# *NOMOS BASILEUS:* THE REIGN OF LAW IN A 'WORLD OF VIOLENCE'[1]

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## Abstract

This essay is a response to John Howard's declaration that Greeks in Australia are desirable ethnics, due to their being "fully integrated". With this colonial act disguised as benevolence as the backdrop, I also respond to the work of Toula Nicolacopoulos and George Vassilacopoulos, whose important argument about Southern Europeans being positioned as "perpetual-foreigners-within" the Australian state, is vividly brought to life by Howard's latest celebration of racial *integration*. But then I move through Nicolacopoulos's and Vassilacopoulos's further arguments in order to contest their claim that Southern Europeans can be understood as being "fully complicit" in the ongoing colonial dispossession of Indigenous peoples and their lands. While I accept that all non-indigenous peoples living in Australia benefit from the ongoing effects of Indigenous dispossession, I do not see this as "full complicity" since the very coordinates of this complicity are aporetic and violent in structure: it is complicity *with* colonial and therefore legal criminality but it is also a complicity that is produced *in* and *by* law. From this position I ask, what does it mean to be complicit with that which is demanded and enforced by law? Or put differently, what does it mean to be complicit with law from the position of being inescapably *before* the law?


## Before the *(Immigrant)* Law

The High Court in Mabo, in overturning the doctrine of *terra nullius,* guarded white sovereignty as non-justiciable (Giannacopoulos 2007: 48) and in so doing it produced the coloniser, its key people and key institutions, as non-immigrant. Aileen Moreton-Robinson speaks of the way in which the British Empire imposed itself through both colonisation and waves of migrants from Britain (2003: 24). She writes that "the British claimed the land under the legal fiction of Terra Nullius -land belonging to no one- and systematically dispossessed, murdered, raped and incarcerated the original owners on cattle stations, missions and reserves" (2003: 25). This point makes visible and explicit the direct link between migration and the legally produced doctrine that effectively constructed the land as empty for filling. Moreton-Robinson's critical point is that "through the fiction of Terra Nullius the migrant has come to claim the right to live in our land. This is one of the fundamental benefits white British migrants derived from dispossession" (2003: 25).

Whilst Moreton-Robinson writes of British colonisation along with British migration as the foundational events in the illegitimate assertion of white sovereignty, Osuri and Banerjee contend that white diasporic events are rendered invisible by a series of manoeuvres including the strategic employment of the term "settler" (2004:158). They draw upon the work of Mahmood Mamdani who states that "settlers are made by conquest, not just immigration. Settlers are kept by a form of the state that makes a distinction particularly juridical-between conquerors and conquered, settlers and

natives" (quoted in Osuri and Banerjee 2004: 158-159). Whilst Mamdani has written in the context of the African settler states, it has been argued by Ahluwalia that Mamdani's work is relevant to Indigenous dispossession in Australia since "the myth of terra nullius was dependant upon the non-recognition of the local population and the 'indigenisation' of their white conquerors" (quoted in Osuri and Banerjee 2004: 159).

For the purpose of this essay I will show with specific reference to the Mabo judgement, that the ongoing production of the colonisers as non-immigrant, a production that I argue takes place principally in the realm of the law, is a key factor in ensuring that *terra nullius* is a live, ongoing and to use Moreton-Robinson's term, "postcolonizing" technology (2003: 30&38). Further I want to draw out the way in which the Mabo judgement is a graphic example that animates Mamdani's claim: that the state *keeps* "settlers" by drawing distinctions, *particularly juridical* distinctions between categories of persons. "Settlers" and "British migrants" are not historical novelties as far as the operations of racialised power are concerned. They are generated by a law that obfuscates its status as immigrant, diasporic and racially violent. They are generated by a law that is indissociable from the operations of white sovereignty (see Giannacopoulos 2006). As such, the 'non-migrant', 'non-diasporic' white sovereign can *keep* itself as mystically un-ethnic and transcendental by asserting its jurisdiction over the bodies it *looks out* toward.

