelty this kind of punishment delivers and might wonder how we can continue to call that justice.

[16] An unimportant aside, but this bit about the paint is no longer true because my apartment flooded again in July, 2021. I suppose I must be careful what I wish for, as the flood did indeed grant me something new to look at (namely, the inside of my walls).

Migrant Rights & Border Closures

Many more articles, theses, and dissertations will surely emerge that focus critically on determining which decisions were most responsible for policy successes and failures in Canada and Australia and how this resulted in the major discrepancy in total cases of coronavirus between the two. This thesis is unable to cover all of this, but will focus on the policy decisions that had a direct impact on individuals in carceral institutions. Considering the concentration of this thesis on migrants, however, I must take a moment to unpack the notion of 'closing the border' as a prevailing measure to abate the spread of COVID-19 (or indeed, any virus).

By April 22nd, 2020, the United Nations estimated that 167 countries had fully or partially closed their borders in response to COVID-19, with at least 57 of these countries making no exception for people seeking asylum (UNHCR, 2020). This has exacerbated existing crises at borders – stranding Syrians at the Turkish border, leaving numerous asylum seekers in overcrowded and unsanitary camps in Greece, and denying rescue boats entry at European ports (Owen, 2020). This is in keeping with colonial policies and rhetorics that frame migrants as 'contaminating agents' who are vectors of disease (Paik, 2013; Bashford & Strange, 2002). Whether migrants end up in camps, detention centres, or elsewhere, it is clear that border closures are forcing many into environments that could quite easily suffer disastrous outbreaks if COVID-19 is introduced. Australia and Canada are among those who have kept their borders closed to asylum seekers (Spinks, 2020; Paperny, 2021a). Border closures negatively impact migrants both within and outside of Australia and Canada. Not only are asylum seekers unable to safely seek refuge, many migrants living within these jurisdictions have been neglected throughout the course of the pandemic.

In Canada, many migrant care workers have faced significant harm as a result of COVID-19. Care workers frequently live and work out of their employer's home, which continued for many throughout the pandemic. This caused difficulty for those who were required by their employer to remain within the home at all times to avoid contracting the virus, which cut many off from their supports and left them vulnerable to abuse (Caregivers Action Centre, 2020). Oftentimes employers would require this quarantine for their employees while not observing the same housebound discipline themselves. Other migrant care workers lost their jobs due to the pandemic, which meant a concurrent loss of housing if they lived with their employer. Migrant agricultural workers in Canada often live in deplorable conditions, and these congregate housing arrangements are particularly dangerous in the wake of COVID-19. Language barriers and precarious immigration status can prevent migrant workers from speaking out about unsafe conditions and abuse (Paperny, 2021b). Given these conditions, it is unsurprising that the migrant worker population in Canada has been disproportionately infected with COVID-19. In 2020, 8.7% of migrant workers in Ontario tested positive for COVID-19, and workers returned to work in the midst of the third wave while many advocates remain concerned that Canada still lacks adequate protection for them (Wilson, 2021).

In Australia, many temporary migrants faced considerable difficulty supporting themselves following the closure of hospitality, retail and other workplaces (Berg & Farbenblum, 2020). Despite this, many are ineligible for state aid such as JobKeeper and JobSeeker, COVID-19 employment relief schemes (Symington, 2020). The lack of support for migrants "can be seen as a worrying example of the politicisation of rights in Australia, where the needs of the vulnerable are often treated by the major political parties as secondary to the sending of signals to particular voter groups for perceived electoral gain" (Symington, 2020, p. 516). This

politicisation of migrant rights has long been at the centre of many immigration policies in Australia. In the past two years, many migrants in Australia have lost access to status resolution support services and do not have access to Medicare (Refugee Council, 2021). Throughout the pandemic, surveys have indicated that migrants fear they may become unhoused, and have been unable to pay for food and other basic necessities. This was particularly true of international students, asylum seekers, and refugees (Berg & Farbenblum, 2020).

The hardening of borders proves to be harmful for migrants, barring some from safe haven while trapping others in cycles of neglect or exploitation. In addition to these negative consequences, research suggests that closed borders are not a particularly effective tool at preventing the spread of the coronavirus, especially in countries where cases of COVID-19 have already been identified (Mallapaty, 2020; Dearden, 2020). Social distancing remains the most vital mechanism for preventing community spread of COVID-19 (Leigh, G., 2020). Indeed, some research even suggests that open borders and increased motility actually improve our resilience to global pandemics (Thompson et al., 2019).

Restrictions on migrants in the name of public health is not new. Infectious disease control and immigration detention have been substantively linked, as both allow for the preventative detention of non-criminals in the name of public health. Historically, quarantine at the border mirrors the supposed rationale of migrant detention, both done in the name of national security and defence (Bashford & Strange, 2002). "Compulsory quarantine detention in Australia is thus also part of the history of immigration restriction – one technology through which 'white Australia' was implemented" (Bashord & Strange, 2002, p. 516). Silverman draws similar conclusions linking Canada's historical quarantine measures and contemporary immigration detention as means to control, contain, and expel migrants (2020).

Extreme circumstances warrant an extreme response, and there is no denying that the virulence and fatality of the coronavirus required extreme interventions by states. To suggest business-as-usual at the border is not the aim of this section, but rather to highlight that the measures taken were flawed. It is highly revealing who the state chooses to protect and who the state opts to neglect. Closed borders, particularly these borders that remain open to the most privileged but shut to the most vulnerable, lay bare the value of particular lives over others. This chapter will begin to demonstrate how both the Canadian and Australian state valued the lives of those in carceral institutions less than the general public.

COVID-19 Behind Bars

Due to the nature of the COVID-19 virus, it was clear early on that carceral spaces have all the makings of an environment where the virus could flourish and decimate. One Canadian physician described the risk of COVID-19 in prisons: "I do not generally use alarmist language, but the elements are in place for an enormous calamity" (Philpott & Pate, 2020). Carceral spaces around the world are woefully overpopulated and known to have inadequate sanitation – Canada and Australia are no exception (John Howard Society, 2019; Payne & Hanley, 2020). The reality that carceral institutions are particularly at-risk environments for an outbreak of COVID-19 is not contentious. The guidelines for COVID-19 outbreaks in Australian correctional and detention facilities, developed by the Communicable Diseases Network Australia and endorsed by the National Cabinet, note that carceral spaces "are likely to be at increased risk of significant transmission and infection"[17] (CDNA, 2020, p. 5). In Canada, the Solicitor General of Ontario's

[17] Australia's response included forming a National Cabinet, the first instance of such a body being convened since WWII (Payne & Hanley, 2020).

protocols for COVID-19 asserted “correctional institutions are congregate settings with increased risk for disease spread once it has been introduced” (Ontario Solicitor General, 2020a, p. 7).

In early 2020, when Australia and Canada first identified cases of COVID-19 in the country, the recommendations were to social distance and to routinely wash hands and sanitize high-touch surfaces. These directives were near impossible for those in prison and immigration detention centres to follow, as they were kept in overpopulated spaces, frequently without hand soap or sanitizer (Payne & Hanley, 2020; Change the Record, 2020; Casey & Graveland, 2020). The architecture of prisons and detention centres confines their populations in small, shared cells, in poorly ventilated buildings, with no meaningful means of social distancing. As recommendations evolved to include wearing a face mask, many of those contained in prisons and immigration detention centres have gone without access to this piece of personal protective equipment (Rodriguez, 2021; Payne & Hanley, 2020). Reports have also indicated that many prisons in both Canada and Australia will not provide hand sanitizer as a result of the alcohol content, and in some instances, individuals must buy their own soap (Change the Record, 2020; Casey & Graveland, 2020).

