

PAPERLESS ARRESTS AS PREVENTIVE DETENTION:  
MOTION AND DOCUMENTATION IN THE GOVERNANCE OF INDIGENOUS  
PEOPLES OF AUSTRALIA

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ABSTRACT

*The 'paperless arrest' scheme in Australia is a detention regime in which motion and documentation are central to crime control and community protection. This article interrogates paperlessness as a political fantasy for policing alongside the routine documentary practices of police administration, including their effects on the movement of Aboriginal and Torres Strait Islander people. Operative since 2014 in Australia's Northern Territory (NT), the paperless arrest scheme provides police with the power to take an individual into custody for up to four hours if they believe, on reasonable grounds, that the individual has committed, or was about to commit, an infringement notice offence. This article frames paperless arrests as an instance of preventive detention continuous with the long-term regulation of alcohol consumption by Indigenous people in Australia, in relation to racialised norms of public propriety in urban space. It considers preventive detention beyond issues of legality and efficacy, examining local and material relations that organise the everyday governance of preventive detention in Northern Australia.<sup>2</sup>*

*Keywords:* alcohol policy; preventive detention; race; policing; bureaucracy

INTRODUCTION

On 14 August 2015, Northern Territory (NT) Coroner Greg Cavanagh delivered his findings in the inquest into the death in custody of Kumanjayi Langdon.<sup>3</sup> The Yuendumu artist was arrested by police under the paperless arrest scheme on 21 May 2015 for the offence of drinking alcohol in a regulated place in a designated area (Liquor Act s101U) a public park in the city of Darwin's CBD (Moore 2015). In Cavanagh's words, 'He was not causing any disruption before or during his arrest and at all times he was polite and cooperative' (2015, 4).

The coroner noted that the maximum penalty for Kumanjayi's offence is a fine of \$74, which he was issued before reaching the watch house. Cavanagh observed that:

although the offence carried no term of imprisonment, Kumanjayi was handcuffed in public, placed in an iron cage in the back of a police van, transported away from family and friends, presented at the watch house counter with his arms still handcuffed behind his back, searched, deprived of his property, sat down and made to take his shoes and socks off and detained for some hours in a cell built to house criminals. (2015, 5)

Such mundane details signal the embodied, slow, and unspectacular violence brought to bear upon Aboriginal and Torres Strait Islander people for drinking in public in Northern Australia. The case demonstrates how policing and the infringement notice are routinely called upon to manage a racialised aesthetics of civil society.

The paperless arrest scheme came into effect on 17 December 2014, through the passing of the *Police Administration Act 2014*. This law was part of the 'Pillars of Justice' criminal justice reforms, implemented by the NT Country Liberals Party (CLP), having returned to government in 2012 after a decade in opposition. Following its electoral triumph, the CLP abolished the previous government's alcohol reforms, including a requirement to present an identification card to purchase takeaway liquor and a banned drinker register for individuals taken into protective custody three times in three months and individuals convicted of alcohol related offences (Buckley 2014). In August 2016, the Territory Labor Party returned to government after a landslide victory, elected on a platform which included commitments to reinstate the banned drinker register and phase out another CLP initiative in Alcohol Mandatory Treatment. While the logics, actors, and effects of various alcohol programmes and policies require particularised assessment, both parties share an ongoing determination to be seen to be acting on the highly visible issue of Aboriginal alcohol consumption. Paperless Arrests is a particularly pernicious instance of this entrenched desire, if not governmental requirement, to intervene in Aboriginal lives.

This article examines paperless arrests as an instance of the increasingly normalised use of preventive detention to manage populations rendered exceptional through such regimes. It begins by outlining the recent history of the paperless arrest scheme, locating paperless arrests within an assemblage of contemporary NT strategies addressing Aboriginal people and alcohol con-

sumption, and outlining the judicial response to such regimes. As such, the paperless arrest scheme enters a cultural and legal terrain of adjacent governmental institutions and precedent norms concerning space, race, embodiment, and consumption which – as the idea of non-recording also implies – render its operation relatively invisible. Suggesting that paperless arrests signal the ongoing practice of settler colonial accumulation through dispossession (Brown 2014), the article considers the scheme's central logics and techniques as *motion* and *documentation*. While specific arrests may be spectacular, paperless arrests' slow violence depends on enforcing mundane norms of mobility and record-keeping. The article concludes by suggesting that analysis of the scheme should not be reduced to an ongoing contest between police and Aboriginal campers living outside the private property and public housing systems. On the one hand, paperless arrests signal the importance of the political legitimization of policing in the name of the public. On the other, the contribution of the Larrakia Nation Aboriginal Corporation (LNAC) – registered under the *Corporations (Aboriginal and Torres Strait Islander) Act* as a member-based organisation to represent and promote the interests of Larrakia people – to Aboriginal people's mobility troubles any straightforward rendering of repressive state power. Interventionist logics are variously employed and underpinned by control and care prerogatives, with a range of effects, including the constitution of intra-Aboriginal distinctions (Vincent 2016).

