Nomophilia and Bia
The love of law and the question of violence

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Following on from Sherene Razack’s assertion that white settler society continues to be structured by a racial hierarchy where white settlers ‘become’ the original inhabitants, this essay argues that specific attention must be focused on particular structures, in this case on the colonial structuring dimensions of Australian law that generate the enabling conditions for ‘Australia’. The purpose of the investigation in this essay is to foreground what is at stake when scholars in the field of race and whiteness studies, as well as in related fields, ignore the structural components of ongoing legally colonial relations by effectively producing nomophilic theories which are imbued with confidence and faith about law, taking for granted that law can produce the equality and fairness it promises. This nomophilia in effect disallows a complete critique of colonial relations since it skims over the structural colonial dimensions of white law.

On the 26th of August 2001 a 20 metre wooden fishing boat was sinking in the Indian Ocean about 140 kilometres north of Christmas Island. During this time the Norwegian container ship, the MV Tampa, was in the vicinity, on its way from Fremantle to Singapore. At about 5pm that afternoon Captain Arne Rinnan received a call from Australian authorities asking him to rescue a ship in distress. He rescued 438 people from the sinking vessel. It would seem that disaster had been averted.

The MV Tampa began to set sail for Indonesia. The captain was forced to turn back and head towards Christmas Island when several of the people on board objected and threatened to commit suicide if he did not change course. When the MV Tampa was close to Christmas Island but outside Australian territorial waters, Captain Rinnan was asked by the Australian authorities to change course for
Indonesia. The administrator of Christmas Island was asked to ensure that no Australian vessel went out to the Tampa. The port of Christmas Island was closed. Movements to and from the cove were prohibited. Australia’s gates were being shut.

On Wednesday the 29th of August, as a result of mounting concerns, primarily ones regarding the health of those on board his vessel, Captain Rinnan took the MV Tampa into Australian territorial waters and stopped about four nautical miles from Christmas Island. The response, within two hours, was that forty-five Special Armed Services (SAS) troops from the Australian Defence Force left Christmas Island and boarded the MV Tampa. The presence of the SAS showed in no uncertain terms that the Australian government was committed to using force to retain control of the asylum seekers. Why were troops necessary? What was the actual threat? In what way was the fact that there were 438 people at Australia’s border, asking for help, a threat? Are these the ‘threatening’ people against whom the border was/is being protected? Does it necessarily follow that since it is declared that the border is being ‘protected’ that fear must exist in those same sites from where border protection is taking place? Was this a continuation of the so called ‘fears’ of invasion that have allegedly characterised white Australian history?

I begin this essay by illustrating why the characterisation of border practices of the white sovereign as ‘fear’ is insufficient to account for the exclusionary violence which took place in an incident such as the Tampa crisis. To account for practices of state-built racism as motivated by or practiced because of ‘fear’ runs the risk of reproducing the same anglocentric logic that the explanation purportedly sets out to critique. This is because the use of ‘fear’ to explain colonial practices acts as a covert form of exculpation of the colonial Australian state. I contend that this exculpation occurs when the state is anthropomorphised and pathologised. That is, despite being an inanimate entity, the state is given the ability to feel and perceive threat. I do not mean to suggest that fear does not have a role to play in the construction of the border and that fear is not perceived and experienced by people in various locations. I aim to show that a colonial state does not act to protect itself because it is frightened. Since its very reason for being is to establish itself through violent force, it follows that all acts that it engages in for self preservation derive from institutional force rather than from a position of insecurity. Here I am drawing a distinction between a position of defence arising from actual fear and a position of extending racial privilege from which defensiveness and ‘fear’ derive as a way of maintaining that privilege. ‘Fear of invasion’ is an effect of continuing colonisation but by many commentators it is used as an explanation for racial relations of inequality in lieu of naming colonisation. This has the effect of removing colonisation from view as well as hiding its own status as a colonial construct. While critics of xenophobia have been willing to discuss Australian identity as insecure, there has been a reluctance to locate this identity problem squarely in relation to ongoing colonial relations based primarily on Indigenous
dispossession. This dispossession is then maintained by perpetrating racial violence against other ethnic groups who are designated as ‘foreign’ by the white power which has installed itself through force as sovereign. The word ‘fear’, or its Greek form phobia used in the form of xenophobia, recurs in an influential body of literature across various disciplines as an explanation and critique of Australian race relations.

Don McMaster’s Asylum Seekers: Australia’s Response to Refugees sets out to examine ‘the historical construction of Australia’s ‘other’ and the political and legal structures that have evolved to maintain exclusionary and discriminatory policies’ (McMaster 2001, p. 4). Further, the author contends that ‘successive Australian governments have used these structures, the White Australia and detention policies, in a discriminatory way, often at an unconscious and administrative level hidden from the public gaze, to exclude certain people because of their race’ (2001, p. 4). While McMaster is critical of discriminatory practices, his language betrays an unwillingness to name the violence of colonisation as lying behind the practices of which he is critical. He speaks of political and legal structures ‘evolving’ to ‘maintain’ exclusion and discrimination and he asserts that successive governments have used these at an ‘unconscious’ level. The first significant issue here is that since Australian law is not Indigenous to this country, its ‘evolution’ begins from the moment of British law ‘arriving’ through imperial force. Why is the use of such systems in a discriminating way ‘unconscious’? Why does McMaster give this enormous benefit of the doubt to a discriminatory system? These structures have not simply been ‘used’, they have been generated by successive governments to legitimise white presence. If McMaster wants to use the language of psychology to account for state action then he must consider that to ‘use’ law, to follow, uphold or change it, are all conscious processes.