Populations kept in carceral spaces often have higher rates of risk factors that can worsen the outcomes of an infection with COVID-19. Social determinants of health that contribute to an increased risk often result from marginalization, victimization, and discrimination[18] (John Howard Society, 2019). Research findings demonstrate that the prison population in Australia have higher levels of chronic and communicable diseases than the general population (Stewart et al., 2020). 22% of prison entrants have been diagnosed with asthma, in comparison to a

[18] Social determinants of health are “the non-medical factors that influence health outcomes” which include “income and social protection, education, unemployment and job insecurity, working life conditions, food insecurity, housing” among others (World Health Organization).

community rate of 11% (Payne & Hanley, 2020). Additional chronic conditions, such as arthritis, cancer, cardiovascular disease, and diabetes are prevalent in the prison population (Stewart et al., 2020). The population contained in Australian immigration detention facilities have higher rates of diabetes and higher incidences of being diagnosed with upper respiratory infections (Green & Eager, 2010). Inadequate medical care within detention facilities have worsened the health of many of those detained there, sometimes compromising their immune systems (PIAC, 2018).

This repeats in Canada. Generally, the health of people incarcerated in prison in Canada is poorer than that of the general population (Kouyoumdjian et al., 2016). People who are incarcerated have higher rates of communicable diseases, such as tuberculosis, which in 2016 had 22.4 actives cases per 100,000 in federal custody in comparison to 4.6 per 100,000 in the general population (Kouyoumdjian et al., 2016). A report issued in 2019, detailing the state of medical care in Ontario's prisons, concluded "correctional facilities are not equipped to provide consistent, equitable, or high-quality health care" (John Howard Society, p. 5). As in Australia, there is evidence that people incarcerated in both prison and immigration detention centres experience social determinants of health that worsen their health outcomes prior to containment. Increasingly, incarceration itself is understood as a social determinant of health (Cleveland et al., 2018; Mazzilli, 2019). Additionally, in both the Australian and Canadian jurisdiction, there is clear evidence that incarceration and detention cause, and seriously exacerbate, mental illness (Gros & van Groll, 2015; Cleveland et al., 2018).

Both the nature of carceral spaces, and the health of those contained within them, make it clear that COVID-19 poses a serious risk, yet some still mistakenly believe the solution within prisons is simple because they are a securitized environment. Despite the impression they can give, carceral spaces do not have a static population and these spaces are highly susceptible to

disease being brought in. There is considerable turn over in staff, visitors (when allowed), and in the incarcerated population itself. Often when discussing issues within prisons, there is a focus on the number of people who are incarcerated on remand (someone who has not yet been sentenced). Frequently this focus is used to demonstrate that these harms are being inflicted not just on criminals, but on people who may be innocent. This framing does not fit in the abolitionist belief system that animates this thesis. I seek to abolish prisons for everyone, inclusive of those that are guilty. There is still some validity to focusing on the number of people imprisoned on remand, as it contributes to the significant turnover of those imprisoned, known as 'prisoner churn' (Pelvin, 2017). Social distancing and lockdowns are difficult to enlist effectively against COVID-19 in prisons not only because of the physical architecture of the prisons, but the nature of the criminal justice systems designed to continuously cycle people in and out.

The impacts of this churn are felt not only within the prison population, where COVID-19 may be introduced or re-introduced, but also in the community of origin for people who are incarcerated. Carceral institutions "take people from vulnerable communities, confine them in tight quarters— quarters which are often unsanitary and lack adequate medical treatment—and then quickly return them to those same communities, where they spread the illnesses they contracted there" (Pfaff, 2020, p. 5). Diseases are often imported from carceral institutions to vulnerable communities who may feel the impacts of these health events more acutely as a result of systemic injustices, including barriers to accessing health care.

In response to COVID-19, medical professionals, advocates, academics, and international organizations released statements and signed open letters imploring countries to release contained populations to avoid catastrophic outcomes. The United Nations Office on Drugs and Crime, the World Health Organization, Joint United Nations Programme on HIV/AIDS, and the

Office of the United Nations High Commissioner for Human Rights released a joint statement on COVID-19 in custodial institutions in which they urged countries to use all mechanisms available to release people deprived of liberty (UNODC et al., 2020). In Canada, open letters have been written by the Saskatchewan-Manitoba-Alberta Abolition Coalition, the Canadian Civil Liberties Association, the HIV Legal Network, the Union of British Columbia Indian Chiefs, and many other networks and organizations. In Australia, numerous agencies including the Australasian Society for Infectious Diseases, the Australian College of Infection Prevention and Control, and thousands of health care professionals and academics called for the release of migrant detainees in Australia in the wake of COVID-19 (Vogl et al., 2021). Experts agree that an effective prevention strategy includes decarceration. While numbers in certain jurisdictions within Canada and Australia lowered during the pandemic (as will be discussed in further detail), opportunities for further custodial population decline or true abolition were missed.

While the risk factors for custodial populations are quite similar in Canada and Australia, the spread of COVID-19 has differed significantly. COVID-19 emerged in both countries in early 2020, indeed the first cases of COVID-19 in Canada and Australia were identified on the same day, January 25th, 2020 (Negin, Kapur, & Baxter, 2020). While initially the spread followed a similar pattern, quickly the cases recorded in Canada began to outpace the cases recorded in Australia. A little over a year into the pandemic Australia had 35 COVID deaths-per-million, while Canada reported 543 deaths-per-million (Lewis, 2021). By April, 2021, much of Australia had returned to a kind of pre-pandemic normal, with stadiums filled for sporting events, shopping malls open without restriction, and much of the country back to in-person versus remote activities.[19] Across Canada, 'lockdowns' continued as a third wave took hold and

[19] I do not wish to downplay the lack of 'normalcy' many continue to face. In addition to those entangled in carceral institutions, other sectors in Australia remain heavily impacted by COVID-19. Many Australian citizens are stranded

ICUs became dangerously full. Within prisons in Canada, the situation was far harsher and more dire. Infection rates were significantly higher than in the general population, and extreme lockdowns continued to further prohibit what little freedom people enjoy in carceral institutions (Ouellet & Gilchrist, 2021).

Australia has proven successful at avoiding significant COVID-19 outbreak in prisons and immigration detention centres; however, this chapter will demonstrate that this came at great cost to the physical and mental health of those contained and their communities. In Canada, insufficient policy safeguards led to mass outbreaks in carceral institutions. In both the Australian and Canadian context, it is clear that the settler state logics of containment endured, even in the face of a once-in-a-generation pandemic when public health experts overwhelming favoured decarceration.

Australia: Policies & Protocols in Carceral Spaces

The fears of the damage that COVID-19 could inflict in carceral institutions have been proven warranted worldwide. A state prison in Ohio had at least 1,828 confirmed cases among inmates, about 73% of the prison's inmate population (Chappell & Pfleger, 2020). In February, 2021, 95 of the UK's 117 jails were classified as 'outbreak sites' (BBC News, 2021). In early 2020, prisons in Italy were at an occupancy level of 121.75%, and by April 9th, 2020, 58 prisoners and 178 penitentiary officers tested positive for COVID-19 (Cingolani et al., 2020).

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in other countries and unable to return due to strict border policies. Many pregnant people in Australia can still only have one person in the hospital with them, forcing many people to choose between their partners and other birthing supports like their own mothers or doulas (NSW Health). These are just a few examples of the ways COVID-19 continues to impact Australians, and those within Australia. It also remains necessary to be hyper-vigilant whenever considering easing restrictions. India, who's President declared in January, 2021 that the country "has saved humanity from a big disaster by containing corona effectively," has since seen cases rise to over 18 million (Roy, 2021). Like Australia, India implemented harsh lockdowns (considered by some the harshest in the world) (Roy, 2021).