#### REGULATING ALCOHOL: GOVERNMENTAL REGIMES AND LEGAL RESPONSES

The contemporary assemblage of Northern Territory strategies to regulate alcohol consumption includes Alcohol Protection Orders (see Hunyor 2015), police temporary beat locations at liquor outlets, voluntary retailer initiatives (see Krien 2011), and Alcohol Mandatory Treatment (AMT). Under AMT in particular a Tribunal has the power to refer people who have been apprehended by police three or more times in two months as a result of public intoxication for mandatory treatment as a form of civil commitment for up to three months (see Lander, Gray, and Wilkes 2015; Buckley 2014). The paperless arrest provisions sit alongside such mechanisms, established through the insertion of Division 4AA into the *Police Administration Act 1978* (NT).

Under Section 133AB of the *Police Administration Act*, a member of the police can without a warrant detain an individual for up to four hours, or if that person is intoxicated, until the 'member believes on reasonable grounds that the person is no longer intoxicated' (2b). Pursuant to Section 123, the arrest can be made on the condition that police believed that person 'has committed, is committing or is about to commit, an offence that is an infringement

notice offence.’ ‘Infringement Notice Offences’ are incorporated from the *Summary Offences Regulations*, the *Liquor Regulations*, and the *Misuse of Drugs Act*. These offences are broad ranging and minor, including ‘Undue noise at a social gathering after midnight’, ‘Dumping of certain containers’, and ‘Failure to keep clean yards and causing nuisance’. Regarding alcohol, relevant offences include but are not limited to ‘Bringing in, possessing or consuming alcohol’ in a general or special restricted area or restricted premises, ‘Contravening permit conditions on alcohol possession or consumption in a special restricted area’, and ‘Consumption of liquor at a regulated place causing nuisance’. These offences would typically result in a fine rather than a custodial sentence; however, the accumulation of unpaid fines can contribute to subsequent imprisonment. The crux of paperless arrests is the power to detain the individual for up to four hours following the arrest.

At the end of the custody period, police may release the arrested person unconditionally, with an infringement notice, on bail, or bring them before a justice or court. Despite the possible outcome of unconditional release, the individual remains subject to usual arrest procedures, in which they can be searched and have items removed, and during which police may use reasonable force. During the custody period, there is no right afforded for a bail application, legal representation, or a court appearance within a confined period of time (Anthony 2015).

As of November 2015, about 2,000 arrests had been made under the scheme, with almost 80 per cent of arrests involving Aboriginal people (Human Rights Law Centre 2015). For the former Chief Minister Adam Giles and former Attorney-General John Elferink, the scheme’s aims centrally concerned the functions of police. In Parliament, Elferink claimed that the paperless arrest option allowed police to deal with arrested individuals ‘more expeditiously’, enabling ‘police to return to their patrol in a more timely fashion, as opposed to being detained for long periods preparing necessary paperwork for a court to consider the charges’ (Northern Territory 2014). Elferink framed the ‘catch-and-release’ scheme as both superior to precedent public nuisance laws, under which an individual might be issued with a fine but not ‘move on’, and as providing police with a political mandate for controlling public space. The scheme has been attributed to ‘seeing crime at record low levels in the Northern Territory’ (Elferink, quoted in Carlisle 2015). However, no evidence of such decreases exists. If it did, it would contradict research that shows that public order policing escalates antagonistic relations between police and people living in public spaces, and the number of arrests of such people for offences including offensive language, resisting arrest, and assaulting police (Yang 2015, 23).

Straightforward comparisons are possible between paperless arrests and the practices examined in the 1987–1991 *Royal Commission into Aboriginal Deaths in Custody* (Johnston 1991, hereafter RCIADIC). A key RCIADIC recommendation was that arrest should be ‘the sanction of last resort in dealing with offenders’ (Johnston 1991, 5 87a). Forty of these recommendations related to reducing the over-representation of Aboriginal people in custody, including for public drunkenness offences (Cavanagh 2015).

In his coronial inquest, Cavanagh found that Kumanjayi died because chronic health conditions caused his heart to cease functioning (2015, 3). The coroner found that while Kumanjayi’s custodial health assessment and questionnaire were completed satisfactorily, neither the nurse nor police ‘took seriously Kumanjayi’s request to see a doctor’ (p.15). He concluded that the nurse’s assessment, ‘whilst not thorough, was adequate, and what might be expected in the context of a very demanding shift’ (pp.17–18). Acknowledging the ‘enormous pressures on Police and Nurses as a result of the paperless arrest scheme’ (p.5), Cavanagh found the arrest to be lawful but questioned whether it was unreasonable and disproportionate, given alternative options available to police.

For Sherene Razack, inquests into Aboriginal deaths in custody operate as public ceremonies that medicalise those deaths through alcoholism and eschew ‘the violence of an ongoing colonialism’ (2011, 1). The difficulty of distinguishing prior medical conditions from the negligence or abuse of medical staff or law enforcement, allows the inquest to suggest death would have occurred irrespective of detention and despite professional recognition of a duty of care (Cunneen 2006). For Razack, ignoring Kumanjayi’s request to see a doctor would likely exemplify an implicit presumption of suffering associated with Aboriginal bodies, ‘considered by police and medical staff as bodies on whom a full measure of care would be wasted, bodies marked for death’ (2011, 6–7). This pathologisation of Aboriginal bodies nonetheless encourages exceptional governmental strategies, circumscribed by territorial relationships between race and geography (Wilson Gilmore 2002), and effecting the consolidation of state power through their implementation (Ferreira da Silva 2009). If such strategies do not name Aboriginal people explicitly (such as in the Northern Territory Emergency Response, ‘The Intervention’ [Moreton-Robinson 2014]),<sup>4</sup> Aboriginal people remain disproportionately affected by them (such as in paperless arrests and Alcohol Mandatory Treatment).

