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In Cold-Blood

British colonialism with its legacy of land theft and genocide, fundamentally affected the peoples of the Anthropocene and the maintenance of our garden estates, within the cultural landscapes, of our Aboriginal Nations.

The brutality of the frontier wars saw the colonisers wielding guns and poisons against spears and boomerangs. An equipped hardened army battling innocent families, to dispossess them of their lands, waters, and natural resources, on behalf of the crown.

A Deliberate Act

When the British arrived in Australia, two hundred and thirty-five years ago, hundreds of Indigenous nations interconnected by a system of clearly defined law and kinship, covered the entire continent, governing their peoples and managing their cultural heritage, their lands, waters, and natural resources, in collective perpetuity.

The existence of a peopled, cultural landscape, invalidated Australia's foundational myth of Terra Nullius, of an uninhabited land belonging to no one. Wielding the power of might, not law, the invaders expected Aboriginal people to die out, to disappear from the face of the earth, without a trace; they were unleashing armed forces on innocent families, hunting people down for sport, portraying Aboriginal peoples as inferior, uncivilized heathens, less intelligent, as barely human. The colonisers expected there would be no need to treaty.

As a result, no consent was sought, and no consent was given. We were not asked to cede our sovereignty, or treaty with the coloniser. They did not purchase our lands, waters, or natural resources, and we never conceded defeat, we did not acquiesce, we retained our sovereignty.

Despite their enduring effort, we did not die out, we went down but were not beaten. Aboriginal peoples adapted and survived. After the second world war the Aboriginal population ceased its decline, and by the end of the 20th century became the youngest, fastest-growing population in Australia.

Genocide

Our old people, the grandchildren of the frontier war survivors, told us the stories of the massacres, of the cruel treatment metered out by the coloniser, of being starved off, shot off, poisoned off, trucked off, and forced to walk off our lands.

As the owners of the lands, waters, and natural resources, Aboriginal peoples resisted the Squatter's intrusion. The squatters fought back or called upon the State-sanctioned Native Police. This force was tasked with patrolling the frontier and putting down any so-called 'outrage', or act of resistance by Aboriginal peoples.

Any gathering for any purpose, such as harvesting foods or conducting ceremonies, on a squatter's run, constituted an outrage. The response to an outrage was called 'dispersing the natives'. In practice, it was cold-blooded murder, followed by burning the bodies to destroy any evidence of the massacre. Without the might of the invaders, within a decade, the population of each frontier Aboriginal Nation steeply declined; if not at the hands of the native police, or squatters, then at the peril of introduced diseases, or from starvation.

Survivors of these apocalyptic catastrophes and their offspring became labourers or domestic servants to the new masters of their land. With everyone assuming their place in the racist, sexist, and bigoted order, the squatter was at the top and Aboriginal peoples at the bottom, and everyone else in-between. To know your place was to comply with this system of social organisation.

In response to Aboriginal peoples who rejected their place at the bottom of colonial society "colonial governments across the British Empire created Indigenous military units to quell Indigenous resistance. In Australia these paramilitary forces were euphemistically called the 'Native Police', suggesting Aboriginal people were lawbreakers. A more military label would admit that a war was being waged against sovereign Aboriginal tribes, rather than an action against "criminal' black citizens".¹

Stories echoed across the country of the atrocities, the massacres, the murders committed by the Native Police as they turned Aboriginal lands into brutal killing fields. Rivers ran red with our peoples' blood, and smoke filled the skies with their burning bodies. It was anything but peaceful, it was savage, inhumane, and relentless, culminating in an almost complete decimation of the Aboriginal populations, across the continent.

The Survivors

Surviving Aboriginal peoples, formally referred to as the 'remanent population', living in camps on the outskirts of rural towns, on sheep and cattle stations, government reserves, and Christian missions, maintained their traditional identity and knowledge, their connection to their peoples, Country, and cultural heritage. These peoples, their children, and grandchildren repopulated their nations, and now these Aboriginal Nations are rising from the ashes of government-orchestrated oblivion, from being permanently erased from history.

Australian schools did not inform their students of the frontier wars, the massacres, land theft and genocide. Instead, they opted to construct a myth of a peaceful settlement, where a superior civilization, the colonisers, compassionately

1 Richard Broome: *Aboriginal Australians*, pp. 47f.

smooth the dying pillow of an inferior primitive race, who willingly abandon their lands and waters, and, as lesser beings, were doomed to extinction.

