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ABSTRACT
The settler state is vested in the incarceration of non-white bodies. Yet, the coincidence of settler states and liberal polities also means a consistent concealment of this carceral system within forms of governmentality that represent it as a system of protection or rehabilitation. Forms of settler governmentality silence subjects of colour within and beyond the borders of the settler state even as they enclose, incarcerate and eliminate the very bodies that would enunciate an objection to the transnational networks of dispossession in which the settler state is imbricated. This article addresses how speech is managed and circumscribed within the operations of settler colonial liberalism, by focusing on such forms of speech as protest and government inquiries. It does so through an analysis of recent practices of incarceration – particularly of refugees in off-shore detention and of Aboriginal people in Australian prisons and youth detention centres – and of the modes of speech that resist them in Australia.

It is not only ‘un-Australian’ to be, through experience, a whistle-blower against nation-building mythology. Simply ‘to be’ one of those who have been abused by the Australian nation is to be ‘un-Australian’ (Birch, 2001, 21).

Introduction
The settler state is vested in the incarceration of non-white bodies. Yet, the coincidence of settler states and liberal polities also means a consistent concealment of this carceral system within forms of governmentality that represent it as a system of protection or rehabilitation. Forms of settler governmentality silence subjects of colour within and beyond the borders of the settler state even as they enclose, incarcerate and eliminate the very bodies that would enunciate an objection to the transnational networks of dispossession in which the settler state is imbricated. Within this nexus, the disciplinary application of power to bodies also manifests through a parallel governmentality, a strategy of appropriating the late liberal language of protection (Povinelli 2014). To claim to ameliorate the suffering of disciplined Aboriginal lives is one such form of
governmentality even as the settler state protects its subjects from the incursion of refugee alterity on the other. To take seriously, a critique of the settler state involves an analysis of the management of difference that manifests both internally in relation to Indigenous bodies and externally in relation to migrants – and, in particular, irregular migrants (Giannacopoulis 2013; Moreton-Robinson 2007). The complexity of the settler colonial carceral means that analysis of its contours can hardly be captured even in an analysis crossing multiple authors with diverse backgrounds. Acknowledgement of such positionality is a key disclosure to the current article: the authors of this essay are quick to assert that they do not speak for all the positions of precarity engaged by this essay. The first author is both displaced and the beneficiary of a settler inheritance, a diasporic Palestinian and settler Australian, raised on Yorta Yorta Country. The second author is also a beneficiary of the privilege of being a settler Australian raised on Noongar Country and currently residing in Gadigal Country.

This essay asks how some bodies are disappeared in order to maintain the proper meaning of the liberal settler polity. Settler liberal states and subjects, we suggest, mourn this trauma as a means to manage the very violence that the settler state perpetrates. Those privileged with such conditions as whiteness and citizenship often maintain their privilege precisely through such forms of speech as mourning. As such, liberal discourse strips the political identity of refugee agents while it purports simultaneously to ameliorate the constitutive politics of the refugee. Liberal discourse simultaneously claims to address the conditions of Aboriginal bodies even as it reconstitutes constitutive settler violence against Aboriginal lives. In many cases, the forms of speech that have challenged this settler colonial liberal discourse rearticulate the terms of liberal debate in such a way as to maintain frameworks of governmentality. Where they refuse to be complicit in such governmentality, they are frequently met with silencing criminalization. This essay addresses the way modes and manifestations of speech are managed and, at times, circumscribed, within the operations of settler colonial liberalism by focusing on such forms of speech as protest and government inquiries. In so doing, we unravel the way forms of speech that critique or challenge settler colonial sovereignty are often restrained and circumscribed from breeching the liberal discursive form by which the settler state manages difference.