The potential for paperless arrests to increase detention and thus workload for police and custody nurses risks undermining custodial care. Cavanagh’s coronial findings go beyond what Razack critiques as inquests’ typically nar-

row concerns with procedural measures, calling for paperless arrests laws to be repealed. Nonetheless, the Attorney-General dismissed the Coroner's recommendation as 'an opinion', stating, 'OK, nobody dies in custody, but the question I have in response then is: is it better that they die in a gutter?' (quoted in Davidson 2015). Both the disregard of the Coroner's recommendation and the Attorney-General's statement signal the way ill-health is presumed to attend Aboriginal bodies in such worldviews, wherein an interventionist approach in the form of police custody is deemed a response to rather than a cause of poor health, and is thus banal and necessary.

Three months after Cavanagh's coronial findings, the High Court of Australia handed down its ruling in the case brought by the North Australian Aboriginal Justice Agency (NAAJA) against the constitutional validity of the paperless arrest scheme. The second plaintiff was Miranda Bowden, an Aboriginal woman from the Katherine region who was arrested for an alcohol offence under the scheme and detained for twelve hours (Hunyor 2015). NAAJA argued that the law underpinning the scheme is invalid on two grounds. Firstly, it grants the NT Executive, or police, powers that are penal in nature – in determining whether, and for how long, to detain an individual on the grounds of their perceived intoxication or in anticipation of their committing an infringement notice offence – which contradicts the Commonwealth separation of powers doctrine. Secondly, the powers conferred on the Executive undermine the institutional integrity of the courts (Hunyor 2015).

The High Court ruled against the plaintiffs by a majority of 6 to 1. One point of contention concerned when police should attempt to bring an arrested party before a justice or a court, or, alternatively, release them. In their joint judgement Chief Justice French and Justices Bell and Kiefel ruled that the law requires that an individual be released or charged 'as soon as is practicable after being taken into custody' (NAAJA v NT 2015, 11). They suggested that in a case where police deemed that an individual was about to commit an infringement notice offence,

it is difficult to see what lawful purpose would be served in detaining that person under Div 4AA for more than the very short time necessary to prevent him or her from committing the offence and to establish his or her identity as required by s133AC [...] That application of Div 4AA militates against any suggestion that it authorises an officer to keep a person in custody for four hours regardless of the circumstances. (p.17)

Justices Nettle and Gordon expressed similar faith in police to circumscribe the scheme's application (p.84). That is, the judgements emphasised that the operation of arrest and custody under Div 4AA was lawful, confined by appropriate criteria, and detention was deemed administrative rather than punitive in character (pp.16–17). Further, excepting situations in which 'the offence is continuing or there is an ongoing risk to public safety or order' (p.84), the judgements questioned whether the power to detain an individual for the time specified in the Act could be legitimately exercised for an infringement notice offence (Brull 2015).

Langdon and Bowden's experiences engender doubt about whether this expectation to curtail detention will be effectively implemented. Justice Gageler, dissenting, expressed concern that the law provides no strict limit on the length of detention, ultimately leaving it to police discretion (*NAAJA v NT* 2015, 37). As Markus Dubber and Mariana Valverde note, 'discretion is a necessary feature of all forms of governance that are oriented toward prevention' (2006, 5); however, the space granted to discretionary action and accountability for the effects of discretionary decision-making are highly varied. In the paperless arrest scheme, discretionary power also exists in adjudications of 'public safety or order' and where police deem an individual to be intoxicated. While an individual is in custody, police are not required to determine the state of intoxication; thus, time in custody is liable to extend beyond the point when the person is no longer intoxicated or a risk to public safety or order. Police discretion has been identified as a contributing factor to the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system, in practices such as 'diversion, cautioning, arresting and charging, through to bail decisions and available sentencing options' (Schwartz 2013, 39).

The paperless arrest scheme thus continues to legitimate police arrest and custody to regulate public drinking. It does so despite the lack of evidence of its efficacy for reducing crime or alcohol-related harm, despite a coroner's call that it be repealed, and despite a subsequent High Court decision that saw no legitimate reason to detain individuals beyond a 'practicable' period. Having described the political and legislative contexts underpinning the regime, I now want to consider paperless arrests as an instance of preventive detention, including through its central logics and techniques of motion and documentation.

#### PREVENTIVE DETENTION AS EVERYDAY GOVERNANCE

Paperless arrests is an instance of the wider trend of preventive detention re-

gimes in recent Australian governance. Preventive detention takes various forms – in prison as part of a criminal sentence or for therapeutic objectives, in other secure facilities, and under control orders (Keyzer 2013) – and is applied to various populations, including potential terrorists, the mentally ill, and asylum seekers. For example, since 2003 Australian jurisdictions have established regimes involving post-sentence extended supervision and continuing detention orders for sex offenders which are implemented through risk assessment, community custodial institutions, work and mobility restrictions, and police surveillance (Grealy 2012; 2014).

