

# RE-CENTRING FIRST NATIONS KNOWLEDGE AND PLACES IN A TERRA NULLIUS SPACE

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## **Abstract**

Indigenous law, philosophy and knowledges are core to our Indigenous past and they still hold our present worlds together, promising a future for First Nations peoples even in the face of colonialism which has done much to marginalise First Nations. This paper discusses the marginal position held by Indigenous peoples, one which is reflected in international law and which deems us as objects of colonial states. This is our political position even while First Nations continue to hold and centre our lawful obligations to care for country. I also critically review the impact of colonisation on the First Nations of Australia and consider the need to transform that colonial history to enable a less peripheral and more centred place for First Nations peoples' laws, philosophy and knowledges to re-emerge. For the Australian colonial project the mechanism of terra nullius provided the legitimacy which imperial Britain needed to “lawfully settle” our lands and dispossess First Nations from our way of being in relation to the earth in the place now called Australia. Here I consider both the impact of colonisation on—and the challenge we face in re-centring—Aboriginal law, philosophy and knowledges.

## **Keywords**

Indigenous law, philosophy, knowledges, colonisation, de-coloniality, savagery

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## Introduction

Indigenous law, philosophy and knowledges are core to our Indigenous past and hold our present worlds together; they also promise a future for First Nations peoples. In this paper I critically review the impact of colonisation on the First Nations of Australia and consider how we might transform that colonial history and at the same time enable a less peripheral and more centred place for First Nations peoples to re-emerge.

The impact of colonisation on the past and present lives of First Nations peoples of Indigenous Australia is well known. The Indigenous relationships with our natural world are not so well known, however. The “domestication” and “assimilation” of Indigenous peoples are on the main agenda of the Australian state and within that process of assimilation the richness of Indigenous law, knowledge and philosophy is largely ignored, or treated as if those Indigenous ways of being are of minor interest. Indigenous peoples’ status as peoples and subjects in international law is advocated (Venne, 1998), but the prevailing view of the colonial states is that Indigenous peoples remain objects in international law. In pre-colonial times, First peoples governed our territories for thousands of years and prior to the British invasion our territories were highly ordered and sustainably managed environments. Kombu-merri and Waka Waka philosopher Mary Graham (2008) describes the importance of relationships to land as follows:

The two most important kinds of relationship in life are, firstly, those between land and people and, secondly, those amongst people themselves, the second being always contingent upon the first. The land, and how we treat it, is what determines our human-ness. Because land is sacred and must be looked after, the relation between people and land becomes the template for society and social relations. Therefore all meaning comes from land. (pp. 181–182)

Yet the dominant colonial narrative is one that tells the story of First peoples being rescued and civilised by a superior European society. Instead of propagating the rich and layered understanding of our relationship to country, the colonial project deployed, constructed and communicated to the world the myth of native savagery and the absence of an understanding of how to “properly use” the land. The richness of Aboriginal law and philosophy was in many places dispossessed as were First Nations peoples dispossessed of our lands. The underlying theory supporting the colonisation and dispossession of First Nations peoples in Australia entailed the doctrine of terra nullius—essentially “there’s no people here, it’s ours”. Of course, it’s now commonly known that in 1992 the High Court of Australia rejected terra nullius as a legitimate source of legal foundation. In the case *Mabo v Queensland* (1992) 66 ALJR 408, in a ruling of six to one, the court held that the lands were not terra nullius or “practically unoccupied” in 1788. However, post-Mabo the concern and question remains: If terra nullius was rejected by the High Court, why are the ongoing effects of terra nullius—the legal dispossession and physical deprivation—still with us today? We were dispossessed of all our territories and our capacity to be self-determining peoples. At the time of James Cook’s act of possession (1770, at Possession Island) it was deemed by the colonial authorities in London that there were no people in this island continent, and that where First Nations peoples were known to exist, they existed as peoples without law and society; they were “savages”, like “animals”, without identity or subjectivity in international law (Williams, 2012). The inclusion of “savage native” occurred with the colonial legal system recognising the Indigenous person as a “British subject”, an identity which in 1967 morphed into an “Australian citizen” (Watson, in press). But the late-coming “right” to be an Australian citizen held no recognition of who we actually are—First Nations peoples with our own relationships,

laws, philosophy and knowledge of our own country.

