

# In the Northern Territory Intervention, What is Saved or Rescued and at What Cost?

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The foundation of the Australian colonial project lies within an 'originary violence', in which the state retains a vested interest in maintaining the founding order of things. Inequalities and iniquities are maintained for the purpose of sustaining the life and continuity of the state.<sup>1</sup> The Australian state, founder of a violent (dis)order is called upon by the international community to conform and uphold 'human rights', but what does this call to conformity require, particularly when the call comes from states which are also founded upon colonial violence? It is my argument that very little is required beyond the masquerade that 'equality' for Aboriginal peoples is an ongoing project of the state. So for what purpose does the masquerade continue? The masquerade of equality is essential to the notion of foundation and state legitimacy even though inside the colonial state 'equality' is never a possibility. The bare minimum notion of 'rights' is allowed, in what Jacques Rancière suggests is a space which is diminishing daily, until 'rights' appear empty and devoid of use.<sup>2</sup> Rancière compares the idea of rights of the oppressed to the charitable giving of second-hand clothes to the poor, or the sending of aid abroad to 'deprived peoples'.

Australia does not have to look overseas to extend the 'charity' of human rights; the colonisation of Aboriginal people's lives and territories has been an ongoing project in the maintenance of inequality— inequality between Aboriginal life and a privileged colonial settler society. The

standing inequality between the Aboriginal and settler societies provides fertile ground for human rights interventions. In June 2007 the Howard government announced it would lead an Intervention into Aboriginal communities in the Northern Territory as a response to the findings of the *Little Children are Sacred* report, which reported on high levels of community violence against Aboriginal children and women.<sup>3</sup> Without negotiating with Aboriginal communities the federal government announced its own strategy to intervene in the 'crisis' within Northern Territory Aboriginal communities, and enacted the Northern Territory National Emergency Response Bill (Cth) 2007.<sup>4</sup>

Soon after the announcement the Intervention commenced and was led, like those in Iraq and Afghanistan, by the Australian military. According to the Australian Government the Intervention will save and transform the lives of Aboriginal peoples living on Aboriginal lands that have been recognised since 1975. The Howard government argued that its emergency intervention was a 'just' and 'humanitarian' act, while the incoming Labor government fully supports its opponent's intervention laws. But are they just? Derrida argues that the mere application of a rule 'without a spirit of justice' might be protected to stand as 'law' but it would not be 'just'.<sup>5</sup> In this instance the Australian Government stands protected by law, a law that continues to play out and re-enact its own unjust foundational position, one which took root in innumerable acts of colonial violence and continues today as violent re-enactments. But these violent re-enactments are not seen as violence, because the violence is normalised. The intervention, read by some as a contemporary invasion of Aboriginal lands, was read by the Australian public as a humanitarian intervention, as a lawful process of the Australian state.<sup>6</sup>

I understand the contemporary colonial project as one which has continued unabated from the time of the landing and invasion by the British in 1788. It is from this foundational 'originary violence' that the Australian state retains a vested interest in the inequalities and iniquities that are maintained against Aboriginal peoples, for the purpose of maintaining the life and continuity of the state.<sup>7</sup> A question the Australian

state is yet to resolve is its own illegitimate foundation and transformation into an edifice deemed lawful. Within this unanswered questionable structure the Australian state parades as one which has repressed its 'illegitimate' origins into 'a timeless past',<sup>8</sup> while the survivors of this founding violence ask the state: by what lawful process do you come to occupy our lands?

The Commonwealth's Intervention is focused only on the Northern Territory — it is only the Northern Territory that has a federal Aboriginal land rights regime — but the Northern Territory is also earmarked for the opening of a number of new uranium mines. Coincidentally, a new railway line is routed from Adelaide to Darwin and crosses Aboriginal lands in the Northern Territory to provide easy access to shipping routes.<sup>9</sup> Clearly none of these facts have been cited as being relevant or having any connection to the new emergency laws — the media and public focus is solely upon child sexual abuse and the possibility of its prevention and protection — but they are certainly coincidental. Wendy Brown, writing on humanitarian intervention, suggests the state's intervention in crisis events is probably more about a 'particular form of political power carrying a particular image of justice'.<sup>10</sup> In Australia, that image of justice enables the violent foundations of colonialism to continue to hold territory and transform the life of Aboriginal peoples. It is a violent act which masquerades as being beneficial but that boils down to the legitimising of the right to invasion of Aboriginal lands and lives.<sup>11</sup>