Analysis of preventive detention tends to focus on issues of legality and efficacy. Legal concerns include whether such regimes undermine procedural fairness and a presumption of innocence, contradict principles of double and disproportionate punishment, or breach human rights. Efficacy concerns revolve around specific technologies, from custodial architecture to actuarial risk assessment tools. Jurisprudential debates typically oppose the competing logics of individual rights and community protection, frequently deeming detention a non-punitive security measure. In Kumanjaya Langdon's coronial inquest, counsel for the NT Police and Department of Health admitted that the paperless arrest scheme was being deliberately employed as preventive detention, to 'deescalate' situations through people's removal (Cavanagh 2015, 27). In *NAAJA v NT* the plaintiffs argued for the punitive character of paperless arrests; however, the majority judgement determined the scheme did not provide 'detention for a punitive or penal purpose' (p.17). Justice Gageler, dissenting (and signalling competing bases for making legal determinations about what constitutes punishment), argued that detention under Div 4AA is punitive, following police 'acting not as an accuser but as a judge' (*NAAJA v NT* 2015, 40). Across various preventive detention regimes, juridical adjudications of their punitive character depend on the significance of temporality (pre-charge or post-conviction), spatiality (in a prison or community-based facility), intent (executive or legislative), and effect (for detained individuals and other stakeholders).

Arlie Loughnan and Sabine Selchow suggest that analyses of preventive detention should move beyond questions of legality and efficacy 'to ask what preventive detention does to society' (2013, 263). Within the legal framework, we could submit that the paperless arrest scheme uses arrest and custody as ends in themselves, locating punishment too early in the criminal justice process. Where arrest can follow the police's determination that an individual is *about* to commit an infringement notice offence, the legislation exemplifies a pre-emptive rationality on behalf of future harms, thus, expanding custody provisions for minor offences which do not typically warrant this restriction



on liberty. This use of preventive detention for crime control is exemplary of David Garland's (2001) 'culture of control' and of Malcolm Feeley and Jonathan Simon's (1992) 'new penology': managerial rather than transformative, and implemented for precautionary politics in a 'pre-crime' society (Zedner 2007).

Paperless arrests and the post-sentence detention of serious sex offenders involve qualitatively different harms, and interventions occur at opposite temporal junctures in criminal justice.<sup>5</sup> Anxieties about 'community protection' respectively concern children's safety and racialised standards of public space and propriety. Nonetheless, both cases illustrate liberalism's balancing act between liberty and security (Foucault 2008, 329), and the recent mainstreaming in criminology of 'non-punitive', administrative detention to address crime control (Zedner 2016). Such regimes emerge in relation to 'exceptional' sub-groups of offenders, whose actions contravene deeply held liberal norms – including about the sexual vulnerability of minors and the public-private spatial distinction. The paperless arrest scheme, rather than establishing an exception to the law, demonstrates the racial contract's application of universal law to respond to cultural alterity (Mills 1997; Vincent 2016).

### *Motion*

The implementation of paperless arrests signals a government strategy to regulate space according to racialised conceptions of public propriety and community. In his coronial findings, Cavanagh emphasised that a large number of Aboriginal people were being arrested for consuming alcohol in public spaces geographically proximate to businesses predominantly catering to white clientele (2015, 28). NT Police Commissioner Reece Kershaw stated that 'Our officers don't discriminate [...] If those areas are designated or public restricted areas then we enforce the regulations [...] no matter what race or colour you are from' (quoted in La Canna 2015). This typical appeal to formal legal equality disavows the scheme's differentiated effects in consolidating a licit geography for alcohol consumption and in encouraging dangerous drinking practices to avoid confiscation or arrest (Brady 1990).

This discourse of formal equality conceptualises social order 'in a depoliticised and dehistoricised context' (Cunneen 2001, 181). A relevant historical precedent is the NT's 'Two kilometre law', introduced in 1983 and under which restrictions were placed on alcohol consumption in public places within two kilometres of any licensed premises (Brady 1990, 204). Peter d'Abbs (2012) describes how former alcohol legislation based on explicit racial distinctions has been largely replaced by spatialised regimes with racialised effects, consoli-

dated through the competing cultural figures of the (white) ‘Territorian’ and the (Aboriginal) ‘problem drinker’. Chris Cunneen (2001) argues that policing practices, including through the application of summary offences, have historically excluded Aboriginal people from public life, and rendered their private lives public, through the reserve, mission, and settlement systems.

Settler colonial discourse on the formal accessibility of commercial establishments and the appropriate use of public space also effaces the networked context of NT alcohol regulations and its migration effects. Catherine Holmes and Eva McRae-Williams (2008) argue that the Intervention, including measures prohibiting alcohol consumption in Aboriginal communities, contributed to migration to Darwin and other Northern Territory urban centres, especially into its long-grass population.<sup>6</sup> People move to and camp in the long-grass for a range of reasons, including to escape disputes, following familial deaths, to access services, and for recreation, including drinking. The experience of long-grassing, therefore, regularly involves the negotiation of traumas and related illness, social stigmatisation and harassment, and exposure to harms such as alcohol misuse and violence (p. 64). Long-grassing also involves ‘a high level of localised mobility’ (p. 30), with campsites determined by access to resources, amenities and aesthetics, proximity to social obligations, safety, and affordability. With notable exceptions, many individuals interviewed by Holmes and McRae-Williams highlighted police as contributing to their everyday experience of insecurity and harassment.