‘[N]ot one boat’: anxieties of sovereignty in settler-colonial australia

There is a language of crisis that now defines settler colonial liberal states. In the case of the refugee, this language of crisis obfuscates by referring to humanity as such and not the exceptional position of the most vulnerable. This obfuscation, in turn, covers over the plight of people forced into a crisis of geography (statelessness) and the claim of asylum which such stateless subjects could once, require of states. Alternative descriptions of the refugee demonstrate an entrenched linguistic regime of naming ‘unwanted bodies’ while the plain language meaning of the term itself has come to undermine the way the administration of asylum seeker policy now functions in Australia. Terminological power is at its base a violence that begins in language, transforming mentality, systems and approach. The hollowing out of the term, ‘refugee’, is a state crime, reproduced infinitely and under our watch.
Refugees have experienced increasingly limited possibilities for accessing asylum in Australia. Policy has progressed from limitation to outright prevention of access; a process (which is both a series of practical mechanisms but also a mentality) in which bodies have become a crude byproduct. Yet, an ill-defined but pervasive threat is attached to those subjects seen to unsettle the national body. Thus, the machineries of asylum seeker policy represent a protective mechanism to Australian, which it now posits as a constitutive element of national security. Indeed, the early twenty-first century Australian approach to refugees was to determine, as a matter of quotas rather than the compelling nature of a case, who would be regarded as a refugee in the eyes of the state (Burnside 2015). These linkages between security and border protection have, as Giannacopoulos, Marmo, and De Lint (2013, 560) argue, constructed the problem as one of numbers and people which, as De Lint and Giannacopoulos (2013) also argue elsewhere, circumscribes a humanitarian impulse with the ancillary assumptions of the sovereign right to exclusion, as determined by questions of security (Giannacopoulos, Marmo, and De Lint 2013, 626). In the 25-year history of the current regime of management to which refugees are subjected, Robert Manne (2016) writes that the conditions which have made possible a system devoid of humanity and yet so unremarkable and unremarked upon at moments of travesty/tragedy, is not a result of any one policy. Rather, he argues, it is the historic scaffolding to current policy, beginning with mandatory detention in 1992, that has diminished the capacity of the nation to apprehend the cumulative effects of refugee policy as deserving of serious structural repudiation and critique. Or, as Giannacopoulos, Marmo, and De Lint (2013, 561) argue, the Pacific Solution has reduced the possibility of scrutiny through questions of immediacy, thus reducing overall accountability. Manne invokes the most famous of Arendt’s extrapolations from *Eichmann in Jerusalem*, ‘the banality of evil’, arguing that it is this incremental development of policy and attitude which has meant that

[. . .] as a nation we gradually lost the capacity to see the horror of what it was that we were willing to do to innocent fellow human beings who had fled in fear and sought our help (Manne 2016).

Yet, while the incremental reform of process is, as Manne argues, what enabled Australian Immigration and Border Protection Minister Peter Dutton to assert after yet another tragic death in offshore detention: ‘that people self-immolate so they can get to Australia’ such that a remark as this goes unnoticed for its brutality. There is also a dimension of the current system which has been enabled by Australia’s response to the so-called War on Terror (Manne 2016). In particular, it has enabled a host of political and social issues to be sequestered into the seeming neutrality of security issues. This, and much else, is indicative of the legal fictions on which Australia’s white history stands, by which narratives of entitlement and in this instance, dis-entitlement, are supported through a reified legal lens.

The 2013 legislation, which excised the entire Australian mainland from the migration zone, is indicative of the structural brutality of the current system. The objective of the bill, which received bipartisan support, was to deter the arrival of asylum seekers to Australian shores, where previously, such arrivals were protected at law from the possibility of offshore processing. Effectively, this meant even refugees arriving to Australian shores were no longer legally recognized as arrivals; the new law purporting
to sever the Australian continent from categorization as a migration zone. Yet, ridicule of this extraordinary policy, famously by the late satirist John Clarke and his comedic partner Bryan Dawe (7:30 Report, 2012), has to the contrary been subsumed by the bureaucratic mechanisms and language of border control such that neither outrage nor critique is sustained to enable the radical rethinking of a framework that obscures the positioning of refugees to Australia: essential elements if there is to be sufficient impetus to completely and systemically revise the current Australian regime on asylum.

Hage (2017, 37–41) observes that there is now a class/apartheid structure that regulates how kinds of people may access or cross borders. This observation intervenes in the nexus between late twentieth century work on transnational cosmopolitanism on the one hand and the neo-liberal ‘use’ value attributed to individuals which is increasingly prominent in the twenty-first century. He writes that, while the national border constitutes an obvious boundary, separating nation-states, what is less obvious is as follows: ‘a racialized class border […] where a “third-world-looking” transnational working-class and underclass citizens live, and are made to feel that national borders are exceptionally important and difficult to cross’ (39). The particular problem of refugees, according to Hage, is that ‘in becoming the maroons of the enslaving order of national borders, they are endangering more than the already collapsing national borders; they are also endangering its global apartheid structure’ (40). No refugee is simply or only a refugee whom the Australian navy is preventing from transgressing Australian national borders. Rather in these physical encounters, what is represented symbolically, is the preservation of the class/apartheid borders (40–41). It is thus in managing boundaries and the bodies that threaten to besiege the nation that the refugee problem is instrumentalized as a system of governmentality rather than with reference to, for example, international laws and conventions which could provide alternate modes of regulating the passage of refugees on more compassionate grounds.