Across colonial history, Australian law and society held and continues to hold definitional power, a position which has resulted in translations and constructions of Aboriginal law and culture as being inherently violent against women and children. This position has allowed an opening for crusaders or 'white men to come to the rescue of brown women from brown men', as Spivak suggested when commenting on the dynamics of colonial India and the 'rescue' by white men of Indian women from the 'barbaric practice' of widow sacrifice.<sup>12</sup> The position of crusader is held up as the 'proper' solution to violence. But in this universalised order whose concept of human rights and equality applies? And will the 'originary violence' be transformed into a law-full act which obliterates

its own past? It is my argument that the current emergency response laws are the contemporary representation of earlier colonial laws and protectionist policies of the Aborigines Acts, and that these (now repealed) laws were in their time of operation also characterised as being of benefit to Aboriginal peoples.<sup>13</sup>

Across time, from the moment of the original violence of foundation to this time now, the same question can be asked: what was it that Aboriginal people are being protected from? In the past the black frontier experience was one of physical violence: white settlers effected massacres, murders and kidnappings, and as a result of their pressure, starvation and disease were also rife. Often official protection was ineffective. On the white side of the frontier, however, it was and still is strongly contested that any frontier violence had occurred at all. It is now claimed that under the recently imposed Intervention laws Aboriginal individuals, particularly women and children, would be protected from the violence of Aboriginal male members of their communities. Women and children would be protected from a 'failed Indigenous experiment' in respect of which the Howard government, Marcia Langton states, 'would no longer stomach a policy regime whose many failings resulted in endemic poverty, alienation and disadvantage, and sickening levels of abuse of Aboriginal women and children ... a new order swept in'.<sup>14</sup> Langton's support for the Intervention fails to acknowledge the Howard government's complicity; that is, during the previous decade the Howard government held power to intervene in Aboriginal community endemic poverty, alienation, disadvantage and community violence, but chose instead to do nothing, chose to sit back and observe like the vulture state it was and to swoop in upon communities at the point of implosion. So why did the state fail to intervene or act earlier? The implosion of communities was well represented by the Australian media but in their representation they failed to provide a critical commentary of the Howard government's failure to engage with Aboriginal community development.

The white settler frontiersman of the past has been transformed by the Northern Territory intervention into the crusader of the present, rescuing Aboriginal women

from Aboriginal men. The question to be asked is: what has happened in the intervening two hundred years and why does the violence continue to occur inter-generationally in this changed and inverted context?

In coming to these questions it is important to distinguish the nature and character of violence in Aboriginal communities. Early colonial frontier violence was pitched against first peoples' laws and cultures, a foundational violence which established a colonial sovereignty. However, contemporary violence is more complex; it is characterised by violence of Aboriginal against Aboriginal, but the violence of the state also retains its original character against Aboriginal peoples' laws and cultures. It is a colonial violence which re-enacts itself to support its claim to legitimate foundation, and the Howard government emergency measures are such a re-enactment.

I don't think we can fully comprehend these recent developments without reflecting on history. In the past the colonial state cast the net of what I have called in previous works an illusion of protection or the masquerade of recognition of the humanness of Aboriginal peoples.<sup>15</sup> But under the protectionist policies of the Aborigines Acts our lives were totally controlled. Our old people were forced to live on reserve lands and were only allowed to leave the reserve once they obtained the permission of the Aboriginal Protector, or held a certificate exempting them from being identified as an Aborigine under the Aborigines Acts.<sup>16</sup>

So who am I/ we today in this new so-called 'postcolonial landscape'?<sup>17</sup> This question is particularly relevant to situations of native title claims where Aboriginal culture and identity is interrogated for authenticity. In the past our ability to truly live as Aboriginal peoples was subjugated entirely by colonial policies, but during the 1970s there was a symbolic shift to 'recognition' of Aboriginal lands, laws and cultures. However, recently we have been made aware that these shifts in the 1970s were never based on firm ground but were vulnerable 'rights recognition' secured only by the 'human rights movement' of the times. So what are these times and how far if at all have we shifted from the original founding colonial intentions?

Prior to the commencement of the Intervention, Aboriginal culture and collective forms of land ownership were deemed subversive to 'proper' forms of property ownership. In a speech to parliament, Mal Brough spoke in support of amendments to land rights legislation, arguing that private property rights would provide safer and more progressive developments for Aboriginal communities.<sup>18</sup> At the same time, negating the possibility for judicial consideration of Aboriginal cultural background was also considered by the Commonwealth as an advancement of universal human rights standards.<sup>19</sup>

The original colonial intentions were to establish colonies that were to become transformed into the Australian state. At the time of its foundation we were the non-native coloniser's natives, but we were ourselves Tanganekald or other peoples, by our own names.<sup>20</sup> Our identity and voices were unknown to the colonisers and unheard, but they have survived the attempted genocide. Today our voices are still talking while the colonial project remains entrenched and questions concerning identity politics, and the 'authentic native', are constructed and answered by those who have power to determine legal and political categories. The categories of Aboriginal and non-Aboriginal were imposed by the colonial project and in this process of constructing Aboriginal and non-Aboriginal identities, the colonisers excluded themselves from having an Indigenous past. I see this process of negating an Aboriginal identity as being tied to the idea of progress or the movement towards a 'vanishing future', away from an Aboriginal being, and relationships or connections to country.

