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Articles:

'Enacted in the Destiny of Sedentary Peoples': Racism, Discovery and the Grounds of Law

Peter FITZPATRICK – Queen Mary and Westfield College, University of London.

This paper has benefited greatly from the discussion following its initial exposure at a seminar arranged by Ian Duncanson and Arena Publications in Melbourne in July 1988 and from extensive debates since with Stewart Motha and Colin Perrin.

Whilst the racial, and the racist, basis of the doctrine of discovery is a modern innovation, the doctrine owes much to its pre-modern forms and ethos. The finding and settlement of putatively unknown lands has long been attended with mythic and religious justification and with rituals of appropriation all of which strikingly resemble modern practice. Similarity in this case, however, serves to dramatise difference. The modern discovery of the occidental variety is marked by the displacement of the mythic and religious by a combination of racism and legalism. The story of that displacement is told here along with an analysis of the poverty, not to say vacuity, of the doctrine of discovery as a justification for imperial appropriation. Since the story is told in broadly historical terms, its conception of the modern relies on the temporal 'depth' which historians usually attribute to this term, here the discoveries of Columbus provide something of a benchmark. But this account of the doctrine of discovery is not an antiquarian exercise, not a tale told in a now entirely discovered world, the unfolding of which may have had its reasons for regret but is now decidedly done with. Rather, this account is modern also in the sense of having current significance, of discovery's still being an impelling force in the treatment of peoples supposedly once discovered and in the self-identity of those who would claim to have once discovered them, an identity which extends to the grounding of the discoverer's law. Following the preponderant legal authority on discovery, my 'case' study here will come from the history of the United States. The parallels with the Australian situation are, it would seem, close.

Mothering the 'Other': Feminism, Colonialism and the Experiences of Non-Aboriginal Adoptive Mothers of Aboriginal Children

Denise CUTHBERT – Centre for Women's Studies and Gender Research, Monash University.

In these reflections on the gendered impact of the child removals which came to dominate the 'management' of Aboriginal affairs from the middle decades of the twentieth-century, Deborah Bird Rose perceptively identifies the sexual politics at work by which powerful white men – whether the genitors of the children concerned or the officials who ordered and executed their removal – were able to distance themselves from the consequences and pain which entailed on their actions by shifting these burdens to those less powerful: Aboriginal women and their children.

Poetry: Away, Assimilation Prayer, Relaxed and Comfortable

Tony BIRCH – a writer who lives in Brunswick with his five children, Erin, Siobhan, Drew, Grace and Nina. In his spare time he teaches history at the University of Melbourne. He would like to thank Sara Wills for her comments on these poems.

AWAY
ASSIMILIATION PRAYER
RELAXED AND COMFORTABLE

Testimony, Narrative, and a Lived Life

Debbie RODAN – School of Arts, Murdoch University.

Shifting the focus from the idea of the privileged individual and focusing on the representation of identity within autobiography and biography, allows for different kinds of writing and reading practices. From this viewpoint the telling of 'life stories' can be read as a 'testimony' to a lived life, and as a form of 'resistance' literature. Texts can, then, be read as sites of resistance and, at the same time, can reflect our own reading processes.

Fire Creator for Justice is Awoken

Eleanor GILBERT – is a writer and a political activist.

The international spotlight once again focused on the Aboriginal Tent Embassy when on 25 January 1999, the Daily Telegraph ran a lead story, Not in Our Front Yard, revealing that Ian MacDonald, Minister for Territories, had introduced a 1932 trespass ordinance to remove the caravans, tents and dwellings. Even though the Tent Embassy has been registered on the National Estate by the Australian Heritage Commission since 1995 as a 'living site… a dynamic site which is continually evolving and changing to cater to the needs of the Aboriginal people who visit and live there.' It is under constant threat of removal.

'Not Invited to the Negotiating Table': The Native Title Amendment Act 1998 (Cth) and Indigenous Peoples Right to Political Participation and Self Determination Under International Law

Hannah McGLADE – School of Law, Murdoch University.

The passing of the discriminatory *Native Title Amendment Act 1998* (Cth) is evidence of the exclusion of Aboriginal people from the political process, and highlights the inadequacies of the Aboriginal and Torres Strait Islander Commission (ATSIC) structure. Yet, Indigenous peoples' rights to self determination and political participation are emerging under international law and the critical response of the United Nations Committee on the Elimination of All Forms of Racial Discrimination (CERD) to the Australian legislation is

indicative of this trend. These developments highlight the urgent need for reform, in accordance with international standards, of Australian domestic political structures.

Colonialism and the Moral Philosophers

John LADD – Professor of Philosophy Emeritus, Brown University, United States of America.

With the exception of Immanuel Kant, who made occasional brief references to the horrors of colonialism, most, if not all, of the other well-known moral philosophers, notably British, from the seventeenth down to explicitly or implicitly explained them away as collateral 'injustices' that were 'necessary evils' for the 'greater good of mankind', as regrettable incidents of the progress of commerce and civilisation. It may come as no surprise, with the exception of Kant, that the moral philosophers I have in mind, including Hobbes, Locke, Hume, and John Stuart Mill are not only loyal British subjects (Britain being an archetypical colonial power), but also empiricists and utilitarians in the broad sense. Nowadays they would call themselves 'liberals'. Adam Smith, as we shall see, is the outstanding exception.

Disrupting the Kantian Sublime: Gordon Bennett's Painting for a New Republic (the Inland Sea) and the Rule of Reason

Brett NICHOLLS – School of Arts, Murdoch University.

