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Without love there can be law but no justice

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ABSTRACT

This special issue of *Globalizations* builds the case across a diverse group of papers that law is in need of decolonization, especially law systems structuring settler-colonial societies. This is because law's dispossessing character in these contexts is hidden by the prevalence of *nomophilia*; that is, an uncritical love of law for the neutrality and objectivity it self-proclaims to possess. The collection of papers for this special issue constitute a collective critique of colonial law and crime that does its part in disrupting law's empire of violence by tracking the legalized violence across the axes of class, race, gender, and sexuality. The popular expression of 'fuck the law' captured by Agozino in the leading paper of this issue establishes the context in which we make a call for the necessity of love to enter the realm of law as an urgent decolonizing praxis. Without love there can be law, but no justice.

KEYWORDS

Law; love; decolonisation; nomophilia; Agozino; justice

On *nomophilia*: the case for not loving the law

On 13 June 2018, a roundtable discussion was held on the traditional Country of the Kaurna people of the Adelaide Plain at Flinders University Adelaide, Australia. This roundtable took place on Indigenous country where sovereignty has never been ceded, even if colonial law acts as though it possesses singular and incontestable sovereignty. The fact of this sovereignty never having been ceded, but instead having faced continual attack by state force provided the main impetus for the event from which this special issue has emerged. The colonial Australian state has been attracting considerable attention for its treatment of asylum seekers. Some of that attention condemns the state for its brutality and Behrouz Boochani (2019) is a powerful voice in that regard. Meanwhile other right-wing state power brokers, like Donald Trump and Geert Wilders have been inspired by Australia's imperial reach and legalized violence against refugees on neighbouring Pacific Islands. Trump's tweet before meeting with Australian Prime Minister Scott Morrison for the G20 summit exclaiming that 'much can be learned' from Australia's example[1] and Wilder's appropriation of Australia's 2014 'No Way' slogan to found an anti-immigration party in the Netherlands[2] validate and build on Australia's identity as a penal state (see Boochani, 2019; Tofighian, 2020; Giannacopoulos & Loughnan, 2019). In such narratives, Australia's unacknowledged *sovereign debt crisis* (Giannacopoulos, 2017) where Indigenous lands and waters are not able to be fully cared for by those entrusted to do so but instead made available for the extractive, exploitative, and unsustainable practices of capitalism, which includes the practices of excluding migrants remains invisible. The machinery of the law is a critical dispossessing machinery but does not always appear as such. Law is more often loved than critiqued because it is read as being synonymous with objectivity and neutrality and as

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being above and outside of practices of colonialism rather than as instrumental in its production. In Australia, as in many other settler-colonial countries globally, it is law that imposes colonial ordering over stolen territories while disguising the inherent violence of these practices by deeming them lawful. The inability to read law as a vehicle for colonial violence but instead to love law for the neutrality and objectivity it claims to bring is *nomophilia* (Giannacopoulos, 2011). The prevalence and persistence of *nomophilia* require critical attention to bring into view and to disrupt law's empire of violence.

Although it has been a while now since the legal machinery, by way of the Australian High Court overturned the foundational lie of *terra nullius* lying at the heart of the colonial sovereignty, Australia continues to function *as though* it is empty of Indigenous law and sovereignty. Indigenous lands are made and maintained as 'property' (see Davies, 2019) and the right to welcome refugees, for example, a right that should reside with the rightful owners of the land remains with the colonial sovereign (see Giannacopoulos & Loughnan, 2019) and is systematically denied to lethal effect (see Boochani, 2019; Tofighian, 2020). Under Australian law, prisons persist violently as a land clearing *terra nullius* technology (see Agozino, 2019; Palombo, 2019; Boochani, 2019; Tofighian, 2020). Reforming a colonial constitution remains the only permissible national discussion about legal change while Aboriginal people continue to be killed at the hands of the state in alarming numbers. The recent fatal police shooting of Warlpiri man Kumanjayi Walker at Yuendumu while in his own home and on his traditional country, once again demands an examination of ongoing colonial policing in Australia, a place that acts as though colonialism has ended (Giannacopoulos, 2019). The calls by the Yuendumu community for police to leave their country and their community is an abolitionist one (see Agozino, 2019; Palombo, 2019; Giannacopoulos & Loughnan, 2019) revealing once again that policing of Aboriginal communities is undertaken without consent and to lethal effect. There can be no doubt that such laws must be abolished or 'withered away' (Agozino, 2018) in practice as well as in legal and criminological knowledge systems. Thinking about societies without prisons, a particularly violent form of ongoing colonial control (see Palombo, 2019) is crucial for redressing hidden *sovereign debt* and for undertaking the task of deepening democracy through decolonization (Agozino, 2018). Further, an abolitionist approach can accommodate the testimony/knowledge of those most directly targeted by state violence (see Boochani, 2019; Dastile, 2019) in order disrupt the continuum that holds between normative disciplinary knowledge of law and crime with 'biopolitical, racial penal governance' (Palombo, 2019).

