Three Shots

Melinda Hinkson and Thalia Anthony

The death of Kumanjayi Walker—the Northern Territory as police state

'Three shots were fired.'

The acting deputy police commissioner of the Northern Territory thrust three fingers into the air as he addressed the crowd of grieving and angry residents who gathered on the Yuendumu basketball courts two days after Kumanjayi Walker had been shot and killed by police.

The commissioner told the crowd he was very sad.

He assured them police had been wearing body cameras at the time.

He promised an independent investigation.

The following day Chief Minister Michael Gunner told a community meeting: 'Saturday night was an awful night and we will be working together for a long time about how we deal with that together'. He promised that 'consequences will flow as a result'.

It is not our intention to doubt or disparage these expressions of compassion and care from the Northern Territory's most powerful men. However, it is glaringly obvious that these leaders of government and police have oversight of a coercive legal regime that has been systematically brought to bear on Aboriginal lives. The shooting death by police of 19-year-old Kumanjayi Walker at his family home at Yuendumu is shocking. However, it is not an anomalous event but rather a predictable outcome of an expanding law-and-order complex that has increasingly penetrated NT Aboriginal communities over the past two decades.

The details of this case are now sub judice and cannot be explored here. We are more interested to ask what kinds of 'consequences'—to follow the chief minister's lead—might flow. Arguably, the greatest challenge facing the murder trial of Constable Zachary Rolfe, the coronial inquest, the Independent Commission Against Corruption investigation and any other ensuing inquiries is to establish parameters broad enough to address the complex constellation of decisions and actions that led to this death. The archive of royal commissions and investigations gives little hope that such parameters will be established, or, if they are, that significant consequences will follow.

There are three necessary ingredients for an adequate investigation. First, that it is independent. The state's investigative mechanisms in the Northern Territory (and Australia wide) preclude such an approach because investigative procedures are embedded in the policing apparatus. Second, it is crucial that the family of the deceased is engaged at every stage of the investigation to the extent that they choose. Circumstances surrounding Walker's death give little confidence that this will happen. Finally, the inquiry should consider the broader systemic circumstances leading to this death. This will require transcending the systems that govern police shootings, police powers and police training to consider the cultivation of police culture.

Since the Aboriginal Justice Unit of the NT government recently found endemic racism by police against Aboriginal people, serious questions need to be addressed about attitudes within the force, and indeed about attitudes of the wider society that policing emanates from and responds to.

In the immediate aftermath of the shooting Warlpiri people called out what they see as a direct line between this death and the Coniston Massacre. These are events on the edge of living memory: in 1928, rifle-wielding police and vigilante settlers tore through the Tanami Desert on horseback, shooting and killing between sixty and 100 Warlpiri and Anmatyerre men, women and children in retribution for the murder of dingo trapper Fred Brookes. All involved in the massacre were exonerated.

It is not just the act of shooting per se that Warlpiri people draw attention to when they invoke Coniston; it is the *attitude* that enables one person to shoot another—an attitude in which Warlpiri people are