Within the ambit of that which constituted international law, terra nullius provided the legitimacy for imperial Britain to lawfully settle “Australia” and in doing so it was able to avoid the complex business of negotiating a peaceful settlement with First Nations. In 1992 the High Court of Australia (in *Mabo*) did reject terra nullius, but it was also highly concerned with the legitimacy of “Australia” as a settled colony. It was certainly a case of having one’s cake and eating it; that is, the *Mabo* decision enjoyed a lime-lighted victory against the injustice of terra nullius while at the same time retaining the spoils of the unjust foundation by way of the continued and uncompensated occupation of First Nations peoples’ unceded territories (Watson, in press). We did end up with “recognition” of “native title” as a result of the *Mabo* decision, but native title remains more of a condescension than a compensation. **But in this paper I want to look beyond the effects of terra nullius as the source of the physical dispossession of Indigenous peoples and focus on the impact colonisation has had on the lawful, philosophical and knowledge centres of Indigenous peoples, while also considering the challenge we face in re-centring them.**

While Indigenous peoples hold Aboriginal law, philosophy and knowledges close there are hurdles and many challenges that we face; these derive largely from a dominant colonial society which centres commodities over relationships, especially those which exist between the natural world and peoples. Distinct differences exist between an Aboriginal relationship to land where the natural world is loved and treated as a close relative and that found in European philosophy which views nature as being there for man to use. Francis Bacon (1620/1889) set it out in *Novum Organum*: “occulta naturae magis se produnt per vexationes” (nature best discovers her secrets when tortured) (p. 304) Torture applied in relationship to the natural world is a concept alien to Aboriginal peoples.

But relationships of alienation between people and the natural world are older than Bacon; the book of Genesis provides a prescription for the land needing to be subdued so as to benefit man: “And God said to them, ‘Be fruitful and multiply and fill the earth and subdue it and have dominion over the fish of the sea and over the birds of the heavens and over every living thing that moves on the earth’” (1:28). These ideas of dominion of the human over the land instructed colonial expansion and they can be identified in the terra nullius doctrine as it laid the foundation for the denial of Aboriginal law, philosophy, knowledge and peoples’ relationships to the land.

### **Shifting the empty space of terra nullius and refilling it with Indigenous law and philosophy**

In general, philosophy consists of the contemplative investigation of the most fundamental aspects of existence, life, knowledge and value. Philosophy concerns itself with how to live one’s life (ethics), what one knows, can know, and how one knows it (epistemology), and what can be said to exist (metaphysics). Indigenous peoples have lived and centred ways of knowing the world for thousands of years and the times since the application of terra nullius have disrupted the relationship in which we understood the human and non-human—the entire natural world—as one connected being. Now Aboriginal knowledge is no longer the central framework we live by; First Nations peoples must also negotiate the dominant colonial paradigm within which the colonial state either denies Indigenous knowledge or, if it acknowledges it at all, treats it within Western social sciences as culture or history. Until recently, Indigenous lives and knowledges were represented, translated and interpreted by anthropologists, historians, social scientists and scientists in a way which objectified and spoke for and about our Aboriginality. Over the past

decade, there has been a shift towards the positioning of Aboriginal voices which speak for and about us, but challenges remain in claiming back a place in which to centre Aboriginal law, philosophy and knowledges.

In considering challenges to the possibilities of centring Indigenous law, philosophy and knowledges perhaps we should begin with a definition of Indigenous peoples. There is no definition within the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), so I will rely on the definition developed in the 1980s in the UN *Study of the Problem of the Discrimination against Indigenous Populations* by José Martínez Cobo (1986):

Indigenous communities, peoples and nations are those which, having a *historical continuity with pre-invasion and pre-colonial societies* that developed on their territories, consider themselves *distinct from other sectors of the societies now prevailing in those territories*, or parts of them. They form at present *non-dominant sectors* of society and are *determined to preserve, develop and transmit to future generations their ancestral territories*, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems. (emphasis added)

The above definition of Indigenous peoples has a role in differentiating between Indigenous knowledges and traditional knowledge, in that it gives consideration to the fact of colonisation. A particular aspect for many Indigenous peoples is that we are peoples whose lands have been occupied by colonising invaders and yet we continue to survive. Places such as Australia, New Zealand, the United States and Canada are places which remain colonial identities and are yet to de-colonise. That which constitutes Indigenous knowledge is said to be the local knowledge unique to First Nations peoples.

Aboriginal knowledges embody law and

philosophy and Aboriginal protocols, many of which are similar across different Indigenous territories. There are common protocols around speaking in the context of one's people's own country and not speaking for other peoples' countries. The knowledge of a place is held by the First Nations people of that place, and learning about Aboriginal knowledge of places is to learn from the people of that country who are the speaking voice with and for the land. **While there are universal principles shared by Aboriginal peoples, our knowledges are themselves not universal but consist of a diverse range of differentiated and localised knowledges.** Australia is home to hundreds of distinct First peoples and this alone indicates the diversity of knowledges across the country. The localised nature of Indigenous knowledge makes it an imperative that, when considering the re-centring of Indigenous ways of being, capacity-building needs to occur at the local level. The strengthening of capacity at the local level is one way of ensuring that Aboriginal knowledge will continue to be held by First Nations peoples, and the local level is where we need to ensure capacity is built, particularly if our goal is to move beyond terra nullius and a static museum-type approach to Indigenous knowledge. For our knowledge systems to have life they require maintenance at the ground level and in particular on the territories of First Nations peoples, by First Nations peoples of those lands.