Despite limited transparency, it is clear that COVID-19 has been lethal in Immigration and Customs Enforcement (ICE) facilities in the United States (Smart & Garcia, 2020). As of April, 2021, Australia had few reported cases of COVID-19 within carceral spaces, a significant deviation from many comparable settler state jurisdictions. By managing to keep community spread low in the general public, Australia avoided significant outbreaks amongst people who are contained.

The success of preventing broader spread of COVID-19 and higher incidences of death in Australia are largely attributed to strict travel control, state border closures, an economic relief package that included doubling unemployment and free childcare, and swift responses to small outbreaks (Lewis, 2021; Flanagan, 2020). Throughout the pandemic, state governments have been quick to implement extreme measures to contain small outbreaks. When a single case was identified in Perth in January, 2021, a five-day lockdown period was immediately put in place, allowing for significant contact tracing and testing efforts to prevent wider spread (Lewis, 2021). As this chapter will demonstrate, however, much of the success in Australia has been a great cost to vulnerable populations, inclusive of Indigenous peoples, incarcerated people, and migrants.

As a settler state, the policies put in place by default protected richer, Whiter, and more centrally located Australians. The inflexibility of many policies meant they disproportionately impacted vulnerable communities, both in and out of carceral institutions. While strict border closures between Australian states and municipalities have been credited with preventing the spread of COVID-19, they have also been found to impact access to basic necessities for Indigenous peoples living in border towns (Change the Record, 2020). This has resulted in penalties for those breaking quarantine, despite practical measures not always being in place to ensure basic necessities are available to those in communities who typically need to cross

borders to access them (Change the Record, 2020). Many Indigenous communities are currently closed to visitors, and residents cannot return without first isolating for 14 days. This is in place to protect communities who are at high-risk of complications of COVID-19, and who are underserved medically, from experiencing an outbreak. This presents difficulties for those leaving incarceration, however, who are released and have no alternative accommodation to safely self-isolate for the 14-day period (Russell, 2020).

While many meaningful preventative and protective opportunities were denied to those incarcerated, carceral institutions in Australia did introduce some measures designed to lower the risk of a COVID-19 outbreak. Prison restrictions varied across states and territories, but they generally included: suspension of in-person social visits, restrictions on moving inmates between institutions, temperature checks for staff, and quarantine periods for new inmates (Stewart et al., 2020). Based on the available data, mass outbreaks in prisons and immigration detention centres were avoided, but it is unclear to what extent this can be claimed as a success of the policies implemented in carceral institutions versus the policies that prevented broader community spread. For many vulnerable individuals, however, the COVID-19 prevention strategies within these institutions came at great expense.

In March, 2020, all jurisdictions suspended in-person visitation (Payne & Hanley, 2020). Visitations have been reinstated and suspended throughout the course of the pandemic, as case numbers in Australia fluctuate (e.g. Victoria Corrections, Prisons & Parolee, 2021). The elimination of in-person visitation can cause significant harm to incarcerated populations. “Visitation is a core pillar of prisoners’ rights because of the varied and well-documented benefits associated with regular contact with family and friends” (Payne & Hanley, 2020, p. 5). The benefits of visitation are not a solution to the harm of incarceration, but visitation does

provide crucial support for the mental wellbeing of those who are incarcerated and their families (Payne & Hanley, 2020). It remains unclear to what extent video-visitations and other substitutions deliver these benefits, and similarly unclear how reliably available these visitation alternatives are across carceral institutions in Australia.[20] Reports indicate that in some institutions, people who are incarcerated are required to pay exorbitant fees to call loved ones, and that there have been "for-profit services which appear to have sprung up during the COVID-19 crisis allowing people to 'email-a-prisoner' at high costs" (Change the Record, 2020, p.11). The suspension of visitation is further concerning in jurisdictions where visits by volunteers and non-governmental organizations are suspended, as they often act as witnesses and advocates for people who are incarcerated (Payne & Hanley, 2020; Change the Record, 2020). Interruptions to visitations have also, troubling, disrupted reliable access to legal counsel (Change the Record, 2020).

Individuals within carceral institutions who have been able to make contact with legal representation and loved ones have expressed concerns that measures being taken are insufficient at safeguarding against COVID-19. Mark Rowson, incarcerated at the Port Phillips prison in Victoria, has numerous health conditions that put him at greater risk of suffering severe, and possibly lethal, complications from COVID-19 (HRLC, 2020b). Rowson, scared by the lack of protection against COVID-19 while incarcerated, described feeling like a "sitting duck" and filed a case seeking early release (Percy, 2020). While the case is ongoing and Rowson remains

[20] Relying on video-chat is, of course, not only a reality for those imprisoned. Many of us have relied on virtual interactions as a result of the dangers of in-person socializing. There is no denying the impact this has had on most everyone's mental health throughout the pandemic. For those in carceral institutions, not only are in-person visitations suspended, but virtual connections are heavily structured and securitized (just as in-person visitations would be). If decarceration had been implemented, the harm would undeniably have been reduced, even if outside of carceral facilities those released continued to rely on video-chat and other remote alternatives to connect with loved ones outside of their household.

incarcerated, the judgement published following an interlocutory hearing noted that Rowson's "evidence provided a sufficient basis, when taken with the absence of a risk assessment, to establish a prima facie case that the defendants have breached its duty of care to him, which exposes him to risk of significant injury" (Supreme Court of Victoria, 2020). A risk assessment of the facility has been ordered and any recommendations from this assessment must be implemented (HRLC, 2020b). The acknowledgement by the court that carceral institutions are breaching their duty of care responsibilities to people contained within them has been welcomed by advocates.

A similar legal challenge to the Rowson case has been filed by the Human Rights Law Centre on behalf of a man in immigration detention in Australia. Previously detained on Manus Island, they were brought to Australia for medical treatment in 2019. Like Rowson, this person has numerous underlying health conditions (including asthma, a heart condition, and diabetes) which could all worsen the outcome if they contracted COVID-19 (HRLC, 2020a). At the time of writing this case has not yet been decided. The cases brought by Rowson and the man in immigration detention against the Australian state are in response to a well-founded, genuine fear for their lives. This contrasts significantly to the court cases filed by members of the Australian public who argue that lockdown measures and curfews infringed on the guarantee of freedom of movement (Bell et al., 2021). While these cases were dismissed, it is demonstrative of the differing impact of restrictions on incarcerated populations and the general public.[21]

Harsh lockdowns have been implemented within prisons throughout the course of the pandemic. Many jurisdictions implemented quarantine periods for newly arrived individuals, which amounts to solitary confinement. Some incarcerated people in Queensland spent 22 hours

[21] See Gerner & Anor v The State of Victoria, Loielo v Associate Professor Giles.

a day in solitary confinement (Smee, 2020). In Victoria, there have been reports of some men in protective quarantine released from their cell for only 15 minutes a day, and some women for only 40 minutes a day (Lachsz & Hurley, 2021). Despite its continued use in both Canada and Australia, solitary confinement is a form of torture (United Nations, 2011). Solitary confinement has been proven to be extremely harmful to those who experience it, and the impacts are often long-lasting (United Nations, 2011). Research has demonstrated that in Australia, solitary confinement has an especially deleterious impact on Indigenous people (Lachsz & Hurley, 2021; Royal Commission into Aboriginal Deaths in Custody, 1991). Emergency acts and COVID-19 response policies have broadened the instances in which solitary confinement can be used in Australian prisons (Lachsz & Hurley, 2021).

