Ngiya
Talk the Law

Cover painting: Sunrise Band 1909
Year: 2009
Medium: Canvas
Artist: Djon Mundine
Country: Bundjalung people of northern NSW

Statement:
"In 2009 I was asked to complete an artist residency for the Manning River Art Gallery at Taree. I'd carried a 1909 inspirational black and white photograph of an Aboriginal music band from Purfleet 'mission' south of Taree on the mid north coast of NSW, for some years. Some one hundred years later, I worked with the descendants (family members) of this music group. I advertised for the heirs of this heritage to assist me in colouring this image, bringing the little-known but special human beings to life in a painting on canvas. I asked people to paint with their fingers and thumbs in a raw pointillist style that allowed children and people of all ages and skill levels to take part. The touching of their great-grand parents' images was a form of grooming; looking at and caring for them as a form of haptic specificity helped to create a bond with them and their musical art practice. Over ten days, 38 family members collaborated together and the resulting painting is the collection the Manning River Gallery, with photos of the participants in action." (Taken from an editorial essay written by Djon Mundine and published in Artlink Issue 35:2 01JUN15).

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Ngiya: Talk the Law

What is Ngiya?

Ngiya means 'talk the law' in Gamillaroi. The journal is produced by a group of Aboriginal and Torres Strait Islander people who have an interest in Indigenous legal and policy issues.

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Academic referees, with expertise in the field, assess all articles.

Ngiya: Talk the Law—Volume 5

Indigenous Methodologies

CONTENT

INTRODUCTION

Indigenous ways of knowing, being, and doing, inform our methodologies for taking up research.

This practice and process is of, course, not new. However, the circumstances we are dealing with today are the resulting conditions that have developed under the tenure of colonial forces. The impact of colonisation continues to be significant on every level of our being, but we have been able to navigate the western world's colonial structures by gaining footholds within their own Universities' scaffolds; qualifying and making known that we remain sovereign in our thoughts and actions as the First Peoples of our continent.

Appreciating that the resilience we share and celebrate as our survival is a direct result of many thousands of years of applying Indigenous logic and wisdom to dealing with the ever changing environment. At the very heart of this genius is the humble recognition that we are all a very minute part of an ecosystem that is holistic. Our existence relies on our ability to respect this ecosystem and work with supporting its balance. We have indeed been fortunate that in every generation we have been able to talk to our Elders and take up these vital and valuable resources to reinvest in our futures. So has been our continuum of past, present and future for ever being.

Today we continue to remain strong in our ways of knowing, being and doing, and have over the last few decades been able to connect with our brothers and sisters across the oceans to share our stories of how we use our knowledge systems to endorse our self-determined solutions. Our communicating has legitimised that the world we have always envisioned is a world that requires caring for us to continue to support those who rely on it for their survival. Our ways of looking after country are valued and revered by First Nations people worldwide. This is indeed an important worldview to acknowledge and appreciate as vital to the well-being of all who take breath or slumber in their resting places to be called upon to reinvigorate their song lines and other spiritual actions.

We have also gained from this sharing support to remain strong in the face of those who attempt to construct us in the mode of deficit. We are strengthened by the values we share that are divergent to those of our colonisers. Our respect of collectivity, collaboration, relationality and the importance of growing trust are inherent to our ways of being and doing. Our ethical protocols signify that we mean business in ways that are currently not being considered by dominant cultures. Indigenous Research Methodologies provide voice to those silenced, hand back power to those oppressed, ground the notions of action and change from an Indigenous Community standpoint, speak and write in a language that is spoken by our people so that the results are useful in their hands and not just in academic journals.

Academic journals, of course, provide opportunities for further sharing and substantiating why and how we use these methods. How they have been useful to other communities and what may we consider taking up as a strategy to better inform our way of addressing the circumstances we are dealing with that are a result of a dominant knowledge system that does not respect the holistic eco-system we have supported and nurtured for time immemorial.

As the world shifts and changes, our solutions informed by and through our knowledge systems that have and can shift restricting and deficit paradigms will be considered valuable. The validity and rigor of our research is improved and consolidated by the uptake of Indigenous values and ethical protocols that are intelligent and make our research about changing the status quo rather than simply reporting the status quo. An approach that we have argued is simply unethical.

The following papers you will read in this special edition share with you their extraordinary stories of taking up Indigenous ways of knowing, being and doing to define and create resolutions. Each paper delivers a robust message that we can deliver our own solutions which can benefit all.

Professor Juanita Sherwood
Academic Director
National Centre for Cultural Competence
Deputy Vice-Chancellor (Indigenous Strategy and Services)
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OBSERVING ABORIGINALITY, ABORIGINALITY OBSERVING: EPISTEMIC AND METHODOLOGICAL PATHS TO AN INDIGENOUS STUDENT JURISPRUDENCE FROM WITHIN

Alison Whittaker[*]

Introduction

Aboriginality observes itself. From this premise I began to observe it.

Aboriginality hems itself in from its conceptual wounds, stretches to accommodate itself, its land and its mob, and in patches it becomes worn. Aboriginality is imprecise as a racial category, and drawn from the common colonial subjection of hundreds of nations more than any sense of cultural or racial commonality between those nations.[1] Aboriginality always had to be liquid and dynamic as this trauma, and its sources, changed. Aboriginality, distinct from its composite nations and diasporas, is a process of becoming and unbecoming, coverage and nakedness, essentialism and anti-essentialism[2]—at once a political and intimate category that seemingly draws independent breath from its institutional and individual organs.[3]

I am Gomeroi. The Gomeroi are a nation comprised of a number of groups whose lands, by reference to settler borders, stretch from north-west New South Wales to south Queensland. I was raised close to the centre of these lands, in Gunudha, beside what is now known as the Namoi River. My people are referred to as, and insofar as our colonial context necessitates, are Aboriginal peoples. However, to be Aboriginal and to be Gomeroi, although overlapping, can be seen to be two distinct ways of knowing and two different things to be known. For instance, I know I am Gomeroi with reference to my land, language and kinship. I know I am Aboriginal with primary reference to colonisation, and my position within it. This article does not attempt to address

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[*]   Pending BA LLB (Hons). Alison Whittaker is a Gomeroi woman and critical legal scholar at the University of Technology, Sydney.

[1]   Gordon Chalmers, 'Indigenous as 'not-indigenous' as 'us'?: a dissident insider's views on pushing the bounds for what constitutes our mob' (2013) 17(2) *Australian Indigenous Law Review* 47.

[2]   Jane Haggis, 'Thoughts on a Politics of Whiteness in a (Never Quite Post) Colonial Country: Abolitionism, Essentialism and Incommensurability' in Aileen Moreton-Robinson (ed), *Whitening Race: Essays in Social and Cultural Criticism* (Aboriginal Studies Press, 2004) 48; Pat Dudgeon and John Fielder, 'Third spaces within tertiary places: Indigenous Australian Studies' (2006) 16(5) *Journal of Community & Applied Social Psychology* 396.

[3]   Bain Attwood, 'Introduction' (1992) 16 *Power, knowledge and Aborigines: Special edition of the Journal of Australian Studies* 1.

Gomeroi ways of knowing, but instead considers how Aboriginality as a positional category can interact with and research the law that tries to capture it.

The law, in its elusive pursuit of certainty in the intervention, administration and, occasionally the empowerment of the Aboriginal[4] individual, demarcates and locates Aboriginality, but does not account for its necessary liquidity. Even the judiciary, whose self-described objective is to snapshot a static Aboriginal person under the law's indicia,[5] recognise the institutional incompatibility of the law to describe what is 'Aboriginal'.

> Legal discourse in the courts is probably the least promising field in which to explore concepts of identity. It projects interrelated individual and communal realities on to a pointillist landscape of disputes and 'matters'.[6]

Nevertheless, the law continues to attempt to define Aboriginality. The current, longest-standing model for defining Aboriginality is the three-tier test. This test was devised by the Department of Aboriginal Affairs' *Review of the Administration of the Working Definition of Aboriginal and Torres Strait Islander* in 1981,[7] and integrated into the law through *Commonwealth v Tasmania*[8] and pockets of codification. This model defines an Aboriginal person as one who identifies as Aboriginal, whose community identifies them as Aboriginal and who is descended from an Aboriginal person.[9]

Despite this being articulated by courts[10] and the literature[11] as a near-universal and internally coherent model, I used Indigenist methodologies to make way for a critical legal analysis of the test's reasoning. In doing so, I revealed an implicit body of principles shaping it. Indigenist methodologies 'approach cultural protocols, values and behaviours as an integral part of methodology' and are crucial means for decolonising research by and about Indigenous

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[4]   In this article, 'Aboriginal' refers to Indigenous groups in mainland Australia and their members; 'Torres Strait Islander' refers to Indigenous groups in the Torres Strait. 'Indigenous' refers to 'Aboriginal and Torres Strait Islanders' as a whole, and 'First Nations' refers to Indigenous peoples globally.

[5]   See eg Justice John Toohey, 'Finniss River Land Claim' (Report by the Aboriginal Land Commissioner, Mr Justice Toohey, to the Minister for Aboriginal Affairs and to the Administrator of the Northern Territory No 1981).

[6]   Robert French, 'Aboriginal identity—The legal dimension' (2011) 15(1) *Australian Indigenous Law Review* 18, 18.

[7]   Department of Aboriginal Affairs, *Report on a Review of the Administration of the Working Definition of Aboriginal and Torres Strait Islander* (1981) (Constitutional Section, Commonwealth of Australia, Canberra).

[8]   *Commonwealth v Tasmania* (1983) 158 CLR 1.

[9]   John Gardiner-Garden, 'Defining Aboriginality in Australia' (Current Issues Brief No 10, 2002-3, Social Policy Group, Commonwealth of Australia, 2003).

[10]   *Commonwealth v Tasmania* (1983) 158 CLR 1.

[11]   Loretta de Plevitz and Larry Croft, 'Aboriginality Under the Microscope: The Biological Descent Test in Australian Law' (2003) 3(1) *Queensland University of Technology Law and Justice Journal* 105.

peoples, or at least for making colonisation in research visible.[12] These methodologies offer an original analysis of the existing body of precedent by considering its racialising consequences for Aboriginal persons. More crucially, these methodologies were uniquely positioned to detect an entire body of decision-making on the test that had become invisible to settler jurisprudence, because it occurred within the Aboriginal community itself—without settler documentary or substantial judicial oversight.[13]

Like most of its conceptual relatives in race and culture, Aboriginality appears to be more concrete when observed from the outside. Although an attractively simple proposition for scholars, to observe and document Aboriginality from the outside is to create something else entirely—something artificial forged in the imagination of the settler colony that is cast over diverse nations. Aboriginality from the outside is not strictly attached to Aboriginal persons as a racial identity *per se*, but it is a vital racial facade with which we navigate settler observation. It is not Aboriginality itself, but settler's perception of Aboriginality. It is thought to acquiesce to those myths put upon it by the settler colonial legal systems that, in part, made it.

> Some physical, social and material effects of [legal definitions of Aboriginality] demonstrate that [they] entrenched the very conditions…it ascribed as natural to the Aboriginal 'race'.[14]

The inimitable position of the Aboriginal scholar is of one that can both critically appraise and account for the relationship between Aboriginality and the law's representation and enforcement of it. Aboriginal scholars have the epistemic grounding of experience from which to draw a methodology that shows that what remains invisible to the law can be a fundamental and visible component of what the law is and does.

This article's attention is on translating these internal epistemologies into methodological practice as an Aboriginal critical legal scholar, and stretching between the researcher and researched. This article traces the fraught methodological middle ground between Aboriginal epistemologies and critical legal analysis.

This article will also consider a specific context of undergraduate research, In particular it will account for my position as an undergraduate Indigenous student attempting to make the leap from a doctrinal legal education to independent research. In doing so, this reflection addresses a gap in current

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[12]   Linda Tuhiwai Smith, *Decolonizing methodologies* (Zed Books, 2nd ed, 2012), 15.

[13]   John McCorquodale, 'Aboriginal Identity: Legislative, Judicial and Administrative Definitions' (1997) 2 *Australian Aboriginal Studies* 24.

[14]   Clare Land, 'Law and the Construction of 'Race': Critical Race Theory and the Aborigines Protection Act 1886' in Penelope Edmonds; Samuel Furphy (ed), *Rethinking Colonial Histories: New and Alternative Approaches* (RMIT Publishing, 2006) 137, 137.

discussions on Indigenous epistemologies and methodologies—their relevance for undergraduates and the experiences of undergraduates working with and through them.

