

PARRAMATTA FEMALE FACTORY PRECINCT AS A SITE OF CONSCIENCE: USING INSTITUTIONAL PASTS TO SHAPE JUST LEGAL FUTURES

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Parramatta Female Factory Precinct Association through its Memory Project is activating PFFP as Australia's first officially recognised Site of Conscience. Through the Memory Project, survivors of Parramatta Girls Home are using art practices and social history to disrupt dominant, official narratives that have silenced their experiences, to put their memories of the Home into action and to prevent future injustices of institutionalisation. For law students and legal practitioners the work of Parragirls through the Memory Project offers possibilities for confronting the complicity of Australian legal systems and legal actors in the harms and injustices of institutional confinement. It provides examples and new methods to direct them towards practices of collective ethical accountability in order to shaping more just future legal frameworks of institutional confinement. In support of this argument the article discusses a recent collaboration between the authors to engage law students in the Precinct through an excursion to the site.

I INTRODUCTION

Government inquiries, advocacy reports and media coverage in the past 10 years have illuminated the harms and injustices of Australian institutions of confinement

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across child welfare,¹ criminal justice,² disability and mental health,³ aged care⁴ and immigration detention sectors.⁵ The presentation and critique of this evidence of institutional harms and injustices has largely been approached in terms of different sectors with little consideration of common and interlocking practices and populations. In contrast, this article is premised on the view that – as highlighted by the recent coverage – Australia’s institutions of confinement, across sectors, not only have in common a propensity for harm and injustice, but also detain many of the same kinds of marginalised populations, including Indigenous Australians, disabled people, racialised

- 1 See, eg, Linton Besser, ‘Broken Homes: On the Frontline of Australia’s Child Protection Crisis’, *ABC Four Corners* (online, 14 November 2016) <<https://www.abc.net.au/news/2016-11-14/four-corners-broken-homes-child-protection/7987450>>; *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) (‘*Royal Commission into Child Sexual Abuse: Final Report*’); *Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory* (Final Report, November 2017) vols 3A, 3B (‘*Royal Commission into Detention of Children: Final Report*’).
- 2 See, eg, Caro Meldrum-Hanna, ‘Australia’s Shame’, *ABC Four Corners* (online, 25 July 2016) <<https://www.abc.net.au/4corners/australias-shame-promo/7649462>>; Amanda Porter, ‘Why We Should Honour the Humanity of Every Person Who Dies in Custody’, *The Conversation* (online, 15 April 2016) <<http://theconversation.com/why-we-should-honour-the-humanity-of-every-person-who-dies-in-custody-57272>>; *Royal Commission into Detention of Children: Final Report* (n 1) vols 2A, 2B; Kriti Sharma, Human Rights Watch, ‘*I Needed Help, Instead I Was Punished: Abuse and Neglect of Prisoners with Disabilities in Australia*’ (Report, 6 February 2018) <<https://www.hrw.org/report/2018/02/06/i-needed-help-instead-i-was-punished/abuse-and-neglect-prisoners-disabilities>>; Calla Wahlquist, ‘Family of Aboriginal Woman Who Died in Custody Want Coroner to Consider “Systemic Racism”’, *The Guardian* (online, 30 April 2019) <<https://www.theguardian.com/australia-news/2019/apr/30/family-of-aboriginal-woman-who-died-in-custody-want-coroner-to-consider-systemic-racism>>.
- 3 Australian Human Rights Commission, *A Future Without Violence: Quality, Safeguarding and Oversight to Prevent and Address Violence Against People with Disability in Institutional Settings* (Report, June 2018) <https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_report_VAPWD_2018.pdf>; Senate Community Affairs References Committee, Parliament of Australia, *Indefinite Detention of People with Cognitive and Psychiatric Impairment in Australia* (Report, 29 November 2016) <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/IndefiniteDetention45/Report>; Senate Community Affairs References Committee, Parliament of Australia, *Violence, Abuse and Neglect against People with Disability in Institutional and Residential Settings, including the Gender and Age Related Dimensions, and the Particular Situation of Aboriginal and Torres Strait Islander People with Disability, and Culturally and Linguistically Diverse People with Disability* (Report, 25 November 2015) <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report>; Nick McKenzie, ‘In Our Care’, *ABC Four Corners* (online, 24 November 2014) <<https://www.abc.net.au/4corners/in-our-care/5916148>>; Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Letters Patent: Terms of Reference* (4 April 2019) <<https://disability.royalcommission.gov.au/about/Pages/Terms-of-reference.aspx>>.
- 4 See, eg, Senate Community Affairs References Committee, Parliament of Australia, *Effectiveness of the Aged Care Quality Assessment and Accreditation Framework for Protecting Residents from Abuse and Poor Practices, and Ensuring Proper Clinical and Medical Care Standards are Maintained and Practised* (Final Report, April 2017) <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/AgedCareQuality/Report>; Kate Carnell and Ron Paterson, *Review of National Aged Care Quality Regulatory Processes* (Final Report, October 2017) <https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/10_2017/review_report_final_23_october_2017.pdf>; Anne Connolly, ‘Who Cares?’, *ABC Four Corners* (online, 17 September 2018) <<https://www.abc.net.au/4corners/who-cares/10258290>>; Nicola Gage, Angeliqe Donnellan and Nick Harmsen, ‘Oakden Mental Health Facility to Be Shut Down by South Australian Government’, *ABC News* (online, 20 April 2017) <<https://www.abc.net.au/news/2017-04-20/controversial-oakden-mental-health-facility-to-be-shut-down/8457928>>; Royal Commission into Aged Care Quality and Safety, *Letters Patent: Terms of Reference* (6 December 2018) <<https://agedcare.royalcommission.gov.au/Pages/Terms-of-reference.aspx>>.
- 5 Amnesty International, *Island of Despair: Australia’s ‘Processing’ of Refugees on Nauru* (Report No 12/4934/2016, 17 October 2016) <<https://www.amnesty.org.au/wp-content/uploads/2016/10/ISLAND-OF-DESPAIR-FINAL.pdf>>.

people, people experiencing poverty, children removed from their parents, and older people.⁶

It is important to resist looking at current issues of institutional injustice in isolation, partitioning them off from wider, persistent questions of institutionalisation, and its relationships to colonialism, eugenics, human rights abuses, cycles of injustice, settler colonial nation-building, and marginalised populations' resistance to dehumanisation, control and violence (as well as their resilience and survival). We argue that systems of institutionalisation across diverse sectors – including child welfare, criminal justice, juvenile justice and mental health – sustain the place and role of Australian institutions of confinement within a punitive system. These systems of institutionalisation are embedded in the settler colonial Australian state and denial of Aboriginal and Torres Strait Islander sovereignty and self-determination.

It is timely for legal scholars and practitioners to reflect on how to conceptualise, and do, justice in ways that address the interrelationship between institutions of confinement and account for law's complicity in the persistence of institutional harms in a settler colonial context. In this article, we argue that Sites of Conscience provide a useful framework through which to begin to make these connections between institutions in terms of space, time and bodies. The global Sites of Conscience movement involves engaging communities in the history and heritage of places in order to prompt dialogue on contemporary human rights, social justice and democracy. Some Sites of Conscience organisations have engaged with historic institutional sites, such as prisons, mental asylums, residential schools, and workhouses. It might seem counterintuitive to see places of historical suffering and pain as vehicles for redressing contemporary institutional harms and injustices. Yet, through the Sites of Conscience movement, the histories of specific places are shown to have an ongoing relevance in encouraging the community to understand the persistence of injustice over time and across places in a broader framework that centres the experiences and perspectives of those who have lived in these institutions. In this way, communities are encouraged to engage in dialogue and debate on today's social issues and to commit to disrupting, and ultimately ending, repetitions and cycles of injustice.

More specifically, we propose that for law students, lawyers, judges and policymakers, engaging with historic sites of confinement and with those who have experienced confinement in those sites should be integral to the methods used to articulate and enact justice for individuals who have been institutionalised. Such sites provide legal actors with tools and processes to encourage collective, ongoing ethical responsibility and accountability to those institutionalised by legal and policy decision-making, and thus orient those actors to shaping more just legal, political and social futures that do not sustain cycles of institutionalisation and violence. We illustrate this by reference to Australia's first officially recognised Site of Conscience: the Parramatta Female Factory Precinct ('the Precinct' or 'PFFP').

6 See, eg, the institutionalisation of disabled people across a number of sectors: Karen Soldatic and Lucy Fiske, 'Bodies "Locked Up": Intersections of Disability and Race in Australian Immigration' (2009) 24(3) *Disability and Society* 290; Linda Roslyn Steele, 'Troubling Law's Indefinite Detention: Disability, the Carceral Body and Institutional Injustice' (2018) *Social and Legal Studies* 1–24 ('Troubling Law's Indefinite Detention') <<https://doi.org/10.1177/0964663918769478>>; Linda Steele, 'Disabling Forensic Mental Health Detention: The Carcerality of the Disabled Body' (2017) 19(3) *Punishment & Society* 327. For a similar perspective from North America see Liat Ben-Moshe, Chris Chapman and Allison C Carey (eds), *Disability Incarcerated: Imprisonment and Disability in the United States and Canada* (Palgrave Macmillan, 2014).

The Precinct is Australia's longest continuously running institutional site, established in 1821 as a holding depot and prison for all unassigned convict women and subsequently used – up to the present – for a variety of child welfare, criminal justice and mental health purposes. In recent history, the public have become aware of the Precinct through the Parramatta Girls Home ('PGH'), now known for its cruel and abusive conditions following several national inquiries into out-of-home-care ('OOHC')⁷ and related media reporting.⁸ The Precinct has recently been added to the National Heritage List due to its significance in terms of its 'capacity to tell the stories of women and children in institutions over the course of Australian history'.⁹

Moving beyond these government-based initiatives, this article focuses on the work of survivors themselves. The PFFP Association, based at the former PGH 'Kamballa' site, launched the PFFP Memory Project (also known as the 'Parragirls Memory Project') in 2013, in order to transform a once inaccessible site into a place of shared culture. It brings together artists, historians, survivors, researchers and others to promote awareness about the history, heritage and legacy of institutionalisation.¹⁰ Survivors of PGH ('Parragirls') have, through the Memory Project, led the way to reshaping and reimagining the Precinct as a Site of Conscience. Parragirls and their collaborators are using art practices and social history to put their memories of the site into action and disrupt dominant, official narratives that have silenced their voices and their experiences, in order to prevent future injustices through institutionalisation. In order to explore the possibilities of this work for law students and legal practitioners, later in this article we discuss a recent excursion of law students to the Precinct.

The authors of this article have been involved in different ways with the Precinct and Memory Project, and we propose that the innovative, creative and collaborative work of the Memory Project, framed around a Sites of Conscience approach to the past, provides novel and invaluable opportunities for law students and legal practitioners to understand institutionalisation beyond jurisdictional and sector siloes and to directly confront law's complicity in past harm and injustice. It also offers them new ways to apply ethical considerations of responsibility and accountability in their professional practice and decisionmaking and to connect these to broader discussion and critical reflection on fundamental questions about institutions of confinement, human rights and social justice.

7 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Report of Case Study No 7, October 2014) ('Case Study No 7'); Senate Community Affairs References Committee, Parliament of Australia, *Forgotten Australians: A Report on Australians who Experienced Institutional or Out-of-Home Care as Children* (Report, 30 August 2004)

<https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Completed_inquiries/2004-07/inst_care/report/index> ('*Forgotten Australians*').

8 See, eg, Justine Parker, 'Parramatta Girls' Home Resident Reveals Despair After Sexual, Physical Abuse', *ABC News* (online, 27 February 2014) <<https://www.abc.net.au/news/2014-02-27/girls-home-resident-reveals-despair-after-sexual-abuse/5287788>>; Helen Davidson, 'Raped and Beaten: "They Bounced Me Off Every Wall"', *Witness Tells Hearing*, *The Guardian* (online, 27 February 2014) <<https://www.theguardian.com/world/2014/feb/27/raped-and-beaten-they-bounced-me-off-every-wall-witness-tells-hearing>>; 'Men Charged with Sexual Abuse at Parramatta Training School for Girls', *ABC News* (online, 2 June 2016) <<https://www.abc.net.au/news/2016-06-02/two-men-charged-sex-assault-parramatta-training-school/7469234>>.