Along with Darwin City Council’s by-law 103, which prohibits sleeping between sunrise and sunset in public places (Goldie 2002), the paperless arrests scheme disproportionately affects individuals experiencing long-term homelessness and long-grass campers, many of whom have homes elsewhere (Fisher 2013). For Elferink, such living circumstances underpin a presumption of imminent offending and a precautionary, interventionist approach: ‘Because it is those people who then escalate into further offending down the track. Where do these people defecate, where do these people urinate?’ (quoted in Carlisle 2015). The former Attorney-General’s opinion is typical of non-Indigenous views of long-grass camping, which give little regard to the factors contributing to rural-to-urban migration, to alternative accommodation options, and to positive forms of sociality that camping facilitates (Holmes and McRae-Williams 2008). Concerns about embodied Aboriginality as public drunkenness, violence, and (mis)use of amenities and shared spaces, exist alongside a dominant conception of long-grass campers as ‘itinerant’. However, interview data suggests the long-grass population contains large cohorts of *both* residents (in Darwin for over three years) and ‘tourists’ (Carson, Carson, and Taylor 2013).

Writing on 1990s homeless policies in New York City (NYC), including the disbanding of city ‘encampments’ and the movement of residents into short-term shelters, Allen Feldman argues that ‘the quality-of-life “crimes” of the homeless primarily threatened commodified units of space, not associationist space’ (2001, 65). Feldman cautions against the use of *encampment* to describe homes and informal drug clinics established in post-industrial NYC, as it discursively erases the networks that connect such assemblages with other people, neighbourhoods, and institutions, and conceptualises inhabitants as temporary non-residents. In Darwin, the permanence and stability of Aboriginal communities differs among former reserves (such as Bagot community), more recent leaseholds (such as One Mile Dam), and precarious long-grass campsites in areas such as Mindil Beach, the mangroves in Coconut Grove and Rapid Creek, the northern beaches, and elsewhere. Spatial stability facilitates both social security and state surveillance; weeds and rubbish are often employed to signify a camp’s presence and re-route non-Indigenous publics (Lea *et al.* 2012). Avoiding disbandment, including through the disruption of paperless arrests, depends on both the extent that campers are visible to property owners and the degree to which their use of space conflicts with other users, including at sites of potential commercial development and of middle-class leisure.

Nonetheless, ‘the spatial management necessary for ongoing processes of “accumulation through dispossession”’ is not straightforwardly about the removal of Aboriginal people’s presence (Lea *et al.* 2012, 140). The importance of the NT’s tourist and art economies demand an ongoing visibility and proximity, where Indigeneity is objectified for consumption. If Aboriginal campers are conceptualised as tourists rather than either residents or itinerants, they are ‘problem tourists’ (Carson, Carson, and Taylor 2013). Perceived to ‘run amok’ and to compete with international tourists and other residents in the use of public amenities (Fisher 2012), they are deemed not to contribute to the economy. For Tess Lea *et al.*, this ambivalence over Aboriginal visibility is most marked in spaces designated for touristic consumption in Darwin’s CBD, where Aboriginal campers’ motility is heavily curtailed by how they signify as consumers (2012, 152).

Paperless arrests – through police patrols and unmarked surveillance – is one NT government strategy among others that moves Aboriginal people deemed ‘not clean, sober, house-dwelling, and suitable’ to urban peripheries (Lea *et al.* 2012, 150). The power to detain underpins a relatively innocuous requirement to move on, the iterative enactment of which constitutes ongoing dispossession. Lea *et al.* (2012) describe the history of Smith St Mall in Darwin’s CBD, where technologies such as foot patrols, fencing, CCTV, trees, and the commercialisa-

tion of seating have been employed to prevent Aboriginal congregation. This effects a response by Aboriginal people in perpetual movement through city spaces. Such pedestrian routing practices must distinguish waiting, or pausing, from loitering (Goffman 1971), but the choice to recognise this difference remains within police discretion. For Lea *et al.*, the key biopolitical technique of governance is motion, and cultural stereotypes render perpetual mobility normal or natural; for Patrick Wolfe, ‘the reproach of nomadism renders the native removable’ (quoted in Lea *et al.* 2012, 152). Perpetual movement ceases through police custody or in peripheral urban spaces distant from social services. Such spaces provide some respite from state harassment but also have the dangers of hidden places, including sexual assault (Fisher 2012).

Enacted within a geography signposted to designate acceptable spaces for alcohol use, the policing of paperless arrests thus employs the kinetic strategies of moving-on, disbandment, and custody to consolidate state power through spatial discipline in relation to racialised public norms of embodied consumption. Public space is a terrain constituted through the contestation of forces over mobility, which are curtailed and coerced in relation to differences in social power and for ends including capital accumulation, the aesthetics of ‘civil society’, and public health. In Northern Australia, the rights to move and to stay still are not evenly distributed.

### *Documentation*

Alongside motion, the paperless arrest scheme signals discord over the role and effects of documentation in public governance. The CLP’s justification for the scheme emphasised the reduction in bureaucratic labour for police. For Elferink, police should not have to complete “two and a half hours of paperwork” for minor offences that will “very likely lead to a guilty plea” (quoted in Whyte 2015). In office history, paperwork has held conflicting meanings, representing ‘both total control and utter confusion’ (Haigh 2012, 339). The fantasy of the ‘paperless office’ reflects the desire ‘to move from an inefficient present to a gloriously efficient future’ (Sellen and Harper 2002, 26). The political discourse of paperless arrests employs paperlessness to convey publicly state support for ‘muscular’ policing with new powers and increased autonomy. Patrolling urban space and completing paperwork are juxtaposed as gendered images of police work, where the physical, immediate, and unpredictable characteristics of public surveillance are contrasted with the measured, even tedious, rhythms of paperwork, its ‘immobile’ practice, and paper as outmoded technology. In this CLP discourse, paperlessness is rendered a symbol of control, autonomy, and efficiency over work processes for sovereign masculinities embodying the

city of Darwin's exceptionalist frontier ideology. The fantasy of paperlessness is thus not about paper itself but about the practice of record-keeping. We might therefore ask whether a shift towards paperlessness is simply a return to retrograde policing.

