Racial Profiling, Australian Criminology and the Creation of Statistical ‘Facts’: A Response to Shepherd and Spivak

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Abstract

Stephane Shepherd and Benjamin Spivak in their article ‘Estimating the extent and nature of offending by Sudanese-born individuals in Victoria’, published in the Australian and New Zealand Journal of Criminology, suggest that recent patterns of alleged offending among South Sudanese young people “may be more reflective of an increased involvement in crime for a small number of young men, rather than systemic policing bias or the natural consequence of a group’s demographics” (Shepherd & Spivak, 2020, p. 364). In this article, we interrogate the research methodology and findings of Shepherd and Spivak’s (2020) study. We argue that among the crucial flaws of the article is the substantive lack of interrogation of crime statistics on alleged offending and the article’s failure to triangulate this data with the diverse perspectives and voices of South Sudanese people themselves.

Keywords: crime statistics, policing, racial profiling, crime, ethics

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...my son was not killed because he did something wrong, my son was killed because of the colour of his skin – Liep Gony’s mother, Martha Ojulo, at a public memorial service in 2018 (Ulbrick, 2021, p. 20)

As Aboriginal people, we live in fear of how racism will affect us every day. Being harassed or mistreated by police is one of our greatest fears and our hearts are broken because that fear became reality for our son – Raymond Noel’s parents, Debbie and Ray Noel (Victorian Aboriginal Legal Service, 2021, para 9)

Tanya Day stands for every brilliant, beautiful, resilient, courageous, deadly, funny Aboriginal and Torres Strait Islander woman. Her love of family, her children, grandchildren, her generosity, her principles and activism, will always burn deep within our hearts, and the hearts of all the communities she has touched. Despite all the trauma that she had carried, she remained the epitome of life. She lived her sovereignty and resisted every force of racism and colonialism that worked to end her life. Our mother had so much more life to give. We are sure that if she was here today, and not callously taken in police custody, that she would be on Djab Wurrung Country, defending sacred women’s country, defending sovereignty and resisting the same forces of colonisation that prey on Aboriginal women’s lives everyday and everywhere. Mum never stopped practising love and resistance, and the love and resistance is the path we continue to endeavour and embody in her honour – Apryl Watson (2019)
On 25 March 2021, ABC Online published an op-ed with the heading, “Too many young African kids in jail: Some blame police, but the data tells a more complex story”. In the op-ed, Dr Stephane Shepherd draws on a study published in the Australian and New Zealand Journal of Criminology (Shepherd & Spivak, 2020) to consider the driving factors behind the high incarceration rates of African young people in the state of Victoria. In considering the problem, Shepherd presents a familiar binary in popular policing debates – racist policing or higher rates of offending among African young people.

In the op-ed Shepherd (2021) is careful not to outright deny racial profiling of African communities by Victoria police, expressing that “occasional incidents of overzealous policing, and perhaps isolated incidents of profiling” (para 19) do occur. However, in arguing that these incidents are occasional and isolated, Shepherd (2021) asserts that “it is unlikely that alleged racial profiling [emphasis added] by Victoria Police members is driving the imprisonment rates of African-Australian young people” (para 33). He concludes that “higher rates of African-Australian youth imprisonment are most likely because of an increase in violent criminal activity by some members of that group” (para 25).

Our initial reaction to the article was one of dismay. We were reminded of observations made by Gunai/Kurnai author Veronica Gorrie (2021):

Police not only brutalise people with excessive force, but they are racist, too. If they weren’t racist prior to joining the force, in my experience, it seemed that they quickly became so. They would learn to target Black people. People out patrolling or on their way to a job who saw a black person driving would intercept the vehicle, and it didn’t matter what kind of black you were (p. 139).

Police target Aboriginal and Torres Strait Islander people, and people of minority the LGBTQ+ community, people of colour. It’s terrible, it’s to a point of stalking, they racially profile people. Police actually target homeless people and rough sleepers. They demonise and criminalise our people who are suffering from homelessness because they are easy targets. These are not criminal matters, being homeless is a social problem and they should be assisted. [But] with policing it’s
competitive so when you’re in a station the more arrests you get the better cop you are, the more charges or pinches you get the better cop you are and it’s a big part of the culture (Gorrie 2023, 19:15).

In the words of former police officer Jim Taylor:

*The easiest way to inflate the arrest numbers was to target the Aboriginal people, especially those homeless ones who are living in the streets, because they’re extremely easy targets. That’s the police’s bread and butter [...] targeting Indigenous people and making it look like they are doing a lot of work.*

(cited in Murphy-Oates, 2021, para 10)

How would Victoria Police’s documented use of targets, quotas, and “pinches” (Gorrie, 2023; Thompson et al., 2022) be reflected in police data, crime rates, and statistics? What about unlawful and improper arrests? What about arrests of people who were later cleared of their alleged offending? What do official police-recorded crime statistics tell us in the absence of lived experience and firsthand testimony of criminalised and racialised populations? What are some of the problems with police-recorded data and police statistics more generally?