9 Commonwealth, *Gazette: Government Notices*, No C2017G01219, 14 November 2017.

10 'About Us', *Parramatta Female Factory Precinct: Memory Project* (Web Page) <<https://www.pffpmemory.org.au/about>>.

Part II provides an overview of the global Sites of Conscience movement, including in the context of institutions of confinement, and briefly discusses the relationship between this movement and conventional legal justice processes. Part III introduces institutionalisation in Australia, drawing attention to the interrelationships between institutions of confinement and the endurance of institutionalisation irrespective of legal reforms and social shifts. Part IV then introduces the Precinct as a significant place of institutionalisation throughout Australia's settler colonial past and present. Part V discusses how former residents of the Precinct in association with others are re-engaging with the Precinct as a Site of Conscience, through the Memory Project. This Part considers the significance of the Memory Project to conventional legal justice and law reform processes and explores the potential of the Memory Project for legal pedagogy, describing a law student excursion to the Precinct. Part VI concludes with some reflections on future directions for Sites of Conscience in legal education and law reform.

II THE GLOBAL SITES OF CONSCIENCE MOVEMENT

The collective social movement Sites of Conscience is a relatively recent development. Its origins can be traced to the aftermath of World War II and 'the post-colonial wake of collapsing empires, dictatorships and oppressive regimes'.¹¹ The movement has become more organised at an international level through the 1999 founding in the United States of America ('USA') of the International Coalition of Sites of Conscience ('ICSC'). ICSC represents a worldwide network of Sites of Conscience organisations¹² focused on a diverse range of systemic injustices, including institutionalisation, genocide, racial apartheid, environmental disaster, armed conflict, migration and labour exploitation.

The overarching principle of ICSC is to recognise global practices of place-based public memorialisation of historical events that involve the reclamation of sites of human suffering to forge common ground for dignity, respect and civil participation, instead of abuse and neglect.¹³ In the words of its founder, Liz Ševčenko, and her co-authors, Sites of Conscience organisations 'make a specific commitment to democratic engagement through programs that stimulate dialogue on pressing social issues today and that provide opportunities for public involvement in those issues'.¹⁴ Sites of Conscience provide opportunities to the public to 'remember the past', not as an end in

11 Paul Ashton and Jacqueline Z Wilson, 'Sites of Conscience: Remembering Disappearance, Execution, Imprisonment, Murder, Slavery and Torture' in Paul Ashton and Jacqueline Z Wilson (eds), *Silent System: Forgotten Australians and the Institutionalisation of Women and Children* (Australian Scholarly Publishing, 2014) 59, 59. But see the ICSC argument that Sites of Conscience are of more recent invention compared to earlier 'memory sites': International Coalition of Sites of Conscience, *Interpretation of Sites of Memory* (Report, 31 January 2018) <<http://openarchive.icomos.org/2053/1/activity-933-3.pdf>>.

12 Liz Ševčenko, 'Sites of Conscience: Heritage of and for Human Rights' in Helmut Anheier and Yudhishtir Raj Isar (eds) *Heritage, Memory & Identity* (Sage, 2011) 114, 116.

13 See generally Ashton and Wilson, 'Sites of Conscience: Remembering Disappearance, Execution, Imprisonment, Murder, Slavery and Torture' (n 11); Sebastian Brett et al, *Memorialization and Democracy: State Policy and Civic Action* (Report, 6 January 2007) <https://www.ictj.org/sites/default/files/ICTJ-Global-Memorialization-Democracy-2007-English_0.pdf>; Liz Ševčenko, 'Activating the Past for Civic Action: The International Coalition of Historic Site Museums of Conscience' (2002) 19(4) *The George Wright Forum* 55; Ševčenko, 'Sites of Conscience: Heritage of and for Human Rights' (n 12) 114.

14 Brett et al (n 13) 1.

itself but, rather, in order ‘to build a better present and future’.¹⁵ Sites of Conscience organisations seek to prevent the erasure of historical injustices that can come with the repurposing and redevelopment of these sites, particularly in light of reconciliatory discourses that encourage ‘turning the page’ on past conflict.¹⁶ These organisations aim to recover from the periphery narratives that have been forgotten or deliberately suppressed in official histories, and bring them into collective memory.¹⁷ Sites of Conscience resonate with ideas and practices of ‘public history’ that utilise history to engage the community in making sense of the present¹⁸ and with museum theory and practice on using museums to promote human rights.¹⁹ Through Sites of Conscience, visitors do not *remember* the past simply to understand how things *were*, but instead use memory to make connections between the past and social justice and human rights issues in the present, to inform how things *can and should be* now and into the future. Sites of Conscience therefore seek to mobilise the continued relevance of the past and bring diverse communities together to address current challenges of social justice.²⁰

Engaging with historic places as Sites of Conscience involves rejecting the idea of a singular official account of these places and instead opens possibilities of new insights, perspectives and responses.²¹ The deliberate animation of physical places for dialogue on pressing contemporary issues allows these sites to play an intentional role in their societies.²² Injustice is not cast absolutely in the past tense, but rather has an immediacy and dynamism to it that demands our present response and action, in many cases foregrounding the voice and experiences of those with lived experience of the place. This encourages the public to move beyond a framework of individualised legal redress for specific past injustices and towards a collective motivation to prevent, at a structural level, such injustices from occurring again. Despite this emerging practice of memorialisation, states engage with Sites of Conscience unevenly.²³ Public memorials alone are unlikely to achieve either personal or social redress; they must form part of a broader suite of strategies for addressing the past.²⁴

A Institutions of Confinement as Sites of Conscience

Sites of Conscience are well placed to retrieve the marginalised voices and experiences of those held in institutions of confinement and to recover the hidden narratives of such places. They offer a localised epistemological framework that restores agency and humanity to these populations and dislodges the hegemony of official or

15 Ibid 31.

16 ‘About Us’, Sites of Conscience (Web Page) <<https://www.sitesofconscience.org/en/who-we-are/about-us/>>.

17 Ševčenko, ‘Sites of Conscience: Heritage of and for Human Rights’ (n 12) 114, 119; Nayat Karaköse, *Twenty Three and a Half: Hrnt Dink Site of Memory (Preparatory Phase Report, February 2018)* 7.

18 See generally Paul Ashton and Alex Trapeznik, ‘The Public Turn: History Today’ in Paul Ashton and Alex Trapeznik (eds), *What Is Public History Globally?: Working with the Past in the Present* (Bloomsbury, 2019) 1; Paul Ashton and Jacqueline Z Wilson, ‘Remembering Dark Pasts and Horrific Places: Sites of Conscience’ in Paul Ashton and Alex Trapeznik (eds), *What Is Public History Globally?: Working with the Past in the Present* (Bloomsbury, 2019) 281.

19 See, eg, Richard Sandell, *Museums, Prejudice and the Reframing of Difference* (Routledge, 2007); Richard Sandell, *Museums, Moralities and Human Rights* (Routledge, 2017).

20 Brett et al (n 13) 2.

21 Ibid 30.

22 Liz Ševčenko, ‘Sites of Conscience: Reimagining Reparations’ (2011) 1(1) *Change over Time* 6, 25.

23 Brett et al (n 13) 21.

24 Ibid.

statist narratives to expose systematic state violence.²⁵ Sites of Conscience also focus on a ‘redemptive social memory’²⁶ that links these past experiences to continuing and present injustices.

With more than 250 members as of early 2019, there are innumerable examples of these practices across the ICSC global coalition. The Carlisle Indian School Farmhouse Coalition, based in Carlisle, Pennsylvania (USA), seeks to develop a heritage centre dedicated to giving descendants of Indigenous and First Nations people who were institutionalised in ‘Indian Residential Schools’ the power to produce their own narratives.²⁷ In doing so, the Farmhouse Coalition hopes to address intergenerational impacts of Indian residential school experiences and the continuing effects of colonialism.²⁸ The Workhouse, Southwell, United Kingdom (‘UK’), allows visitors to tour buildings that housed Britain’s ‘worthy’ poor; these tours interrogate many of the UK’s foundational approaches to social welfare (which are in some regards also applicable in Australia).²⁹ The main Workhouse gallery exhibit asks, ‘Is what we are doing now better, or worse?’³⁰ Through inclusive remembrance, historic sites of confinement can highlight the functions and personal experiences of institutions of confinement, and the relevance of the institutional past to the (conventionally ‘enlightened’) present. Such sites ultimately offer a ‘polysemy of meaning’³¹ through which to understand present forms of exclusion, prejudice and social control.

Sites of Conscience have also engaged with the aftermath of deinstitutionalisation, in a context where asylum, prison, mental health and welfare infrastructure might otherwise be re-used for dark tourism³² or repurposed (for housing or development). Memorialisation of institutions as Sites of Conscience can be contrasted to practices of dark tourism. Dark tourism is the practice of visiting sites of mass tragedy and harm, and has been criticised as trivialising suffering and creating a voyeuristic ‘theater of the macabre’.³³ In particular, Wilson suggests that tourism in prison spaces generally preserves a sanitised ‘establishment’ narrative of the institution from the perspective of former prison staff, erasing the narratives of prisoners and legitimating confinement in

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- 25 Brendan Wright, ‘Political Violence and the Problematics of Localized Memory at Civilian Massacre Sites: The Cheju 4.3 Peace Park and the Kōch’ang Incident Memorial Park’ (2015) 4(1) *Cross-Currents: Easy Asian History and Culture Review* 151.
- 26 Jacqueline Z Wilson, ‘Beyond the Walls: Sites of Trauma and Suffering, Forgotten Australians and Institutionalisation via Punitive “Welfare”’ (2013) 20 *Public History Review* 80, 82.
- 27 ‘Carlisle Indian School Farmhouse Coalition’, *Sites of Conscience* (Web Page) <<https://www.sitesofconscience.org/en/membership/carlisle-indian-school-farmhouse-coalition/>>; Louellyn White, ‘Who Gets to Tell the Stories? Carlisle Indian School: Imagining a Place of Memory Through Descendant Voices’ (2018) 57(1) *Journal of American Indian Education* 122, 139.
- 28 White (n 27) 140.
- 29 ‘The Workhouse Concept’, *The Workhouse, Southwell* (Web Page) <<https://www.nationaltrust.org.uk/the-workhouse-southwell/features/the-workhouse-concept>>.
- 30 Liz Ševčenko, ‘Sites of Conscience: Lighting up Dark Tourism’ in Marianne Hirsch and Nancy K Miller (eds) *Rites of Return: Diaspora Poetics and the Politics of Memory* (Columbia University Press, 2011) 241, 245.
- 31 Kevin Walby and Justin Piché, ‘The Polysemy of Punishment Memorialization: Dark Tourism and Ontario’s Penal History Museums’ (2011) 13(4) *Punishment & Society* 451, 451.
- 32 Jacqueline Z Wilson, *Prison: Cultural Memory and Dark Tourism* (Peter Lang, 2008) 9.
- 33 Glen Stasiuk and Lily Hibberd, ‘Rottneest or Wadjemup: Tourism and the Forgetting of Aboriginal Incarceration and the Pre-colonial History of Rottneest Island’ in Jacqueline Z Wilson et al (eds), *The Palgrave Handbook of Prison Tourism* (Palgrave Macmillan, 2017) 191, 196. See also Michelle Brown, ‘Penal Optics and the Struggle for the Right to Look: Visuality and Prison Tourism in the Carceral Era’ in Jacqueline Z Wilson et al (eds), *The Palgrave Handbook of Prison Tourism* (Palgrave Macmillan, 2017) 153.

the present.³⁴ Moran argues that dark tourism narratives also obscure continuities, establishing an Othering of the past that suggests that contemporary penal practices are 'reformed'.³⁵ Organisations activating historic places of confinement as Sites of Conscience resist dark tourism that sensationalises the past and seek to create spaces that allow for the recovery of a deeper, culturally complex experience.³⁶

B The Relationship between Sites of Conscience and Conventional Justice Processes

Engaging with historic sites through Sites of Conscience methods has opened up new spaces of deliberation that widen access to and conceptions of justice.³⁷ We argue that Sites of Conscience are about *doing* justice (in the present tense and in an active and ongoing sense), rather than having justice *done* (in the past tense and in a final sense). Sites of Conscience facilitate public engagement with historic sites in terms of ongoing dialogue and collective ethical accountability and responsibility that engage everyone, in contrast to a process of justice that involves an isolated and final act by a judicial decision-maker. As we propose in Part V below, Sites of Conscience have significant impacts on justice *processes* and justice *practitioners*, as we illustrate through discussion of a recent law student excursion to the PFFP Site of Conscience.