Critics of paperless arrests have emphasised the importance of documentation for exercising individual rights. Inadequate evidence of identification produces impediments to accessing social welfare, voting, visiting a prison, and obtaining a driver's licence, passport, or tax file number (Orenstein 2008). Processes for obtaining identification documents can be 'complicated, time-consuming, and disempowering' (p.14), and are exacerbated by issues including English literacy and fixed address requirements. Finn, Srinivasan, and Veeraraghavan (2014) characterise individuals who are unable to acquire such identification – or are unrecognised by bureaucratic categories – as 'infrastructural orphans', while Marie-Andrée Jacob (2007) coins the phrase 'form-made persons' to highlight the role of state bureaucracy in subject recognition.

Liberal governance conducted to economic, disciplinary, or punitive ends is an inter-institutional communicative practice organised by documents that make citizens legible (Finn, Srinivasan, and Veeraraghavan 2014). Form-made persons are subjects of rights, visible to welfare systems through the documentation of case histories, and thus also subject to surveillance, measurement, and intervention (Foucault 1977). For Lisa Gitelman, documents are defined by 'the know-show function' (2014, 1), and 'If all documents share a certain "horizon of expectation", then [...] that horizon is accountability' (p.2). The paperwork of police administration in arrest procedures contracts individuals to future events (Reed 2006), and ensures that important information about an individual is available while she or he is in custody, and afterwards: for medical professionals, courts, individuals, families, coroners, and others (Yang 2015).

Along with arrest and detention, the fine is the central technology of infringement notice offences, which form the basis of the paperless arrest scheme. Literally and figuratively paper, the fine records the individual's offence and obliges payment of a financial penalty. Homelessness increases the likelihood of a person being fined by councils, police, and courts for offences related to drinking in public, littering, offensive language, and public transport (Adams 2012). The relative incapacity of people experiencing homelessness to pay such fines generates further consequences for offenders and state administration, generating additional file work for legal aid, Centrelink, and financial counsellors. Paper makes more paper, in a circular economy that largely redirects deductions from state social security payments to the accounts of other gov-

ernment agencies.

The failure to pay fines also instigates series of events, including enforcement fees, the suspension or cancellation of driving licences and car registrations, the seizure of assets or wages, community service, and imprisonment (Spiers Williams and Gilbert 2011; O'Malley 2011).<sup>7</sup> The regularity of such consequences shows the ineffective deterrent capacity of fines, which exacerbate the conditions that are being penalised. Driving related penalties in particular have flow-on effects for individuals' access to work and for community members who are dependent on drivers and cars. These effects increase the likelihood of further offences being committed, such as unlicensed driving. Mary Spiers Williams and Robyn Gilbert record that 'On 30 June 2009, 5.5% of Indigenous prisoners in Australia, or 408 people, had as their most serious offence "traffic and vehicle regulatory offences"' (2011, 5). Such imprisonment can be related to secondary offending, for example, breaching a community service order established following a fine default. The paperless arrest scheme – under which provisions for arrest and detention position an on-the-spot fine as the less punitive alternative – bolsters this cycle of fines–default–increased penalty, further curtailing Aboriginal people's mobility.

In addition to the prevalence of fines instead of and following a paperless arrest, it is notable that in *NAAJA v NT* (2015), the High Court found that the NT Government had failed to demonstrate any reduction in bureaucratic labour for police. Section 133AC(1) of the *Police Administration Act* states that once a person is taken into custody, a member of the police 'must establish the person's identity by taking and recording the person's name and further information relevant to the person's identification, including photographs, fingerprints and other biometric identifiers'. Cavanagh (2015) found that Kumanjayi Langdon was subject to typical arrest procedures and a range of related record-keeping. The relevant documents include an initial police log an arrest card, a custody health assessment, a property receipt, a custody log, a case summary, and an infringement notice. Documents such as custody health checks and admissions records have immediate consequences for institutional management and subsequent effects in different contexts, such as court proceedings (Brennais 2006). In arrest cards and infringement notices concerning public space offences, 'disorderly conduct' is an especially opaque category and difficult to contest after its designation. 'Disorderly' is less a precise indicator of an offender's behaviour than it is an indicator of police discretion to interpret behaviour normatively in order to justify an individual's apprehension, including behaviour directly responding to potential arrest.

In short, despite the ‘paperless’ qualifier, documentary practices remain central to the paperless arrest scheme’s attempt to control public space. In Jonathon Hunyor’s words, “Paperless arrest” is, in fact, a misnomer. The power of arrest is completely unchanged by the regime as is the amount of paperwork involved’ (2015, 4). Compared with ‘release with an on-the-spot fine’, Hunyor (2015) notes, release without charge from custody actually produces *more* paperwork for police, who remain subject to typical arrest and processing requirements.