The sources of Indigenous knowledges are embedded in an Aboriginal lawful and philosophical approach to the way we lived in the world pre-Cook and live post-Cook; that is, a philosophical tradition which relates to the natural world, as the land itself maps the laws of Aboriginal peoples. Our languages (Hountondji, 1996) and our creation stories and songs are also located in our laws and philosophical concepts.

**Aboriginal peoples' laws, knowledges and philosophies remain relational, and opposed to a Eurocentric approach, which is to separate**

and compartmentalise knowledge. For example, within the academy, knowledge accumulates within separated disciplines or professional practices—law, medicine, engineering, education, etc. An Indigenous approach to knowledge is holistic and embraces aspects of life as a whole entity which has its source and meaning in the land. Skills are learned from childhood in a holistic way; teaching and learning are in the living of life, and are not an aspect of life. We are part of the environment and in a particular relationship with the natural world. That relationship forms and informs all aspects of how we interact with the world and it is a relationship which continues; it's not just about the past, as the "Dreaming", or in my language, Kaldowinyeri, is often considered to be. It lives with us today.

The concept of "traditional" often brings its own manufactured stereotypes. Indigenous laws, philosophy and knowledges are constant; our knowledges are alive and living and not locked in a time pre-terra nullius. The following quote by Native American philosopher Chief Oren Lyons (as quoted in Sioui, 1992) places time and ways of being in context:

We have lost our old ways, but the principles that we go by are not old: peace is not old, justice is not old, equity is not old, it is what everybody aspires to. Those things are ours ... Old is in the mind of the person, old is in their education. We are contemporary people. I don't apologize for standing in these clothes today, for that is what I wear. This is me, this is the Huodensaunee, right now, right here ... we don't expect to see [former US President Ronald] Reagan with a white wig. (p. 32)

Oren Lyons could also be speaking on the challenges to our Aboriginality and the constant measuring of Aboriginal "authenticity" here. Our ancestors were naked peoples up until the first contact in colonial frontier times, but if we presented as naked now we would be locked

up. So we adapt; but that doesn't diminish us or dislodge us from tradition.

Aboriginal knowledge differs from a positivist approach in which knowledge based on natural phenomena is verified by the empirical sciences. Positivism sets out to describe the phenomena we experience and the purpose of science is to describe what we can observe and measure. However, we cannot directly measure emotions, thoughts, and experiences of the spirit and, according to positivists, that which cannot be measured cannot translate as a reputable body of knowledge. Positivism largely rejects the validity of Indigenous law and knowledge, even though Western science is largely built upon the world's Indigenous knowledges. But in contrast, referring to Indigenous philosophy, Makere Stewart-Harawira (2005) claims that "far from [being] irrelevant in the modern world, traditional Indigenous social, political and cosmological ontologies are profoundly important to the development of transformative alternative frameworks for global order and new ways of being" (p. xiv). Indigenous knowledge has always been present in the development of global knowledges; what has been absent is the recognition of those knowledges in the modern academies and the halls of the UN and the parliament houses of colonial states.

The Australian state recognises the rights of the individual. An Indigenous knowledges approach gives recognition to the collective body of First Nations peoples who hold knowledge and the Aboriginal world together. A tension now exists between individual and collective rights and this tension arises in relation to the problematic of non-Indigenous legal systems vesting ownership in the individual and not recognising the collective. Aboriginal principles of recognition include reciprocity, balance and plurality. Western concepts of recognition hold individualised and "owned" property as a central concern for the recognition of rights. The ongoing exclusion by the state of Aboriginal laws, knowledges and philosophies maintains a colonial terra nullius.

To make up for the historic and ongoing erasures of Aboriginal knowledge and possibly to begin to remedy the desolation which they have wrought, one solution would be to re-centre Aboriginal worldviews as the norm and to liberate Indigenous places from colonising and assimilationist processes. However, for this to occur we need to take aim at normativity itself; and certainly to take aim at the proposition that the state is the centre into which First Nations peoples are to be absorbed and assimilated. In centring Aboriginal knowledges, we need to go beyond neo-liberal interpretations of human rights and include, for example, the relationality of Indigenous knowledges to all things in the environment, to land and kin.