While the colonial project from the outset denied and extinguished Aboriginality it seems contradictory that the commodification of Aboriginal culture brings an increased demand for authenticity—of Aboriginal art, and other tangible and intangible 'products'. Commodification occurs even while the survival of the 'authentic native' was and is threatened by colonialism. Who we are is often navigated from a violent space within which Aboriginality is measured for its degree of authenticity, and where those who do the measuring are ignorant or deniers of the history of colonialism. So when the struggle and desire for an Aboriginal life is depicted by

the state as being no more than an invention or fabrication of culture and law, as was found in the Hindmarsh Island Bridge Royal Commission (South Australia) we are reduced of our Aboriginality.<sup>21</sup> The commission was established to determine the truth or otherwise behind the claim that the building of a highway bridge from mainland Goolwa to Hindmarsh Island would destroy a significant Aboriginal women's site. Presuming to inquire into the authenticity of Aboriginal women's law business, the commission concluded that Aboriginal women had invented law business for the purpose of preventing the building of the bridge and that the practice in question had never been a part of Aboriginal cultures in the southern and southeastern regions of South Australia. Since then the bridge has been built and a number of Aboriginal women continue to contest and resist the legitimacy of the decision that enabled the damage of an important Aboriginal site.

Aboriginal culture and identity is more likely to be supported when it is not challenging development projects and when culture performs as a commodity. However, when it challenges the political agendas of the state, it is most likely to be attacked or demeaned as it was by Commissioner Iris Stevens when she determined women's business was a fabrication and a reinvention of the past. Here the state determined the process of cultural translation, and the evidence relied upon was taken from white male experts, while the evidence of Aboriginal women's business was not presented to the commission because its proponents did not acknowledge the Royal Commission's jurisdiction. How can anyone consider the possibility of cultural translation when the source of the translation has no status or even presence? When the information relied upon is that of the 'white expert' that is being translated? It is a compilation of their record of events; the Aboriginal record has no speaking voice. The commission's conclusions resulted in the damage of a site of significance to Aboriginal women's law and cultural business. The discourse of progress framed and determined these conclusions and the processes of translation.

Zizek, in consideration of Scottish kilts, their origins and history writes, 'in the very act of returning to tradition,

they are inventing it'.<sup>22</sup> He was referring to a specific history of place and people, a subject which cannot be conveyed to every known territory. However, the concept of invention of tradition is imposed broadly, and occurred during the Royal Commission. It was applied to a place where Aboriginal peoples are in struggle for the land and a space to re-establish a life beyond that of subjugated natives. The possibility for decolonisation or engagement with Aboriginal worldviews on law and culture was rendered a fabrication by Iris Stevens, of the same species as Žižek's act of invention. Does a space in which there might be Aboriginality beyond a fabricated invention or a commodified Aboriginal being exist? The cynic in me would say no; the resisting-survivor would say it is the challenge.

In a critique of the 'tolerance' of liberal multiculturalism, Žižek reasons most unreasonably: 'an experience of Other deprived of its Otherness (the idealised Other who dances fascinating dances and has an ecologically sound holistic approach to reality, while features like wife-beating remain out of sight)?'<sup>23</sup> Here Žižek renders the 'other' as 'real' without being so, for the real 'reality show' is not Aboriginal relationships to country but the out-of-sight wife beating. This is real. But what of the reality of relationships to country? Here they are demeaned as invention of tradition while the real is wife-beating. What is real and where is the reality space of colonialism as a determined player in the construction of the other's identity and responses to violence and the inter-generational traumas of colonialism? What has been stripped here is an Aboriginal context of life or an Aboriginal reality and not one as suggested by Žižek that is divested of substance resisting that which is real.