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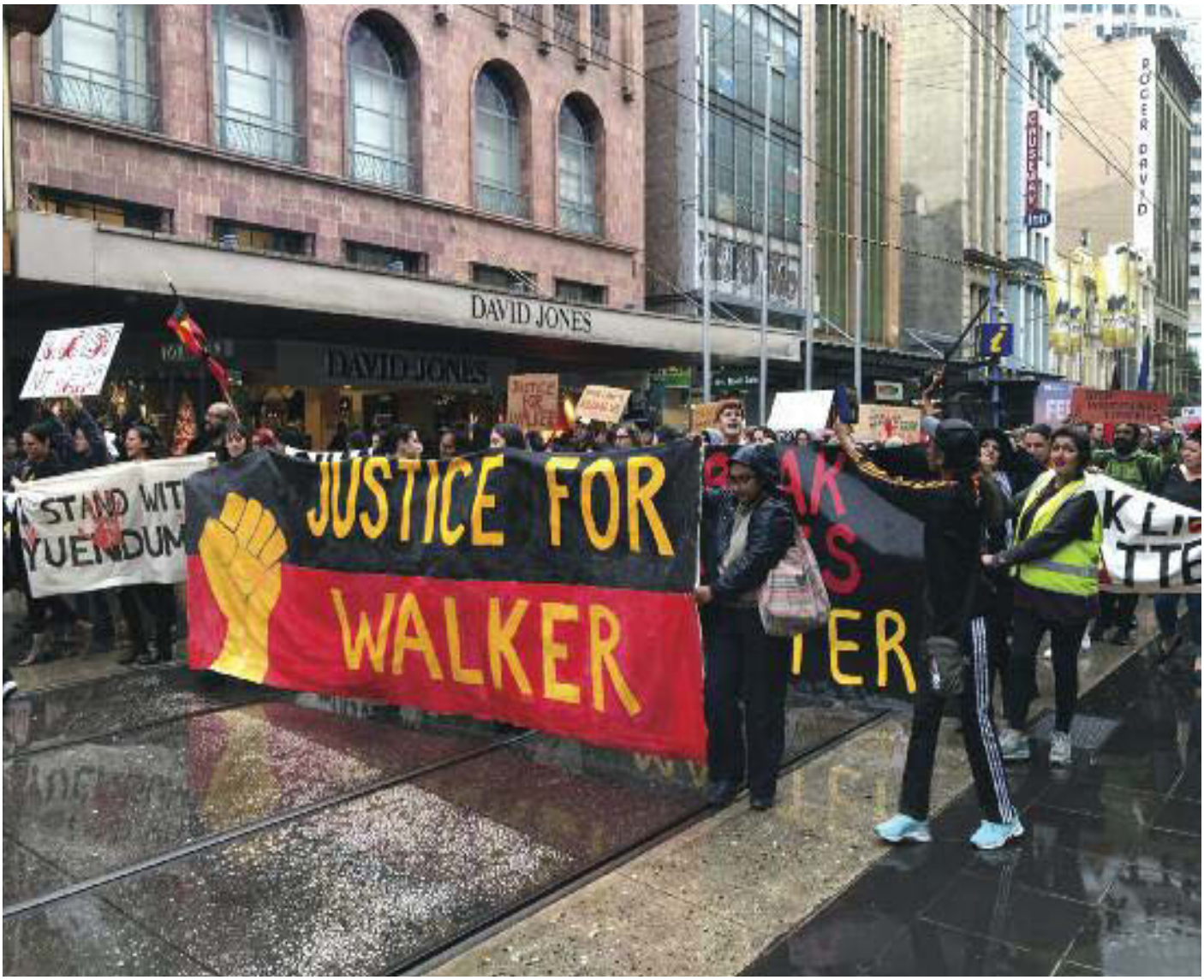

Demonstration in the streets of Melbourne

cognisant of being treated as less than human, 'like dogs'. The references here cycle around, as police brutality has historically been associated with the killing of Warlpiri dogs. In doing so the police—not *yapa*, Warlpiri people—show themselves to be less than human. In Kumanjayi Walker's case, locals described him as having been shot 'like a dog' and then dragged out of his home by his legs.

While Coniston casts a long shadow over Walker's death, there are more recent administrations of frontier law, Northern Territory style, that have been equally fatal and deserve close scrutiny. In 1997 the NT government introduced a new mandatory-sentencing regime. Dubbed 'three strikes', the new laws were instrumental in delivering Aboriginal youth and adults into detention for crimes committed against property.

Why...would police be despatched to travel 300 kilometres in pursuit of a nineteen-year-old who was allegedly in breach of a suspended sentence...

Adult offenders faced mandatory minimum terms of imprisonment at each 'strike': fourteen days, ninety days, twelve months. A young person was required to serve a minimum of twenty-eight days' detention for their second offence. Virtually all young people detained under this law were Aboriginal. These laws contributed to the death of 15-year-old Aboriginal boy 'Johnno' Johnson Wurramarba, who was held in Don Dale Youth Detention Centre for stealing items from his school. While such property-related laws were repealed in 2001, mandatory sentencing continues for violent offences, with Aboriginal youth Zac Grieves receiving a 20-year custodial sentence in a murder trial even though the judge accepted that he was not even present when the crime was committed.

Notwithstanding the repeal of mandatory-sentencing laws for young people, the subsequent years saw a substantial escalation of young Aboriginal people in detention and the infliction

of force and torture on inmates, which was documented by the 2016–17 Royal Commission into the Detention and Protection of Children in the Northern Territory. The Royal Commission revealed 'systemic and shocking failures':

> Children and young people have been subjected to regular, repeated and distressing mistreatment and the community has also failed to be protected. The systemic failures occurred over many years and were ignored at the highest levels.

