

Contextualizing Indigenous people and the state of exception: New Zealand's Waikeria Prison protest

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journals.sagepub.com/home/pun**Jessica Martin and Adele N. Norris** 

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Abstract

On Tuesday, December 29, 2020, 16 protesters at Waikeria Prison, one of New Zealand's largest male prisons, engaged in a six-day standoff with prison guards to protest inhumane prison conditions. The Department of Corrections framed the event as an aimless riot, delegitimizing the intentional demonstration of resistance against state violence. Imprisoned intellectuals, specifically Imprisoned Black Radical tradition, have long examined and centered the prison as the harshest instrument of the state linked to the struggles of the collective. However, voices from imprisoned intellectuals are rarely considered in academic scholarship despite acute analysis of the state and liberation. This article employs the state of exception to contextualize the Waikeria protest. Particular attention is devoted to the 'state of continuity,' which allows for a broader understanding of a permanent state of racialized oppression and marginalization faced by Indigenous and Black communities in racialized-settler-colonial contexts. Populations designated as the exception are thus framed as a threat targeted for militaristic police intervention. This article concludes by extending the discussion of the state of continuity to include how expressions of rage and dissent by Indigenous and Black people are viewed as a direct threat to the sovereign order but are necessary for revolutionary change.

Keywords

New Zealand, prison protest, state of exception, Indigenous people, imprisoned intellectual thought, policing rage, Black power

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Introduction

On Tuesday, December 29, 2020, 16 protesters at Waikeria Prison, one of New Zealand's largest male prisons, engaged in a six-day standoff with prison guards to protest inhumane prison conditions. The protest was met with little surprise according to justice advocate Julia Whaipooti, as Waikeria Prison conditions are reputed as some of the most run down and unsanitary in the country. Unsurprisingly, the protest was framed in the media as a riot, instead of as Whaipooti describes in the Guardian article *Forms of Structural Violence: Waikeria Highlights Injustice of New Zealand's prisons*, as "a very intentional protest" (Anderson, 2021: para 3). Prisoners constructed makeshift weapons and set mattresses ablaze, marking the culmination of numerous ignored complaints by prisoners. Corrections Minister, Kelvin Davis, denied receiving complaints prior to the "riot," labeling the protests as a criminal act that bypassed legitimate avenues for prisoners to raise concerns (Peters, 2021: para 5).

The Department of Corrections' rhetoric in response to the event referenced the Corrections Act and the formal channels for complaints. In doing so, the department constructed a narrative suggesting that prisoners possess the power and right to complain without fear of retaliation or that their complaints will be received with sincere acknowledgment and action. Such statements do not consider stigmas attached to imprisoned bodies or the understanding of "how and why exceptional conditions apply only to specific bodies and places" (Valdez et al., 2020: 902). The frequent emphasis by officials from the Ministry of Corrections on the proper channels to express grievances ignores that the relevant process is overseen by the very institution that the grievance is made. The focus on official channels further underscores how language deployed by the justice system serves to mystify the complexities of the criminal legal system and the experiences of those who engage with it (Corrigan, 2016). Prison protests potentially bring visibility to the entire criminal legal system as a site of repression, racial bias, and oppression, including the police, which functions as a filter and funnel at the front end of this system (Berger, 2010; Corrigan, 2016; Gatewood and Norris, 2019; Ross, 2009; Taylor, 2009).

Emerging criminological paradigms over the past two decades have advanced alternative theories to Eurocentric individualistic theorizations of the prison state. Agozino's (2003) counter-colonial and Cunneen and Tauri's (2017) Indigenous criminologies articulate a vision of decolonial theories to combat epistemic violence rooted in a "denial of alternatives of thinking, knowing, and being in the world" (Dimou, 2021: 432). This article considers Valdez et al.'s (2020) theorization of the Italian philosopher Giorgio Agamben's (1998) generalized concept of the *state of exception* to explore Indigenous people's relationship with the state and to contextualize the Waikeria Prison protest. In Agamben's initial theorization, he scantily engages with race, and thus, fails to account for the embodied character of racialized state violence. Valdez et al. (2020) and Grieves (2017) maintain that in racialized states one must start by centering Indigeneity and race in order to capture the reality that our current legal system stems directly from the state declaring war on Indigenous and Black bodies.