We were similarly dismayed by the timing of the article, which was published in the lead-up to the 30th anniversary of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC). In the immediate lead-up and coverage of the week of the 30th anniversary, Australian mainstream media were dominated by the death of British Prince Philip, and the 30th anniversary of RCIADIC passed with little commentary by mainstream news outlets. The significance of this anniversary did not appear to bear much weight for the discipline of Australian criminology either. For example, there were no special issues on the significance of the anniversary within any of the major Australasian journals or conferences, including both mainstream and critical criminology. Indeed, a number of criminologists attended the Queensland Police Union National Youth Crime Symposium held on the same day as the 30th anniversary of the RCIADIC. Professor Ross Homel (2021) presented at the symposium and, at one point, remarked,
I’m not only talking about Aboriginal children. I get emails from people when I speak on the radio, ‘Ross why don’t you talk more about the Aborigines, they’re always the offenders’. Well, many of them are, let’s be honest, that’s a statistical fact [emphasis added], but the risk factors are common across the board. This is not a race problem, it is a problem of the conditions under which children are reared. (8:16).

We return to the issue of statistical ‘facts’ later.

The publication of Dr Shepard’s op-ed triggered a passionate debate on social media amongst African Australian and Indigenous activist/organiser scholars, around both the contents of the article itself and the nature of criminological research more generally. Respected Munanjahli and South Sea Islander Professor Chelsea Watego (2021) tweeted, “This is the default for criminology in 2021 in the colony – both violent and wrong”. Others questioned how the research, which the op-ed used as authority, had passed peer review.

In response to mounting public pressure, on 8 April 2021, the Australian and New Zealand Society of Criminology issued a statement defending the publication of the article on the grounds of encouraging ‘contestability’ (ANZSOC, 2021, para 7). We return to the issue of contestability later. The Spectator reported, “even the criminology journal that published the report has had to defend the research, and the release of the report [sic]” (O’Sullivan, 2021, para 8). On 13 April 2021, Fairfax entertainment writer Karl Quinn (2021) opined, “the issue points to the pressure academic researchers face when their work […] comes to uncomfortable conclusions, even if it is methodologically sound” (para 9). The findings of the study were presented as fact and the methodology was not discussed. Political shockjock Andrew Bolt (2021) declared, “The racism excuse is dead. And good, because it was too often used to excus the guilty and smash Australia” (p. 3).

In the following sections, we interrogate the research methodology and findings of the research study which Dr Stephen Shepard cited in his opinion piece. We argue that the research is not as methodologically sound as Quinn (2021) suggests and that it contains a number of unjustifiable assumptions.

We note that the publication of this journal article occurs on the 10th anniversary of the settlement of the Haile-Michael v Konstantindis racial profiling claim, filed by 17 African and Afghani youths in 2008 in the
Australian Human Rights Commission and settled in the Federal Court in 2013. We dedicate this article to everyone who endures systemic racism in this country.

**The Shepherd and Spivak (2020) study**

According to Shepherd (2021), the arguments presented in his ABC Online opinion piece were informed by criminological research published in the *Australian and New Zealand Journal of Criminology*, in an article titled ‘Estimating the extent and nature of offending by Sudanese-born individuals in Victoria’ (Shepherd & Spivak, 2020). This article aimed to examine the rate of *alleged* ‘offending’ among three distinct groups: Sudanese-born, Aboriginal and Torres Strait Islander people, and Australian-born Victorian residents (Shepherd & Spivak, 2020). More specifically, the authors first sought to test what they call the demographic effect hypothesis: that “Sudanese-Victorian criminal involvement has been overstated; that some level of justice overrepresentation was inevitable due to the demographics of Sudanese-born Victorians, which skew young and male” (Shepherd & Spivak, 2020, p. 352). To test the “demographic effect” the authors stratify their analysis by cultural group (Sudanese-born, Indigenous and Australian born people living in Victoria) and compare rates of *alleged* offending amongst young adult males across these groups (Shepherd & Spivak, 2020, p. 355).