Observing Aboriginality, Aboriginality observing

The First Nation and the academy have a vexed association shaped through conquest, devaluation, violent archiving[15] and through spaces of conceptual contest.[16] Existing literature developed by First Nation scholars and their supporters internationally speaks of high academic capacity, but of supplementary burdens too heavy for First Nations scholars to bear.[17] These further burdens do not stem only from the personal lives of First Nations persons in a colonial context, but from the colonial position assigned to First Nations scholars in the academy, and the additional struggle for institutional recognition that entails.[18] These colonial positioning burden First Nations scholars with additional labour not assigned to, or even contemplated, by their peers.[19] This includes inclusion and diversity reform, Indigenous curriculum reform and cultural competency work in learning and research institutions.[20] I argue that this work includes the methodological strain of a self-perpetuating epistemic and ontological translation of our work into colonial frameworks.

Nakata argues that settler research can relegate Indigenous epistemologies to the 'primitive'.[21] Our epistemologies are curiousities, valuable insofar as they assist a superficial understanding of us from the outside, but are otherwise considered 'obstacles' to intellectual 'progress along the path to modern civilisation'.[22] Indigenous knowledges were condemned to reside at the peripheries of the anthropological disciplines that centred us as deficit-laden

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[15] Martin Nakata, 'Anthropological texts and Indigenous standpoints' (1998) 2 *Australian Aboriginal Studies* 3.

[16] Michael Marker, 'Theories and disciplines as sites of struggle: The reproduction of colonial dominance through the controlling of knowledge in the academy' (2004) 28(1) *Canadian Journal of Native Education* 102.

[17] Sharon Kaye Chirgwin, 'Burdens too difficult to carry? A case study of three academically able Indigenous Australian Masters students who had to withdraw' (2015) 28(5) *International Journal of Qualitative Studies in Education* 594.

[18] Dudgeon and Fielder, above n 2.

[19] Susan Page and Christine Asmar, 'Beneath the teaching iceberg: exposing the hidden support dimensions of indigenous academic work' (2008) 37(Supplement) *The Australian Journal of Indigenous Education* 109.

[20] Ninetta Santoro and Jo-Anne Reid, "All things to all people': Indigenous teachers in the Australian teaching profession' (2006) 29(3) *European Journal of Teacher Education* 287 ; Christine Asmar and Susan Page, 'Sources of satisfaction and stress among Indigenous academic teachers: Findings from a national Australian study' (2009) 29(3) *Asia-Pacific Journal of Education* 22.

[21] Martin Nakata, 'Disciplining Indigenous Knowledge' in Martin Nakata (ed), *Disciplining the Savages; Savaging the Disciplines* (Aboriginal Studies Press, 2007) 182.

[22] Ibid, 182.

objects of settler inquiry,[23] and then were rushed to the fore of a wide range of disciplines in a tokenistic spirit of diversity.[24] Our knowledges have long been assigned value and assigned intellectual positions, rejected as self-evident expressions of intellectual rigour and critique.

Those scholars attached to those knowledges are painted as 'intellectual fringe dwellers…[struggling] to gain institutional recognition as thinkers, writers, intellectuals and scholars—all too often being narrowly defined as activists and agitators.'[25] As the literature has concisely framed the issue—we were moved from 'savage' to 'disciplined savage', while trying to 'savage the disciplines'.[26] In my experience as an undergraduate scholar, this has occurred in the internally-regulated translation of epistemology to methodology.

In 2015, after five years as an undergraduate Communications and Law student, I wrote a critical legal thesis as part of my Honours candidature. This thesis dissected the relationship that legal Aboriginality has with settler colonial legal systems, self-constitution and with itself. In that paper, I made steps towards a legal discourse of Aboriginality from within, and observed the ways that Aboriginality mirrored and implicated external legal discourses onto itself.[27]

In substance, that thesis found that Aboriginal ways of knowing ourselves had been corrupted by the three-tier model of legal Aboriginality. The model's adoption by Aboriginal Lands Councils and Aboriginal Corporations, in combination with invisible evidentiary and reasoning processes utilised by settler judiciary and ongoing preoccupations with biological models of race, were further found to be crucial contributing factors to this process. I suggested that this process was deep colonising, drawing upon the language of Bird-Rose, naturalising 'the very conditions'[28] of administrative racism that the three-tier model 'set out to address'.[29] The thesis concluded with the recommendation that community bodies be untethered from the three-tier administrative model of Aboriginality, and that the process be translated from one of documentary confirmation to an Indigenist jurisprudence of revival and affirmation.

As much as the thesis was itself an observation of Aboriginality's self-

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[23] Nado Aveling, "Don't talk about what you don't know': on (not) conducting research with/in Indigenous contexts' (2013) 54(2) *Critical Studies in Education* 203.

[24] Michael Warren, Guus von Liebenstein and Jan Slikkerveer, 'Networking for indigenous knowledge' (1993) 1(1) *Indigenous Knowledge and Development Monitor* 2.

[25] Dudgeon and Fielder, above n 2.

[26] Nakata, 'Disciplining Indigenous Knowledge', above n 21.

[27] Alison Whittaker, *White law, black arbiters, grey legal subjects* (LLB Honours Thesis, University of Technology, Sydney, 2015).

[28] Land, above n 14, 137.

[29] Deborah Bird-Rose, 'Land Rights and Deep Colonising: The Erasure of Women' (1996) 85 *Aboriginal Law Bulletin* 6; Whittaker, above n 27.

reflexivity, it bore the weight of another compounding self-reflexivity—I, as a Gomeroi scholar, was watching Aboriginality watch itself, as it watched me on the same mirrored and implicated terms. Subject matter and methodology became increasingly obfuscated, as did the relationship between researcher and researched. This reflection will address the experiences of Indigenous scholars traipsing the boundary between observer and subject matter, where the two are only rhetorically, rather than substantively, distinct.

I will consider my reasoning and deliberative processes throughout the thesis, and will plot sources of support and barriers to these processes. I will examine the undergraduate mandate of sourcing all claims as a site for minimising Aboriginal epistemologies and entrapping Aboriginal scholars in the double-bind of projected authenticity and institutional academic authority. I will consider formal academic language as a prohibitively restrained tool for articulating Aboriginal legal epistemologies. I will reflect on locating and addressing the standpoint of an Aboriginal legal scholar, and its role in creating a narrative of neutrality for settler scholars in Aboriginal scholarship. I will discuss the role Indigenous methodologies played in forging ground between these hurdles and the completion of my thesis from a novice undergraduate perspective.

In doing so, I hope to address critiques of Aboriginal legal criticism that pejoratively suggest it is too personalised or subjective.

Two epistemic guards: authenticity and authority

The early argumentative stages of my thesis were marred by tension between putting forward an Aboriginal epistemology of the law and institutional responses to legal scholarship that is *by* Aboriginality, rather than *about* Aboriginality. This tension played out in my mind between two perceptions of Aboriginal scholarship—the 'authentic' Aboriginal scholar, who is drawn from a set of colonially-perceived (and condescending) values of what Aboriginality is, does, and is capable of doing; and the authoritative Aboriginal scholar, who is drawn from the institutional authority of the academy and works strictly within its values. [30] Moreton-Robinson refers to approaches documenting Aboriginality from the outside as falling into the same 'traditional versus contemporary binarism'. [31] However, even working from the inside, I find myself persistently working between these two archetypes, jostling to find some meaning in or between them. I have yet to find it.

Despite this, these two exaggerated positions have done more to shape my

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[30]   Sonja Kurtzer, 'Wandering girl: who defines "authenticity" in Aboriginal literature?' (1998) 58(2) *Southerly* 20.

[31]   Aileen Moreton-Robinson, 'When the Object Speaks, A Postcolonial Encounter: anthropological representations and Aboriginal women's self-presentations' (1998) 19(3) *Discourse: Studies the the Cultural Politics of Education* 275.

thesis than perhaps its own substance. These two imagined sets of values supervise everything that I do, and my work has come to be self-regulated on their terms.[32] Once I noticed myself working under the supervision of these imagined figures, it became necessary to understand them in greater detail. Where did they come from, and how are they motivated?

First, the authentic. Aboriginal authenticity featured fairly critically in my work on the internal regulation of Aboriginalities, and I feel compelled to reflect on it as a restrictive instrument.

Aboriginal authenticity defies definition, but seems to be located somewhere other than wherever an Aboriginal person stands. Critical Indigenous scholars blame authenticity's subtle abstract motives in settler anthropology and policy as an instigator,[33] one which artificially binarises the traditional and the contemporary, the be-er and the imposter, or, popularly, the remote and the urban.[34] Authenticity is not static, and certainly not merely internal. Authenticity concerns the external or lateral purview of an observer of Aboriginality, and is motivated by their context in defining what is 'authentically' Aboriginal for that purpose. Authenticity is not something one is praised for having, but rather, something one is criticised or dismissed for not having. In this sense, it inhabits a negative space that Indigenous scholars are forced to chase.

Its conceptual diffuseness, its inhabitation of negative space, and its patent impossibility in a context where colonialism impacts and shapes Aboriginality, means that critique of inauthenticity is an ever-lingering, unshakeable threat to the validity of Aboriginal epistemologies. Our epistemologies are condemned for not performing authenticity as settler anthropology would have us do, and the threat is that, rather than our arguments being dissected as some settler scholars are accustomed, our frames of reference are subject to the flimsy critique of being 'inauthentic',[35] or the threat of being not truly Aboriginal at all. Further, positioning Aboriginality as a homogenous, rather than a diverse, intellectual position means that, in cases of internal discord that hinge on Aboriginal scholarship, authenticities are pitted against one another.

There is an element of condescension to this approach that suggests firstly, that complex, diverse and long-standing systems of knowledge can be both known and discerned by settler institutions without expertise and almost by instinct,

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[32] Michel Foucault, 'The subject and power' in HL Dreyfus and P Rabinow (eds), *Michel Foucault: Beyond Structuralism and Hermeneutics* (University of Chicago Press, 2 ed, 1982) 208-228.

[33] Carine Ayele Durand, 'Indexing (In)authenticity' (2010) 6(3) *AlterNative: An International Journal of Indigenous Peoples* 248.

[34] Sylvia Kleinert, 'Aboriginal Enterprises: Negotiating an Urban Aboriginality' (2010) 34 *Aboriginal History* 171.

[35] Durand, above n 33.

and secondly, that these knowledge systems are somehow antithetical to high-quality, varied and nuanced scholarship,[36] or alternatively, have nothing to contribute beyond settler and 'neutral' scholarly approaches

The authoritative Aboriginal scholar seems to be constructed in reply to this latter deficit-perception of Aboriginal research. This authoritative scholar is contrasted against the authentic Aboriginal scholar, but is imagined by settler binaries of researcher and researched to study Aboriginality from the outside. This scholar is mediated by academic institutions, acquires authority from publishing in them. Kwaymullina, Kwaymullina and Butterly have noted that Aboriginal epistemologies must first be mediated by institutions in order to gain access to scholarly currency, they themselves might not, without this endorsement, be considered good practice or excellent research.[37]

The 'authoritative' Aboriginal scholar writes from outside Aboriginality even while within it, and is incentivised by scholarly gatekeepers to value these mediated or institutional means of evidence (empiricism, data, precedent and case law), and to reject others. From the outset, the authoritative Aboriginal scholar appears to grow from colonial anxieties around the veracity of scholarship produced by Aboriginal scholars, and further, a patronising assumption that Aboriginal means of scholarship have no authoritative base.

This is where the tension lies, and the evidentiary and currency lines are drawn in legal scholarship. For a newcomer to, and undergraduate learner within, this already-unprecedented space, with this thesis being my first substantial and independent paper, these were the lines over which I have consistently stumbled. These two figures observed me, and in ways I will outline below, I came to mirror and actively shape myself by them. Two examples of this stumbling have been in referencing and in the use of language; these will both be critically examined below as methodological sites.

A. Sourcing

Legal scholarship's focus on the development of precedent, rather than the primacy of empirical data in other spaces,[38] opens the vast and exciting possibility to explore free-standing Aboriginal methodologies and evidences. This opportunity remains underexplored so long as critical legal scholarship resists ways of constructing and building knowledge outside of the academy's

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36   Karen Martin and Booran Mirraboopa, 'Ways of knowing, being and doing: A theoretical framework and methods for indigenous and indigenist re-search' (2003) 27(76) *Journal of Australian Studies* 203.

37   Ambelin Kwaymullina et al, 'Living texts: a perspective on published sources, Indignous research methodologies and Indigenous worldviews' (2013) 6 *International Journal of Critical Indigenous Studies* 13.