One extended lockdown at the Arthur Gorrie Correctional Centre, precipitated by two correctional officers testing positive for COVID-19, resulted in horrendous conditions and spurred protests within the prison. During the preventative lockdown following their possible exposure, those incarcerated were continuously confined to their cells and unable to contact any loved ones or legal counsel for days (Robertson, 2020). Staff shortages led to the facility failing to deliver basic needs, including meals and medication (Robertson, 2020). While the Arthur Gorrie case was extreme, it is representative of the harmful impacts that COVID-19 response policies have on incarcerated populations. While successfully preventing exposure to COVID-19, the facility instead exposed incarcerated people to other severe health risks by failing to provide them with basic sustenance and health care.

Immigration detention centres in Australia adopted similar protocols to prisons. Although the government stated in March, 2020 that infection control plans were in place at sites of immigration detention, migrant detainees contested this (Vogl et al., 2021). Many prisons and

detention centres in Australia, as well as offshore detention centres, are run by the private operator Serco (ACCR, 2020).[22] Advocates have argued that Serco has limited the transparency on what restrictions have (or have not) been implemented to guard against COVID-19 (Vogl et al., 2021). For example, while testing has generally been conducted quickly and transparently in response to identified cases of COVID-19 in the Australian general public, it is unclear how thorough testing has been within detention facilities. After a detention centre guard tested positive for COVID-19, there was no information on how testing was conducted at the facility in response (Ferdinand et al., 2020). "Although the government has indicated that no detainees have tested positive, this is meaningless if few or no tests have been conducted, and amounts to dodging the issue altogether" (Ferdinand et al., 2020). Throughout the pandemic several places of alternative detention have been utilized, including hotels and aged care homes, often in rooms where they are unable to leave or open the windows (Eddie, 2021). These sites are reported as being "mired in secrecy" making it similarly difficult to know what COVID-19 precautions are in place, or how testing is being implemented in response to potential exposure (Eddie, 2021).

As with prisons, visitations to migrant detainees were suspended (Ryan, 2020a). Individuals detained at hotels serving as alternative detention sites no longer have access to outdoor space or gyms (Ryan, 2020a). Non-essential and non-critical outside medical appointments have also been suspended (Al-Ghalib, 2020). Doctors have expressed concerns that the postponement of treatment and preventative check-ups as a result of COVID-19 may lead to a spike in health concerns after the pandemic has subsided (Lowrie, 2021). Although the

[22] Serco is contracted in numerous countries to deliver detention services. This includes the Yarl's Wood detention centre in the UK, an infamous centre where detainees have repeatedly waged hunger strikes to protest the "inhumane conditions" (Travis, 2018). This company has been notoriously secretive, and along with Australian Home Affairs fought the Asylum Seeker Resource Centre for three years, ultimately unsuccessfully, to avoid releasing their detention centre operating manual (Taylor & Knaus, 2020).

specifics of protocols in immigration detention centres remains somewhat opaque, the protocols that are known seem to follow much of what has been implemented in prisons. The focus is on preventative measures and outbreak management, to the detriment of other aspects of incarcerated people's health, and with minimal focus on decarceration. This is in opposition to the prevailing guidance of the World Health Organization and other leading organizations that called for urgent reduction in custodial populations (Vogl et al., 2021).

Canada: Policies & Protocols in Carceral Spaces

The situation in Canada reflects elements of policies and restrictions put in place in Australia, but differs dramatically in terms of impact. Like Australia, Canada suspended in-person visitations and ramped up cleaning measures (Ontario Solicitor General, 2020b; Loeiro, 2020). Indeed, Canada arguably took more significant measures to safeguard against the spread of COVID-19 in prisons and immigration detention centres by opting to release individuals in order to depopulate these overcrowded spaces of detention, which will be detailed more fulsomely in the final section of this chapter. In spite of this, Canada saw significant community spread and it did not take long for COVID-19 to infect custodial populations.

By early June, 2021, there were more than 6,700 instances of incarcerated people testing positive for COVID-19 in carceral facilities (Walby & Piché, 2021; Ouellet & Gilchrist, 2021). As visualized in Figure 1, the data available to date demonstrates that on average 268 out of every 1,000 incarcerated persons tested positive for COVID-19, compared to 126 in federal prisons, and 37 per 1,000 Canadians not held in carceral facilities (Ouellet & Gilchrist, 2021). In Ontario alone there have been 16 outbreaks in carceral institutions since December, 2020 (CCLA, 2021). A serious outbreak at a federal institution in Drumheller, Alberta, resulted in authorities calling in the Red Cross to assist (CBC, 2021b). Over 60% of inmates at a facility in Montreal tested positive for the virus (HRW, 2020). While specific data separating the race of those who have tested positive for COVID-19 is either not tracked or not publicly available, around 70% of the cases during the second-wave occurred at two facilities in the Prairies (Saskatchewan Penitentiary and Stony Mountain Institution) where Indigenous inmates were disproportionately affected (Rodriguez, 2021).

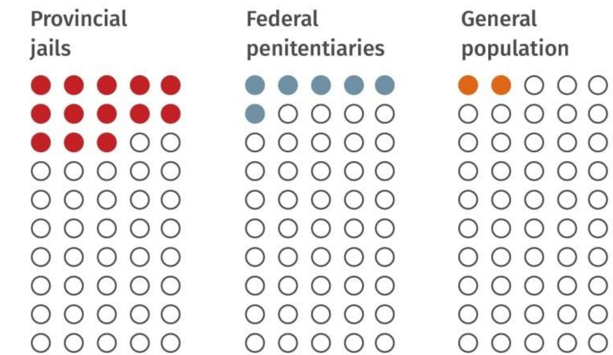

Figure 2: COVID infection rates in Canada's jails vs. general population (Ouellet & Gilchrist, 2021)

It is important to reiterate that migrant detainees are frequently held in provincial prisons in Canada. Therefore, reporting on case numbers within provincial prisons may include individuals who are held through an immigration hold. Migrant detainees not held in provincial prisons are held in Immigration Holding Centres. The situation in these facilities is similarly dire. Migrants at the Laval Immigration Holding Centre have held three separate hunger strikes since

the beginning of the pandemic. At least four people detained at that facility have tested positive for COVID-19 (Gros & Muscati, 2021). In addition to the Laval Centre, at least one staff member tested positive for COVID-19 at another detention facility, the Toronto Holding Centre (Durrani, 2020). The declaration released by the seven individuals participating in the latest hunger strike at Laval is harrowing:

> We are a group of migrants detained at the Laval Detention Center.
>
> With this letter we wish to denounce the conditions in which we are being held at the Center. For some time now, the COVID virus has entered the prison. The sanitary measures taken by the immigration officers are clearly insufficient.
>
> Some of the detainees have already contracted COVID. Others complained of pain similar to the symptoms of COVID but were given only Tylenol. We are in a lot of pain.
>
> We had also been confined to separate rooms without receiving any psychological assistance. We are distraught and very fearful for our health.
>
> In our opinion, using detention as an immigration policy is in all times an inhuman and unjust measure, with or without COVID.
>
> On the other hand, we are announcing that we have started an indefinite hunger strike starting March 1st to contest the treatment we are receiving.
>
> We are asking to be released from the Laval Detention Center because it is a place where the virus can spread, and it is only a matter of time before we are all infected.
>
> This is a call for help. We want to be treated with dignity and above all we want to be protected in this time of pandemic like every Canadian citizen.

Signatures : Marlon, Carlos Martín, Rafael, Mehdi, Alan, Karim, Freddy (Solidarity Across Borders, 2021).

The pain and suffering of those in this detention centre is evident in this declaration. This chapter seeks to underscore the point succinctly made in this plea: that migrants in detention (and people in prison) are not treated 'like every Canadian citizen' at the best of times, and their care conditions have been further comprised throughout the pandemic.