A call for love in law

With the violence against Indigenous and poor peoples across the world persisting as evidence of growing lovelessness, the call for love, especially as praxis within law, is urgent. We build on bell hooks' insight that there is a lack of 'public discussion and public policy about the practice of love in our culture'(2001, pp. 12–13) to argue that there is also an absence of theorization about the place of love within law, particularly as a critical decolonizing praxis. We also build on Erich Fromm's proposition that 'the principle underlying capitalistic society and the principle of love are incompatible' (quoted in hooks, 2001) to highlight the radical potential of an ethic of love for conjoined anti-colonial and anti-capitalist struggles. We hope that this special issue adds weight to the work of thinkers like Fromm, Martin Luther King Junior, and Merton who have always understood that love 'is the primary way to end domination and oppression. This politicization of love is often absent from today's writing' (hooks, 2001, p. 76). hooks reminds us that

> all the great movements for social justice in our society have strongly emphasised a love ethic. Yet young listeners remain reluctant to embrace the idea of love as a transformative force. To them, love is for the naïve, the weak, the hopelessly romantic. (2001, pp. xviii–xix)

If hooks identifies the cynicism of young people towards love, Agozino (2019) foregrounds their unambiguous critique of power through their articulation of 'fuck the law'. Theorists must take note. This is a decolonizing discourse of law.

But it is not just young people who refuse to engage with love as politically transformative. This refusal is evident in much academic thinking and writing perhaps because love is too often relegated to the emotional realm and not seen as a legitimate aspect of academic inquiry. This persists despite much literature concerned with disrupting binary hierarchies of value. This may be particularly the case in disciplines like law which self-narrate as being characterized by rationality, objectivity, and reason and in criminology which is bound up with punishment and penalty (Palombo, 2019). Perhaps love is also systematically ignored and untheorized because it seems to elude definition (Loughnan, 2020). This is despite the fact that the work of defining and charting new ways of seeing and understanding the world is a defining characteristic of academic work. hooks asserts that

> definitions are vital starting points for the imagination. What we cannot imagine cannot come into being. A good definition marks our starting point and lets us know where we want to end up … we need a map guide us on our journey to love- starting with the place where we know what we mean when we speak of love. (2001, p. 14)

And as Agozino argues (2019) if rocket science can be studied, learned, and practiced, love cannot logically be seen to be beyond the reach of scholars. Love can be a choice, a practice, a verb (hooks, 2001) and so it follows that it can be a guiding ethic in how legal structures need to be rethought and how the law needs to be practiced as a mode of decolonization. Loughnan (2020) argues that the 'ethical art of listening' would be a critical aspect of what love in law might look like.

A call for love studies: 'the heart of justice is truth telling'[3]