Colonial policies of protection were initially applied with the expectation that there would be a decline and eventual extinguishment of the 'native'. They would all die. When native populations, however, successfully resisted extinguishment, protectionist policies were replaced by policies of assimilation which assumed not that the natives would all die, but that cultural annihilation would occur. These policies more or less continue in various guises, but the recent Australian Government intervention into the Northern Territory works

differently to colonial policies of the past. Aboriginal reserve lands which were set aside under the Aborigines Acts of the past for the purpose of sustaining protectionist policies of exclusion later formed the land base for the *Aboriginal Land Rights (NT) Act 1976 (Cth)*. These lands have now been targeted for large-scale development and the bringing of both country and peoples into modernity. The Intervention is supported by a package of Commonwealth laws which have been referred to by both major political parties as a necessary human rights intervention to relieve the crisis in Northern Territory Aboriginal communities.<sup>24</sup>

We might ask: was the sole purpose of the Intervention to save and transform lives and in particular the lives of Aboriginal children? The involvement of the Australian military raises the question as to whether this hardline offensive precludes or negates other ways of dealing with violence in Aboriginal communities. For example, from early colonial times Aboriginal peoples have attempted to negotiate with the colonial powers on Aboriginal strategies which could work towards alleviating suffering in communities across Australia. For more than thirty years Aboriginal strategies such as alternative justice models, and rehabilitation and healing centres modelled on Aboriginal cultural knowledge have largely been ignored or if they have been supported it has been in a tokenistic manner.

In considering the military intervention into Aboriginal communities, I am interested in the question that Wendy Brown raises regarding humanitarian intervention: 'what kinds of subjects and political (or antipolitical) cultures do they bring into being as they do so, what kinds do they transform or erode, and what kinds do they aver?'<sup>25</sup> It is a question which could also be applied to the early colonisation of Australia, and to this scenario we have an answer: what was brought into being was large-scale dispossession of peoples from land, culture and law, peoples left without space to survive inside a colonial body that continually works to subjugate the 'native' to the trajectories of progress. Will Aboriginal communities be able to hold onto their land, or will they be removed? We have seen this history performed in the past. So what kinds of Aboriginal identities will form out of

this most recent ‘humanitarian intervention’?<sup>26</sup>

As the Intervention laws begin to peel back land rights legislation, we are yet to see the extent to which the Rudd Labor government will follow the line of its predecessor, the Howard government, and its original intention. At the time of writing there is little to distinguish Rudd’s policy from Howard’s. It is, however, difficult to extrapolate all the intentions behind humanitarian intervention, because interventions by their nature are masked by the illusion of missionary goodwill, masking which is all the more powerful because of the real hardship and poverty of the peoples who are subjects of the intervention. What is to be saved or transformed by the Intervention, or what is likely to be achieved? Is the Intervention really about fixing the Aboriginal position of endemic poverty and violence or is it a land grab? Any answers to the above must critically consider that if intentions were sincere, then why has the state taken so long to act, and why now? We know that the Australian government has spent the past decade de-funding and closing down Aboriginal initiatives and programs that were improving living conditions in Aboriginal communities across Australia, and might have gone further if they had been allowed to continue.

The *Little Children are Sacred* report recommended collaboration between governments in consultation with Aboriginal communities to address the issue of child abuse as a matter of national emergency. But the Howard government did not consider this. It has been suggested (and I am in agreement) that the Intervention had less to do with addressing the question of child abuse and more to do with the government gaining greater access over Aboriginal lands, as well as weakening the position of Aboriginal law and culture.<sup>27</sup> The Intervention was planned and effected but to date it has not been proven that there is any link between Intervention measures and child abuse.

As stated above, the Rudd government supports the Intervention and appears to share the goal of gaining greater access into and control over Aboriginal lands. The Intervention laws, while covering a broad area, include the following three measures which have been identified as having the most potential to negatively impact upon the continuity

of Aboriginal relationships to land. The first involves relaxing the Aboriginal permit system, which allowed Aboriginal people to exclude or remove persons from ‘common areas’ and access roads into their communities and lands. While the federal government and the supporters of this provision have argued that greater access for the media and other members of the public would reduce the remoteness and increase public scrutiny of these communities, on the other side many Aboriginal peoples have argued that it would open the lands to an increase in drug and grog runners into communities where alcohol is restricted or prohibited. Second, the compulsory acquisition of Aboriginal townships for five years will provide for the compulsory transfer to government control of approximately seventy Aboriginal townships and settlements in the Northern Territory. Over these lands five-year leases will be compulsorily taken up by the Commonwealth using powers under section 51(xxxi) of the Constitution.

