# ‘We’re doing everything but treaty’: Law Reform and Sovereign Refusal in the Colonial Debtscape

**Maria Giannacopoulos**[1]

2023 John Barry Memorial Lecture, University of Melbourne.
18 October 2023[2]

## 1 Acknowledgement of Country

What a time to have the privilege of delivering the Sir John Barry Memorial Lecture in Criminology. I acknowledge that across the lands of so-called ‘Australia’, sovereignty and law were never ceded. I pay my deep respect to the Wurundjeri and peoples of the Kulin nation upon whose lands the University of Melbourne is built and to say that wherever colonial universities are, they have a role in writing over pre-existing laws and knowledge systems. I want to extend my respect and solidarity to Dr Eddie Cubillo whose lecture at the University of Sydney about his place within the legal academy I was privileged to attend.

Born on Gadigal lands I have spent the majority of my life on Gadigal, Wangal, Bedegal and Kameygal lands (Sydney) and on Kaurna Yerta (Adelaide) where I lived and worked for over a decade as an early career academic. Born to migrants from Greece I experienced racialisation as a ‘wog’ early in life. Mum and Dad’s life trajectories were shaped by many intersecting geopolitical forces, but two stand

out. The mass poverty in Greece in the aftermath of World War II saw the exporting of the poorest parts of the population coinciding with the desire of the Australian colony to import workers to aid industrialization, white possession and dispossession of Aboriginal peoples.

Our ability to build lives and futures on these unceded lands was the outcome of illegitimate processes that saw the colonial state enact a migration law scheme, first to ensure white Australia, and then extending the definition of whiteness to Southern Europeans in the 1950s to grant entry to Greek and Italian migrants, providing a birthplace for their future children.[3]

But granting us access to unceded lands was never within their authority to give. Understanding *this* has fundamentally shaped how I think, research, write and teach about the operations of Australian colonial law. It is through this lens that I experienced the events of the weekend[3]. If the starting point is, as it should be, that Aboriginal sovereignty and law have never been ceded, the role and nature of the imposed colonial law that has sought the enshrining of an Aboriginal advisory voice into the operations of *itself* must be brought into view. While many think of law as a mechanism for social change including for racial justice, my work for nearly two decades has worked to show that as colonial technology, Australian law is not equipped to deliver such justice. At this juncture in so called 'Australia's' national story, this is the approach towards law that I will be sharing with you tonight.

I thank the Barry family for making this lecture possible, and for providing much needed space for intellectual inquiry into contemporary questions of justice while honouring the memory of Sir John Barry. I don't take this platform for granted. I thank my colleagues in criminology here at Melbourne University who have in different ways and over many years worked tirelessly to push the boundaries on what counts as criminological work and by doing so revealing how a discipline like this sustains itself by seeking to silence those it makes its subjects. No one does academic work alone and I owe a debt of gratitude and more to Associate Professors Amanda Porter and Crystal McKinnon.

I am heartened every day to work with the small but powerhouse criminology and criminal law team at the UNSW since joining last year. I say thank you to Latoya Aroha Rule, Amanda Porter, Allison Whittaker, Natalie Ironfield and Tabitha Lean who delivered the 2020 Barry Lecture 'Abolition on Indigenous Lands' and Chelsea Watego who delivered the 2021 Barry Lecture 'Who are the real criminals: making the case for abolishing criminology'. I have been in dialogue with you all in my mind and work since 2020. I thank the universe for placing Professor Joseph Pugliese in my path as a first in family, first year arts/law university student in the 1990s. Since then he has modelled integrity, rigour and solidarity as the key tenets of community connected and critical academic work. This sustains me still, as do my family who enable me to have the backbone required to survive academic life.

Tonight I hope to build on the critical conversations that have been started in this forum, about criminology, carcerality colonialism and abolition. I do this by joining some dots across the areas of criminal and public law- areas that are often seen as separate according to colonial law's own logic. I aim to show why constitutions and referendums cannot only be assessed, understood and judged from the point of view of the logic that gives birth to them. Or worse, their meanings taken for granted as neutral and legitimate.