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How might we understand this difference between paperless rhetoric and documented reality? To assume a paranoid reading, processing paperwork ‘is a handy opportunity’ to collect personal data useful for future policing (Hunyor 2015, 4). Understood as such and alongside Alcohol Protection Orders and Alcohol Mandatory Treatment, this move-on mechanism is one more alcohol-focused strategy for continuing accumulation through dispossession, in particular regarding commercial development and residential property markets. Such motivations are obscured in public discourse as Aboriginal people are cast in popular morality plays about public drunkenness (Lea *et al.* 2012), police are interpellated by government to be less ‘arrest averse’ (Elferink, quoted in Brull 2015), and the public reprioritises freedom of movement and due process considerations below ‘community protection’. This is a ‘strong theory’ of Indigenous governance under a neoliberal racial state (Sedgwick 2003, 134; Goldberg 2002, 104), concerning intersecting policies, regimes, technologies, and authorities reified as a ‘security-industrial complex’ that profits from the strategic displacement and reproduction of exceptional or ‘surplus’ populations.

The paperless qualifier may also simply differentiate the scheme from more punitive incarceration within a broader terrain of liberal policy-making ‘common sense’ regarding public space, health, and community development. This scheme applies habituated modes of white aesthetic and bureaucratic assessment and the logic of formal legal equality to private property as the dominant dwelling culture. As such, the public–private spatial distinction central to liberal geography and contemporary urban development stratifies policing to intervene in Aboriginal lives by appealing to a reductionist opposition between necessary intervention and imminent tragedy: ‘custody or gutter’. The state of letting die that Elizabeth Povinelli (2008) characterises as the withdrawal of health services and the individualisation of socioeconomic failure in Indigenous lifeworlds is fortified alongside and through policing with little rehabilitative intent or effect. Such policing has no bearing on the adjacent governmental factors contributing to the publicness of Aboriginal campers in Darwin: punitive Federal policies in Aboriginal communities; expansive pri-

vate development; inadequate public amenities; mass incarceration; and public housing strategies constructing 'non houses' (Lea and Pholeros 2009, 188).

In this way, the paperless arrest scheme is underpinned by reactive post-election policy engineering for political point-scoring, while its form reflects the desire for sellable – 'paperless' – solutions to complex issues. The scheme encapsulates social policy-makers' desire for novel approaches in mundane institutional contexts where interventionist common sense about Aboriginal 'clients', understood in terms of deficit and in need of redress, is so entrenched that policy failure can only multiply subsequent interventions. This 'dynamic inertia' – of perpetual policy design, implementation, assessment, and redesign – characterises the 'vampiric dependence' of multiple agencies on Aboriginal pathology (Lea 2008, 51–52).

The paperless arrest scheme clearly impacts on Aboriginal people disproportionately (if not almost exclusively). A strategy of critique through exposure by citing such racialised effects is unlikely to concern the scheme's proponents and supporters, for whom this intervention has been *deliberately* exemplary and spectacular. While certain institutions (Alcohol Mandatory Treatment) and categories ('disorderly conduct') obscure the details of governance in practice, the paperless arrest scheme has been widely promoted and is apparently popular. At stake in the scheme is the universalising of norms regarding distinctions between public and private space and the proper use of the former, as well as the legitimate use of arrest, among other mobility and documentary techniques, to uphold such norms for citizens in general. That is, the paperless arrest scheme involves the deployment of state force to consolidate common sense across policy, political, policing, professional, and public lifeworlds regarding who can live where and how. For David Theo Goldberg, this situation might exemplify the modern racial state's basis in 'the internalization of exclusions' (2002, 9).

Of course, the enactment of the scheme within the racial state does not require lateral coherence across agencies intervening in the lives of Aboriginal campers nor consistent motivations for individual actors. Such stakeholders also advocate for alternative approaches to reduce harm and injustice for Aboriginal campers, including through better and increased access to public amenities, the curtailed use of police discretion, and supply side restrictions on alcohol producers and distributors. These differences in public policy on alcohol consumption in public space are important to note, and provide real potential for improving health and well-being outcomes in the targeted population of public drinkers. This potential exists even if such alternative approaches do not



trouble the ongoing structure of the racial state and Aboriginal people as an object of government on which a range of authorities depend.

#### THE STATE OF PREVENTIVE DETENTION

Examining preventive detention beyond questions of legality and efficacy requires considering the meanings associated with particular offences and offenders. It also requires analysing the material practices of various actors involved in producing 'security'. Such analysis is important in order to evade conceptions of the state read straightforwardly from the law or as a 'cold monster' (Foucault 2008, 6), including one formulated along unproblematised racial distinctions. Further work on recent alcohol policies in the NT might consider the way the Aboriginality of former Chief Minister Adam Giles (Maddison 2010) and public discourse on an expanding Aboriginal 'middle class' (Lahn 2013) have been variously used to legitimate interventions undertaken on the universalising grounds of public health and harm reduction, effacing or rejecting the agentic decisions of Aboriginal campers. Normative and empirical whiteness underpins multiple stakeholder groups relevant to the paperless arrests regime (the police, bureaucrats, health professionals, home-owners, CBD business managers) and modes of spatial practice and configuration (associationist and commodified). However, careful consideration of preventive detention as practice illustrates the entanglement of multiple authorities conducting conduct through techniques of motion and documentation and to various ends.