By centering race, Valdez et al. (2020) draw attention to the ways racialized bodies were and continue to be, differentially positioned in regard to law and violence. Scholars have argued that the declaration of war on Indigenous people, which produced systems of complete suppression, was not only enacted by armed military forces but continues to be perpetuated through the modern police and corrections (Cunneen, 2023; Grieves, 2017; Ogden, 2020; Rifkin, 2009; Ross, 1998; Wolfe, 2001). This understanding alone illuminates how the state is entangled with anti-Indigenous politics and the particularities in patterns and processes of elimination, exploitation, expropriation, and violence, which includes police violence (D'Urso, 2017; Grieves, 2017; Ogden, 2020; Proulx, 2014; Rifkin, 2009; Valdez et al., 2020). Valdez et al.'s (2020) analysis of ways anti-Black racism in the United States is legitimized as *fear for safety* offers insight into the ways colonization unfolded in New Zealand to respond to an "Indigenous threat." Violence perpetrated by correctional institutions (including correctional workers, and correctional policies and processes), in turn, is enacted routinely through predictable deference to racialized affect (Arnold, 2018; Gilmore, 2009; Grieves, 2017; James, 2003; Ogden, 2020; Ross, 2009; Valdez et al., 2020). "Because the judiciary sanctions and defers to police decisions to utilize violence in targeted and racialized ways, police violence makes and preserves the law" (Valdez et al., 2020: 902). Thus, in a racialized state, marked by the colonization of Indigenous people, it is imperative to elucidate the relationship between Indigenous people, the criminal legal system, and the law.

Prison protest literature in North America emerged in the 1960s and 1970s, giving rise to *Imprisoned Black Radical Thought and Tradition* that was suppressed by criminal legal institutions during the 1980s (James, 2003). Political prisoners with a long history of struggle against racialized state violence identified what critical penal studies have recently acknowledged, that the prison remains the harshest instrument of state repressive rights-based strategies (Weber, 2021). Weber (2021) argues this form of absolute repression "stems from the rootedness of policing and prisons as a system of 'gendered racial terror,' producing conditions of domination, elimination, and abject rightlessness, while reforms have been revealed to have enabled racist retrenchment" (Weber, 2021: 708). While critical scholarship is emerging to capture forms of prisoner resistance and protests, which, in many cases, may not be easily recognizable, the focus on correctional institutions as facilitators of state violence is scantily explored in academic scholarship and even less examines the hyperimprisonment of Indigenous peoples (Gatewood and Norris, 2019; Martin, 2023; Ross, 2009). Most of this work is captured within prison journalism, activists and imprisoned-citizens advocacy spaces.

For example, Deckert's 2014 and 2023 analysis of mainstream criminology coverage of the hyperincarcerated Indigenous people over a 20-year period revealed what she calls a *quantifiable silence*. The paucity of scholarly attention to Indigenous people in high-impact criminology journals did not correspond with the rise in decolonial scholarship or the rate of hyperimprisonment of Indigenous people across settler-colonial nations (New Zealand, Australia, Canada, and the United States). Deckert concludes that the two-decade-long silence, specifically in high-impact journals, influences the discursive power or the lack thereof. The failure to gain discursive impact directly affects the

elevation of Indigenous peoples' imprisonment to political and national domains and impedes the development of language used to explain complex and intersecting power systems perpetuating criminalization.

In advanced industrialized democracies, the hostile relationship between the state and colonized people is well documented (see Agozino, 2003; Alexander, 2012; Awatere, 1984; Cunneen and Tauri, 2017; Mbembe, 2019; Proulx, 2014; Ross, 1998). However, Indigenous people's engagement in acts of resistance against state violence perpetrated by sovereign structures, specifically carceral institutions, has received limited scholarly attention in New Zealand, especially in comparison with North American contexts. Thus, this article responds to the pervasive and persistent silence on hyperincarcerated Indigenous people as outlined by Deckert (2014, 2023). This two-part essay contextualizes the 2020 Waikeria Prison protest within the broader context of the violence of racial coloniality, arguing that the protests cannot be entirely viewed as disconnected from the broader struggles of the collective. The first section offers a brief account of the continuity of state violence against Indigenous people, with a particular focus on the role of the criminal legal system and prisons as an instrument of the state facilitating the continuation and maintenance of the colonial project. The second section introduces the concept of the state of exception, specifically exploring arguments that extend Agamben's theorization to account for the specificities across settler-colonial contexts and the importance of race. Here, this essay lays out critiques of the state of exception with regard to the disappearance of race. Particular attention is devoted to ways the failure to account for race and coloniality obscures the centrality of race in the notions of what it meant to be human in settler-colonial contexts. The article argues that the denial of humanity continuously plays out in who is consistently framed as the problem/threat deserving of harsh state interventions, who is allowed to express rage/dissent, and the ways in which this dissent is considered as appropriately expressed.

