8

Law's violence

The police killing of Kumanjayi Walker and the trial of Zachary Rolfe

Maria Giannacopoulos

To all racialized, but especially Indigenous peoples, the full force of an imposed law's violence is visible and palpable. This is evident from the ways that Indigenous peoples have led the way through activism and knowledge creation to expose the true workings of non-consensual white settler regimes to those in the population who can mindlessly live off the back of law's brutal and fatal force. Irene Watson, who belongs to the Tanganekald, Meintangk Boandik First Nations peoples of the Coorong and the southeast of South Australia, has long argued that "in the beginnings of Australia its foundation relied upon the power of force and so it does still" (Watson, 2007, p. 27). From here she asked, "how do we begin to engage with the continuity of an overpowering force?" (Watson, 2007, p. 27). Following Watson, what are the possibilities for engagement with the colonial state and the violent infrastructure that locks it in place? And how are these possibilities affected depending on who the 'we' undertaking the engagement is? To Watson's question, I add another posed by Jacques Derrida (1992):

> How are we to distinguish between the force of law of a legitimate power and the supposedly originary violence that must have established this authority and that could not itself have been authorized by any anterior legitimacy, so that, in this initial moment, it is neither legal or illegal…neither just nor unjust?
>
> *(p. 6)*

Following Derrida, Australian colonial law becomes visible as "originary violence", which triggers (or at least should) an interrogation of the very meaning of its *legality*. This is because "originary violence" was and remains "neither legal nor illegal". Both theorists point to the critical significance of foundation to a deep understanding of ongoing colonial power exercised through law and in doing this they pose a dual challenge. The methodological challenge of *how* engagement with an illegitimate legal regime should occur is inextricably bound up with the theoretical challenge of *how* we *think law*. In what follows, I draw on the still under-theorized *Nulyarimma* case.[1] Commencing in 1998, the case was an Aboriginal challenge to colonial law brought within the boundaries established by that same law, with applicants seeking recognition for the crime of genocide within Australian law. The refusal of the colonial court to allow such recognition is, I argue, what makes the case so significant. The challenge reveals the impasse

DOI: 10.4324/9781003176619-10

This chapter has been made available under a CC-BY-NC-ND license.

experienced by Aboriginal people when seeking decolonial justice through the channels of colonial law or, as Audre Lorde (1984) famously asserted, "the master's tools will never dismantle the master's house". The *Nulyarimma* challenge offers an activist grounding for a theoretical framework with which to read the acquittal of Zachary Rolfe. The case, through the words of Coe, provides an explanation for why the acquittal of a police officer for an Aboriginal death is the logical outcome of a legal system with an unlawful foundation that functions to secure dispossession in the present.

"No Guns-no guns in our own remote community. We don't want no guns. Enough is enough" ("Zachary Rolf", 2022). These are the words of Walpiri Elder Ned Jampijinpa Hargraves speaking after police officer Zachary Rolfe, who shot and killed Kumanjayi Walker in a remote Aboriginal community in the Northern Territory of Australia in 2019, was acquitted of murder. The Northern Territory, which falls under the control of the federal government, is in the central and central northern regions of Australia and a large proportion of its population is Aboriginal. Although Rolfe entered Walker's home, Yuendumu, Walker's country,[2] and fired more than one gunshot ending Walker's life, the Northern Territory Supreme Court would not equate this police killing with murder. Ned Jampijinpa Hargraves, in a statement issued after the colonial court's verdict, added

> We want a ceasefire. No more guns in our communities. It must never happen again. The police must put down their weapons. We have been saying this since the beginning. We cannot walk around in fear in our own homes.
>
> *(Solidarity, 2022)*

Although some scholars (including in this volume) make a distinction between historic and neo-colonization, this chapter argues that colonial laws founding 'Australia' have generated and maintain conditions for the continuity of colonial power. Hargraves likens the violence of colonial law to wartime requiring a ceasefire. Like others who have mourned and mourn the deaths of Aboriginal people at the hands of this law, Ned Jampijinpa Hargraves also carries the burden of revealing the full force of law's violence while most in the population remain unaware or at least immune from it. As I write, I am aware that the argument I am making will resonate differently with different audiences, depending on each reader's proximity to law's violence. Positionality in relation to law and state power can be a powerful contributor to understanding power relations or the thing that makes the brutality of those powers disappear.