McMaster goes on to say that ‘throughout white history, Australians have feared invasion by the ‘hordes from the north’. Racist attitudes are not unique to Australians; what is unique is the fear of invasion and especially of being overrun by Asians’ (2001, p. 4). It is unclear here whether by Australians McMaster means the government or the general population. If we assume that he meant both then is that ‘fear’ also unconscious? A more productive approach here would be to think through the category of the ‘Australian’ and why fearing Asians seems to be a feature of Australian history. If the fear is legitimately about being overrun by Asians then it is a conscious fear. ‘Fear’ then appears as a conscious and critical issue for white sovereignty throughout Australia’s white history.

McMaster continues by asserting that ‘Australia’s response to strangers, and especially to its ‘significant other’, has been highly discriminatory, revealing both a fear of the ‘other’ and a fragile Australian identity’ (2001, p. 4). This is a most revealing statement. He places in quotation marks ‘significant other’ but interestingly, not the word ‘strangers’. He proceeds to say that the treatment of strangers
discriminatorily reveals ‘fragility’. Again the state is invested with human characteristics almost as one would make an excuse for a frightened child. But the state is no ordinary bully. This is a colonial state that has a long history of violence. In fact, it is from this violence that it becomes possible for critics like McMaster to use the term ‘strangers’ as though its meaning is self evident or unproblematic. To utter ‘stranger’ is to be assuming a position of native or Indigenous. This is especially the case if colonial history is not identified as the starting point from which these terms become naturalised. It is from these anglocentric and colonial assumptions that McMaster can proceed to name the Asian as the ‘other’ and from there to say that his analysis ‘confirms Asia as the ‘other’; this clarifies the fear of invasion by ‘the hordes of the north’ and explains why these fears are periodically triggered by rhetoric or events’ (2001, p. 7). This analysis may be correct but it is only correct because it oversimplifies the complex layers of colonial racial relations by continuing to work within an unquestioned anglocentric frame. Another problematic usage of the word ‘strangers’ appears in McMaster’s text when he contends that ‘The history of Australian immigration policy highlights its role in the construction of the nation’s ‘significant other’. The fear of strangers has shaped immigration policy. Although economic factors contribute to this fear, cultural factors and political identity are at its core’ (2001, p. 39). Who is the ‘stranger’ and from which perspective is this decided? Does this position of judgement and definition function to obfuscate the position of coloniser as ‘stranger’ to this land? Immigration policy has been instrumental to processes of Indigenous dispossession (see Moreton-Robinson 2003). Outside of this fact any discussion of ‘immigration policy’ is incomplete.

There is a tendency by those commenting on the White Australia Policy to declare that it officially ended (Jupp 1991; Tavan 2005; Hage 2003; Crock & Saul 2002). McMaster is no exception to this. He says: ‘For seventy-two years the White Australia policy remained in force, finally being abolished by the Whitlam government in 1973. The Immigration Restriction Act was replaced by the Migration Act 1958 which left the policy unchanged apart from scrapping the dictation test as the method of exclusion’ (McMaster 2001, p. 47). However, to say that this policy has ended is to not acknowledge that old laws morph into new laws which can achieve the same ends. To declare the white Australia policy over is to mirror the manoeuvres of a white sovereign act. To declare an official period of racism over is to declare that specific laws can be racist but the system of law itself cannot. Since Australian law is born from colonisation and continues to work in line with colonial interests, racism must be seen as the product of this colonial system and not simply as the product of bad laws.

McMaster asserts that ‘Current Australian immigration and refugee policies have an historical precedent in the fear of uncontrolled migration. This has manifested as an irrational xenophobic concern that Asian ‘hordes’ are poised to invade Australia seeking land and economic opportunity. This fear first surfaced in the colonial model of restricted Chinese entry, explicitly racist in its exclusion of foreigners’
(2001, p. 64). By ‘historical precedent’ it seems that McMaster is once again invoking the white nation as the legitimate although unacknowledged starting point of his analysis. Precedent is a legal concept where current laws lie in relation to previous laws in a contained and self-referential dialogue that does not acknowledge other legal systems outside of its tradition. McMaster is reproducing colonial logic here by implying that history begins with the British Empire commencing the process of Indigenous dispossession. But further, it is ‘fear of uncontrolled migration’ that he vests with having a precedent. How can something as unspecific as fear have a precedent? If, indeed, as he says, ‘Australia is a nation of immigrants, all having come from somewhere else, the Indigenous peoples arriving over forty thousand years ago and European settlers just over two hundred years ago’ (2001, p. 38), then how can one immigrant group get to set precedent for all the other groups?