Moreover, equipping survivors of a place of injustice with the tools to present both their memories and the otherwise unacknowledged historic meanings of that place, and the continued relevance and significance of that past in the present, challenges official legal and political narratives that silence or undermine survivors. Engaging with historic places through Sites of Conscience methods transgresses the individualising effects of conventional justice processes that reduce harms to justiciable causes of action and that silos victims into separate legal disputes. Instead, we can see collectives, patterns and cycles and it becomes possible to *do* justice across places, people and time.

Organisations engaged in historic places through Sites of Conscience methods have varying relationships to conventional justice processes. Some have supported conventional legal processes used to address human rights violations, and have assisted in achieving individualised justice through courts.³⁸ The symbolic and social function of engaging with Sites of Conscience also enables these methods to serve as an alternative to mainstream legal processes for individuals seeking justice, including in relation to state and institutional violence.³⁹ Organisations engaging with historic places through Sites of Conscience methods situate legal processes within a wider, ongoing reflection on the nature of justice in their societies, in order to establish transformative practices beyond law organised around deliberation and confrontation.⁴⁰

34 Jacqueline Z Wilson et al, 'Introduction: Prison Tourism in Context' in Jacqueline Z Wilson et al (eds), *The Palgrave Handbook of Prison Tourism* (Palgrave Macmillan, 2017) 5.

35 Dominique Moran, *Carceral Geography: Spaces and Practices of Incarceration* (Routledge, 2016) 141.

36 Stasiuk and Hibberd (n 33) 203.

37 Alex Jeffrey, 'The Political Geographies of Transitional Justice' (2011) 36(3) *Transactions of the Institute of British Geographers* 344, 344.

38 Jennifer A Orange, 'Translating Law Into Practice: Museums and a Human Rights Community of Practice' (2016) 38(3) *Human Rights Quarterly* 706, 722.

39 Ševčenko, 'Sites of Conscience: Reimagining Reparations' (n 22) 15; Jeffrey (n 37) 344.

40 Ševčenko, 'Sites of Conscience: Reimagining Reparations' (n 22) 16. But see Valeria Vázquez Guevara, 'Crafting the Lawful Truth: Chile's 1990 Truth Commission, International Human Rights and the Museum of Memory', 7(2) *London Review of International Law* 253.

The District Six Museum is an example of how communities have used Site of Conscience methods to initiate and substantiate legal claims. Former residents of District Six in Cape Town, South Africa, who were displaced in the apartheid era, established a map of the razed neighbourhood in a local church and marked it to identify their past homes.⁴¹ This became the basis of both the Museum and a successful land reparations movement under the new constitution of South Africa, with the map serving as an evidentiary basis for judicial processes of restitution through land claims and damages awards.⁴² The archival practices of Sites of Conscience have also been used to provide evidence in criminal prosecutions.⁴³

Sites of Conscience methods have also emerged to fill the gaps left by legal institutions and processes. Material reparations regimes and judicial processes alone cannot adequately address national and individual trauma and social reconstruction in the long term.⁴⁴ Memorialisation, in its public recognition of suffering and recovery of memory, can act as a bridge between past and future, and also reckon with the ongoing legacies of injustice.⁴⁵ An example is the Sierra Leone Peace Museum located on the site of the former Special Court for Sierra Leone, which adjudicated crimes committed during the civil war (1991–2002). The Museum was established not only to document the history of the war and the peace process, but also to act as a ‘continuing advocate’ for victims and for a culture of human rights, recognising that ‘the legal process leaves much work to be done’ despite the completion of legal work.⁴⁶ Similarly, the District Six Museum discussed above recognised that the impacts of mass displacement could not be fully addressed by the reparations program and the courts.⁴⁷ The Museum acts as a space for community planning and rebuilding of the neighbourhood and addresses conflicts among ex-residents.⁴⁸ As Douglas notes, it is focused on simultaneously ‘interrogat[ing] notions of community, home, and race while also attempting to build an anti-apartheid city’.⁴⁹

Sites of Conscience methods have emerged as a unique resource for individuals seeking justice in relation to state and institutional violence.⁵⁰ For example, Ševčenko notes that Chile’s legal regime, which sought to provide reparations to victims of the Pinochet dictatorship, focused on material remedies and did little to recognise sites of memory.⁵¹ In response, Villa Grimaldi was established by a group of survivors to make public the history of the estate as a secret institution of torture and detention, to provide

41 Ševčenko, ‘Sites of Conscience: Reimagining Reparations’ (n 22) 15–16; Orange (n 38) 723–4.

42 Ševčenko, ‘Sites of Conscience: Reimagining Reparations’ (n 22) 16. For an in-depth sociolegal analysis of the District Six Museum see Stacy Douglas, *Curating Community: Museums, Constitutionalism, and the Taming of the Political* (University of Michigan Press, 2017).

43 Orange (n 38) 724. For example, the Tuol Sleng Genocide Museum in Cambodia includes meticulous records of Khmer Rouge crimes, which were used in proceedings before the Extraordinary Chambers in the Courts of Cambodia. For a sociolegal analysis of the Tuol Sleng Genocide Museum see Maria Elander, ‘Education and Photography at Tuol Sleng Genocide Museum’ in Peter D Rush and Olivera Simić (eds), *The Arts of Transitional Justice: Culture, Activism, and Memory after Atrocity* (Springer, 2014) 43.

44 Ševčenko, ‘Sites of Conscience: Reimagining Reparations’ (n 22) 29; Frédéric Mégret, ‘Of Shrines, Memorials and Museums: Using the International Criminal Court’s Victim Reparation and Assistance Regime to Promote Transitional Justice’ (2010) 16 *Buffalo Human Rights Law Review* 1, 26.

45 Ševčenko, ‘Sites of Conscience: Reimagining Reparations’ (n 22) 30; Mégret (n 44) 49.

46 Orange (n 39) 725.

47 Ševčenko, ‘Sites of Conscience: Reimagining Reparations’ (n 22) 16.

48 Ibid.

49 Douglas (n 42) 16. See also discussion of the museum’s Floor Map: at 79–83.

50 Ševčenko, ‘Sites of Conscience: Reimagining Reparations’ (n 22) 21–5.

51 Ibid 21.

a place of healing and education, and to serve as a *de facto* collective symbolic reparation.⁵² In this sense, communities have activated historic sites through Sites of Conscience methods in a shift away from traditional judicial logic, embedding the ‘right to reparation’ in wider social reconstruction processes, official or otherwise.⁵³

This article makes a very particular and novel contribution to the existing literature on Sites of Conscience. We focus specifically on the implications for law student and legal practitioner ethical and professional development of Sites of Conscience related to institutions of confinement in the Australian settler colonial context.

III INSTITUTIONALISATION IN AUSTRALIA

The significance of the PFFP as a Site of Conscience to law students and legal practitioners is premised on an approach to institutionalisation that is ‘inter-institutional’, being focused on interrelationships between different, persistent and pervasive systems of institutionalisation. This approach is also attentive to the significance of the enduring erasure of injustices and histories of institutionalisation, and the limits of traditional legal forms of redress, within the Australian context. The approach draws on Michel Foucault’s notion of the ‘carceral continuum’. In Foucault’s approach, control does not reside in one specific institution, such as the prison, but instead operates through ‘diffused penitentiary techniques’⁵⁴ across society.⁵⁵ The carceral continuum has a temporal aspect insofar as new modes of carceral control emerge *against* and *through* the limitations – and, indeed, even the perceived failures – of existing forms of carceral control, including under the guise of reform.⁵⁶ There is also a kinetic element to the continuum – in the senses of movement and an interconnected corpus – with individuals seamlessly moved between modes and sites of carceral control and the modes and sites themselves evolving over time. This means that across individuals’ lives and across macro policy shifts, any ‘freedom’ from one site of confinement generally results in other modes of confinement and control of institutionalised populations.

As such, the current wealth of evidence of harms and injustices in institutions of confinement raises very specific questions particular to each sector, and broader questions *across* these sectors about the routine and systemic use of institutions of confinement against some of Australia’s most marginalised populations. At the same time, this current moment signals that today’s problems with institutions of confinement are not superficial but, rather, deeply rooted in Australian law, politics and culture. As a penal colony, institutionalisation has always formed part of the structure of Australian

52 Ibid 21–5.

53 Mégret (n 44) 53.

54 Michel Foucault, *Discipline and Punish: The Birth of the Prison*, tr Alan Sheridan (Penguin, 1979) 297 [trans of: *Surveiller et Punir: Naissance de la Prison* (1975)].

55 Ibid. See also development of Foucault’s ideas in the disability context as the ‘institutional archipelago’: Chris Chapman, Allison C Carey and Liat Ben-Moshe, ‘Reconsidering Confinement: Interlocking Locations and Logics of Incarceration’ in Liat Ben-Moshe, Chris Chapman and Allison C Carey (eds), *Disability Incarcerated: Imprisonment and Disability in the United States and Canada* (Palgrave Macmillan, 2014) 3 (‘Reconsidering Confinement’).

56 Michel Foucault, ‘8 February 1978’, tr Graham Burchell in Michel Foucault, *Security, Territory, Population: Lectures at the Collège de France 1977–1978*, ed Michel Senellart (Palgrave Macmillan, 2007) 115, 117–18. See also Chapman, Carey and Ben-Moshe, ‘Reconsidering Confinement’ (n 55); Linda Steele, ‘Towards a Legal Account of (the Endurance of) Disability Institutions’ (Conference Paper, International Institute for the Sociology of Law, 21–22 June 2018).

society.⁵⁷ Moreover, many of the same populations have been confined in institutions over this time and through various material, legal and political shifts in the enactment and rationalisation of institutionalisation. As such, the recent inquiries into and media coverage of harms and injustices in institutions can be positioned as but one iteration of a longer term phenomenon in Australia of the deep entanglements of institutionalisation with systems of oppression. These systems, we contend, embody and continue the founding of Australian institutions of confinement within a punitive framework. And, while this ‘total’ carceral model might also act on white bodies, it is embedded in the settler colonial Australian state and its legal enforcement of the dispossession of Aboriginal and Torres Strait Islander peoples and denial of their sovereignty and self-determination.⁵⁸

Seen in this light, this wealth of evidence of *contemporary* institutional harms and injustices not only prompts concerns about redress for specific victims, but also enlivens fundamental questions of a different temporal register. It directs us to ask how the Australian legal system, and Australian law students and legal practitioners, should respond to contemporary, historical and intergenerational institutional harm and injustice. It also directs us to questions of how to transform laws and social relations to redress instances of injustice and address the deeply embedded structural conditions that facilitate the *continuation* of practices of institutionalisation and the institutions of confinement themselves. It encourages us to consider connections between law and legal actors with institutions of confinement (both at the one point in time and across points in time), settler colonialism, eugenics and settler colonial nationbuilding⁵⁹ and to trace the complex role of law and legal actors in practices and places of institutionalisation which have endured and recalibrated over time through to our contemporary era, and very likely into the future.⁶⁰

57 See, eg, Catharine Coleborne and Dolly MacKinnon, ‘Psychiatry and its Institutions in Australia and New Zealand: An Overview’ (2006) 18(4) *International Review of Psychiatry* 371; Chris Cunneen et al, *Penal Culture and Hyperincarceration: The Revival of the Prison* (Ashgate, 2013) 19–37; Mark Finnane, ‘From Dangerous Lunatic to Human Rights?: The Law and Mental Illness in Australian History’ in Catharine Coleborne and Dolly MacKinnon (eds), *‘Madness’ in Australia: Histories, Heritage and the Asylum* (University of Queensland Press, 2003) 23; Stephen Garton, ‘Asylum Histories: Reconsidering Australia’s Lunatic Past’ in Catharine Coleborne and Dolly MacKinnon (eds), *‘Madness’ in Australia: Histories, Heritage and the Asylum* (University of Queensland Press, 2003) 11.

58 See, eg, contrasting of the official Australian government response to memorialisation of the Aboriginal prison on Wadjemup (Rottneest Island) to Tasmanian convict prisons: Stasiuk and Hibberd (n 33). See also Cunneen et al (n 57) 28. For similar ideas arising in an exploration of relationships between nation building, colonialism and institutionalisation of Ireland’s Magdalen women see Kate Gleeson, ‘A Woman’s Work is ... Unfinished Business: Justice for the Disappeared Magdalen Women of Modern Ireland’ (2017) 25(3) *Feminist Legal Studies* 291.