## The Reign of Law in Mabo

Kafka's parable, *Before the Law*, is the story of an unnamed man whose entire life is spent begging and waiting for admittance to law. The law's doorkeeper never admits him and while at the front line of law's border-policing the man dies waiting:

> Before the law stands a doorkeeper. To this doorkeeper there comes a man from the country and asks to be admitted to the law. But the doorkeeper says that he cannot at present grant him admittance. The man considers, and then asks whether that means he may be admitted later on. 'It is possible' says the doorkeeper, 'but not at present.'…The man from the country has not expected such difficulties; the law, he thinks, should be accessible to everyone at all times; as he now takes a closer look at the doorkeeper in his fur coat, at his large pointed nose, his long, sparse, black tartar beard, he decides that it is better, after all, to wait until he receives permission to enter. The doorkeeper gives him a stool and lets him sit down to one side of the door. There he sits for days and years (Kafka 1992: 165).

Kafka's story is about the reign of law, the absolute rule of law, of *nomos basileus,* that is, of *law as sovereign*. Law needs *keepers* to *keep* it according to the story. Who are law's keepers? What is law? And who or what is external to law? The man from the country is prevented entry but is he outside of the reign of law? If his whole life is spent waiting, begging, complying, in the hope that the law will exercise its discretion and grant him entry, then I contend that the space he occupies is already *of* law in that it is a highly regulated space that demands compliance up until the point of death. Law in Kafka's parable is the place where law is *in force* even when, and perhaps because, subjects are not formally within its jurisdiction. In the same way that Kafka's law is unmarked so too does white law generate itself as ethnically neutral and as though its

jurisdiction is without limits. So if I am to unite my analysis of Kafka's enigmatic text to the Mabo decision then I need to ask: Who are law's *keepers* in Mabo? How is law *kept* in this decision and importantly what factors pertaining to the nature of law are elided in this process? Is the act of *keeping* distinct from, or an integral component of, law? Is *keeping* the decision itself? Is *keeping* the position from which discretion can be exercised and recognitions made or not made? Which meaning to the aporetic concept of *before* should be emphasised when analysing Mabo? It is with these critical questions as a conceptual framework that I turn to some key excerpts from the judgement.

Chief Justice Mason and Justice McHugh made the following 'recognition' in the much celebrated Mabo judgement:

> The common law of this country recognises a form of native title which in the cases where it has not been extinguished, reflects the entitlements of the indigenous inhabitants, in accordance with their law or customs, to their traditional lands and that subject to the effect of some particular Crown leases, the land entitlement of the Murray Islanders in accordance with their laws or customs is preserved, as native title, under the law of Queensland (Mason and McHugh in Mabo 1992: 2).

In this decision the judges are able to 'recognise' a form of native title since they have also just 'decided' to overturn the doctrine of *terra nullius*. So while they have ostensibly removed from law this much criticised doctrine, what remains firmly in place is their position of judgement. By virtue of having the power to judge, determine and decide, the judges can rule on the questions *before* the law while denying what came historically *before* white law, in fact they are able to rule precisely *because* of the denial of what came *before*. Their position of judgement can generate new laws e.g., (Mabo acts in common law terms as a fresh judgement) but the position occupied by the judges in order to make this decision, functions to *keep* an overarching white, non-ethnic, non-immigrant universalised notion of law firmly entrenched. Irene Watson has written of the ways in which the "coloniser perceived this Nunga place as available to be filled with their 'beginnings' of history and 'evolving spirit'" (2002: 254). The judges' discretion to decide which parts of the law will be overturned and under what conditions should be seen as evidence of a still 'evolving' white Australian legal system that is proceeding *as though* the land, Indigenous land, is still empty and needing to be filled with the law of the coloniser. But this 'evolution' requires that the coloniser's status be renewed, as a neutral identity at law, in order for colonial work to continue.

Justice Brennan found that:

> The people who were in occupation of these Islands before first European contact and who have continued to occupy those Islands to the present day are known as the Meriam people. Although outsiders, relatively few in number, have lived on the Murray Islands from time to time and worked as missionaries, government officials, or fishermen there has not been a permanent immigrant population (Brennan in Mabo 1992: 1).