Second, the authors sought to examine how a ‘high-profile criminal incident’ in March 2016, which garnered mass media attention, may have contributed to a heightened law and order response against Sudanese-born Victorians (Shepherd & Spivak, 2020, p. 352). Here, the authors sought to examine what they term the racial profiling hypothesis: that Sudanese-born Victorian’s rates of *alleged* offending may be associated with a heightened law enforcement response, following a “high-profile criminal incident in March 2016 that received protracted media coverage and political commentary” (Shepherd & Spivak, 2020, p. 352). The authors test this hypothesis in two ways. First, by analysing how Sudanese-born overrepresentation is “dispersed across different offending categories”, specifically crimes against the person, property and deception offences, drug offences, public order and security offences, and justice procedure and other offences (Shepherd & Spivak, 2020, p. 355), and, secondly, by undertaking a time-series analysis across the period of 2015-2018 to ascertain how a
high-profile incident in March 2016 which garnered mass media and political attention impacted Sudanese-born *alleged* offending rates.

In terms of the relevant ‘data’ used to examine these questions, the authors draw on two separate data sets: (1) data on *alleged* offending from the Victorian Crime Statistics Agency (CSA) and (2) census data from the Australian Bureau of Statistics (ABS). As the authors note, “the CSA receives data recorded by Victoria police and releases publicly available datasets each quarter” (Shepherd & Spivak, 2020, p. 356). The authors rely on data obtained from January 2015 to December 2018, that is 16 quarters in total.

Using a range of statistical analyses – including negative binomial, quasi-Poisson regression and other analyses – the authors conclude that although their analysis provided no evidence to support either the “demographic effect” or the “racial profiling” hypothesis:

*Sudanese-born young people are processed at a much lower rate for offences typically associated with profiling (public order/drug offences) than they are for offences that rely less on police discretion (i.e. crimes against the person)* (Shepherd & Spivak, 2020, pp. 362-363).

Shepherd and Spivak (2020) ultimately conclude that their findings “clearly indicate that Sudanese-born individuals figure prominently in both youth and adult crime rates relative to other major cultural sub-groups for the period January 2015 to June 2018” (p. 363). Finally, the authors infer from their results that “recent patterns of [*alleged*] offending may be more reflective of an increased involvement in crime for a small number of young men, rather than systemic policing bias or the natural consequence of a group’s demographics” (Shepherd & Spivak, 2020, p. 364). We argue that assumptions about the data undermine the validity of the study’s findings and that, in various ways, the analysis is based on flawed logic.

**Logical concerns: Why police ‘alleged’ crime data tells us very little about racial profiling and crime**

Our first concern with Shepherd and Spivak’s analysis is their assumption that the data they have gathered is capable of assessing whether or not the police are engaged in racial profiling. Crime statistics do not provide evidence of actual crime, but rather who the police are processing and the rates at which they are being processed. It is police practices that generate crime
statistics. Arrest data tells us more about which racial groups the police are targeting than underlying offence rates. Shepherd and Spivak use a comparison of the rate of arrest for public order offences to more serious offences as their methodology for assessing whether racial profiling occurs. They claim that the police have less discretion in the policing of serious offences than more trivial ones. However, the Victoria Police have a number of crime task forces that are more focused on the investigation of these types of offences when they are alleged to be committed by African people rather than white people (ABC Four Corners, 2018). Furthermore, data on COVID-19 fines issued in 2020 in Victoria revealed that a number of police crime taskforces – including the Embona Taskforces – highly targeted African and Middle Eastern individuals (Hopkins & Popovic, 2023). Because Victoria Police is operationally structured to target particular racial groups for particular types of crime, the assessment of racial profiling requires a more subtle strategy than the one adopted by Shepherd and Spivak.

Racial profiling is “a broad, continuing pattern in which racial minorities are subject to suspicious inquiries without any particular basis or justification” (Epp et al., 2014, p. 5). Racial profiling and police operations that target racialised populations are the catalyst for many deaths in custody (Cavanagh, 2015; McGregor, 2023). In the inquest into the death of Mr Langdon, for example, it was found that Mr Langdon was arrested under a police operation named Operation Ascari II, which targeted homeless people in Darwin, almost all of whom were Aboriginal. In the state of Victoria in December 2019, Veronica Marie Nelson was racially profiled while walking with her brother on Spencer St in the Melbourne CBD. She did not commit a crime, though an off-duty constable claimed he ‘knew’ her and she was arrested. She died in the state’s maximum security prison a few days later. In the words of Veronica Marie Nelson’s spouse, Percy Lovett

Veronica should never have even been in jail in the first place. The police officer who arrested her was off duty. She was just walking down the street minding her own business. She wouldn’t have been picked up if she was a white woman. The police target us Blackfullas. (Victorian Aboriginal Legal Service, 2022, paras 5-6).

