

**Racial Warfare and the Northern Territory Intervention:
Security, Colonial Law and Indigenous Sovereignty**

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Abstract

Racial Warfare and the Northern Territory Intervention: Security, Colonial Law and Indigenous Sovereignty

On the 21st of June 2007, Prime Minister John Howard launched a war-like incursion, the so-called Northern Territory Intervention, into seventy-three Aboriginal communities across Northern and Central Australia. This Intervention raises critical questions about race, colonial law and Indigenous sovereignty. In critically examining the Intervention, this thesis is oriented by two key research questions: How does the Intervention reproduce racial warfare? How does whiteness work to reassert, legitimate and secure settler-colonial possession of unceded Indigenous sovereignty over country? Drawing on settler-colonial, critical race and whiteness, and critical legal theories, I argue that the Intervention cannot be conceptualised as ‘exceptional’ or ‘extraordinary.’ Rather, it demonstrates the ways in which the legal fiction of *terra nullius* continues to operate in the context of the contemporary settler-colonial state. I thus situate the Intervention within a genealogy of colonial violence that includes the Hindmarsh and Wik cases of the 1990s. Both these landmark cases, I argue, expose how white law is, despite the *Mabo Native Title Act* (1993), still foundationally underpinned by *terra nullius*.

In the latter part of my thesis, I proceed to examine how the Intervention also exposes transnational regimes of power that connect Australian settler-colonialism to larger imperial formations. In order to evidence this argument, I examine how Australia’s anti-terror laws, amended at the time of the Intervention, and the violent imposition of neoliberal values into Aboriginal communities effectively functioned to position targeted Aboriginal subjects within biopolitical networks that connect them to such seemingly remote sites as Afghanistan and the Solomon Islands. In pursuing the foundational role of race, specifically, whiteness, within the political and juridical infrastructure of the settler-colonial state, I focus on how it scripts targeted Aboriginal subjects and spaces as ‘threats’ that can be lawfully eliminated in the name of the white state’s ‘security.’ The securitisation of the state, through biopolitical regimes of governmentality, works, I conclude, to ensure the self-preservation and reproduction of the settler-colonial order.

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Abbreviations

ABC	Australian Broadcasting Commission
ACC	Australian Crime Commission
AFP	Australian Federal Police
ALS	Aboriginal Legal Service
ATSIC	Aboriginal and Torres Strait Islander Commission
CERD	International Convention for the Elimination of All Forms of Racial Discrimination
CDEP	Community Development Employment Programs
GBM	Government Business Manager
HEROC	Human Rights and Equal Opportunities Commission
IDG	International Deployment Group
NATSILS	National Aboriginal and Torres Strait Islander Legal Service
NIITF	National Indigenous Violence and Child Abuse Intelligence Task Force
NTNER	Northern Territory National Emergency Response
RCIADIC	Royal Commission into Aboriginal Deaths in Custody
RDA	Racial Discrimination Act 1975
SBS	Special Broadcasting Service
SIHIP	Strategic Indigenous Housing Infrastructure Program

Candidate Declaration

This statement is to certify that this work has not been submitted for a higher degree to any other university or institution. All work contained in this document is original and my own, unless otherwise acknowledged.

Jillian Kramer
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Publications

The following publications emanated from this study:

Kramer, Jillian (2012). 'Protecting White Australia: John Howard's announcement of the Northern Territory Emergency Response and the ongoing Colonial Project,' *NEO: Journal for Higher Degree Research Students in Social Sciences and Humanities*, v.3.

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Introduction

We are writing as community members of the Mutitjulu Aboriginal community the traditional custodians of Uluru, to complain about a series of recent reports aired on your Lateline program. Lateline's campaign commenced with a series of recent reports aired on your Lateline program on the 21st of June 2006 and has continued with a series of self-serving reports and adverse comments ...

One can only imagine that Lateline believed they could get away with this outrageous personal and communal slur on the basis that the Indigenous population are so disenfranchised that they would never have the ability to fight back.

Giusseppe and Randall (2006), *Letter to the Australian Broadcasting Commission, Audience and Consumer Affairs Department*, pp. 1 & 9

With this letter, Mario Giusseppe and Dorathea Randall (2006) began their fight against misrepresentations of their community as a disaster zone controlled by 'drug dealers and petrol warlords and the paedophiles' (Andrews 2006). They wrote to the *Australian Broadcasting Commission* [ABC] to call for an investigation into a story featured on one of its premier news programs, *Lateline*, entitled 'Sexual Slavery Reported in Indigenous Community.'¹ This story was one in a series that followed after the Alice Springs Crown Prosecutor Nanette Rogers and Indigenous Affairs Minister Mal Brough appeared on the program and asserted that Indigenous communities were regressive sites pervaded by paedophilia, 'customary' violence and sexual abuse. As Giusseppe and Randall (2006) argue, it relied in part on the evidence of a so-called 'Anonymous Former Youth Worker' who testified that he saw: 'women coming to meetings with broken arms, or with screwdrivers or other implements through their legs' and Aboriginal men who 'get young girls and bring them back to their community and keep them as sex slaves' (Andrews

¹ As *Crikey* and the *National Indigenous Times* reported, the title of this story was altered following the complaint to 'Sexual Abuse Reported in Indigenous Communities (See Kerr, C & Black 2006).