Given the Anglocentric logic at work in McMaster’s text, it is easy to see why he is suggesting that treatment of migrants is ‘inconsistent’. McMaster states that ‘On the one hand, Australia has accepted migrants from Britain enthusiastically, and migrants from Europe with tolerance, sometimes reluctantly. On the other hand, migrants from Asia have been excluded for the greater part of settler history’ (2001, p. 5). McMaster identifies ‘inconsistency’ at work in Australia’s treatment of migrants because, in the absence of colonial violence in his analysis, he can assume that all should be equal before the law, that is, the law should treat people consistently and fairly. If there is any inconsistency to be found, however, it is in relation to McMaster’s analysis. If we are all migrants, then the inconsistency is that one group of those migrants gets to decide on the legal regime to which everyone else must be subjected. This fact alone undermines the ‘we are all migrants’ position.

When Mary Crock and Ben Saul describe the character of Australians, they fail to make any connection between ‘contradictory’ responses to migrants and refugees and the law. They say ‘Many people could be forgiven for thinking that Australians are strangely contradictory, swinging between the poles of heart-felt humanitarianism and deeply xenophobic hostility’ (Crock & Saul 2002, p. 1). There are two flaws to their formulation here. Firstly, they seem to have made the generic ‘Australians’ stand in for Australian law. Even if it was plausible to speak of the response of all ‘Australians’ and even if the Australian public responded the way that they suggest, one moment with humanitarianism and the next with xenophobic hostility, this is, at best, a response to something that is actually out of their hands. On the other hand, it can be said with more certainty that legal responses have in fact swung between the two poles they suggest. In fact, they have not simply swung between the poles but generated the very structures through which people are welcomed or denied entry. I am suggesting here that if the Australian public did respond as Crock and Saul suggest, this was secondary to the response of the law which is instrumental in setting not only the institutional prohibitions and admissions but the parameters within which public opinion is
generated. Framed differently, there is no contradiction here at all. The contradiction only results due to certain dominant assumptions about law. Their uncritical approach to law is what makes the conclusion of ‘contradictory’ possible. Since they do not name law as complicit in producing xenophobia, or position the law as a colonial institution, the violent aspects of Australian law remain beyond their purview and critique. They say ‘There are many reasons why countries encourage immigrants to enter their territory, just as there are many reasons why countries prevent foreigners from entering’ (2002, p. 8). This even-handed approach to the practices of migration conceals that it is also a xenos that has assumed the position of sovereign in order to then cast others as xeni. The term ‘foreigner’ here is used as though its meaning is not affected by colonial relations of power. Their belief in the equality of the Australian legal system is evident when they say:

Australia’s migration laws attempt to ensure that non-citizens applying to the country are treated equally and fairly—regardless of where they come from. As in many other countries, this was not always the case in Australia. The White Australia Policy operated until it was abolished in the early 1970s, discriminating against non-Europeans who wanted to settle in Australia on the basis of their skin colour. (Crock & Saul 2002, p. 8)

The narrative being presented here is that the migration law system now, as opposed to the past, treats people equally. But their formulation, although seductive, disregards what they themselves track later in their text about the Tampa events. During this time the powerful machinery of law was activated to prevent the entry of the Tampa refugees, precisely because of where they came from. But they account for this form of legal violence by attributing it to xenophobia, racism or hysteria, so that the law itself is not implicated in producing this violence. They contend that ‘The burning of a mosque in Brisbane in September 2001 and the sudden upsurge in violence and abuse against Muslim Australians stands testimony to the mood of xenophobia, racism and hysteria unleashed in the wake of the Tampa affair and the terrorist attacks in America’ (2002, p. 109).

Racism and xenophobia are thus cast as occurring outside of the law, while they deem the space of the law as non-discriminatory. This is reflected in their declaration that:

Australia now takes pride in its non-discriminatory immigration policy. Current laws aim to give a fair go and equal opportunity to all non-citizens who apply to enter. The principle of non-discrimination is the foundation of Australia’s modern, culturally diverse community. It also reflects the value Australians place on treating other human beings equally and fairly—particularly those in less fortunate circumstances. These principles are reflected in the special concessions made for the non-citizens who are determined to be refugees. (Crock & Saul 2002, pp. 8-9)
But where does the belief in the principle of non-discrimination stem from and upon what assumptions is it founded? This principle can only be accepted as legitimate if the law is understood as bringing peace, order and equality. Crock and Saul's analysis leaves out that a system of white law that prides itself on non-discrimination is a system that is premised on violence. It is because the position of law is colonial that it can designate itself as non-discriminatory.