The police are an especially secretive and insular institution, which makes policing research challenging. In Australia, research into racial
profiling is hampered by the failure of police agencies in each state and territory to collect and make public data on racial profiling. Nonetheless, we know from police testimony that police use a system of targets and quotas or “pinches” to meet statistical key performance indicators (KPIs). Police use of quotas is well recognised and acknowledged by police themselves (Gorrie, 2023; Murphy-Oates, 2021; Thompson et al., 2022). The police tactics of targeting, harassment, intimidation and hyper-surveillance of racialised and minoritised populations, especially as concerns Aboriginal and Torres Strait Islander First Nations peoples, are well established in academic and policy literature (Cunneen, 2001; Hopkins, 2022; Human Rights and Equal Opportunities Commission, 1991; Johnston, 1991; Sentas & Pandolfini, 2018). Research produced by the Western Australian Police in-house research unit found that Aboriginal drivers received three times more fines from the police than white drivers (Western Australia Police, 2020, p. 1). The report was based on data collected over five years and produced by in-house police research units that acknowledged a “clear ethnic disparity” in police-initiated traffic stops (Western Australia Police, 2020, p. 8). Similarly, the Victorian Police Service acknowledged that Indigenous and other racialised young people are less likely to benefit from diversionary mechanisms such as cautions and warnings than non-Indigenous young people (Cunneen, Porter & Behrendt, 2018; Productivity Commission, 2023).

Internationally, discrimination is found wherever data is available. From ‘Driving while Black’ (Chan, 1997; Harris, 1999) to the disproportionate prosecution of Black and Indigenous peoples for cannabis offences (McGowan, 2020), there is now a considerable body of research that documents the racially disproportionate impact of police stop-and-searches, deaths in police custody, overpolicing, racial profiling, and the expansion of police and executive powers (Camp & Heatherton, 2016; Goldson et al., 2020).

The discriminatory activities of the police or other first responders have been condemned in some high-profile cases. For example, in 2016 respected Aboriginal Elder and activist Lex Wotton brought a successful class action on behalf of the Aboriginal community of Palm Island. In the landmark decision Wotton v Queensland Police Service [2016] FCA 1457, Justice Mortimer found that the Queensland Police Service had contravened s 9(1) of the Racial Discrimination Act 1976 (Cth). In 2018, the family of the late Aunty Tanya Day fought through their submissions and advocacy to have systemic racism included in the Inquest into the Death of Tanya Day.
The coroner, Caitlin English (2020), found that a rail official’s treatment of Day was influenced by her Aboriginality and impacted by unconscious bias. It was the first coronial inquest in Australia to find that unconscious bias was a causal factor in an Indigenous death in custody. In 2013, *Haile-Michael v Konstantinis*, a racial profiling claim that had been running for five years settled in the Federal Court with the police agreeing to release data that revealed patterns of racial profiling over four years. This data revealed that between 2005 and 2008, Victoria Police issued field contact reports to African/Middle-Eastern boys and young men at 2.53 times their proportion in the population (Hopkins, 2021) and that the police were acting under an operational order that instructed police to target African youths (Hopkins, 2021).

A survey of 981 people in Victoria during 2018/2019 revealed that police were more likely to unjustifiably stop, question, search, and otherwise unreasonably investigate Aboriginal, African, Middle-Eastern, and Pasifika-appearing people (Hopkins, 2022). This provides further evidence of racial profiling in Victoria. Contrary to Shephard and Spivak’s findings, these data sets provide evidence of systemic racial profiling in Victoria.

When police engage in racial profiling, it biases the data by inflating and deflating the *alleged* crime rate of particular racial groups in several ways. Firstly, police operations that target racialised populations will inevitably lead to higher rates of *alleged* crime being identified in those communities (Harcourt, 2007). On the other hand, crime in the non-targeted communities will go undetected. Secondly, racial profiling is criminogenic. Research shows that racial profiling creates alienation and relegates people to second-class citizen status, it reduces participation rates and can lead to resistance against police and participation in crime (Epp et al., 2014; Futterman et al., 2016; Kirk & Papachristos, 2011; Rios, 2006; Wiley & Esbensen, 2013). Racial profiling – itself an unlawful form of policing – can lead people to engage in unlawful behaviours against police and society. Shepherd and Spivak’s data tells us nothing about whether racial profiling occurs in Victoria, whether the police operations that contributed to the CSA data were engaged in racial profiling or whether the individuals stopped had previously been racially profiled.

Police crime data tells us about rates of criminal processing through the legal system but they tell us very little about other aspects of policing, racial profiling, and actual crime rates. A significant body of empirical evidence suggests that racial profiling is a significant concern among African
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Methodological concerns: Why ‘offending’ rates alone tell us very little about policing, racial profiling, and crime

The next set of concerns relates to methodological flaws and the quality of data that Shepherd and Spivak use in their study. Our first concern relates to the study’s reliance on the use of data on alleged offending, and the inappropriateness of this dataset to test the authors’ stated hypotheses – the demographic hypothesis and the racial profiling hypothesis. Our second concern relates to the central variable in their study – ‘country of birth’. We identify four ways that the use of this variable is problematic and identify problems in the statistical methods Shepherd and Spivak use to make sense of their data.