The existence of such international conventions indicates the possibility of other modalities for responding to refugees. Yet, even as the problem posed by humanitarian frameworks are significant, the solidification of humanitarian spaces as camps – or offshore centres – leaves refugees imprisoned such that while they are kept in a condition of mere life, they do not – as Weizman (2011, 58–62) argues – attain the status of properly political spaces. These exceptional spaces come to lack the conditions for the development of a politics outside of the agential practice of survival. The question in Australia, however, is positioned as a problem not at origin but at destination, indicative of the ancillary anxiety of the settler colonial state, whose settlers are differentiated from refugees only by the time and manner of their arrival, rather than by a distinctly different or unequivocal claim to ‘belonging’ (Benjamin 2002, 104). To the contrary, one might regard the problematic of the settler colonial state, faced with the claim of the refugee, to be in a sense reminded by its own incurably illegitimate claim to the nation, ethically speaking, irrespective of what settler-laws may purport to ‘make good’.

The continuity between refugee policy and the selective and exclusionary practices of Australian immigration – characterized by the White Australia policy – indicates towards a continual process aimed at remedying settler-colonial anxieties about legitimacy and belonging, in this case by delimiting what in fact is characteristic of Australian identity, values or national character. This is necessarily a mythologizing of the nation, which
purports both to erase the memory of those whom it has supplanted (Aboriginal people) and exclude those perceived to threaten the character of the nation (refugees). As Hage (2017, 100–101) notes, such a process of polarization, ‘works through the valorization of a certain definition of “humanity” that the domesticator aims to “evacuate” from the domesticated’. However, he argues that the humanity of the domesticator ‘is something that is never complete but needs to be continuously aspired for’ (101). Indeed, there is a permanent difficulty for settler-colonial states in securing an identity that lays claims to ‘naturalness’. Thus, the notion of granting refugees the formal equality of citizenship and the rights which flow from it, troubles the state’s identity. It is perhaps for this reason that at least one study sympathetic to the negative impact on refugees of current policy and discourse, nevertheless poses the question of whether refugees consider themselves as ‘human beings’ as one worth asking (Reid and Khalil 2013, 18).

Although Manne argues that the current system of refugee management does not share the obvious and foundational racism of the White Australia policy, he nevertheless considers that a significant feature of the current treatment of refugees, is immigration absolutism – that is, a culture of control – premised on the idea that the ideal situation is where ‘not even one asylum seeker boat reaches our shores’ (Manne 2016). While this accounts descriptively for current practice, as Hage argues, it is mistaken to consider the current system as only peripheral to questions of race. In fact, the system signals to Hage, racism in crisis. Furthermore, to refuse to acknowledge the continuity of disciplinary technologies of exclusion when they are not codified as applying to all migrants (for instance, economic migrants) is to ignore the more insidious operations of racialized governmentality.

Racism is, according to Hage (2017), one tool that enhances colonial practices, which, as a discriminatory method of organization and control, has offered great benefit to its colonial practitioners. Historically, it has functioned as an effective practice of management and has supported a network of justificatory arguments that work to cure fundamentally illegal forms of wealth and land accumulation on which capitalism relies. Thus racism is not in itself a crisis. Rather, Hage argues, the crisis is born when racism fails to do its job (29). Yet, if the current refugee problem is an index of racism in crisis, both the length of time in which current policies have operated and accretions of practice (where previously they may have seemed easier to dismantle), have made Australia’s method of handling asylum seekers appear to its citizens, if it is not so regarded abroad – although Australia has provided a model elsewhere for more extreme forms of exclusion and refusal – a matter of normalcy (Lowenstein 2016).

It is in this milieu that one might consider the prevailing attitude in Australian politics and political discourse towards refugees. Since the ‘Tampa’ crisis in 2001, the federal position has been bipartisan, in which ‘turn back the boats’ and similar mantras have characterized policy pursued by all successive governments. However, something that does not inevitably follow from this bipartisan response to ever increasing numbers of displaced people, a figure which has vastly escalated since the 2003 Iraq war and the ongoing chaos of the Syrian conflict since 2011, is the attitude of Australians towards in the first instance, government policy, and in the second instance, refugees themselves.

In the first respect, the widespread campaign, ‘bring them here’, aims through a series of actions and protests throughout Australia to close all offshore processing centres and detention camps. There have also been instances in which individuals held in offshore
camps have been brought to Australia for medical treatment and whose removal back into detention has been blocked by protesters holding 24-h vigils. One particularly well-publicized case of this nature was that of a baby burnt on Nauru and brought to a hospital in Brisbane in 2016 (Tapim 2016). Such activism has at least the effect of raising the profile of an issue and renewing, however briefly, public attention. However, notwithstanding the discreet value of such localized interventions in specific cases, no actions have produced any material effects on policy-makers and making in Canberra to date.