What is common between the approach taken by McMaster and Crock and Saul to the topic of refugee/migration intake is that, while both texts are critical of discriminatory policies and practices against certain types of peoples, there are underlying assumptions—particularly about law and whiteness—that are operating invisibly to allow for the classification of this discrimination as ‘inconsistent’ or ‘contradictory’. I suggest that inconsistency only appears in an analysis that assumes the law to be outside of colonial machinery, which by definition must be discriminatory. It is when such practices of discrimination become institutionalised as law that the xenos can appear. The xenos and therefore xenophobia are produced at law precisely because the illegitimate presence of white law in Australia is obfuscated. The law’s creation then functions to legitimise white presence since it vests itself with the power to name and treat others as strangers through the force embedded in law. My contention is that when ‘xenophobia’ is seen to occur, this seeing also requires the status of white law to be neutralised. When white law obfuscates and legitimises its colonial presence and from that symbolically violent position perpetrates further violence against those it casts as xenoi, I would suggest that this should be seen as xenonomobia. I coin this term as a response to the descriptive overuse of the term ‘xenophobia’ in ways that do not problematise the term and as such efface its anglocentricity. Xenonomobia is comprised of three terms, xenos, the stranger, nomos, the law, and bia meaning force. Xenophobia in the Australian context results from white law installing itself as non-foreign and from there defining others in relation to itself. The law has many names for the xenos. ‘Alien’, ‘unauthorised arrival’, ‘lawful non-citizens’, ‘unlawful non-citizens’, ‘detainee’, ‘transitory persons’ and ‘offshore entry person’ are all legislated categories of xenoi. In the event that there is phobia in relation to these persons, it is because their foreign status is produced at law. McMaster as well as Crock and Saul are working from the assumption that white law can comfortably be equated with fairness and equality, and they fail to consider why a system of law that has been born from an imperial project and cultivated as a colonial state would do anything other than ‘discriminate in favour of itself’ (Moreton-Robinson 2004, p. 7). Even a brief examination of Australian legal history indicates that the ‘inconsistency’ of which McMaster speaks, or the ‘contradictory’ nature of Australian xenophobia according to Crock and Saul, was legally produced, making it not only consistent with the colonial project of whiteness but consistent with the functions of white law. The nomophilic position taken by Crock, Saul and McMaster in different fields of research prevents the broader questions of the law’s founding violence from entering the scope of their discussion. I name their
analysis *nomophilic* because embedded within it is a confidence and faith about the law which produces their operating assumptions that the law can deliver the equality and fairness it promises. This is despite the fact that contained within their own body of research is evidence to the contrary of what they seem to believe and assert.

In 1900 the British Parliament passed the *Commonwealth of Australia Constitution Act*, which came into force on January 1, 1901. This law was exported by the British and gave the Commonwealth Parliament the powers to:

- make laws for the peace, order and good government of the Commonwealth with respect to naturalisation and aliens; the people of any race, other than the aboriginal [sic] race in any state, for whom it was deemed necessary to make special laws; emigration; and the relations of the Commonwealth with the islands of the Pacific. (Quoted in McMaster 2001, p. 41)

What is evident here is that Australian law was in the first instance an effect of British law and imperial control, since British sovereignty extended to legislating for the founding and structure of another legal system. If lawmakers in Britain passed a statute giving powers to the lawmakers in Australia to make laws for the ‘peace, order and good government of the Commonwealth’ with respect to race, then it can be argued that the connection between sovereignty, law and race is one that writes out the question of racial violence by recasting practices of violence as practices of peace, order and good government. While these three things, ‘peace, order and good government’, have been made synonymous with each other, it does not necessarily follow that peace is the result of order or good government, since the way in which these aims were to be met was through the violent control of racialised subjects. Dispossession, colonial violence and the denial of Indigenous sovereignty are removed from view as what must be sacrificed in order to make way for the British legislative will which is purportedly founding a ‘peaceful’ Australian state and legal system. It is from this British legal centre that the xenos begins to be designated, while the centre itself remains non-racial and universalised by virtue of its whiteness and legality.

In accordance with the directive from the British parliament expressed in the *Commonwealth of Australia Constitution Act 1900* legislation, the *Immigration Restriction Act of 1901* became urgent and priority business for the newly formed Australian Federation that was keen to follow the British law in order to exclude Chinese workers who were at that time perceived to be a threat to Australian labour, particularly in the goldfields (McMaster 2001, p. 5). Not only did this Act, one of the first by the new Commonwealth government, instil ‘the racist tone of immigration policy’ (McMaster 2001, p. 41), but it marked Australian law as being a racial project in which selective inclusion and exclusion were perfectly consistent with its white colonial objectives and intentions. In this sense the *Immigration Restriction Act 1901* can be seen as not only instilling ‘the racist tone’ but being an effect of
structural racism and lawfulness. That is to say, the newly formed Australian legislature was not simply making exclusionary law but was following British law in order to do so. These operations of law, necessary for a colonial project, do not simply set a ‘tone’; they bring the violence of legal machinery to bear upon those who must be cast as aliens. Because Britishness was built into Australian law, it became logically possible to cast others (such as the Chinese workers) as strangers, outsiders or imposters. This is despite the fact that the presence of the Chinese workers predated the imposition of these laws (Jayasuriya 1999, p. 13). The Immigration Restriction Act 1901 is regularly cited as the legal foundation of the White Australia Policy, which is also regularly cited as officially ending in 1973 (McMaster 2001, p. 6). However, if this piece of legislation is understood as resulting from British legislation, then it cannot accurately be understood as the legal foundation of a white Australia policy. The laws designed to vest in the white Australian sovereign the power to designate categories of whiteness at different historical junctures did not found white legal racism but were a product of it. The naming of white Australia as an effect of a piece of legislation is to efface the fact that such legislation could not come into being outside of an already white Australia. The presence of non-whites did not make Australia less white prior to 1900. Since colonisation Australia has been white Australia, and just as white Australia did not begin with the White Australia policy, so too did it not end with its formal demise.