As in Australia, legal cases have been filed in Canada as a result of carceral institutions' handling of the COVID-19 pandemic. A constitutional challenge was entered in British Columbia by current and former inmates and the John Howard Society, a prisoner advocacy organization. This case, which is ongoing, contends that the conditions within prison during the pandemic infringed on their rights through extended lockdowns, suspended parole hearings, inadequate health care and suspension of visitations and religious services (CBC, 2021a). The protests and legal challenges in both Australia and Canada serve as evidence of the extreme conditions that incarcerated people faced as a result of 'protection' protocols to control the spread of COVID-19.

Access to Justice in The Era of COVID-19

Significant barriers compromise meaningful access to justice for people held in carceral spaces in both Canada and Australia even prior to the pandemic (Silverman & Molnar, 2016; Parr, 2018; ALRC, 2019; Nethery & Holman, 2016). Canada and Australia's immigration systems borrow punitive elements from the criminal justice system, but have not reproduced

many of the protections and safeguards of that system.[23] CBSA has no oversight body, and independent monitoring agencies such as the Red Cross have been denied access to provincial correctional facilities (Gros & van Groll, 2015). The ABF's legislation has made it illegal to disclose information about detained non-citizens such that "staff working in the centres risk imprisonment for up to two years if they reveal information to the media" (Nethery & Holman, 2016, p. 1026). The Australian Federal Police have investigated multiple journalists who have reported on detention centres for "unauthorized disclosure of Commonwealth information" (Nethery & Holman, 2016t, p. 1029). Amnesty International has been barred from both Manus and Nauru on multiple occasions (Amnesty International, 2014).

Similarly, those held on criminal charges experience numerous barriers to justice. On their own, these barriers may not always be understood as particularly devastating, but within the confines of prison they can make justice remedies near impossible to seek or achieve. One such example is the termination of prison librarians (Parr, 2018). Without them, many who are incarcerated are unable to do necessary research or access relevant documents to their legal defence. In Australia, lack of access to interpreters and indefinite holds on those deemed unfit to stand trial are just two examples of access to justice issues that disproportionately impact Aboriginal and Torres Strait Islanders (ALRC, 2019).

COVID-19 has both worsened existing barriers to accessing justice and created new ones. In Australia, there has been limited information about the impacts of COVID-19 on legal matters for those incarcerated, particularly in terms of what timelines are expected for court services and what legal interventions remain possible (Change the Record, 2020). Migrant detainees are once

[23] As is clear from the discussion of Indigenous incarceration, this is not to say that the criminal justice system's protections are adequate or desirable. If the immigration detention systems of Canada and Australia had the same oversights in place, there would still be barriers to accessing justice, human rights violations and lasting harm.

again being housed on Christmas Island, as the facility was re-opened to relocate individuals from mainland Australia to decrease populations in onshore facilities due to COVID-19 (Ryan, 2020b). As has been previously established, access to justice is particularly compromised in offshore facilities. Perhaps one of the most significant changes to emerge over the course of the pandemic has been the reliance on remote courts. Both Canada and Australia pivoted to virtual courts and postponed 'non-urgent' proceedings as a result of COVID-19 (Australian Public Law, 2020; Cseh et al., 2021).

The speed with which justice and immigration systems embraced video-conferencing technology was necessarily accelerated in light of COVID-19. Remote courts do offer some potential remedies to existing barriers, such as providing those in offshore facilities more timely proceedings. The use of any new technology comes with new rewards, but also new risks. The harms of new technologies are not always clear when new systems are implemented, so it is necessary when considering implementing them into the vulnerable space that is a refugee hearing, or court proceeding, that it is done with the utmost caution and sensitivity. Problems with links from detention, such as poor-quality audio and video, the inability to adequately consult with counsel, and the perceived lack of legitimacy of the virtual encounter, have all emerged as problems with remote courts (Eagly, 2015; McKay, 2018). This presents a significant challenge to the legitimacy of virtual hearings. For these reasons, the Incarceration Nation Network has recommended that all bail/remand decisions be conducted in person (2020). A similar recommendation has been made by the Bail Observation Project (2019), with regards to bail hearings from immigration detention facilities in the UK. In simulations run to study the outcomes from remote courts, defendants who appeared remotely from carceral spaces (police custody or jail) were more likely to have a higher bail set, they were more likely to plead guilty,

and received longer sentences than those appearing in person (Rossner & Tait, 2020). Asylum seekers who appeared remotely were more likely to be deported (Rossner & Tait, 2020). This suggests a reconfiguration of virtual court proceedings is necessary for outcomes to comparable to in-person.[24]

In both jurisdictions, strict policies have cut off incarcerated peoples' communications to the outside world, relied heavily on solitary confinement (torture) and inflicted considerable harm on incarcerated peoples' mental and physical health. While video chats and virtual courts offer some minor remedies to these ills, there are serious concerns that these formats will persist even after the pandemic for all the wrong reasons, primarily motivated by funds. In California, for example, the Department for Corrections has calculated that between March 2020 and January 2021 they saved $35 million dollars by not having in-person visitation (Valenzuela, 2021). It is clear that for many, continued incarceration throughout the pandemic has worsened access to justice issues. Early on the recommendations from domestic organizations in Canada and Australia, as well as international bodies such as the World Health Organization, urged countries to release their custodial populations. While neither Canada nor Australia abolished prisons or immigration detention centres, decarceration was employed in some jurisdictions and offered some individuals instances of remedied justice.

Decarceration

Decarceration has consistently been the guidance from justice and health advocates, with calls for custodial population reduction intensifying in the wake of COVID-19. As with all

[24] A reconfiguration of virtual court proceedings must be implemented to address the issues that have been identified with virtual courts, however, this will not address the multitude of systemic factors being discussed throughout this thesis. This interjection is to remind the reader of the abolitionist imagination that I will continue to engage with and advocate for.

solutions animated by an abolitionist imagination, meaningful decarceration requires considering the conditions of care around release that are essential to a successful outcome. For example, in the UK, approximately 400 asylum seekers were released from detention by the end of April, 2020 in an effort to avoid outbreaks of COVID-19 (Vogl et al., 2020). "Many of those released in the UK were granted 'freedom' with nowhere to go" (Vogl et al., 2021, p. 44). Inadequate supports post-release resulted in some individuals becoming unhoused, while others were housed in accommodations where they were unable to practice social distancing[25] (Vogl et al., 2021). In order for decarceration and abolition to be successful, holistic societal changes are necessary to ensure adequate supports and care for all members of society. Without them, release may place those formerly incarcerated and detained at risk of others kinds of violence and precarity, both new and familiar.

Decarceration was not widely adopted in Australia as a preventative measure to avoid outbreaks of COVID-19 in carceral institutions, but legislation demonstrates that it was considered. Certain jurisdictions, including New South Wales and the Australian Capital Territory, passed legislation enabling the early release of prisoners as a result of emergency COVID-19 situations (COVID-19 Emergency Measures Act NSW, 2020; COVID-19 Emergency Response Act ACT, 2020). Available statistics indicate that no Australian state or territory has released anyone incarcerated with a sentence due to COVID-19, although there are instances of bail being granted as a result of concerns about COVID-19 in carceral spaces (Antolak-Saper, 2020; Bali, 2020). While advocacy groups have lauded these mechanisms for bail release, they have noted that the burden has fallen to Aboriginal Legal Services, Community

[25] Which is not to say that the conditions outside of incarceration are equally harmful, but rather that release from prison is not the only aspect of decarceration.

Legal Centres, and Legal Aid Commissions to seek release for their clients through these measures (Change the Record, 2020).