In terms of Australian attitudes to refugee treatment in offshore processing centres, the death of Reza Barati, an Iranian refugee held at Manus Island, in February 2014, harnessed a particular sense of public outrage against Australia’s ‘Regional Processing Centres’, or more precisely, offshore detention on Manus Island (this centre now closed at the time of writing, amidst condemnation of Australia’s decision to abandon inmates to life in PNG notwithstanding public outcry to bring the remaining refugees to Australia) and Nauru. In April 2016, two men were sentenced for Barati’s murder: the trial uncovered a scene of utter chaos. Testimony indicates that there were multiple employees at the centre involved, while the cause of death – severe head trauma resulting from multiple blows to the head with a piece of wood with a nail in it, and finally a rock – demonstrates the brutality of the crime. In recognition of the widespread mismanagement by employees in subduing a riot, which a 2014 Senate inquiry found to be ‘eminently foreseeable’, the presiding judge acknowledged that ‘in sentencing these two prisoners, I do not make them “guinea pigs” to bear the brunt of punishment for those who are not here and have not been prosecuted’ (Tlozek 2016).

Yet, it ought to be noted that in the interim, the Australian Border Force Act 2015 came into effect, provisions of which seek to ‘gag’ employees from disclosing, under threat of jail-time, anything they come across in off-shore processing centres while doing their jobs (Barnes and Newhouse 2015). In short, the institutional approach to misconduct has been to suppress its wider publicity rather than to address the inhumane treatment in detention centres or, more radically, to abandon a policy that is systemically abusive.

In the public outrage at Reza Barati’s murder, one sees a short-term capacity in the Australian public to horror at the treatment of refugees in offshore processing centres, but that in the absence of practical strategies or ideas aimed at significant structural reform, this outrage is easily dissipated and unable to produce meaningful change. In the wake of the death, well-attended candlelight vigils were held around Australia under the hashtag ‘#LightTheDark’. People carried banners and placards reading ‘not in my name’, ‘ashamed to be Australian’ and ‘Justice for Reza Barati’. It would be disingenuous to say that the outrage was not real, that people did not cry at these protests, and that they did not mean it when they shouted for justice, compassion, or closing the centres. However, the idea that dominated in the series of protest speeches was one of atonement, of a clean slate, that creating a public ‘resting space’ for Reza Barati was the work of an evening.

We contend that it is the responses of the vigils themselves that are demonstrative of the crisis in public discourse in the first instance, and in particular the failing of left politics, to reframe or determine a future direction for refugee policy. To the contrary, in the vigils inspired by Barati’s murder, one witnessed a tendency in the protesting public to dissociate themselves from the policies that have led to this state of affairs and thus
absolve themselves of responsibility for the continuing perpetration of these crimes. Thus, the mode of public dissent, rather than being capable of harnessing a collective force, is personalized and individualized. This is captured in particular by the refrain ‘not in my name’, which expresses this sense of individual horror and refusal, but lacks the transformative impact required for the structural re-framing of discourse.

It is similarly this individualized discourse, reflected in the media, which deflects attention from structural problems by focussing on individual cases. A recent ‘good new story’ in the Sydney Morning Herald related to an Iraqi doctor, 50 years of age, taking his HSC in New South Wales (Sinha 2017). Although the article did note that a system to recognize international qualifications existed, it had not in this case been able to recognize the qualifications of Hekmat Alqus Hanna, since proof of the qualification could not be obtained. The positive framing of the piece was rather directed towards the optimistic spirit displayed by Mr Hanna whose chief desire is to requalify as a medical doctor in Australia, demonstrating his ‘use’ value to the Australian host society.

In a discussion at the University of Melbourne in 2011 entitled ‘An Indigenous Welcome for Asylum Seekers’, Hage described the issue in Australia as a pathological inability to deal with people other than through a mode of instrumentality (Birch et al. 2011). He notes that this is specific to a kind of sovereignty associated with private property, rather than a sovereignty which engages in the upkeep of the dignity of the other. As Hage (131) has recently argued, the detention centres serve Australia’s purpose, ‘the opposition to them […] is largely moral’. At the same discussion, the strategy offered by two Aboriginal speakers, the late Ray Jackson and Tony Birch, was to address the fundamental anxiety of settler-colonial governmentality in Australia and offer an alternative register for thinking about refugees. Birch (2001, 20–21), in an earlier piece, urges that Aboriginal people