bell hooks writes that 'Our nation is … driven by sexual obsession … yet schools for love do not exist' (2001, p. xxviii). The papers collected in this special issue have justice at their heart. All reveal the persistence of colonialism across a range of legal, political, and national sites and within the disciplines of law and criminology. Some go further to call for an abolition of colonising practices and knowledge systems and since these systems are violent, it is an act of love to do so. The central paper of this special issue is '*Fuck the Law': Decolonizing Nomophilitis with the Discourse of Love* by Biko Agozino which questions the assumption that global cultures and especially Indigenous peoples are to be civilized and modernized by being subjected to the rule of European law, under racist, patriarchal imperialism as a result of centuries of dehumanizing conquest, genocide, slavery, apartheid, and colonization. Agozino raises the additional question of whether young people around the world are crazy for giving the middle finger salute to the empire of law or whether defiant Hip Hop artists may be expressing understandable decolonization discourse against legal imperialism without criminologists and legal scholars being aware. He concludes that decolonization-centricity in legal discourse will involve the extension of the ethic of love to the institutions of the state and to research methodologies to such an extent that any law made or enforced and any methodology or economy devoid of love at the heart or centre of it would be deemed to be fatally flawed and deserves to be erased through abolitionism or decolonization. True love in policy discourse comes from the acknowledgement that a lot of injustice has been done to people of African descent, Indigenous

peoples, poor women, and poor workers by the colonialist systems of racism-sexism-classism. Love praxis involves the compassionate search for reparative justice in recognition of the enduring legacies of centuries-old oppressive practices.

In *Can Property Be Justified in an Entangled World?* Margaret Davies focuses on the liberal institution of private property which she reveals is based upon a view of the natural order that prioritizes the individual human being over our social existence and over our nonhuman others. Davies reveals how colonial expansion was enabled in part by the misrecognition and denigration of indigenous land management practices and asks whether it is possible to imagine the decolonization of property?

Maria Giannacopoulos and Claire Loughnan in '*Closure*' *at Manus Island and Carceral Expansion in the Open Air Prison* reveal that far from ending the imprisonment of refugees, the closure of Manus camp following a PNG judicial ruling has facilitated the expansion of the imperial carcerality that has characterized Australia's immigration detention policy since 1992. By revealing how refugee incarceration has been extended and offshore processing instantiated following the closure of Woomera camp in 2003, Giannacopoulos and Loughnan argue that official closures of refugee camps Woomera and Manus have been constitutive of carceral expansion that is imperial in form and that reiterates patterns of colonial violence.

Behrouz Boochani, award-winning novelist of *No Friend but the Mountains: Writing from Manus Prison* (2018) written via text message while imprisoned on Manus Island since 2013, has offered a poem for this special issue titled *Freedom in a Cage*. This poem stands as a powerful testimony to the embodied effects of violent law. Omid Tofighian who has collaborated extensively with Boochani offers a companion article titled *Introducing Manus Prison Theory: Knowing Border Violence*. Here Tofighian argues that Manus Prison theory is a coherent intellectual, creative and political project inspired by four years of ongoing research and organizing between Behrouz Boochani and Tofighian in what they refer to as a shared philosophical activity. Manus Prison theory they argue exposes how border violence is rooted in Australia's colonial imaginary and pervades socio-political structures and institutions.

In *Criminology 9/11* Willem de Lint argues (2019) that 9/11 is a historically significant, high profile event which he classifies as an 'apex crime'. Apex crimes are, according to de Lint a subtype of political crime in which the ideological order, official narrative, contested and problematic forensics and third party review are each constitutive features. De Lint's paper reveals an absence of serious academic engagement with 9/11 as a crime event which is indicative of a lack of critical scrutiny of high-level political crimes in criminological discourse. This he argues gives a pass to one of the most significant crime events in the past 50 years.

In *Racial Penal Governance in Australia and Moments of Appearance: Disrupting disappearance and visibilising women* Lara Palombo considers the lives of women that are invisibilised by the racial penal governing mechanisms of the settler state. She demonstrates how a racial penal governance is configured historically by its interlockings with multiple and hierarchical systems of oppression that intervene differently in the lives of Aboriginal and Torres Strait Islander people and women, convict women, racialised diaspora and marginalized white women. Her paper engages with four 'moments of appearances' that interrupt and speak back to racial penal governance. These are embodied moments that make lives in prisons appear and matter.