In settler colonial contexts, like Australia, and like Palestine, machineries of law must be seen as key infrastructures seeking elimination and replacement of First Laws and first peoples. I am thinking here of Patrick Wolfe and I am also thinking of Professor Irene Watson who wrote prophetically in 2017 that

> We need to move beyond the politics of recognition: politics which are limited by the colonial foundations of the state. These foundations pass as law, but it is military power and colonial violence that are the foundations of the colonising project called Australia, a project which continues to this day…While the colonial legal system has constructed myths which emanate from terra nullius- they are myths of non-existence constructed for the purpose of enabling unlawful foundation. Aboriginal laws remain the mainstream and while First

> Nations are deemed peoples without law and merely objects of the colonial law, this is not the truth.[4]

Professor Watson's insights about colonial law, once seen, are hard to unsee, once heard hard to unhear. Professor Watson's words reveal that what masquerades as 'law' is more precisely colonial law, a form of violence and cannot be judged from the point of view of those who benefit from it every day.

## 2 Stolenwealth: 'They Got a Country for Free'

I coined the concept of the colonial debtscape while working to understand the relation between debt and sovereignty in the wake of the 2007 Global Financial crisis. Greece was regularly front-page news with the headlines advising that an indebted country must be punished through austerity. Despite the referendum held in Greece in 2015 where the people voted against austerity, austerity as punishment, was imposed anyway. As this was a colonising move, that is, the imposition of an external and foreign law on local populations against their will, it was to Aboriginal scholars here that I turned to begin to put the pieces together. In 2007 Professor Tony Birch rightly instructed that:

> Before sovereignty can become even a viable concept for discussion amongst the wider non-Indigenous community, it needs to redeem and take responsibility for its colonial debts.[5]

In 2013 Lilla Watson drew upon her conversation with Mary Graham to say:

> We ran this country, then those first boat people come and they never went away and they literally took over this country through force of arms and everything else that happens through colonialism and as my friend and sister Mary always says "they got a country for free". They never paid a thing. They made themselves rich out of our country. They owe us much more than they could ever hope to repay and they need to start to come to terms with that.[6]

So, although separated by seas, cultures, languages, and laws, Greece and Australia are both colonial *debtscapes*. In these lands (although

there would be many others) legal structures and the laws that flow from them operate to *expose or conceal* debt resulting in the extension of colonial power. In the years following the Global Financial Crisis, as Greece's economy began to collapse under the weight of 'sovereign debt', the International Monetary Fund, the European Central Bank, and the European Commission (troika) stepped in to provide financial relief on the proviso that Greece introduces severe austerity measures, even if this were to result in high unemployment and widespread poverty. In the same period in Australia, economists and politicians celebrated the nation's economic success. A recession had been avoided and Australia (it was said) was emerging from the GFC relatively unscathed due to a highly lucrative mining boom. Greece's appearance on the international stage during the GFC was as a dramatic and highly visible example of a nation beset by sovereign debt with austerity the necessary remedy. In the same period and since then, the widespread and enduring sovereign debt owed to and the austerity experienced by Indigenous peoples in Australia remain unacknowledged and hidden (although not hidden to those who directly experience its violence) through the machinations of colonial law, or the *nomopoly*.

Greece's 'sovereign debt' crisis gave rise to much public and scholarly discussion about both sovereign debt and the prevailing strategy employed to address it: austerity. As austerity was imposed and Greece's democratic will was subverted, even after the 2015 referendum which voted no to austerity, critical questions emerged about the meaning given to sovereign debt that allowed austerity to appear as its natural companion. Austerity's colonising character, experienced as external force by the most economically marginalised parts of the Greek population who were most impacted by its violence, appeared to many outsiders as a necessary form of economic coercion to redress Greece's sovereign debt. In this latter version, sovereign debt becomes punishable as it is made akin to a collective form of criminality for which austerity is the logical punishment.

This is one type of *debtscape* where sovereignty and debt become conjoined in their operations so that the punishment (austerity) for the

collective criminality of owing debt undermines and even cancels out the operations of democratic sovereignty. While the Greek crisis was the point of departure for my thinking, Australia's colonial *debtscape*, where (colonial) sovereignty, debt and austerity have always been at play has become the central focus of my work. Colonial law in Australia is born from and enabled by unpaid sovereign debt but legal apparatuses work ceaselessly to hide this fact. By acting as if Australia was not founded in conditions of illegality, the laws of an illegitimate power are affirmed. This buries the sovereign debt owed to First Nations Peoples and licenses the accumulation of further debt through the criminalisation of people and the extractive violence against land. Austerity as punishment against those to whom the debt is owed remains unacknowledged.