In considering the work which might be involved in de-centring state prerogatives, the work of feminist philosopher Judith Butler (1997) provides some insight into how the idea of a centre universal sets up a norm and excludes all other ways of knowing, while at the same time exposing the failure of a universal reach:

one who is excluded from the universal, and yet belongs to it nevertheless, speaks from a split situation of being at once authorized and de-authorized ... Speaking and exposing the alterity within the norm (the alterity without which the norm would not “know itself”) exposes the failure of the norm to effect the universal reach for which it stands, exposes what we might underscore as *the promising ambivalence of the norm*. (p. 91, emphasis in original)

As the norm or the universal stands exposed and First Nations peoples continue to resist absorption and assimilation into the body of the state, the question remains: How might Indigenous laws, knowledges and philosophy be situated now and in the future? The failing of universal approaches is illustrated by the following example taken from the experiences of environmental and human rights lawyers when translating and

interpreting Article 8J of the UN Convention on Biological Diversity. Article 8J provides for limited protection of traditional knowledge, and any possibility of protection is subject to the approval of the state. Environmental lawyer Kabir Bavikatte has argued that Article 8J is solely interpreted by universal standards. For example, when considering the protection of traditional knowledge from misappropriation, that protection would be taken from conventional definitions to include theft, or access to property of another without their permission (Cornell, 2009). There is no opening here to include an Indigenous ethical framework. Doing so would require the inclusion of respect for relationality and would go beyond monetary considerations of knowledge and neo-liberal capitalism. The point here is that even though international standards in respect of Indigenous peoples are said to be developing, they still have a long way to go in providing recognition of ethical Aboriginal frameworks which sit outside the realm of neo-liberalism.

The problem with claims to universal truths is that they imply the negation of many truths and the opportunity for any possibility of co-existence. (One “truth” once flattened our world.) I prefer the “many truths” approach of Kurna elder Uncle Lewis O’Brien, that is, that there are many truths and there should be no difficulty with the co-existence, for example, of a creationist and evolutionist view of the world (O’Brien, 2014). Currently Indigenous peoples navigate being left within or without the universal; either way the colonial states deem us destined to progress towards and assimilate into the universality of their global world order, whatever that is. In this journey generally called “progress”, which involves the universalisation of all ways of being, will the inevitable destination actually be white, male, and Christian? Will the First Nations peoples, the feminine and the “heathen native” be finally disappeared or, at least, remain peripheral? What is there to do to re-emerge and to sustain First Nations’ truths?

There are many obstacles to the inclusion of Indigenous knowledges, laws and philosophy. Perhaps one of the most onerous is the failure of the UN and its member states to recognise the international subjectivity of First Nations peoples and their failure to make obsolete terra nullius policies which continue to objectify First Nations peoples. To be an object means that you are without full rights to determine and govern your life in commune with your peoples. To be an object is to live under an imposed political and legal regime that you have neither consented to nor have any physical power to withdraw from or to withhold your consent. As an object, the state assumes the power to talk about and speak for you, as you are deemed to be without a voice. As an object you are subjected to state-authorised views about your being to the exclusion of your inherent First Nations lawfulness and ways of being. The ongoing objectification of First Nations peoples continues even while the UNDRIP purports to prescribe the minimum standards on Indigenous peoples' rights in international law. Article 46 of UNDRIP ensures that the interpretation of those rights will remain within the domestic paradigm and be determined in accord with the "territorial integrity" of the particular colonial state, that is, determined and interpreted to apply by the colonial state to the colonised First Nations (White Face, 2013, pp. 104–106).

The UN hosted the High Level Plenary Meeting on Indigenous Peoples (HLPM) in September 2014 and, though possibilities to address the weaknesses embedded in the UNDRIP exist, the opportunity was not taken up. The HLPM is not a real UN conference and states are not compelled to attend. The planning for this event was done without Indigenous peoples globally being fully informed, or given a proper opportunity to consider its merits or otherwise (Watson, in press). The flaws in the preparation for the HLPM were highlighted when the North American Indigenous Peoples Caucus (NAIPC) withdrew from the process

(NAIPC, 2014). Meanwhile UN member states are currently steering towards an even more limited reading of UNDRIP, a position which was revealed in a letter from the president of the UN General Assembly to all permanent representatives and permanent observers to the UN in New York (Ashe, 2014). At the time of writing, other UN-designated Indigenous global regions' caucus groups are still considering their options—to withdraw or to stay in the process. Steven Newcomb (2014), the Shawnee and Lenape international law commentator, questions the HLPM and asks us to consider whether or not the process is about approving an international outcome document which merely reinforces the existing domination and subjection framework being used against First Nations.