59 In the context of the Precinct, see, eg, Lauren Tynan, *Changing Places: Cootamundra to Parramatta Girls Home* (Parramatta Female Factory Precinct Association Inc, 2018).

60 See, eg, Cunneen et al (n 57). For similar observations in the Canadian context see Chris Chapman, ‘Five Centuries’ Material Reforms and Ethical Reformulations of Social Elimination’ in Liat Ben-Moshe, Chris Chapman and Allison C Carey (eds), *Disability Incarcerated: Imprisonment and Disability in the United States and Canada* (Palgrave Macmillan, 2014) 25; Chapman, Carey and Ben-Moshe, ‘Reconsidering Confinement’ (n 55); Chris Chapman and AJ Withers, *A Violent History of Benevolence: Interlocking Oppression in the Moral Economies of Social Working* (University of Toronto Press, 2019); Ameil Joseph, *Deportation and the Confluence of Violence within Forensic Mental Health and Immigration Systems* (Palgrave Macmillan, 2015).

The notion of ‘erasure’ is useful in thinking about how institutionalisation and its injustice endure across time and place.⁶¹ First, as Wilson and others have noted, there is a worrying focus on the celebration of Australia’s (white) convict history at the cost of critical or ethical engagement with more recent and normalised practices of incarceration that disproportionately impact on racialised, Indigenous, poor or disabled populations.⁶² Second, the closure of particular institutions does not ensure ‘freedom’ of those detained, as they are often transferred into other institutions or other modes of coercive intervention. In part, this is because laws enabling institutionalisation do not so much cease to exist with any finality, but rather are *amended* or *replaced* with new laws that carry forward institutionalisation.⁶³ Third, processes of deinstitutionalisation have served to mask the material, political and legal continuities in institutionalisation. During the second half of the 20th century, across Australia, disability, mental health, and child welfare sectors went through deinstitutionalisation processes involving the closure or downsizing of large-scale institutions and the movement of institutionalised people into ‘community’ settings.⁶⁴ One aspect of the deinstitutionalisation process was the abandonment, posthumous neglect or demolition of specific buildings and sites of institutionalisation.⁶⁵ While deinstitutionalisation was celebrated as marking the dawn of a more progressive era, scholars have noted that with this closure come risks of collective forgetting of these places of institutionalisation.⁶⁶ The possible ‘erasure’⁶⁷ of the injustices associated with these historical sites is additionally problematic because it might then become difficult to trace connections across time to the present day, and between institutions of confinement and other modes of coercive intervention in the ‘community’.⁶⁸ A further reason for this forgetting is that different institutions of confinement are regulated by different legislative frameworks that are often each administered by different government departments, thus embedding these siloes and disconnections in law and bureaucracy to effect another type of erasure or masking.⁶⁹

Erasure of the *harms and injustices* of institutions also occurs through the limits of legal redress. For example, Rossiter and Rinaldi argue that a settlement redress scheme for disabled individuals ‘re-inscribe[s] systemic forms of injustice’.⁷⁰ Kim argues that while injustice is material and embodied and lives on through disabled peoples’ lives and survival,

justice—in demands for reparations and apologies for harms inflicted—is often cast as a universal and final outcome that cannot be revisited. Justice is described as ‘not done yet’

61 Jihan Abbas and Jijian Voronka, ‘Remembering Institutional Erasures: The Meaning of Histories of Disability Incarceration in Ontario’ in Liat Ben-Moshe, Chris Chapman and Allison C Carey (eds), *Disability Incarcerated: Imprisonment and Disability in the United States and Canada* (Palgrave Macmillan, 2014) 121.

62 Wilson, *Prison: Cultural Memory and Dark Tourism* (n 32) 177, see generally 191–211. See also Cunneen et al (57) 28.

63 Steele, ‘Towards a Legal Account of (the Endurance of) Disability Institutions’ (n 56) 26.

64 Coleborne and MacKinnon (n 57).

65 For example, in the context of mental health institutions see Graham Moon, Robin Kearns and Alun Joseph, *The Afterlives of the Psychiatric Asylum: Recycling Concepts, Sites and Memories* (Ashgate, 2015).

66 Abbas and Voronka (n 61) 121.

67 Ibid.

68 Niklas Altermark, *Citizenship Inclusion and Intellectual Disability: Biopolitics Post-Institutionalisation* (Routledge, 2017) 13.

69 Steele, ‘Towards a Legal Account of (the Endurance of) Disability Institutions’ (n 56) 12–14.

70 Kate Rossiter and Jen Rinaldi, *Institutional Violence and Disability: Punishing Conditions* (Routledge, 2018) 67.

or 'done', as if justice were something to be completed at a certain time by a set of actions upon which affected people and society in general agree.⁷¹

A further limit of relying on legal modes of justice is the problem that much of the injustice of institutions of confinement has been enlivened and legitimated through law and through the actions and decisions of legal actors (eg the legal purposing of specific buildings for institutional use and the detention, pursuant to court or tribunal orders, of individuals within these buildings),⁷² as well as the legal system's role in broader settler colonial dispossession and the denial of Aboriginal and Torres Strait Islander sovereignty in which institutionalisation is situated (and its failure to acknowledge and remedy colonialism per se).⁷³ Running alongside this is a parallel dimension of the role of women and children in the colonial program of occupation and dispossession. This enactment was most successful in terms of the sweeping and systematic disappearance of black bodies within the larger schema of female criminalisation and confinement/removal of children. Although it is beyond the scope of this article to explore more fully, it is also vital to interrogate the complex ways in which the larger punitive institutionalisation of women and children empowered colonial dispossession. Such consideration needs to be nuanced, mindful too of the different unfoldings of history on colonial frontiers, as compared to the centres of colonial power.

In this current moment, then, legal actors concerned with understanding and countering the harms and injustices of institutions of confinement must not restrict themselves to considering only legal redress of individual victims or fixing problems within a series of siloed sectors. Legal actors should instead attend to fundamental questions of institutions of confinement per se. Has the legal system supported the existence and recalibration of institutions of confinement as just and legitimate in the face of their harm and injustice? What role have legal actors played? How do we understand the limitations of the legal system in redressing harms and injustices in which it has itself been complicit? And, how do we understand the accountability of and responsibility of legal actors for what has occurred in the past in terms of their role in shaping our legal system into the future? The PFFP provides novel opportunities for considering these questions.

IV PARRAMATTA FEMALE FACTORY PRECINCT

The Memory Project is a social history and contemporary art project promoting awareness about the history, heritage and legacy of institutionalisation of women and children in Australia and activating the historic Precinct as Australia's first Site of Conscience.⁷⁴ The PFFP is the first place in Australia officially recognised by ICSC as

71 Eunjung Kim, 'Continuing Presence of Discarded Bodies: Occupational Harm, Necro-Activism, and Living Justice' (2019) 5(1) *Catalyst: Feminism, Theory, Technoscience* 1, 3.

72 Steele, 'Towards a Legal Account of (the Endurance of) Disability Institutions' (n 56) 18; Linda Steele, 'Lawful Institutional Violence Against Disabled People' [2017] 143 (November/December) *Precedent* 4; Steele, 'Troubling Law's Indefinite Detention' (n 6).

73 Irene Watson, 'The Aboriginal State of Emergency Arrived with Cook and the First Fleet' (2007) 26(1) *Australian Feminist Law Journal* 3, 7. See also Pauline Klippmark and Karen Crawley, 'Justice for Ms Dhu: Accounting for Indigenous Deaths in Custody in Australia' (2018) 27(6) *Social & Legal Studies* 695.

74 See 'Contemporary Art + Social History', *Parramatta Female Factory Precinct Memory Project* (Web Page) <<https://www.pffpmemory.org.au/>>. See also Bonney Djuric, 'A Past Revisited' in Paul Ashton and Jacqueline Z Wilson (eds), *Silent System: Forgotten Australians and the Institutionalisation of Women and Children* (Australian Scholarly Publishing, 2014) 119; Lily Hibberd, 'Making Future Memory' in Paul Ashton and Jacqueline Z Wilson (eds), *Silent System: Forgotten Australians and the Institutionalisation of Women and*

a Site of Conscience. The Memory Project was founded in 2012, when former PGH resident Bonney Djuric invited artist Lily Hibberd to develop an art and social history collaboration with a group of former residents of PGH. These women were members of a support group called ‘Parragirls’, which three former residents – Bonney Djuric, Christina Green and Lynette Aitken – created in 2006 as a contact register and advocacy network. In this Part we introduce the site itself, followed in Part V with a discussion of the Memory Project.

The PFFP covers 23 hectares and is located in North Parramatta, New South Wales, along a bend of the Parramatta River. The Precinct’s institutional complex is sited on Burramattagal lands inhabited by the Darug people, and its proximity to that particular bend in the river provided the location with particular significance as a meeting and trading place, in addition to being a sacred location to women and children. As Tobin explains:

The term Burramatta translates as ‘a place where the eels lie down’. The Girls’ Home is located on a site along the river known as the Crescent. It is also the place where the salt water meets the fresh water and still today the eels gather on their way out to sea as part of their migratory path to the northern parts of Australia. The local Burramattagal would meet with other clans at the time of the full moon when the eels were running and corroborees would be held late into the night, as the local clans from far and wide would feast on the fattened eels. Women and children laid fish traps and fished with handlines and gathered food from the river and nearby surrounds. The river provided all that was needed and not far from the banks are sites that are thought to contain birthing places and ochre markings can be seen on the faces of rocks and caves.⁷⁵

Selected in November 1788 for a military outpost, the Crescent on Parramatta River was one of Australia’s first two colonial settlements⁷⁶ and hence, in terms of Aboriginal narrative, threads together eons of pre-colonial memory with recent histories of settlement and dispossession. Tynan explains that

[i]n this sense, Parramatta’s ancient history is Parramatta’s modern history; one that cannot exist without the other, and we cannot move through to the future without bringing that history along with us, in research, in story and in the site itself.⁷⁷

The ongoing significance of the site to the Darug people, as well as their dispossession via European settlement (including through the construction of the Precinct) is a vital dimension of the history and life of the Precinct and the larger story it tells of institutions and settler colonial nation-building. It is also important to the contemporary work of the Memory Project that activating and enacting a Site of Conscience also contends with the past and present marginalisation of Darug people and the many people of Aboriginal descent who were incarcerated in the various institutions on the site.⁷⁸

The footprint of the Precinct encapsulates two institutional areas, the Female Factory site and the Roman Catholic orphanage site, which evolved over time and were

Children (Australian Scholarly Publishing, 2014) 103; Lily Hibberd and Bonney Djuric, ‘Art after Oblivion: The Parramatta Female Factory Precinct Memory Project’ (2013) 33(3) *Artlink* 68 (‘Art after Oblivion’).

75 Hibberd and Djuric, ‘Art after Oblivion’ (n 74) 69. See also Tynan (n 59). See also Erin ‘Burrumurang’ Wilkins and Aunty Edna Watson, ‘Welcome to Country’ in Lily Hibberd and Bonney Djuric, *Parragirls: Reimagining Parramatta Girls Home through Art and Memory* (NewSouth Publishing, 2019) vii, vii–ix (‘Parragirls’).

76 Terry Kass, ‘Parramatta’, *Dictionary of Sydney* (Web Page, 2008) <<https://dictionaryofsydney.org/entry/parramatta>>. See also ‘Upriver: Sydney’s First Highway’, *Hindsight: ABC Radio National* (online, 20 July 2014) <<https://www.abc.net.au/radionational/programs/archived/hindsight/upriver/5573148>>.