Artists Matt Chun and James Tylor in their *UnMonumental*[7] collaboration to develop a style guide that is attentive to empire, instantiate the strikethrough to denaturalise and to interrupt the colonial name ~~Australia~~. Written English is after all 'a language imposed upon a continent already home to diverse Indigenous languages'. When referring to colonial entities they use the strikethrough, but for the landmass they use Aboriginal land. This is done to refuse the way the term brings together two meanings: Australia as continental landmass and as a British Commonwealth political entity. While the two meanings have been made synonymous under British colonialism, this operation of language conceals and naturalises the British theft of Aboriginal land. 'Australia' acts as description when it is usurpation and cover up of colonial crimes and debts.

In the same way 'law' is no neutral descriptor. 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. Although spoken of in the singular as 'law' or 'the law', this is not so. 'Law' is more accurately ~~law~~ following Chun and Tylor as it is usurpatory, dispossessing and naturalises colonial theft and debt all at once. Just as Aileen Moreton-Robinson brought into sharp focus the rightful descriptors for ~~sovereignty~~ as patriarchal and white[8], so too

must ~~law~~ be reunited with its silent animators. By marking ~~Australia~~ with a strikethrough and by doing the same to ~~law~~ I highlight its link to the colonial state project, its usurpatory constitution and the false and violent claim to singularity. ~~Law~~ and ~~laws~~ imposed upon Aboriginal Land are usurpatory and as such form a nomopoly (an attempted monopoly of law), which in turn functions to naturalize and then retrospectively legitimize the theft of Aboriginal land.

Unfettered access to Indigenous lands has been licensed time and time again in colonial history but during the GFC it was enabled through a punitive income management scheme, the 2007 *Northern Territory Emergency Response Act (NTER)*. Despite this explicit form of austerity being unleashed upon Indigenous communities and in such a systematic manner, it failed to register in the national and global imagination as a sovereign debt crisis. While the *NTER* is said to have officially ended in 2022, the many debts of the colonial state continue to mount in direct proportion to the harm and violation caused to Indigenous peoples, lands, and laws. Leases, constitutional reform, over-policing, over-incarceration, carceral expansion, child removals and income management represent but do not exhaust the wide range of colonial functions performed through the mechanism of colonial law.

I conceptualise colonial law as a *nomopoly* and as performing *nomocide*. If colonial law usurps and claims the centre (*nomopoly*) and from there exerts violence over Indigenous life and lands (*nomocide*) justice cannot possibly flow from it. The possibility for a decolonised version of justice is foreclosed by this legal framework through cycles of law reform and the staging of nonperformative legal events which come to form part of the circularity of the violence since violent foundation is not examined as locked in placed as the animating centre of power. The articulation of colonial law as a *nomopoly* that perpetrates *nomocide*, can provide a new lexicon for understanding the role of law in the production of Australia's colonial debtscape. The national conversation on racial justice when emanating from the colonial centre does not acknowledge its colonial debts, does not address the centuries of unpaid rent and wages and so these are more deeply buried, and their harms amplified.

## 3 From colonial debts to colonial investments

This year, the Federal Budget allocated $364.6 million to the Voice to Parliament referendum. This is the work of the debtscape: it is an investment in the state's infrastructure where the coordinates and limit points for change are carefully circumscribed and contained. Such state funding should not be misunderstood to be bringing decolonisation closer.

Also this year the National Aboriginal and Torres Strait Islander Legal Services declared a funding emergency around the country. This contrast puts into sharp relief the colonial state's work to discriminate in favour of itself to use Aileen Moreton-Robinson's expression. The state allocates resources to the colonial regime and not to those targeted by its killing functions. When we heard assurances in the lead up to the referendum that a yes vote would not destabilise the constitution or the political order (if only we were beginning to have that discussion!) this was spelling out that such a law reform was never intended to be one that had decolonising intent or capacity.

This is because the yes/no binary flattens and violently displaces the larger questions of colonial debt and decolonisation that urgently need to be reckoned with. The technology of the referendum works to naturalise the legitimacy of the colonial structure posing the question. This is because both yes and no, as available positions, are not independent of the system that poses the wrong question and only two possible answers as the path to racial justice. Back in 2017 as the Recognise campaign was still in full swing and in the wake of the 2015 Greek referendum where voting was elicited then disregarded, I wrote an article tracking how referendums are a technology for the expansion of colonial power.[9] I believe this remains the case regardless of the result that it produced.

The Australian constitution forms a *nomopoly*, this means that it imposes a violent legal infrastructure that seeks to usurp the operation of law pre-existing it. For a referendum to appear as a legitimate avenue for law reform, the conditions giving rise to the constitution must be removed from view. In this way the referendum can efface its role in

maintaining a colonial debtscape and concealing the foundational debts of dispossession that structure both economy and sovereignty. Because this referendum operated within the parameters set by a non-consensual legal regime it must be seen as a law reform device crafted by a constitution/the nomopoly *to enable its conservation via alteration*. Having been created by the constitution, the referendum performs the role of affirming colonial law as the legitimate starting point and centre of legal authority.