Contextualizing state violence, Indigenous people, and the penal state

Since the colonization of Indigenous people, prisons have been the most overt manifestation of state power and racialized social control, which remains heavily reliant upon myths of Indigenous criminality and deviancy to justify the expansion of police powers (Awatere, 1984; Cunneen and Tauri, 2017; Deckert, 2023; George et al., 2020; Grieves, 2017; Hill, 1986; Martin, 2023; McIntosh and Workman, 2017; Ogden, 2020; Proulx, 2014; Ross, 1998). With 55.7% of the prison population comprised of Māori, who make up 15% of the overall population, prisons in New Zealand are "largely holders of Māori flesh and blood" (McIntosh and Workman, 2017: 726). Viewed as natural attributes of the social landscape, prisons and targeted racialized policing remain unproblematic and undertheorized.

Julia Whaipooti's description of the prison protest, in the 2021 Guardian article, *Forms of structural violence': Waikeria highlights injustice of New Zealand's prisons*, locates the imprisoned citizens' actions as part of a larger symptom of poverty-related issues, including systemic racism. Whaipooti's articulations of the event move the

analysis of the protest away from the law-and-order paradigm to a deeper meaning of housing the dispossessed. Thus, Whaipooti's description advances the call to not move quickly past the protests as a rare outburst of an undesirable population, but rather situate their actions within a broader framework of Indigenous resistance that illuminates the invisible spaces of absolute state power. The Waikeria protest situates the prison as a site of Indigenous struggle that deserves scholarly attention to explore the relationship between Māori, the state, and the criminal legal system. Tracey McIntosh further substantiates Whaipooti's claim stating, "[g]ross disproportionality of Māori within our system is one of the most enduring social facts in New Zealand" (Anderson, 2021: para 21). McIntosh's extensive scholarship and work within prisons explain and map the sustained and embedded nature of what she describes as the "crises of Māori imprisonment [and policing]" (McIntosh and Workman, 2017: 725). Like Whaipooti, McIntosh identifies the Waikeria protest as a symptom of a larger problem of structural violence and a culture of systemic racism that has been at play for generations.

Recent scholarship has explored the hyperimprisonment of Indigenous people tracing the trajectory of the historical relationship between racialized violence, policing, and the law (see Cunneen and Tauri, 2017; D'Urso, 2017; Martin, 2023; McGuire and Murdoch, 2022; Norris and Tauri, 2021; Proulx, 2014; Woolford and Gacek, 2016). Theoretical frameworks such as *carceral genocide* in Canada (McGuire and Murdoch, 2022; Woolford and Gacek, 2016), *carceral eugenics* in New Zealand (Jaques, 2023), *Aboriginal exception* in Australia (Grieves, 2017), and *coloniality* (Dimou, 2021; Mignolo, 2011; Quijano, 2007) all analyze long-standing patterns of power unique to Indigenous people across settler contexts. Racialized state surveillance of Māori has only gained renewed attention after two major events that spurred resistance from Indigenous and Pacific people communities: Armed Response Team Trials in 2020 and the extralegal photographing of Indigenous youth by law enforcement in 2021¹ (Deckert et al., 2022; Norris and Tauri, 2021). These acts of state violence elucidate the inextricable link between land acquisition, public policy, and housing that facilitate Māori oppression in every facet of social life and have thus produced a perennial network of surveillance technologies that has given rise to the carceral state (see, e.g., Awatere, 1984; Dawson et al., 2023; Deckert et al., 2023; Howard, 2023; Norris and Tauri, 2021; Proulx, 2014; Wacquant, 2001).

Cunneen (2023), in articulating the relationship between the carceral state and Indigenous and Black people, considers the antecedents to the current calls to divest from police and invest in jobs, housing, health care, and education. Drawing on the events that spurred radical politics among First Nation and Black people,² Cunneen highlights that confronting state violence, specifically racist military police occupation of urban housing developments, was the primary impetus for the 1960s formation of the American Indian Movement (AIM) in Minneapolis and the Black Power Movement in the United States and Australia. Members of the organizations framed police violence and brutality as part of the broader social violence of poverty. Native American activists, led by George Mitchell, Dennis Banks, and Clyde Bellecourt, formed networks of AIM patrols to resist police violence and the 1970s Legal Rights Center to support Native and Black people in the criminal legal system: "[B]orn out of the dark violence of police brutality and the voiceless despair of Indian People" AIM was formed (Ikche, 1993, as cited

in Cunneen, 2023: 216). Resisting police violence was understood as responding to an immediate need for survival. Struggles for autonomy and self-determination emerged in concert with protecting Indigenous communities from police terror, thus addressing the criminal legal system has been a central focus in Indigenous struggles (Cunneen, 2023; Ross, 1998). In fact, the 1966 formation of the Black Panthers initially involved direct resistance to policing and prison education (Carmichael, 1968; Corrigan, 2016; Cunneen, 2023).