2006).² Reporter Suzanne Smith echoed the tenor of this testimony. After framing Mutitjulu as a theatre of war within which Aboriginal people were ‘fighting a battle for survival,’ her final claim that ‘time is running out for the Indigenous children of Australia’s Red Centre’ appealed for a ‘rescue’ mission (Smith, S 2006).

Giusseppe and Randall establish, however, that *Lateline*’s report was marked by a series of sensational and calculated fabrications that amounted to an ‘outrageous personal and communal slur’ against the Aboriginal people of Mutitjulu (2006, p. 9).³ They write:

Lateline mislead its viewers by falsely describing Greg Andrews as a ‘former youth worker’ in it’s [sic] original June 21, 2006 broadcast. Mr Andrews has actually never worked as a youth worker neither at Mutitjulu nor anywhere else, a fact eventually conceded by *Lateline* and Mr Andrews. Mr Andrews is an Assistant Secretary in the Office of Indigenous Policy Coordination. His Minister is Mal Brough, Indigenous Affairs. This fact was well known to *Lateline* prior to the broadcast of its story. In addition to this, Mr Andrews’ identity was concealed on the program with his face blacked out and his voice digitally altered. He made statements on the program that backed Mr Brough’s comments about paedophile rings. (2006, pp. 4-5)

As Giusseppe and Randall demonstrate, *Lateline*, Greg Andrews (the anonymous youth worker) and Brough colluded in order to misrepresent Mutitjulu.⁴ They effectively criminalised Aboriginal men and depicted the Aboriginal community as a space of lawlessness, despair, criminality and sexual slavery.⁵

² Another key witness in the *Lateline* story has since been discredited, see Graham (2012).

³ For a full list of the fabrications that mark *Lateline*’s report see the remainder of Giusseppe and Randall’s (2006) letter, in particular pages 3-7.

⁴ It would later be revealed that Andrews also provided Brough with a ministerial briefing that detailed what he was going to say on the program. This brief was embellished in his performance (See Graham 2012).

⁵ Giusseppe and Randall also reveal that the Police did not corroborate such stories: ‘The head of a Northern Territory police taskforce set-up specifically to investigate the claims aired on *Lateline*, Superintendent Colleen Gwynne, told media on July 14, 2006 that after interviewing almost 300 people in Mutitjulu, police believed the *Lateline* claims were over-stated and that there was ‘no evidence whatsoever’ to support claims petrol had been traded for sex with young children’ (2006, p. 7).

Yet, Andrews's allegations not only attempted to substantiate Brough's earlier claim that paedophile rings operate in every Aboriginal community across the Northern Territory; they also served to validate punitive Government policies. Drawing on longstanding historical representations of Aboriginal people as 'primitive,' 'anarchic' and in need of 'protection' and 'civilisation,' Andrews and Brough reproduced a racial arsenal that would be leveraged in the weeks and years that followed in order to prepare the ground for a series of Government interventions. Six days after the initial story about the community went to air, Brough held a national 'Summit on Violence and Child Abuse' and pledged \$130 million to State and Territory Governments to address 'issues of law and order' within Aboriginal communities (Anthony 2013; Khadem & Gordon 2006). \$40 million was allocated to fund police stations in remote Aboriginal communities and a further \$15 million was assigned to the Australian Crime Commission [ACC] in order to establish a National Indigenous Violence and Child Abuse Intelligence Task Force [NIITF] (Brough 2006; Khadem & Gordon 2006). The provision of this funding was predicated on two conditions. First, the Federal Government required the States and Territories to match the funding. Second, it required them to amend their respective laws in order to ensure that 'customary law' and 'cultural practices' could not be considered in sentencing (Anthony 2013; Hunter & Huggins 2006).⁶ In this political context, Brough also called upon the Northern Territory Government to 'act.' The Territory launched an investigation into child abuse in Aboriginal communities and commissioned the *Ampe Akelyernemane Meke Mekarle (Little Children are Sacred) Report* (Wild & Anderson 2007).

National Emergency

One year later, Andrews and Brough's racial arsenal was further sensationalised and exploited on the national stage. Following the release of the *Little Children are Sacred Report*, the Australian Prime Minister John Howard and Brough declared a 'national emergency' in Aboriginal communities across Northern and Central Australia (Howard & Brough 2007). While overlooking the substance of the report, they once again sought to misrepresent Aboriginal communities such as Mutitjulu as lawless and entrenched in 'customary' violence; they proposed that Aboriginal children must be rescued. Against the backdrop of headlines such as 'Martial Law' and 'War on Child Abuse,' the Government

⁶ The Federal Government also enforced the latter measure with the passage of the *Crimes Amendment (Bail and Sentencing) Act 2006*.