[…] must also assert more moral authority and ownership of this country. Our legitimacy does not lie within the legal system and is not dependent on state recognition […] And we need to claim and legitimate our authority by speaking out for and protecting the rights of others, who live in, or visit our country. (Birch et. al. 2011)

In bringing together the anxiety of settler-colonialism and the positioning of refugees, Jackson insists on Australia’s foundational illegality as crucial in explaining government approaches to refugees but also the power of Aboriginal communities (however symbolically) in definitively rejecting that position. Indeed, he argues that the incurable illegality of white Australia is constitutive of the brutality towards both Aboriginals and refugees. Thus, he urges the power of alliance between these two embattled groups with respect to the Australian state, an identification that circumvents its claims to sovereignty and refuses the importance of state recognition at all:

I object very strongly to the governments of this country saying that refugees and asylum seekers are not welcome. […] I have been approached by Palestinians, Iranians, by others, could I arrange a welcome to country? They wanted to feel a part of this country. They didn’t go to the government to seek that. They came to the real owners of this land. They came to us, the Aboriginal people. So I say welcome, WELCOME to the refugees. And I’m damned sure that none of these governments speak in my name. (Birch et. al. 2011)

This welcome is, in a profound sense, a gesture that can only be given by Indigenous Australians, and as we have previously noted, neither of us are Indigenous to the land on
which we write. Nonetheless, it is absolutely essential that the carceral operations of settler colonialism not only touch on its excised spaces of exception from properly political space (Weizman 2011). As such, we turn to the internally colonial carceral within Australia’s borders.

**Inquiry-mentality and the criminalization of aboriginal resistance**

Indigenous bodies in the late liberal archipelago of dispossession are now killed, removed, disappeared and incarcerated at incredible rates. In Canada, there is the pervasive question of missing and murdered women – predominantly of First Nations and Aboriginal filiation and affiliation. In Australia, the question of death and torture in custody has been recently found once again to overlap with the removal of children as more and more Aboriginal teens, subject to removal have been subjected to and subjectivized as incarcerable subjects – the case of Dylan Voller is a key example. As Michael Griffiths (2013) has elsewhere argued, building on Hage’s foundational claims about the field of whiteness in settler nation-states such as Australia: ‘while the gaze of governmental belonging does not question whether indigenous persons belong within the nation [an assertion of Hage’s], this gaze clearly claims the desire to evaluate how such subjects belong (both together and within wider imaginaries)’. Similarly, the targeting of refugee bodies might function through the production of exceptional zones of off-shore detention, but as bodies Aboriginal subjects are also subjected through the lens of racism to exceptional (and exceptionally cruel) treatment within the territoriality of the settler nation-state. As such, the settler state subordinates the Aboriginal subject through disciplinary measures comparable to those targeted at the refugee, even as – in the case of Aboriginal subjects – they produce a governmental logic of protection as the alibi of this carceral project. The settler state manifests an officially liberal self-presentation, concealing its own disciplinary measures within a putatively affirmative biopolitics (Esposito 2008).

In this year’s Interim Report of the Royal Commission into the Protection and Detention of Children in the Northern Territory (RCPDCNT), Commissioner Mick Gooda presents the following caveat to Australian policy:

> There have been up to 50 earlier reports and inquiries on the issues covered by the Commission’s Terms of Reference. Despite these efforts, the situation of children and young people in the child protection and youth detention systems in the Northern Territory appear to have deteriorated.

Noting this rate of reporting, the RCPDCNT continues, drawing on the 2016 words of Senior Counsel Assisting Commission Peter Callaghan SC: ‘There is a need to confront some sort of “Inquiry Mentality”, in which investigation is allowed as a substitution for action and reporting is accepted as a replacement for results’. This is hardly surprising since few of the recommendations of either the 1992 report of the Royal Commission into Deaths in Custody or the 1997 *Bringing Them Home* Report into the removal of Aboriginal and Torres Strait Islander children from their families have been implemented (Commonwealth of Australia 1997). While *Bringing Them Home* recommended compensation for survivors of the Stolen Generations and while several individual cases have ended in such compensation, no commission of compensation has been established.
Similarly, extensive measures had been recommended by *Bringing Them Home* to prevent the repetition of racialized child removal— for instance that Aboriginal and Torres Strait Islander children be removed from family only in the most extreme of instances and, where possible to Indigenous extended family. There are now around 15,000 Indigenous children in out of home ‘care’ nationally, where there were less than 3000 in 1993.\(^4\)