The aftermath of this damning report into the Northern Territory's youth-justice and child-protection systems saw continued use of the riot squad in Don Dale, forced strip searches and prolonged segregation of young people in detention. Child removals by the NT government have continued to occur in horrific circumstances, including with the involvement of the police. In the immediate aftermath of the Royal Commission's report, the streets of Alice Springs were teeming with members of the Territory Response Group—the same tactical force that was deployed to manage the crowds gathering in protest to the killing of Kumanjayi Walker.

In the 2007 NT Intervention, the federal government rewrote land-tenure arrangements for small communities on Aboriginal land and in the process set about a systemic disassembling of the forms of authority that had been granted to Aboriginal people in running their communities. Among the specific legislative changes were the revocation of the land-permit system that provided local councils with some degree of control over who entered their lands and for what purposes, and, more profoundly, the expanded policing of customary laws and sacred sites. The Intervention legislation also dissolved distinctions between public and private space, allowing police to enter any Aboriginal house without a warrant and to apprehend if they reasonably believed a person to be drunk.

Around the same time, the NT government disbanded Aboriginal community councils in favour of government shires that now govern and deliver services at a distance. Aboriginal residents were effectively evicted from all positions of authority with respect to the running of local services and affairs. Welfare recipients were further humiliated, tainted as irresponsible and in need of income management.

As power was systematically taken from Aboriginal people, other actions more insidiously criminalised and controlled them, such as an intensified police campaign issuing driving infringement notices. Unprecedented numbers of fines and court-attendance notices were issued for not wearing seat belts, for driving unroadworthy vehicles, for driving on a suspended licence. In the years that followed there were significant spikes in incarceration for minor offences, including unlawful driving and unpaid fines.

A further destabilising effect of the Intervention was increased mobility of people from the bush into regional centres, especially Alice Springs. Through this same period the NT police force has substantially grown. The region that takes in Alice Springs and Yuendumu already boasts three times the national average of police officers per head of population, and recent media statements indicate that the Northern Territory aims to more than double its total force from 697 to 1500 officers by mid-2020. Additional 'police auxiliary liquor inspectors' are stationed at the threshold of all stores selling alcohol, a program currently funded to the tune of $11 million per annum. These point-of-sale checks systematically target and harass Aboriginal people, who are singled out for identification checks and arrested on the spot for outstanding warrants and fines, often for cumulative mundane 'crimes'.