Corrigan's 2016 article, *Prison power: How prison influenced the movement for Black liberation*, details the centrality prisons held in Black liberation movements. Similarly, Cunneen draws from Stuart Hall et al. (1978) commentaries in *Policing the Crisis* to detail what Hall refers to as "policing of Britain's internal colonies" that explicate how racism, authoritarianism, and state violence were enabled through the figures of dangerous young Black men and the crime of mugging (Cunneen, 2023: 218). Cunneen reiterates that the Black and Indigenous struggles in the 1960s and 1970s have always been the story of confrontation with a violent state that strategically and frequently deployed militaristic police interventions and prisons to surveil, control, and neutralize groups viewed as ungovernable and in need of exceptional kinds of law and order. Stuart Hall (1980), a criminological theorist-activist and critical cultural theorist, delineated the specificity of the militarization of the police, for which he described the police as the disciplinary arm of the emerging law and order state under Margeret Thatcher. Hall in the United Kingdom, like AIM and the Black Power movement, called attention to the state's creation of populations marked as exceptional by documenting how such designations facilitated government support for more aggressive policing and unrestrained state terror. Merging the arguments made by Cunneen and Hall, this article contends that the deployment of racialized military-style policing intimately marks Indigenous and Black life, which offers insight into regimes of exception in settler-colonial contexts. Community-based organizations' resistance to police and state violence further elucidates state violence that follows said groups into prisons, which can be understood through the state of exception.

State of exception: Indigenous and Black peoples relationship with the West

The second part of this essay explores Agamben's (1998) concept of the state of exception and the ways the concept has emerged as a pivotal framework for understanding the suspension of normal legal and constitutional order during times of crisis (Grieves, 2017; Humphreys, 2006). As noted by Taylor (2009), it is the state of exception that defines Western sovereignty and subjugates people to another state, what is referred to by Agamben (1998) as bare life. Recent scholarship has expanded upon Agamben's (1998) state of exception framework, addressing three critical limitations: (1) the lack of attention given to race (Amarasinghe and Rajhans, 2020; Everuss, 2023; Rifkin, 2009; Valdez et al., 2020; Weheliye, 2014; Whitley, 2017); (2) the positioning of the state of exception as a sharp rupture between a "then" and "now" (Carbado, 2019;

Valdez et al., 2020); and (3) the limitations of the spatially delimited “camp” (Arnold, 2018, 2023; Everuss, 2023; Rifkin, 2009; Valdez et al., 2020).

Everuss (2023) notes that the abstract framing of excluded peoples as *homo sacer* in Agamben’s (1998) *Homo Sacer: Sovereign power and bare life*, presupposes equality among individuals prior to the state of exception and ignores the racial grounds on which exclusion has historically occurred (Everuss, 2023; Valdez et al., 2020; Weheliye, 2014; Whitley, 2017). Addressing this, Valdez et al. (2020) highlight the importance of grounding the framework in history, noting that Agamben’s ontological account “prevents careful examination of how and why embodied subjects of the state of exception are targeted by the state in ways that are neither homogenous in space, nor time, and moreover filtered by race, gender, class, sexuality and other positionalities” (p. 904). Carbado (2019) further attends to a gap in Agamben’s conceptualization by articulating the state of continuity, which addresses the experience of a permanent state of racialized oppression and marginalization, which is faced by specific racialized communities. The state of continuity allows for a broader understanding of how technologies of power—ideologies, discursive frames, and practices—are continuous across history and pays particular attention to the enduring manipulation of power to serve the hegemony (Carbado, 2019; Fejzula, 2019; Grieves, 2017; Valdez et al., 2020). While Agamben (1998) theorized the state of exception by relying heavily on a spatially delimited camp, recent scholars have explored how states of exception manifest within democratic contexts, particularly through instances of police violence (Everuss, 2023; Minca, 2006; Valdez et al., 2020). From this perspective, Everuss (2023) asserts that “people are not excluded because they enter an excised space, but an excised space is created because they are excluded” (p. 6). Conceptualizing the state of exception through this lens is crucial as it recognizes that spaces of exception are relationally constructed, and therefore, deeply influenced by the pervasive impact of race on society (Everuss, 2023).

Valdez et al. (2020) argue that it is important to address “other genealogies of racialized state power that manifests in the intimate entwinement between law and violence” (p. 904). Similarly, Amarasinghe and Rajhans (2020) advance Agamben’s (1998) conceptualization of the state of exception by applying it to the colonial encounter. This encounter, Mbembe (2019) argues, is most evident in the *necropolitics*, which refers to the colony as “a zone where the violence of the state of exception is deemed to operate in the service of ‘civilization’” (p. 77). The colonial project heavily depended on the *state of emergency* to establish and sustain its dominance, restrict movement, and suppress dissent (Amarasinghe and Rajhans, 2020; Grieves, 2017).