Where is Brennan situated so that he may determine the facts of the case in this way? How can Brennan decide that there were no "outsiders" or "permanent immigrants"? Who can make the judgement about who is an "outsider" or an "immigrant" if not someone who acts *as though* he is Indigenous to the

country? I suggest that the High Court, aporetically acts as though it is Indigenous at the same time as it "recognises a form of native title… where it has not been extinguished, reflects the entitlements of the original inhabitants" (Mason and McHugh in Mabo 1992: 2). If the Court's work is to decide whether extinguishment has taken place and whether the rights of the original inhabitants have survived, then in the absence of "outsiders" or "permanent immigrants" this task would be a nonsense. What the High Court does not make explicit whilst perched up in the position of *doorkeeper*, is that it is occupying a position from where it is allowed to decide upon a dispute between two adversaries where it is itself one of those adversaries. The "outsiders" and "permanent immigrants" have instilled themselves as sovereigns who rule with law with such violent force, that they can literally write themselves out of the narrative even as they continue to "post-colonise" armed with this master script.

The final excerpt I employ from the Mabo judgement is lengthy but I have reproduced it at length as it brings to the fore the ways in which the contemporary legal system is implicated in, yet attempts to exculpate itself from, the business of colonising. Brennan states:

> In discharging its duty to declare the common law of Australia, this Court is not free to adopt the rules that accord with contemporary notions of justice and human rights if their adoption would fracture the skeleton of principle which gives the body of our law its shape and internal consistency. Australian law is not only the historical successor of, but is an organic development from the law of England. Although our law is the prisoner of its history, it is not now bound by decisions of courts in the hierarchy of an Empire then concerned with the development of its colonies. It is not immaterial to the resolution of the present problem that, since the Australia Act of 1986 (Cth) came into operation, the law in this country is entirely free of Imperial control. The law which governs Australia is Australian law…The common law of Australia has been substantially in the hands of this Court. Here rests the ultimate responsibility of declaring the law of the nation. Although this Court is free to depart from English precedent which was earlier followed as stating the common law of this country…it cannot do so where the departure would fracture what I have called the skeleton of principle…The peace and order of Australian society is built on the legal system. It can be modified to bring it into conformity with contemporary notions of justice and human rights, but it cannot be destroyed. It is not possible, a priori, to distinguish between cases that express a skeletal principle and those which do not, but no case can command unquestioning adherence if the rule it expresses seriously offends the values of justice and human rights (especially equality before the law) which are aspirations of the Australian legal system (Brennan in Mabo 1992: 29).

Brennan suggests that the Court cannot move so far in line with notions of justice and human rights if this were to have the effect of fracturing "the skeleton of principle which gives the body of our law its shape and internal consistency" (Brennan in Mabo 1992: 29). Whose law is "our" law? For Brennan it seems that "our" law is Australian law as distinct from British law and as established through the 1986 statute. Brennan is using the language of decolonisation to describe the Australian legal system as though the passing of a statute can

undo the effects of colonialism that have by 1986, coloured the structure and operations of institutions of power, particularly institutions of law which create the very skeletal structure for 'Australia'. And yet whilst Brennan and his co-judges are not bound to follow British law, they cannot depart from precedent in a way that would cause damage to the "skeleton of principle" since it is this principle, he claims, that brings peace and order through the legal system. This logic can only stand if certain questions about the legitimacy of white sovereignty remain non-justiciable. It is extraordinary that in a case that is about 'finding' that there were "original" systems of law and organisation in existence on the Murray Islands, that the Court is still able to deny the operations of such laws, even as it pertains to no longer be implicated in colonialism. Whose law is the "our" law of which Brennan speaks? Where is the peace, under law, which Brennan says is the justification for having law? If laws can change, but law, white law, must remain firmly entrenched then the notion of "equality before the law" is a legal fiction built upon the erasure and continual denial of what law came historically *before* it. If Brennan says that "equality before the law" is an aspiration of the legal system it is because he means it as an "equality" that looks only in one direction and as such it must be an equality that is evacuated of justice and constituted by violence. This is *nomos basileus*, that is, the sovereignty of law which in the Australian context is the absolute sovereignty of white law.

## From "Fully Integrated" to "Fully Complicit"

It is because Australia still functions as though it can be filled and defined at the will and discretion of the guardians of white sovereignty that non-British migrants become the 'middlemen' for contemporary colonisation. When white law presides as sovereign, hovers mystically above all other forms of law and sovereignty and is securely kept in place by a violent colonial law then it is law that creates the national space of 'Australia' and in so doing makes the nation intelligible and operable as a "white possession" (see Moreton-Robinson: 2004). It is against this legal framework or "skeleton" of whiteness that notions like 'integration' and 'assimilation' need to be understood in the context of contemporary racial relations in Australia.

