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Imagining Decolonised Law

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Rhys Aston, Kristopher Wilson and Maria Giannacopoulos

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Imagining Decolonised Law Introduction

Rhys Aston, Kristopher Wilson and Maria Giannacopoulos

At the time of writing, settler violence against Palestinian people and lands unfolds unapologetically across our screens. The UN Secretary-General describes Gaza as a 'crisis of humanity' and a 'graveyard for children' and as we watch the bombing of hospitals, civilians and children in real time we are implicated. There is no possible justifiable defence to be invoked down the track, claiming to not know. As South Africa brings its action against Israel in the International Court of Justice (ICJ) seeking provisional measures to stop the genocide against the Palestinian people we recall the places and genocides in the locations that we write from. We recall Isobell Coe, in the *Nulyarimma* challenge who more than two decades ago accused the legal system in ~~Australia~~ of being complicit in genocide if it refused to recognise and curb the death worlds of colonial ~~law~~ for Aboriginal people (Giannacopoulos 2020). We recall that in the wake of the police killing of Kumanjayi Walker in his own home and on his country, the Walpiri community called for a ceasefire and for the killings to end.[1] Where there is genocide there is dispossession and where there is dispossession ~~law~~ is always implicated. In the tale of these two genocides, it is only the time line that is different.

It was in a ~~law~~ school on Kaurna Yerta, ~~Adelaide~~ that the three of us were brought together, where colonial ~~law~~ remains core business,

as it does in all ~~law~~ schools across colonies, in a way that relegates decolonisation to the status of metaphor at best. We first began thinking about this special issue project in 2021 in the midst of the pandemic and in the wake of the resurgence of the Black Lives Matter movement when protests were frequent and bringing into clear view the killing function of carceral systems and logics across settler colonies globally. George Floyd's heartwrenching cry 'I can't breathe' in 2020 was haunted by that of Dunghutti man David Dungay Jr, from ~~Kempsey NSW~~ who in 2015 pleaded 'I can't breathe' when prison officers overpowered him after he refused to stop eating a packet of biscuits.[2] There was no metaphor here. The colonial regime and its legal arms quite literally deprived breath to asphyxiate and cause death. It was evident then and even more so now, that nomocide, (Giannacopoulos 2021) the killing function performed by the type of ~~law~~ that is imposed without consent to claim the position of a nomopoly (Giannacopoulos 2020) is bound up with dispossession and the domination of people upon their own lands.

Looking squarely at and engaging immediately with the line of connection that holds between nomocidal ~~laws~~ and the denial of life and Indigenous sovereignty across the globe, are the necessary preconditions for decolonised justice. As critical Indigenous and non-Indigenous scholars of ~~law~~ in the settler colonies of ~~Australia~~ and Aotearoa ~~New Zealand~~, we have long known that it has always been the right time to dare to imagine decolonised law; a law that is disentangled from killing and domination. But right now the stakes could not be any higher. In line with Tuck and Yang (2012) we posit that decolonisation is about the repatriation of Indigenous land and life. It is not metaphorical and is without synonyms and metonyms. Uncritical approaches to ~~law~~ reform of violent systems and disembodied theorisations of ~~law~~ and violence cannot stand in for decolonial justice. We knew that critical work of this sort, especially in the nomocidal and genocidal present, would come with some risk but perhaps we did not fully appreciate how daring to speak of ~~law~~ as colonial violence at a time when so many in ~~Australia~~ were turning to ~~law~~ as the remedy for colonial injustices would be met with aggressive gatekeeping attempts to shut down, discredit and silence. We never imagined at the outset, that our modest special issue

of *Law Text Culture* would catch the angry attention of those whose approaches to ~~law~~, the state and constitutional reform had no less than Government backing. Perhaps we should have anticipated that like state systems, disciplines as fields of knowledge relating to those systems rely on their central assumptions remaining uninterrogated as the reform canon endlessly repeats.

In ~~Australia~~, the 2023 Voice referendum (and both its possible outcomes) worked to disallow an interrogation of the role of ~~law~~ as a deep cause of racial injustice in the colony. With the starting assumption and operating condition of the referendum being to accept the nomopoly as a legitimate basis of ~~law~~, it worked to disguise the clear line of causation between the imposition of colonial ~~law~~ and the racial violence that flows from it in the present day. In the aftermath of the Voice referendum and with the International Court of Justice hearing the case against Israel while the genocide unfolds in and beyond ~~Australia,~~ we are at a crossroads. We need to engage with profound injustice in a foundational sense in order to move closer to decolonisation. Decolonisation requires more from us than an investment in reform hoping that this time, government backed initiatives might curb intractable injustices. Decolonisation requires from us an intention to dismantle the structures that make colonies. As this special issue demonstrates, legal systems are fundamental in structuring and maintaining colonial societies.