During this historical epoch, legal scholarship and all scholarship in the colony must be asking: what was the problem that legal constitutional reform was seeking to address? The framing of the campaign suggested that the problem being addressed was the lack of representation on Indigenous questions to parliament. This is 'the problem' that was forcibly placed within our eyeline and one that demanded we submit to it in order to see justice arrive. In other contexts colonial law would describe conditions such as those it produced as coercive and being subject to undue influence rendering an arrangement or event null and void. The constitution sets up the conditions of existence for policing, courts and prisons, a series of institutions misleadingly called the criminal justice system. The 'criminal legal system' is more apt as this "wording doesn't pretend these institutions offer justice".[10]

But the constitutional reform narrative tells us that once a singular Indigenous representative voice is enshrined as part of the colonial infrastructure, the injustice experienced by Aboriginal people will be ameliorated. But how can this be when then this approach is seeking absorption into the colonial structure and is an exercise in legal assimilation? I am thinking here of the work of Professor Irene Watson and of Michael Mansell. Not only does constitutional reform lack both decolonising intent and potential, when integrationist logic is at play, as it must be in processes of reform, colonial structures are cemented while the illusion of change prevails.

Yet First Nations sovereignty and laws exist even if untold resources are poured into denying this truth. There is much at stake in opening up the question of colonial sovereignty and so it is systematically kept

shut through the law in Mabo for example and through the funding to redirect the national gaze to the constitution and not to the more critical questions of unpaid colonial debts and the persistence of Aboriginal sovereignty. As Professor Gary Foley has powerfully put it, constitutional recognition has been 'yet another device to divert the people from the real issues of self-determination, economic and political independence which have been the consistent Aboriginal political demands since the first modern day Aboriginal political organisation, in the 1920s'.[11] When there is resistance to Senator Lidia Thorpe's powerful calls for treaty as an end to the war on Aboriginal people who have survived genocide, we must ask why. If one cannot see and hear her logic, it is time to ask why not? What affective investment sits behind this resistance to the enactment of Aboriginal sovereignty?

In the time I have been writing this talk many open letters began to appear especially from academics seeking to speak for their disciplines. One was an open letter signed by more than 350 historians claiming that a yes vote would place one on the right side of history. The letter states: 'We each support the proposal to amend the Commonwealth Constitution to recognise First Australians and enshrine a Voice enabling representations to be made to the Parliament and the executive government. We will each be voting 'yes' at the year's referendum'.[12]

Here among those who might be considered the most educated and informed, a troubling lack of literacy about the racial features and functions of both constitutions and referendums is demonstrated. Driving this letter and others similar to it is an affective investment and uncritical love of colonial law. This is a nomophilic stance and it desires law reform- law reform that ultimately works to maintain the colonial infrastructure. Herein also sits the desire of the signatories to be seen as 'not racist' and instead as the agents for progressive change. The signatories author and sign the letter and in so doing cast themselves as desirable future subjects of study within their own discipline.

My research on the coloniality of Australian law across nearly two decades, reveals that far from decentring colonial structures, law reforms such as this function to entrench colonial power. This is not

surprising if the colony is understood to always be discriminating in favour of itself while remaining in control of the nature and extent of the changes made to itself. Reformed or not, law, the constitution and referendums are mechanisms of colonial law and they function to displace the First Laws of this land. If sovereignty has never been ceded by Aboriginal people, and this is regularly acknowledged and known, including by lawyers, historians, criminologists and others, then what do these same people think is the status and character of the colonial law usurping Indigenous sovereignty and which is seeking to provide the terms for Aboriginal inclusion through legal integration?

## 4 Law

A decolonising approach to law requires more from us than an investment in the reform of existing legal structures. And yet most thinking and action around social change and racial justice sits in realm of reform. Decolonisation requires an intention to disrupt the colonial; its logics and institutions that that stretch across unceded sovereign lands entrenching deep injustice. There is a role for reform but this must be undertaken with the intention to disrupt and alter colonial systems and logics. One of the urgent tasks of decolonisation across all disciplines in the imperial university is to expose the role and function of colonial law in performing and maintaining dispossession and colonial violence. As a system of law imposed upon first laws, colonial law left to continue will only continue to perform nomocide.