To conduct their analysis, the authors draw upon publicly available alleged offending incident data, obtained from the Victorian Crime Statistics Agency (Victorian CSA). Incidence data are collected by Victoria police and refer to police charges against the person, not criminal convictions, and thus all offending is alleged. This is made clear by the Victorian CSA itself. When providing this dataset to data users, the Victorian CSA provides all data users with a document titled ‘What is Country of birth information in police recorded crime statistics and what can it tell you?, which explicitly states that incidence data on alleged offending cannot be used to determine how much crime people born in particular countries are responsible for (Crime Statistics Agency, 2018). Indeed, in the guide for data users, the Victorian CSA clarifies, “statements such as: ‘XX% of all crime in Victoria is committed by people from [particular country]’ may be misleading and are not supported by the data” (Crime Statistics Agency, 2018, para. 2). Further, the authority provides guidance to all data users on how to accurately interpret data on alleged offending in relation to country of birth, noting that “ ‘XX% of recorded alleged offenders with a known country of birth were born in [country]’ is a statement that would accurately be supported by the data source” (Crime Statistics Agency, 2018, p. 2).

Whilst all arguments put forth by Shepherd and Spivak are based on alleged offences, rather than criminal convictions, this is a key caveat that is only touched on briefly by the authors in the article’s concluding
paragraphs. The lack of critical attention given to such a crucial element of the dataset means that this caveat appears as somewhat of an afterthought. In presenting their findings, the authors contend that “the findings clearly indicate that Sudanese-born individuals figure prominently in both youth and adult crime rates relative to other major cultural sub-groups for the period January 2015 to June 2018” (Shepherd & Spivak, 2020, p. 363). However, according to information provided by the Victorian Crime Statistics Agency, this statement is not only misleading, it is not supported by the dataset that the authors used to conduct their analysis. Despite explicit guidance from the Victorian CSA to refer to all offending as *alleged*, the authors consistently use the term “offending” rather than “alleged offending” throughout – even in the article’s title. When the authors do acknowledge this, they offer the following qualification:

*Some proportion of charges may not have proceeded to court or led to a conviction, possibly inflating offending rates. However, rates based on convictions only, would have omitted some perpetrators whose cases did not progress between charge and court for various reasons. Indeed, both offending classifications omit criminal activity that is not detected by law enforcement* (Shepherd & Spivak, 2020, p. 364, emphases added).

Here, Shepherd and Spivak imply that convictions underestimate true offending rates. However, for those reliant on legal aid funding or unable to access legal aid at all, the reverse is often true. Police can arrest a person if they have reasonable grounds to believe that the person has committed an offence. However, this does not mean that the person is guilty of that offence. A person is only guilty if they plead guilty or if a court finds them to be guilty. Unfortunately, the Australian legal system applies considerable pressure on individuals to plead guilty even when they are innocent. Our own experience in acting for African youths in criminal cases, using unfunded pro bono barristers, reveals that police charges against them are frequently without reasonable grounds and often get dismissed at trial (Flemington and Kensington Legal Centre, 2015, p. 10).

While data on the rates of police charges being dismissed at trial is not available in Australia, British research has shown that Black people are more likely to be unreasonably arrested and acquitted at trial (May et al.,
Furthermore, evidence exists that Indigenous young people are less likely than white young people to be offered diversions, cautions, and warnings (Cunneen, Porter & Behrendt, 2018; Productivity Commission, 2023). Data on the discrepancies in the use of diversion, cautions, and warnings for other racialised populations are not publicly available. For these reasons, arrest rates and particularly arrest-rate comparisons between racial groups are a poor measure of actual offending.

A second set of methodological concerns relates to Shepherd and Spivak’s use of the variable ‘country of birth’. We identify four ways that the use of this variable is problematic. The first problem is its uncontrolled use implying a causal link between country of birth and crime. This is particularly problematic because Shepherd and Spivak fail to control for known confounding factors such as educational status, employment, housing, family income, school attendance, the experience of family violence, and discrimination. As class-conscious research consistently tells us, a person’s experience of family violence and discrimination, school attendance, and family income are far more correlated to alleged offending rates than their country of birth (Collins, 2005). While reference is made to these factors at the end of the article, these are central issues: and are potentially far more relevant to offending rates than race. Indeed without controlling for these issues, their article risks being more likely to entrench harmful stereotypes than be of social use. It is easy to make ‘country of birth’ a variable in research. This is how crime statistics are recorded by the Victorian CSA. However ‘country of birth’ is a meaningless variable in understanding crime causation. Meaningful research into the causes of ‘crime’ must analyse the real causes of crime, not the meaningless and low-hanging fruit offered by the Victorian CSA.