This belittling, degrading, and demonising propaganda permeated Australian culture, falsely informing Australian and international perceptions. As I wrote in 'Indigenous Filmmaking, A Short History. The Rise of First Nations Filmmakers':

Early representations of Aboriginal Australians on film were often played by non-Indigenous people in blackface and lacked any resemblance to the actual peoples or their customs and traditions. Unfortunately, this misinterpretation of First Nations peoples and their cultures in turn influenced and perpetuated the broader population's perceptions. When First Nations people did get to play a major role in feature films, it was as the subordinate sidekick or a primitive savage. In either case, they were cast as racially inferior to the white characters.²

This was also the case in songs, cartoons, novels, and newspapers; but it was not all one-sided, Australians also wrote letters and raised their voices in many ways, against the prevailing narrative. They did not see the extinction of Aboriginal people as inevitable or the representation of events as morally sound, ethically guided, or factually accurate.

John Harris, in his 1990 publication 'One Blood' quotes humanitarian Catholic Bishop Matthew Gibney (1835-1925), describing the dying pillow as "simply a convenient euphemism for genocide"; along with the editor of the 'Australasian Chronicle', W. A. Duncan: "We have driven them from their haunts; we have communicated to them our diseases and vices; in a word, an edict has gone out for their extermination".³

Sovereign vs. Sovereign

Aboriginal sovereignty is not the question. The question is how the colonisers validate a sovereign title to our lands and waters, to the stolen wealth of Indigenous nations without our cessation of sovereignty, if the land was not purchased from us, or in lieu of a legally binding international treaty with the Indigenous nations of this continent? As Kevin Gilbert outlined:

The failure of Britain and subsequently the successional government, Australia, to enter a legally valid treaty with our Aboriginal Sovereign State has resulted in a position of national and international consequences which must be resolved in accordance with the proper standards of principle, good faith and requirements to international law as applies to the validity of States. Australia's claim to 'sovereignty' in root title is not a valid claim.⁴

So, what is their claim to the sovereignty over our lands and waters, our peoples, our cultural heritage, and the wealth of our natural resources? How credible was their claim in international law, when Britain annexed the continent in 1788, 1824, and 1829, and how does their claim to sovereignty hold up to scrutiny today? As Henry Reynolds points out:

2 Elisabeth McNiven: *Indigenous Filmmaking, A Short History*.

3 John Harris: *One Blood, 200 Years of Aboriginal Encounter with Christianity*, p. 551.

4 Kevin Gilbert: *Draft Treaty, Discussion Paper*, p. 2.

The establishment of the small penal colony on Sydney Harbour gave absolutely no legitimacy to the British claim to half a continent, home to many Indigenous nations, which had occupied their homeland for hundreds of generations.⁵

It is not our claim to sovereignty needing to be examined, it is the legitimacy of the British claim requiring investigation. Before Captain James Cook left Britain, he received his orders from the Admiralty to take possession with consent, but in breach of this order, Cook took possession without consent.

European nations held established protocols regarding the extension of sovereignty. "Instruments of law in Britain recognized Aboriginal sovereign titles and rights in land. Such rights were an established fact of British and international law at that time".⁶

Property Rights

Then there is the question of Aboriginal peoples' rights to their private property. As Henry Reynolds quotes John Locke: "There were three natural rights - to life, liberty and property".⁷

The right to property is paramount in British law with the defense of these rights as a central feature of common law. In addressing these rights, Reynolds quotes 17th-century jurist Sir Christopher Yelverton, stating

that no man's property can be legally taken from him or invaded by the direct act or command of the sovereign, without the consent of the subject [...] is *jus indigenae*, an old home-born right, declared to be law by divers statutes of the realm.⁸

The Crown appropriated the property of Aboriginal nations across Australia, without negotiation, consent, or compensation and at the same time and in the same way they appropriated the sovereignty of Aboriginal nations, without negotiation, consent, or compensation.

Australia grew fat on the sheep's back, but the sheep grew fat on the natural resources of Aboriginal peoples. Calculate the wealth generated, over two hundred years, from the commercial exploitation of the lands, waters, minerals, and natural resources of Aboriginal nations, across the entire continent. This is the stolen wealth of the Aboriginal nations of Australia.

"The British believed that their success in industry accorded their colonial ambition a natural authority, and that it was their duty to spread their version of civilization and the work of God to heathens. In return, they would capture the wealth of the colonized land".⁹

As if by sleight of hand, the coloniser systematically flipped nations of Aboriginal peoples of land, law, and culture into the most disadvantaged position within Australian society. Successive legislation, policies, practices, and procedures over the past two centuries maintained the intergenerational poverty afflicting the

5 Henry Reynolds: *Truth-Telling, History, Sovereignty and the Uluru Statement*, p. 25.

6 Kevin Gilbert: *Draft Treaty, Discussion Paper*, p. 3.

7 Henry Reynolds: *Truth-Telling, History, Sovereignty and the Uluru Statement*, p. 136.

8 *Ibid.*, p. 136.