Discussing how colonial history continues to construct First Nations, Georges Sioui (1992) makes some positive suggestions as to how change might occur, and, from where he is situated as a Huron, First Nations of Turtle Island (Ontario, Canada), outlines ways to challenge the dominance of North American values which are virulent and persistent. To begin, Sioui recommends the abandonment of the "primitive cultures that are dead or dying" discourse. He argues that the continuing colonialist representation of history is "socially irresponsible, pointless and misleading and a shell without its animal content" (p. 22). There is a need for the presence and commitment of First Nations peoples—whose laws, cultures and traditions are being observed and studied—to be able to direct the interpretation of their own history. There is also an ongoing need to revise and review old histories which have been written about us and this particularly applies to those histories which continue the primitive-extinguished discourse (Williams, 2012). The old construction of the "savage" by the colonial project as victims of our "own" barbarism needs to be replaced with a more ancient narrative prepared by First Nations peoples, one that situates us as we have always been, transforming

the world, and as agents in the bringing of the future.

The UN and its member states need to discard the colonial Indigenous object of the master narrative so that we remain the subject of our own First Nations narratives. Historically, the West has positioned the white male as the subject, and excludes the native, the slave, and the woman. Spivak (1988) writes about the West as the subject and the Indigenous as the object of a colonialist historiography, while the construction of gender keeps the male dominant and the subaltern female “even more deeply in shadow” (p. 287). It is white systemic ignorance which enables racism to influence knowledge production. White male philosophy claims a universal space which masks sex, class, gender, and the race of its producers (Applebaum, 2010, p. 13). There is a history of philosophy being derived from white patriarchal sources which acted as though philosophical thought applied universally, without borders, being managed by race, sex and class. Colonising knowledge production has been in the hands of white, heterosexual, able-bodied, Western male academics for centuries (Collins, 2000, p. 255; Haraway, 2004, p. 199; Harding, 2004; Means, 2011, pp. 515–525; Smith, 1998). But the marginal or subjugated knowledges are now re-emerging, equipped with the theoretical tools to expose the social situatedness of knowledge production and the different realities which are produced and experienced (Moreton-Robinson, 2011, p. 414). Yet defining Aboriginality continues to be a predominantly white patriarchal knowledge production activity.

What are the moves here? Is Aboriginality to be assimilated into white male universals? As I have said above, the reality is that there is no universal or single knowledge system but rather there are many localised versions of Indigenous knowledge. On the matter of racism, bell hooks (1992) argues that the liberal white male subjects’ appeal to sameness, which is based on their belief that we all inhabit a universal subjectivity, would somehow in their view make

racism disappear. But it hasn’t. Race affects the displacement of First Nations and similarly the call to sameness will not cause the historic racism and colonial construct of the native savage to disappear. The old and continuing constructs of native savagery and the racist ideologies which go along with them are still necessary to the foundation of colonial states.

Likewise, ongoing racist constructs of native savagery persist and are alive and well in the academy. Goenpul scholar Aileen Moreton-Robinson (2011, pp. 421–422) dissects and examines the work of historian Dirk Moses (2010) and notes his approach and use of adjectives such as “suspicious” and “hostile” to describe the work of First Nations women scholars. Moses refers to the work of Noonuccal and Bidjara scholar Karen Martin (2008) on relatedness as a “fully blown re-enchantment of the world” (Moses, 2010, p. 8). Moreton-Robinson (2011) argues that this is an example of the acting-out of epistemic violence and while Moses is positioning Martin’s work within patriarchal knowledge production, the concept of “enchantment” has all the associations with witches and, I would add here, savagery:

epistemic violence is enabled by the power of patriarchal knowledge and its ability to be the definitive measure of what it means to be human, what does and what does not constitute knowledge and who can and cannot be a knower. The anti-essentialist critique is premised on a contradiction embedded within the western patriarchal construction of truth; it is applied as a universal and, through its epistemological claim to being anti-essentialist, it reproduces a patriarchal metaphysical ontology. (p. 427)

### **Will the real savages please stand up?**

Cultural critic Ziauddin Sardar (1998) has argued that one way that the West maintains

hegemony over knowledge is by denying non-Western science's existence and contribution to Western science and that the history of non-Western science has been generally written out of science history. Europe rewrote the origins of European civilisation, constructing it as self-generating. Conquest and civilisation appropriated the sciences of other peoples and then suppressed the knowledge of those origins so as to recycle them as Western science. Similarly, James Blaut (1993) argues that prior to 1492 and the "discovery" of the Americas there were few significant differences in the progress of science between the West and the rest. Blaut provides evidence that the plundered wealth of the Americas enabled Europe to develop. Scientific advancement, rarely acknowledged, occurred through interactions with First Nations peoples. The wealth of silver and gold taken from First Nations territories stimulated Western economies and the seeds of plants from Asia, Africa and the Americas, previously unknown in Europe, became major food sources. Their origins remained obscured and unacknowledged.