Thus, the state of exception offers valuable insights into how the colonial enterprise harnessed exceptional powers to ensure control over both colonized lands and the Indigenous people. It is crucial to emphasize the role in which race is enlisted to justify state violence and rationalize the actual mechanisms of that violence (Valdez et al., 2020). In the colonial context, race played a crucial role in upholding and perpetuating discrimination and oppression (Agozino, 2003; Alexander, 2012; Awatere, 1984; Cunneen and Tauri, 2017; Grieves, 2017; Proulx, 2014). Taylor (2009) extends this

argument by contending that colonized Indigenous communities and sufferers of slavery, which were so crucial to the rise of the West, have persistently been reduced to a state of bare life. Unpacking violence must account for the genocidal dispossession, which accounts for important nuances in understanding the differential impacts of racialization on Indigenous peoples from other non-Indigenous (i.e., African Americans) people in settler-colonial contexts. As Wolfe (2001) notes, the “logic of elimination” underpinned Europeans violent acquisition of Indigenous lands (p. 868). For example, Grieves (2017) examines what she calls the “Aboriginal exception to the Australian State” stating that the Australian imaginary has no room for Aboriginal people or their ways of being, which is observed repeatedly through the progression of genocidal policies against Aboriginal people in the face of domestic and international outrage (p. 1). Limiting or eradicating the potential for dissent was a deliberate strategy, explains Quijano (2007), of the colonial project toward eliminating Indigenous people.

State of exception and quelling dissent

Amarasinghe and Rajhans (2020) discuss the role of emergency laws in quelling the 1915 Sinhalese Muslim riots in Sri Lanka, which caused the colonial government to enact martial law, resulting in a suspension of the ordinary laws of the colony. Furthermore, the British went on to arrest many of the Sinhalese Muslim leaders. Amarasinghe and Rajhan (2020) use this example to articulate how martial law is used as a constant threat to the Indigenous population. Moreover, this created a perpetual state of exception, wherein the threat of martial law allowed for any expression of dissent or rage to be policed and silenced.

It is important, however, to locate this discussion in New Zealand to understand how Indigenous dissent has always been framed, and the strategies deployed in quelling dissent toward populations deemed as the exception. For example, the peaceful protest of Parihaka, a community established in New Zealand’s north island in 1865 advocating for peace and independence under the leadership of Te Whiti o Rongomai and Tohu Kahahi, was met with emergency laws established by the Crown to silence dissent. After the Crown began attempting to confiscate land that Parihaka had been assured would not be taken, a peaceful protest began. White settlers began to feel “threatened,” demanding an increase in the armed presence, leading to Governor Grey in June 1879 instructing “the head of Crown forces in Taranaki to arrest any ploughmen [members of Parihaka] whose actions were likely to lead to a disturbance of the peace” (Te Kotahitanga o Te Atiawa Taranaki, 2021: para 4). In the following month, 182 Māori were arrested and charged under the *Malicious Injuries to Property Act* 1867. Shortly after the last of them were arrested, Parliament passed the *Māori Prisoners’ Trial Act* 1879. The preamble of this Act stated that it was necessary for “the ordinary course of law [to] be suspended,” so that the Crown could alter the time and location of the prisoners’ trials if “for any reason, it is expedient” (Te Kotahitanga o Te Atiawa Taranaki, 2021: para 7). In the end, over 405 Māori had been imprisoned for their peaceful resistance campaigns and were shipped to South Island jails where they experienced gross overcrowding, solitary confinement, and other humiliating and inhumane conditions. A report by the

Crown-appointed West Coast Commission in August 1880 states that Taranaki Māori were being imprisoned “not for crimes, but for a political offense in which there is no sign of criminal intent,” and thus, can be conceptualized as political prisoners (Te Kotahitanga o Te Atiawa Taranaki, 2021: para 18).

The state of exception explains the sovereign, The Crown, ability to quell dissent through the use of prison and the enactment of laws that specifically target Māori, the population marked as the exception, to stifle Indigenous dissent of nonoffending Māori. The Parihaka example elucidates what Rifkin (2009) asks in his article, *Indigenizing Agamben: Rethinking sovereignty in light of the “peculiar” status of native peoples*. Rifkin (2009) critiques Agamben’s framing of sovereignty and bare life because his concepts fail to fully address the geopolitics of settler-state jurisdiction that the United States uses to legitimize its management of Indigenous peoples. In his examination of Native reservations, Rifkin identifies the domain of *inclusive exclusion* that led to bare habitance, which is related to but distinct from bare life. Agamben’s definition of camp as a piece of land placed outside of normal judicial order but not an external space captures the peculiarity of Native reservations. Rifkin’s (2009) use of the state of exception highlights the specificity of embedded kinds of “sovereign violence” that plays out in the (re)production and naturalization of national space (p. 94).