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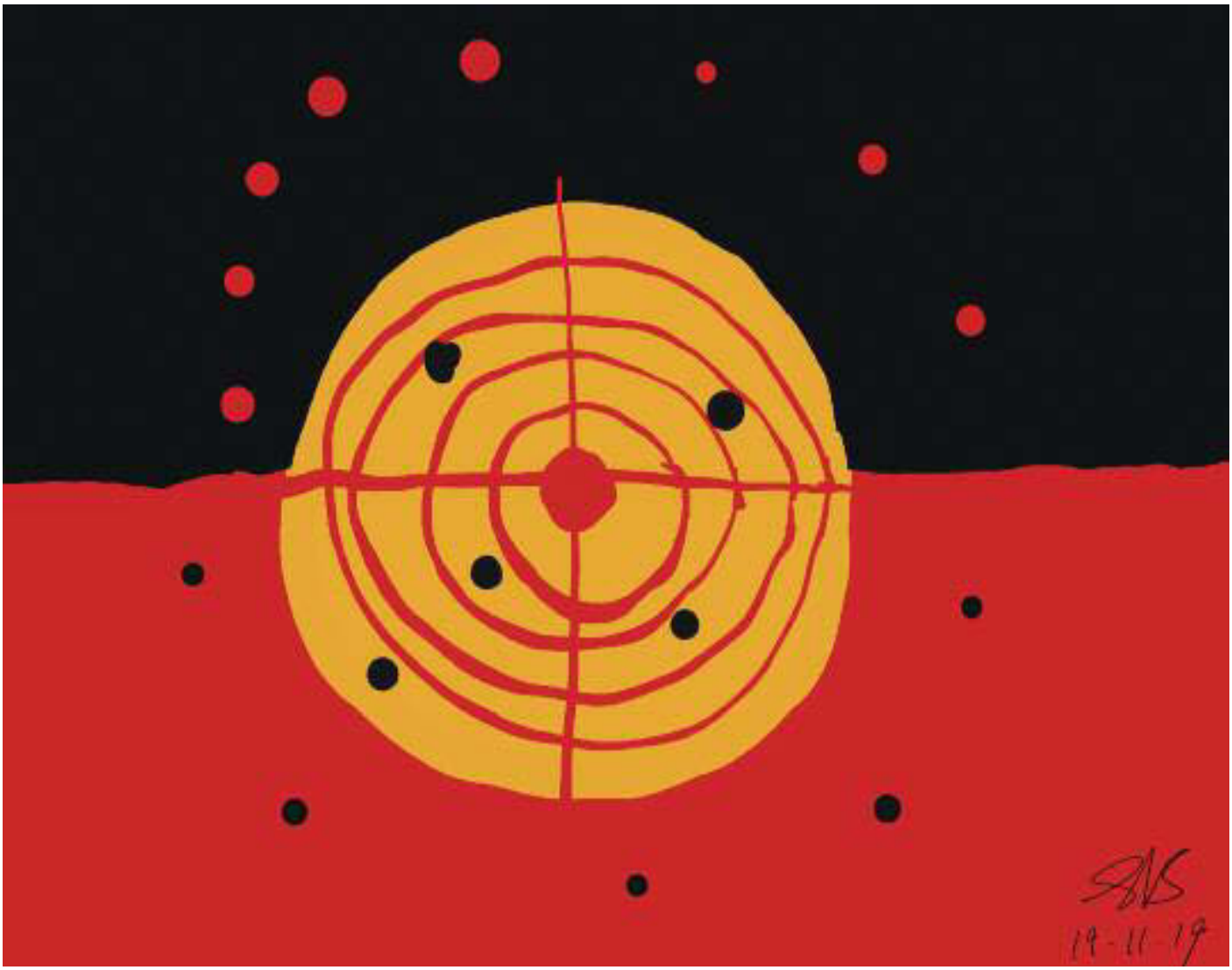
One of the clearest cases of a dispersed, limitless policing regime rests with so-called paperless-arrest laws. Introduced by the NT government in 2014, these laws enable police with 'reasonable grounds' for assessing a person as having committed or about to commit an offence to arrest and detain that person for four hours, or 'for as long as they are judged to be intoxicated'. In the first seven months after the paperless-arrest laws were passed police took 1295 people into custody. Close to 80 per cent of them were Aboriginal.

In May 2015 another Warlpiri man, Kumanjayi Langdon, closely related to Walker, was arrested under these laws while drinking quietly with kin in Darwin parkland. The maximum penalty for the offence of drinking alcohol in a designated area is a fine of $74. In Langdon's case he was issued with the fine and then handcuffed and removed to Darwin police station in a police van. Three hours later he was found dead in a holding cell. The inquest into Langdon's death found that a nurse overseeing his admission had wrongly recorded that he had 'denied health problems', despite his requesting a doctor and despite the nurse having ready access to medical records that would alert her to his chronic cardiac condition.

Coroner Greg Cavanagh, investigating this case, recommended the repeal of the paperless-arrest laws. He observed that 'a civilised society does not subject its citizens to [the] mortification [of arrest] unless there are no other reasonable options open'. Cavanagh's criticisms are unusually strong for a coroner's report, yet he falls short of recognising the larger systemic context in which these laws



Courtesy of George Burchett

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operate. As lawyer Jonathon Hunyor has observed, the regime of paperless-arrest laws is not an aberration but rather sits 'comfortably within the prevailing culture of mass incarceration... in the NT and reflects an increasing trend of laws designed to exert more coercive power by executive government'. Despite a commitment by the Labor Party in opposition to abolish these laws, they remain in place under the current Labor government.

This is the police state of the Northern Territory into which Kumanjayi Walker was born and grew up. The time of his childhood and youth was defined by a set of policies and public attitudes that pathologise Aboriginal people and convey a sense that there is no future in places governed by Warlpiri authority and values.