Prime Minister John Howard in an address at the Hellenic Club in September 2006 said that Greeks "are 'a wonderful example' of integration" (ABC News 2006). Surely I should have been happy with such a validation of the community I belong to. Instead these comments deeply disturbed me. How can an act of praise still be an exercise in racial violence? Prime Minister Howard said that the Greek community has demonstrated how to embrace Australian culture. He said "The Greeks are just a wonderful example of how you do it, you integrate fully, you become part of the mainstream…Your first loyalty is to Australia, but that doesn't mean that you don't have a place in your heart for your home culture, and that's how we want it" (ABC News 2006).

Here Howard is itemising the heart as the correct holding topos for love of Greece. The 'integrated Australian' must contain within the borders of his/her body those emotive aspects that could be threatening to the rational domain of loyalty to Australia. Howard is evoking the familiar rhetoric of the periods of integration and assimilation that defined Australia as white. The terms he employs, "integrate fully" and

"loyalty" can only be intelligible if the assumptions that drive them have become so familiar that they cease to be visible. That Howard has the right to employ language which simultaneously assumes and asserts his right to decide and declare which "outsiders" and "immigrants", apart from him and his kind, have successfully "integrated" is an exercise of sovereign power that continues to be produced at the level of law. When Howard exercises the logic of patriarchal white sovereignty (see Moreton-Robinson: 2004) he colonises in multiple ways: he produces ethnicity as something that can only be present in non-British people and their descendants; he acts to protect the white nation as produced by white law; and by silently drawing upon legal knowledge that has come to appear familiar and as common sense he colonises the space of what counts as legitimate knowledge about nation.

Howard praises Greeks because they have become part of the mainstream. He suggests that the Greeks have hit upon the magic formula for becoming good *ethnic* Australians by having worked out the correct balance between loyalty to Australia and a place in one's heart for his/her home culture. Howard says "this is the way we want it" (ABC News 2006). So according to Howard's two part formula, there are two homes. There is 'our home' and there is 'their home'. From this breakdown I draw the following equation: 'they' who are still 'they' even though 'they' have "fully integrated" must be loyal to 'our' home without it ever quite being 'their' home. This is the way "we" want it says Howard. Who are the "we" in his formulation? If Howard's statement is taken seriously then my father, who migrated to Australia from Greece in 1964 and has lived and worked here since is one of Howard's celebrated subjects. If my father has become part of the mainstream, if he has "integrated" fully but still pines, in the correct and measured amounts, for his homeland then is he part of the "we" who now validate Greeks? Is he part of the "we" that is patting Greeks on the back? Is dad patting himself on the back? After all it seems that he is the 'we' and the 'they' in this instance. Or is it that dad will only ever be capable of being patted on the back? I contend that Howard's white "we" excludes my father and not coincidentally has the same traits as white Australian law. It is a "we" that operates as racially unmarked and as being without ethnicity since Howard's "we" and white law are the epistemological centres from where the terms of these debates are produced and around which all discussions then pivot. The "we" is the person whom Nicolacopoulos and Vassilacopoulos term the "dominant white Australian". They state that "the dominant white Australian subject position does not typically represent itself in terms of the categories of 'immigrant' and 'migrant'" (2004: 45). Instead, "the presumptive association of migrancy with (some element of) non-whiteness reinforces the illusion that those who occupy the white Australia subject position have somehow always been here" (2004: 45). From this position of "we" Howard need only *look outward* to define and discipline those *before* him since this gesture continues to place him in a position of acting Indigenous. In using his discretion to praise Greeks in this moment, he erases the racialised histories of Greeks by presenting an ahistorical teleological narrative of racial equality.

Howard made these comments against the backdrop of debates about whether new migrants will be required to undertake citizenship and "values" tests (see DIMA 2006). Without entering into the discussion of what would constitute