At first glance it would not appear that there is much in common between McMaster, Crock and Saul and the thesis advanced by Ghassan Hage in his influential text Against Paranoid Nationalism (2003). I suggest that the continuity between these three works is the lack of critical engagement with the role of law in relation to ongoing colonial relations, as well as the tendency to endow the state with human characteristics in an exculpatory way. Hage's work is well known, widely celebrated, and has been taken up enthusiastically, especially in critical race and whiteness studies, as a potent critique of whiteness in Australia. With a view to extending debate around the very questions with which Hage is concerned, I put forward the position that while his work conveys the sense of an anti-colonial stance, his arguments are effectively tokenistic, reductive and disembodied, since their overall effect is of an implicitly perpetuated anglocentricism which does not effectively challenge the legitimacy of white institutions of power. For the purpose of this analysis I specifically focus on Hage’s pathologisation of the state, his comments about Indigenous Australians and his comments on the Tampa events of 2001.

Hage’s critique of Australian race relations has definite appeal. He places the nation state on the therapist’s couch and the analysis he offers about its health status makes for compelling and entertaining reading. He tracks the way in which Australia has been plagued by ‘white paranoia’ since the time of its birth, but this paranoia was relegated to the margins in the period post World War II (Hage 2003, p. 47). The current period, he says, puts this paranoia ‘at the core of
today’s national culture’ (2003, p. 47). The ‘current period’, since Hage was writing in 2003, was the period of former Prime Minister John Howard’s rule. Specifically in relation to Tampa, he asserted that ‘Nowhere has this generalised culture been as intense as it has been in the Australia of the Tampa crisis and the detention centres. This is perhaps because no other society has ideologically legitimised, even institutionalised, the culture of worrying to the extent that the conservative government of John Howard has’ (Hage 2003, p. 22). Hage sees the Tampa events and former Prime Minister Howard as exceptional, in the sense that he positions this period as more paranoid than others. This is reflected in his use of the word ‘even’ to connect ‘legitimised’ and ‘institutionalised’. Further, when he says that ‘worrying today exerts a form of symbolic violence over the field of national belonging’, his use of ‘today’ shows a keen interest in contemporary manifestations of paranoia. Hage identifies migration, refugees and crime as ‘threats’ but says that these ‘do not explain what is beginning to look like a structural entrenchment of the culture of worrying’ (2003, p. 23). The use of the term ‘beginning’ here is of particular interest as it builds on Hage’s position that the ‘institutionalisation’ of worry is something in its infancy. The Howard regime was a particularly conservative one that acted especially violently against refugees and Indigenous peoples. In fact, former Prime Minister Howard used the Tampa incident as a way of ensuring electoral victory for himself and his party (see Marr & Wilkinson 2003). On this point I am in agreement with Hage’s position; however, several issues begin to arise from this formulation. Did the actions of the Howard regime amount, in Hage’s terms, to a response to the ‘generalised culture of worry’, or could they be seen as having been instrumental in its orchestration? Further, is Howard’s period of rule as ‘exceptional’ as Hage implies? My contention is that Hage’s argument contains some very significant weaknesses but continues to have popular appeal because it gently criticises the white state even as it reproduces colonial logic.

While Hage cites ‘Tampa and the detention centres’ as being the most dramatic example of a culture of worrying, he does not account for why this is the case. He simply mentions Tampa and detention centres as though their meanings are self-evident. In the first instance, Hage must clearly identify what he means when he says that there has been an ideological legitimisation, ‘even’ institutionalisation, of the culture of worrying. If Hage’s logic is followed then he is suggesting that ‘worrying’ precedes governmental and institutional responses. So even though Hage is saying that former Prime Minister Howard has been responsible for legitimising and institutionalising a culture of worrying, he is in a sense exculpating Howard from responsibility for doing so. This is because, despite the critique of Howard as taking worrying too far, the implied defence is that he was simply addressing a worry that pre-existed any of his actions. While it would be fair to say that Howard’s regime was responsible for a raft of laws and policy changes during the Tampa events, it would be incorrect to assume that these legislative, judicial and executive acts were not instrumental in generating the culture of
worrying that Hage implies pre-exists these events. Hage’s analysis fails to name the specific instances of ideological legitimisation since he prefers to leave the structures of power unnamed and refers to them simply as ‘worry’. Specific details relating to his general claim are necessary to substantiate it in a way that avoids homogenising ‘worry’ and generalising what is felt by a diverse population. The use of the word ‘even’ prior to ‘institutionalisation’, which signifies as surprise or as aberration, as though the institutionalisation of ‘worrying’ is something new and previously unknown in the context of the Australian colonial state, places the institutional violence that founds and maintains the Australian state out of view. This is despite the fact that Hage has said that Tampa and the detention centres confirm in the starkest sense the generalised culture of worry that existed prior to them. For Hage’s analysis to be consistent, ‘Tampa and the detention centres’ cannot be both a continuation of white power and an aberration from it.