9 Bruce Pascoe: *Dark Emu*, p. 3.

peoples of Aboriginal nations. This entrenched suffering impedes our capacity to access our lands, waters, and natural resources, to self-governing economic independence, and to social, cultural, and political inclusion.

Indigenous Rights in International Law

In 2007, the UN General Assembly accepted the Declaration on the Rights of Indigenous Peoples (UNDRIP), and in 2009, Australia ratified the document. This should have triggered a reassessment of Australian law in relation to the inherent rights and responsibilities of Aboriginal peoples, and a change in public opinion in this country. This UN declaration rebuffs the historical injustice of the terra nullius doctrine:

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust.¹⁰

The chasmic disconnect between international and national law in Australia sees institutions of land, law, and government held-fast in the doctrine of 18th-century British imperialism. Australia's commitment to international human rights is not realised on the ground as demonstrated by the government's failure to implement the UNDRIP in law, through legislation.

As a result, Aboriginal peoples fail to benefit from, or enjoy the exercise of, these international law rights. Government maintenance of culturally inappropriate policies, practices, and procedures, continually ravages Aboriginal peoples' rights and perpetuates socio-economic disadvantage.

The facelessness of institutional racism masks the collective denial of our peoples' human rights including our right to self-determination, that is to manage and receive economic gain from our lands, waters, and natural resources, to protect and maintain our tangible and intangible cultural heritage including our traditional knowledge systems, to govern ourselves, to be economically independent, and to practice our customs and traditions within the cultural landscapes of our Aboriginal Nations.

Incarceration

Government statistics show the intergenerational impact of institutional racism, socio-economic exclusion, over-representation in incarceration, poor health and education outcomes, limited employment, and housing opportunities.

The New South Wales Legislative Council Select Committee Report on 'The High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody', inquired into the unacceptably high level of First Nations

10 UN General Assembly: United Nations Declaration on the Rights of Indigenous Peoples, p. 3.

people in custody in New South Wales. The report begins by conceding that in the thirty years since the publication of the Royal Commission into Aboriginal Deaths in Custody Report, we “are no closer to addressing the over-representation of First Nations people in the criminal justice system”.¹¹

Tabled by the Hon Adam Searle MLC, Committee Chair, this report on ‘The High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody’ follows three decades of reports on the subject, including the ‘Royal Commission into Aboriginal Deaths in Custody’ in 1991, ‘Deaths in Custody: 10 Years on from the Royal Commission’, the Department of Prime Minister and Cabinet’s ‘Review of the implementation of the recommendations of the Royal Commission into Aboriginal deaths in custody’, ‘Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples’ in 2017, and the ‘National Agreement on Closing the Gap’ in 2009.¹²

The Committee Chair, expressing his extreme disappointment, states in the ‘Chair’s Forward’ of the report that “many of the recommendations made in one of the most influential reports of our time, the Royal Commission, have still not been implemented, and that governments have even given up monitoring the implementation of those recommendations”.¹³ In conclusion, he adds,

it is clear that the multi-generational disadvantage that First Nations people have faced over time, in areas such as health, housing, employment and education, and the historical dispossession and systemic racism, which underscores each First Nation person’s experience with the criminal justice system, must be addressed by government.¹⁴

Mr Tony McAvoy SC, Chair of the New South Wales Bar Association’s First Nations Committee and Member of the Joint Working Party on the Over-representation of Indigenous People in Custody in New South Wales, in submission to the New South Wales Legislative Council Select Committee on ‘The High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody’ (2021) suggests that in addressing the systemic issues relating to over-incarceration, the royal commission report into Aboriginal Deaths in Custody and the ALRC report of 2017 “in themselves provide a guide for the States and the Commonwealth”.¹⁵

The Select Committee “called on the New South Wales Government to take urgent action to address the disproportionate rates of incarceration of First Nations people in New South Wales. As the Chief Justice of New South Wales, the Honourable TF Bathurst AC, has recently made clear, First Nations peoples are “one of the most incarcerated people in the world”.¹⁶

11 NSW Legislative Council: The High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody Report, p. ix.

12 Elliott Johnston: Royal Commission into Aboriginal Deaths in Custody; Paul Williams: Deaths in Custody; Deloitte Access Economics: Review of the Implementation of the Royal Commission into Aboriginal Deaths in Custody; ALRC: Pathways to Justice; COAG: National Agreement on Closing the Gap.