announced its ostensibly ‘radical, comprehensive and highly interventionist’ plans to ‘establish law and order,’ ‘good governance’ and ‘normality’ in seventy-three targeted Aboriginal communities (Adlam & Gartress 2007, p. 1; Farr 2007a, p. 5; Howard & Brough 2007). The military and additional police were deployed to ‘move in’ and ‘take control’ of targeted Aboriginal communities (Howard 2007c). These forces were charged with implementing a suite of ‘emergency measures’ that not only sought to regulate and control the everyday lives of over 45,000 targeted Aboriginal people; they also set out to coerce targeted Aboriginal people and their land into the so-called ‘real economy’ (Brough 2007b, p. 9). The Government compulsorily reacquired communally owned Aboriginal land on five year leases, imposed alcohol and pornography bans and ordered that children undergo a medical examination. It also sought to obliterate communal land title, promote private home and land ownership and insert communities into the neoliberal marketplace. Compulsory income quarantining was imposed, the Community Development Employment Program [CDEP] and permit system were abolished and Government Business Managers [GBMs] were sent to seize control of each community’s assets and organisations, such as earthmovers, equipment and buses. These moves were heralded on the front-page of the nation’s only national newspaper, the *Australian*. Below the headline ‘Crusade to Save Aboriginal Kids,’ Nicolas Rothwell wrote in glowing terms: ‘the “emergency response” aims at establishing nothing less than a new social order in the bush. This is human engineering on the grand scale’ (Karvelas 2007b, p. 1; Rothwell 2007b, pp. 1-2).

In this thesis, I pursue the racialised regimes of power that underlie this ‘Emergency Response.’ I argue that the settler-colonial state’s attempt to create a so-called ‘new social order in the bush’ cannot be conceptualised as either exceptional or extraordinary; on the contrary, it is implicated within a genealogy of colonial violence that can be tracked back beyond the release of the *Little Children are Sacred Report* and the events of 2006. This policy represents a continuation of forms of racial warfare instantiated with the originary assertion of *terra nullius*. I argue that it reveals how the racial arsenal inscribed in this legal fiction continues to operate within laws, political discourse and media texts in the context of the contemporary settler-colonial state. More specifically, it reveals how race and, in particular, whiteness work as an a priori within the state’s political, juridical and economic infrastructure in order to reassert, legitimate and secure possession of unceded Indigenous country. I argue that this policy also exposes the transnational regimes of

power that connect Australian settler colonialism to larger imperial formations. As the state amends anti-terror laws and attempts to impose neoliberal values within targeted Aboriginal communities, it reproduces biopolitical regimes of governmentality. The policy scripts targeted Aboriginal subjects and spaces as ‘threats’ that can be lawfully obliterated in the name of the white state’s security. It demonstrates the ways in which the securitisation of the state works to ensure the preservation and reproduction of the settler-colonial order.

Before I proceed to outline the theoretical apparatuses that orient my argument, I want to pause and mark my relationship to the argument that unfolds. As a privileged white woman, I am not a neutral or passive observer; I am a constitutive part of the settler-colonial order. The arrival of my family on the land of the Butchulla people – now known as Maryborough, Queensland – in the mid 1850s is directly attributed to the assisted migration scheme of the time that encouraged skilled Germans, such as carpenters and midwives, to relocate to the colony in order to expand the white frontiers and ensure white ‘racial purity’ on the continent (Curthoys 1973; Markus 1988).⁷ As Aileen Moreton-Robinson argues in *Talkin’ Up to the White Woman*: ‘white middle-class women’s privilege is tied to colonisation and the dispossession of Indigenous people. Notions of race are closely linked to ideas about legitimate ownership and formation of the nation, with whiteness and nationality woven together’ (Moreton-Robinson 2000). In the work that follows, then, I want to direct my analysis in order to contest and interrogate representations of whiteness that attempt to assert, legitimate and secure white possession of Indigenous country. I want to ask a series of questions: how does the Intervention construct white Australians? How does it perpetuate colonising narratives that script white subjects as ‘benevolent’ and ‘civilised’ protectors? How does it reproduce the analytics of raciality inscribed in the legal fiction of *terra nullius* in order to position white subjects as legitimate sovereigns?

Indigenous Sovereignty Over Country

⁷ During that period, Ann Curthoys argues that the race crucially important in: ‘[D]efining who was to be considered alien to and irrevocably outside colonial society, and who was to be included in it, was confirmed. “Race,” which had been used to explain ... the “high” level of civilisation and ability to assimilate of non-British Europeans’ (1973, p. 594).

As I proceed to answer these questions, I take my point of departure from Irene Watson's (2009a) analysis of Howard and Brough's policy and the colonial laws that preceded it. In the title of her article, Watson poses a compelling question that simultaneously confronts and disables the racialised narratives that work within political, legal and media texts in order to frame the 'Emergency Response' as a crusade to protect Aboriginal children. She asks of the policy: 'What is Saved or Rescued and at What Cost?' (2009a, p. 45). As this question dismisses official representations and seeks to identify 'what' is rescued, Watson brings into focus precisely what is at stake in moments of colonial violence such as *Lateline's* misrepresentation of Mutitjulu, Andrews and Brough's collusion and the laws that were produced in the days and years that followed. She situates the policy within the context of the white invasion, colonisation and the continued occupation of unceded Indigenous country in order to argue that it functions to protect the legitimacy of the settler-colonial Australian state. This argument relies on a critical premise that underlies Watson's work; in spite of the originary violence that lies in the state's legal foundations, she argues that Aboriginal law 'breathes slightly beneath the colonising layers, not asleep or dying but breathing gently under the crushing and burying layers' (2002b, p. 266). As such, she argues, that the settler-colonial state consistently attempts to forcibly extinguish Aboriginal laws.