"The legal system is a part of that genocide against our people"

In 1998, Isabel Coe along with her husband Billy Craigie, Wadjularbinna Nulyarimma, and Robbie Thorpe brought an action to the Supreme Court of the Australian Capital Territory to have the crime of genocide recognized in Australian law.[3] The applicants argued that John Howard (former Prime Minister of Australia), Timothy Fischer (former National Party leader), Brian Harradine (former independent Member in the Senate) and Pauline Hanson (former leader of the right-wing One Nation Party) had, by introducing into Parliament and securing the passing of the Native Title Amendment Bill, committed an act of genocide. The applicants asserted that the failure to enact legislation creating statutory offences of genocide, following the Convention on the Prevention and Punishment of the Crime of Genocide (1948), also constituted genocide. Justice Crispin, presiding over the case, found the contentions put by the applicants "obviously somewhat startling" as "it was not readily apparent how allegations relating to the formulation of government policy concerning land rights and the introduction of a

Bill to amend a Commonwealth statute could support charges of genocide". Justice Crispin's response demonstrates (among other things) that a colonial judge whose function is to maintain that law as 'authoritative' must structurally find the claim of colonial law's violence unintelligible. Crispin's unwillingness to read for the killing function of Australian law is bound up with the way this same law systematically denies Indigenous sovereignty (Moreton-Robinson, 2007). When Indigenous sovereignty "has been raised in courts and parliaments, legal and political decisions have in one way or another found in favor of the patriarchal white sovereignty of the nation state" (Moreton-Robinson, 2007, p. 4). Australian law produces colonial violence in each instance that it discriminates in favour of itself.

While the legal system refuses to acknowledge that Aboriginal sovereignty was never ceded (Treaty 88 Campaign, 1988) it has become commonplace in academic circles to make this acknowledgement (Watson, 2020). I suggest that for this to be ethically and logically consistent among knowledge producers, all colonial law stemming from an imposed and violent sovereignty must be seen as violence and must cease to be seen and treated as an authority with authority. While the tendency in academic work across disciplines is to critique specific instances of law's violence, especially within the criminal justice system, what is required is a connection of these specific instances of violence with the foundational role of law in the organization and maintenance of colonial power. The critique of law's violent foundation is essentially the first task for abolitionist work.

The *Nulyarimma* case continued in 1999 and through to 2000 when the applicants sought special leave to appeal in the High Court. So important is Coe's confrontation in and to the Court about its violence that I quote it at length here:

MS COE: Now, you know, it just seems that this is just another form of genocide that is happening right now against our people, and the legal system is a part of that genocide against our people. Now, if we cannot get any justice here, where do we go? We are desperate. Our people are dying everywhere. Just today there is a funeral. You know, we had to make a choice whether we come here or go to a funeral. Now, – there has been at least three this week.

KIRBY J: What is the substantive thing you want to say to the Court?

MS COE: Well we want to say that, you know, this war against our people has to end. It has been undeclared for 212 years.

KIRBY J: Well, this is a Court of law. We are obliged to conform to the law and there are some very complicated legal questions which are before the Court… Now is there anything else you want to say relevant to those issues? We cannot fix up every issue in the country. We can only deal with the matters that are before the Court.

MS COE: Well, I appreciate that but someone has to help us stop the genocide in this country against Aboriginal people. Now, if we cannot get justice here in the highest Court of this country, then I think that this Court is just a party to that genocide as well.

GUMMOW J: No, we will not hear that sort of thing.