Payne & Hanley contend that while no incarcerated people have been "officially" released due to the risk of COVID-19 in Australia, prisoner trends indicate that "these provisions are being informally enacted in all jurisdictions" (2020, p. 11). The number of persons in custody reported in the March, 2020 quarter was a five-year high figure of 44,159 (Australian Bureau of Statistics, 2021). By March, 2021, 42,633 people were in custody, which was an increase from the previous quarter, but represented a 3% decrease from March, 2020 (Australian Bureau of Statistics, 2021). In several jurisdictions there was clear population reductions in the initial few months after COVID-19 was identified in the country. "Never in the history of the available data series have the New South Wales or Victorian prison populations declined so considerably in such a short period of time" (Payne & Hanley, 2020, p. 9). The population numbers remain somewhat resistant to analysis without further data – just as Payne & Hanley understand these numbers as indicative of considerations of COVID-19 being enacted informally, they also note that COVID-19 has disrupted other mechanisms within the criminal justice system that has contributed to the population decline, including delayed court proceedings, travel restrictions, barriers to evidence gathering, and other tasks that relate to the intake and release of those imprisoned.

Decreased prison intake does appear to have contributed to the lower number of persons in custody. It is unclear to what extent this is the result of a rise in the use of alternatives, such as home detention or electric monitoring, or the result of interruptions to court procedures and processing due to COVID-19 (Payne & Hanley, 2020). It is clear that while some official, and unofficial, measures were implemented to reduce prison populations in response to the risk of

COVID-19, decarceration was not emphatically embraced as the prevailing response. It also appears that decarceration efforts in many jurisdictions were short lived. New South Wales reported 9,226 people incarcerated in March, 2020, a figure that rose to 9,853 by March, 2021 (NSW Bureau of Crime Statistics and Research, 2021).

While data continues to emerge as reporting deadlines are met, it is crucial to pay attention to the ways in which the population declines that did occur interacted with the issue of over-incarceration of Indigenous peoples. Initial data found that in Queensland, there was an overall decline of 5% to the incarcerated population but that the number of Indigenous peoples incarcerated decreased by just 1%, suggesting that the issue of over-incarceration actually worsened in the early days of the pandemic (Payne & Hanley, 2020). Current statics indicate that over a year into the pandemic, over-representation of Indigenous peoples across Australia appears to have held relatively stable. In Queensland the percentage of incarcerated peoples who were Indigenous was 34.50% in March, 2020 and 34.77% in March, 2021 (Queensland Government, 2021). In New South Wales, the incarcerated population was 25.8% Indigenous in March, 2020 and 25.7% by March, 2021 (NSW Bureau of Crime Statistics and Research, 2021).

In immigration detention, decarceration was not employed to reduce the population. Rather, throughout the course of the pandemic the total number of people held in immigration detention increased, visualized in Figure 2. This was despite COVID-19 travel restrictions resulting in fewer arrivals to the country (Pupazzoni, 2021). Had

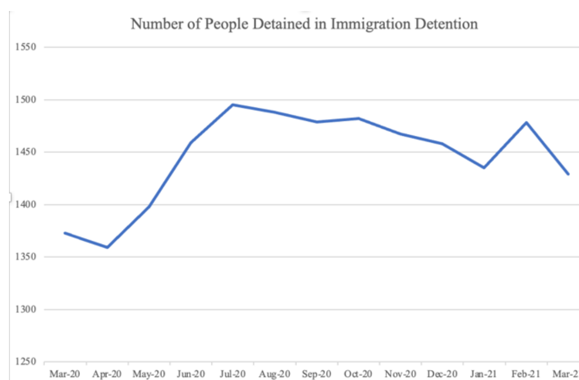

Figure 3: Total number of migrant detainees in Australia March 2020-March 2021 (data source Home Affairs)

decarceration been more readily implemented across custodial jurisdictions in Australia, much of the injure perpetrated in the name of 'protection' against COVID-19 could have been avoided. While cases of coronavirus in carceral institutions across Australia remained low, the suspension of visitations, increased the use of solitary confinement, and failure to meet basic food and medical needs caused significant mental and physical harm to those incarcerated.

Unlike Australia, swift measures were implemented early on in Canada to reduce custodial populations. In the early months of the pandemic, the custodial population in prisons (federal and territorial/provincial) fell by an unprecedented 19%, primarily as a result of significant depopulation of territorial and provincial prisons (Statistics Canada, 2020). The incarcerated population in the Northwest Territories fell 22% (Government of Northwest Territories, 2020). In Ontario, the population fell by 32% (Hasham, 2021). Despite this initial push, decarceration efforts in prisons have stalled. By October, 2020, the initial 32% reduction observed in Ontario was only a 21% decrease. By January, 2021, the population was only 15% less than pre-pandemic levels (Hasham, 2021). At the same time, cases in prisons were rapidly increasing as Ontario lived through a second, and then third wave of COVID-19. By summer 2021, decarceration appears to be less frequently considered. In June, 2021, a major COVID-19 outbreak at the North Bay Jail caused the jail to close (McKee, 2021). Rather than depopulate the prison, those incarcerated were instead relocated to other carceral facilities, where they are forced to once again isolate and risk exposing COVID-19 to new facilities. Reports indicate it has become more difficult to get granted bail, as lawyers and community service agencies struggle to speak with their clients, whilst concurrently dealing with challenges COVID-19 has presented to obtain sureties and a place to live (Hasham, 2021). Aboriginal Legal Services

Toronto has indicated this is especially true for Indigenous people, who are often unable to return home for fear of introducing the virus to their highly vulnerable communities (Hasham, 2021).

Immigration detention numbers also fell significantly in the early months of the pandemic. Between March and July of 2020, the number of migrants detained by CBSA fell a staggering 61% (CBSA, 2020a). These decreases were the direct result of policy decisions that sought to control the spread of COVID-19, although disruptions to legal processes and travel undoubtedly further contributed to this decrease. CBSA stated "since the beginning of the COVID-19 pandemic, the CBSA has made a concentrated effort to ensure the volume of detained persons remains at a minimum" (CBSA, 2020a). Immigration detention statistics for much of 2020 and all of 2021 are not yet available, so it is unknown if these efforts mirror those in prison, which is to say it is unknown if numbers have been steadily increasing to pre-pandemic figures as they have for those in prisons (which may include those held on an immigration hold).

A study by Arbel & Joeck analyzed seventeen decisions by the Immigration Division (ID) of the Immigration and Refugee Board, a quasi-judicial administrative tribunal that determines migrant detention and release. Their findings indicated that the ID recognized COVID-19 as a 'condition of detention' – "insofar as COVID-19 renders detention more dangerous for the detainee's health and wellbeing – but has also willingly incorporated this as a factor into its reasoning" (Arbel & Joeck, 2021, p. 9). Of the seventeen decisions the authors analyzed, the risk of COVID-19 was explicitly considered in sixteen cases. Arbel & Joeck suggest this marks a "shift in containment strategy, one that moves away from a concern with protecting the public from the detainee, towards one that seeks to protect the public by protecting the detainee" (2021, p. 12). While reforms are destined to be inadequate in systems built with

settler logics at their core, this shift does appear to provide some harm reduction for some migrants.