The Howard government stated that this was necessary to allow unfettered access to Aboriginal townships; however, both state and federal bureaucrats already had access to meet and negotiate with communities on a range of issues. Compulsory acquisition would not provide any greater benefit to the Aboriginal communities in the critical areas of health, housing, and education. Third, the intervention laws disallow the consideration of customary law or the cultural background of an offender in sentencing or bail proceedings.<sup>28</sup> Critics of the Intervention have argued that these amendments are most likely to result in higher incarceration rates and also undermine the work of Aboriginal courts and their efforts at increased involvement with community people and elders. In mapping the sentencing remarks of justices in the Northern Territory, I have found no evidence of Aboriginal offenders gaining a more lenient sentence where the courts have considered their ‘cultural background’; nonetheless, the government played upon populist sentiments that this in fact was happening.<sup>29</sup> The emergency response laws are now being challenged for contravening Australia’s obligations under international racial discrimination law.<sup>30</sup>

Initially, the Intervention found its legitimacy in the findings of the *Little Children are Sacred* report. The report

was the result of an eight-month inquiry which held consultations with forty-five communities: 260 meetings, sixty written submissions, and ninety-seven recommendations, most of which were ignored by the federal government. Instead, the government headlined the report's finding that child sexual abuse was endemic in Aboriginal communities, and decided upon fast-tracking and implementing the emergency response with all its powers to compulsorily acquire land. The Australian military entered targeted Aboriginal communities without prior consultation or their consent.

There have been a number of Aboriginal responses to the Intervention — mine, like many, is an outsider's view. I am not an Aboriginal person living in any of the communities which were the subjects of the *Little Children are Sacred* report and now targeted by the emergency response. From experience and long-term connections and relationships with friends living in some of the targeted communities, however, I know that the physical and economic violence suffered by some members of those communities is critical and it has been for a long time.

I was the director of the Aboriginal Legal Rights Movement in Adelaide in 1988 when I was contacted by members of a remote South Australian community and asked to assist in their negotiations for a greater police presence within their community. For me, it was a difficult position to be placed in. In my life, led in more 'settled' areas of South Australia, police practices had deliberately targeted Aboriginal men, women and children as part of a strategy of maintaining an Aboriginal-free space for white people. We were the enemy for no reason other than our Aboriginality. So to consider the need to call upon the police to aid and protect members of Aboriginal communities in 1988 was a very different proposition, even if it was to assist with the alarmingly high levels of substance abuse-related violence. That call has been consistent for some twenty or more years, not only from communities within the Northern Territory, but from across Australia. But the call for increased services was not only for improved policing, it was also for services which would improve the overall wellbeing of communities in health, education, and housing.

Among the widespread criticism of the emergency response, a number of communities have expressed support. I would argue this support is an indication of how critical the situation has become rather than being an expression of support for the manner in which the federal government has acted. It's hard to see enthusiasm for sending in the military and amending land rights legislation so as to transfer control of Aboriginal townships.

I have written elsewhere about the long media campaign waged against Aboriginal culture and law, the many acts of demonisation enabling the space for the current emergency response to enter and occupy with very little opposition.<sup>31</sup> In post-Intervention media debates the focus shifted to ideological differences within Aboriginal communities. The media facilitated a public slanging match between two Aboriginal women, both members of the Northern Territory Labor government, who held opposing views on the emergency response. Alison Anderson, in line with Rudd's national policy, publicly supported it and condemned Marion Scrymgour's rigorous opposition as being out of touch with 'grassroots' community concerns.<sup>32</sup> Scrymgour had argued that there appeared to be no rational linkage between the need to rescue women and children from sexual abuse and the compulsory acquisition of their land. The emergency response has taken on the mantle of being the bringer of 'human rights' and to speak against it for whatever reason is to be against the advancement of the human rights of Aboriginal communities and an advocate for violent black men.<sup>33</sup> At least this is how both major Australian political parties and their investors, both Aboriginal and non-Aboriginal, allowed the event to be characterised by the Australian media in the lead-up to the Federal Election. I, among others, would characterise the emergency response differently.<sup>34</sup>

As I have flagged earlier in this article, the Intervention is a continuing play for legitimacy, and the act of legitimacy is the rescue of Aboriginal women and children from the violence of Aboriginal men. In the protection racket of shielding and protecting subjects from certain abuses they also become subjects in the tactics of their disempowerment. Here, that disempowerment comes in the form of weakened land tenure

and the loss of opportunity to build communities from an Aboriginal centre and knowledge base.<sup>35</sup> In the rescue mission the provision of essential services will be at the cost of Aboriginal autonomy over township areas.<sup>36</sup> Instead of shifting the colonial imbalance towards a decolonised space, the state further entrenches the colonial project by reviving protectionist policies, this time under the rubric of human rights. We are returned to the stereotype of the barbaric violent bashing native, one that is in need of protection from one's 'own kind'. It is not my intention to deny the experiences of chronic poverty, violence, poor health, housing shortages and poor education outcomes existing in the life of many Aboriginal peoples, or the need for action to remedy this critical condition, but to critically evaluate the Intervention processes. Brown makes the point that 'there is no such thing as *mere* reduction of suffering or protection from abuse—the nature of the reduction or protection is itself productive of political subjects and political possibilities.'<sup>37</sup> The political subjects which are reproduced are Aboriginal peoples who continue to be subjugated by the colonial body state, having no possibility of shifting to or opening up a decolonised space. The Intervention has had the effect of foreclosing any possibility of that because the construction of the 'violent native' provides the legitimacy to that foreclosure.