(Nulyarimma, Transcript)

Coe identifies and exposes the Court's refusal to curb genocide as a form of genocide itself. She references the ongoing deaths in custody and the death and grief that Aboriginal communities deal with daily, less than a decade after the Royal Commission into Aboriginal Deaths in Custody handed down its 339 recommendations.[4] Justice Kirby, who is often celebrated as progressive in the Australian legal landscape, responds to Coe by asking what the *substantive* thing is that Coe wants to put to the Court. The word substantive has several meanings

including a specific (colonial) legal meaning. In general usage the word refers to something that has substance, is considerable, meaningful and of utmost importance. Kirby's posing of the question requires Coe to put her case even more bluntly. The ongoing and undeclared war against Aboriginal people must end, she asserts. Perhaps Kirby is seeking from Coe something that conforms to the stricter (colonial) legal usage where substantive law refers to law which governs the original rights and obligations of individuals. Substantive law might derive from common law, statutes, or a constitution (Legal Information Institute, 2022). But here is the first colonial impasse. All these typologies, distinctions about what can constitute law, are colonial creations. These categories are created *after* the foundationally violent moment of colonial law's imposition. Coe would never be able to deliver something *substantive* to satisfy Kirby's question, since the *nomopoly* creates the categories that it deems justiciable before the colonial court. Here the etymology of the term substantive can shed further light on the material violence animating colonial law. From Latin, it means to 'stand beneath'. The deaths and systematic killing of Indigenous peoples are precisely what underwrites and stands beneath the violent legal apparatus. As such, Coe's challenge works to reveal the false promise of 'access to justice'. Considered the all-important precursor to the rule of law, access to justice at a national level posits that all Australians "receive appropriate advice and assistance, no matter how they enter our justice system" (Attorney-General's Department, 2016). And according to international law, it is thought that without "access to justice, people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable" (United Nations, 2022). Member states of the United Nations, of which Australia is one, are required to be "taking all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all" (United Nations, 2022). But the polemic between Coe and Kirby stands as a significant critique of 'access to justice' which itself can be seen to be a critique of law and its exclusivity. 'Access to justice' is an enduring legal fiction about the possibility of justice within a colonial infrastructure, even after the foundational legal fiction of *terra nullius* was ostensibly overturned in 1992 in the *Mabo (No.2)* decision. As the challenge of the *Nulyarimma* case revealed, even if access to a colonial justice system occurs, decolonial justice is not possible through this channel. Instead, the pseudo-neutral Australian legal framework generates deadly effects and closes off possibilities for Aboriginal justice.

Law and the undeclared war

In Ned Jampijinpa Hargraves' call for a ceasefire and a prohibition of guns in communities and Isabel Coe's demand that the undeclared war against her people ends, we *should* hear through their word choice, and not look away from the inextricable connection they are drawing between law and war. An undeclared war refers to a military-style conflict between two or more nations in the absence of a formal declaration of war. A ceasefire is both the opposite of open fire and an agreement to stop fighting in a war to advance discussions for peace. The challenge here is to understand the role that colonial law with its non-consensual foundations plays in the ongoing war of dispossession. This undeclared war generates violence and death through its overpowering force (Watson, 2007), and the colonial legal regime is both agent and neutralizer of this violence. This is because colonial law, that is, all Australian law, operates as a critical dispossessing machinery but does not always appear as such. Colonial law (at least by those who are not its direct targets) is more often blindly loved and followed because it is presumed to be above and outside of practices of colonialism rather than instrumental in its production. Patricia Hill Collins (2022) argues that force used against marginalized people, "constitutes an essential feature of domination […] yet violence also requires interpretive contexts whose purpose is to

solicit cooperation from elites and subordinated groups alike" (p. 27). Colonial law is one such interpretive context where violence is both produced and obfuscated. The inability or unwillingness to read colonial law as a vehicle for colonial violence but instead to love law for the neutrality and objectivity it claims to bring is what I have termed nomophilia (Giannacopoulos, 2011, 2020). Derived from the Greek *nomos*/law and *philia*/love, nomophilia is an unquestioned tendency to believe in the correctness of 'law'. When nomophilia underpins thinking about colonial law, it disallows its war and domination function to be fully visible, since the structural colonial dimensions of white law are covered over with legal fictions about law's objectivity and neutrality.