Against this backdrop, the Emergency Response is of crucial importance. As Watson writes:

The foundation of the Australian colonial project lies within an "originary violence," in which the state retains a vested interest in maintaining the founding order of things. Inequalities and iniquities are maintained for the purpose of sustaining the life and continuity of the state. (Watson 2009a, p. 45)

Watson demonstrates that the 'Emergency Response' must be situated historically in order to identify the ways in which it reproduces longstanding asymmetries of power that were trammelled into the continent with the foundation of the white state. She argues that Howard and Brough's measures stand to perpetuate inequality within targeted Aboriginal communities; as they materially exacerbate the chronic poverty, the deprivation of appropriate services and the misrepresentation of targeted Aboriginal communities as lawless, these measures also attempt to undermine the ongoing exercise of Indigenous laws

and to legitimate the white state's claims to sovereignty. The Australian state is posited as a benevolent sovereign that must assume ownership and control of Indigenous country in the name of protection.

Race War

In this thesis, I aim to extend Watson's argument that the Emergency Response must be situated historically. I argue that it not only operates in order to maintain foundational moments of colonial violence that protect the white state's claims to legitimate sovereignty; in line with Michel Foucault's (1991a, 1998, 2004) understanding of racial warfare, I argue that the settler-colonial state uses race to position the policy as a means to 'protect' and 'secure' the white Australian population. In his genealogy of European warfare, Foucault tracks the evolution of sovereign power and marks its imbrication with racism and colonialism. More specifically, he argues that sovereign power transformed throughout the seventeenth, eighteenth and nineteenth centuries. Once encapsulated by the symbol of the sword, the sovereign's power to '*take life or let live*' – and thus their ability to control subjects through the constant threat of death – '*diminished*' (Italics in original; Foucault 1998, p. 138&5). In its place, two complementary forms of power emerged. The first, labelled disciplinary power, is antithetical to the sovereign power that preceded it. Informed by disciplines such as the human sciences, this form of power works through the regulatory mechanisms imposed by state institutions such as schools, hospitals and prisons. It reconfigures the population, once imagined as a 'single uniform mass,' into individual bodies that function as both 'objects and as instruments' of control (Foucault 1991a, p. 170). As Foucault explains, subjects become enmeshed within a 'political anatomy' that envisages each 'individual' as a machine that must be normalised in order to 'increase their productive force' (1991a, p. 138; 2004, p. 242). He argues: 'one of the basic tools for the establishment of industrial capitalism,' disciplinary power surveils, hierarchises and trains the individual 'in order to obtain an efficient machine' that is productive and subservient (1991a, p. 164&38).

In the late eighteenth and early nineteenth centuries, a second form of power emerged to complement this process: biopower. While disciplinary power attempts to produce efficient and docile individuals, this new form of power seizes control of 'the biological and biosociological processes characteristic of the human masses' (Foucault 2004, p. 250). Biopower, Foucault argues, implicates the subject's biological life within complex

mechanisms of intervention and regularisation. Their body – including their health, physical characteristics, fertility rate, illness rate and death – become the ‘object of a political strategy’ that works to guarantee hegemonic forces (Foucault 2007, p. 1). This biopolitics of the population draws on disciplinary apparatuses in order to sustain its power. On the one hand, biopower is informed by disciplines such as the human sciences. As Foucault explains, this form of power exploits ‘knowledge-power as an agent of the transformation of human life’ (1998, p. 143). The body is exposed to biological discourses that both constitute and seek to control it. On the other, biopower also colonises the state’s disciplinary infrastructure. Foucault argues that biopower ‘dovetails’ into disciplinary power, ‘us[ing] it by sort of infiltrating it, embedding itself in existing disciplinary techniques’ (2004, p. 242). Biopolitical and disciplinary regimes operate concurrently within state institutions. These twin poles of power supersede ‘the old power of death that symbolised sovereign power’ (Foucault 1998, p. 139). ‘One might say,’ Foucault explains, ‘that the ancient right to *take* life or *let* live was replaced by a power to *foster* life or *disallow* it to the point of death’ (Italics in original; 1998, p. 138). Technologies of power are reoriented toward governing bodies at an organism and species level while also neutralising – and demanding the death of – internal threats.

In order to draw out the significance of this transformation, Foucault poses a pivotal question: ‘How, under these conditions, is it possible for a political power to kill, to call for deaths, to demand deaths, to give the order to kill, and to expose not only its enemies but its own citizens to the risk of death?’ (2004, p. 254). The answer, he argues, is racism. In his 1975-76 lecture series – *Society Must be Defended* – Foucault marks a rupture in the historical function of racism. He suggests that prior to the nineteenth century, race was prefaced on aristocratic ‘symbolics of blood,’ lineage and legitimacy. It sustained a binary form of warfare between opposing groups, such as the conquerors and the conquered, who sought sovereignty of specific territories. After the emergence of biopower, however, these lines of conflict were redrawn. Racism morphs into a ‘basic mechanism of power’ that serves the settler-colonial state in two ways (2004, p. 254). First, it fragments the population. Drawing on ideas of lineage and new scientific disciplines, racism installs additional ‘caesuras within the biological continuum addressed by biopower’ (2004, p.255). It produces race as a categorical object that consigns subjects to a hierarchy. Second, racism comes to authorise the bloody practice of ‘colonising genocide’ (2004, p. 257). Informed by the emergent theories of degeneracy and evolution, the racial hierarchy