What are the possibilities of having healthy, safe Aboriginal futures and should indeed our efforts be focused on decolonising the space as a strategy to this end? The continuing colonial cycle has a vested interest in retaining its own ordinary violence. So, as a strategy towards having a life and better still an Aboriginal one, I am in agreement with Brown's suggestion that there should be a more direct challenge of imperialism and support for 'indigenous efforts to transform authoritarian, despotic, and corrupt postcolonial regimes'.<sup>38</sup>

The response to the 'Aboriginal crisis' has misrepresented the causes of violence against Aboriginal women and children and reinforced the colonial myth that violence against women is inherent in Aboriginal culture, rather than considering that the source of violence lies in the invasion and colonisation of Australia and the imprisonment of its Indigenous population. Alternative views on the source of

violence in Aboriginal communities have not been given much of an airing in the debate. In general, the public knows very little about the complexities of Aboriginal law (beyond the perception of it being acquiescent in violence).<sup>39</sup> Aboriginal women are portrayed as victims in need of rescue from violent black males, but this view is rarely inverted to reflect on the Australian legal system's failure to protect white women from white male violence.<sup>40</sup> While the concept of an 'inherent violence' in Aboriginal culture is deployed to explain the rape of small Aboriginal children and the focus is shifted from the social, economic and political environment of those being raped, culture is not deployed to explain the same in the white community. That is a policing matter. The emergency response instead engages the military to resolve sexual assault in Aboriginal communities living on Aboriginal lands. On Aboriginal ground, at home, reality is more complex. The violence in Aboriginal communities, in my view, is more a comment upon the Australian Government's management of the colonial project than it is about the culture of the perpetrators. Aboriginal communities across Australia continue to resist the pressure of assimilation, while the public gaze turns away (as it has done before) from the colonial violence of poverty and dispossession of Aboriginal Australia to cultural profiling of the Other as barbarian.<sup>41</sup>

The violence of the colonial foundation was a means to an end: the creation of the Australian state. But this endpoint requires constant maintenance and, as I have argued, this maintenance occurs through continuous re-enactments of state violence. Derrida writes that European law prohibits individual violence of the military and its police not simply because the state's laws would be thereby threatened, but because individual violence 'threatens the juridical order itself'.<sup>42</sup> In Australia, it is the state which is threatened by its own founding violence.<sup>43</sup>

Just prior to his recent election defeat, Prime Minister John Howard announced his new interest in reconciliation between Aboriginal and non-Aboriginal Australia. He declared 'We are not a federation of tribes. We are one great tribe, one Australia', announcing that 'group rights are, and ought to be, subordinate to both the citizenship rights of the individual

and the sovereignty of the nation'.<sup>44</sup> In the space of a united Australia where the many become the one-Australia tribe, what is it that we the Aborigines become? Is this the restaging of Badiou's 'new man' where the creation of a 'new humanity' requires the destruction of the 'old one'?<sup>45</sup> In the destruction of the old one, Badiou cautions us on the capacity of science to make the new man along with the power of profit to determine its making or unmaking.<sup>46</sup> The century Badiou reviews, the twentieth, was one in which it is impossible not to see the 'unceasing burden of questions of race'.<sup>47</sup> Along with race there were the questions of contested sovereignties and lawful and unlawful foundation. The impact of these unresolved 'burdens' provides for the continuation of a violent colonial foundation, one that leads to skewed and colonised readings on violence and its origins. This is as well as the negation of the many hundreds of Aboriginal 'tribes' that co-existed in this land we now call Australia at the time of the coming of an 'originary colonial violence'.

### *Reflection*

I began thinking about this essay while working on 'Illusionists and Hunters: Being Aboriginal in this Occupied Space', published in 2005. At that time and since I have written on colonial constructions of 'recognition' and examined also the way in which the state both translates and interprets colonial violence. In 2005, I was resisting and observing the Howard government's campaign to eradicate our First Nations struggle for land and self-determination. In 2007, the government's campaign ultimately morphed into the Intervention.