Patricia Hill Collins (2022) has argued that one of the major challenges of resisting violence is that its ubiquitousness does not allow it to be conceptualized as violence at all, asserting that "violence can be so routinized as to be invisible" (pp. 36–37). Aileen Moreton-Robinson (2004), a Goenpul woman of the Quandamooka people and Professor of Indigenous Research, has revealed how a logic of white possession is generated through discourse and the repetitive circulation of meanings that come to appear as common sense. A central repetition produced in all arms of the colonial law about itself is the idea that the imposed legal system has a legitimate basis for exercising its violent sovereignty and law over stolen Indigenous lands where sovereignty was never ceded. The logic of white possession is asserted at policing, legislative, judicial, and administrative levels. Each time any of these arms of the colonial infrastructure are at work, white possession and authority over stolen lands are quietly and repetitively reaffirmed. This is precisely why the conceptualization of all arms of colonial law *as* violence is so important. Failing to *see* and *think* of law as violence acts as a key barrier to challenging its violence. But this statement comes with a proviso. This is because "people who experience political domination" recognize and often try to resist the "organisations that organize and enforce institutionalized violence" (Hill Collins, 2022, p. 38). Although many activists and scholars in the US context – one that has many parallels with the Australian settler-colonial society – have pointed out that mass incarceration was a racialized practice when these practices took hold (see Alexander, 2012), many in less targeted white populations supported 'law and order' campaigns. They could not or would not see mass incarceration as an extension of racialized political domination (Hill Collins, 2022, p. 39). With mass incarceration as a racialized practice having a constitutional basis, nomophilia can stand as a barrier to seeing law's violence. When slavery and involuntary servitude were removed from the US legal code, the concession "except as punishment for crime whereof the party shall have been duly convicted" (Hill Collins, 2022, p. 38) generated the basis for the legal machineries of the police force, the judiciary, and the prison system to be available for use against targeted populations. In other words, the relicensing of the racialized regime of white supremacy has a basis in (colonial) law.

Nomopoly: when 'substantive' law is premised on substantive injustice

In the Australian settler-colonial context, where the Australian Constitution follows the originary violence that was "neither legal nor illegal" (Derrida, 1992, p. 6), and so has an illegitimate foundation (Watson, 2007), a monopoly of violence through law or a 'nomopoly' results. The nomopoly presents as a neutral framework without origin but is the vehicle through which the ongoing war of dispossession is licensed and legalized. Sara Ahmed's (2006) concept of non-performativity, the dynamic of *doing something* but not the thing named is central to illuminating the violence of colonial law. Colonial law announced in 1992 that it had overturned *terra nullius* but, in fact, it proceeded to do something other than what it named/said. It is still, to this day, continuing to impose a nomopoly: a monopoly over what can constitute law on

Indigenous lands. This nomopoly lacks consent at its foundation and as such has a killing function. When Indigenous law and sovereignty are foreclosed upon by the operations of colonial law, then this law is a law that kills. 'Nomopoly', etymologically from the Greek *nomos* meaning law and *poleis* meaning exclusive right to sell, is coined here to highlight the exclusive status that Australian/colonial law claims for itself upon Indigenous lands. A nomopoly denotes a monopoly of *nomos*/law. But in a colonial context, it has the added feature of structurally foreclosing the operations of the first laws of Aboriginal peoples by subjecting all to its rule. The nomopoly is as instrumental in the war of dispossession as it is in hiding this same violence. In the leading judgement of the 1992 *Mabo (No.2)* decision, Justice Brennan declared that:

> In discharging its duty to declare the common law of Australia, this Court is not free to adopt the rules that accord with contemporary notions of justice and human rights if their adoption would fracture the skeleton of principle which gives the body of our law its shape and internal consistency [...]. Here rests the ultimate responsibility of declaring the law of the nation. Although this Court is free to depart from English precedent which was earlier followed as stating the common law of this country [...] it cannot do so where the departure would fracture what I have called the skeleton of principle [...]. The peace and order of Australian society is built on the legal system. It can be modified to bring it into conformity with contemporary notions of justice and human rights, but it cannot be destroyed.
>
> *(Mabo (No.2)*