This is not say to say that Hage does not outline the key and problematic aspects of Australia’s racial history (2003, p. 47), but in doing so he pathologises the state in a way that exculpates the system while appearing to be critical of it. Hage says that there is a history of ‘White paranoia in Australian culture which has structured Australian nationalism since the time of its birth’ (2003, p. 47). Further, Australia’s national culture and identity have evolved in the shadow of contradictory colonial tendencies (2003, p. 48). The contradiction, according to Hage, is that, despite the fact that Australia has been built on the attempted decimation of the Indigenous population, the ‘paranoiac colonial sensibility one finds in colonial-settler nations that are in constant fear of decolonisation’ (2003, p. 48) remains. While he sees no contradiction in the case of Israel or in the South African example, the contradiction in Australia arises because ‘Australia’s Indigenous people are no longer capable of engaging in any significant anti-colonial political practices of this kind—that is, although there are many Indigenous practices that can be seen as ‘anti-colonial’, there is no serious Indigenous movement aiming to regain sovereignty over Australian territory’ (2003, p. 48).

It is from this position, one that dismisses the work of countless Indigenous academics, activists and elders who continue to battle against the Australian state, that Hage thinks it strange that Australia does not share with the United States the ‘colonial fait accompli’ confidence that he says permeates U.S. culture (2003, p. 48). The work of Indigenous academics, work that implicitly informs this essay, like that of Irene Watson (2002a, 2002b, 2005a, 2005b, 2007), Aileen Moreton-Robinson (2003, 2004, 2005, 2007) and Tony Birch (2000, 2002, 2006, 2007), has not only been prolific but also unrelenting in the fight against the denial of Indigenous sovereignties. In the critically important text Sovereign Subjects, for example, Aileen Moreton-Robinson brings together a range of Indigenous scholars, including Watson and Birch, in order to ‘to initiate discussion about the broader context of Indigenous sovereignty, and its existence and refusal within
the everyday, demonstrating that colonisation is a living process’ (Moreton-Robinson 2007, p. 2). Moreton-Robinson asserts that

Our sovereignty is embodied, it is ontological (our being) and epistemological (our way of knowing), and it is grounded within complex relations derived from the intersubstantiation of ancestral beings, humans and land. In this sense, our sovereignty is carried by the body and differs from Western constructions of sovereignty, which are predicated on the social contract model, the idea of a unified supreme authority, territorial integrity and individual rights. (Moreton-Robinson 2007, p. 2)

The critical positions put forward in this text by Moreton-Robinson and others function as a fundamental challenge to Hage’s thesis, which does not account for sovereignty in non-western terms. This lack of seeing Indigenous sovereignty forms the foundation of Hage’s problematic claims about the colonial dimensions of Australian society. Hage puts forward his definition of paranoia in relation to ‘colonial paranoia’:

A pathological form of fear based on a conception of the self as excessively fragile, and constantly threatened. It also describes a tendency to perceive a threat where none exists or, if one exists, to inflate its capacity to harm the self. The core element of Australia’s colonial paranoia is a fear of loss of Europeaness or Whiteness and of the lifestyle and privileges that are seen to emanate directly from that. (Hage 2003, p. 49)

It is of critical importance that what is being suggested here is precisely what is lacking in Hage’s overall argument, namely the idea that the state has real strength and force. His position is that the state is too strong to worry about any threat to its supremacy since white sovereignty is above threat. Herein lies the first suggestion that Hage’s problem is not with white sovereignty itself but rather with its inability to understand its position of supremacy. It is of particular interest that he has conjured the state’s strength here, because elsewhere his pathologising thesis functions to minimise the state as the primary location of political, legal and military power. For instance, elsewhere in his analysis he characterises the White Australia Policy, a policy founded on the passing of an Act of Parliament, as an effect of the ‘timidity’ felt by the nation about to gain its independence and weaken its ties with Britain (Hage 2003, p. 52). So here, Hage is attributing weakness and vulnerability to the nation state. Firstly, the anglocentrism of Hage’s analysis and his uncritical position in relation to white sovereignty manifests in this definition of ‘colonial paranoia’ because this definition, or this component of his argument, is premised upon seeing the project of colonialism as a ‘fait accompli’. So while the Australian state, according to Hage, does not share a colonial confidence with the U.S., Hage the whiteness critic does. Secondly, the seeming contradiction that arises in his analysis regarding the state’s power and weakness appears because he does not critically engage with the role of institutions—such as law—in establishing a colonial state. An Act of Parliament, passed as a result
of the power of a British Imperial Act of Parliament, cannot be understood as an act of timidity. This was quite simply colonial nation building. Were these paranoid or timid acts, or acts of state and force sanctioned through the civilizing processes of law? And even if we can speak of ‘colonial paranoia’, it is transformed from being a mere pathological state or emotion into something that bears the full weight of the law when it turns into enforceable legislation. In this sense, once transformed into law, which has been the case throughout Australia’s history, ‘colonial paranoia’ is in fact a state practice which at once generates and embeds race privilege.