77 Tynan (n 59) 8.

78 Hibberd and Djuric, ‘Art after Oblivion’ (n 74); Tynan (n 59).

used for multiple institutions of confinement. The colonial authorities established a Female Factory in 1821 as a holding depot and prison for all unassigned convict women.⁷⁹ With convict transportation ending in 1840, the site was subsequently, albeit unofficially, used to confine sick and destitute convict women.⁸⁰ In 1847, the Female Factory was repurposed as the Lunatic and Invalid Convicts Asylum, and was gazetted in December 1848 as the Parramatta Lunatic Asylum under the administration of Tarban Creek Asylum, Gladesville. In 1983, the site was repurposed as the present-day Cumberland Hospital.⁸¹

The adjacent orphanage site was established when the colonial government approved a two-and-a-half acre allotment adjoining the Female Factory grounds in response to demands from the growing Irish Catholic population for a Roman Catholic Orphan School. This institution operated from 1844 until 1886,⁸² when it was closed following a Royal Commission that found the ‘barrack’ style living arrangements inhumane and inefficient.⁸³ In 1887, the orphanage was repurposed as the Girls Industrial School, commonly known as PGH.⁸⁴ The original detainees were girls moved from Biloela Industrial School (on Cockatoo Island, Sydney),⁸⁵ which was closed in part following investigations into ‘gross mismanagement and cruelty from the administration and unruliness and frequent rioting from the girls’.⁸⁶ Throughout its operation, under many different titles, PGH had a reputation for cruel and abusive treatment of its occupants. This came to a head in 1973, with a protracted Women’s Liberation Movement campaign and ensuing media coverage of the institution that exposed serious allegations of abuse.⁸⁷ A review of child welfare legislation followed and PGH was closed in 1974.⁸⁸ Part of the home was repurposed as two child welfare institutions: Kamballa Girls Training School and Taldree Boys Remand Centre.⁸⁹ While some detainees of PGH were released, others identified as having behavioural disturbances continued to be detained onsite in a newly established ‘Kamballa Special Unit’.⁹⁰ Kamballa and Taldree operated until 1983 and served thereafter as administrative offices for the Department of Community Services until 2009.⁹¹ In 1980, the main section of PGH was repurposed as Norma Parker Detention Centre, a minimum-security prison for women.⁹² Cumberland Hospital remains the only operational institution of confinement on the Precinct.

79 Bonney Djuric, *Abandon All Hope: A History of Parramatta Girls Industrial School* (Chargan My Book Publisher, 2011) 1–9 (‘*Abandon All Hope*’).

80 Ibid 9.

81 ‘Precinct Institutions’, *Parramatta Female Factory Precinct Memory Project* (Web Page) <<https://www.pffpmemory.org.au/precinct-institutions>>.

82 Djuric, *Abandon All Hope* (n 79) 15–24.

83 Ibid 23.

84 Ibid 24, 60.

85 Ibid 60.

86 ‘Reform School’, *Cockatoo Island* (Web Page) <www.cockatooisland.gov.au/visit/history/reform-school>. See generally Djuric, *Abandon All Hope* (n 79) 50–8; Hibberd and Djuric, *Parragirls* (n 75) 130. The girls detained at Biloela had earlier been moved from a site at Newcastle: Djuric, *Abandon All Hope* (n 79) 50–1.

87 Djuric, *Abandon All Hope* (n 79) 123–32.

88 Ibid 132–4.

89 Ibid.

90 Ibid 134.

91 Ibid 134–5.

92 Ibid 136.

A The Precinct and Institutional Injustice

Each of the multiple institutions that occupied the Precinct bear witness to very particular stories of harm and injustice, as well as resistance and survival, and are important foci of analysis in their own right. However, the Precinct is significant in relation to the stories it tells *across* institutions and of the evolution and endurance of institutionalisation throughout Australia's settler colonial history and present. The multiple repurposings of the site and its use across a number of sectors exemplifies the geographical, historical, intergenerational and legal aspects of the carceral continuum as it has manifested in the settler colonial Australian context. Memorialisation of some of the earlier iterations of the Precinct – the Asylum, the Female Factory and the Girls Industrial School – can provide us with new prisms through which to understand injustices of contemporary institutions of confinement, and new tools for how we do justice in ways that are inter-institutional and attentive to geography, temporality, legality and corporeality, as well as the lived experience of the people caught up in this system.

Since its original use as the Female Factory, the Precinct has been a place presented publicly as a form of shelter or care, while what happened within resulted in serious harm and injustice for many of those who were institutionalised. Although the Precinct's importance in the public memory predominantly rests on its connection to Australia's white settler/convict era, its legacy for Aboriginal Australians who passed through its institutions is significant, as is the foundational role it played in the development of carceral approaches to child welfare that arguably persist today. As the Memory Project's report *Changing Places* suggests, the framework of eugenics might be particularly useful in this exploration.⁹³ Tynan argues in this report that the site has particular significance in relation to the origins of Stolen Generations policies, with the first removal of Aboriginal children in early colonial times to the Native Institute at Parramatta – which was located in central Parramatta, some distance from the Precinct, but which resulted in confinement of the children of local Darug people.⁹⁴ More recently, girls of Aboriginal descent were detained in PGH,⁹⁵ as well as in the later Kamballa and Taldree child welfare homes. For example, in her study of the records of the Cootamundra Training Home for Aboriginal Girls for the period 1912–31, Tynan found that approximately 8% ($n=21$) of the Aboriginal residents of Cootamundra Home were moved to PGH.⁹⁶ Tynan also suggests that girls were moved for disciplinary reasons.⁹⁷ Our point is not that PGH (or the Precinct more broadly) was a primary site of Aboriginal incarceration. Rather, we propose that PGH manifested dominant ideologies of eugenics that circulated in the early 20th century, such that PGH became a place where Aboriginal girls were incarcerated alongside other girls deemed 'unfit' and deviant.⁹⁸ Within this institution, they suffered and were exposed to different levels and forms of abuse and this occurred in a broader context of systematic colonial practices of child removal, displacement and dispossession.⁹⁹

93 Tynan (n 59).

94 Hibberd and Djuric, *Parragirls* (n 75) 98.

95 Hibberd and Djuric, 'Art after Oblivion' (n 74); Tynan (n 59).

96 Tynan (n 59) 7. Tynan notes limitations in the records which render this figure an approximation: at 17–18.

97 *Ibid* 19–20.

98 *Ibid* 22–7.

99 See, eg, Hibberd and Djuric, 'Art after Oblivion' (n 74) 69.

When the main buildings of PGH were reopened in 1980 as the Norma Parker Detention Centre for the periodic detention of women, a number of women were detained there with their children. The movement of young women through the Precinct's own complex reveals the interlocking nature of earlier acts of colonisation, and how the Precinct is a foundational example of the design of Australian institutional welfare. It also shows how this design is complicit in ongoing systemic violence against Aboriginal Australians today, most notably through the forced removal of children from their mothers through the child 'welfare' system.¹⁰⁰ Hibberd and Djuric note that the Memory Project 'bears witness to the contradictory nature of its riverside location, once sacred to Darug women and yet, since colonisation, a place of incarceration for many generations of Aboriginal and non-Aboriginal girls'.¹⁰¹ In 2017, through extensive consultation with Darug Elders, Aboriginal Parragirls and local Indigenous leadership, the site was identified as a possible location for a Keeping Place. By way of background, in 2016, a NSW inquiry into reparations for the Stolen Generations put forward recommendations for establishing "'Keeping Places" – Aboriginal community managed places where cultural material is held for safe keeping'¹⁰² – to 'assist healing for Stolen Generations members and their descendants, and educate the public about their experiences'.¹⁰³ Darug Elders and the Memory Project joined forces to recommend the site in response to the report on *Reparations for the Stolen Generations in New South Wales*.¹⁰⁴ The Precinct thus illuminates the confluence of the Aboriginal Stolen Generations with broader practices of penal welfarism.¹⁰⁵ Tynan again emphasises how these injustices of institutional violence continue in our present and into the future, such as through the torture of Indigenous Australian children in juvenile detention via teargas, restraint chairs and spit hoods at Don Dale Youth Detention Centre in the Northern Territory.¹⁰⁶ She says that 'a critical analysis of past injustices becomes paramount for learning, but also, for healing'.¹⁰⁷

More generally, the Precinct's various institutions of confinement operated under a punitive model that not only permitted harmful and harsh conditions, but also allowed both physical and sexual abuse to go largely unchecked (as evidenced by the infrequent number of inquiries); indeed, these harmful and harsh conditions provided some impetus for them being closed down (only for the site to be repurposed for other, harmful institutions). Conditions at PGH were mostly unchanged over its almost 100 year lifespan, with many of the same punishments carried out over this time, including laundry work, hard physical labour and scrubbing punishments, deprivation of food and

100 See, eg, the 2018 policy shift of the NSW government towards fast-tracking pathway to adoptions and adoption-like guardianship orders: *Children and Young Persons (Care and Protection) Amendment Act 2018* (NSW).

101 Hibberd and Djuric, 'Art after Oblivion' (n 74) 68.

102 Legislative Council General Purpose Standing Committee No 3, Parliament of New South Wales, *Reparations for the Stolen Generations in New South Wales: Unfinished Business* (Report, 23 June 2016) 76 [5.67].

103 New South Wales Government, *Unfinished Business: New South Wales Government Response to the General Purpose Standing Committee 3 Report into Reparations for the Stolen Generations* (Report, 2 December 2016) 7.

104 Legislative Council General Purpose Standing Committee No 3, Parliament of New South Wales, *Reparations for the Stolen Generations in New South Wales* (n 102).

105 Hibberd and Djuric, 'Art after Oblivion' (n 74) 68; Tynan (n 59) 20–2.

106 Tynan (n 59) 27.

107 Ibid.

menstrual items, forced medication, solitary confinement and beatings, the effects of which are endured by survivors to this day.¹⁰⁸ Djuric has described PGH as

a place where girls were exposed to an abnormal culture of fear and unworthiness; a place where those employed to care for them were able to pursue their criminality, sadism and perversions safe in the knowledge that no one was going to rescue or even believe their victims; that thorough investigations were unlikely and that in any case they could safely retire without ever being brought to justice. ... Questioning of authority was not tolerated and answering back was regarded as a major offence warranting physical punishment. This in turn has left many unable to engage in dialogue with authorities or authority figures such as those in the medical, legal and social welfare fields. The irony is that as a result of their institutional experience former inmates are far more likely to be dependent on services only available through such authorities.¹⁰⁹

These violations have been recorded by the Royal Commission into Institutional Responses to Child Sexual Abuse ('RCIRCSA'). Findings from RCIRCSA's investigation into PGH catalogue a regime of punishment and emotional trauma, including physical and medical control, and physical and sexual abuse. Compensation and civil claim processes related to the home also came in for criticism in its report.¹¹⁰ These documented individual instances of abuse can be situated within the structural and legal violence of coercive institutionalisation and related practices, such as forced child removal and non-consensual mental health treatment.

In light of this long-standing abuse, the Precinct carries a heavy burden as it bears witness to the harm and injustice of thousands of Australians detained on the site. Indeed, the site in its material form holds important markings that are vital to conventional justice processes. For example, one Parragirl's 'memory of another Parragirl's scratching made in [the] Bethel [building of the Girls Home] in the late 1950s was the sole proof for a private compensation claim against a state welfare department because all of her welfare records had been destroyed'.¹¹¹

As Australia's longest-operating site of institutionalisation of children, women, Indigenous Australians and those labelled as mentally ill, the Precinct illustrates a variety of concerns that can inform how we frame, articulate and redress the injustices of institutionalisation. First, the repurposing of the Precinct site over nearly 200 years, while frequently a response to crises and scandals, did not prompt any fundamental rethinking of institutionalisation itself, but instead the further reification (via repurposing) of institutions of confinement in ways that continued to capture the same marginalised and precarious populations. This phenomenon of closure and repurposing is observed by Hibberd and Djuric, who note 'each name change occurring after a government inquiry into abuse or poor conditions yet without real reform'.¹¹² This suggests that we need to be cautious in assuming that 'closure' of a particular institution of confinement is a progressive move and will prevent further harm and injustice. Rather, the Precinct demonstrates the endurance over time of institutions vis-à-vis marginalised and precarious populations, and that closure is not so much a positive moment of finality of the institution itself as a transitional process of reconfiguration and re-legitimation of institutionalisation. Moreover, documentation of lifelong legacies

108 For survivor-authored accounts, see Djuric, 'A Past Revisited' (n 74) 119; Djuric, *Abandon All Hope* (n 79); Christina Green, *The Life of Riley* (Parramatta Female Factory Precinct Memory Project, 2014); Hibberd and Djuric, 'Art after Oblivion' (n 74).