Brennan's judgement reveals the workings of the colonial nomopoly. The law, he says, cannot depart from the law. The legal system that provides 'the law of the nation' is presented as detached from its colonial origin. But it was at the time of Federation that the Constitution was imposed upon Indigenous lands. Australia, as it is currently legally, politically, and economically constituted, came into being in 1901 following the passing of a British Act of Parliament, the Commonwealth of Australia Constitution Act 1900. This was/is "whiteman's law" to use the words of Senior Lawman Murray George, who said that "Aboriginal law must sit on top of whiteman's law, because our law is the law of the land" (Anderson, 2015). But Brennan's assertion is that 'peace and order' result from the imposed legal framework that attempts to usurp the operations of Aboriginal laws. Operating without reference to its colonial foundation, originary violence and its usurping function is Australian law as nomopoly.

Nomocide: the killing of Kumanjayi Walker and the acquittal of Zachary Rolfe

In the aftermath of the fatal police shooting of Walpiri man Kumanjayi Walker at Yuendumu, while in his home and on his country, law's violent impact over Aboriginal life once again came to the fore. In 2019, at the time of the police killing, I attended one of the many rallies organized around the country by Aboriginal communities and activists to mark yet another death in custody. As I approached the steps of the South Australian Parliament House on Kaurna Country in Adelaide, I could feel the grief and the intensity of the crowd that had gathered. Handprints of red paint, simulating blood, had been pressed against the smooth grey marble and granite of Parliament House. The bloody hands on the outside of the Parliament House were a visual articulation of the killings enabled, licensed, and covered up by the workings of that parliament, itself a product of the *nomopoly*. And as Isabel Coe had asserted two decades earlier from within the Supreme Court building, "it just seems that this is just another form of

genocide that is happening right now against our people, and the legal system is a part of that genocide against our people" (*Nulyarimma* Transcript para 439).

In early 2022, after a jury trial, a choice that is possible for the defence to make within the rules of the nomopoly, Constable Zachary Rolfe was acquitted by an all-white jury of all charges for the killing of Kumanjayi Walker (McGlade, 2022). This verdict could only have amplified the grief of Walker's family and communities as the impossibility for Aboriginal justice within the nomopoly was once again laid bare. All-important public debate was prohibited by a suppression order during the trial. I say all-important debate because the time of writing marks 31 years since the Royal Commission into Aboriginal Deaths in Custody handed down its 339 recommendations. Those recommendations continue to be systematically ignored by the colonial state. The deaths continue at an accelerated pace. There have been over 500 deaths in custody since the Royal Commission, which is equal to one every month (McGlade, 2022). Despite this background of deep violence against Aboriginal peoples at the hands of the so-called justice system, the trial functions to individualize justice and promote procedural protections, in this case for the police. Suppression orders prohibiting the publication of evidence or information can be made by judges where they deem that it is in the interests of justice to do so (Director of Public Prosecutions, 2013). Those thinking from within the rule book imposed by the nomopoly might argue that without the suppression order, the fairness of the trial would be compromised for the policeman charged. I am suggesting that in the interests of decolonial justice, we (knowledge producers and non-Indigenous populations) can no longer *think* and judge colonial law in accordance with its own system of logic, since that logic is one that exists to enable dispossession and colonial control. Colonial law, with its violent foundation and its implication in genocide, must be seen as instrumental in producing Aboriginal death. Colonial law must be seen as nomocidal.

Had the suppression order not been made, some information about Zachary Rolfe linking him to the historical role played by police in the violent dispossession of Aboriginal people from their lands could have surfaced. After the trial and Rolfe's acquittal, the suppression order was lifted, revealing his disdain for the communities he was policing and his understanding of his policing function. One text message authored by Rolfe revealed this:

> We have a small team in Alice, IRT (immediate response team). We're not full time, just get called up from GDs (general duties) for high-risk jobs, it's a sweet gig, just get to do cowboy stuff with no rules.
>
> *(Park & Butler, 2022)*

In another text message Rolfe wrote:

> Alice Spring sucks ha ha. The good thing is its like the Wild Wild West and fuck all the rules in the job really […] but it's a shit hole. Good to start here coz of the volume of work but will be good to leave.
>
> *(Park & Butler, 2022)*