As we know this audience knows, critical interrogations of ~~law's~~ relationship to violence, race and injustice are not new. In fact, they have been at the centre of critical legal theory for at least four decades. However, despite the many important insights and tools this scholarship has provided, the underlying issues they address persist. Our special issue, draws on much that is already known about colonialism, violence and ~~law~~ but does so with the intent of getting closer to decolonisation by looking directly (and not just abstractly) at the violence necessary to processes of colonial ~~law.~~ The special issue attends to the embodied, affective, poetic, sonic and aesthetic dimensions of this relation at an opportune and indeed urgent moment for scholars, activists and artists

to offer reflections on the meanings of, and strategies for achieving meaningful structural and material change.

Integral to decolonisation is the task of attending to the coloniality of ~~law~~, within and beyond the settler colonies. This is a project that necessarily entails works across multiple levels. First, it demands a continuing – and renewed – critique of colonial ~~law's~~ nomocidal features (Giannacopoulos 2019; 2020), particularly its expanding carcerality (McKinnon 2020) and extractive exploitation. At the same time, it is also necessary to reflect on how pathways towards decolonial justice might be opened up and prefigured in the wake of nomocide. Imagining alternative – and lively – legal worlds cannot happen unless existing ~~law~~ is conceptualised and enacted differently – as generative, plural, and able to accommodate difference without subsuming it within singular or universal frameworks. While the centring of knowledges that stem from lived experience of colonialism's violence is urgent, there is also a part here that must be played by those who do not regularly come up against colonial ~~law's~~ unrelenting violence. The contributors to this special issue are artists, poets, activists, emerging and established scholars. From differing embodied and theoretical standpoints their contributions collectively paint a picture of the importance of resistance, creativity, theoretical imagination and intellectual courage in moving towards decolonisation in this charged historical moment. It is at such critical junctures that their theoretical critiques of colonial law, lived experiences of carceral and colonial violence, and imaginings of a decolonised world guided by Indigenous scholarship are urgently needed.

Latoya Aroha Rule descends from Wiradjuri and Te Āti Awa peoples, and is a takatāpui/queer person who resides on Gadigal Land. A PhD scholar who has been instrumental in the founding and success of a national ban spit hoods campaign following the death of their brother, Rule's contribution is a poem titled *Exhibit C273 - Pathology Report*. A meditation on love and state violence, their words stand with and guard their brother's memory. The poem quietly exposes a state that kills and then investigates how it kills, only to restore innocence to itself. Rule's loving plea is a profound call to action, a scathing critique of nomocide in a time of genocide -

I plead of you
don't leave it
to exhibit
to hold me
in your hands
and show me
love in life

From love to rage, the next contribution is the poem *Native Rage* and accompanying photo by **Dominic Guerrera**. A Ngarridjeri and Kaurna poet, artist and curator, Guerrera's art practice extends into ceramics, photography and screen-printing. In 2022 he programmed a series of film screenings and talks in association with Richard Bell's *Embassy* inspired by the Aboriginal Tent Embassy, the protest camp set up 50 years ago on the lawns of Parliament House in Canberra. In the context of that work and as is evident from his poem here, Guerrera will always be centred on the needs of Aboriginal audiences: 'What do the Aboriginal communities want to hear, need to hear? What's the conversation we need to be having?'. Guerrera adds 'But then, that's always going to be beneficial to any other community.'[3] What can his account of native rage, nothing short of an enactment of Aboriginal sovereignty, have to say to the question of decolonising law? Everything. Tracking processes of criminalisation, incarceration, assimilation, genocide, theft of children, cultural appropriation, extractive exploitation and more to conclude:

time for native values
native beliefs
native principles
always was, always will be treaty first
land back, liberation
    fuelled by native epistemology
    fuelled by native ingenuity
    fuelled by native rage

In *Civilising the savages of Yorta Yorta country: legal metaphor, violence and the 'tide of history'* **Holly Charles**, a Yorta Yorta and Gunai woman living on Yorta Yorta country and an emerging scholar in the final year of her PhD studies at RMIT University, reveals the epistemic violence of metaphor in denying the *Yorta Yorta* claim. While colonialism and its violence is far from metaphor, the technique of metaphor is necessary to close up the reality of violence that underlies the system of colonial ~~law~~. Charles' contribution is a study of resistance, contestation and power dynamics revealing the structural refusal of the colonial court to hear or be influenced by the tonnes of evidence brought before it by the Yorta Yorta people in their challenge following the promise of *Mabo*. The need to go before a regime of illegitimate ~~law~~, and to be subjected to its demands for evidence only to have it all unheard and dismissed by way of metaphor, reveals the hard limit point for racial justice under colonial ~~law~~ reforms since this ~~law~~ cannot acknowledge, let alone speak to its own violence.