"Australian values" under this regime, it is sufficient to say that at this historical juncture, Howard is drawing Greeks under the umbrella of whiteness in order to perpetrate racial violence against other communities in Australia. He does this by erasing the struggles, past and present, that Greeks have experienced in Australia and by actively forgetting that they once did not qualify as white enough or worthy enough to enter Australia. The officially homogenised category of people called "Southern Europeans" were considered far less capable of assimilation and so were historically far less desired than the British or Northern Europeans (Lopez 2000: 43). It was in 1964, the same year as my father's move to Australia that the Department of Immigration's Assimilation Branch changed its name to the Integration Branch (Lopez 2000: 62). The official workings of integration continued the logic of assimilation, with an added emphasis on the idea of "core values". Lopez states that "those who spoke of core values implied that the greater proportion of migrant cultural practices and national loyalties, considered not to transgress core values, could be tolerated" (Lopez 2000: 58). When Howard's comments are placed against this historical backdrop, not only is it abundantly clear that in contemporary racial politics there is a unashamed return to the period of which Lopez writes, but also that Howard is using the same logic to praise Greeks as was used to punish them at other historical moments. The *familiar* and legally generated logic of integration re-enters popular debates whilst simultaneously never having been absent from them.

Howard's celebratory words of integration in relation to Greeks are mobilising the same white sovereign logic as derogatory words uttered in periods of more explicit racism. His homogenising logic functions to place Greeks in opposition to other *others*. So in fact the validation that Howard offers can only be enjoyed if I/we ignore that this validation is in fact a form of colonial violence. Accepting praise from Howard means accepting, as valid, the white sovereign power from which that praise emanates as well as to sanction punishment of other communities who have not yet shown the compliance he says my people have shown. This benevolent *recognition* of Greeks as "well integrated" is more a strategic positioning in relation to white power than it can be a statement of fact. In fact, it is a gesture that is in line with ongoing colonial logic. Nicolacopoulos and Vassilacopoulos argue that dominant white Australia, which needs to continually generate its right to colonise Indigenous land, supplies to certain migrant groups a "subject position that is sufficiently like, while remaining suitably unlike, the dominant white Australian subject position" (2004: 45). This conferring of status functions to generate recognition by the selected 'migrant' groups of white power as legitimate. Nicolacopoulos and Vassilacopoulos argue that:

> Southern European foreigners are, firstly allowed into the country in so far as we conform our identity to that of a property-owning subject…in thus recognising the Southern European (im)migrant as a formal subject, dominant white Australia qualifies the migrant to participate in the processes of mutual recognition through which white Australia can claim rightful ownership of the country. In turn, by recognising white Australian authority, the Southern European becomes fully complicit in the ongoing violent dispossession of the Indigenous peoples and the nation-building processes that manifest our collective criminal will (2004: 46).

My contention here is that the terms “allowed” and “qualifies” used above are precisely the textual instances which betray that the behaviours *expected* of “Southern Europeans” (which also amount to being implicated in Indigenous dispossession) are actually assimilationist/integrationist demands produced at the level of law. Who scripts the conditions under which migrants will be “allowed” entry? Where is this power located? Further, where is the power to “qualify” migrants to recognise white power as legitimate located? Both of these concepts are discretionary, simultaneously able to hold migrants at bay but also able to coerce them into participation with a violent white colonial project. These conditions of entry for migrants are not *prima facie* legal rules. However, these assimilationist/ integrationist demands placed on migrants, either directly or indirectly, can only operate as they do as the result of the imposition of a violent white law which denies its “postcolonising” function. It is in this way that white laws still act as *gate-keepers,* as border police for the nation. The argument that Nicolacopoulos and Vassilacopoulos put forward here seems to undo itself. If they signal that identifying as a “property owning subject” is a condition of entry, and that migrants are ‘qualified’ by white power to legitimate white power, then it seems incongruous logic to name what eventuates from this a “mutual recognition”. This is a relation that is, even *before* migrants have touched Australian soil, asymmetrical and coercive. Further, Nicolacopoulos and Vassilacopoulos put forward the concept of “mutual recognition” even though they have argued elsewhere in their essay that “Southern Europeans” remain “perpetual foreigners within”, this being *despite* their recognition of white power which enables Indigenous dispossession. In my discussion of Howard I have tried to suggest that even when “Southern Europeans” (in this instance Greeks) are granted ‘white’ status, this remains a coercive relation to white sovereignty. This is a relation that demands complicity to white sovereignty/law and the proprietal rules which are circumscribed by this regime, whilst never completely allowing unqualified entry to the category of ‘non-foreigner’ or ‘Australian’.