Hage also refuses a serious engagement with questions of colonisation by generating a strategic distinction between ‘colonial paranoia’ and ‘paranoid nationalism’. Paranoid nationalism, he says, ‘is not dependant on an external threat. It is the product of a deterioration of the relationship between the national subject and the motherland produced internally within the nation’ (Hage 2003, p. 39). Defensiveness is not paranoia (Hage 2003, p. 31), he says, but what is the difference between these two states and why does he place significance on this difference? For Hage the problem is that ‘our protective societal border politics have reached a point where they have become too aggressive and too violent for the loving interior ... we cannot defend our border in a totally racist and totalitarian way and then claim—or pretend to—live with that border as a non-racist democratic society’ (Hage 2003, p. 45). It is here that it becomes even clearer that Hage is not concerned with the Australian state and its illegal seizing of sovereignty from whence it proceeded to dispossess Indigenous peoples. A defensive state in Hage’s formulation does not appear to be problematic; it is only when the state of paranoia sets in that there is an issue. The significance of Hage’s distinction is that it allows him to separate questions of state founding violence from the modes through which it preserves its position as sovereign. The original violence of the Australian state is not of much relevance to Hage, who is more concerned with border protection that has become ‘too aggressive’, ‘too violent’, ‘totally racist’ and ‘totalitarian’. It is highly problematic that Hage can make these harsh indictments without implicating the machinery of law, which is precisely what ensures continuity between the original violence against Indigenous peoples, its contemporary manifestation, and border protection practices. The border practices about which he is outraged are legal practices, but nowhere does he engage with the role of law in producing the racism, aggression and violence with which he claims to be concerned. Instead he says, ‘In my garden, I want to protect the goodness of the fruits and vegetables growing there. What I use to protect this goodness affects it. I can use a really efficient poison that will exterminate all possible threats coming from the outside, but I know that this would kill the very goodness I am protecting. I need to perform a balancing act’ (Hage 2003, p. 45). Hage chooses the genre of a parable to explain the conundrum that the State finds itself in. He chooses to use the ‘I’ as the speaking position. Who does this ‘I’ represent? This is of importance since it denotes ownership. Is it Hage, or does he use ‘I’ to conflate self with nation? In either case the
parable can only function unproblematically if the question of ownership of nation is assumed to be resolved. This question is only resolved from the position and purposes of white sovereignty. It appears that the white sovereign or someone imitating the white sovereign is speaking, since it is he who is vested with the power to decide whom to include and whom to exclude. The ‘I’ of the parable assumes the position of the decider, but also assumes that the inside is already good. If the ‘I’ is indeed the sovereign, then this last assumption is the way in which the sovereign both assumes this position and protects itself from critique.

It is on the basis of this analysis that it seems tokenistic when Hage says:

First it should be noted that whatever traces of colonial confidence existed in Australia are built on genocidal practices, and so remain haunted by these constitutive deeds ... Thus despite their relative weakness and the fact that they are hardly ever concerned with challenging White Political sovereignty, the struggles of Indigenous Australians act as a constant reminder of the uglier aspects of the colonial past—even for those most determined to forget them or deny their continuing relevance. (Hage 2003, p. 51)

His reference to genocidal practices functions colonially here since he also positions Indigenous Australians only as a ‘reminder’ of the past and therefore as not relevant to the present moment, or to the current issues of race relations. On what basis does Hage make the claim that Indigenous people are not concerned with challenging white political sovereignty? He does not defend this homogenising statement. He simply asserts it as though it is a fait accompli. What arises from this analysis is that it is Hage, not Indigenous peoples as he claims, who is not interested in challenging white political sovereignty. Indigenous legal scholar Irene Watson has identified that ‘in the struggle for Indigenous sovereignty ... the dominant voice, or the prevailing ‘reality’ is that the sovereignty of Aboriginal laws is an impossibility ... yet for many Aboriginal people, Aboriginal laws, or sovereignty simply exist’ (Watson 2007, p. 24). Watson’s powerful contention is that the work that needs to be done in order for Indigenous laws and sovereignty to be engaged with is to begin the task of moving beyond the colonially constituted ‘reality’ of impossibility. The ground of ‘impossibility’, Watson argues, is a fertile ground for moving forward in our thinking about Indigenous sovereignty (Watson 2007, p. 25).