First Nations' knowledges of plants were enormously exploited; while tropical medicine was first developed from Indigenous knowledge. This was ignored and the rewriting of history fitted with the colonial science project which was to benefit and help maintain European power and hegemony, while also creating commodities and making a good profit. In reassigning the West as the centre and the rest as marginal the colonies went on to support the European sciences. The colonial project of empire-building enabled European access to a large share of the world's energy and resources, but in that process of colonial expansion local Indigenous knowledges were diminished. European science was embedded in the colonial projects and it was used to increase human bondage and mortality rates amongst colonised peoples.

Lakota elder Russell Means (2011; Means & Bayard, 2012) has argued that it was European

colonial expansion which contributed to the increasing gap between European technology and the colonised First Nations. The "age of discovery" did not unearth primitive timeless peoples with no histories and no scientific and technological knowledge; on the contrary, the Europeans encountered complex and sophisticated cultures with highly effective scientific and technological systems, significant portions of which were pressed into European traditions. Sandra Harding (2004) has also argued that there is no one science and that indeed science borrowed across the discovery era. The scientific community should be understood as a broader concept than that currently known as being Euro-centred. The difference between Western and non-Western science is that non-Western science comes from cultures and civilisations emphasising a unity of knowledge. These cultures embraced science and metaphysics which were not separate but rather were unified.

Progress and the rise of Europe were contingent upon colonising South and North America and then Africa, Asia, and lastly Australia, New Zealand and the Pacific. The myth of colonialism was that the natives needed the Europeans to live and progress, but the reverse is true (Blaut, 1993). Europe needed colonies in order to progress, not the other way round. The ideals of progress, civilisation and Christianity justified the vast European colonial projects, which competed with each other for access to the territories and resources of the "New World".

Between 1526 and 1546 Franciscus de Victoria, a Dominican scholar, influenced early Spanish practice in the colonisation of the Americas. Victoria held the view that the Law of Nations was derived from "natural law". His interpretation of law gave rise to rights and obligations universally binding and agreed to by the majority of states. Victoria argued that international law imposed on Indigenous societies basic duties which included permitting free passage by foreigners; allowing free and open commerce and trade; sharing communal property; and permitting the propagation

of Christianity. But there were no reciprocal duties placed upon the colonisers and Victoria's duties would promote the annihilation of First Nations. Victoria's interpretation of natural law ignored the existence of the laws and philosophies of First Nations and denied First Nations peoples' sovereignty and authority over their territories and resources. Other European writers such as Grotius, Locke, Vattel and Hobbes further entrenched Victoria's view that the land and resources of First Nations peoples could be taken with or without our consent. The colonial position enunciated in the 16th century remains extant in Australia today; it is still entrenched in its settler society.

The sovereign status and rights of First Nations peoples were denied by a process of legal rationalisation underpinned by the assertion that Indigenous peoples were uncivilised, inferior, and incapable of conducting international relations. It legitimised the wholesale exploitation or expropriation of Aboriginal resources. It legitimised the assumption of sovereignty and the imposition of foreign legal systems, and it legitimised the establishment of foreign colonial governments. Blaut and Harding both argue that the European Miracle was no miracle at all. Europe constructed its own myth and it concealed the fact that it developed and "progressed" from the resources and knowledge gained from its invaded colonies.

Colonial expansion was justified and based on the myth of "native savagery", but also on the proselytising imperative of its religion. In 1859 Reverend George Taplin (1859–1879) described the First Nations peoples and survivors of a violent colonial war who were assigned by the colony to the Point McLeay Mission, South Australia, thus:

This horrid rite [i.e., ceremonial law] is much calculated to throw them back into barbarism, whatever good instruction they may have received in youth. Whatever sense of cleanliness, or love of European clothes may have been acquired is by this rite completely swept

away. This custom must be done away with ... I told all the blacks plainly this morning, that they obeyed the devil, and that Jehovah would send them to hell with the devil if they did not cease to obey him. (vol. 5, p. 28)

The history of First Nations peoples in Australia prior to the British invasion is known as pre-history. As the "native" was termed pre-historic we were deemed by Western science as beings living outside "civilised" history. Our old people's histories were seen to pre-date Western civilised beginnings, and Australian history is said to have begun in 1788. Australian colonial history was never to include a First Nations perspective—of a time immemorial when our ancestors recorded the first song laws of the land.

For First Nations peoples to fully re-emerge and our futures to be assured, a shift is required from the contemporary racialised, colonised views about Indigenous knowledges to a new position; one which restores an Aboriginal humanity. This new position would recognise an Aboriginal philosophy and also an understanding that First Nations do not need to "progress" to an "end point" in history. Such a shift would anticipate the opening up of an understanding that the "native" has already arrived. It needs to be acknowledged that we already live inside Aboriginal history and knowledge and that there is an ongoing need to unpack ideologies of civilisation.