109 Djuric, *Abandon All Hope* (n 79) 191.

110 Case Study No 7 (n 7).

111 Hibberd and Djuric, *Parragirls* (n 75) 131.

112 *Ibid* 3.

of harms and injustices that took place at PGH more than 40 years ago¹¹³ highlights how they endure in people well beyond the closure of sites, and that it is vital to redress these enduring harms, and give survivors control over how their experiences are understood and represented. As Djuric argues,

‘social control’ was the central instrument of such institutions that it has been ‘important that those with a direct experience’ take back control over ‘how they are remembered, how this history is interpreted and how these places are used in the future’.¹¹⁴

Second, the many institutional iterations of the Precinct tell us that harm and injustice are not restricted to one particular time period, type of institution or sub-section of the population. The PFFP provides but one geographical site that witnesses and embodies the dynamics of institutionalisation and provides a continuity of institutionalisation and injustice from Australia’s colonial beginnings to the present day.

Third, the site illuminates the fluidity of movement of marginalised individuals *between* systems of institutionalisation such as ‘penal welfarism’ (movement between places of ‘care’, such as child welfare homes, into criminal justice systems)¹¹⁵ and criminalisation of disability (movement between mental health, disability and criminal justice systems).¹¹⁶ The history of the Precinct signals the endurance of hierarchies of privilege that have enabled the systemic marginalisation and oppression of Indigenous people, women, children and people labelled as mentally ill.¹¹⁷ The life of the site also traces legal transitions in the child welfare system towards a more punitive model.¹¹⁸

While the Precinct has the potential to tell such stories, the general public is still more likely to connect it with a convict past. As discussed earlier and noted by various scholars, the convict Female Factory iteration of the ‘Female Factory’ section of the Precinct has received ever-growing support and interest for its convict ‘sandstone’ history (despite very few of the original buildings having been preserved) rather than for that section’s far longer and more recent mental health history. Moreover, the other section of the Parramatta Female Factory Precinct site, with its long child welfare history that commences with the Roman Catholic orphanage – and encompasses PGH, Kamballa, Taldree and the Norma Parker Women’s Detention Centre – has been thus rendered invisible by the popularity of ‘convictism’.¹¹⁹ The work done by Parragirls and the Memory Project, in contrast, has foregrounded more recent histories of what might be referred to as ‘difficult heritage’ (‘a past that is recognised as meaningful in the present but that is also contested and awkward for public reconciliation with a positive,

113 See, eg. Case Study No 7 (n 7).

114 Hibberd and Djuric, *Parragirls* (n 75) 199.

115 See, eg. Kerry Carrington and Margaret Pereira, *Offending Youth: Sex, Crime and Justice* (Federation Press, 1st ed, 2009) 2 (‘*Offending Youth*’).

116 Ruth McCausland and Eileen Baldry, “‘I Feel Like I Failed Him by Ringing the Police’: Criminalising Disability in Australia” (2017) 19(3) *Punishment & Society* 290.

117 Eileen Baldry and Chris Cunneen, ‘Imprisoned Indigenous Women and the Shadow of Colonial Patriarchy’ (2014) 47(2) *Australian & New Zealand Journal of Criminology* 276, 285.

118 In relation to New South Wales see, eg. Peter Quinn, “‘Unenlightened Efficiency’: The Administration of the Juvenile Correction System in New South Wales 1905–1988” (PhD Thesis, University of Sydney, 2004); Katherine McFarlane, ‘From Care to Custody: Young Women in Out-of-Home Care in the Criminal Justice System’ (2010) 22(2) *Current Issues in Criminal Justice* 345. See generally Carrington and Pereira, *Offending Youth* (n 115).

119 See generally Wilson, *Prison: Cultural Memory and Dark Tourism* (n 32) 191–211. See also Cunneen et al (n 57) 28.

self-affirming contemporary identity')¹²⁰ and made connections from the convict past through various iterations of institutionalisation to the present day. This work also provides more comprehensive, inclusive and just perspectives on the links between contemporary Australia and its convict settler colonial beginnings. These links are moreover correcting narratives of progressive and successful settler colonial nation-building to make apparent how continuities and ongoing legacies of institutionalisation, institutional harm and injustice have been crucial to settler colonial nation-building, at the expense of marginalised others.

B Heritage Listing and Beyond

On 10 November 2017, the Federal Government registered a portion of the Precinct on the National Heritage List, on the basis that it

is outstanding in its capacity to tell the stories of women and children in institutions over the course of Australian history. The Precinct demonstrates how colonial and state governments chose to address the perceived problem of vulnerable women and children, who they regarded as needing protection and control, through the use of institutions as a core element of the welfare system ... The Precinct reveals the physical form which institutions took from the 19th to the 21st centuries. This in turn reflects the approaches to care that existed over the historical period, as well as providing a focal point for the stories of institutionalised women and children.¹²¹

With this listing, the Australian Government recognised for the first time that institutionalisation is a central part of Australia's welfare system and, indeed, national history over two centuries. The heritage listing also highlights the importance of the Precinct, in terms of its various iterations (rather than its convict origins alone) and foregrounds its significance by reason of the women and children who were impacted by the institutions on the site (rather than simply the material architectural significance of its buildings). The heritage listing is testament to the Precinct's unique capacity to tell the stories of institutionalised women and generations of Australians who experienced OOHC (also known as 'Forgotten Australians'¹²² and 'care leavers'), child migrants and Stolen Generations,¹²³ as well as people with cognitive impairments or mental health disorders.

Since 2013, the Precinct has been under the auspices of the NSW Government's Parramatta North Urban Transformation plan, under the management of the Government's UrbanGrowth NSW Development Corporation.¹²⁴ A portion covering the non-heritage protected section of the Cumberland Hospital grounds is due to be developed by University of Sydney.¹²⁵ In relation to the Roman Catholic Orphanage section of the site, between December 2018 and February 2019, UrbanGrowth NSW

120 Sharon Macdonald, *Difficult Heritage: Negotiating the Nazi Past in Nuremberg and Beyond* (Routledge, 2009) 1.

121 Commonwealth, *Gazette: Government Notices* (n 9) 2.

122 *Forgotten Australians* (n 7).

123 Human Rights and Equal Opportunity Commission, *Bringing Them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (Report, April 1997) ('*Bringing Them Home*').

124 'Parramatta North', *UrbanGrowth NSW Development Corporation* (Web Page) <<https://web.archive.org/web/20190327060709/https://www.ugdc.nsw.gov.au/growth-centres/parramatta-north/>>.

125 *Ibid.* See also UrbanGrowth NSW Development Corporation, 'World-Class Westmead Health and Education Precinct Comes to Life' (Media Release, 5 November 2018) <<https://www.ugdc.nsw.gov.au/news/latest-news/world-class-westmead-health-and-education-precinct-comes-to-life/>>.

Development Corporation invited interested organisations and individuals to make ‘submissions to help identify uses, programs, services and activities in relation to buildings and open spaces that can make a valuable contribution to the site’s emerging vision and place outcomes’.¹²⁶

In parallel, a local community organisation called Parramatta Female Factory Friends has led numerous appeals to the Australian Government for United Nations Educational, Scientific and Cultural Organization world heritage listing of the Precinct, as well as proposals for a Museum of Australian Identity.¹²⁷ To date, these calls have had little impact on state or local government policy, but it is interesting to note that these campaigns have been overwhelmingly focused on convict histories of the site (albeit under the guise of ‘female’ or even a form of ‘feminist’ representation). Such national identity narratives are racially and socially limited, as they propose a white settler origin, rather than the intersectional reality of poor, female, coloured and disabled people, alongside the other institutional uses of the site over time, not just its brief time as a convict depot. Such groups provide a narrative that diminishes the story of child welfare on the site and thus excludes the living testimony of care-leavers and members of the Stolen Generations.

The current uncertainty surrounding development of the Precinct marks a further turning point in the site’s history. Proposed development of the site could contribute to further injustices, such as through demolition of buildings of significance to Parragirls and others institutionalised at the Precinct, potentially generating grief and distress at the loss of access for former residents to a place of acknowledgement, agency, healing and community. Potential demolition of some buildings will also erase from contemporary society a key site of institutionalisation that connects the history of institutional punitive welfare and mental health from 1821 to contemporary iterations of carceral welfare. The Precinct is at a point of transition and it is timely, indeed urgent, to consider how the site’s history can be remembered in ways that deliver justice to its former inhabitants and that engage civic society – and, specifically, legal actors – with its contemporary role as a Site of Conscience.

V THE MEMORY PROJECT

Based on the former PGH ‘Kamballa’ portion of the Roman Catholic Orphanage section of the Precinct, the PFFP Memory Project brings together artists, historians, researchers and former occupants to transform this once inaccessible site into a place of shared cultural heritage, one that acknowledges the significance of these institutional sites for Forgotten Australians, Stolen Generations and their descendants. The Memory Project delivers workshops, events, exhibitions, tours and publications that stimulate dialogue about contemporary questions of social justice and human rights associated with the institutionalisation of women, children and people with cognitive impairments and mental health disorders. Through the Memory Project, Parragirls invigorates

126 UrbanGrowth NSW Development Corporation, ‘Parramatta North Heritage Core ROI to Close 25 February’ (Media Release, 22 February 2019) <<https://www.ugdc.nsw.gov.au/news/latest-news/parramatta-north-heritage-core-roi-to-close-25-february/>>.

127 ‘Declare the Parramatta Female Factory a Site of World Heritage Significance and Return It to the Australian People’, *Change.org* (Web Page) <<https://www.change.org/p/declare-the-parramatta-female-factory-a-national-and-world-heritage-site>>; ‘Parramatta Female Factory: Federal Petition for World Heritage’, *Change.org* (Web Page) <<https://www.change.org/p/parramatta-female-factory-federal-petition-for-world-heritage>>.

questions around contemporary government and community accountability and responsibility for institutional injustices. The Project also informs government and key stakeholders on contemporary issues historically associated with these institutional sites, including poverty, gender discrimination, inequality, domestic violence, child sexual and physical abuse, forced migration, wrongful detention and racism.

Through the Memory Project, Parragirls have been able to shape their own narratives about their time in PGH. Their occupation of the Kamballa portion of the site since 2013 has also given the women the means to connect with the site and remake their memories after decades of being excluded. The Memory Project has been vital for these women to create safe spaces for remembering and retelling their experiences, and producing counter-narratives that resist public stigma and that empower them in ways public inquiries cannot. Finally, the Memory Project has given former residents a new presence through their artworks and writing, works that have been shared beyond Parragirls and the Precinct. These reiterations have allowed others who have experienced institutional confinement as children to rethink their place in history in terms of self-determination, rather than victimisation and dependence on state or judicial support and public empathy.

As they have determined how they want to be remembered and how the site may be utilised in the future, Parragirls has used the Memory Project to supplant isolation, shame and silence with shared memory, creativity and social gathering. Activities held on the PGH 'Kamballa' portion of the site since 2013 include a children's day and the inauguration of the memory garden, collaborative exhibitions and performances, and collaborative Aboriginal songwriting and live music events.¹²⁸ The Memory Project has also enabled Parragirls to contribute to the design of a PGH memorial.¹²⁹ Hibberd and Djuric emphasise the importance of Parragirls' reclamation not only of the representation of PGH but the physical site itself.¹³⁰

The Memory Project occurs in a context of recommendations in successive government reports related to memorialisation. The 2004 Forgotten Australians Senate Committee inquiry provided an opportunity to systematically investigate the experiences and treatment of children in OOHC during the mid-to late 20th century, the lifelong legacies of OOHC and the adequacy of legal redress and bureaucratic responses to the harms and injustices experienced by Forgotten Australians.¹³¹ Among the recommendations made by the Committee were some pertaining to memorialisation: '[t]hat the Commonwealth and State Governments, in conjunction with the Churches and agencies, provide funding for the erection of suitable memorials commemorating care leavers',¹³² developed in 'consultation with care leavers and their support and advocacy groups'.¹³³ It also suggested some of the forms these memorials might take, including memorial gardens, plaques and heritage centres on the site of former institutions.¹³⁴

128 See 'Events & Exhibitions', *Parramatta Female Factory Precinct Memory Project* (Web Page) <<https://www.pffpmemory.org.au/memory-projects-1>>.

129 Elton Consulting, *Parramatta Girls' Home Memorial: Consultation Summary* (Final Report, 24 August 2015) <https://www.facs.nsw.gov.au/_data/assets/file/0007/331576/Parramatta-Girls-Home-Memorial-Consultation-Summary-Report.pdf>.

130 Hibberd and Djuric, *Parragirls* (n 75) 82.

131 *Forgotten Australians* (n 7).

132 *Ibid* xxvi [11.46].

133 *Ibid*.

134 *Ibid*.