In Rolfe's text, the accuracy of the claim that there is an undeclared war occurring through law and policing is borne out. Chris Cunneen's (2017) work has revealed the historical role played by police in colonizing Australia, showing that, unlike any other group, Indigenous peoples were subjected to military-style policing, akin to a state of war, by paramilitary policing units such as the Mounted Police and Native Police forces. Cunneen (2017) argues that this form of policing was integral to the expansion of the British jurisdiction in Australia, and it

was influenced in its intensity by the degree of Indigenous resistance to the colonial will. In Australia, Indigenous people, in their resistance, were not policed by consent – and if consent is the mechanism through which legitimacy for policing is gained, then it remains absent to the present day. Details of a paramilitary style of policing in the modern day were protected by a suppression order in the Rolfe trial. The historical context and origins of colonial policing which operated in tandem with colonial law's violent foundation were removed from view in favour of procedural rules that self-represent as fair and objective while obfuscating deeper violence.

At the time of Walker's death, the Yuendumu community and protestors nationwide were asserting culpability for murder and death that was bigger than the potential verdict of guilt or innocence for Zachary Rolfe. Calls were being made by protestors that drew a line of causation from the deaths perpetrated by the state and officers of the law to the critical absence of self-determination. At the rally on Kaurna land (Adelaide), I heard this: "We don't need this Government, we have been governing this place for millennia!" Another placard read: "Your laws are killing us". An Aboriginal elder at the rally in Adelaide called out to the police who were surrounding the protestors on the North Terrace: "This is a peaceful protest. Why do you bring your guns?" Within these cries for justice reverberates the call to abolish colonial law and all violence that it licenses and then attempts to cleanse. These are the calls to abolish the nomocidal regime, to abolish the law that kills.

Abolition of colonial law as the impossible

With Zachary Rolfe having been absolved of all culpability for the death of Kumanjayi Walker, the evidence on law's violent machinery continues to build. And, while the Yuendumu community is calling for an end to guns in their community, a national gun amnesty is occurring across Australia, "with holders told to surrender their illegal firearms or face the full force of the law" (Australian Associated Press, 2022). The authorities, i.e., the colonial state, are assuring citizens that if they surrender an illegal firearm they will not be penalized. To encourage people further, Crime Stoppers Australia chair, Vince Hughes, said people should consider how they would feel if they had information about an illegal gun that was then used to harm or kill someone. He continued, "Criminals often go to great lengths to obtain a firearm illegally and then conceal it from authorities, and it's unlikely they would go to that effort unless they are prepared to use it". This gun amnesty reveals the distinctions drawn by the colonial state to conceal its own violence and its power to kill. The legal/illegal firearm dichotomy also establishes the colonial state/criminal distinction. Although it is often cited in these debates that Australia has not had a mass shooting since the Port Arthur massacre in 1996, the deaths of Aboriginal people at the hands of police armed with guns are removed from view. The ability to hold and use firearms legally is generated by the rulebook of the colonial nomopoly. The fact that the police have the legal power to hold and use guns on Aboriginal lands reveals the definition of (colonial) law as the strongest form of violence (Derrida, 1992).

When it comes to Indigenous peoples, Australian law and policing do not deal with crises – they both produce and *are* the crisis. I am aware that peoples most targeted by law's violence will find this conclusion obvious and logical, while the ones who are invested in the logic of the nomopoly will find it extreme. In the latter group, there will be a tendency to hold onto comforting fictions that law is about peace and order and that policing is about public safety. The verdict in the case of Zachary Rolfe has failed to deliver justice to Aboriginal people and reveals, for all those willing to look, exactly what is at stake in continuing to turn to colonial law for resolutions to colonial violence. The challenge for all scholars, but especially

those producing knowledge in law and criminology, is clear. How will we move beyond our investments in colonial law frameworks and their self-justifying and responsibility-avoiding logics to face, understand, and work with the reality of the deathly impact of colonial law upon dispossessed people?