38   David Trubek, 'Where the Action is: Critical Legal Studies and Empiricism' (1984) 36(1) *Stanford Law Review* 575.

anachronistic and exclusionary foundations.[39]

When first developing a proposal for my thesis, these foundations became a stumbling block–to what extent could I rely on long-standing, but un(der)documented, community discussion and debate and not have it dismissed as conjecture? [40] The staple Indigenist methodological strategies (qualitative interviews, conversation, immersive community-driven research)[41] were unavailable to me as an undergraduate due to time and ethics constraints. Autoethnography [42] might well have been the best approach to linking a community-oriented epistemology to the methodological challenge of sampling subjective experience without interviews, but bore some considerable risk as an undergraduate project in law, a traditionally doctrinal and empirical discipline. [43] As the grade outcome of my thesis would have some material bearing on my future as an Honours student (and a future scholar), I opted for a risk-averting strategy to drag me over these foundational stumbling blocks and into the house of the legal scholar.

Instead of relying on reference to and support by ongoing and established community-level discussions and opinions on legal models of Aboriginality across a number of Indigenous groups at an institutional level, I attempted to frame existing published opinion by predominantly settler scholars in the terms of the current community understanding of the subject matter they addressed. In the context of trying to underpin an understanding of how decolonising institutions can end up reinforcing prior, anachronistic work of colonial institutions, this approach was inconsistent with what I had set out to do.

Where only voices extraneous to, and looking into, Aboriginality could be presented, even if they were framed by those from within Aboriginality, I was limited by the claims I could make; the supporting evidence I could bring; and the arguments that I could compose. Particularly in a setting where the only law that I could address was formal law as applied by settler courts, rather than a proposed further space where formal law is applied informally by Aboriginal organisations.[44] I was less observing how Aboriginality was shaped, than I was

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[39] Elizabeth Ellsworth, 'Why doesn't this feel empowering?: working through the repressive myths of critical pedagogy' (1989) 59 *Harvard Educational Review* 297; Marker, above n 16.

[40] Ross Hoffman, 'Respecting Aboriginal knowing in the academy' (2013) 9(3) *AlterNative: An International Journal of Indigenous Peoples* 189.

[41] Linda Smith above n 12.

[42] Paul Whitinui, 'Indigenous autoethnography: Exploring, Engaging and Experiencing "Self" as a Native Method of Inquiry' (2014) 43(4) *Journal of Contemporary Ethnography* 456.

[43] Douglas Vick, 'Interdisciplinarity and the Discipline of Law' (2004) 31(2) *Journal of Law and Society* 163; Trubek, above n 38.

[44] Alison Whittaker, 'The Border made of Mirrors: Indigenous Queerness, Deep Colonisation and (De)fining Indigenousness in Settler Law' in Dino Hodge (ed), *Colouring the Rainbow: Blak Queer and Trans Perspectives* (Wakefield Press, 2015).

participating in this shaping myself. Methodology and epistemology became limiting factors of each other.

In order to address these growing concerns, I methodically collated sources by Indigenous scholars. This encouraged me to seek broad, conceptual and thematic sources where specific sources on the doctrinal field under investigation were not available. In my thesis, this involved minimising those sources that, while useful in a doctrinal sense, did not take a critical approach from an Indigenist perspective to the construction of racialised legal subjects. I did so with the view that this was necessary to eliminate the problematisation of Aboriginal perspectives or Aboriginal peoples themselves, an ongoing site of methodological contestation between study by, and study about, Indigenous peoples.[45]

The necessary implication of this was that an already modest body of literature concerning legal definitions of Aboriginality was drawn ever more thin, which forced me to conduct my own original analysis of the cases concerned. This analysis was thematically supported by minoritised or Indigenised literature. In no small part, it involved an extensive intellectual labour, not only in processing and accounting for thousands of pages of raw qualitative data from cases across doctrinal fields with minimal shared language, but also the excruciating task of then linking trends across this data, and then linking these trends to a body of theoretical literature. This was undertaken in conjunction with an already intellectually-onerous methodological approach that consciously centred current undocumented Indigenous knowledge. Combined, these factors are at least an indicator of the epistemic and methodological strain placed on undergraduates seeking to employ Indigenist methodologies in terrain where no extensive body of literature exists.

At an undergraduate level where honours students have been criticised for too heavily relying on literature,[46] I began from a point where I eliminated a body of literature outright in order to prioritise Indigenous voices from within the flesh of Aboriginality. Indeed, as an undergraduate student to whom interviewing is not available as a research strategy, this was one of the very limited ways in which I could Indigenise my methodology to link with epistemic purpose. The disadvantage of this was that it only seemed to amplify academically-sanctioned Indigenous knowledges, as these were the published knowledges available to me.[47]

These concerns were addressed through the use of case studies that led a deep scholarly investigation of two judgements made in Australian courts and

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[45]   Linda Smith, above n 12.
[46]   Cassandra Florio and Steven Hoffman, 'Student Perspectives on Legal Education: A Longitudinal Empirical Evaluation' (2013) 62 *Student Perspectives on Legal Education* 162.
[47]   Kwaymullina et al, above n 37.

tribunals. These judgements further detailed community identification mechanisms undertaken by litigants. By allowing two such examples to strategically speak for themselves at both a judicial and community level, I both avoided the imposition of over- or under-intellectualisation, and amplifying the voices of Aboriginal peoples outside of the academy. Additionally, it reduced the administrative burden of the work significantly. In an undergraduate thesis expected to be completed within twelve weeks, the chance to deepen rather than widen my inquiry was a welcome relief. The most appropriate way to link Indigenist epistemology with methodology in this instance was to draw the critical and the tangible together, allowing the practical implications of these case studies to be borne out, to inform and expand the existing body of critical theory. Aside from the epistemic strength of such an approach in circumstances of scant available material, I suggest that such an approach might also have substantive pedagogic value in imparting self-reflective and critical reasoning strategies on late students and emerging scholars.

B. Language

So anxious was I to give scholarly credit to the ideas that myself and members of my communities had spoken outside of the academy that I overspoke them in academically formal and 'neutral' language. I over-articulated and over-explained concepts that may have been conceptually inaccessible for settler scholars and readers, and in doing so, I studied Aboriginality from within, but tried to write Aboriginality from without. I lost critical conceptual and written space to accommodating settler readerships, and soothing their anxieties, despite how those anxieties and roles in defining blackness remained a critical focus of my work.[48] From there, I redrew the boundaries within which I would accommodate and explain concepts that were already established in Aboriginal legal scholarship. In order to secure the space I had left to make assertions based on these concepts, I rejected the notion of universal settler accessibility to my work, and tightened those boundaries.

I did so to such an extent that I began to write external to Aboriginality as it attached to myself. 'Our' became 'their'. 'We' became 'they'. 'I' was extracted from the equation altogether. Meanwhile, 'settler-ness' in the process of my writing became a value-neutral term, assigned no loaded personality like Aboriginality was, but instead referred to as 'it', 'the court', 'legal systems', 'procedure'.[49] Whilst 'settler-ness' of course is, in part, institutional, what use was critically analysing facets of the law if I could not personify and racialise

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[48] Bronwyn Fredericks, 'The epistemology that maintains white race privilege, power and control of Indigenous Studies and Indigenous peoples' participation in universities' (2009) 5(1) *Australian Critical Race and Whiteness Studies Journal* 1.

[49] Aileen Moreton-Robinson, 'Whiteness, epistemology and Indigenous representation' in Aileen Moreton-Robinson (ed), *Whitening Race: Essays in social and cultural criticism* (Aboriginal Studies Press, 2004) 75.

them, but allowed them to remain invisible and causeless in abstract?

Mid-way through the writing phase of my thesis, I repositioned Aboriginality as 'our', 'we' and 'I' to reverse these effects, but even then I was plagued with concerns that positioning myself as having a stake in this piece might effect its perceived neutrality in a settler framework, and that by making 'settler-ness' the subject inquiry, I was instead opening myself up for critique on its terms.[50] Although, through the use of first person language, I may have effectively sign-posted critiques based on my race, authenticity and my relationship to the subject matter, ultimately, it was part of the integrity and embededness I hoped to be patent in my work, and a signpost of confidence in Aboriginal legal epistemologies that I felt compelled to make.

The instruments available to me as an undergraduate researcher were broadly insufficient to meaningfully or methodically address linguistic concerns. Even writing this with the benefit of hindsight, it is difficult to imagine what tools could have addressed these complications, or articulate precisely what these complications' impacts were, methodologically speaking. I speculate that this might be because, prior to my identification of this linguistic problem, in order to centre a critical, rather than technical, analysis of the law, I decided on a discursive and phenomenological analysis of cases.

The advantage of discourse analysis above other methodological strategies, particularly in the analysis of decision-making and judgements, is that language and social knowledge themselves became the substantive part of that analysis, rather than merely being a vehicle for it.[51] Whereas in doctrinal analysis, language might instead be a technical vector and ultimately, doctrinal clarity is the focus of the investigation.[52] Discursive analysis treats language as not only a means by which meaning is conveyed, but as constitutive of the inquiry itself.[53] In this way, methodology absorbed and gave meaning to, rather than set aside, linguistic concerns before they substantively troubled my work. This could be useful guidance for other undergraduate scholars seeking to use subjective Indigenist methodologies, but who are limited by the confines of pre-existing data or literature.

Indigenous methodologies have been framed as an approach that is constructed to address methodological motivation. Smith[54] proposes a series of questions that ought to be considered by researchers who brush with Indigeneity. These

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[50]   Karen O'Connell, 'Pinned like a Butterfly' (2008) 4(2) *Australian Critical Race and Whiteness Studies Journal* 1.

[51]   Phillip Graham, 'Critical discourse analysis and evaluative meaning: Interdisciplinarity as a critical turn' in Gilbert Weiss and Ruth Wodak (eds), *Critical Discourse Analysis: Theory and Interdisciplinarity* (Palgrave, 2003) 110.

[52]   Trubek, above n 38.

[53]   Graham, above n 51.

[54]   Smith, above n 12.

include questions of ownership, served interests, benefits, carriage, writing and dissemination.[55] The further my thesis progressed, the more that I noticed that a discursive critique that highlighted the hidden aspects of judicial commentary on Aboriginality increasingly oriented itself towards my own experiences in seeking and interacting with formal identification as an Aboriginal person. These were the phases of writing within which I was paralysed with anxiety about exposing myself as the author. Although this thesis was owned by me, delivered by me, written by me and distributed by me, by what force was this desire to alienate myself from it driven? In my mind, it was driven by the pan-Aboriginal standpoint from which I attempted to work, and from the pressure implicit in that standpoint that my work be subject to an elusive authenticity.

In this way, instead of the linguistic standpoint of 'we' and pan-Aboriginality being a tool that stretched methodology between two competing rubrics, it became a point of disguise; depersonalising what I had set out to do and imposing some degree of essentialism and absolutism over what I attempted to argue.

C. Standing Point—where is it, what is it, and do I step away from it?

Undergraduate students are encouraged to step away from our own experiences and biases, and confront the material before us. Critical methodological scholarship has to some degree rejected that any scholar can stand aside from their biases, and that, in order to address this within the context of their work, ought to articulate it in order to make these standpoints known, and allow them to inform the work.[56] Observers and critics might even better understand the work through the framework within which it was conceived, leaving the epistemic and ontological standpoints of scholars clear, and leaving space for critique and commentary based on their various exclusions and impositions.[57]

This is an approach that has been taken up widely in the United States with regards to critical race scholarship, but has been taken up with less enthusiasm in Australia.[58] Whilst, due to frames of cultural reference, some Aboriginal authors reference their standpoints as Aboriginal scholars of particular nations and affiliations either in their author biographies or works, settler authors have been known to leave these questions of standpoint and identity unanswered.

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[55]   Ibid, 123-41.
[56]   Juliana McLaughlin and Susan Whatman, 'The potential of critical race theory in decolonising university curricula' (2011) 31 *Asia-Pacific Journal of Education* 365; Rogelia Pe-Pua, 'From decolonizing psychology to the development of a cross-indigenous perspective in methodology' in Uichol Kim, Kuo-Shu Yang and Kwang-Kuo Hwang (eds), *Indigenous and cultural psychology: understanding people in context* (Springer, 2006) 109.
[57]   Nakata, 'Anthropological texts and Indigenous standpoints', above n 15.
[58]   Aileen Moreton-Robinson, 'The white man's burden: Patriarchal white epistemic violence and Aboriginal women's knowledges within the academy' (2011) 26(70) *Australian Feminist Studies* 413.

This can lead to a pervasive over-exposure of scholarly Aboriginality to standpoint scrutiny, and can naturalise the standpoints of settler scholarship on Aboriginal peoples and the law.[59] This is in addition to existing scrutiny and visibility of Aboriginal scholars of the law, due to our inability to even illusorily set aside our standpoints in scholarship when this scholarship has tangible impacts on our lives. Doubly so, when the object of inquiry is Aboriginality itself.