Commencing a decade later, in 2014, the RCIRCSA provided another opportunity for systematic investigation into the experiences of children in OOHC, albeit limited to a focus on child sexual abuse, in which PGH was included as a specific case study.¹³⁵ The Royal Commission recommended '[a] national memorial should be commissioned by the Australian Government for victims and survivors of child sexual abuse in institutional contexts. Victims and survivors should be consulted on the memorial design and it should be located in Canberra'.¹³⁶

Unfortunately, neither the *Forgotten Australians: A Report on Australians who Experienced Institutional or Out-of-Home Care as Children* report nor the RCIRCSA report make provision for survivors to manage their own recovery or document their own experiences. This has, to date, instead been handed over to 'endorsed agencies' – a practice that perpetuates the status quo of silencing, disempowering and invalidating the views and experiences of those who have experienced institutional violence and injustice. Regardless, it does emphasise the importance of memory work and of Parragirls' work through the Memory Project in activating the Precinct as a Site of Conscience, which arguably provides a rare example of what can be achieved in this space to *surpass* conventional public education and public memorials. Indeed, Hibberd and Djuric note that, during the RCIRCSA:

Parragirls were exposed all over again as public hearings and police investigations into Parramatta Girls Home commenced ... The media appetite for traumatic testimony was sometimes overwhelming, yet the women involved in the memory project channelled this experience of exposure into an artistic strategy and developed new installation artworks ...¹³⁷

Shifting specifically to Indigenous Australians, Tynan notes that the Precinct could be a practical Keeping Place because of its continued significance to the Darug People.¹³⁸ And at the Memory Project event, *Long Time Coming Home*, held in 2017 to mark the 20th anniversary of the *Bringing Them Home* report into the Stolen Generations¹³⁹, Hibberd and Djuric discussed with Darug Elders and community, as well as Aboriginal Parragirls, the possibility of a Keeping Place at the Precinct. The general view was that it would be 'ideal to create not only an archive but an active art and media space for the creation of old and new memories'.¹⁴⁰

The Memory Project provides a place that can bear witness to the specific history of the injustices that took place at PGH, alongside the other institutions that were located on the Precinct since 1821. In particular, the Project provides the opportunity for former residents to lead and author these practices of bearing witness. Djuric refers to the Memory Project as providing a 'new model of ethical practice to engage with and interpret institutional sites of confinement that would place former occupants at the centre of the process rather than at the periphery as subjects, or footnotes.'¹⁴¹ In a similar vein, Hibberd states that the Memory Project

takes up the struggle to establish the right of the women to self-author a history of the home and accounts of the state welfare system ... A shattered life is not easily rebuilt without the help of others. And when that life has been the subject of national shame and

135 *Case Study No 7* (n 7).

136 *Royal Commission into Child Sexual Abuse: Final Report* (n 1) vol 17, 13.

137 Hibberd and Djuric, *Parragirls* (n 75) 16.

138 Tynan (n 59) 29–30.

139 *Bringing Them Home* (n 123).

140 Hibberd and Djuric, *Parragirls* (n 75) 152.

141 Djuric, 'A Past Revisited' (n 74) 119, 129.

denial, as is the case with the Parragirls, survivors have a critical need to receive public acknowledgement of their testimony.¹⁴²

Hibberd argues that the Memory Project plays an important role in facilitating new forms of memory production that emerge out of contact with the site itself, and these ‘stories ... repair or reconnect them with their past’.¹⁴³ These processes of memory are ‘not necessarily visible and or easily explicated in words’,¹⁴⁴ including through conventional written and oral forms of testimony utilised in litigation or governmental inquiries, but are enlivened through artistic practices utilised by the Memory Project.

Through their creative works, Parragirls involved in the Memory Project have demonstrated an understanding and desire to connect their experiences to current law and policy debates. For example, through *The Public Secret*, an immersive video work (filmed and directed by Lily Hibberd) that was installed in the 2017 *Group Therapy: Mental Distress in a Digital Age* exhibition as part of The Big Anxiety festival,¹⁴⁵ Parragirls Bonney Djuric and Jenny McNally draw attention to the inherent contradiction between the state’s and public’s awareness of the injustices experienced by Parragirls and the enduring possibility of these injustices recurring through state systems and structures. Djuric and McNally ask to what extent diverse current state practices – ranging from compensation schemes, heritage protection, support hotlines and day-to-day child welfare bureaucratic recordkeeping – realise the state’s ongoing responsibility to be accountable to survivors for past injustices versus sustaining the silencing and legitimisation of these injustices.¹⁴⁶

Another immersive film created for The Big Anxiety festival, *Parragirls Past, Present: Unlocking Memories of Institutional ‘Care’*, melds ‘the testimony of five Parragirls with the artistic representation of a place of intense suffering and contested memory’.¹⁴⁷ Hibberd and Djuric explain that this was a response to the limitations of the RCIRCSA process:

Parragirls Past, Present provides a new way to speak about the experience of childhood abuse. It makes space for an alternative forum distinct from legal testimony. All five women involved in the project had participated in the Royal Commission ... Despite the importance of these official investigations, the act of giving testimony does not always empower those who testify. In giving such personal evidence the victim is exposed to public scrutiny, which does not result in immediate justice: belief, compensation and charges against perpetrators do not occur in the immediate aftermath of such testimony, if at all ... But in *Parragirls Past, Present*, the five women involved have been able to demonstrate the systemic failings of justice and public blindness to repeated cycles of abuse. The film offers them a position of authority, in contrast to the victim’s identity as a powerless dependent of the state.¹⁴⁸

142 Hibberd, ‘Making Future Memory’ (n 74) 105–9.

143 Ibid 110. For a recent discussion of gender and mnemonic practices, see Sharon Crozier-De Rosa and Vera Mackie, *Remembering Women’s Activism* (Routledge, 2018).

144 Hibberd, ‘Making Future Memory’ (n 74) 112.

145 See ‘Group Therapy: Mental Distress in a Digital Age’, *The Big Anxiety* (Web Page) <<https://www.thebiganxiety.org/events/group-therapy-2/>>. For a broader discussion of the significance of aesthetic engagement with lived experience in the Big Anxiety Festival see Jill Bennett, Lynn Froggett and Lizzie Muller, ‘Psychosocial Aesthetics and the Art of Lived Experience’ (2019) 12(1–2) *Journal of Psychosocial Studies* 185.

146 See discussion in Hibberd and Djuric, *Parragirls* (n 75) 161–8.

147 Ibid 17. A preview of the film can be viewed at: *Parragirls: Past, Present. Unlocking Memories of Institutional ‘Care’* <<https://www.parragirlsmovie.com/>>.

148 Hibberd and Djuric, *Parragirls* (n 75) 17.

In this work, the audience is situated in an immersive 360-degree, 3-dimensional video installation (as first displayed in UNSW EPICentre's cylinder cinema), in which they are slowly 'walked' through the grounds of PGH, while Parragirls relate fragmented memories, retold as they themselves revisit the site in the present.¹⁴⁹ The Parragirls' memories speak of the harms and injustices they experienced, as well as the everyday acts of resistance, survival, friendship and love that they enacted in these circumstances. This is significant in challenging assumptions of the lack of agency of those who are institutionalised and the lasting impacts this can have in marginalising their voice, perspectives and experiences in contemporary political and legal processes of redress and reform.

The Memory Project with its focus on places of concentrated and diverse institutionalisation, provides an ideal method for considering larger questions about the contemporary existence, role and legitimacy of institutions of confinement, and how, collectively, we can make decisions and actions to prevent the repetition of history. The Precinct is ideally suited for these kinds of deliberations, precisely because of its authenticity as one of the oldest and most enduring sites of institutional power over the lives of women, children and people labelled as mentally ill – and because there are women such as the Parragirls ready to witness these pasts in ways that reassemble the fragmented public narrative and thus help us to build on this transformation.

A The Legal Inheritance of Institutional Injustice

The Parragirls' activation of the Precinct as a Site of Conscience has a significance for legal education and legal professional practice. The Memory Project encourages law students and legal practitioners to confront the complicity of Australian legal systems and actors in the harms and injustices of institutional confinement. It also directs law students and legal practitioners to be mindful of the legal profession's responsibility for past injustices in its present work interpreting and administering laws of institutional confinement, and for its contribution to shaping future legal frameworks of institutional confinement.¹⁵⁰ Representation of and engagement with injustice through artistic practice and aesthetics of memory may also help legal actors confront the limits of conventional justice processes in redressing violence.¹⁵¹ To draw on the work of Dean, in the context of remembering disappeared women in Vancouver (Canada), the practices of the Memory Project might affect a shift from seeing past injustices in the present in terms of 'legacy', to seeing them in terms of 'inheritance'. This notion of 'inheritance' is particularly potent in implicating law students and practitioners in these enduring injustices and encouraging a more active assumption of responsibility for past injustices and for shaping current and future legal systems.¹⁵² In a similar vein, Jennifer Balint, Julie Evans, Nesam McMillan and others propose the concept of 'structural justice' as

149 See also feminist scholar Fullagar's description of her experience of viewing *Parragirls Past, Present*: Simone Fullagar, Wendy O'Brien and Adele Pavlidis, *Feminism and A Vital Politics of Depression and Recovery* (Palgrave Macmillan, 2019).

150 For a broader discussion of ethical accountability to the Other through 'office' see Claire Loughnan, 'On the Tears of the Other: Refugees, Responsibility and the Ethical Corrosion of Office' (PhD Thesis, University of Melbourne, 2017).

151 Klippmark and Crawley (n 73); Honni van Rijswijk, 'Feminist Genres of Violence and Law's Aggressive Realism' in Andreas Philippopoulos-Mihalopoulos (ed), *Routledge Handbook of Law and Theory* (Routledge, 2018) 329.

152 Amber Dean, *Remembering Vancouver's Disappeared Women: Settler Colonialism and the Difficulty of Inheritance* (University of Toronto Press, 2015).

a framework that can address the intergenerational, historical, and structural injustices in settler colonial contexts.¹⁵³ They document how artistic practice (notably theatre performance) can be one way through which to ‘do’ structural justice.

Legal practitioners play a key role in technical and political responses to institutional harm and injustice, through such practices as drafting Bills to reform legislation, managing government inquiries that articulate recommendations for reform, taking individual matters to court or defending the state against such litigation, and representing stakeholders in law reform and policy development processes. The Memory Project provides a vehicle through which these practices can be held accountable to the past through conscious deliberation on how, from circumstances of endemic harm and collective trauma, we can use law and policy to (re)build a society that supports social justice and human rights for precarious and marginalised populations. The Memory Project disrupts the conventional material and corporeal distance between legal actors or institutions and those who have been institutionalised, a proximity usually mediated by legal processes that create hierarchies and structure interactions, as well as by a physical absence from the sites of institutions that removes legal actors from the violence entailed by their actions.¹⁵⁴ Parragirls’ work through the Memory Project offers a means to directly engage legal actors with the injustices of past events and to be answerable to people who have been institutionalised, in the sense of being invited to deliberate and reflect on how their engagement with and use of current laws and policies or the development of new laws and policies might continue or legitimate these injustices into the future.

Through the Memory Project, Parragirls’ long and transformative engagement with the Precinct illuminates material – and legal – continuities between institutional pasts and the present, and thus serves as a reminder to law reformers and policymakers to not carry over the past into new legislation and policies. As stated by Djuric in the *Living Traces* project:

Like the Forgotten Australians Inquiry, the Royal Commission has made and will continue to make recommendations, but what happens afterwards? ... As in the words of [author and academic] Maria Tumarkin, ‘Where are those spaces in our culture that can keep these histories in the public imaginary?’¹⁵⁵

Indeed, the significance of the Precinct to legal actors is particularly pertinent, given its physical proximity to contemporary places of legal decision-making. The Precinct sits within three kilometres of NSW’s contemporary epicentre of ‘justice’ at the ‘Parramatta Justice Precinct’, which houses the headquarters of the state’s Attorney General and Justice Department, as well as the Children’s Court and other courts and government department offices.

The Precinct as a Site of Conscience also provides an opportunity to radically transform understandings in law of redress, reparation and remedy (including compensation), and make apparent a more active role for legal actors in doing justice. While not understating the importance of monetary payments and counselling and psychological care, what is missing from the RCIRCSA report and its aftermath is an

153 See, eg, Jennifer Balint, Julie Evans and Nesam McMillan, ‘Rethinking Transitional Justice, Redressing Indigenous Harm: A New Conceptual Approach’ (2014) 8(2) *The International Journal of Transitional Justice* 194; Jennifer Balint et al, ‘Introduction: “Moving On”? Official Responses to Mass Harm and the Question of Justice’ (2017) 7(2) *Oñati Socio-Legal Series* 254. See also Jennifer Balint et al, ‘The Minutes of Evidence Project: “Doing Structural Justice”’ (2018) 7(2) *State Crime Journal* 389.