A second critical problem with the variable ‘country of birth’ relates to the categories of populations as selected by the authors, namely: Sudanese-born, Australian-born, and Indigenous Australian (Shepherd & Spivak, 2020). The reality is that ‘country of birth’ can have little to do with a person’s racialisation. For example, African-appearing young people in Australia might be Egyptian-born, Australian-born, New Zealand-born, British-born etc. While the authors state that their reason for introducing these categories is to explore the ‘demographic effect’ hypothesis (Shepherd & Spivak 2020, p. 355) it is unclear how these categories are able to do this. The authors give the following justification for including Indigenous Australians as a separate cultural category in their comparative analysis:
“Indigenous Australians are consistently over-represented in offending data and thus prove an additional upper range benchmark” (Shepherd & Spivak 2020, p. 355). The variable ‘country of birth’ collapses matters as divergent as race, Indigeneity, ethnicity, class, and citizenship. To put this differently, the category ‘Australian-born’ would seemingly include all of the following populations so long as one is born in Australia: white settler Australians, Lebanese Australians, African Australians, Sudanese Australians, and so on. Conversely, many Aboriginal and Torres Strait Islander people are more likely to identify with their First Nation affiliation (e.g., Wurundjeri, Yuin, Dharug, Wemba Wemba) and for various reasons may not identify as Australian, in a census or otherwise.

Further, whilst the categories ‘Indigenous Australian’ and ‘Sudanese-born’ are both racialised, the category ‘Australian-born’ comes to be known by the race it is not (Walter, 2016) carrying an unjustifiable and unnamed assumption of whiteness. In this process, the category of ‘Australian-born’ operates to obscure whiteness, by defining itself as the norm (Moreton-Robinson, 2004). Through these categorisations, whiteness “is always glimpsed only negatively: it is what allows us to see the deficient and the abnormal without itself being seen” (Montag, 1997, as cited in Moreton-Robinson, 2004, p. 291). The authors’ categorisations operate to “reinforce whiteness as superior” (Watego et al., 2021, p. 3) by positioning the ‘Australian-born’ category as the norm against which the criminal and deviant ‘Sudanese-born’ and ‘Indigenous Australian’ populations are measured.

The third problem with the use of country of birth as a key variable relates to its rate of missingness in Victoria Police data. The Victorian CSA, which issues this data, advises caution when attempting to make these comparisons noting that “it is trickier than it sometimes looks”:

*Country of birth information is as self reported by the alleged offender or victim of crime. Victoria Police does not record an answer to the question in all instances. For alleged offenders, the rate of unknowns is approximately 11.3% and for victims of crime it is 66.8% Therefore, it is not possible to know the country of birth of all people involved in recorded crime known to the police* (Crime Statistics Agency, 2021, p. 1).
A fourth issue with using country of birth as a variable relates to the small numbers of the sample size and therefore the generalisability of the data. As Shepherd and Spivak (2020) explain, the population estimates for the comparative analysis of the 10-17 age group are: 649 Sudanese-born young people, 221,540 non-Indigenous young people, and 3,926 Indigenous young people (p. 356). Again, the CSA includes the following note regarding generalisability and the need for caution when using small numbers:

> Interpretation becomes difficult for a range of reasons, including: population data are not always up to date for emerging and/or small communities, and may be less accurate the further away we are from refreshed ABS population figures after the conduct of a Census of Population and Housing every 5 years (Crime Statistics Agency, 2021, p. 2).

Given these concerns about the accuracy of the ‘alleged’ offending rates and these four concerns with the use of country-of-birth data, it would be prudent to triangulate statistics on alleged offending with qualitative data. Put simply, there are dangers in presenting ‘data’ on the extent and nature of alleged offending by Sudanese-born individuals without asking members of the Sudanese Australian community their diverse perspectives on policing, racial profiling, and crime.

A comparable study which dealt with similarly small population numbers is the ‘Jumbunna Rates of Crime’ project – a research partnership between Jumbunna Indigenous House of Learning and the New South Wales Bureau of Crime Statistics and Research (BOCSAR) (Behrendt, 2011; Behrendt et al., 2016a, 2016b; McCausland & Vivian, 2009, 2010). In that study, the authors sought to manage the problem of generalisability by including a qualitative component to allow residents to describe local crime in their own terms, to ‘speak back’ to crime statistics and to give voice to the significance of any statistical changes over time. There were many reasons for this, including (1) dealing with small sample sizes; (2) the significant underreporting of Indigenous and racialised status in census data; and (3) the well-known underreporting of crimes such as racially-motivated hate crime and domestic violence. As the authors noted in that study, “[c]aution should be used when comparing rates when incident numbers or populations are small, since large percentage change in rates between
periods will result from small changes in incident or population counts” (McCausland & Vivian, 2009, p. 8). In that longitudinal study, quantitative data from the New South Wales BOCSAR was triangulated with qualitative data including sustained fieldwork and in-depth interviews with the residents of the six towns.