> Aborigines have often been represented as objects – as the 'known'. Rarely are they presented as subjects, as 'knowers'…it is academics who represent themselves as 'knowers' whose work and training is to 'know'. They have produced knowledge about Indigenous people but their way of knowing is never thought of by white people as being racialised despite being exercised epistemologically.[60]

There are comparisons to be made of norm-reflecting evidence law, where Aboriginal persons can be thought of to provide evidence, to some extent, of their own culture and practices.[61] The legal academy, to some extent, has this same series of preferences—where Aboriginal epistemologies are considered valid, but not expert, a useful perspective, but certainly not good, neutral research,[62] requiring intervention or commentary to ensure their quality.[63]

> Indigenous scholars are usually cast as native informants who provide 'experience' as opposed to knowledge about being Indigenous or white.[64]

One step beyond this is a critical standpoint phenomenology that is reflexive to itself and distinguishes between knowledge and standpoint.

> Bringing the situation of ourselves as 'knowers' into the frame does not make ourselves the focus of study but will 'involve investigating the social relations within which we as 'knowers' know.[65]

This standpoint epistemology does not refer 'to a particular social position, but rather is an engagement with the kinds of questions found there.' [66] Interrogating what is found under the feet of the scholar is the approach that informs this reflection and my thesis. However, it is not inherently decolonial

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[59] Martin Nakata, 'An Indigenous Standpoint Theory' in Martin Nakata (ed), *Disciplining the Savages, Savaging the Disciplines* (Aboriginal Studies Press, 2007) 213.

[60] Moreton-Robinson, 'Whiteness, epistemology and Indigenous representation', above n 49.

[61] *Hort v Verran* [2009] FamCAFC 214.

[62] Moreton-Robinson, 'When the Object Speaks, A Postcolonial Encounter: anthropological representations and Aboriginal women's self-presentations', above n 31; Nakata, 'Anthropological texts and Indigenous standpoints', above n 15.

[63] Kwaymullina et al, above n 37.

[64] Moreton-Robinson, 'Whiteness, epistemology and Indigenous representation', above n 49.

[65] Nakata, 'An Indigenous Standpoint Theory', above n 59.

[66] Gaile Pohlhaus, 'Knowing communities: An investigation of Harding's standpoint epistemology' (2002) 16(3) *Social Epistemology* 283, 285.

territory—a settler anxiety about colonisation and what it means for the settler's standpoint is also the undercurrent of a noticeable proportion of settler-centric work in Indigenous peoples and the law.

Sites for interrogation emerge not from intellectual curiosity, nor necessarily the development of precedent, or the day-to-day application of the law – but instead from an attempt to reconcile what I find where I am standing, with the footprints I leave there. That is to say, in my view and in my experience (and not to artificially homogenise a diverse body of intellectual work), critical Indigenist methodology is a crucial exercise in locating the work that is done, while it is being done. This can produce work that can better locate itself and its impact, and perhaps even bring settler anxieties about colonisation to the fore in interrogating what it finds there.

However, in the context of an invisible settler body of knowledge that does not generally investigate how it, as a 'knower', 'knows'. [67] Critical standpoint phenomenology as an Aboriginal scholar can (and in my case, did) launch a maddening process of self-doubt, hyper-visibility and naked vulnerability to the threat of having one's work labelled as a mere reform project (particularly in the context of the law), or one's scholarship as a whole as mere racial agitation.

D. Empiricism and Outcomes: Tracing the implications of disguised legal processes

Ongoing emphasis in policy and jurisprudence on empiricism and quantitative observations of Aboriginality before the law forgo both the rich research value of Aboriginal methodologies, and, more critically, portray trends only in the outcomes of the law, rather than its more complicated processes, implications and positions. [68] For instance, empirical data on case outcomes concerning Indigenous parties might well depict bias, a trend in judicial reasoning or an unexpectedly-crucial legal juncture. Purely empirical legal data in its own right is inept in unveiling colonial practices embedded into the law itself, although it might reflect them.[69] That is to say, that whilst data can unravel systemic biases on the law's terms, it is an unsuitable instrument for dissecting what I think is the more critical hinge of the relationship between Indigenous peoples and common law systems—the invisible legal 'neutralities' that reside in the skeleton of the law and are both assumed and unquantifiable, but nonetheless of substantial impact to Indigenous persons—an institutional and ontological bias in the law itself.

That is not to say that nothing with evaluative value could take its place, as it

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[67] Nakata, 'An Indigenous Standpoint Theory', above n 59.
[68] Darren Peter Parker, 'An aboriginal jurisprudential examination of constitutional recognition' (2013) 22(2) *Griffith Law Review* 344.
[69] U. Kalpagam, 'The colonial state and statistical knowledge' (2000) 13(2) *History of the human sciences* 37

were. Aboriginal epistemologies of the law (including its contrast with our own systems of law, critical colonial theory and an experiential breakdown of legal contact and trauma) are particularly well placed for this systemic analysis, and, crucially, centre Aboriginal actors and subjects of study as the scholars who must drive it.[70]

In these analytical frameworks, it is impossible for us to stand aside. Moreover, were we to do so, our research and knowledges would lose their value, both because the valuable framework of centred Aboriginal experience is left vacant,[71] and because Aboriginality from within is a concept largely distinct from Aboriginality from without. Traipsing the border of within and without as Aboriginal scholars has useful methodological value, but performing the role of the outsider conflates, rather than draws research value from, these dual perspectives.

In my thesis, I traced the operative and legal boundaries of the Aboriginal legal subject from within it. Mapping Aboriginality at law, due to its consideration as a matter of fact, not law,[72] did not strictly concern precedent beyond the trends within particular statutory instruments that bound Aboriginality together. At a legal level, as Aboriginality is seen before the courts, this involved evaluating a nexus of facts, and reasoning within probative frameworks that were not always consistent.

Although scoping data played some role in connecting Aboriginality as seen by the courts to Aboriginality as seen by those who deliberate it in the day-to-day (through Confirmations of Aboriginality) revealed that Aboriginality was more frequently contested from within than it had been previously.[73] A macro analysis of these cases proved deeply unhelpful, even in mapping trends, to create a fuller picture. The data did not provide a picture of a trend that could be clearly observed through qualitative and narrative reading of the cases—an imprecise and contoured, non-chronological withdrawal of Aboriginality from its conception as a three-tier test incorporating community and self-identification, towards a biological and genetic construction of race.

What scoping data did reveal of the outcome was that the outcome was only minimally significant to how Aboriginality has been constructed. Even with this anachronistic return to colonial principle, a considerable majority of the

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70   Martin and Mirraboopa, above n 36.
71   Deborah Prior, 'Decolonising research agendas: claiming voice and power in academia' in Jack Frawley, Maggie Nolan and Nereda White (eds), *Indigenous Issues in Australian Universities: Research, Teaching, Support* (Charles Darwin University Press, 2009) 66.
72   *Muramats v Commonwealth Electoral Officer (WA)* (1923) 32 CLR 500; *Sheldon v Weir (No. 3)* [2010] FamCA 1138.
73   Whittaker, *White law, black arbiters, grey legal subjects*, above n 27; John McCorquodale, 'The Legal Classification of Race in Australia' (1986) 10(1) *Aboriginal History* 7.

cases still found the person in question to be Aboriginal. What critical race scholarship,[74] and in this case, critical Indigenous scholarship, unveiled was that it was in this process, rather than the outcome, that troubling views of Aboriginality emerged, with operational and epistemic, rather than purely legal, implications.[75]

An overview of the data may have unveiled an imprecise opposite of that, that Aboriginality is applied liberally and generously by the judiciary to allow a majority of applicants to hold an Aboriginal legal identity, and that Aboriginal persons had some degree of control in this process by virtue of appeal to the courts. I would say, operating from the perspectives of outcome, structural and interpersonal judicial 'bias' approaches in this instance are a projection on Aboriginality from without. This will not be the case in all contexts. Further analysis of Aboriginality from within, in Aboriginal corporations mostly outside the view of the courts, revealed that the operational and epistemic implications of current tests for legal Aboriginality prompted concern that legal Aboriginality was actually an increasingly restricted concept, and systemic external factors ensured that Aboriginal decision-makers had an illusory stake in self-constitution.

Despite the (albeit limited) availability of quantitative data on Aboriginality at the operative level through the minutes and annual reports of Aboriginal corporations, I declined to use it beyond setting the scene for a distinct application of principles on Aboriginality in a distinct setting. From another angle, if, in considering Aboriginal persons and organisations, I were to impose the same empirical constraints that focused on outcomes, would I be considering Aboriginality within itself, or as a matter of policy administration? What are the implications of that?

Rather than trying to map an operational Aboriginality through trends at all, I opted to confer the subject matter to greater analytical depth. To do so, I considered only two matters as case studies, and extracted qualitative data from the facts of how their Aboriginality was decided on the ground as outlined by the judgement. What followed was a narrative case analysis that focused on salient practices highlighted by the facts, and related to, but not necessarily formally addressed, by the settler law. These included considering legal Aboriginality as a construction of over-evidenced, over-documented and over-scrutinised probative questions, even by our own autonomous bodies. One particular applicant had no fewer than eight individual pieces of evidence of his Aboriginality, which was considered insubstantial. [76] It also included contrasting this with consideration of whiteness as a category of assumed race,

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Helen McDonald, 'Exploring possibilities through critical race theory: exemplary pedagogical practices for indigenous students' (Paper presented at the NZARE/AARE Conference, Auckland, NZ, November 2003).

[75] Parker, above n 68.

[76] *Sheldon v Weir (No. 3)* [2010] FamCA 1138.

or indeed, as a non-racialised subject, where in the same case, an Irish woman merely had to produce one piece of evidence to attest her heritage.[77] This analysis also included an underpinning of how Aboriginal decision-makers, under the gaze of stringent Ministerial policy and with the lingering threat of administrative appeal, created tighter evidentiary constraints than even a court or tribunal was willing to apply.[78]

Combined, these provided evidence of an Aboriginality from within which was being substantively shaped by the 'neutral' skeleton of evidentiary and probative principles of settler law. A surprising and disconcerting finding emerging from the in-depth phenomenological case studies was the extent to which Aboriginal governance was active in the process of entrenching a biological racialisation. In this sense, Indigenist methodologies are strongly positioned to be communal-reflexive ways of thinking about the implications of law, including those implications that complicate our narratives of law and how it is colonially enacted. Without a critical legal analysis with an Indigenous perspective, I doubt that a finding seemingly external to a judicial application of the law would be brought into the legal picture. This approach meant that findings that were previously untenable from a strictly doctrinal perspective emerge as sites for reform in substantive law, including changes to the documentary process of Confirmations of Aboriginality that de-centred documentation as proof of identity and re-centred epistemic revitalisation.

E. *Complicated and complicating*

A repetitive criticism of Aboriginal legal epistemologies is this paradoxical statement—that Aboriginal legal epistemologies are either simple or that they are simple and are made complicated by methodology, or those scholars who practice them.[79] Their treatment by the academy in both curriculum and research reflects this projected superficiality. In my undergraduate study prior to the completion of my Honours thesis, Aboriginal legal systems were considered only insofar as they grounded settler legal principles. For instance, native title was taught only so far as it was a necessary concomitant to the radical title of the Crown. Either that, or we were considered passive victims of circumstance, deficits that the law had to address, but which the law was never implicated in a contributor. It seemed natural to me that in response to a generally simplified instruction of Aboriginality and the law (which I understand to be common to many law schools),[80] I would mirror this process

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[77]   Ibid, [504].

[78]   *Re: Bruce William Patmore and Others, Applicant, and Independent Indigenous Advisory Committee, Respondent* (Unreported, Administrative Appeals Tribunal, 18 October 2002).

[79]   Moreton-Robinson, 'The white man's burden: Patriarchal white epistemic violence and Aboriginal women's knowledges within the academy', above n 57.

[80]   Simon Young, 'Cultural Timelessness and Colonial Tethers: Australian Native Title in Historical and Comparative Perspective' (2008) 12(1) *Australian Indigenous Law Review* 60 ; Irene Watson and Marcelle Burns, 'Indigenous Knowledges: A strategy for

in an Indigenous methodological approach to address these colonial anxieties with Aboriginality in law, and that I would seek to address the role that law had and continues to have in Aboriginal deprivation and victimisation.

Clearly, Aboriginal methodologies have been complicated by their burdened relationship with language. Articulating these principles in not only settler legal frameworks, but scholarly frameworks imposed on top of them, becomes a convoluted exercise, particularly where, for the sake of colonial scholarly currency, Aboriginal jurisprudence is forced to articulate itself through legal principle and existing literature by settler scholars. Aside from the conceptual barriers of articulating Aboriginal knowledge in these scholarly frameworks, Aboriginal scholars face the additional difficulty of expressing our knowledge in careful academic vernacular. In some circumstances this may be an ill-suited means of communicating something that aims to stand outside of colonial systems of knowledge.[81] When we do, the rigid scepticism that meets our work is fixated on its delivery and the academic currency it brings. This makes me wonder if our knowledges are better placed in lengthy, probative and collaborative conversations, art or practical work than as written papers, not because of any scholarly inadequacy, but because these contexts are more readily made our own outside of the devaluation cast by the settler academy.