Prison writings have long considered Agamben’s state of exception to theorize and locate the prison within the contours of U.S. democratic politics. Taylor (2009), in examining the life and activism of political prisoner Mumia Abu-Jamal, considers the state of exception and Abdul R. Jan Mohammed’s formulations of *social death* and the *dialectic of death* to explore how the exception easily transforms into the rule under the state of democratic politics. Taylor’s (2009) analysis contextualizes the race-based character of the criminal legal system that cannot be disentangled from racialized violence, an endemic component of American democracy. Within this context, Taylor (2009) contends that we must broaden our understanding of bare life beyond the suspended space between life and death but see bare life as being subject to a life that can be raped, castrated, mutilated, and abused at will. This articulation of bare life has always been recognized in prison writings and can be observed in the Waikeria Prison protests where the prisoners detailed extreme forms of neglect: poor plumbing (eating near toilets filled with feces), lack of clean water and inedible food (fed moldy bread). Conditions raised by the Waikeria protesters were longstanding. Outcries from family members and prison advocacy groups were well documented. Thus, the protest reveals what imprisoned intellectuals have long theorized: Indigenous and Black liberation must include and reach those held in confinement/captivity (James, 2003; Shoatz, 2020). In Joy James’ 2003 anthology, *Imprisoned Intellectuals: America’s Political Prisoners Write on Life, Liberation, and Rebellion*, James highlights analyses of class, society, culture, and social justice issues found in writings of scores of political prisoners that offer theories of democracy and revolutionary struggles that are rarely referenced or considered in academic scholarship.

For example, George Jackson (1994), one of the leading architects of the Prisoner’s Rights Movement, addresses in his book, *Soledad Brother*, the terrorism that is firmly fixed deeply within the sovereign inflicts violence upon populations designated as

threats. Jackson (1994) points out that what truly renders the Soledad prison so oppressive is state-sanctioned terrorism. He points to the “frightening, petrifying diffusion of violence and intimidation emitted from the offices of the warden and captain” (p. 22). This passage underscores the crucial question: how could a small group of armed individuals be expected to maintain dominance over a significantly larger group if not through instilling fear? Arnold (2023) brings attention to the fact that even when the freedom of speech is not officially restricted under the state of exception, security concerns can be held as a superseding right when the disenfranchised protest. Within the context of colonization, Amarasinghe and Rajhans’ (2020) conceptualization of the state of exception, alongside Quijano’s (2007) coloniality framework, illuminates the dual nature of the state of exception. It reduces a group to a perpetual bare life—a state “lacking all the rights and expectations that we customarily attribute to human existence” (Agamben, 1998: 159). Simultaneously, it functions as a tool to quell dissent by employing force and instilling fear, effectively facilitating the silencing of voices that seek to protest the structures of power (Amarasinghe and Rajhans, 2020; Valdez et al., 2020). The issue is this; the state may make laws that on paper constrain violation by the state; but that does not stop institutions, like the police, from differentially enacting *the law*, such as biased policing decisions, which of course are not registered as accepted practice but hidden under the cloak of protecting society from high-risk populations deserving of hypersurveillance, which within the New Zealand context means Māori (Awatere, 1984; Deckert, 2023; George et al., 2020; Martin, 2023; McIntosh and Workman, 2017; Norris and Lipsey, 2019; Norris and Tauri, 2021).

Policing the rage of “the problem”

Lewis Gordon’s (2000) chapter, *What does it mean to be a problem*, draws on DuBois’ 1903 classic, *The Souls of Black Folk* to extend the theorization of the color-line into the 21st century, which lends itself to a useful analysis of the policing of rage and dissent from Black and Indigenous people. According to DuBois, the potency of the color-line lies in the creation of *normal* and *abnormal* identities (Gordon, 2000). As a result, the Black problems are overlooked and omitted from the sphere of human problems and instead become seen as pathologies wherein *problematic* people cease to be struggling people (Gordon, 2000, 2005; Ladner, 1971). In this view, Black and Indigenous people are seen as “the problem” and marked for exceptional use of state-sanctioned policing. Consequently, these populations, which the state has exempted from humanity are viewed solely through the lens of crime, licentiousness, and other social pathologies (Gordon, 2000; Ogden, 2020; Rifkin, 2009). However, it is important to recognize that the problem lies in the tendency to construct Black and Indigenous people as “the problem,” while omitting White people from the narrative of problematic/criminality (e.g., White lynch mobs) (Gilmore, 2009; Gordon, 2000; hook, 1995).