Rhys Aston and Kris Wilson in *The Kangaroo and Emu Between Legal Worlds: Unsettling the Recognition of Difference* pay tribute to Arabunna (Arabana, Arabuna) Elder and Community Advocate Uncle Kevin Buzzacott who in 2004 was convicted of theft after 'stealing' a bronze Australian coat of arms from Old Parliament House. Part of broader protests associated with the thirtieth anniversary of the Aboriginal Tent embassy, Kevin Buzzacott asserted his actions were not theft, but rather a reclamation – both a 'taking back' of, and insistence of right to protect these sacred animals – a claim that stemmed from his cultural and legal obligations to country. The court's unequivocal rejection of Uncle Kevin's claims provides a compelling example of the ways in which the legal system seeks to (re)produce and (re)enact colonial ~~law's~~ nomocidal framework, one that has striking similarities to many other legal challenges to the colonial state, including the often-lauded decision in *Mabo (No 2)*, the decision in *Nulyarimma* (see Giannacopoulos 2021) and in *Yorta Yorta* (see Charles, this issue). However, Uncle Kevin's actions and arguments also draw attention to the very real tensions, contradictions, and fractures in the colonial regime. In his steadfast insistence that the court recognise Arabunna

law, and his corresponding legal obligations under that law, he exposes and brings into question the colonial systems claim to be the sole source and purveyor of law and justice, to be 'an authority with authority' (Giannacopoulos 2020, 251).

In *Colonial Goals through Colonial Gaols: The Imperative of Indigenous Self-Centred Self-Determination for Indigenous Decarceration*, **Lisa Billington** critically interrogates the carcerality of colonial states, drawing on the experiences of Indigenous populations in Australia and Kalaallit Nunaat (Greenland) as case studies. As she compellingly argues, there is nothing anomalous about the high levels of incarceration experienced by Indigenous peoples, a strikingly common feature across colonial states. In fact, systems of carceral control are central to the colonial project, as she puts it 'colonial gaols are repositories of colonial goals'. In this way, the overrepresentation of Indigenous people in prison is not simply a symptom or effect of colonialism, but rather colonialism in action. Consequently, any project aimed at Indigenous decarceration must begin with decolonisation. For Billington, the key to decolonisation lies in Indigenous self-determination, but crucially this must be an 'Indigenous Self-centred self-determination'. Any form of self-determination that is acceded to and contained within existing colonial frameworks will only work to recentre the colonial state's claims of legitimacy. In order for self-determination to disrupt the prevailing structures and relationships of power, it must remain controlled and driven by Indigenous people themselves.

In *Reimagining Settler Law: Navigating the Lawscape on Wurundjeri Country*, **Julian Bagnara** embarks on an introspective and exploratory journey into the complexities of settler ~~law~~ on Wurundjeri land. Drawing from his personal experiences and academic insights, Bagnara critically examines how settler ~~law~~ contributes to ecological destruction and the erosion of Indigenous cultures and laws. Bagnara's exploration is framed within the context of two significant ecological crises in Australia – the Black Summer bushfires and catastrophic floods – symbolizing the urgency of addressing the anthropocentric and colonial mentality embedded in settler ~~law~~. This journey through

the 'Lawscape' – a concept that views law as inherently spatial and relational – serves as a foundation for considering how law interacts with various forces and bodies, including those of Indigenous peoples. Bagnara advocates for a legal system that is more responsive to the needs and rights of Indigenous communities, recognizing the importance of Indigenous laws and cosmologies. Through a reflective and narrative style, Bagnara invites readers to join him in re-imagining law as a dynamic and relational entity, deeply intertwined with the physical and cultural landscape.

A World Where Many Worlds Fit': On the Zapatista Model of a Just Society by **Luis Gómez Romero** is a historical tracking of the colonial exercise as it played out in Mexico leading to the rise of the Zapatista movement. Traversing a period of 500 years of Mexican history, Gómez Romero moves beyond Eurocentric frames to meticulously present the Zapatista model for justice, one that is both utopian and within reach. There is another sense in which this historical survey resonates in this moment as a history of the present. With its discussion of constitutions aiding authoritarianism and the calls for ceasefires, the article conjures contemporary settler colonial violence playing out in both ~~Australia~~ and Palestine without even invoking these. In this way, the article is significant for enhancing understandings of coloniality and technologies of ~~law~~ in this historical moment where a genocide is unfolding and ceasefire urgently needed.