Isabel Coe's protest within the High Court in 1999 correctly anticipated the death and harm that would continue to transpire if law were to remain deaf to its own complicity in ways that prevent justice. If the High Court and other colonial legal apparatuses foreclose on Indigenous sovereignty even as they seem engaged in further fact-finding about escalating issues, then an implicit challenge exists. This is to see law for what it really is and does in a colonial context. A legal system that lacks consent at its foundation and is characterized, in the present day, by a refusal to examine and engage with its violent origin, while continuing to cause deaths of Indigenous peoples and country, is nomocidal. I argue, following Isabel Coe, that an unresponsive death-producing law is a part of the genocide experienced by Aboriginal people. I name this death by law 'nomocide', an arm of genocide that captures the unique functions performed by law in reproducing and repetitively maintaining colonial conditions in Australia. Recently I listened with great interest to the Annual John Barry Lecture given by Professor Chelsea Watego (2022), hosted by the Department of Criminology at the University of Melbourne. Professor Watego made a compelling case for the abolition of the discipline of criminology because it is so deeply linked to the colonising function of the state. Abolition is a project of love, Professor Watego argued; it is about rethinking and rebuilding, and is not simply destructive as nomophilic readings of it might suggest. But this got me thinking. If we can be convinced that criminology must be abolished, must we not also consider how to abolish the larger colonial infrastructure from which the criminal justice system and so criminology stem? Doing this might allow us to fully see and so address the deep sovereign debt owed to Aboriginal people and grasp why justice through colonial law will continue to be elusive. This would require a "critical love" (Giannacopoulos, 2020) to interrupt the killing function of a regime that says it is about peace and order.

Notes

1 For an extended analysis of this case see Giannacopoulos (2021).

2 Ambelin Kwaymullina (2005) explains that "For Aboriginal peoples, country is much more than a place. Rock, tree, river, hill, animal, human – all were formed of the same substance by the Ancestors who continue to live in land, water, sky. Country is filled with relations speaking language and following Law, no matter whether the shape of that relation is human, rock, crow, wattle. Country is loved, needed, and cared for, and country loves, needs, and cares for her peoples in turn. Country is family, culture, identity. Country is self."

3 In the matter of an application for a writ of mandamus directed to Phillip R Thompson Ex parte Wadjularbinna Nulyarimma, Isabel Coe, Billy Craigie, and Robbie Thorpe (Applicants), Tom Trevorrow, Irene Watson, Kevin Buzzacott and Michael J Anderson (Intervenors) [1998] ACTSC 136.

4 The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) (1987-1991) was a Royal Commission appointed by the Australian government in October 1987 to study and report upon the underlying social, cultural and legal issues behind the deaths in custody of Aboriginal people and Torres Strait Islanders, in the light of the high level of such deaths. See Royal Commission into Aboriginal Deaths in Custody (1998).

References

Ahmed, S. (2006). The nonperformativity of antiracism. *Meridians: Feminism, Race, Transnationalism*, 7(1), 104–126.

Alexander, M. (2012). *The New Jim Crow: Mass incarceration in the age of colorblindness*. The New Press.

Anderson, M. (2015, October 15). Queen got no right here. This is our country under our Tjukurpa law… Murray George. *Sovereign Union – First Nations Asserting Sovereignty*. http://nationalunitygovernment.org/queen-got-no-right-here-our-country-under-our-tjukurpa-law-murray-george

Attorney-General's Department. (2016). Access to justice. https://www.ag.gov.au/legal-system/access-justice

Australian Associated Press. (2022, February 3). Hand it in: Gun amnesty targets 260,000 unregistered firearms across Australia. *The Guardian*. https://www.theguardian.com/australia-news/2022/feb/03/hand-it-in-gun-amnesty-targets-260000-unregistered-firearms-across-australia

Commonwealth Director of Public Prosecutions. (2013). Guidelines and directions. https://www.cdpp.gov.au/sites/default/files/CDPP-GDM-Suppression-Orders.pdf?acsf_files_redirect#:~:text=Suppression%20orders%20are%20orders%20made,Commonwealth%2C%20State%20or%20Territory%20legislation

Cunneen, C. (2017). Police violence: The case of Indigenous Australians. In P. Sturmey (Ed.), *The Wiley handbook on violence and aggression* (pp. 1591–1602). John Wiley and Sons.