In Law, Love and Being in Relation Claire Loughnan takes up Agozino's call for love to inform justice but warns that the call for love is not as simple as it appears. In responding to Agozino's call Loughnan argues for an appreciation of love which avoids collapsing love into 'protection' and affection, and which engages with the Aboriginal World View described by Wakka and

Kombumerri scholar, Mary Graham. Loughnan offers two stories by young people in their encounters with the criminal justice system in Australia to explore the concrete potential for, as well as limitations upon, love in social and institutional settings. Such work is especially urgent in Australia and in other settler-colonial states, Loughnan argues, where the dispossession of First Nations peoples continues to underwrite the institutions and processes of the state, contributing to ongoing harm including death, in the name of 'protection'.

Ongoing colonial legacies affecting women in the South African prison context are traced by Nontyatyambo Pearl Dastile in *Isinangananga versus imbobo: negotiation of intimacy in South African female correctional centres*. Her paper explores the narratives of women's involvement in both same-sex and heterosexual relationships within the prison context in order to redress the fact that the subjective experiences of incarcerated women's negotiation of intimacy are swept under the carpet and not written about. This she says is a legacy from colonial times and is continued to the present day in criminological discourses.

Ahmed Salehin and Laura Vitis in *Cruising, space and surveillance: decolonizing sexuality in Singapore* (2019) argue that the policing of homosexuality in Singapore through legislation and public policy are imbued with colonial legacies that have enshrined heteronormative values within its public sphere. They reveal that despite this, communities within new online spaces in Singapore disrupt the heteronormative surveillance efforts deployed by the state within public, family, and political landscapes and become a form of everyday resistance that characterizes modern-day efforts to decolonize sexuality in Singapore.

Notes

1. https://www.theguardian.com/us-news/2019/jun/27/donald-trump-says-much-can-be-learned-from-australias-hardline-asylum-seeker-policies.
2. https://www.smh.com.au/politics/federal/antiislam-campaigner-geert-wilders-video-replicates-controversial-no-way-campaign-20151002-gjzigx.html.
3. hooks (2001)

Disclosure statement

No potential conflict of interest was reported by the author.

Notes on contributor

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References

Agozino, B. (2018). The withering away of the law: An indigenous perspective on the decolonisation of the criminal justice system and criminology. *Journal of Global Indigeneity*, *3*(1).

Agozino, B. (2019). Fuck the law: Decolonizing nomophilitis with the discourse of love. *Globalizations*. doi:10.1080/14747731.2019.1651814

Boochani, B. (2019). Poem: Freedom in a cage. *Globalizations*. doi:10.1080/14747731.2019.1702335

Davies, M. (2019). Can property be justified in an entangled world? *Globalizations*. doi:10.1080/14747731.2019.1650696

Dastile, N. P. (2019). Isinangananga versus imbobo: Negotiation of intimacy in South African female correctional centres. *Globalizations*. doi:10.1080/14747731.2019.1668711

Giannacopoulos, M. (2011). *Nomophilia* and Bia: The love of law and the question of violence. *Borderlands*, *10*(1).

Giannacopoulos, M. (2017). Sovereign debt crises, referendums and the changing face of colonial power. *Continuum*, *31*, 33–42.

Giannacopoulos, M. (2019). "Your laws are killing us": The death of Kumanjayi Walker and the crisis of colonial law. Retrieved from https://www.abc.net.au/religion/the-death-of-kumanjayi-walker-and-the-crisis-of-colonial-law/11722836

Giannacopoulos, M., & Loughnan, C. (2019). 'Closure' at Manus Island and carceral expansion in the open air prison. *Globalizations*. doi:10.1080/14747731.2019.1679549

hooks, b. (2001). *All about love: New visions*. New York: William Morrow.

de Lint, W. (2019). Criminology 9/11. *Globalizations*. doi:10.1080/14747731.2019.1655933

Loughnan, C. (2020). Law, love and being in relation. *Globalizations*. doi:10.1080/14747731.2019.1702302

Palombo, L. (2019). Racial penal governance in Australia and moments of appearance: Disrupting disappearance and visibilizing women on the inside. *Globalizations*. doi:10.1080/14747731.2019.1700047

Salehin, A., & Vitis, L. (2019). Cruising, space and surveillance: Decolonizing sexuality in Singapore. *Globalizations*. doi:10.1080/14747731.2019.1661159

Tofighian, O. (2020). Introducing manus prison theory: Knowing border violence. *Globalizations*. doi:10.1080/14747731.2020.1713547