As statisticians have noted (Walter & Anderson, 2013; Weatherburn, 2011), there are significant dangers in drawing definitive conclusions based solely on quantitative and desktop research. As discussed above, some crimes are underreported (e.g., domestic violence) and require triangulation with interviews, fieldwork or ethnographic methods to make sense of official crime rates. A report by the Flemington and Kensington Community Legal Centre, based on interview data with young people and service providers, reports that young people interviewed overwhelmingly felt that service providers did not know how to provide adequate support to young people when police were “misbehaving” (Haile-Michael & Issa, 2015, p. 12). Whilst young people routinely disclosed instances of racialised policing to service providers, service providers reported that they “were not equipped, mandated or skilled” to respond to these disclosures (Haile-Michael & Issa, 2015, p. 5).

For the above set of reasons, the assumptions used by the authors to support their claims regarding the ‘demographic effect’ hypothesis are flawed to the point of being implausible. The authors’ findings lack credibility and are neither supported by the author’s research methodology nor by triangulation with qualitative data – namely, the diverse views and perspectives of South Sudanese people themselves.

**Ethical concerns: The harmful impacts of deficit and criminological discourses**

Our final set of concerns relates to the question of ethics and the impact of ‘problem framings’ on real-life policy ‘solutions’. The authors contend that their finding will “offer some clarity to the contested public discourse on the extent and nature of Sudanese-Australian offending which will help inform strategies to reduce justice involvement” (Shepherd & Spivak 2020, p. 355). We dispute this claim.

It is not ‘race’ that causes ‘crime’, but institutionalised and structural disadvantage, marginalisation, and patriarchal, misogynistic, and racist attitudes in the general population and among police, who target Aboriginal, African-Australian, and other racialised and minoritised populations. We are
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not arguing that Sudanese youth are not engaged in ‘crime’ or that uncontrolled alleged offending data may not suggest ‘they’ are overrepresented in particular ‘crime rates’. We do however ask, does analysing the variable ‘country of birth’, with all its errors compounded in the ways identified above, add anything meaningful or worthwhile to the scholarship? Using ‘country of birth’ in this categorical way leads to a distorted oversimplification of crime causation that reinforces racist stereotypes and fails to take into account the socio-economic, institutional, historical, intergenerational, colonial, and global factors and political marginalisation that are causes of crime (Lea & Young, 1993).

Research that attempts to find a correlation between race and crime is inherently problematic and researchers need to be careful about the implications that can be drawn from the data. Such research can be interpreted as suggesting there is a causal link between race and crime. Such an interpretation can lead to racial profiling and can generate prejudice against racialised people in the community. The United Nations (2019) has articulated that “Data should be collected [...] to control the dangers of misuse, stigmatization and negative stereotyping” (p. 19). In accordance with these principles, researchers have an ethical obligation to ensure that their research does not increase racial discrimination.

In writing this response to Shepherd and Spivak it is not our intention to single out the online op-ed and journal article. Indeed, we note the prevalence of articles in Australasian criminology journals that examine young ‘offenders’ based on quantitative data alone (Payne & Roffey, 2020; Shepherd & Spivak, 2020). Rather we wish to emphasise the prevalence of ‘silencing methodologies’ in Australasian criminology (Deckert, 2015). The term ‘silencing methodologies’ was coined by Antje Deckert to refer to criminological studies which erase or eliminate the voices and agency of the subjects under study, whether intentionally or unintentionally (Deckert, 2015). Silencing methodologies, for example, might refer to studies which rely solely on quantitative or observational data without providing an opportunity to give research participants a voice or investigate a stigmatising and reductionist research question – a particular type of quantitative-only methodology that finds particular favour in international criminology journals and pedagogy.