Hage’s work stages a pathologisation of the nation and those within it. His emphasis on ‘worry’ downplays the structural conditions of a colonial state, which by definition acts to defend itself. His thesis downplays the way in which institutionalisation, particularly through the machinery of the law, has always played a significant role in organising subjects to conform to the ideals of the white nation. Hage says that threats of migration, illegal refugees and so on are ‘beginning to look like a structural entrenchment of the culture of

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worrying’ (Hage 2003, p. 23). If the events of Tampa can be seen to look like the first instance of a structural manifestation of worry then Hage has ignored the way in which Tampa was an event that was produced by law and by a legal system whose function has always been to act in its own interests. When he says, ‘worrying today exerts a form of symbolic violence over the field of national belonging’ (Hage 2003, p. 23), he exerts symbolic violence in worrying about worry in the abstract, a manoeuvre that displaces and denies the multiple forms of symbolic and material violence that have and continue to take place in a still-colonial state. Indeed, part of this violence is to remove from view the ongoing struggles of Indigenous peoples against the continuing theft of their lands. Law’s violence against Indigenous peoples at the current time is primarily taking place through the enforcement of the Northern Territory Intervention legislation, which was designed by the former Howard regime, continued under Kevin Rudd, and is now being ‘redesigned’ under the Prime Minister Gillard regime to relicense theft after Mabo (No. 2).

Finally, Hage’s psychoanalysing of the nation, although entertaining, is highly problematic as he must anthropomorphise the nation in order to stage his critique. In turning the state into a person, he invests this imaginary construct with specific traits. But the colonial state, the defensive nation or the paranoid nation is not a person. It is constituted by a series of violent institutions, the machineries of law whose function it is to generate a white system of privilege based on dispossession. Inflating the capacity for self harm is precisely the way in which a state functions to maintain its power. This is how privilege—colonial privilege—is built. Since Indigenous peoples are still living under colonial rule, to assume they are not interested in challenging white oppression is to reproduce the colonial logic on two levels. The first is that the Indigenous person desires white oppression and the second is to place a double burden on the colonised by suggesting that the matter of challenging white sovereignty is only a matter for Indigenous peoples. Hage spends his time in his analysis of the state establishing whether the emotions it is having are valid, good or rational. But perhaps the answers to these questions are irrelevant, because even if, for example, the state can be said to be acting ‘fearfully’ or ‘irrationally’, this becomes something else, something rational, through law-making. This particular frame of inquiry does not function to disrupt the logic of colonialism and keeps ‘anti-colonial’ critics like Hage locked in a colonial mindset.

I have staged this critique for two main reasons. First, to foreground the way in which nomophobia pervades popular analyses of Australian race relations with the effect of this blind love of law functioning to exculpate white institutions of power from responsibility for colonial violence by refusing to engage in the way that institutions of law are implicated in producing deep structural racism. Second, my emphasis on unpacking Ghassan Hage’s work has been in response to the enthusiastic way in which his work has been taken up as a potent critique of whiteness in Australia. I offer this critique in order to underscore the importance of critically investigating the role of law in
relation to colonial relations of power and not to suggest that there is no value or importance to the work produced by Hage. However, I do argue that pathologisation of an entire population is a logical impossibility and to base a critique on race on the denial of difference within a population is itself a colonial manoeuvre. To illustrate this point and to conclude this essay I focus on the way in which the people of Christmas Island responded during the Tampa crisis. Christmas Island is located 360 kilometres away from Indonesia and 1600 kilometres away from the nearest point on mainland Australia (Jameson 2003, p. 5). Despite the distance from mainland Australia, it has been an Australian territory since the late 1950s (Jameson 2003, p. 5). Being an Australian territory means that Australian sovereignty reigns over the island, this being both the reason why it was desired by the Tampa refugees as a place of landing and why the Australian government deployed its sovereign power in order to exclude Christmas Island from Australia’s immigration zone. Christmas Island was declared by the sovereign as an exceptional zone, and in one sense this exemplifies Hage’s idea about the conservative Howard government’s institutionalised ‘worry’ about border control. Hage’s homogenising vision of Australia, and the undifferentiated ‘worry’ that afflicts it and all of those within it, cannot account for the very simple fact that the day the Tampa sailed away from Christmas Island, the locals signalled their respect for the humane gestures of the Norwegian captain and his crew with ‘a huge fireworks display, a shore to ship acknowledgement’ (Jameson 2003, p. 13). The Australians who in Hage’s formulation express their Australianess through ‘worry’ about border control did not extend the same gesture to the Australian navy warship which was busy transporting the refugees to Nauru purportedly in the interests of keeping the border controlled and those within it safe. I draw attention to this gesture of hospitality in order to make distinct that the questions which arise from Tampa—‘Who is ‘one of us’ or ‘Whose humanity do we recognise as akin to ours’ (Perera 2002, p. 12)—do not have homogenous answers. The gesture of hospitality extended by the people of Christmas Island needs to be marked in order to make distinct the operations of the state and the actions of the people within those states. This gesture undermines Hage’s formulation of ‘generalised worry’ and reveals the ‘worry’ clearly as the concern of institutions of white power.

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Notes

1 Victorian Council for Civil Liberties Inc v Minister for Immigration and Multicultural Affairs [2001] FCA 1297.

3 See Davies (1994, pp. 41-55) Asking the Law Question for a discussion of precedent, also known as the principle of *stare decisis*.


5 Cf., for example, the Northern Territory Emergency Response (NTER) Redesign: http://www.fahcsia.gov.au/sa/indigenous/progserv/ctgnt/ctg_nter_redesign/Pages/default.aspx

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