In *Utopia as 'No-Place': Utopias, Colonialism and International Law*, **Ruth Houghton and Aoife O'Donoghue** bring to the fore the links between utopian literature, colonialism, and international law. Central to their analysis is the recognition of utopian literature as a significant contributor to colonial ideologies. They emphasize how early modern Western utopian narratives adopted similar techniques to those that informed international law and colonial expansion through the construction of 'no-places'. This includes concepts of *terra nullius* or nobody's land; ideas of science and mapping to exert authority over a place; and the use of race, gender and sexuality in suppressing or erasing inhabitants (fictional or otherwise). 'No-places' were instrumental in

justifying the subjugation and erasure of Indigenous populations, facilitating the colonial process by nullifying the existence and rights of the indigenous peoples to land. While acknowledging the potential of the use of inclusive utopias in decolonial and intersectional feminist scholarship today, this paper serves as a call to critically interrogate the colonial foundations of the utopian genre.

Edwin Bikundo's *Law, Violence, Music, and Decolonising the Coronation Ceremony* is an elegant and timely meditation on musicality and its unique placement to consciously marshal the unconscious impersonal centripetal-centrifugal forces that simultaneously promise to bring society together while threatening to tear it apart. In 2023, a year that saw the celebration of King Charles' coronation in the ~~Australian~~ colony *and* the staging of a referendum to entrench a singular Indigenous voice into a parliamentary structure that the monarchy was implicated in establishing, Bikundo asks: why does a monarch need crowning even though, legally, speaking they already are King or Queen as the case may be? Bikundo argues that if power is not enough to rule effectively without glory, then it must mean that violence, not even a preponderance of it, is ever sufficient to ground the legitimacy and thus the effectiveness of a political and legal regime. The coronation ceremony, described as 'stupefyingly spectacular'[4] unfolded in a context where calls for Indigenous sovereignty and treaty only became louder, in rejection of constitutional reform as a way to achieve racial justice. Lynda-June Coe, niece of Isobell Coe, considers it an act of 'self-erasure' for 'our mob, and colonised peoples globally, to pledge allegiance to the head of an institution which represents the theft of our lands and demise of our communities'.[5]

Concluding the special issue is '*We are doing everything but treaty': Law reform and sovereign refusal in the colonial debtscape*' by **Maria Giannacopoulos**. This article is the text of the John Barry Memorial Lecture in Criminology delivered just four days after the unsuccessful Voice referendum and eleven days after the genocide in Gaza began to be unleashed. Following artists Matt Chun and James Tylor's strikethrough of ~~Australia~~ and extending this to the description of

colonial ~~law~~ Giannacopoulos reveals how colonial ~~law~~ in the place known as ~~Australia~~ sits in a violent relation of domination toward Indigenous laws, peoples, lands, and languages that pre-existed it. ~~Law~~ and ~~laws~~ imposed upon Aboriginal Land are usurpatory and as such form a nomopoly which in turn functions to naturalize and then retrospectively legitimize the theft of Aboriginal land. This is the work of the debtscape where legal apparatuses are on a reformist loop, working ceaselessly to cover over the fact of unpaid colonial debts as the foundation and enabling condition for ~~Australia~~. Reckoning with unpaid sovereign debt will be a form of decolonisation that is yet to come. But it must come, she argues 'all our futures depend on it'.

Endnotes

1 See, Scott L (2022) *"Karrinjarla muwajarri—we call for ceasefire.", UMSU.* Available at: https://umsu.unimelb.edu.au/news/article/7797/Karrinjarla-muwajarriwe-call-for-ceasefire/

2 See, Hagan S (2020) *'I can't breathe': Australia's Awkward Conversation, NITV.* Available at: https://www.sbs.com.au/nitv/article/i-cant-breathe-australias-awkward-conversation/pclwxy4bi (Accessed: 11 December 2023)

3 See, Pillarisetty A (2022) *'Embassy' upholds legacy of First Nations sovereignty and protest*, *CityMag.* Available at: https://citymag.indaily.com.au/culture/embassy-upholds-legacy-of-first-nations-sovereignty-and-protest/ (Accessed: 11 December 2023).

4 See, McKenna M (2023) *The coronation, the republic and the voice, The Monthly.* Available at: https://www.themonthly.com.au/issue/2023/june/mark-mckenna/coronation-republic-and-voice#mtr (Accessed: 11 December 2023).

5 See, Williams, C (2023) *What First Nations Australians think of King Charles III's coronation, ABC.* Available at: https://www.abc.net.au/news/2023-05-05/first-nations-people-on-king-charles-coronation/102303820 (Accessed: 11 December 2023).

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