Not all quantitative criminological methods constitute by definition silencing methodologies. We note in particular the emergence of Indigenous quantitative methodologies and data sovereignties and their relevance to the

International scholarship on Indigenous data sovereignty, led by First Nations scholars including Maggie Walter (Pairebenne), Raymond Lovett (Ngiyampaa/Wongaibon), Stephanie Russo Carroll (Ahtna-Native Village of Kluti-Kaah), emphasises the importance of avoiding the production of what they term ‘5-D data’ in quantitative research (Walter, 2016; Walter & Russo Carol, 2020). 5-D data refers to quantitative and aggregated data that is almost always exclusively used to measure and highlight “difference, disparity, disadvantage, dysfunction and deprivation” (Walter & Russo Carol, 2020, p. 9). Here, aggregated quantitative data on the First Nations people or other racialized minorities is contrasted to the ‘normed’ non-Indigenous majority, and is used to portray a ‘gap’ between the two populations. Whilst such statistical portrayals can be used to highlight inequalities in criminal justice outcomes, such portrayals often operate to locate deficiency and criminality as an Aboriginal, or in this case South-Sudanese problem, rather than a colonial or racist one. This is achieved through what Walter (2016) terms the “Deficit Discourse/Problematic People correlation” (p. 82), which inherently aligns racial inequality, with racial, social and cultural differences. As Walter (2016) explains:

In the DD/PP correlation, the problematic people are the ones who, through their behaviour and their choices, are ultimately responsible for their own inequality. The power of the DD/ PP correlation is such that it still works in contemporary times as a mechanism for disenfranchising and dispossessing (p. 83).

Quantitative researchers must contend with the reality that statistics are not neutral entities (Walter, 2016). Failing to contend with the racialised reality of statistics may result in the continuation of the production of data that is based on “difference, disparity, disadvantage, dysfunction and deprivation” (Walter, 2016, p. 82), which could be deployed to uphold racist stereotypes and racialised practices of policing.

Criminologists do not labour in a vacuum. The ‘uses and abuses’ of statistics are well known (Weatherburn, 2011). There is a danger that criminological studies based on flawed analysis be used to bolster racist stereotypes and prejudice about race-crime associations. Indeed, in the week
following Ross Homel’s comments on Aboriginal young people to the Queensland police union, the state of Queensland introduced new laws for “hardcore youth offenders” (Gramenz, 2021). This included the announcement of greater police powers and police resources.

**Conclusion: Disputing statistical ‘facts’, challenging criminology**

The Australian and New Zealand Society of Criminology (ANZSOC, 2021, para 7) defended the publication of the article in a peer-reviewed journal on the grounds of fostering ‘contestability’. But unethical science has no place in the marketplace of ideas. Indeed, the prevalence of epistemic violence as well as racist and deficit discourses might be one of the reasons that Australasian criminology has failed to recruit many Indigenous scholars into their departments and as editorial board members of its major journals. The demography of the membership of the Australian and New Zealand Society of Criminology as well as its editorial board remains overwhelmingly white, settler, and male. It is perhaps then unsurprising that – with regard to Indigenous peoples – deficit discourses and ‘silencing methodologies’ tend to dominate the pages of major criminology journals (Deckert, 2015). Writing nearly a decade ago, Australian social theorist John Braithwaite (2013) observed a pattern of influential Indigenous scholars who appeared to be writing about ‘crime’ and ‘justice’, though seemingly avoiding criminology:

> Yet the leading examples of Polynesian, Melanesian and Aboriginal and Torres Strait Islander criminologists have been New Zealand Maori, with smaller numbers of Australian Aboriginal incumbents in academic posts who are contributors to the criminological conversation in our universities. Even then, Indigenous criminologists in academic posts such as Juan Tauri are rarer than non-criminologist Indigenous scholars who have been influential commentators on the criminal justice system such as Moana Jackson, Mick Brown, Larissa Behrendt, Megan Davis or Mick Dodson. Indigenous doctorates in criminology have been rare in comparison to cases of Indigenous commentators on crime who have doctorates such as Behrendt and Davis (pp. 5-6).

What should be emphasised here, is that Indigenous scholars have made significant contributions outside of the discipline of criminology and
without the aid of Australasian criminology. Australasian criminology must confront the monoculture of the discipline and its editorial boards. It is perhaps the epistemic violence of the discipline and the culture of groupthink that contributes to the lack of contestability that criminologists have long bemoaned (Goldsmith & Halsey, 2020).

Academic freedom should be tempered by an awareness of the harmful uses of criminological research, as well as in relation to its ‘subjects’ under study. Academic freedom should also be tempered by responsibility for the production of methodological and ethically sound scholarship. While the ANZSOC Statement is consistent with normal expectations around academic freedom, we note that enlightenment concepts such as freedom have always been racialised (Stoval, 2022). As Nyadol Nyuon (2019) observes, “it is easy to argue free speech when it’s not you or your children in the firing line” (online). Moreover, we note the oppressive use of statistics in criminological research generally and the real-life impacts of the study on real-life policy ‘solutions’ for Black and Indigenous communities. Deficit or problem constructions are frequently accompanied by solutions that increase state intervention in the lives of communities that are already hyper-surveilled and racially targeted by police.

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1 Throughout this article, we put the term ‘alleged’ in italics to emphasise the fact that in Australia one is considered innocent until proven guilty in relation to criminal charges.