It is with these issues as the backdrop that I want to introduce the “personal dimension” (Said quoted in Pugliese 2003: 2) in order attempt to make sense of, as well as to mark the racialised violence I was recently subjected to on a Sydney train. The attacker did not see a *well integrated* Greek, but a Muslim woman whom he felt entitled to attack as having no rightful place in the Sydney suburb of Newtown. The white transgender attacker *recognised* and *named* me a “dumb ugly Muslim cunt” as a way of denying my right to enter the cosmopolitan inner city suburb. I was silenced. On the train, nobody else spoke. When I rose from my seat to disembark the attacker scolded me by saying “how dare you get off at *my* area”. In my head I quickly organised a series of retorts, none of which I could utter. I could tell the attacker that I am not Muslim. I could tell him[2] that I am actually *Southern European*, Greek. But I couldn’t utter either. If I told him I wasn’t Muslim, wouldn’t I be using being non-Muslim as a defence, implying that if I was Muslim I really would deserve to be attacked? If I told him I was Greek it would deny the reality that I didn’t visit Greece until I was 22 and that since I was born somewhere in Paddington and have no *other* homeland to return to, I am technically Australian. I could tell him that this was not *his* area. His claim to exclusive possession ran contrary to my memories of growing up, in which working class Newtown looked and felt

like 'wog country'. This was before I understood that these neighbourhoods were predicated on deeper forms of colonial violence. These 'race' thoughts *raced* through my mind in a matter of seconds. They came quickly and fluently like thoughts come in a native tongue; but I choked on these thoughts because I couldn't translate them into speech. A few weeks later I read Howard's celebration of Greekness. How could I make sense of the disjunction between these two events? It seemed to me that official conferrals of whiteness could not conjure the type of magic that could make whiteness, that elusive property, attach to bodies that were non British. Joseph Pugliese's analysis would posit this event as a "structural contradiction generated by the power of Orientalism" (2003: 5). I was constituted by my attacker in accordance with "the paradoxical formulation: I am of Middle Eastern appearance and I am not Middle Eastern," that Pugliese foreshadowed (2003: 5). The incident in some senses also affirms the position of Nicolacopoulos and Vassilacopoulos that I/we will remain "perpetual foreigners within the Australian state", but this assertion within the context of the circulation of the descriptor "of Middle Eastern appearance" marked for me not only the impossibility of passing as 'white' or local but also the impossibility of passing as "Southern European"; a category that Nicolacopoulos and Vassilacopoulos employ as though it is unproblematic and its meaning self evident.

Nicolacopoulos and Vassilacopoulos contend that "Southern Europeans self presentation suggests that we share two basic features with the dominant white Australian subject position. Firstly, we take for granted our own whiteness and, secondly, we render it invisible as a source of certain privileges" (2004: 45). Pugliese argues in his essay *White Historicide and the Returns of the Souths of the South* that the statement by Nicolacopoulos and Vassilacopoulos quoted above is "homogenising" and "Anglocentric" because:

> whiteness is presented as though it impacts for the first time on the bodies and subjectivities of diasporic subjects only once they have entered the Australian nation. As such non-Anglo diasporic subjects are positioned in terms of ahistorical *tabula rasa,* doubly white-washed subjects devoid of prior histories of whiteness and racialised power (forthcoming in *Australian Humanities Review*).

In order to disturb this homogenising manoeuvre Pugliese tracks in haunting detail, histories of whiteness from the place of his birth: Spilinga, Calabria (forthcoming *Australian Humanities Review).* Pugliese argues of the Australian context that even though "Southern Europeans are now, at official, bureaucratic and administrative levels, classified as white or Caucasian, the lived reality for certain subjects is much more complicated" (forthcoming in *Australian Humanities Review)*. If I am visually identified and publicly 'outed' on a Sydney train as a "dumb ugly Muslim cunt" then I must conclude that I am not *allowed* to take my whiteness for granted and as a result it cannot act as an invisible source of privilege. I see the inability to take my own whiteness for granted as being indissociable from Pugliese's formulation that "racialised identification is still, in this Anglocentric nation, driven by the ontology of the visible, whereby a subject's racial categorisation and belonging is also determined by visible racialised identificatory attributes such as epidermal chromaticism, physiognomics and phenotypicality" (forthcoming in *Australian Humanities Review)*. So unlike Nicolacopoulos and Vassilacopoulos

who assert that Southern Europeans become "fully complicit in the ongoing violent dispossession of the Indigenous peoples", (2004: 46) I contend that to argue "full complicity" is too reductive in that it does not allow for the complex histories and lived experiences of racialisation to be visible. The continual denial of Indigenous sovereignties is a war being waged and fought on many fronts.