prescribed by biopower is operationalised by a new relationship of warfare is political and biological, that is, biopolitical. Those at the top of the hierarchy are rendered the more biologically 'superior' race, while those at the bottom are rendered 'inferior threats' to survival. As a result, Foucault explains, the sovereign authorises the extermination of those deemed 'inferior' as a means 'of [not only] improving one's own race by eliminating the enemy race... but also as a way of regenerating one's own race' (2004, p. 257). His theoretical framework maps the biopolitical infrastructure that – traversed by racist and colonial discourses – comes to constitute the modern Australian state.

Whiteness

It is necessary to mark, however, an omission that is particularly relevant in the context of white Australia's history and the Emergency Response. In *Race and the Education of Desire* (1996), Ann Laura Stoler argues that his genealogy of racism is limited by its geographic specificity. Foucault's account of the transformation from decentred 'race struggle' to 'racism' conceived in biological terms is based exclusively on internal disputes throughout Europe. It occludes the processes of colonialism and the discourses of race that manifested in spaces of colonisation. Stoler cites the division between black slaves and white masters that formed throughout the 1600s in the American south, to suggest that 'there is good evidence that the discourses of race did not have to await mid-nineteenth-century science for their verification' (1996, p. 27). The racial discourses at work within biopower, then, are not solely derived from notions of aristocratic dissent but also from colonial technologies of exploitation and expansion. In her analysis, Stoler suggests that Foucault's understanding of biopower must be recalibrated to include the racial agendas that are specific to colonial spaces.

In the work that follows, I ground Foucault's understanding of biopower in the context of the *contested* Australian settler-colonial state by situating it alongside Aileen Moreton-Robinson's analysis of whiteness and Indigenous sovereignty over country (2000, 2004a, 2004b, 2006, 2007). In *Towards a New Research Agenda? Foucault, Whiteness and Indigenous Sovereignty* (2006), Moreton-Robinson explores Foucault's understanding of sovereignty, race and warfare. She argues:

While the limitations of Foucault's work on colonisation have been addressed by a number of postcolonial theorists, most fail to pursue the specific ramifications of these limitations on our understanding

of the issue of Indigenous sovereignty. In contrast, I believe the use of Foucault's idea of biopower to explicitly address the context of a 'postcolonising' nation will produce a new understanding of how Whiteness operates through the racialised application of disciplinary knowledges and regulatory mechanisms ... to preclude recognition of Indigenous sovereignty (Moreton-Robinson 2006, p. 387)

Moreton-Robinson identifies the limitations of Foucault's analysis in order to open up the space to develop crucial links between biopolitical processes and the operation of whiteness under the Emergency Response. As I outline in Chapter One and Two, Moreton-Robinson argues that whiteness is a regime of power that emerges from the nexus between disciplinary techniques, biopolitical mechanisms and racial and colonial discourse. It works through racialised regimes of knowledge production embodied in fields such as biological sciences, anthropology and history in order to produce representations that construct white people as civilised and non-raced. Following Foucault, Moreton-Robinson argues that whiteness operates within modes of sovereign warfare that have worked unabated within the practices of everyday Australian life.⁸

After implicating whiteness within forms of racial warfare specific to the Australian context, Moreton-Robinson calls on scholars to expose the ways in which it perpetuates racial warfare:

The task today is to name and analyse whiteness in all texts to make it visible in order to disrupt its claims to normativity and universality ... Whiteness as a regime of power that secures hegemony through discourse has material effects on the entire social structure and is an area of study worth of investigation and critique. (2004b, pp. 87-8)

She argues that the act of naming whiteness brings into focus modes of knowledge production embodied in policies and laws that attempt to efface and elide Indigenous

⁸ Moreton-Robinson outlines a more specific regime of power – the possessive logic of patriarchal white sovereignty – that is grounded in the legal fiction of *terra nullius*. This regime will be discussed in Chapter One.

sovereignty over country. Tracing this process back to the Enlightenment period, she argues that the ‘disembodied way of knowing’ practiced by the white men throughout the West was predicated on finding and measuring the unknown against the known (2004b, p. 76). This practice produced a schema ground in dualisms – the unknown/known, abnormal/normal, uncivilised/civilised, raced/non-raced, sovereign/non-sovereign. The advent of modernity and subsequent attempts to devise universal notions of humanity compound this division. Drawing on the work of Warren Montag (1997), Moreton-Robinson argues that whiteness becomes ‘constitutive of the epistemology of the West... [It] provides for a way of knowing and being that is predicated on superiority’ (Moreton-Robinson 2004b, pp. 75-6). This process of universalising whiteness as normative and supreme mutates and adapts to specific historic and geopolitical circumstances in order to perpetuate – and materially enforce – white supremacy. Moreton-Robinson argues that white epistemology deploys race as a categorical object in order to exclude racialised subjects as rights bearing subjects. It defines the parameters of knowledge production, offering definitions of the ‘Other’ that are inscribed with disciplinary and biopolitical power and thus mobilised within policies such as the Emergency Response to (re)instantiate white sovereignty.