These further challenges aside, the anticipation by settler scholars that Indigenous concepts will be simple and accessible to them places an unfulfillable burden on Indigenous scholarship, and restricts the articulation and growth of a stand-alone Indigenous jurisprudence.

As with Aboriginality itself before the law, Aboriginal critical legal scholarship is purposively shaped by its colonial context in a way which threatens to defeat it, and which forces its momentum towards these dual colonial assumptions of simplicity, and of over-articulation. The weakening of even these manifestations of Indigenous knowledges in the academy takes place when naming Aboriginal critiques of the law mere 'perspectives',[82] draining them of any further scholarly currency as if they were mere guesswork, rather than carefully navigated jurisprudence.

Nonetheless, such a jurisprudence is in the long process of emerging within and outside of these constraints, and upcoming generations of Indigenous students and undergraduate researchers are making headway in this terrain.

First Nations Peoples' Engagement in Higher Education' in Sally Varnham, Patty Kamvounias and Joan Squelch (eds), *Higher Education and the Law* (The Federation Press, 2015) 41.

[81] Prior, above n 71.
[82] Watson and Burns, above n 80.

Conclusion

Aboriginal knowledge and knowledge-holders, despite their relegation to the fringe of legal scholarship, continue to resist the positions assigned to their work, and continue to challenge their subjection to inquiry. My attempts to stand within my subject matter and interrogate it from within were subject to internalised anxieties of Aboriginal knowledge, and cyclical attempts to step outside the shroud of Aboriginality and instead view the exterior surface of Aboriginality and its relationship with the settler law.

Contrary to the patronising relegation of Aboriginality in scholarship to the 'perspectives' category, flipping epistemic approaches to Aboriginality identity law to view it from within gave rise to an analysis of previously unsurveyed legal terrain. This was not mere conjecture, nor mere perspective, but an entirely distinct view of the law that articulated new forms of precedent, and opened them to critical reflection as a self-determinative process or otherwise. In reflecting and observing on this process, I was able to interrogate the processes that continually drew me outside this standpoint. I was able to give flesh to those conversations I had on Aboriginality and the law with my community, and bring them in sharp public scholarly relief with prior scholarship on Aboriginality as it is shaped as a body of public judicial precedent.

Aboriginal legal criticism is assigned a superficial value for that which can be seen of it from the outside. From within, these epistemologies are enriched by our proximity as subjects and objects of inquiry, and more crucially, as readers and responders to our own inquiry on the inside of Aboriginality. From this perspective, even methodology and epistemology can become complex, intertwined instruments of knowledge. Even Indigenising and colonising epistemologies can become knotted, especially by student researchers whose research is underscored by competitive and evaluative scholarly gatekeeping.

As an Indigenous learner struggling with, and working towards, acquiring key competencies as a researcher or intellectual, traipsing the bounds between ways of knowing and researching, can be fraught and plagued with insecurities. Methodologies at the undergraduate level are exploratory, diverse, and lay formative ground for ongoing inquiry. In my own experience in completing an undergraduate thesis, this process was less a question of oppressive research versus decolonising research, oppressive knowledge versus decolonising knowledge, although these tensions are a critical feature of the undergraduate research landscape.

For myself, at least, this methodological struggle was a way of learning through failing and revising, not merely in terms of exploring methodology itself, but rather in the sense that from hurtling back to epistemology to revise methodology so violently and spontaneously, I observed many facets of my

subject matter that I would otherwise have dismissed, including the role of institutional 'settler-ness' in the law and literature. Through this, I was able to depart from what Smith termed the 'problem'[83], where Indigenous researchers and writers can find themselves almost habitually and uncritically returning to the intellectual formation of Indigeneity as Other and the academy as a prioritised form of knowledge. The danger lies in inadvertently reinforcing these principles and legal language as our own and granting them our de-colonial imperatives and currency, in addition to hardening ourselves to our ways of knowing and researching that defy translation on colonial terms. Rather than problematising Indigenous legal practices through a deep colonising framework, I could set upon the more crucial task of problematising the law.

I found that Indigenous research methodologies are remarkably resilient and adaptive to ongoing revision in accordance with their purpose and context. The implication of this is that Indigenist research is well placed for undergraduate honours scholars. It is well placed not because it is simple, or a mere 'starting block' for Indigenous research, both unsubstantiated claims and loaded untruths, but rather because it does not artificially distinguish between the researcher and the researched, and because, unlike any other research methodology I have encountered as an undergraduate or as a research assistant, it is both epistemic and pedagogic.

Indigenist methodologies for Indigenous undergraduate researchers draw their potency from their orientation towards critical self-reflection, self-appraisal of ethics, implications and outcome, and their ability to forge new ground inconceivable through settler legal methodology. They do not shy from the border of learning and knowing, and challenge each of us, experienced or novice, to remain porous, accountable and responsive to knowledge production.

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[83]   Linda Smith, above n 12, 35.

SPEAKING AS COUNTRY: A NGARRINDJERI METHODOLOGY OF TRANSFORMATIVE ENGAGEMENT[1]

Steve Hemming, Daryle Rigney, Shaun Berg, Clyde Rigney, Grant Rigney, Luke Trevorrow[*]

> The land and waters is a living body.
> We the Ngarrindjeri people are part of its existence.
> The lands and waters must be healthy for the Ngarrindjeri people to be healthy.
> We are hurting for our country.[2]

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[2] Tom Trevorrow in Naomi Goodwin and Sandra Bennett (eds), *The Murray Mouth: Exploring the implications of closure or restricted flow* (Murray-Darling Basin Commission, 2002) inside front cover.

Introduction

The systemic nature of colonisation results in a trenchant series of problems for Indigenous peoples striving to protect their lands and waters, to ensure the health of their communities, and to rightfully enjoy their cultural life. Indigenous leaders and communities who seek the transformation of colonial systems of knowledge, law and practice must engage effectively and authoritatively with the non-Indigenous processes and structures that have long been the source of Indigenous disempowerment. How can Indigenous people engage with a dominant system, without being co-opted into that system? Similar issues are raised for non-Indigenous actors implicated with Indigenous affairs: how can the agencies of a dominant system partner meaningfully and respectfully with Indigenous peoples, to refrain from appropriating Indigenous cultural knowledge and assimilating Indigenous aspirations within a framework that has been developed insensitively, in ignorance of Indigenous needs, perspectives and philosophies? In sum, how can we collectively ensure that our 'response to wrongs are not reinscriptions of colonial processes'?[3]

In South Australia, the Ngarrindjeri Regional Authority (NRA) has developed an innovative response to colonial governmentality, which subverts and seeks to correct the structural conditions underlying the continuing dominance of colonial social forms and their associated epistemologies. The NRA makes strategic use of an Indigenous-led methodology of engagement that is culturally relevant and secured legally through contractual agreement.[4] At its centre is the Ngarrindjeri concept of *Yannarumi*—broadly translated as 'Speaking as Country'. Resulting interaction then reinforces Ngarrindjeri nationhood and agency in protecting Ngarrindjeri lands and waters, by sharing in knowledge production that respects rights to cultural knowledge as a form of intellectual property. Through this method of relationship-building, including in the domain of scientific research conducted on Ngarrindjeri Ruwe (Country), the NRA has been able to take an active and progressive role in the development of environmental policy and in decision-making around water and natural resource management (NRM) in the Murray-Darling Basin region.[5]

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[3]   Daryle Rigney, Steve Hemming and Shaun Berg 'Letters Patent, Native Title and the Crown in South Australia' in Elliot Johnston, Martin Hinton and Daryle Rigney (eds), *Indigenous Australian and the Law* (Routledge Cavendish, 2nd ed, 2008) 161, 164; Simone Bignall, *Postcolonial Agency: Critique and Construction* (Edinburgh University Press, 2010).

[4]   Steve Hemming, Daryle Rigney and Shaun Berg, 'Researching on Ngarrindjeri Ruwe/Ruwar: Methodologies for positive transformation' (2010) 2 *Australian Aboriginal Studies* 92; Daryle Rigney, Simone Bignall and Steve Hemming, 'Negotiating Indigenous Modernity: Kungun Ngarrindjeri Yunnan—Listen to Ngarrindjeri Speak', (2015) 11(4) *AlterNative* 334.

[5]   The NRA has negotiated a 'Statement of Commitment' with the South Australian Government dealing with Indigenous engagement in water resource planning in line with the Murray-Darling Basin Plan.

This article provides a conceptual account of these innovations in environmental management being led by Ngarrindjeri elders and leaders working in natural resource management and cultural heritage programs in the South Australian Murray-Darling Basin.[6] We explain how the NRA and our partners in environmental research and policy planning are involved in a transformative method of 'actor network' realignment, encouraged strategically through a politics and an ethics of respectful engagement.

The first section considers the Ngarrindjeri engagement strategy in the light of the nation's cultural beliefs, its aspirations for the future, and the historical context of the processes of colonisation it has survived and continues to struggle against. The second section describes how a Ngarrindjeri philosophy of interconnectivity has informed this Indigenous nation's strategic invention of 'Kungun Ngarrindjeri Yunnan' Agreements as legal tools for contracting and regulating the conditions of respectful relationship, including in the domains of research and policy; these tools are effectively transforming the actor networks in South Australian natural resource management. The third section elaborates how this process of actor network transformation works. It describes the methodology of engagement employed by Ngarrindjeri and partners in research investigating water use and natural resource management in the South Australian Murray-Darling Basin region. This transformative work is taking place in the ongoing 'contact zone' of practices, ideas and assemblages created through engagements between Ngarrindjeri and the settler State.[7]

Colonial impairment of the Ngarrindjeri Vision for Country

At the start of the new millennium South Australia was plunged into a serious drought that severely restricted the flow of water through Ngarrindjeri Ruwe (Country), impacting the health of the lower River Murray, Lakes Alexandrina and Albert, and the Coorong. The entire Murray estuary here is identified as a Ramsar Wetland of International Importance.[8] This region supports a fragile ecology where the 'Meeting of the Waters' takes place, as fresh water combines with ocean saltwater in the tidal flows of the river mouth.[9] This area

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[6] The authors of this article are directly involved on a day-to-day basis in the development of engagement and negotiation strategies relating to Ngarrindjeri interests in water planning, management and research and the broader NRM context. We also pay respects to the Ngarrindjeri leaders and elders who have passed and their steadfast commitment and enormous contribution to the development of the strategies and innovations discussed in this article.

[7] For a discussion of the concept of 'contact zone' see Marie Louise Pratt, 'Arts of the Contact Zone' (1991) *Profession* 33.

[8] Bill Phillips and Kerri Muller, *Ecological character of the Coorong, Lakes Alexandrina and Albert Wetland of International Importance* (Government of South Australia, Department for Environment and Heritage, 2006).

[9] Diane Bell, Ngarrindjeri Wurruwarrin (Spinifex Press, 1998); Steve Hemming, Tom

is a vital cultural and creation place for the Ngarrindjeri, and a habitat and breeding ground for many Ngarrindjeri *ngartji* (totems—friends). In 1998 the Ngarrindjeri Ramsar Working Group produced a community-endorsed position paper that lamented the degradation of waters in the region:

> Too much water has been diverted from the river system and not enough water now reaches the Lakes and Coorong. The quality of the water has also fallen. The water is cloudy, polluted and not fit for drinking. The Murray, the Lakes and the Coorong are no longer environmentally healthy and this is partly why the Ngarrindjeri people are not healthy. The Ngarrindjeri know that the Coorong, Lakes and River are dying.[10]

The Ngarrindjeri position paper was excluded from the final Ramsar Management Plan after promises were made by the South Australian Government that it would be included. The disrespectful approach to Ngarrindjeri values, aspirations and knowledges was compounded by the degraded health of the river system. This sad state of affairs stands as a direct counterpoint to the Ngarrindjeri 'Vision for Country', which encapsulates the Ngarrindjeri philosophy of being (*Ruwe/Ruwar*) at the centre of more recent Ngarrindjeri interventions in natural resource and cultural heritage management:

> Our Lands, Our Waters, Our People, All Living Things are connected. We implore people to respect our Ruwe (Country) as it was created in the Kaldowinyeri (the Creation). We long for sparkling, clean waters, healthy land and people and all living things. We long for the Yarluwar-Ruwe (Sea Country) of our ancestors. Our vision is all people Caring, Sharing, Knowing and Respecting the lands, the waters and all living things.[11]

Ngarrindjeri elders and leaders developed this aspirational statement in 2006 as a fundamental part of the *Ngarrindjeri Nation Yarluwar-Ruwe Plan*.[12] It makes plain ongoing Ngarrindjeri traditions, values and aspirations associated with Ngarrindjeri lands and waters. It was an example of Ngarrindjeri *Yannarumi* (Speaking as Country) and it carries with it reference to Ngarrindjeri law, and a Ngarrindjeri assessment of what constitutes wellbeing and what has to change to achieve this vision.