It was Derrida's work which helped me to think through originary violence and its connection to the colonial invasion of our lives and lands. I have written about how colonial violence is perpetuated by the state so as to justify its own past and ongoing acts of terror and invasion. These days, colonial violence is veiled by the illusion of 'recognition' and that illusion is acted out as being in the 'best interests' or for the 'protection of Aboriginal victims of Aboriginal violence'. I have argued that the state is in the business of re-enacting invasion and that the Intervention is one contemporary version of re-enactment. The purpose of re-enactment allows the state to perform new ways of legitimising

and justifying its existence; it conjures images of itself as a dutiful state which secures the protection of its citizens. The subtext is that these state re-enactments work to secure an unlawful colonial foundation.

Talking back to the Intervention was to talk against the dominant colonial narrative, a narrative which positions Aboriginal women and children as being in need of protection from the dangers of rampaging, drunken Aboriginal men. The government's picture was a return to life similar to the past—under the 'Aborigines Acts'—with state-sanctioned control over our lands, governance, children, incomes and so on. This, notwithstanding the fact that the degree of First Nations self-determination prior to the Intervention hardly measured up to recognition of our status as sovereign peoples in our own lands.

Feedback on this essay and what has followed has been marginal so I have little idea as to how it has been received. I continue to build upon earlier works and have become more focused on our strengths as original First Nations peoples. Currently I am working on an ARC project—'Indigenous Knowledges: Law, Society and the State'—in which my gaze is directed beyond the dominant colonial narrative towards instead recentring our own First Nations knowledges as the sources for our survival as peoples against colonialism. This work also builds upon my recent book *Aboriginal Peoples, Colonialism and International Law: Raw Law* (Routledge, 2015). Our peoples are building strength and getting off the treadmill of involving ourselves with a framework which is genocidal and incapable of knowing and recognising whom we are. Instead we are rebuilding places where we can hear the voices of our old people and in which we can have conversations that are not leading us down an illusory path to 'progress' but instead build a continuing and sustaining relationship to country.

## Notes

- 1 Jacques Derrida, 'Force of Law: The Mystical Foundation of Authority', *Cardoza Law Review*, vol. 11, 1989, pp. 927, 931, 943, 971-7.
- 2 Jacques Ranciere, 'Who is the Subject of the Rights of Man?', *South Atlantic Quarterly*, vol. 103, no 2/3, 2004, p. 307.
- 3 Rex Wild and Pat Anderson, *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred': Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abus*, Northern Territory Government, Darwin, 2007.

- 4 The Howard government on 21 June 2007 announced its intention to use Commonwealth powers to impose a number of emergency measures following the *Little Children are Sacred* report.
- 5 Derrida, p. 949.
- 6 *Ibid.*, pp. 983-5.
- 7 See *Ibid.*, pp. 919-1045.
- 8 Slavoj Žižek, *Violence*, Profile Books, London, 2008, p. 99.
- 9 The 2008 economic crises has impacted upon proposed uranium and other mining developments in the region and at the time of writing there is an indication that mining developments are slowing down.
- 10 Wendy Brown, 'The Most We Can Hope For ... Human Rights and the Politics of Fatalism', *South Atlantic Quarterly*, vol. 103, no. 2/3, 2004, pp. 451-63.
- 11 Ranciere, pp. 297-310.
- 12 Gayatri Chakravorty Spivak, *A Critique of Postcolonial Reason: Toward a History of the Vanishing Present*, Harvard University Press, Cambridge, 1999, p. 284. See also Irene Watson, 'Aboriginal Women's Laws and Lives: How Might We Keep Growing the Law?', *Australian Feminist Law Journal*, vol. 26, 2007; Irene Watson, 'Illusionists and Hunters: Being Aboriginal in this Occupied Space', *Australian Feminist Law Journal*, vol. 22, 2005.
- 13 For examples of early colonial legislation see: *Aboriginals Protection and Restriction of the Sale of Opium Act (Qld) 1897*; *Aborigines Protection Act (Vic) 1886*; *Aborigines Act (Vic) 1890*; *Aborigines Protection Act (WA) 1890*; *Aborigines Protection Act (NSW) 1909*; *Northern Territory Aboriginals Act (SA) 1910*; *Aborigines Act (SA) 1911*.
- 14 Marcia Langton, 'Trapped in the Aboriginal Reality Show', *Griffith Review*, vol. 19, 2007, p. 147.
- 15 The recognition of Aboriginality is seen as an illusion in Irene Watson, 'The Power of Muldarbi and the Road to its Demise', *Australian Feminist Law Journal*, vol. 11, 1998; for further discussion on how this illusion is manifested in Australian native title laws, see Irene Watson, 'Sovereign Spaces, Caring for Country and the Homeless Position of Aboriginal Peoples', *South Atlantic Quarterly*, vol. 108, no. 1, 2009.
- 16 *Aborigines Act (SA) 1934-39*, section 11a, provided Aboriginal individuals with an exemption from being identified as an Aborigine from its provisions.
- 17 I say so-called postcolonial because from my lived experiences there is very little which is postcolonial to the Aboriginal experience in Australia.
- 18 Mal Brough, *Aboriginal Land Rights (Northern Territory) Amendment Bill 2006* Second Reading, Commonwealth Parliament of Australia, Canberra, 31 May 2006.
- 19 See the amendment to the *Crimes Act 1914 (Cth)*, s16A. Prior to the amendment the court could consider the cultural background of the defendant.
- 20 Tangane kald is my mother's people of the Coorong of South Australia; our lands bordered with kin including the Meintangk, as our traditional identities mapped the land.
- 21 Iris Stevens, *Report of the Hindmarsh Island Bridge Royal Commission*, State Government Printer, Adelaide, 1995.
- 22 Slavoj Žižek, *How to Read Lacan*, Granta Books, London, 2006, p. 29.
- 23 *Ibid.*, p. 38.
- 24 For a critical Aboriginal response to the intervention, see Combined Aboriginal Organisations of the Northern Territory, *A Proposed Emergency Response and Development Plan to Protect Aboriginal Children in the Northern Territory: A Preliminary Response to the Australian Governments' Proposal*, 2007.
- 25 Brown, pp. 451-63.