In November, 2020, CBSA abruptly lifted the moratorium on deportations that was introduced in March as a response to the danger of COVID-19. Over 12,000 people were deported in 2020, an increase from the previous year, despite the multi-month moratorium (Esses et al., 2021). The resumption of deportations occurred not just while Canada was in the midst of a second wave, long before vaccines were available, but also while the Canadian government continued to enforce a hardened border which blocked the entry of refugee claimants and restricted access to foreign nationals, ostensibly to protect the public from COVID-19 (Esses et al., 2021). Deportations put migrants at considerable risk, as well as the public health of the receiving country and Canadians by virtue of the potential exposure of those involved in the administration of deportations. When statistics are made available, they may initially appear positive in the sense of steady decarcerated figures, yet lower figurers will have been achieved at least in part through deportations. For this reason, it is difficult to read Canada's detention strategy as a whole as shifting in the way Arbel & Joeck suppose the IRB has, which is to say to a system that protects the public by protecting the detainee.

Australia did not follow the advice of public health experts who advocated for decarceration. While Canada did follow this advice in some instances, this policy was not employed consistently across carceral spaces, nor did carceral institutions ensure that decarceration efforts would be maintained throughout the pandemic. As a result, those held in carceral institutions across both jurisdictions suffered. In Australia, while those contained did not become infected with COVID-19 at any significant rate, they suffered disastrous impacts to their level of care and increased barriers to accessing justice. In Canada, many fell ill with COVID-19,

while others suffered needlessly in much the same way those contained in Australia did as a result of insufficient care and infringement on their rights. In this way, it becomes increasingly clear that there were individuals who both counties found more deserving of protection against COVID-19 than others. As this chapter has demonstrated, COVID-19 caused significant harm to to those in carceral spaces. My concluding chapter will investigate what allows settler states and their citizens to find some individuals more deserving of care than others, yet will also look forward with hope, encouraged by growing migrant, prisoner, and Indigenous justice movements.

Chapter 5: The Pain of the Present & the Dream of the Future

This thesis has traced Canada and Australia's historical treatment of Indigenous peoples and migrants through to their contemporary containment in carceral institutions. In doing so, I have demonstrated that both countries remain active colonial powers and the logics that drive incarceration and detention are the familiar settler colonial logics of White supremacy and land occupation. By contextualizing the containment of these groups as an outcome of settler colonialism, their treatment within these institutions throughout the COVID-19 pandemic becomes legible as colonial violence. In this final chapter I will explore more specifically how the lives of those incarcerated are understood as less alive, and thus are less lose-able or injurable within the settler state.

Necropolitics & Removed Grievability

The lives of those held in carceral institutions are made less alive through the use of necropower by the settler state. Necropolitics is the political calculation and control over life and death. "The ultimate expression of sovereignty largely resides in the power and capacity to dictate who is able to live and who must die" (Mbeme, 2019, p. 66). States exercise necropolitical power within, but also beyond, their borders. It is employed when waging war, where some lives are deemed worthy of protecting yet others are deemed acceptable of destructing. Necropower, for example, has allowed richer states across the globe to hoard COVID-19 vaccines, letting countless doses expire while the majority of the world remains unvaccinated. In this example, wealthy states such as Canada have made the clear necropolitical choice that the lives of their citizens and residents supersede the lives of those who reside primarily in poorer countries, and that sovereign, political interests supersede a global duty to public health.

Canada and Australia exert this necropolitical control over life and death within their state boundaries in countless ways. Consider how access to adequate housing, healthcare, vaccines, and social supports all influenced the lethality of COVID-19 (and indeed life expectancy more broadly). In Canada, a 2021 report has found that COVID-19 was associated with many deaths that were not classified as COVID-19 related, "most likely in low-income, high-density, racialized neighbourhood of essential workers and recent immigrants" (Moriarty et al., 2021, p. 6). Not only does this report suggest that those removed from the Platonic ideal citizen of the settler state were left more vulnerable to the pandemic, it further suggests that the provincial and national systems for reporting deaths in Canada are highly ineffectual and questioned how "the loss of so many lives went unnoticed for so long" (Moriarty et al., 2021, p. 7). In effect, these flawed systems made it such that the state did not deem it necessary to record these deaths as a result of COVID-19. By removing them from the public record these lives are somehow less important, less grievable.

Butler explores this issue of what makes lives grievable at length. They contend that "specific lives cannot be apprehended as injured or lost if they are not first apprehended as living" [26] (Butler, 2009, p.1). Racialized, queer, disabled, gendered, and otherwise marginalized people are repeatedly framed as less alive. This affects the grievability and injurability of these lives, in life and in death. Less grievable in many instances translates to less worthy. In the case of the COVID-19 pandemic, some lives are understood as being less worthy of safeguards and protections that will prevent their deaths, because if they were to die their death is not apprehended as a loss. Even when physically alive, necropower can be wielded to execute a kind

[26] I will continue to use apprehend throughout this chapter the way Butler employs it. They distinguish it from recognition, "'Apprehension' is less precise, since it can imply marking, registering, acknowledging without full cognition. If it is a form of knowing, it is bound up with sensing and perceiving, but in in ways that are not always – or not yet – conceptual forms of knowledge." (2009, p. 5).

of social death. Social death, a term used by Patterson in their work on slavery, is the work of rendering people as noncitizens, or nonentities through systematic violence, generalized humiliating treatment, and natal alienation[27] (Price, 2015). As Price argues, social death grafts readily on to the experience of those in prison. So too is a social death knell rung for migrants facing deportation (De Genova & Peutz, 2010), and Indigenous peoples who may physically survive genocide (Card, 2003). Social death ensures lives are less grievable – after all, their lives are already lost.

I contend that carceral facilities are an example of what Mbembe calls death-worlds, spaces where "vast populations are subjected to living conditions that confer upon them the status of the living dead" (2019, p. 40). The settler state apprehends the lives of Indigenous peoples and migrants as less-than-living and less-than-human. This apprehension contributes to justifying their containment, and in turn containment further impacts how people are apprehended. People in prison and detention centres are apprehended as 'criminals' and 'illegals,' in addition to most already being apprehended as racialized others. Where outside of carceral institutions they were less-living, they may not yet have been socially dead. Carceral institutions employ all the factors that Patterson identifies for social death: systematic violence, generalized humiliating treatment, and natal alienation. This act of dehumanizing those in carceral institutions is a "necessary factor in the acceptance that millions of people (sometimes including oneself) should spend part or all of their lives in cages" (Gilmore, 2007, p. 243). If the state and its citizens apprehended people held in these spaces as fully human and fully living, carceral spaces such as we know them, with all their cruelty and disregard for life, could not exist.

[27] Natal alienation: a severing of familial and community support.

Related to this concept of social death and grievability is the erasure of lives, such that we are unable to apprehend them. Lives can be erased by the settler state because they are understood as unworthy of perceiving, and therefore any injury or death also goes unperceived. This erasure is rendered in a multitude of ways, some of which have been raised in this thesis, e.g. the ludicrously expensive journalist visas for Nauru,[28] the lack of meaningful supports for migrant workers to register abuse and maltreatment, and prisons/detention centres and their (often private) operators as secretive institutions. A combination of erasure and a failure to apprehend lives as grievable, can frame people as waste and their lives as disposable (Razack, 2017). For the contemporary settler state this erasure of these lives, and their suffering and deaths, is bound up in the denial that allows Canada and Australia to remain progressive, liberal democracies. If these lives are erased, how can we grieve them? They never were.