154 See, eg, Robert M Cover, ‘Violence and the Word’ (1986) 95(8) *Yale Law Journal* 1601.

155 Bonney Djuric, in Hibberd and Djuric, *Parragirls* (n 75) 204.

overarching response capable of redressing injustice at the systemic level. Accountability needs to be an ongoing process and form of conduct on the part of the state, rather than an isolated, ‘tick box’ act by a particular state official. Legal actors’ deeply-held understandings of and investments in conventional justice processes can be disrupted by the Memory Project’s work, which suggests the state should be accountable not only for specific past events through acts of compensation or apology, but additionally for the broader laws, policies and practices of the state that continue to enable and legitimate institutionalisation. Moreover, the creative auspices of the Memory Project gives people who were held in the Precinct’s institutions the means to produce various artworks, events, public outreach, writings and transformations that engage directly with the public. Through this work, Parragirls and others document different, ‘inside’ aspects of the history, experience and legacies of the Precinct – a framework that, most importantly, has provided the means for them to determine how they want to be remembered and how the Precinct’s sites may be used into the future.

Sites of Conscience also provide opportunities for alternative approaches to legal pedagogy, facilitating direct engagement with the material, geographic and institutional dimensions of law and public administration in an example of ‘place conscious’ pedagogy.¹⁵⁶ Place-conscious pedagogy locates education at the point of students’ material and physical circumstances, encouraging them to understand where they fit in the world and to be more aware of their accountability to others.¹⁵⁷ In contrast, conventional legal education predominantly occurs in the confines of law schools and by reference to books and lectures,¹⁵⁸ distanced materially, affectively and geographically from the people and places that the laws impact. This is problematic because it contributes to the disjuncture noted by American legal theorist Robert Cover between law and the material acts it enables (eg the sentencing judge from the prison).¹⁵⁹ Consequently, lawyers, judges, law reformers and legislative drafters can easily detach their actions from harm and injustice. Their own sense of responsibility and accountability can be limited, thus supporting an ongoing cycle of unacknowledged complicity. In general, in the core subjects in Australian legal education there is a gap in terms of learning about what law regulates or permits *within* institutions of confinement. Legal education stops at the point of legally ordering entry into detention (eg in core subjects on criminal law, immigration law, administrative law), and then picks up in the aftermath of legally actionable harm (eg tort law). With this in mind, Sites of Conscience can connect law students’ learning in criminal law, mental health law, children’s law, immigration law etc with tangible and direct examples of the impact of the legal system and the failures and limitations of contemporary justice processes,

156 For a discussion of the pedagogical purpose and use of Sites of Conscience, see, eg, Craig Kridel, ‘Places of Memorialization: Forms of Public Pedagogy’ in Jennifer A Sandlin, Brian D Schultz and Jake Burdick (eds), *Handbook of Public Pedagogy: Education and Learning Beyond Schooling* (Routledge, 2010) 281. For an introduction to place conscious pedagogy, see David A Gruenewald, ‘Foundations of Place: A Multidisciplinary Framework for Place-Conscious Education’ (2003) 40(3) *American Educational Research Journal* 619 (‘Foundations of Place’); David A Gruenewald, ‘The Best of Both Worlds: A Critical Pedagogy of Place’ (2003) 32(4) *Educational Researcher* 3.

157 Amanda Kennedy, Trish Mundy and Jennifer M Nielsen, “‘Bush Law 101’”: Realising Place Conscious Pedagogy in the Law Curriculum’ (2016) 13(1) *Journal of University Teaching & Learning Practice* 1, 3, citing Gruenewald, ‘Foundations of Place’ (n 156) 621.

158 For a discussion of place conscious pedagogy in law, see Kennedy, Mundy and Nielsen (n 157).

159 Cover (n 154).

and in turn engage them in critical thinking and self-awareness about law, lawyering and legal ethics.

To conclude, engagement with the Precinct as a Site of Conscience in legal education could assist law students engaged with the material specificities of experiences and knowledges of institutionalisation to begin to forge connections between these potent examples and the practice of law. Sites of Conscience can be powerful vehicles for place-conscious legal pedagogy for a number of reasons. One reason is that they can direct law students' contact with concrete places of injustice and harm. Another reason is that they provide an opportunity to listen to and come face-to-face with survivors of injustice and harm which has been done by law. They can also provide an opportunity to make connections between desk-based legislation and court or administrative orders, on the one hand, and material harm to specific individuals, on the other. Moreover, they provide an opportunity to make connections between historical injustice and current laws, in the senses of redress, continuation of past injustice, and intergenerational impacts. Lastly, they show the significance of place, as well as *how* teaching occurs and *who* is teaching, thus making students more aware of epistemic authority and the role of law *and legal professionals* in dominant narratives that marginalise or invalidate others.

We now turn to illustrate this argument by reference to an excursion to the Precinct.

B Learning Through Memory: A Legal Excursion

In late 2019, Linda Steele took students in a LLB elective subject 'Law and Mental Health' on an excursion to the Precinct. The excursion utilised place-conscious pedagogy (discussed in Part V(A)) to engage students in the Site of Conscience work of Parragirls through the Memory Project. The aim of the excursion was to encourage students to reflect on the lived context and the longer histories of law and mental health, including the role of child welfare law, and to connect these to current concerns with the legal system and legal actors' complicity in institutional injustice. Students were encouraged to reflect on how the 'Sites of Conscience' model provides creative methods of engaging with institutional sites in order to work toward a future that does not repeat past injustices and to explore the implications of these methods for current law reform practices.

The excursion involved a preliminary lecture from Bonney Djuric in the preceding week's class in the usual classroom. This lecture provided an overview of the Precinct, the experiences of some Parragirls and the author's hopes for the future of the Precinct. The excursion itself involved a two-hour tour and a panel discussion facilitated by Bonney Djuric, with talks by two former residents of PGH. In terms of legal content, the discussion traversed the legal process that resulted in detention in PGH, the lack of legal assistance at the time for harms that occurred during detention, the RCIRCSA and challenges experienced in engaging with contemporary redress schemes involving alternative dispute resolution. The excursion highlighted that, at multiple levels, injustices were done by law, contemporary legal responses are inadequate and there are numerous continuities between historical and contemporary law, policy and practice, even if institutionalisation occurs pursuant to different rationales or legislation. Students were prompted to question assumptions that law is only of technical use in achieving justice and will always have protective and benevolent effects. They were also encouraged to reflect on the ethics and responsibilities of *practitioners* of law and how they can use their role to intervene in continuities of institutional injustices, including those done by law.

Students were invited to participate in an online survey during a one week period following the excursion.¹⁶⁰ The survey asked questions about what they learned, the experience of learning through the excursion and what could be improved. Of the 27 students who participated in the excursion, seven participated in the survey. The relatively low response rate might be because the survey was optional and not part of classwork or assessment. While the results cannot be taken as representative, they do provide useful insights in relation to students' experiences of and reflections on the excursion.

Overall, the students who responded to the survey found the excursion a worthwhile learning experience. The main points students picked up were the lack of legal accountability, ongoing and intergenerational nature of trauma resulting from institutionalisation and institutional abuse, failure of contemporary justice processes to respond to historical injustice, and the importance of reclaiming history, even if the past cannot be changed or corrected. Students were thus making connections between the past and present, and reflecting on the role of legal systems in institutional harm and injustice.

Students appreciated the pedagogical value of the 'Site of Conscience':

I found it was beneficial to see in person how the space is being preserved to remember the injustices of the past, but simultaneously transformed to show the agency and voice of the survivors. It really emphasised the importance of addressing the past in order to achieve equality in the present. I also think that hearing from people with lived experience of PFFP was very beneficial and eye-opening. (Student five)

Being on the site gave me a sense of reality about what happened. It was important to see, hear and smell the site rather than just hear about it to get the important messages across. Being outside the classroom also was a good way to break up the course. (Student six)

The excursion was something that I will remember throughout my entire legal practice. The fact that the institution existed only a few decades ago is a stark reminder that there needs to be ongoing change to avoid history repeating itself.' (Student six)

These reflections highlight the exciting possibilities for Sites of Conscience as a pedagogical tool, in ways not capable of replication in the classroom environment. While the physical site itself was central to students' learning, the presence and testimony of Parragirls was also a significant dimension of the excursion. Their experiences, knowledge, and expertise provided different insights to students about relationships between law, mental health and justice, and institutionalisation as a corporeal, material and lived phenomenon. Students were also encouraged to have a more direct sense of their ethical accountability to those who are impacted by the laws they will be drafting, applying or interpreting in their future legal careers.

Some students were keen for more specific engagement with legal dynamics. This shows the importance of having a clear structure to the excursion and providing prompts to help students make connections between past and present, between different areas of law and systems of institutionalisation (eg child welfare and mental health) and between the material/corporeal and legal. This is especially so given the way in which the information is presented to students in the excursion is much more immersive and unpredictable than a textbook reading or classroom environment. Given this was the first time such an excursion has been run, it is useful to know what students are looking for, noting that they will come with preconceived ideas of how law learning occurs.

160 The University of Technology Sydney ethics application number for this survey was UTS HREC REF NO. ETH18-2836.

The students' responses to the survey suggest a number of implications for future directions in research and teaching. These include the need for greater research in terms of legal pedagogy focused on the significance of how students receive and interpret information, of *where* learning takes place and *who* is teaching. In relation to teaching and learning, the findings from the excursion suggest the importance of law students having direct contact with concrete places of injustice, harm and resistance for their ethical and professional development, and the importance of providing opportunities for students to make connections between historical injustice and current laws and legal practice.

VI CONCLUSION: DOING JUSTICE THROUGH OUR LEGAL INHERITANCE

In a contemporary context of overwhelming evidence of institutional harm and injustice across a number of sectors, the work of Parragirls through the Memory Project provides powerful possibilities for encouraging critical reflection on the interconnectedness of institutions of confinement across time, space and laws in order to work towards better opportunities for flourishing *beyond institutions*. We have argued in this article that the Memory Project has particular significance in a legal context, in three respects. One is informing processes of law reform and legal redress in ways that are mindful and disruptive of the interrelationships between institutions of confinement, the endurance of institutionalisation and institutional harms regardless of changes in laws or positive justice outcomes for particular individuals, and the epistemic authority typically given in legal processes to third party experts over those with lived experience. The second is eliciting from law students and legal practitioners a deeper sense of collective responsibility for law's complicity in institutionalisation and institutional harms that have occurred and continue to occur across Australia. The third respect is drawing attention to the resistance and survival of Parragirls, and the importance of engaging with their valuable and necessary contributions to public debates about child welfare and social justice. Across all of this, the article has emphasised the importance of law students and legal practitioners being attentive to settler colonial dynamics, including to Indigenous histories and significance of the Precinct and other places where institutions of confinement are now situated, the particular impacts of institutionalisation on Indigenous Australians, and the role in Indigenous healing, self-determination and nation-building of reclamation of the Precinct and other sites of institutions of confinement.

As Djuric, Hibberd and Steele have argued, '[i]t is here, in this very place of inordinate pain and loss, that we can best put justice to work and make use of past wrongs for future good'.¹⁶¹ Australian governments, the nation and, indeed, the legal profession must acknowledge this past as an inheritance that is in our possession and cannot be ignored. As Hibberd argues:

Australia currently faces the critical loss of invaluable historical records held in the memories of the Parragirls and the many thousands of Forgotten Australians ... The

161 Bonney Djuric, Lily Hibberd and Linda Steele, 'Transforming the Parramatta Female Factory Institutional Precinct into a Site of Conscience', *The Conversation* (online, 5 January 2018) <<https://theconversation.com/transforming-the-parramatta-female-factory-institutional-precinct-into-a-site-of-conscience-88875>>.

deteriorating health and demographic of the Parragirls means there is now a very narrow window of five to ten years in which to record and preserve their version of history.¹⁶²

Now is the time to commit to the collective, ongoing and active process of using this institutional past to shape better legal futures.

162 Hibberd, 'Making Future Memory' (n 74) 113–14.