- 26 Ibid., p. 454.
- 27 For further discussion see: Combined Aboriginal Organisations of the Northern Territory; Balgo Women's Law Camp, *Aboriginal Women Have Answers Themselves*, 2007; Jon Altman, 'The "National Emergency" and Land Rights Reform: Separating Fact from Fiction', CAEPR, Canberra, 2007.
- 28 National Emergency Response Bill, Part 6, Section 91. On 14 July 2006, the Council of Australian Governments (COAG) agreed that no customary law or cultural practice excuses, justifies, authorises, requires, or lessens the seriousness of violence or sexual abuse. This decision was then made effective through a series of legislative changes.
- 29 See Irene Watson, *Aboriginal Women, Law and Colonialism: Safe Places for Women*, 2008.
- 30 For further discussion on 'special measures' under the Racial Discrimination Act (Cth) 1975, Mabo and native title see: Irene Watson, 'Buried Alive', *Law and Critique*, vol. 13, no. 3, 2002, p. 253.
- 31 Watson, 'Aboriginal Women's Laws and Lives'.
- 32 Marion Scrymgour, 'Whose National Emergency? Caboolture and Kiribilli? or Milikapti and Mutitjulu?', Charles Perkins Oration, 26 October 2007.
- 33 See Watson, 'Illusionists and Hunters'.
- 34 For a further discussion on the construction of Aboriginal culture and the role of the media see Norm Sheehan, "'Some Call It Culture": Aboriginal Identity and the Imaginary Moral Centre', *Social Alternatives*, vol. 20, 2001, p. 29.
- 35 Brown, p. 459.
- 36 National Emergency Response Bill, Part 4.
- 37 Brown, pp. 459-60.
- 38 Ibid., p. 460.
- 39 Catherine Wohlan, *Aboriginal Women's Interests in Customary Law Recognition*, Background Paper No. 11, Law Reform Commission of Western Australia, 2005, discusses the complex interaction between Aboriginal and Anglo-Australian laws, contextualising the problem as not being sourced in Aboriginal law and suggesting that Aboriginal law could be useful 'in addressing community justice'.
- 40 In a recent South Australian court decision, the presiding judge referred to 'culture sickness' when referring to the impact of Aboriginal people disconnected from country as an explanation for the rape of a woman. See 'Rapist's "Cultural Sickness"' *Advertiser*, 10 June 2006.
- 41 See further Slavoj Zizek, 'How China Got Religion', *New York Times*, 11 October 2007.
- 42 Derrida writes, 'militarism is a modern concept that supposes the exploitation of compulsory military service, is the forced use of force, the compelling to use force or violence in the service of the state and its legal ends', pp. 1001-7. In short, law seeks to monopolise violence not in order to protect legal subjects, but to protect itself from challenge from acts of revolutionary violence which might found a new legal order. See also Rosemary Hunter, 'Law's (Masculine) Violence: Reshaping Jurisprudence', *Law and Critique*, vol. 17, no. 27, 2006.
- 43 Derrida, p. 989.
- 44 Dennis Shanahan, 'Howard's New Reconciliation', *Australian*, 12 October 2007.
- 45 Alain Badiou, *The Century*, Polity Press, Cambridge, 2007, p. 8.
- 46 Ibid., p. 9.
- 47 Ibid., pp. 14-15.