For example, the extralegal lynching of Black people in the United States was a sanctioned practice that occurred for 100 years under Jim Crow rule after slavery was abolished. The state’s deputization of the white body granted ordinary White people the power to surveil and even murder Black people without penalty. The black body was

exempt from constitutional and legal protections; thus, the normal rule of law was suspended under a regime of Southern White justice. The state of exception reveals how state-deemed problem identities are constructed relationally, thus giving certain bodies power to excise violence over racialized bodies. In this case, the institutionalized white body is endowed with state-backed power to lynch and commit atrocities against a non-offending “problem” population (Summerville, 2020; Wells-Barnett, [1895], 2015, 2002). It is estimated that for 30 years after Emancipation, more than 10,000 Black people were killed without the formality of judicial trial highlighting the pervasiveness of white violence (Wells-Barnett, [1895], 2015). Despite this, White people, including law enforcement, judges and governors, who established and ratified lynch mobs have been excluded from narratives of criminality. More importantly, this example shows how white bodies are given license by the state to fully act out their racial hatred without retribution.

Many scholars and activists have observed the phenomenon of suppressing Black and Indigenous dissent (Awatere, 1984; hooks, 1995; Ogden, 2020; Ritchie, 2017; Rounds, 2020; Roy, 2014; Wiggins, 2020). bell hooks’ discussion of Black rage comes nearly 30 years after Stokely Carmichael’s 1968 essay *Power and Racism*. Stokely Carmichael articulates the frustration and the powerlessness of Black people due to the continued assault at the hands of the state, specifically White people in a country that purports to “be the good guys.” Carmichael speaks to the blatant disregard given to the rage of poor, Black youth. Carmichael critiqued the Civil Rights movement tone geared toward a White middle-class audience while failing to listen to the frustrations of Black youth in the urban ghetto.

Carmichael’s (1968) analysis of U.S. imperialism explained the combined forces of politicians, movement leaders, and the mass media that organized to tame Black rage. Arundhati Roy (2014) states that “[h]aving worked out how to manage governments, political parties, elections, courts, the media, and liberal opinion, the neoliberal establishment faced one more challenge: how to deal with growing unrest, the threat of “people’s power” (p. 38). How do you domesticate it? How do you turn protesters into pets? How do you vacuum up people’s fury and redirect it into blind alleys? The questions raised by Roy (2014) are relevant to this moment and this essay. It is for this reason bell hooks (1995) cautioned against one-dimensional discussions of rage. Those with the power to censor images of those who wreak havoc upon the innocent obscure meaningful rage/anger that does have a purpose.

Misrepresentation of rage, according to hooks (1995), occurs within the context of being narrowly viewed through the lens of destruction and without meaning, which, in turn, ensures that there will be no revolutionary effort to gather that rage and use it for constructive change (hooks, 1995). Black-Aboriginal scholar, Chelsea Watego in an interview with George Yancy evokes hooks’ sentiments recalling advice hooks received from Thích Nhất Hạnh to “hold on to your anger and use it as compost for your garden” (Yancy and Watego, 2023: 73). Watego articulates the fatigue of being told her Black-Indigenous anger was an unhealthy emotion when it is, in fact, the appropriate expression for Black Aboriginal’s reality of the present moment. She refers to Black rage as the driving force and the foundation for her best work. Like hooks, Watego

cautions against the whitewashing of Black and Indigenous rage, which is rooted in racist hegemonic systems of power that demands Black and Indigenous people to suffer in silence. For Watego, “[t]o be human and to be free is to feel every damn emotion—when-ever the hell we feel” (Yancy and Watego, 2023: 73).

Within the context of the Waikeria Prison protest, dissent is further dismissed as aimless, especially when it occurs behind prison walls as it filters through narratives of the “violent other” and is not afforded legitimacy. Thus, a protest within prison walls is always framed as a riot, stripped of its political legitimacy and diminished to nothing more than an act of irrational rage and criminality. hooks’ (1995) contextualization of rage as a necessary aspect of resistance calls for a careful consideration to distinguish spontaneous eruption of emotion from a carefully planned and executed political action, which requires long-term planning in a heavily surveilled environment such as the case of the Waikeria protest.