Since South Australia's establishment as a British colony in 1836, Ngarrindjeri and other Indigenous people have struggled to protect their cultures,

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Trevorrow, and Matt Rigney, 'Ngarrindjeri culture' in Naomi Goodwin and Sandra Bennett (eds), *The Murray Mouth: Exploring the implications of closure or restricted flow* (Government of South Australia, Department of Water, Land and Biodiversity Conservation, 2002) 13.

[10] Ngarrindjeri Ramsar Working Group, *Ngarrindjeri Perspective on Ramsar Issues* (1998) 5.

[11] Ngarrindjeri Tendi, Ngarrindjeri Heritage Committee and Ngarrindjeri Native Title Management Committee on behalf of the Ngarrindjeri Nation *Ngarrindjeri Nation Yarluwar-Ruwe Plan: Caring for Ngarrindjeri Sea Country and Culture* (2006), 7.

[12] Ibid.

communities, lands and waters—in short, to 'Speak as Country'.[13] As a result of the colonial history of dispossession and oppression, Indigenous nations across Australia have very limited 'rights' to water and other natural resources except indirectly through a weakened native title regime and more indirectly through regional legislation such as the *Aboriginal Heritage Act*, *1988* (SA).[14] Historically, when water licenses became available along the Murray River, Ngarrindjeri people were still living under protectionist legislation on former missions or in fringe camps and were in no position to apply. This situation differs significantly from the experiences of Indigenous peoples in comparable settler democracies such as Canada, the USA and New Zealand. In all these examples there exists significantly stronger recognition of Indigenous rights to lands and waters.[15]

Nonetheless, as the formal 'constitutional' statement above demonstrates, Ngarrindjeri have maintained a strong connection to country through a cultural tradition of *Ruwe/Ruwar* (understanding that lands, waters, people and all living things are connected). Ngarrindjeri have continued to draw attention to the damaging changes being made to Ngarrindjeri country through ongoing colonization.[16] Ngarrindjeri argue that the draining of South Australia's South-East has had damaging effects on the flow of water into the Coorong and into

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[13]   Christobel Mattingley and Ken Hampton *Survival in our own land: "Aboriginal" experiences in "South Australia" since 1836* (Wakefield Press, 1988); Shaun Berg (ed), *Coming to Terms: Aboriginal Title in South Australia* (Wakefield Press, 2010); Steve Hemming, Daryle Rigney and Shaun Berg, 'Ngarrindjeri Futures: Negotiation, Governance and Environmental Management' in Sarah Maddison and Morgan Brigg (eds), *Unsettling the Settler State: Creativity and Resistance in Indigenous Settler-State Governance* (Federation Press, 2011) 98.

[14]   Bruce McFarlane, 'The National Water Initiative and acknowledging Indigenous interests in planning', (2004), Paper presented to the National Water Conference, Sydney, 29 November 2004; Robert Hattam, Daryle Rigney and Steve Hemming, 'Reconciliation? Culture, nature and the Murray River' in Emily Potter et al (eds) *Fresh Water: New Perspectives on water in Australia* (Melbourne University Press, 2007) 105; Jessica Weir, *Murray River Country: An ecological dialogue with Traditional Owners* (Aboriginal Studies Press 2009); Jessica Weir (ed), *Country, native title and ecology, Aboriginal History. Monograph 24* (ANU Press, 2012); Poh-Ling Tan and Sue Jackson 2013 'Impossible Dreaming - does Australia's water law and policy fulfil Indigenous aspirations?' (2013) 30 *Environment and Planning Law Journal* 132; Timothy Neale and Stephen Turner, 'Other people's country: law, water, Entitlement', (2015) 5(4) *Settler Colonial Studies* 277.

[15]   William H Veeder, 'Winters Doctrine Rights Keystone of National Programs for Western Land and Water Conservation and Utilization' (1965) 26(2) *Montana Law Review* 1.; Marcia Langton et al, *Honour among nations: Treaties and agreements with Indigenous people* (University of Melbourne Press, 2004); Steve Hemming, Daryle Rigney and Meryl Pearce, 'Justice, culture and economy for the Ngarrindjeri nation' in Emily Potter et al (eds), *Fresh Water: New Perspectives on Water in Australia* (Melbourne University Press, 2007) 217; Lisa Strelein, *Compromised Jurisprudence: Native Title cases since Mabo* (Aboriginal Studies Press 2006).

[16]   Diane Bell, (ed) *Kungun Ngarrindjeri Miminar Yunnan: Listen to Ngarrindjeri women speaking* (Spinifex Press, 2008); Ngarrindjeri Nation, Yarluwar-Ruwe Plan, above n 16.

the Lower Murray region more generally. The draining of wetlands/nurseries along the Murray and the building of levee banks and barrages to facilitate industries such as dairy farming and fruit growing have had devastating impacts on the health of the South Australian Murray-Darling Basin (SAM-DB) and the lives of Ngarrindjeri people. Always at the centre of this Indigenous communication and educational program have been Ngarrindjeri stories, histories and lessons with a message for non-Indigenous people to develop a respectful, health-giving relationship with Ngarrindjeri lands and waters. Ngarrindjeri have continued to exercise responsibility to Speak as Country, to preserve the reproductive health of Ngarrindjeri *Yarluwar-Ruwe* (Sea Country).

In the early 1990s, Ngarrindjeri men and women used new Aboriginal heritage legislation to argue that the waters around Kumarangk (Hindmarsh Island) are spiritual waters and crucial for the life of the Ngarrindjeri Nation. Ngarrindjeri sought to protect their *Ruwe* (Country) from desecration and further environmental degradation. They insisted that building a bridge between the mainland at Goolwa and Kumarangk would do irreparable damage to the spiritual context of the region and therefore would compromise the health of the River, the Lakes and the Coorong and all connected living things.[17] They were attempting to communicate the core Ngarrindjeri cultural principles associated with *Ruwe/Ruwar*. The litigation around the Hindmarsh Island bridge issue was fought in multiple courts and in both state and federal jurisdictions. In 1995 a Royal Commission was also established to investigate these claims, and its findings rejected the Ngarrindjeri traditions.[18]

At this very low point in the Ngarrindjeri Nation's history, Ngarrindjeri saw little scope for exercising agency within the settler colonial system. The efforts of Elders and leaders to use the mechanisms of settler law such as Aboriginal heritage legislation to speak for Country and to protect Ngarrindjeri cultural life had been met with incomprehension, and at times blank refusal. Ngarrindjeri found themselves caught and immobilised within an inflexible actor network structured by colonial institutions and their associated forms of knowledge, which funnelled social understanding through narrow pathways towards a predetermined outcome of cultural extinction. Ngarrindjeri were once again declared extinct, not modern and 'enslaved' in death-giving, actor-networks that fail to provide any opportunity for Ngarrindjeri to be Ngarrindjeri in a

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[17]   Iris E Stevens *Report of the Hindmarsh Island Bridge Royal Commission* (State Print, 1995); Bell, Ngarrindjeri Wurruwarrin, above n 14; Bell, Kungun Ngarrindjeri Miminar Yunnan, above n21; Sandra Saunders (2003) 171 *Overland* 60; Tom Trevorrow and Steve Hemming, 'Conversation: Kungun Ngarrindjeri Yunnan – Listen to Ngarrindjeri People Talking' in Gus Worby and Lester-Irabinna Rigney (eds), *Sharing Spaces: Indigenous and Non-Indigenous Responses to Story, Country and Rights* (API Network, 2006) 295.

[18]   Stevens, above n 22; Margaret Simons, *The Meeting of the Waters: The Hindmarsh Island Affair* (Hodder Headline Australia, 2003).

Ngarrindjeri way.[19] According to John Law, because of their apparent systemic stability, such 'knowledge places' tend towards a 'pessimistic ending' in which the potential for transformation becomes almost unimaginable:

> Here's the pessimistic ending. If we're interested in change, if we are interested in radically different forms of knowing and the radically different versions of the world that might go along with that knowing, then we face an uphill battle. This is because we're caught in what one might think of as a quadruple lock. By which I mean that *all* the items on the list—institutions and technologies, metaphysics, particular descriptions and the things that we are describing – need to be altered simultaneously if we are to achieve certain forms of radical change. But, here's the problem, they all interlock with one another. Specific forms of knowledge and their objects are embedded in institutions and in metaphysics too. So, for instance, to know and to engage in debate in the most obvious ways is also to reproduce the most obvious institutional forms, authorities and metaphysics, and changing these together would require organisational, social, material, and metaphysical reworking all at one go.[20]

However, even in the most rigid colonising and normative systems, what might appear to be minor shifts can produce opportunities for significant change if the interventions are strategic, theorised and coordinated. Ngarrindjeri are working hard to re-assemble this colonising contact zone and to abolish the ongoing erasure of Ngarrindjeri Ruwe/Ruwar. This work has required reinforcement of First Nationhood, strengthening of governance and an assertion of the responsibility to 'Speak as Country'[21]

In 2001 the Federal Court of Australia in Adelaide reconsidered the evidence previously put forward by Ngarrindjeri to oppose the construction of the bridge to Kumarangk. This time, although the Bridge had already been erected and the desecration of *Ruwe/Ruwar* (country, body, spirit and all living things) had already taken place, Justice Von Doussa concluded that 'upon the evidence before this Court I am not satisfied that the restricted women's knowledge was fabricated or that it was not part of genuine Aboriginal tradition'.[22] This

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19   Steve Hemming, 'Managing Cultures into the Past' in Damien W Riggs (ed), *Taking up the challenge: critical race and whiteness studies in a postcolonising nation* (Crawford House Publishing, 2007); Steve Hemming and Daryle Rigney, 'Unsettling sustainability: Ngarrindjeri political literacies, strategies of engagement and transformation' (2008) 22(6) *Continuum: Journal of Media and Cultural Studies* 757; Jim Birckhead et al, *Economic and Cultural Values of Water to the Ngarrindjeri People of the Lower Lakes, Coorong and Murray Mouth. Report to the Commonwealth Scientific and Industrial Research Organisation (CSIRO)* (River Consulting 2011).

20   John Law, 'Knowledge Places' (Plenary paper presented at workshop: 'Linking STS and the Social Sciences: Transforming 'the Social'?', Kookmin University, Seoul, 28-29th October 2011) 10
<http://www.heterogeneities.net/publications/Law2011KnowledgePlaces.pdf>.

21   Hemming, Rigney and Berg, Researching on Ngarrindjeri *Ruwe/Ruwar*, above n 9; Stephen Cornell, '"Wolves Have a Constitution": Continuities in Indigenous Self-Government' (2015) 6(1) *International Indigenous Policy Journal*; Stephen Cornell, 'Processes of Native Nationhood: The Indigenous Politics of Self-Government' (2015) 6(4) *The International Indigenous Policy Journal*.

22   *Chapman v Luminis Pty Ltd (No 5)* (2001) 123 FCR 62 (Summary) [12] (Von Doussa

judgement provided support to Ngarrindjeri claims to the cultural and spiritual significance of the 'Meeting of the Waters' and the Kumarangk area. As a consequence of difficult and extended negotiations and agreement-making, 'The Meeting of the Waters' has now been registered under the *Aboriginal Heritage Act, 1998* (SA) and recently recognised as significant to natural resource management and water planning in South Australia and the broader Murray-Darling Basin.[23]

Always included in Indigenous calls for just recognition of rights and obligations in respect of traditional lands and waters is an appeal to non-Indigenous researchers and natural resource managers to shift their understandings of the relationship between humans and non-humans—conceived in Western terms as the divide between 'nature' and 'culture'.[24] Ngarrindjeri have addressed this gap in understanding through the introduction of Ngarrindjeri philosophies of being, knowledges and histories into State policy and planning with a prioritising of the inclusion of the Ngarrindjeri concept of *Ruwe/Ruwar* and a Ngarrindjeri assessment of the impact of colonisation and environmental degradation in regional environmental water planning. The following excerpt from the 2014 *Report of the Murray-Darling Basin Authority* provides a significant example:

> Since the arrival of Europeans the Ngarrindjeri witnessed the draining of their wetlands along the rivers, and in the south east, and the disconnection of the living body of the River Murray, Lower Lakes and Coorong through the installation of locks, levee banks and barrages. They have watched their ngartjis (totems) diminish, their lands cleared and the degradation of Yarluwar-Ruwe.[25]

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[23] Steve Hemming, 'Ngarrindjeri Cultural Heritage Management, Colonial Misuse of Water, Climate Change, and Planning for a Future' (2009) 2(2) *Heritage Management* 252; Murray Darling Basin Authority, *Lower Lakes, Coorong and Murray Mouth Environmental Water Management Plan* (MDBA Publication No 10/14, Murray Darling Basin Authority, 2014).