Derrida, J. (1992). Force of law: The 'mystical foundation of authority'. In D. Cornell, M. Rosenfeld, & D.G. Carlson (Eds.), *Deconstruction and the possibility of justice* (pp. 4–67). Routledge.

Giannacopoulos, M. (2021). White law/black deaths: Nomocide and the foundational absence of consent in Australian Law. *The Australian Feminist Law Journal*, *46*(2), 249–263.

Giannacopoulos, M. (2020). Without love there can be law but not justice. *Globalizations*, *17*(7), 1085–1090.

Giannacopoulos, M. (2011). Nomophilia and bia: The love of law and the question of violence. *Borderlands*, *10*(1). https://go.gale.com/ps/i.do?id=GALE%7CA267422555&sid=googleScholar&v=2.1&it=r&linkaccess=abs&issn=14470810&p=AONE&sw=w&userGroupName=anon%7E668ef4bc

Hill Collins, P. (2022). Violence and intersecting power relations. In S. Perera & J. Pugliese (Eds.), *Mapping deathscapes: Digital geographies of racial and border violence*. Routledge.

Kwaymullina, A. (2005). Seeing the light: Aboriginal law, learning and sustainable living in Country. *Indigenous Law Bulletin*, *6*(11). http://classic.austlii.edu.au/au/journals/IndigLawB/2005/27.html

Legal Information Institute. (2022). *Substantive law*. https://www.law.cornell.edu/wex/substantive_law

Lorde, A. (1984). *Sister outsider: Essays and speeches*. Crossing Press.

McGlade, H. (2022, March 15). All white juries are a symptom of structural racism. *NITV*. https://www.sbs.com.au/nitv/article/2022/03/14/opinion-all-white-juries-are-symptom-structural-racism

Moreton-Robinson, A. (2004). The possessive logic of patriarchal white sovereignty: The High Court and the Yorta Yorta decision. *Borderlands*, *3*(2), 1–9. https://eprints.qut.edu.au/7690/

Moreton-Robinson, A. (2007). Introduction. In A. Moreton-Robinson (Ed.), *Sovereign subjects: Indigenous sovereignty matters* (pp. 1–14). Routledge.

Nulyarimma & Ors v Thompson C18/1999 (2000). High Court of Australia. Transcript.

Park, M., & Butler, D. (2022, March 18). 'Cowboy stuff with no rules': Zachary Rolfe text messages to army friend revealed. *NITV*. https://www.sbs.com.au/nitv/article/cowboy-stuff-with-no-rules-zachary-rolfe-text-messages-to-army-friend-revealed/wixpuioj4

Royal Commission into Aboriginal Deaths in Custody. (1998). Royal commission into aboriginal deaths in custody. *Australasian Legal Information Institute*. https://www.indigenousjustice.gov.au/resources/royal-commission-into-aboriginal-deaths-in-custody/

Solidarity. (2022, March 11). Ned Hargraves: No more guns in our communities, it must never happen again. https://www.solidarity.net.au/highlights/ned-hargraves-no-more-guns-in-our-communities-it-must-never-happen-again/

Treaty 88 Campaign (1988). Aboriginal sovereignty – never ceded. *Australian Historical Studies*, *23*(91), 1–2. https://doi.org/10.1080/10314618808595786

United Nations. (2022). Access to justice. https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/

Watego, C. (2022). *Who are the real criminals? Making the case for abolishing criminology [Lecture]*. Youtube. https://www.youtube.com/watch?v=B6uwQylOyv4

Watson, I. (2007). Aboriginal sovereignties: Past, present and future (im)possibilities. In S. Perera (Ed.), *Our patch: Enacting Australian sovereignty post-2001* (pp. 23–43). Network Books.

Watson, J. (2020, March 18). How the acknowledgement of Country became a core custom-and why it matters. *ABC News*. https://www.abc.net.au/news/2020-03-18/history-indigenous-acknowledgment-of-country-national-custom/12029886

Rolfe, Zachary. (2022, March 11). Policeman acquitted of murdering Aboriginal teenager. *BBC News*. https://www.bbc.com/news/world-australia-60703420