Gordon Bennett is a prolific artist who examines the cultural and social predicament of Indigenous peoples in Australia. His work opens up the political nuances of the paradoxical cultural exile of Indigenous peoples; I say paradoxical, since these have never departed the land. What makes Bennett particularly provocative is the manner in which his work draws European philosophy and colonialism together to undertake this examination. For Bennett, European philosophy is analogous to colonialism; it defines and limits subjectivity. Moreover, in the context of a colonial history these limits become violent impositions. Thus throughout Bennett's work – most notable: *The Coming of the Light* (1987), *Nature of the Observer* (1995), *Mirror (Interior/Exterior) Volkgeist* (1995), and the subject of this paper, *Painting for a New Republic (The Inland Sea)* (1994) – there emerges a necessary interrogation of the imposition of Western subjectivity upon Indigenous peoples.

Black Spice for White Lives: A Review Essay

Mitchell ROLLS – Faculty of Arts, University of Tasmania.

Joel Monture, writer and professor of traditional Native American arts, tells of a visit to Santa Fe, '*the* place to buy culture and reduce your spiritual deficit'. He writes poignantly of discovering two of his former students – a Lakota (Sioux) woman and her partner, an Arapaho sculpture student – making suede jackets – average price $US 4,000 – in a dingy back room under sweat shop conditions. Disgusted and pained by the exploitation, but the counterfeit traditional garb and artefacts on sale and, more discreetly, the illegal sale of authentic heritage items, Monture concludes by noting that Native American popularity peaks in twenty-year cycles, and that during the troughs, a period when Native peoples become invisible, 'mainstream culture' redefines them in alignment with their changing interests. He

then notes that the dominant culture 'will not stop short of acquiring even our spirituality for eventual mutation into a New Age pantomime'.

Developing a Regime to Protect Indigenous Traditional Biodiversity Related Knowledge

Henrietta FOURMILE-MARRIE – The Centre for Indigenous History and the Arts, University of Western Australia.

In the global economy, the creation of intellectual property is becoming an increasingly important factor in wealth generation as new ideas, new research and innovation form the basis of much modern day commerce. This source of wealth creation also requires protection of the intellectual property on which it relies. This is particularly so with regard to the industries with their heavy reliance on genetic engineering and other forms of biotechnology. Not only do biological resources provide much of the raw materials for such industries, but traditional biodiversity-related knowledge of such resources can also provide vital clues to industry researchers, saving valuable time and money in the research and development process. But it is also important for our long-term economic security and sustainable development that Indigenous communities in Australia secure a stake and participate in this and any other industries based on Australia's biological wealth and its management. Indeed, for many of our communities, their long-term sustainable economic property from their traditional knowledge; to create new products derived from their natural resources. In this context we, therefore, need to focus on such forms of intellectual property protection as plant breeder's rights, patents, trade secrets, and the creation and protection of economic advantage through the use of trademarks, product certification, labeling and geographic indicators. It is also relevant to consider various forms of contractual means for protecting traditional knowledge, such as biodiversity contracts, non-disclosure clauses to protect certain kinds of information, and licensing agreements.

Colonialisation Through Art: How Western Intellectual Property Law is Failing Indigenous Art

Paul LOFTUS – Blake Dawson Waldron, Lawyers, Melbourne. The comments of the anonymous referee were instrumental in the development of this paper. The usual caveat applies.

Australia's copyright law does not provide adequate recognition of Aboriginal community claims to regulate the reproduction and use of works, which are essentially communal in origin … the question of statutory recognition of Aboriginal communal interests in the reproduction of sacred objects is a matter for consideration by law reformers and legislators.

Cultural colonialism does not massacre and imprison and institutionalise a subservient people, but more gently absorbs the values of peripheral culture into the larger system of the dominant one.

Our concept of ownership evolved independently of European concepts. Without the sense of private property that ascended with European culture, we evolved concepts that recognised the interdependence of communities, families and nations. There was a sense of ownership, but not one that pre-empted the rights and privileges of others… .

Casting Shadow: Persisting Colonial Influences and Aboriginal Health

David PAUL – University of Western Australia.

There has been a substantial, and increasing, amount written on Aboriginal health inequalities in Australia. Unfortunately much of this material involves stating, or restating, health status statistics. Repetitious surveying and describing the extent of such inequality is of very limited use in engendering change. In order to reflect more usefully on the problematic nature of such approaches to Aboriginal people's health experiences in the context of a supposedly rich and homogenous Australian society, a more comprehensive consideration of both historical and contemporary understandings is needed.

Millenium Dreaming: Indigenous Peoples in Australia in the Era of Reconciliation. How Far Have We Come? How Far Have We to Go?

Aden RIDGEWAY – Senator for New South Wales, Commonwealth Parliament. This paper is a reprint of the Murdoch Memorial Lecture, delivered by Senator Ridgeway on 17 November, 1999. And is reprinted with Senator Ridgeway's permission.

As this millennium draws to a close, we find ourselves reflecting on a past that seems uncomfortable and unfamiliar – it is for many Australians, not at all like the Australia we learnt about at school. In a kind of national social cleansing, Australians are now confronted with all sorts of skeletons in the closet we had for too long left untouched. But as we enter the 21st century, there is a lot of unfinished business tht we will not leave behind. Only a few weeks ago, I still held great hope that Australians would choose to become a Republic and to adopt a Preamble to our Constitution, which for the first time in Australia's history, would have provided Constitutional recognition of Aboriginal People and Torres Strait Islanders. But it seems my hopes were premature, I continue to hope that things will change in my lifetime. It will be up to the opinion-makers to properly inform the community so tht we all feel ready for this long-overdue reform.