This section critiques this ‘Inquiry Mentality’ by making the claim that the governmental subordination of Indigenous bodies to surveillance and violence deploys a swathe of technologies of power that shelter within late liberal policies of abandonment (Povinelli 2014). Building on Audra Simpson’s work, one can observe that settler states require the death and disappearance of Indigenous people to establish and maintain their patriarchal white sovereignty (Simpson 2016; Moreton-Robinson 2007). Incarceration plays a central role in this structure of dispossession since settler society’s ‘multicultural, liberal, democratic structure and performance of governance seek[] an ongoing settling of this land’ (Simpson 2016, 1). As such, such forms of speech as political performances of liberal settler shame are themselves annexed to the structure of dispossession that they claim to ameliorate. Inquiry-mentality is a late liberal technique of government designed precisely to precipitate the disciplinary and necropolitical power over non-white subjects who, as in the case of Aboriginal people, are designated as belonging to the settler nation (however tenuously or tokenistically) and, in the case of migrant subjects such as the refugee— are refused belonging *tout court*. Inquiry-mentality produces a din of discourse about the ‘tragic’ violence to which Aboriginal subjects are subordinated without implementing the measures which might not only ameliorate such conditions but dismantle the settler colonial carceral as such.

The language of governmentality centres its mourning on the nation that was always the subject of dispossession. In clarifying his official statement, Australia’s Attorney General, George Brandis, stated as follows:

> I have decided to make a new reference to the Australian Law Reform Commission, to ask them to examine the incarceration of Indigenous Australians, and to consider what law reform measures can be put in place to help ameliorate this *national tragedy* (quoted in Conifer et al. 2016, italics ours).

The Indigenous body has always been made manifestly disposable by patriarchal white sovereignty— yet the trope of tragedy has been the rhetorical alibi for this violent disposal’s occultation (Moreton-Robinson 2007).\(^5\) Yet, the discourse of *national tragedy* retains rhetorical occlusion of dispossession that abandons Aboriginal bodies to incarceration— a settler logic of dispossession engendered by Brandis’s own *hubris*. Attorney generals are not the tragic heroes in a story that has seen Dylan Voller held in the interventionist conditions of violence that manifest through Don Dale Detention Centre’s or Mulrunji Doomadgee’s death in custody on Palm Island— both instances of the ongoing reduction of bodies to ‘bare life’ (Agamben 1998). Dylan Voller’s body was subjected to torture— the spectacle of settler sovereignty in all its eliminationist violence. Mulrunji Doomadgee’s death led to resistance riots, which were criminalized by the Queensland Police (Anthony 2013, 165–191). Inquiry transforms sovereign power and the spectacle of violence against the Indigenous body into biopolitical indices: facts
about detention and incarceration to be recorded, tabled and mourned – all in order to reify the settler nation.

Often, articulations of settler-colonial discourse (such as national tragedy – informed as it is by an amnesia about Indigenous Country) are met with a commiseration, even when they are staged by such voices (such as Brandis) within late liberalism who have a vested interest in the grounded fruits (land) of slow and fast violence and the extractions it entails (Nixon 2013; Berlant 2007; Nichols 2017). Povinelli (2014, 22) argues that neoliberalism is ‘neither a social formation in which the state allows the market to proceed on the basis of one set of principles and the market allows the state to proceed on another set of principles’. Instead, she argues, ‘we need to start asking what are the measures of failure, the arts of failure, such that people believe and experience cultural recognition and social welfare as failures’ (23). The disposability of Aboriginal bodies within the settler colonial carceral is not, then, simply a tragic failure of a system vested in a Benthamite doctrine such as rehabilitation. It is not simply that the suffering of Aboriginal young people under incarceration was a failure of state care or protection. Rather the alibi of protection and rehabilitation is deployed to undergird a system designed to remove Aboriginal bodies from their traditional Country. Such a statement is not legible in the language of free speech or in racist cartoons such as that produced by Bill Leak (discussed in detail in Evelyn Araluen’s article in this issue of Continuum). The failure of the Northern Territory youth rehabilitation system is a cunning one designed to absent Aboriginal presence – precipitating the creation of a silo effect in which the sovereign power to take life (as was done to Mulrunji) or subject bodies to torture (to which Dylan Voller was subjected) is made possible residually even within a framework presented as protection and designed to inhabit late liberalism as such a form of governmentality. Colonial governmentality, thus remains the normative framework of the settler-liberal logic of power even as it permits and precipitates residual disciplinary violence and sovereign putting to death.