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Yuendumu is the largest town in Central Australia with a predominantly Aboriginal population. It is situated at the southern edge of the Tanami Desert, which takes in some 100,000 square kilometres of Warlpiri country. Under colonial rule the town was established as a ration depot in 1946, following two decades of intensifying encroachment of settlers and pastoralists on Warlpiri hunting grounds and precious water sources. The killings at Coniston in 1928 and the legal aftermath that exonerated those responsible made clear that Warlpiri were no longer safe and free on their own territories. Australian settler nation-building proclaimed a developmentalist and accumulation agenda that dispossessed Warlpiri people and set out to undermine their distinctive way of life. The relationship of the colonial settler state to Central Australian Aboriginal people was forcefully expressed by the then chief protector of Aborigines who was simultaneously chief of police, C. H. Noblett, who told the inquiry into the Coniston killings:

> I deplore the killing of the natives as much as anyone, but, at times, it cannot be avoided and the same thing has happened in the settling of

> all new countries…we must give the pioneers every protection both for themselves and their stock otherwise the country must be left to the natives who have not the slightest idea of development in any shape or form.

Protection, where applied to Aboriginal people, has always involved containment. The ration depots of the 1930s and 1940s drew people in from the desert and were gradually replaced by government settlements where broad-sweeping administration of Aboriginal people would occur. Under protection and then assimilation policies, Aboriginal residents of government settlements had their movement closely controlled and were cultivated to adopt new attitudes and practices towards language, land, food, raising babies and children, education, religion, health care, work, dress, shelter, marriage, money and ceremony. There were no police on the ground in settlements through this period, but they would be mobilised at strategic moments. By turns the settlement superintendent and Baptist minister wielded incomparable authority of a kind that turned upon intensive day-to-day interactions and intimate knowledge of goings on across residential camps and households.

The Intervention…dissolved distinctions between public and private space, allowing police to enter any Aboriginal house without a warrant and to apprehend if they reasonably believed a person to be drunk.

From the late 1960s assimilation was gradually replaced by a new policy approach described (in some ways misleadingly) as self-determination. Henceforth, new democratic structures were cultivated, informed by Aboriginal authority and social organisation. In the 1980s community government councils were established under NT legislation, vesting some degree of control in Aboriginal leaders over service delivery and other decisions that affected Aboriginal people. A proliferation of community organisations governed by Aboriginal boards followed. Organisations were supported by the formation of the Aboriginal and Torres Strait Islander Commission (ATSIC), whose democratic regional councils vested service and program delivery in local Aboriginal organisations.

In 1991 Warlpiri women at Yuendumu set up a night patrol to resolve disputes, deal with outbursts of substance abuse, and keep people safe. They operated as a vital conduit between their community and the police following the establishment of a permanent police presence in Yuendumu. Subsequently the Warlpiri community formed strong youth and justice organisations that became internationally renowned, such as the Mount Theo Substance Misuse Aboriginal Corporation, the Warlpiri Youth Development Aboriginal Corporation (WYDAC) and the Southern Tanami Kurdiji Indigenous Corporation, led by senior men and women working in conjunction with professional and volunteer youth workers. Through these organisations Warlpiri people have worked towards what they describe as 'two-way law', based on mutual respect between Anglo-Australian law and Warlpiri law. Throughout the 1990s and into the early 2000s a broad commitment to this approach encouraged a form of policing that accepted the practice of customary law, by and large without interference.

Yet perhaps paradoxically, the government era of 'self-determination' also heralded the beginning of a new period in which the regime of criminal justice would progressively be brought to bear on Aboriginal people from remote communities, as evidenced in steadily growing rates of Aboriginal imprisonment. Contradictory forces continued to operate through the 1980s and 1990s; on the one hand, relative autonomy enabled Warlpiri and other Aboriginal people living on Aboriginal land to pursue myriad projects in cultural revitalisation and intercultural community-making, but on the other, government programs established particular constraints on much of that activity.

On coming to power in 1996, Prime Minister John Howard foreshadowed his intention to bring an end to Indigenous-specific programs—to 'mainstream' the governance of Aboriginal affairs. Over the next decade Howard waged a moral campaign that demeaned, disparaged and dismantled structures of distinct Aboriginal and Torres Strait representation, most prominently ATSIC and its regional governance network. The abolition of ATSIC, fundamental opposition to Native Title and the undermining of reconciliation worked steadily to reset the place of Aboriginal people and their distinctive models of authority in Australian society.