Raciality

In my analysis of this policy, I draw on Denise Ferreira da Silva’s (2001, 2007, 2009) reconceptualisation of race in order to amplify Moreton-Robinson’s understanding of whiteness. As I map in detail in Chapter Three, da Silva’s work stages an important departure from poststructural understandings of race – such as those of Moreton-Robinson (2006, 2004b) – that suggest it is a technology that works as an *a priori* to exclude racialised subjects. Drawing on her analysis of the ways in which philosophical, scientific and national texts have produced race since the eighteenth century, she argues that it should not be conceptualised as an apparatus of exclusion (See da Silva 2007). For da Silva, it is not an apparatus that invokes ‘difference’ in order to produce, and later justify, the exclusion of target subjects from human rights and attendant legal frameworks. On the contrary, she argues that this understanding of race fails to recognise the way the analytics of raciality always already constitute so-called universal and normative laws and rights. The analytics of raciality, then, unravel the distinctions between race, law and sovereignty. Her understanding of race demonstrates that racial violence is always already justified in the context of settler-colonial states:

Racial violence, unleashed in the in/difference that collapses the administration of justice in/to law enforcement, immediately legitimating the state's deployment of self-preservation does not require the stripping off of the signifiers of humanity. On the contrary, this collapsing is always already inscribed in raciality (da Silva 2009, p. 234)

In the context of the Emergency Response, then, da Silva elucidates a crucial line of inquiry; race must be understood as a productive politico-symbolic arsenal that works as an *a priori* through political, juridical and economic infrastructure in the name of the settler-colonial state's self-preservation. As it produces whiteness—and white bodies and colonial laws—as always already lawful, ethical, self-determined and universal, it also necessitates specific modes of academic inquiry. As da Silva continues: 'I believe only by examining how the racial has produced the domain, *universality*, will it be possible to work towards the enlargement of the horizons of Justice' (Italics in original; 2001, p. 423).

As I proceed to explore the domain of universality reproduced by the Emergency Response, I also draw on Sherene Razack's (2004, 2011) theorisation of racial violence. Razack's work extends da Silva's (2009) conceptualisation of racial violence. Writing in the context of the Canadian settler-colonial state, she brings into focus the ways in which it not only works to preserve the state; it also consistently attempts to undermine Indigenous sovereignty over country. She argues that racial violence is constitutive of – and sanctioned within – colonial narratives:

Settler societies, like all imperial and colonial formations, depend upon specific racial narratives to install Europeans as the rightful owners of the land. The story of Aboriginal dysfunction, for example, confirms that Aboriginal people are not yet fit to enter modernity, and cannot then be entrusted with ownership of the land ... [It produces a space where] violence comes clothed in the language of improvement, a space through which the settler can come to know himself or herself as legitimate owner of the land through his capacity to improve Native Others. (Razack 2011, p. 89)

Razack demonstrates that racialised violence works within representations in order to both preserve and 'secure' white sovereignty. Inscribed in white laws, media texts, government policies and colonial practices, it scripts white subjects as supreme, benevolent and sovereign. It reproduces narratives that are elucidate the power relations that undergird the Emergency Response. Hinged on the notion that 'white knights' must 'civilise' backward and lawless Indigenous people, they attempt to legitimate the founding violence that belies the settler-colonial state's legal infrastructure and sovereignty (See Razack 2004).

Intervention

Following Razack (2011), then, I will no longer play into the narratives reproduced by Howard and Brough and refer to their policy as Emergency Response. I will call the policy by its colloquial name: the Intervention. In doing so, I do not want to reject or dismiss the incidences of child sexual abuse and violence identified by the *Little Children are Sacred Report* (Wild & Anderson 2007). It states that:

[T]he Inquiry has found clear evidence that child sexual abuse is a significant problem across the Territory. This view mirrors that of most of the individuals and organisations with whom the Inquiry has had contact and from whom submissions were received. (Wild & Anderson 2007, p. 57)

Wild and Anderson's finding that 'child sexual abuse is a significant problem across the Territory' is consistent with previous research carried out by Aboriginal women throughout the 1980s and early 1990s (Atkinson 2002; Moreton-Robinson 2009). Aileen Moreton-Robinson (2009) identifies numerous instances when Indigenous women have raised their concerns about child sexual abuse with local, state and federal governments.⁹ For example, she cites the 'Federation of Aboriginal Women's Conference in Canberra in 1982, the First Indigenous Women's Conference in Adelaide in 1989 [and] the Aboriginal

⁹ For analysis of the ways in which Aboriginal women's voices have been silenced and occluded by the settler-colonial state in the context of the Intervention see Moreton-Robinson's (2009) article *Imagining the Good Indigenous Citizen: Race War and the Pathology of Patriarchal White Sovereignty*. For a broader analysis of the ways in which research into these issues has been precluded, see Judy Atkinson's (2002) work. She has also reported to the Government on the issue of child sexual abuse within Aboriginal communities. During the 1980s and early 1990s, she argues that government officials would often disregard her research. She writes: 'I would receive troubling responses: "it's cultural. What can we do about it?"' (2002, p. 7).

and Torres Strait Islander Commission [ATSIC] National Women's Conference in Canberra in 1992' (2009, p. 71). On each of those occasions, Indigenous women attributed the rates of abuse and violence within their communities to issues such as intergenerational trauma and chronic underfunding of vital services such as healthcare (Moreton-Robinson 2009).