## Conclusion

Recognition of Aboriginal philosophical knowledges is necessary for the respect of "native" reason and all things about the "native" being, and we need to better learn each other's ways so as to understand competing values (Cornell, 2009). This is a necessary first step in any successful process and for any possibility of co-existence. But the possibility of co-existence is hampered by a colonialist indifference to

Indigenous philosophy. From the beginning of invasion times there has been very scant reference to Aboriginal philosophy, laws, values and traditions, and where it has been mentioned, Aboriginal knowledge has been contained within the academy, listed under, for example, the “discipline” of anthropology which informs on the native for the benefit of the other expert knowledges and the colonial project itself. In the academy, rationality has been seen as a white trait, not possessed by the “native” and this is largely due to colonial foundations having constructed educational institutions upon the unspoken principle of terra nullius. This foundation has led to negative and racist constructions of Aboriginality, which in turn have justified the exclusion of Aboriginal knowledge. The embedded colonialist and racist constructs of Indigenous knowledges are the following: Aboriginal knowledge is irrelevant, irrational, unscientific, uncivilised, native story-telling, and “oral tradition” (which provides a flawed record of history).

For some Aboriginal persons a cross-examination of the above constructs might include the following questions: How does one express and retain a First Nations identity within the colonial state? Or, how might we progress a dialogue which centres Indigenous knowledge within the policy purview of the colonial state? While there are a number of programmes for inclusion of Aboriginality, many remain assimilationist in effect and are simply ineffectual in advancing Indigenous well-being in terms which would be understood as progressive or inclusive by First Nations peoples. Notwithstanding the implementation of the UNDRIP in 2007 and the Australian government’s belated endorsement of it in 2009, Aboriginal peoples continue to be amongst the world’s most disadvantaged (Watson & Venne, 2012; White Face, 2013). While there is a substantial body of research on the belated and conditional recognitions of Aboriginal peoples in the 20th century, views constructed in the 16th–19th centuries continue to prevail,

to deny that First Nations peoples’ governments and relationships to land are legitimate forms of political organisation and ownership (Fitzpatrick, 2001; Venne, 1998; Watson, in press). Instead models still aiming for the assimilation of Aboriginality have been developed to accommodate claims for the “equality” of Aboriginal rights (Watson, 2009). The need for an analysis of the exclusion of Aboriginal-centred approaches is acute because Australian and international laws have been largely silent on the question and the validity of Aboriginal knowledge as an essential approach to questions of justice and co-existence.

The difficulties of including Indigenous knowledge should not be underestimated. Ongoing racism, exclusions and the (at best) mixed progress to date suggest that there is significant research and thinking remaining to be done surrounding the “how to” part of the problem. Critical thinking requires us to take our experience of the problem of inclusion as a marker of a political and intellectual landscape in need of rethinking in order to articulate political possibilities beyond those offered by the existing discursive framing of the problem.

Australia continues with little understanding of what Aboriginal philosophy is, and how it can continue to exist. The immediate goal would be to reassess practices aimed at inclusion and develop practical possibilities for the centring of Indigenous knowledges. Such a process would go beyond the translation of Aboriginality, which has in most instances been affected by Western expertise and interpreters, and would enable the inclusion of Indigenous knowledges from a First Nations peoples’ standpoint.

The future of the natural world, along with First peoples, could be secured by the state engaging in a process of de-colonisation. De-colonisation would work to remedy past injustices by unpacking the myth of terra nullius and enabling reinvigorated First Nations places to fill a perceived emptiness—the lack of Aboriginality and knowledge. First Nations peoples need to resume control over our lands

to regain our lives and ways of being along with our international personalities and subjectivities. In being able to resume these places we would have the space to develop narratives counter to the one of the “colonial master”—the master narrative which deems that we do not exist. Sustaining First Nations sovereignty over our territories would not only ensure our future as First Nations peoples but also the future of our knowledges and ways of being.