The next phase of this political campaign directly homed in on governmental arrangements on Aboriginal land in the Northern Territory, a jurisdiction in which the Commonwealth had exceptional constitutional powers to intervene. It soon became clear that this phase of assimilation would be rolled out with a new kind of stealth. Bush communities were portrayed as places awash with domestic violence, child abuse, paedophile rings and broader dysfunctionality. No longer envisaged as idealised bastions of custom and culture, these were now seen as dangerous places where people needed

to be governed hard. The success of this campaign was realised not only in comprehensive legislative terms by federal and NT governments following the Emergency Intervention and its successor, 'Stronger Futures', but in the projection of a moral righteousness into this new 'tough love' governance model such that it secured broad public support, not only in conservative and right-wing circles but in powerful and vocal sections of the liberal Left. Bipartisan support for this policy stance has endured successive governments since 2007.

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To return to the chief minister's promise that 'consequences' would follow the investigations into the police killing of Kumanjayi Walker, we ask: what consequences might these be? There are three obvious lines of possibility.

The first would identify Walker's killing as an isolated, exceptional event and in so doing effectively endorse the status quo. The current surveillance-policing regime would continue undiminished, confirming Warlpiri people's sense that they are no longer safe in their houses and that there is no future in the places they call home.

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A second possibility would recognise the need for reassessment and redesign of discrete programs and protocols for policing.

A third possibility—and this is the vision that most closely accords with Warlpiri demands—is that governments be compelled to recognise that Walker's death is an inevitable culmination of systematic Aboriginal disempowerment and so enter into a genuine process of redesign of collaborative policing and devolved community administration on Aboriginal land.

The hurdles that stand in the way of such a possibility currently appear almost insurmountable. While our discussion conveys a sense of a criminal-justice regime that is exceptionally brutal, it is important to recognise that the Northern Territory's approach to policing its Indigenous population is just one instantiation of the larger penal-security complex that Australia and other liberal-democratic states have fully embraced in the wake of 9/11. A growing body of scholarship tracks not just escalating incarceration rates but the 'transit of empire', to borrow Chickasaw scholar Jodi Byrd's phrase: the movement across time and space of a shape-shifting constellation of settler-colonial practices and attitudes in contemporary deployments of racialised injustice. A larger comparative perspective would shed light on the connections between, for example, the governance regime currently enforced on Aboriginal people in the Northern Territory and the incarceration of asylum seekers in offshore detention. Alarmingly, in the wake of 9/11 Australia has passed more national-security legislation than any other Western democracy. This hyper-securitisation progressively expands the application of a punitive policing regime to all sorts of marginalised populations, and ultimately to all Australian citizens. It would be naive to imagine that either the Northern Territory or federal governments would break with such an entrenched agenda and pursue a differently ordered approach to Aboriginal people.

The Intervention and the resultant disempowerment of Indigenous communities bears a close relationship to punitive governance, cruel neglect and unchecked brutality. Why else would police be despatched to travel 300 kilometres in pursuit of a nineteen-year-old who was in breach of a suspended sentence—on the very day of the funeral of his close relative? Why would police violently enter a Warlpiri house, shoot this teenager, drag him out by his legs and then refuse to advise his family of his death or communicate with community leaders? Why did the Royal Flying Doctor Service require police assurance of their safety before they would issue a plane to Yuendumu? Why would a policeman and former decorated professional soldier shoot a young Warlpiri man three times rather than use other means of restraint? Why would the Territory Response Group (TRG)—a force with a history of involvement in deaths in custody and more recently incorporated into the national counter-terrorism force—be deployed to carry out general police duties on the streets of Alice Springs? (Just a week after Kumanjayi's death, another young Aboriginal man was hit by a TRG vehicle and was med-evacuated to Adelaide with critical injuries.)

For two decades a vigorously renewed colonial authority—operating in tandem federally and in the Northern Territory—has worked systematically to undermine Aboriginal authority. Across a suite of community-based projects as well as in public protests Warlpiri people have pushed back against these attacks and refused to submit to *kardiya* (white) forms of authority and ways of being. Kumanjayi Walker's shocking death has spectacularly enlivened the Warlpiri struggle. A key question now is whether government leaders such as Chief Minister Gunner will have the political will to follow through on his promises. There are myriad fault lines to be traversed, including the incessant demands of the white majority of the Northern Territory, who continue to call for tough law-and-order programs. In the volatile circumstances of the present and with a looming election, it would take extraordinary political courage to cultivate a new public attitude, let alone a new approach to governance that recognises the sanctity of Aboriginal law. Yet, only then might it be possible to end brutal violence towards Aboriginal people.

Note

A shorter version of this article appeared in *The Guardian* on 19 November 2019.