These findings demonstrate the importance of situating contemporary rates of child sexual abuse in their context of histories of colonial violence and contemporary forms of government regulation. In line with previous reports, for example, the *Little Children are Sacred Report* (2007) brings into focus the intergenerational trauma experienced within the Northern Territory. Following visits to forty-five Aboriginal communities, it states that:

During the consultations, the Inquiry was informed that many people are suffering from depression and a general lack of wellbeing. It heard that this is a result of a combination of the history of colonisation, 'intergenerational trauma' and present experiences of disempowerment, racism and trauma. Australia has a brutal history when it comes to the treatment of its Aboriginal people ... the Inquiry found that it is still fresh in the minds of Aboriginal Australians. This includes the sexual exploitation of Aboriginal women and children throughout colonisation. In more recent times, the 'stolen generation' were subjected to sexual exploitation and abuse. (Wild & Anderson 2007, pp. 138-9)

Wild and Anderson (2007) mark the material ramifications of recursive government policies that, as I will map in Chapter One, had violent effects and resulted in abuse and the Stolen Generations. These policies attempted to annihilate Aboriginal resistance to the white frontier and assimilate Aboriginal people into the white workforce. The trauma inflicted by these policies has been exacerbated by the failure of successive governments – at all levels – to provide infrastructure and fund necessary services. Aboriginal communities have been chronically underfunded and left without health care, appropriate housing and education infrastructure. The *Australian Medical Association Report Card 2007* on Aboriginal health, for instance, describes the government's failure to provide resources for Aboriginal people as 'criminal.' They report's authors argue that an

additional \$460 million dollars per year must be spent on Aboriginal health care, especially in the very programs abolished under the ‘Emergency Response:’ community controlled primary care (*Australian Medical Association Report Card Series 2007: Aboriginal and Torres Strait Islander Health* 2007, p. 6). In the work that follows, then, I do not want to dismiss the rates of child abuse and violence identified within targeted Aboriginal communities; rather, as I proceed to discuss, I want to situate the Intervention in the context of histories of ongoing racial and colonial violence in order to argue that this policy reproduces biopolitical regimes of governmentality that attempt to reconstitute, legitimate and secure the settler-colonial order.

Method and Outline of Chapters

In order to evidence this argument, I proceed to analyse a range of political, legal and media texts such as political speeches, legislation, newspaper articles and published interviews. While the theoretical frameworks outlined above inform my aim to track the ways in which the Intervention reproduces the settler-colonial order, the work of Foucault (1998), Penny Pether (1999) and Norman Fairclough (1992) guide the methods that I employ in order to analyse specific texts and tease out the ways in which racial and colonial discourse operate in this context. Their work suggests that performing an intertextual, linguistic and situated analysis (Pether 1999) of selected texts can productively highlight the ways in which discourses reproduce specific relations of power. Throughout his expansive body of work, Foucault (1998) explores and revises his understanding of this relationship between discourse, power and society. Often categorised as his archaeological work, his earliest accounts of discourse explore the ways in which it interlinks with other discursive practices in order to circulate, reproduce and constitute social formations (Fairclough 1992). In the work that follows, I draw on his later and extended genealogical analysis that implicates discourse within the disciplinary and biopolitical regimes of power mapped above (Fairclough 1992; Pether 1999). Specifically, I take my point of departure from Foucault’s argument that: ‘discourse is not simply that which translates struggles or systems of domination, but is the thing for which and by which there is struggle, discourse is the power which is to be seized’ (1984, p. 110). Foucault argues that discourse does not merely represent the manifold and conflicting regimes of power operative within society. On the contrary, he argues that the production of discourse is a technique of power. In other words, power works via the construction, reproduction and dissemination of tactical discourses that constitute subjects, institutions

and cultural domains. It thus renders texts politically charged sites of contestation that can expose underlying regimes of power and the ways in which they materially shape our society.

In *The History of Sexuality* (1998), Foucault expands on this understanding of discourse and, in doing so, brings into sharp focus the reason why I will use discourse analysis to track the racial discourses reproduced by the Intervention (Foucault 1984, p. 110). He writes:

Discourses are not once and for all subservient to power or raised up against it, any more than silences are. We must make allowance for the complex and unstable processes whereby discourse can be both an instrument and an effect of power, but also a hindrance, a stumbling-block, a point of resistance and a starting point for an opposing strategy. Discourse transmits and produces power; it reinforces it, but also undermines and exposes it, renders it fragile and makes it possible to thwart it. (1998, p. 100-101)