[24] Monica Morgan, Jessica Weir and Lisa Strelein 'Indigenous Rights to Water in the Murray Darling Basin: In support of the Indigenous final report to the Living Murray initiative' (Research Discussion Paper No. 14, Australian Institute of Aboriginal and Torres Strait Islander Studies, 2004); Bruno Latour, *Politics of Nature: How to Bring the Sciences into Democracy* (Harvard University Press, 2004); Dhimurru Land Management Aboriginal Corporation, *Dhimurru Yolnguwu Monuk Gapu Wanga Sea Country Plan: A Yolngu vision and plan for sea country management in north-east Arnhem Land, Northern Territory* (Dhimurru Land Management Aboriginal Corporation, 2006); Marcia Langton, 'Earth, Wind, Fire, Water: The Social and Spiritual Construction of Water in Aboriginal Societies' in Bruno David, Bryce Barker and Ian J McNiven (eds.), *The Social Archaeology of Australian Indigenous Societies* (Aboriginal Studies Press, 2006); Ngarrindjeri Nation, Yarluwar-Ruwe Plan, above n 16; Karen Barad, *Meeting the Universe Halfway: Quantum Physics and the Entanglement of Matter and Meaning* (Duke University Press, 2007); Hemming and Rigney, Unsettling sustainability, above n 19; Weir 2009, Murray River Country, above n 19; Birckhead et al, above n 19.

[25] Murray Darling Basin Authority, above n 29, 26.

This shift, subtle at first, in the South Australian 'colonial archive', activated in the actor networks of the contact zone, substantiates John Law's ultimate optimism, that if knowledge relations…

> … and the practices in which they are implied are multiple then this suggests that the knowledge places don't come as seamless wholes, but instead with gaps and interstices and cracks. … The implication, of course, is that different normativities, politics and ethics co-exist and intersect with one another too; and that, if we can make parts of these explicit then they become debatable and contestable. And then there are similar stories, too, about difference, in the places where Northern technoscience encounters alternative post-colonial knowledge traditions. Such encounters are saturated with power, for sure, but again they bring different realities and different normativities into contact with one another – and sometimes, at least, the self-evidences of technoscience are undermined.[26]

In the contemporary South Australian contact zone, actor networks comprising natural resource management policy and practice, are resistant to recognition of 'different normativities'. The continuing work of Ngarrindjeri leaders and the peak Ngarrindjeri organisation the NRA, however, is leading steadily towards a re-defining of the requisite inclusion of procedures for Indigenous engagement in water planning in the new Basin Plan.[27] Of course, this tendency towards acknowledgement, inclusion and Indigenous agency did not come about inevitably or easily; rather, it was the effect of Indigenous strategic action and a conscious move towards First Nationhood sustained in the frequently hostile, 'white', contexts of colonising, settler governance and natural resource management.[28]

Restoring the Vision: Kungun Ngarrindjeri Yunnan

The Hindmarsh Island Bridge affair divided and devastated the Ngarrindjeri community, also impacting negatively on Ngarrindjeri obligations under Ngarrindjeri law to act responsibly for the health of *Ruwe/Ruwar* and to Speak as Country (*Yannarumi*). As the drought worsened in South Australia, Ngarrindjeri Elders embarked upon a comprehensive process of nation re-building),[29] to restore community well-being and provide a clear structure of

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[26]   Law, above n 20, 11.

[27]   See Steve Hemming, Daryle Rigney and Shaun Berg, 'Ngarrindjeri Futures: Negotiation, Governance and Environmental Management' in Sarah Maddison and Morgan Brigg (eds), *Unsettling the Settler State: Creativity and Resistance in Indigenous Settler-State Governance* (Federation Press, 2011) 98; Steve Hemming and Daryle Rigney, *Indigenous engagement in environmental water planning, research and management: Innovations in South Australia's Murray-Darling Basin Region*, (Technical Report Series No 14/21, Goyder Institute for Water Research, 2014).

[28]   Hemming, Managing Cultures into the Past, above n 24; Hemming and Rigney, Unsettling sustainability, above n 24; Cornell, Wolves Have a Constitution, above n 28; Cornell, Processes of Native Nationhood; Aileen Moreton-Robinson, *The White Possessive: Property, Power and Indigenous Sovereignty* (Minnesota Press, 2015).

[29]   Miriam Jorgensen (ed), *Rebuilding Native Nations: Strategies for Governance and*

authority through which negotiations with the non-Indigenous community and its institutions could proceed, on terms that recognized (rather than excluded) Ngarrindjeri rights and responsibilities as a starting point for engagement. This process of nation re-building is ongoing. It includes a claim for native title in the region,[30] but is not dependent upon the successful determination of this claim. In relation to water, for example:

> Ngarrindjeri consider they have the first right, a right attached to the exercise of their cultural rights, interests and responsibilities, that precedes all other rights including but not limited to the legislative function of the MDBA[Murray-Darling Basin Authority] to allocate water for particular uses. The rights and interests of the Ngarrindjeri require that water flows into, through, and from, their country from up river. This is a right a priori to all others and the MDBA should commence their consideration of allocations without interference or diminishment of these rights.[31]

Ngarrindjeri Nationhood assumes an autochthonous and unique connection to Country (regardless whether this is recognized in settler law), and is now deeply embedded in a range of practices and leadership engagements with other governing powers in South Australia. The process of Nation re-building accelerated in 2007 with the official incorporation of a centralised governing body, the Ngarrindjeri Regional Authority, tasked with representing and acting for Ngarrindjeri interests. This was a vital first step in the nation re-building process, allowing Ngarrindjeri to *identify* authoritatively as a Nation, and to be identified as such by settler powers. This primary moment of National identification then allowed Ngarrindjeri to *organize* politically and to *act* more effectively as a consistent and representative power in the South Australian political landscape).[32] Federally and locally the NRA is clearly acknowledged by non-Indigenous governments as the peak representative body for the Ngarrindjeri Nation. The NRA was the first Indigenous peak body representing an Indigenous nation in South Australia. Inspired by its success, the State Government has recently introduced a new policy direction in Indigenous affairs aimed at establishing Aboriginal Regional Authorities across South

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[ ] *Development* (University of Arizona Press, 2007).

[30] In South Australia the First Peoples of the River Murray and Mallee (FPRMM) have a consent determination and Indigenous Land Use Agreement (ILUA) applying to lands and waters of the Upper Murray in South Australia. The Ngarrindjeri & Others Native Title Management Committee (NNTMC) is responsible for a native title claim that includes the River Murray to just north of Murray Bridge. The NRA is the peak regional Indigenous body that includes the NNTMC and also covers the River Murray to Morgan through another member organisation—the Mannum Aboriginal Community Association Inc. (MACAI). It is important to note that the FPRMM native title claim was first submitted as a Ngarrindjeri claim. It was later re-named during the late 1990s native title re-registration phase. Many members of the Ngarrindjeri Regional Authority are FPRMM native title holders.

[31] Ngarrindjeri Regional Authority, NRA Submission to Murray-Darling Basin Authority for and on behalf of the Ngarrindjeri People in relation to the Proposed Basin Plan, 16th April 2012, 13.

[32] Cornell, Wolves Have a Constitution, above n 21.

Australia.[33] This new policy direction should help support the further development of Ngarrindjeri capacity to meaningfully contribute to regional management of natural resources.

The NRA was established to support the Ngarrindjeri leadership's long-term aim of protecting and improving the wellbeing of Ngarrindjeri *Ruwe/Ruwar*— the inseparable relation between lands, waters, body, spirit and all living things. The organization and expression of the Nation's core commitments is contained within the foundational Ngarrindjeri management planning document—the *Ngarrindjeri Nation Yarluwar-Ruwe Plan: Caring for Ngarrindjeri Sea Country and People*.[34] It articulates a broad vision and a set of strategic directions for caring for Ngarrindjeri country, emphasising that 'the river, lakes, wetlands/nurseries, Coorong estuary and sea have sustained us culturally and economically for tens of thousands of years'.[35] It is important to appreciate that the Yarluwar-Ruwe Plan is at once a policy document, and a constitutional statement by the Ngarrindjeri Nation. It is an expression of Ngarrindjeri identity and aspirations for the future.[36] The Ngarrindjeri Yarluwar-Ruwe Plan is now given high-level recognition in State and Commonwealth contexts. For example the M-DBA's *Lower Lakes, Coorong and Murray Mouth Environmental Water Management Plan* includes the following positioning statement:

> This document is to be read in conjunction with the Ngarrindjeri Nation Yarluwar-Ruwe (Sea-Country) Plan, the Ramsar Management Plan and the Ecological Character Description Report.[37]

In 2007, following in the footsteps of earlier Ngarrindjeri natural resource management and cultural heritage programs, the NRA established a Caring for Country Program (soon re-named Yarluwar-Ruwe Program) to implement and further develop the vision expressed in the Nation's Yarluwar-Ruwe Plan.[38] Through its Yarluwar-Ruwe Program the NRA is now working with government and local communities to develop new forms of natural resource management that recognise Ngarrindjeri values and rely on Ngarrindjeri expertise and capacity. The Yarluwar-Ruwe Program facilitates a series of objectives that include: coordinated development and implementation of Caring for/as Country strategies and activities within Ngarrindjeri *Ruwe/Ruwar*; a forum for engagement, discussion and innovation; the provision of advice and formal responses to requests from the Ngarrindjeri nation and external bodies

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[33]   Government of South Australia, Department of State Development, 'South Australian Aboriginal Regional Authority Policy. A regional approach to Aboriginal governance in South Australia' (Government of South Australia, Department of State Development, March 2016).

[34]   Ngarrindjeri Nation, Yarluwar-Ruwe Plan, above n 16.

[35]   Ibid, 6.

[36]   Cornell, Wolves Have a Constitution, above n 28.

[37]   Murray Darling Basin Authority, above n 29, 5.

[38]   Hemming, Rigney and Pearce, above n 20.

such as governments at all levels, education and research organisations, and the business sector; promotion of the NRA and its activities; and supporting the NRA in achieving its goals to build its capacity and create increasing opportunities to manage Ngarrindjeri lands, waters and all living things. For the NRA, much of the energy in this process has been directed towards improving governance, initiating Caring for/as country Programs with associated economic development opportunities, and creating new relationships with government at all levels to achieve these objectives. The NRA is critical in this process, providing a centralised point of contact between non-Indigenous interests and the Ngarrindjeri Nation.

In fact, the NRA not only is a key point of government contact, but also significantly decides the *nature of the contact* ensuing between Ngarrindjeri and the settler State. For Ngarrindjeri, a key lesson taken from the Hindmarsh Island Bridge affair was that communication with non-Indigenous agencies would only be worthwhile if Ngarrindjeri could be sure that cultural knowledge would be listened to, acknowledged as authoritative, and treated respectfully. Displacing the insidious, settler 'politics of recognition' was a primary goal in re-assembling the contact zone.[39] To guarantee this, Ngarrindjeri leaders and advisors established a contract law foundation for all future negotiations over interests affecting Ngarrindjeri Country.[40] This requires signatories to begin by 'Kungun Ngarrindjeri Yunnan'—'listen to Ngarrindjeri people talking'. To enter into a negotiation and 'consent' process with Ngarrindjeri (as is generally required under settler state policies of consultation with Indigenous peoples as part of policy planning procedures), state powers seeking to consult with the NRA must enter into legally binding accords known as Kungun Ngarrindjeri Yunnan Agreements (KNYA). The 'KNY' process does not designate fixed outcomes, but rather clarifies a *starting point* for respectful communication between interested parties: every KNYA requires parties to commit to respectful listening, discussion and negotiation over any and all management matters concerning Ngarrindjeri jurisdiction in relation *Ruwe/Ruwar*. Importantly, the negotiation can only proceed when there is a formal procedural recognition of the capacity of each partner to enter into the negotiation and agreement process. This necessarily includes an *a priori* recognition of the Ngarrindjeri as 'traditional owners' and the Ngarrindjeri Regional Authority as a peak political body that registers de facto Ngarrindjeri sovereignty over Ngarrindjeri (unceded) territories;[41] KNY agreements allow all parties to recognise how Ngarrindjeri rightfully enjoy a practical exercise of

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[39]   Elizabeth Povinelli, *The Cunning of Recognition: Indigenous Alterities and the Making of Australian Multiculturalism* (Duke University Press, 2002); Steve Hemming 'The problem with Aboriginal heritage' in Gus Worby and Lester-Irabinna Rigney (eds) *Sharing Spaces: Indigenous and non-Indigenous Responses to Story, Country and Rights* (API Network, 2006) 305; Audra Simpson, *Mohawk Interruptus: Political Life Across the Borders of Settler States* (Duke University Press, 2014).