## References

- Applebaum, B. (2010). *Being white, being good: White complicity, white moral responsibility and social justice pedagogy*. New York, NY: Lexicon Books.
- Ashes, J. (2014). *Draft outcome document to be adopted by the General Assembly on 22 September 2014*. Retrieved from <http://www.un.org/en/ga/president/68/pdf/letters/882014Informal%20Consultations%20on%20the%20World%20Conference%20on%20Indigenous%20Peoples%20-%202008%20August%202014.pdf>
- Bacon, F. (1620/1889). *Novum organum, Book one*. (T. Fowler, Trans.). Oxford, UK: Clarendon Press.
- Blaut, J. (1993). *The colonizer's model of the world: Geographical diffusionism and Eurocentric history*. New York, NY: Guilford Press.
- Butler, J. (1997). *Excitable speech: A politics of the performative*. London, UK: Routledge.
- Collins, P. (2000). *Black feminist thought* (2nd ed.). New York, NY: Routledge.
- Cornell, D. (2009). *uBuntu*, pluralism and the responsibility of legal academics to the new South Africa. *Law Critique*, 20, 43–58.
- Fitzpatrick, P. (2001). *Modernism and the grounds of law*. Cambridge, UK: Cambridge University Press.
- Graham, M. (2008) Some thoughts about the philosophical underpinnings of Aboriginal world views. *Australian Humanities Review*, 45, 181–194. Retrieved from <http://www.australianhumanitiesreview.org/archive/Issue-November-2008/graham.html>
- Haraway, D. (2004). *The Haraway reader*. New York, NY: Routledge.
- Harding, S. (2004). A socially relevant philosophy of science? Resources from standpoint theory's controversiality. *Hypatia*, 19(1), 25–47.
- hooks, b. (1992). *Black looks: Race and representation*. Boston: South End Press.
- Hountondji, P. (1996). *African philosophy: Myth and reality*. Bloomington, IN: Indiana University Press.
- Martin, K. L. (2008). *Please knock before you enter: Aboriginal regulation of Outsiders and the implications for research*. Tenerife, Spain: Post Pressed.
- Martínez Cobo, J. (1986, March 11). *United Nations Commission on Human Rights: Study of the problem of discrimination against Indigenous*

- populations, E/CN.4/RES/1986/35. (Martínez Cobo Report).
- Means, R. (2011). Patriarchy: The ultimate conspiracy; Matriarchy: The ultimate solution. *Griffith Law Review*, 20(3), 515–525.
- Means, R., & Bayard, J. (2012) *If you've forgotten the names of the clouds you've lost your way: An introduction to American Indian thought and philosophy*. Porcupine, SD: Treaty Publications.
- Moreton-Robinson, A. (2011). The white man's burden: Patriarchal white epistemic violence and Aboriginal women's knowledges within the academy. *Australian Feminist Studies*, 26(70), 413–431.
- Moses, D. K. (2010). Time, indigeneity, and peoplehood: The postcolony in Australia. *Postcolonial Studies*, 13(1), 9–32.
- NAIPC (North American Indigenous Peoples Caucus). (2014, March 3). *Call for the cancellation of the United Nations HLPW/WCIP*. [Video file]. Retrieved from <http://www.youtube.com/watch?v=iUgTgB771ks&feature=youtu.be>
- Newcomb, S. (2014). *Some questions regarding the UN High Level Plenary Meeting*. Retrieved from <http://indiancountrytodaymedianetwork.com/2014/07/29/some-questions-regarding-un-high-level-plenary-meeting>
- O'Brien, L. (2014). In conversation with Uncle Lewis: Bushfires, weather-makers, collective management. *AlterNative*, 10(5), 450–461.
- Sardar, Z. (1998). *Postmodernism and the other: The new imperialism of western culture*. London, UK: Pluto Press.
- Sioui, G. (1992). *For an Amerindian autohistory*. Montreal, QC: McGill-Queens University Press.
- Smith, B. (1988). *The truth that never hurts: Writings on race, gender and freedom*. New Brunswick, NJ: Rutgers University Press.
- Spivak, G. (1988). Can the subaltern speak? In C. Nelson & L. Grossberg (Eds.), *Marxism and the interpretation of culture* (pp. 271–313). London, UK: Macmillan.
- Stewart-Harawira, M. (2005). *The new imperial order: Indigenous responses to globalization*. London: Zed Books.
- Taplin, G. (1859–1879). *Journal: Five volumes*, as typed from the original by Mrs Beaumont. Mortlock Library, Adelaide, SA.
- Venne, S. (1998). *Our elders understand our rights: Evolving international law regarding Indigenous peoples*. Penticton, BC: Theytus Books.
- Watson, I. (2009). Assimilation agendas of the state: What space remains for Aboriginal law and culture? In P. Singh (Ed.), *Indigenous identity and activism* (pp. 124–137). New Delhi: Shipra.
- Watson, I. (in press). *Aboriginal Peoples, colonialism and international law: Raw law*. Abingdon, UK: Routledge.
- Watson, I., & Venne, S. (2012). Talking up Indigenous peoples' original intent in a space dominated by state interventions. In E. Pulitano (Ed.), *Indigenous rights in the age of the UN declaration* (pp. 87–109). Cambridge, UK: Cambridge University Press.
- White Face, C. (2013). *Indigenous Nations' rights in the balance: An analysis of the Declaration on the Rights of Indigenous Peoples*. St. Paul, MN: Living Justice Press.
- Williams, R. Jr. (2012). *Savage anxieties*. New York, NY: Palgrave Macmillan.