John Howard's comments are not and were never really meant to be about the 'fact' of Greeks being superior to other migrant groups. His comments are about the exercising of "patriarchal white sovereign power" (see Moreton-Robinson: 2004). When Howard designates who is worthy enough to belong to Australia in this historical instance the racial violence that creates the enabling conditions for him to do so is removed from view. By being able to designate who can count as 'white' he is producing whiteness as a kind of property. Harris asserts that whiteness has actual value in a society that is structured around white supremacy and it is this that underlies the desire to pass as white (1993: 1713). Howard's words of praise for Greeks expose the way in which passing might be a tactical intervention into a racialised economy by individual subjects, but it also operates in the Australian context in accordance with the imperatives of "patriarchal white sovereignty" (Moreton-Robinson: 2004). Howard is allowing Greeks to pass as white at this historical moment and in so doing he is effectively "valorising whiteness as treasured property in a society that continues to be structured on racial caste. In ways that are so embedded that they are rarely apparent, the set of assumptions, privileges, and benefits that accompany the status of being white have become a valuable asset"(Harris 1993: 1713). So, in this particular instance, Howard's actions show the validity of Harris' claim that "whiteness and property share a common premise—a conceptual nucleus—of a right to exclude" (1993: 1714). Like a legal title to land, Howard has used his sovereign discretion to assign and transfer whiteness over into the custody of his chosen recipient. But even this does not act as a safeguard from racialised violence. The act of bestowing white status is a colonial gesture disguised as benevolence. The discretionary nature of this sovereign power requires Indigenous land, the land upon which John Howard necessarily stands in order to make his determinations (and the land upon which I stand to offer this analysis) to be treated as though it is a legitimately white possession.

## Conclusion

Whilst "Southern Europeans" are expected to invest in patriarchal white sovereignty through possession, which is to say through dispossession of Indigenous land, I/we are denied whiteness as an embodied property. This is despite the changes in official classifications and definitions of who can be 'white' in Australia; a country that has been obsessed with those legally enabled systems of classification since the nation was 'founded' as a white nation, first through colonisation, British law and British migration and subsequently through the imposition of 'Australian' law through the drawing up of the Constitution and the racialised infrastructure which it established. The exclusivity and whiteness contained in Brennan's utterance of "our" when he says "our law" in Mabo is the sibling of Howard's "we" when he says this is the way "we" want Greeks to be; that is, well integrated. Both of these utterances are not only "fully complicit" with Indigenous dispossession but they

also produce the very conditions under which other communities then become implicated in "postcolonising" work. I have taken issue with the phrase "fully complicit" in this paper, not to claim that "Southern Europeans" and other migrant groups do not play a significant role in Indigenous dispossession, but rather to focus on a system of law that demands this complicity. In the context of an ongoing demand to "integrate" the claim of "full complicity" seems to be an impossible logic. If "Southern Europeans" are allowed into the country on the condition that they conform to a "property owning identity" then this is the unspoken script of "integration". Integration is not simply something that is demanded of migrants after they have arrived and started their lives here, it is built into the very conditions that enable their passage. It is too reductive to then say that integration, which is understood to be a critical way in which migrant communities are subjected to racism, is also the very reason these same communities are "fully complicit". If I/you/we are *before* the law in such a way that a level of complicity is inescapable then complicity with colonial dispossession is built into the very operations of racialised power. And it is to the institutional forms that this power takes, modes of power that continue to treat this as land empty of other law, that I/you/we must attend.

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## Notes

[1] Although I am aware that Agamben has used the term *Nomos Basileus* in *Homo Sacer: Sovereign Power and Bare Life*, I employ the term in this paper in a way that derives from and is consistent with my usage of the term in my first language, Greek. The phrase "world of violence" is from Marcia Langton (2001). In an Alfred Deakin Lecture titled *The Nations of Australia* she described the world in which the Constitution was created and imposed as a "world of violence, racist violence".

[2] The attacker, who I name 'transgender' in my analysis, was someone who 'appeared' to me as now presenting as a woman. I understand that I should use the descriptor "her" rather than "him" but I deliberately use "him" to highlight the "white patriarchal" dimensions of this event, which were palpable to me.