Resistance to this wing of the settler colonial carceral is often marked by a suppression and criminalization of Aboriginal voices. As Thalia Anthony (2013) has argued, attempts by Indigenous people to challenge this logic through assembly, resistance and riot are criminalized while exonerating the sovereign killing of agents of the settler state (165–191). For Anthony, the riot is ‘a contest over territory’, wherein the criminalized are articulating their resistance to the ongoing colonization of their land and the incarceration of the bodies of kin (169). Institutionalized operations of policing assert themselves as agencies of care and protection over Indigenous bodies and particularly those of Indigenous children, but all too often this late liberal governmentality covers over an ongoing apparatus of carceral violence and killing. Where these agents and their carceral killing are not punished by the late liberal apparatus, Anthony’s work suggests that the riot is a political response – a form of speech from an ‘alternative social world’ (in Povinelli’s sense) that is resisting ongoing colonization. This political speech act is, however, consistently coded as criminal. On Palm Island, community leaders such as Lex Wotton were criminalized and penalized for taking a leading role in the political resistance of the riot that had seen police point ‘rifles on the crowd and were prepared to fire’. (R v Wotton 2007: [6]–[7] cited in Anthony 2013, 186, 187). As Povinelli (2014, 165) argues, the ethical substance of such alternative social worlds is put aside in settler colonies wherein: ‘complex rhetorical crossings provide a dense knot where late liberal
figurations of tense, eventfulness, and ethical substance aggregate harm and suffering in such a way that every ethical and political claim of an alternative social world [...] can be deferred’. The riot is a political act of resistance over land – a form of speech that is always criminalized and threatened by further violence on the part of agents of the settler state. The rioter in articulating resistance is nonetheless subject to criminalization by the late liberal apparatus of settler governmentality. Governmentality covers over settler state discipline in a contradictory double logic. Where the death tolls and incarceration rates of this double logic are addressed it is only through the reporting of aggregates – an inquiry-mentality that refuses to dismantle its carceral structures, instead multiplying late liberal governmental speech.

Where the social form of protest that becomes recognized as a ‘riot’ is a political response to this double logic of settler colonial carceral and its alibi in late liberal governmentality, the riot becomes pathologized in relation to Indigenous culture. As Neale (2013, 181) has argued, claims of cultural pathology work through misrecognizing Indigenous culture and misrepresenting it through anecdotal ethnography. For Neale, a recent tradition of ethnographic glosses on: “‘traditions” and “culture” allows the knotted intricacies of inherited practices, negotiated responses and the modern formation of Indigenous subjects in remote Australia to appear as malignant nostalgia: unavailable to most and pernicious to the remainder’. Practices of political assembly and action respond to the double disciplinary-governmental logic of settler colonialism, but become subject to a representation of cultural pathology of the kind Neale identifies in such ethnographic and, indeed, mass-media gloss. However, where Neale is addressing the attempt by the settler state to ascribe pathology to traditional practice, the double logic of settler colonial incarceration and inquiry mentality seeks to suppress forms of Indigenous culture that are a direct response to discrimination’s history and persistence in settler institutions.

Writing of African-American culture, Spillers (2006, 25) notes that ‘black culture [...] is born in the penumbra of the official cultures that are historically emergent at a particular moment that we could quite rightly call modernity’. For Spillers, the relation between black culture and modernity is one of dialectical relation and invention. She argues that ‘black cultures arose in the world of normative violence, coercive labor, and the virtually absolute crush of the everyday struggle for existence, its subjects could imagine, could dare to imagine, a world beyond the coercive technologies of their daily bread, but meditating the historical possibilities steadily marks [an] immense labor of emancipation’ (25–6). The culture of the colonized is not only traditional and continuous or (in the case of diasporic cultures) a utopian emergence of exchange and creolization (though it is often emergent from both of these lines of filiation). Just as African-Americans elaborated black culture in relation to such normative violence and coercive labour, similarly, Aboriginal people have had to produce culture through a labour of emancipation. As Spillers elaborates: ‘[b]ecause it was set aside, black culture could, by virtue of the very act of discrimination, become culture, insofar as, historically speaking, it was forced to turn its resources of spirit toward negation and critique’ (26). The riot is just one such continuous practice of negation and critique. It asserts the need for justice in a space wherein the state agencies of late liberal governmentality are also the perpetrators of incarceration and killing. The riot is a form of assembly – an articulation that aims to reframe the terms of debate even as its praxis is consistently subject to both liberal
rhetorics insisting on its irrational violence and also state practices that criminalize and target resistant Aboriginal subjects. Where the management of justice remains subject to an inquiry-mentality – an agglomeration of discourse without action – the riot substitutes a political speech act of outrage and direct action, even, as we have noted as the former is labelled legitimate and the latter delegitimized as violent and irrational.