Engaged for decades with and in NT government and bureaucracy, the Larrakia Nation Aboriginal Corporation (LNAC) plays a mediating role between long-grass campers and the state in Darwin. For Daniel Fisher,

Larrakia concerns have increasingly tended toward mitigating the forms of self-harm, physical trauma, and chronic illness that long-grass camping often entails for campers themselves, foregrounding the status of Darwin as itself Aboriginal country, and seeking to amplify Larrakia involvement in knowledge production about and service delivery to Aboriginal people. (2012, 172)

Fisher describes a former campaign in which the LNAC designed posters on cultural protocols for visiting their country, expressing a responsibility to look after visitors, including campers (174–175). Such pronouncements indicate the LNAC's connections with other Aboriginal peoples, and with the NT government, which has repeatedly contested a Larrakia native title claim in exchange

for commercial real estate and forms of de facto recognition (p.176).

Reflecting on the practice of preventive detention and mobility here, we can point first to the LNAC Night Patrol – a free transport service that moves intoxicated people, with their permission, to the ‘spin-dry’ (a sobering out shelter) or to their homes or accommodation. A Night Patrol worker, Ituma, describes the relationship between short-term, preventive detention and the longer-term cycle of incarceration: ‘Yes, just find a better place than the watchhouse, because you end up with a fine, people don’t have an income to pay that, it’s just an ongoing domino effect of problems that come after that’ (quoted in Carlisle 2015). The Night Patrol thus indigenises social service provision and reduces contact between Aboriginal people and the criminal justice system. The LNAC and other Aboriginal organisations registered under the *Corporations (Aboriginal and Torres Strait Islander) Act* have also been granted the capacity to issue photo identification recognised by banks, post offices, airlines, and welfare agencies. Fisher suggests that ‘The capacity to issue functioning, recognized ID cards [...] might be the clearest index of the Larrakia Nation’s success in re-establishing their claims as traditional owners’ (2013, 249).

In the Night Patrol and the production and verification of identity documents, the LNAC facilitates the mobility of Darwin’s long-grass populations alongside, rather than for, the paperless arrests regime.<sup>8</sup> Such practices exhibit a ‘state effect’ or a ‘becoming like the state’ situation for the LNAC. But to characterise the LNAC as having acquiesced to state prerogatives in the paperless arrest scheme would misrepresent its everyday work, the social relations involved, and the motivations of its employees. It would be equally reductive to conceive the LNAC as simply resisting ‘state’ intervention in Aboriginal lives. Instead, further consideration might be given to the production of intra-Aboriginal relations in Northern Australia or what Eve Vincent calls the production of ‘other Others’ (2016, 2). In the legitimation of the LNAC as social services provider and as mediator between the government and long-grass campers, adjacent versions of respectable and vulnerable Aboriginality are consolidated, reinscribing the latter as requiring coercive intervention on humanitarian grounds.

## CONCLUSION

This article has examined preventive detention as an intersecting network of material practices in the paperless arrests regime. It has demonstrated that in order to understand the paperless arrests regime it must be analysed both as a legal framework and within the messy terrain of culture it seeks to reform. The article has shown how, by extending the custodial powers of police, the scheme

consolidates a racialised geography on behalf of white norms about dwelling and leisure, the commercialisation of public space, and through documentary techniques that incorporate individuals into cycles of ongoing surveillance and custody. This occurs within a broader historical context of ongoing settler colonial accumulation through dispossession exacerbated by the contemporary importance of real estate and tourism to Darwin's 'real' economy. The significance of the LNAC to how we might understand the mobility of Aboriginal campers in Darwin highlights the specific unfolding of particular preventive detention regimes even as we might locate one case as continuous with local histories and contemporary criminological trends in regulating public space.

#### NOTES

- 1 Liam is a Postdoctoral Research Associate in the Department of Gender and Cultural Studies at the University of Sydney. His research examines governmental policy and practices in a number of fields, including media classification, preventive detention, higher degree research supervision, and the policing of alcohol consumption.  
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- 2 Article submitted to *Sites* on 21 December 2016.
- 3 This article employs the local convention 'Kumanjayi' to refer to the deceased (see Mackinolty and Gallacher n.d.).
- 4 The Northern Territory Emergency Response ('The Intervention') was implemented in 2007 by John Howard's coalition government under claims of widespread child sexual abuse in Indigenous communities. Wide-ranging measures were introduced – and continued when the Labor Party assumed government in 2007 – including restrictions on alcohol and pornography, the compulsory acquisition of township leases, and the quarantining of welfare incomes, among others (Altman 2007).
- 5 A historical NT precedent for preventive arrest without a warrant exists in the former *Police and Police Offences Ordinance 1923*. A contemporary comparison can be made with cases of Aboriginal Australians being held indefinitely in prison without a criminal conviction (Hunyor 2012).
- 6 'Long-grassing' is a colloquial term for Aboriginal people camping in public spaces in Darwin. The informality of long grassing provides a challenge for data collection and definitive claims regarding causation in migration.

- 7 The payment of fines is further complicated for many recipients of social security in the Northern Territory by legislation governing compulsory income management that does not include fines as a priority need (Bielefeld 2014, 18).
- 8 See Eldridge (2013) and Fisher (2013) on a range of other services provided by the LNAC to long-grass campers.

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