As Foucault gestures towards the ways in which power works via discourse to ‘produce,’ ‘transmit’ and ‘reinforce’ its authority and influence, his claim that discourse also exposes power relations, renders them ‘fragile’ and possible to ‘thwart’ compels my own discursive analysis. I argue that the political, legal and media texts that I analyse throughout this thesis ‘expose’ and open up for critique the ways in which racial and colonial power works via discourse in order to reproduce the settler-colonial order. On one level, as Fairclough argues, such discourse analysis has the potential reveal the ways in which power works through discourse to ‘contribute to the construction of systems of knowledge and belief’ (1992, p. 63). On another level, as Pether argues, intertextual discourse analysis also ‘makes visible the ways in which institutions and their discourses shape us’ (1999, p. 60). In this thesis, then, I use discursive analysis of selected texts in order to perform a non-linear exploration of the ways in which the Intervention reproduces ‘legitimizing fictions’ (Pether 1999) and scripts targeted Aboriginal subjects and spaces as ‘threats’ that can be lawfully eliminated in the name of the white state’s ‘security.’ As such, I analyse texts produced at very different times and across disparate landscapes in order to ‘join the dots’ and elucidate the way the analytics of raciality works consistently to reproduce racial warfare and reconstitute white sovereignty.

This thesis is delineated into three parts that aim to track the ways in which the Northern Territory Intervention works to (re)instantiate, legitimate and secure white possession of the continent. Before I proceed, however, I want to mark

my use of the words Indigenous and Aboriginal. Following Judy Atkinson's work (2002), I use the word Indigenous when identifying both Aboriginal and Torres Strait Islander Peoples. I use the term Aboriginal to identify the seventy-three Aboriginal communities within the Northern Territory that are targeted by the Intervention. I also want to mark that I have departed from one traditional referencing practice when citing media and governmental texts. In order to identify precisely who should be attributed to particular quotes, I have always identified the individual rather than the organisation that published the material in the in-text references. For example, when citing Hansard I do not attribute particular quotes to the House of Representatives or Commonwealth Government. Instead, I cite the specific politician who made the quoted comments. I have done this to ensure that specific politicians are held responsible for their words. In the context of the Intervention, some of their words stand as examples of biological forms of racism and moments of symbolic violence.

Part One of the thesis, *(Re)Instantiating White Sovereignty*, is comprised of two chapters that aim to chart the ways in which the illegal fiction of *terra nullius* is consistently (re)instantiated by the settler-colonial state. In Chapter One, I introduce Moreton-Robinson's (2004a) understanding of the Possessive Logic of Patriarchal White Sovereignty and Joseph Pugliese's (2007a) conceptualisation of the 'event trauma.' I situate them historically in order to tease out the implications of specific moments of colonial violence from 1788 to the *Mabo (No.2)* Case of 1992. In Chapter Two, I extend this genealogy by examining the Hindmarsh and Wik Cases of the 1990s. I examine these cases, and the political and media discourses that accompanied them, as they stand as crucial case studies that not only expose the continued operation of *terra nullius*, but that also prepare the ground for the announcement of the Intervention.

In Part Two of the thesis, *Legitimizing White Sovereignty*, I map the analytics of raciality and post-9/11 biopolitical regimes of governmentality that work as *a priori* in order to justify both the Intervention *and* the white state's assertion of sovereignty. In Chapter

Three, I introduce da Silva's (2007) reconceptualisation of race in order to unpack media, political and legal representations of the policy as an exceptional and extraordinary policy designed to protect children. In spite of the suspension of the *Racial Discrimination Act 1975* [Cth] [RDA], I argue that this policy must be reconceptualised as a continuation of racial warfare; the legal fiction of *terra nullius* always already works within white laws in an attempt to obliterate Indigenous sovereignty over country. In Chapter Four, I extend this argument by further exploring the legislation that constitutes the Intervention. I argue that the state's amendments to the *Australian Crime Commission Act 2001* [Cth] [ACC Act] must be situated within the politico-juridical rhetoric that framed this Act as an anti-terror law designed in the wake of 9/11 and the Bali Bombings. In this context, its mobilisation under the Intervention elucidates crucial links between the contemporary settler-colonial state's forces of self-preservation and larger imperial formations.

In Part Three of the thesis, *Securing Sovereignty*, I identify two contrasting sites. Firstly, I map the forms of neoliberal assimilation imposed under the Intervention and then proceed to identify the sites of Indigenous resistance that consistently undermine the white settler-colonial state's attempts to secure possession of Indigenous sovereignty over country. In Chapter Five, I analyse political and media discourses in order to explore how biopolitical regimes of securitisation operate within the Intervention's neoliberal apparatuses such as: the compulsory reacquisition of targeted Aboriginal land, mobilisation of GBMs and proposed abolition of CDEP. I argue that these policies represent a reiteration of the protectionist forms of legislation produced in the late 1800s and early 1900s in order to secure white possession of Indigenous country. In Chapter Six, I examine the Intervention in the context of Indigenous people's continued exercise of Aboriginal law and their ongoing sovereignty over country. I map a genealogy of Indigenous resistance and explore Protest House built by the Alyawarr people on land that has not been annexed by the Intervention in order to demonstrate, as the organiser of the protest Richard Downs writes: 'the government is playing a waiting game. It thinks we'll get sick of it and go back to the community ... We're never ever going to go back to that community to live under your controls and measures' (Downs 2009b). I conclude my thesis with an Epilogue that situates the Intervention in the context of contemporary racialised crime and punishment in the Northern Territory; I also bring into focus contemporary calls made by Aboriginal communities for treaties. I end with their demand that the Government recognise their ongoing exercise of Aboriginal laws and sovereignty over country.

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