13 Ibid., p. ix.

14 Ibid.

15 ALRC: Indigenous incarceration.

16 Ibid.

Land, Water and Natural Resource Management

The impact of colonialism on our peoples, lands, waters, and natural resources, on our natural and cultural heritage, and on our tangible and intangible knowledge systems generated a wave of intergenerational trauma across the Aboriginal Nations of Australia.

The old peoples passively resisted colonialism, caring for their Country, practicing their customs and traditions, while working on the settler's blocks. They advised, warned, and guided the colonists in managing the land. Some settlers listened, taking heed to the traditional knowledge, and succeeding in the process, while others ignored the old peoples and failed miserably.

Over two centuries of inappropriate land and water management practices depleted Aboriginal peoples' natural resources and fundamentally changed our cultural landscapes. These practices include the introduction of environmentally destructive cloven-hooved animals breaking up and scattering delicate topsoils and silting up the rivers, feral animals including cats, pigs, rabbits, and goats impacting on the native flora and fauna, and the repurposing of our lands, waters, and native vegetation for stock grazing. All these practices threaten native species and diminish precious water resources.

In possession of the land, the squatters rejected traditional fire regimes and other traditional land management practices, in favour of land clearing. In initially allocating these lands, the government deemed land clearing an improvement, with squatters expected to clear the land after taking possession.

With no understanding of the Country, squatters used inappropriate tools in their quest to subdue the landscape. Over time these practices led to a decline in the health of our rivers and ecosystems.

In one of the wealthiest nations on earth, the list of declining and threatened species keeps growing alongside the social disadvantage and injustice experienced by Aboriginal peoples, in this colonial top-down governing system.

As a result, Aboriginal peoples in Australia, living in extreme poverty, fit the profile of the 'left behind' as defined by the UN 2030 Agenda for Sustainable Development. That is, "those who endure disadvantages or deprivations that limit their choices and opportunities relative to others in society". People living without the "choices and opportunities to participate in and benefit from development progress".¹⁷

One hundred and ninety-three United Nations Member States adopted the 2030 Agenda for Sustainable Development, pledging to ensure "no one will be left behind" and to "endeavour to reach the furthest behind first". The overarching goal of 'leaving no one behind' calls natural and cultural heritage management into question in Australia. This means "taking explicit action to end extreme poverty, curb inequalities, confront discrimination and fast-track progress for the furthest behind".¹⁸

17 Sarah Renner, Ludo Bok, Nicole Igloi, Natalia Linou: *What Does it Mean to Leave No One Behind*, p. 28.

18 *Ibid.*

The paper concludes: “With the pledge to leave no one behind, all governments committed to break with ‘development-as-usual’. They recognized that outdated approaches had put ‘average rates of progress’ ahead of people’s lives and were, thus, threatening to leave the worst off irrevocably behind”.¹⁹

Conclusion

This article, in addressing the challenges and presenting solutions to the current Indigenous matters of disadvantage and injustice in the Anthropocene, offers a First Nations perspective on Australia’s colonial past, on present tensions stemming from this past, and on the future of the peoples of Aboriginal Nations – if the Australian government implements, in law, our rights as recognised in international law.

If the practice of ‘development-as-usual’ prevails in Australia, Aboriginal disadvantage will only increase, the socio-economic gap between Aboriginal and other Australians will only widen, and the cycle of intergenerational poverty and associated trauma will only continue infesting future generations of Aboriginal peoples.

Without intervention, the loss of habitats and the loss of biodiversity will spiral the natural world towards mass extinction. The relationship between natural and cultural diversity is well understood, along with the role of Indigenous knowledge in restoring balance in the natural world. In working with Western scientists, Aboriginal people can make a difference in the management of our natural and cultural heritage and protect these sites of world significance, for posterity.

Australia must become a defender, in law and in practice, of the natural and cultural heritage of Aboriginal Nations, of Indigenous knowledge systems, and of the status of Aboriginal Nations in managing our lands, waters, and natural resources.

This war on Aboriginal sovereign Nations, now raging for well over two hundred years, needs to end. It is time to enshrine Aboriginal peoples’ rights and interests, including compensation and reparation, in an International Sovereign Treaty, between Australia and the Aboriginal Nations of this continent.

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19 Ibid.

highlighting the questionability of the validity of the British and subsequent Australian claim to sovereignty.

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