Erasure allows the contemporary settler state to participate in what I am calling removed grievability. This removal can be both temporal and spatial. The distance provided by this removal allows settler states to engage with postcolonial rhetorics, acknowledging past colonial violences without atoning for them in their contemporary colonial institutions. Lives that were previously erased may be apprehended at some point in the future and found grievable. We see this removed grievability in the responses to the buried men on Wadjemup, or the mass graves at residential schools across Canada. These lives are publicly mourned, and thus are actively made grievable, precisely because of the passage of time. Time allows the state, and its devoted citizens, to understand these deaths as the result of a 'dark chapter' instead of a product of the same statecraft killing and containing Indigenous peoples in the present. A form of spatially removed greivability is clear in how migrants are apprehended. Canadians and Australians

[28] See also Butler's exploration of 'embedded journalism' (2009).

publicly mourn the deaths of migrants at sea, yet their states are complicit in these deaths through their hardening borders and harshening immigration policies, which fail to deter migrants and instead ensure only that those migrant journeys are more dangerous (Mountz, 2020). These lives lost in transit can be grieved within Canada and Australia only because their deaths are spatially removed, and so the state can carefully untangle themselves from their role as an accomplice.

Throughout this thesis, I have recounted harrowing statistics and stories which collectively demonstrate that the lives of those in prison and detention are apprehended as less-alive and less-human. Contemporary colonialism continues to contain Indigenous peoples, migrants, and other marginalized people, relegating them to death-worlds. The apprehension of lives in carceral facilities as less injurable is critical to the policies put in place by both the Canadian and Australian state in response to COVID-19. Vogl et al. speak about the Australian government response, in a way that applies to both settler jurisdictions at hand, noting: “the Government’s response to COVID-19 illustrates persistent inequalities and discrimination against those not deemed worthy of any form of adequate protection” (2021, p. 47). This apprehension of lives in carceral facilities as less injurable allowed Canada and Australia to expand the use of torture (solitary confinement), neglect their duty of care to those contained (by failing to meet medical and basic sustenance needs), and harshening the deprivation of liberty (by further constraining access to loved ones, legal representation, and advocates). Despite the warning cries, prisons and detention centres largely remained over-crowded, poorly ventilated, and inadequately sanitized. As a result, thousands of contained people in Canada contracted the COVID-19 virus, and people held in both Canada and Australia suffered even if they were spared infection.

Clear alternatives exist which could have prevented the injuries inflicted. Health experts and advocates were explicit that decarceration was the best way to prevent spread, and implicit in this call is that contained lives are apprehended as grievable and thus worthy of protection by those calling for their release. Decarceration required an understanding that the lives of those contained were endangered by COVID-19, not just by the virus itself, but by the conditions that outbreak prevention policies in carceral facilities would create. For some, decarceration is considered an extreme policy, yet seemingly not even the extreme of a global pandemic could justify it in most cases. While Canada did engage with decarceration early on in the pandemic, these efforts have been fading, despite the real risk the virus continues to pose (particularly as some in prison have faced barriers to receiving a COVID-19 vaccine)[29] (Ouellet & Gilchrist, 2021). This resistance to decarceration came from an understanding that the lives of those in carceral facilities did not need protection through release, because those who would be saved were already dead.

The pandemic has underlined the way the lives of those contained in carceral institutions are apprehended in settler states. There were stark differences in the treatment of public health for the general population versus the health of those in carceral institutions. "Despite the Australian Government's willingness to follow the advice of public health experts in relation to the broader community, it has not heeded expert recommendations regarding…refugees, people seeking asylum and other non-citizens in the urgent, national public health response to the pandemic" (Vogl et al., 2021, p. 44). In Canada, migrants in detention expressed the same

[29] While the Federal government initially stated those in prison (which includes many held under an immigration hold) would be prioritized for access to vaccines, by March, 2021 "in most jurisdictions the vast majority of prisoners have not yet been offered a vaccine" (CCLA, 2021). Vaccination efforts in prisons have ramped up, but people who have asked for additional information about the vaccine or to speak directly with a medical professional about the vaccine have been denied access, understandably contributing to vaccine hesitancy (Ouellet & Gilchrist, 2021).

sentiment: “We heard about the new measures that were being taken, like social distancing. But nothing changed for us in detention; it was like those measures were not meant for us, just for Canadians” (Arbel & Joeck, 2021, p. 1). For those in prisons, the reality was much the same. “Not even a global pandemic can justify the way in which prisoners' rights have been eroded or ignored during this period” (CBC, 2021a). The lives of those held in carceral institutions are apprehended as less valuable, less alive, less human. As a result, the harshness of their treatment throughout the pandemic can be broadly ignored, or made somehow more palatable to the public, particularly when the world was consumed with the concurrent crises of the pandemic, violent conflicts, racial injustice, and climate change (among so many others).

The conclusions of this thesis are then painfully predictable, yet no less important to bear witness to. The settler state contains others, notably migrants and Indigenous peoples, to further their agenda of maintaining the colony. While the dominating world orders of capitalism and colonialism were interrupted by COVID-19, they remain relatively resilient to the impacts of a global pandemic. These interruptions did see unprecedented levels of decarceration in some jurisdictions, but these justices appear short-lived. For the many who were not released, the realities of containment were more brutal than ever.

Migration-Indigenous Justice & Looking Forward

Against the backdrop of the pandemic, protests against police brutality and racial injustice proliferated and grew worldwide. From Black Lives Matter demonstrations across the United States to End SARS in Nigeria, racial justice movements (which, of course, have lengthy histories preceding the pandemic) gained newfound support. The largest labour protest in history began as Indian agricultural workers protested President Modi’s harmful new laws that only worsened the economic conditions that have led to thousands of suicides. Marches for migrant

justice occurred across Canada in response to the disproportionate number of COVID related deaths. These movements have been meaningfully organizing and advocating for generations, yet there is an undeniable momentum building while the coronavirus rages and continues to claims lives. Foundational to many of these protests have been support for abolition. Abolishing prisons and de-funding the police were once considered radical or fringe movements, yet are now ideas shared freely on TikTok and widely discussed in mainstream media.

I have sought to capture the injustices these protests and movements rail against throughout this thesis by identifying how and why they are proliferated through carceral institutions. The immense harm perpetrated against those in prison and detention centres is preventable, yet support for abolition, while growing, remains less mainstream than the support for 'tough on crime' politics and strict border controls. In spite of this, I remain genuinely hopeful. Ruth Wilson Gilmore advocates for finding life precious (Kushner, 2019). I believe one day we will see all our fellow community members, not as less human or less alive, but as precious lives worthy of protecting.

This thesis has engaged with and expanded on important work bridging migrant and prisoner justice (see 2021 Citizenship Studies Issue 'DeCarceral Futures'). I have also endeavoured to overlay Indigenous and migrant justice in meaningful ways, despite some valid tensions across these movements. Migrant justice advocates, including myself, are often unwavering in their support of open borders and freedom of movement. There is no denying that this can be in conflict with ideas of Indigenous sovereignty and land-back movements. This does not present a barrier to supporting either cause. Rather, it forces a deeper reflection on how these aims may be compatibly achieved (see PhD Dissertation by Krista R. Johnston for a thoughtful exploration of what this could look like in my home city of Toronto). While this work is

ongoing, there is clear evidence of solidarity across migrant and Indigenous justice advocates (see statements of solidarity from No One Is Illegal, Canadian Council for Refugees, and Rise).

When life is precious, abolition is the natural way forward. Increasingly, there is an understanding of the structural and systematic nature of many of the worst -isms and phobias that diminish humanity. More and more people outside of those who study this, or those who know through lived experience, have recognized how racism and settler colonialism are foundational to the logics of policing, our criminal justice systems, and border controls. Abolition provides an opportunity to undo these harms by rejecting the systems they created and build something new. Aiken & Silverman explore the multi-faceted aspects of abolition and synthesize abolition's aims as seeking to "co-create a more equitable world valuing the opinions, experiences, and ideas for progress of those most harmed by the current world order" (2021, p. 142). For Maynard, "it is a call to create a society based in care rather than in carceral conditions" (2021). For me, this is the world that Roy describes in the opening quote of this thesis. On a quiet day, I can hear her breathing.

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