Concluding comments

McIntosh and Workman (2017) contend that the state’s enmity toward Māori was sanctioned through racialized policing and has been scantily examined. This essay has responded to this call by advancing the state of exception as a theoretical framework to extend our understanding of Māori relationship with the state and the criminal legal system. As McIntosh and Workman (2017) and Whaipooti note, the long-standing power prison holds as an institution and an experience is linked to its unproblematized prominence. Thus, concepts such as mass incarceration and police brutality, according to Rodríguez (2023) are misnomers, a semantic error that does not adequately capture overlapping, symbiotic ensemble of institutions and systems that implicate the entire apparatus of the law-and-order paradigm. We must consider the asymmetrical domestic war settler-colonial countries enact against “criminalized” people and places. Similarly, McIntosh and Workman (2017) explain the racialized nature of mass incarceration as occurring when “the rates of incarceration impact negatively on sectors of society who share similar ethnic and socioeconomic characteristics; characteristics which create the conditions for cumulative and intergenerational disadvantage” (McIntosh and Workman, 2017: 727). This means whanau (extended families) and communities of the incarcerated are impacted, as well as their offspring, just as much as those behind the wire are.

Acts of resistance via prison protests, prison writings, and riots rupture this invisibility of the prison, exposing the sovereign violence that produces systems of bare life. As discussed, systems within prisons function to suppress the voice of prisoners, and it is important to extend our understanding of rage beyond the narrow focus of aimless discontent among populations designated as the problem. Rage and expressions of dissent, especially from imprisoned citizens, have always testified to the colonial and racialized violent nature of the settler-colonial context. Hence, this article proffers that the Waikeria Prison protest can illuminate what Taylor (2009) calls *today’s state of exception* and cautions against viewing the protest in isolation from historical and more recent forms of prisoner resistance to the carceral state. Just as Black and Puerto

Rican prison protests in the 1970s have been regarded as purposeful oppositional strategies that functioned to reveal the invisibility of the prison (and its violence) to the broader society (Berger, 2010), Waikeria offers insight into the 21st-century carceral state in New Zealand. “As the prison exaggerates invisibility, it invites exaggerated forms of visibility” (Berger, 2010: xiv). Thus, visibility as it relates to the prison, argues Berger (2010), refers to both public and mass consciousness of its presence and violence, which still has a special meaning for dispossessed and disenfranchised populations.

As discussed, since the 1960s, Indigenous and Black activists and intellectuals have always situated the criminal legal system, prisons, and the treatment of imprisoned people as extensions of the Indigenous and Black experience. Importantly, imprisoned writings, as part of the canon of Indigenous and Black political consciousness, are reemerging, gaining increased visibility due to technology (e.g., podcasts, virtual classrooms, and video conferencing) and advocates and collaborations in the free world. Taylor (2009) makes clear in his analysis that Mumia Abu-Jamal’s perilous case represents the collective. Taylor contends (2009) that “[i]t is the collectivization, this way of making unity among those who know social death, that is particularly threatening. It is not just resistance; it is the *unity in* resistance that is both provocative to oppressive power and effective for resisting it” (p. 321). Abu-Jamal’s journalistic activism lies in the tradition of Black imprisoned intellectual thought wherein his voice represents the collective by linking his liberation to others’ liberation, acknowledging the varieties of oppression, and identifying the patterns of oppression that are felt under the West’s “enduring but always transforming, racialized empire” (Taylor, 2009: 321).

By employing the state of exception that considers the states of continuity within a racialized-settler-colonial context, this article offers insights into how Indigenous people have been consistently marked by the dehumanizing bridge between the individual and the structures constituted through the colonial project. Centuries-old structures, such as the penal system, have produced systems of structural denial of Indigenous and Black humanity (Gordon, 2022). While Agamben draws on Nazi Germany’s use of concentration camps, Australian and U.S. scholars have employed the state of exception to examine the strategic use of the criminal legal system to suppress dissenting voices in modern democratic societies and explain longstanding police brutality against Indigenous and Black bodies. Thus, prison protests are contextual and must be considered as one platform of collective resistance against perpetual state violence.


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Notes

1. ART trials refers to the NZ Armed Response Team trials that began in 2019 and ended 2020. The trial was introduced to equip the policy to respond decisively to violent encounters. It is important to note that NZ police (NZP) do not carry guns. The trials ended due to an outcry from Māori and Pacific community who reported that they felt less safe and would likely not call the police even in need due to their communities receiving over half of the calls with armed police drawing their firearm on youth as young as 12. Similarly, the extralegal photographing of Indigenous youth was brought to the public attention due to the outcry from the same communities stating that their children were being stopped and photograph by NZP despite the absence of evidence of offending (Deckert et al., 2022; Norris and Tauri, 2021).
2. It remains essential to differentiate between those bodies subject to social death for the purposes of hyper exploitation and those subject to literal physical death for the purposes of justifying occupation of Indigenous lands. Thus, the goal was to eliminate Indigenous bodies for land as opposed to multiplying enslaved African bodies to work the land.

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