In the final section of this talk I draw on the still under-theorised *Nulyarimma* case. 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 a recognition is, I argue, what makes the case so significant. The challenge reveals the impasse experienced by Aboriginal people when seeking decolonial justice through the channels of colonial law.

## A 'The legal system is a part of that genocide against our people'

In 1998, Isobell 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 recognised in Australian law. The applicants argued that John Howard (former Prime Minister) 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 the 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.

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 some of it 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.[13]

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. 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. 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 the 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 and her polemic with Kirby

work to reveal the false promise of colonial law. The *Nulyarimma* case revealed that 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.

Isobell 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, like constitutions and referenda foreclose on Indigenous sovereignty the challenge remains to fully see law for what it really is and for the work it performs in a colonial context. A legal system that lacks consent at its foundation and is characterised, 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. In 2021 I listened with great interest to Professor Chelsea Watego giving the Barry lecture 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, and it is about a 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 to grasp why justice through colonial law will continue to be elusive.

I end by drawing on the wisdom of Professor Irene Watson:

> 'our natural world is in crisis. The west has reached the end point of project progress and does not have solutions to the crisis. Current regimes of recognition and protection do not work. We are on the brink of sacrificing our waters, our oceans and our lands which provide for an overpopulated planet'.[14]

Decolonisation is still in the space that is to come. But it must come. All our futures depend on it.

## Endnotes

1 Dr Maria Giannacopoulos is Associate Professor and Director of the Centre for Criminology, Law and Justice at UNSW, Sydney. An interdisciplinary scholar and second-generation migrant from Greece, Maria is a leading scholar in decolonising approaches to law and criminology. Her work has a sustained and critical focus upon the operations of settler law to reveal its role in maintaining colonial relations of power that impact most acutely upon Indigenous peoples, refugees, asylum seekers and migrants. In 2020 she received the Vice Chancellor's Award for Excellence in Teaching for the development of a decolonial methodology for teaching criminology. Her book *Colonial Debtscapes: Austerity Sovereignty Law* is under contract with Palgrave. In 2023 she delivered the John Barry Memorial Lecture in Criminology at the University of Melbourne.

2 First published in *Overland* as Maria Giannacopoulos (2023) 'We're doing everything but treaty': reform and sovereign refusal in the colonial debtscape. https://overland.org.au/2023/12/were-doing-everything-but-treaty-law-reform-and-sovereign-refusal-in-the-colonial-debtscape/.

3 This talk was given just days after the Voice Referendum was held.

4 Irene Watson (2017) 'What is the mainstream? The laws of First Nations peoples', in R. Levy et al (eds), *New Directions for Law in Australia*, Canberra: ANU Press.

5 Tony Birch (2007) 'The Invisible Fire': Indigenous Sovereignty, history and responsibility' in *Sovereign Subjects* edited by Aileen Moreton Robinson.

6 Lilla Watson (2013) "Panel on the Political, Philosophical and Legal Intricacies of First Nations Sovereignty." http://www.989 fm.com.au/news/lets-talk-soveriegnty/.

7 Unmonumental style guide https://unmonumental.substack.com/p/the-unmonumental-style-guide.

8 Moreton-Robinson, A. (2004) 'The possessive logic of patriarchal white sovereignty: The High Court and the *Yorta Yorta* decision', *Borderlands*, 3(2): 1–9.

9 Maria Giannacopoulos (2017) 'Sovereign debt crises, referendums and the changing face of colonial power', *Continuum*, 31(1): 33–42.

10 Chris Cunneen (2022) "Criminal Legal system does not deliver justice for First Nations people, says a new book" *The Conversation*

11 Gary Foley and Padraic Gibson (2023) 'The use and abuse of history in the Voice referendum debate: An interview with Professor Gary Foley', *Overland*, 2 October, https://overland.org.au/2023/10/the-use-and-abuse-of-history-in-the-voice-referendum-debate-an-interview-with-professor-gary-foley

12 Josh Butler (2023) 'Historians urge Australians to 'be on the right side of history' when they vote in voice referendum' *The Guardian*. Available at https://www.theguardian.com/australia-news/2023/oct/06/indigenous-voice-to-parliament-referendum-historians-open-letter.

13 Nulyarimma & Ors v Thompson C18/1999 [2000] HCATrans 439 (4 August 2000).

14 Irene Watson (2017) 'What is the mainstream? The laws of First Nations peoples', in R. Levy et al (eds), *New Directions for Law in Australia*, Canberra: ANU Press.