Conclusion

The framework of racialized class apartheid we saw in the forerunning discussion of the settler state repression of refugees is, then, present on the Australian mainland in a modified form. Its internal colonization functions as a method to acquire and shore up land and resources, with inquiry-mentality operating, in turn, as a performative governmental strategy that conceals knowledge of the ongoing disciplinary intervention into Aboriginal lives. Inquiry-mentality is, precisely, the state production of critical discourse against state practice that stands in place of more radical systemic transformation. It is a form of speech designed to take the place of action. Protests, in this space, are a form of speech. Yet, this speech is, as we have seen, variously constrained and redefined within settler discourse. In one instance, the vigils for Reza Berati were constrained in time – seeking to mourn as the work of an evening at the risk of addressing ongoing structures of refugee incarceration. This occasional mourning operates as a mode of enunciation that fails to address such settler structures. In the other instance, the political enunciation of the riot against death in custody was everywhere constrained, whether by physical force on the part of the police, or via discursive force by representing the rioters as irrational violent subjects and not as the active political agents they were and are.

As we have consistently affirmed, settler colonialism and its self-sanitization as late liberal multiculturalism is structured by the disposability of bodies. In articulating the relation between settler colonialism and the elimination of (crucially, but not only) Indigenous bodies as well as (crucially, also) as those of irregular migrants of colour, we join with such scholars as Giannacopoulis (2013) and Aileen Moreton-Robinson (2007) as seeing the undergirding racist co-constitution of settler states such as Australia. This double logic of offshore and onshore incarceration should lead to a consideration of agency, both with regards to the people positioned as outside and even inimical to the interests of the settler state and those positioned within the state who are moved to protest its brutality. One has the late-liberal spectre of the revivified Indigenous identity whose success in merely surviving, let alone a capacity to resist, poses a threat to the Australian nation. The coherence of an indigenous identity is not shared by other marginalized groupings, such as refugees, in so far as that identity is not held together by an ancillary geontological claim to the Australian nation (Povinelli 2016). Rather, the refugee identity is vertiginous and externally imposed. What links refugees together in the Australian context is not the histories that lead them into exile but rather the imposition of Australian state policy on obstructing their arrival. Refugees come to have a common identity less because of the varying violences they have fled and more for the uniform way this settler colony manages them.

In the face of this violence, certain forms of speech are privileged and others forms are silenced. One sees in moments of collective ‘resistance’ such as the riots that led to
Barati’s murder, the (morally incompetent) struggle of state mechanisms to manage an accumulated collective identification, yet nevertheless the refugee identity vis-a-vis the Australian state is not fixed. Aboriginal riots, the so-called ‘History Wars’ and increased awareness in how white-solidarity should function creates a particular body of resistance such that the date for Australia Day (however tokenistically) has become the subject of national debate. On the other hand, the incarceration of refugees in off-shore detention has the effect, whether primary or residual, of disabling collective resistance amongst refugees themselves or the capacity to develop appropriate partnering strategies and campaigns between the subjects of violence and their supporters. Rather, since protests for refugees are, as we saw, constituted by Australian citizens, it is unclear what interests the very subjects of protests they (or, indeed, the broader voting public) might have in maintaining the systems of repression that they nonetheless object to.

The problem we should now consider is not whether indigenous communities can accept their dispossession, or whether the international community will continue to tolerate Australian approaches to refugees, since in the former case it seems they must and in the latter case that they will. However, rather we must ask the question of how we might arrest the appalling violence that settler-colonial states perpetuate in the ongoing effort to conceal the founding violence from which the settler state derives (however precariously) and from which the continuing violence must be seen as a futile strategy in maintaining but never completing that project of domination.

For those of us with the privileges secured by Australian citizenship, it seems incumbent that we use that privilege in ways that others cannot. One may be wary of the value of reactive activism, or left-liberal talk, and with good reason. Practical outcomes towards radical transformation are urgently needed. However, not talking, not criticizing, not acting – in obnoxious volumes and with the vigour of the faithful – or in short, falling silent on these atrocities, is surely the worst response that there might be.

Notes

1. Lorenzo Veracini makes this argument in the context of exogenous groups and the Law of Return in the case of Israel: ‘Settler colonial studies and the politics of interpretation: reframing Israel-Palestine’ (Veracini, conference paper supplied by the author, September 2016).
2. It should be noted that in 2016, the law was reformed to the extent that it exempted doctors and nurses from commenting on abuses (Hall 2016).
3. ‘#Light the Night’ (2014).
5. Griffiths (2011) engages and critiques the trope of Aboriginal death as tragedy.

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