[40]   Hemming, Rigney and Berg, Researching on Ngarrindjeri *Ruwe/Ruwar*, above n 9.

[41]   Ibid.

sovereignty over all matters in the Nation's jurisdiction, even where these matters now register coexisting interests as a consequence of colonial settlement. Ngarrindjeri have negotiated a number of such contracts over subsequent years, including some very significant agreements with government outlining the co-management of land and resources, and statements of apology for past wrongs and of new commitment to better relations.[42]

This way of doing business has been formally recognised by government at local, State and Federal levels though the signing of KNY agreements. In particular, a whole-of-government KNYA between the Ngarrindjeri and the South Australian Government was set in place in 2009 to frame the Ngarrindjeri strategy for negotiating Ngarrindjeri interests in Country and 'natural resource management', and in particular the South Australian Government's long-term plan for the Coorong, Lower Lakes and Murray mouth.[43] This is a legally binding agreement committing Ngarrindjeri and various Ministers of the Crown in South Australia. The KNYA provided for the establishment and funding of a joint taskforce that created a formal context for the NRA to negotiate regarding South Australian Government programs on Ngarrindjeri *Ruwe/Ruwar*. The agreement includes a recognition of Ngarrindjeri traditional ownership; recognition of the NRA as the Ngarrindjeri peak body; and an agreement to negotiate on key, long-held Ngarrindjeri objectives, such as the hand-back of the Coorong National Park.

The NRA continues to reinforce the need for a shift in the use of government resources, towards prioritising the provision of long-term resourcing to develop the NRA's capacity to effectively engage with and 'participate' in the State's environmental programs and to conduct Ngarrindjeri programs. The KNYA 2009 and the KNYA Taskforce have provided the primary Indigenous engagement mechanism for environmental water planning in the South Australian Murray-Darling Basin region. Membership of the KNYA Taskforce includes relevant state government departments, local councils, NRM Boards, the South Australian Water Corporation and the Environmental Protection Authority. The inaugural KNYA Taskforce Annual Report (2010-2011) begins with the following acknowledgement of the Ngarrindjeri as traditional owners of Ngarrindjeri lands and waters:

> The South Australian Government acknowledges Ngarrindjeri are the Traditional Owners of the land and that according to their traditions, customs and spiritual beliefs its lands and waters remain their traditional country. The State also acknowledges and

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42   Ibid.

43   KNYA (Kungun Ngarrindjeri Yunnan Agreement) 2009 Ngarrindjeri Tendi Incorporated, Ngarrindjeri Heritage Committee Incorporated and Ngarrindjeri Native Title Management Committee for and on behalf of the Ngarrindjeri people and The Crown in right of the State of South Australia represented by the Minister for Environment and Conservation, the Minister for Aboriginal Affairs and Reconciliation, the Minister for the River Murray, and the Minister for Agriculture, Food and Fisheries (5 June 2009).

respects the rights, interests and obligations of Ngarrindjeri to speak and care for their traditional country, lands and waters in accordance with their laws, customs, beliefs and traditions.[44]

This recognition is repeated in the recent Environmental Water Management Plan for the Lower Murray Ramsar Icon site that covers the Ngarrindjeri 'Meeting of the Waters'. It states that the 'Ngarrindjeri Nation is acknowledged as the traditional owner of the country that includes the Lakes, Kurangk (Coorong) and Murray Mouth'.[45]

State Government and Ngarrindjeri recognition of the structural role played by the KNYA Taskforce in water planning, for example, is reflected in Objective 5 of the KNYA Taskforce Strategic Implementation Plan, which was endorsed in October 2012:

> Objective 5: Support coordinated and appropriate engagement with Ngarrindjeri on water related planning and management issues that affect the Ngarrindjeri Nation Description: The Ngarrindjeri are inextricably connected to the fresh and saltwater of the Lower Murray, Lakes and Coorong. Water resource planning for this region and within the broader Murray-Darling Basin affect water quality and quantity flowing into Ngarrindjeri country. The KNYA Taskforce can help coordinate engagement with Ngarrindjeri across these different water resource planning arenas and support the appropriate integration of Ngarrindjeri interests.[46]

The KNYA Taskforce has been pursuing its stated objectives through initiatives such as the organisation of a series of workshops focused on Indigenous people and water issues, and the shared development of 'an agreed way forward' and a 'statement of commitment'. Development of a Water Resource Plan Statement of Commitment between the NRA and the South Australian Government is seen as a positive step in clarifying relationships and activities to implement the Basin Plan and progress Ngarrindjeri water interests.[47] Like a KNY agreement, a 'statement of commitment' can define engagement principles and agreed actions. This process of formal commitment of powers to work together to achieve dedicated outcomes ensures mutual and

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[44]   Government of South Australia, Department of Environment, Water and Natural Resources and Ngarrindjeri Regional Authority, 'Kungun Ngarrindjeri Yunnan Agreement. Listening to Ngarrindjeri People Talking. KNYA Taskforce Report 2010-11' (KNYA Taskforce Report 2010-11, Government of South Australia, Department of Environment, Water and Natural Resources, June 2012), 2.

[45]   Murray Darling Basin Authority, above n 29, 5.

[46]   DEWNR and NRA, above n 50, 14.

[47]   Government of South Australia, Department of Environment, Water and Natural Resources and Ngarrindjeri Regional Authority, Water Resource Planning (Murray-Darling Basin Plan) Statement of Commitment between Ngarrindjeri Regional Authority Incorporated and the Department of Environment, Water and Natural Resources and the South Australian Murray-Darling Basin Natural Resources Management Board and the South East Natural Resources Management Board (31 January 2015) <file:///Users/104030/Downloads/water-resource-planning-statement-of-commitment-2015-gen.pdf >.

shared benefits: South Australia meets M-DB Plan Water Resource Plan accreditation, while recognising Ngarrindjeri political authority and supporting Indigenous input of aspirations, values and knowledges into environmental water planning. On a smaller scale, Statements of Commitment have also been developed as crucial 'tools' for articulating the KNYA principles within specific projects and programs, such as Ruppia translocation; Coorong, Lower Lakes and Murray Mouth research, monitoring, and vegetation management planning; and most recently for up-dating the Ramsar Ecological Character Description. They ensure clarity of process and provide protection for Ngarrindjeri cultural knowledge through a Ngarrindjeri-developed cultural knowledge protection regime. As part of the expression of a partnership statement of commitment, specific clauses and definitions are included in project agreements, research agreements and other documents. The following is an example of a key definitional clause, which relates to a principle of cultural knowledge protection enabling Ngarrindjeri to safely share knowledge:

> Cultural Knowledge means all and any cultural knowledge, whether such knowledge has been disclosed or remains undisclosed of the Indigenous group, including but not limited to: (a) traditions, observances, customs or beliefs; (b) songs, music, dances, stories, ceremonies, symbols, narratives and designs; (c) languages; (d) spiritual knowledge; (e) traditional economies and resources management; (f) scientific, spatial, agricultural, technical, biological and ecological knowledge; and includes documentation or other forms of media arising there from including but not limited to archives, films, photographs, videotape or audiotape.[48]

Such acknowledgement of Indigenous political and cultural authority in key State policy and planning resources outlined above is evidence that an Indigenous-led, highly innovative model for engagement between Indigenous people and the State has been firmly established in the SAM-D region. We have described how the Ngarrindjeri Yarluwar-Ruwe model treats 'Caring as Country' as a holistic nation-building project designed to create a healthy Ngarrindjeri future. This unique Indigenous governance model, combined with the high-level KNYA engagement strategy, provides this part of the M-DB with well-developed structures and practices designed to support just and effective Indigenous engagement in water research, policy development and management. It has achieved this because the political and legal technologies introduced by the NRA have been instrumental in transforming the colonial nature of the actor network in South Australia. By providing new conditions of interaction, the NRA has created a new political disposition in South Australia, characterized by increased willingness to listen for culturally diverse expressions of interest, and to respond to such expressions in ways that mutually enhance governing agencies. Importantly, this re-shaping of the contemporary 'contact zone' has produced vital opportunities for increased Ngarrindjeri agency in water research, policy and planning.[49] In the final section

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[48] Hemming, Rigney and Berg, Researching on Ngarrindjeri *Ruwe/Ruwar*, above n 9, 100.
[49] Hemming, Rigney and Berg, Ngarrindjeri Futures (2011), above n 33; Steve Hemming and Daryle Rigney, 'Ngarrindjeri futures: negotiating a future through Caring for

of this paper, we examine in finer detail how the broad scale structural initiatives introduced by Ngarrindjeri translate into a practical methodology of engagement, which is redefining programs and projects of natural resource management on Ngarrindjeri Country.

Securing the Vision: Actor alliances

In December 2014, Ngarrindjeri further embedded Ngarrindjeri cultural principles in the agreement making process and extended the concept of Speaking as Country (Yannarumi), underpinning governing responsibility, into a Ngarrindjeri Speaking as Country Deed.[50] This agreement provides recognition in a more explicit way the deep interconnectedness between Ngarrindjeri agency and responsibility, health of Country and health of people and cultural life: Ngarrindjeri *Ruwe/Ruwar* (lands, waters, body spirit and all living things) needs to be healthy for Ngarrindjeri to be healthy, and for this reason Ngarrindjeri care for, speak for and exercise cultural responsibility <u>as</u> Ngarrindjeri *Ruwe/Ruwar*. The Speaking as Country Deed specifically commits the government to work with Ngarrindjeri to promote an improved understanding of the meaning and significance of the 'Meeting of the Waters site'. In signing a KNYA, parties commit to listening to Ngarrindjeri 'Speaking as Country'. This shift in message from simply listening to a deeper understanding is crucial to truly grasping what Ngarrindjeri have been trying to explain since colonisation. In assigning Ngarrindjeri *Ruwe/Ruwar* to the practices and discourses of cultural heritage management rather than, for example, the northern Australian land rights and Caring for Country programs, Ngarrindjeri have suffered a 'deep form' of colonisation that locates southern Indigenous people as museum specimens rather than contemporary First Nations.[51]

The Ngarrindjeri Yarluwar-Ruwe Program has resisted and transformed the contemporary contact zone in natural resource and cultural heritage management to produce new actor networks that carry life-giving flows that sustain Indigenous nation building. The Yarluwar-Ruwe Program provides a

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Ruwe/Ruwar (lands, waters and all living things)' in Penelope Figgis, James Fitzsimons and Jason Irving (eds) *Innovation for 21st Century Conservation* (Australian Committee for IUCN, 2012) 186; Mac Kirby et al, 'Preliminary Systems Inventory and Project Scoping River Murray Catchment' (Technical Report Series No. 13/9, Goyder Institute for Water Research, 2013).

[50]   Ngarrindjeri Speaking as Country Deed between the Ngarrindjeri Regional Authority for and on behalf of the Ngarrindjeri People and the Minister for Sustainability, Environment and Conservation (27 December 2014). <https://data.environment.sa.gov.au/Content/Publications/CLLMM_404_Ngarrindjeri %20Speaking%20as%20Country%20Deed%20Murray%20Mouth%20dredging_2014. pdf>.

[51]   Deborah Bird Rose, 'Land rights and deep colonising: the erasure of women', (1996) 85(3) *Aboriginal Law Bulletin* 6; Hemming, The problem with Aboriginal heritage, above n 45.

culturally appropriate and strategic Indigenous engagement mechanism supporting a number of major regional natural resource management partnership projects such as the Murray Futures Program. It also facilitates ongoing and developing partnerships between the NRA and the four regional natural resource management boards and the programs of the regional Local Councils. It is a successful mechanism for discussion, analysis and decision-making and has been influenced by best-practices in leading First Nation contexts internationally.[52] As a program, it is the conduit for all external and internal projects and programs associated with Ngarrindjeri Yarluwar-Ruwe. First contact from outside organisations is made via the NRA Board and the KNYA Taskforce. Once ideas, projects and programs have been presented through these channels they are referred to the Yarluwar-Ruwe Program for detailed assessment and consideration. What is known as a Ngarrindjeri *Yannarumi* assessment is conducted based on Ngarrindjeri cultural principles that reproduce Ngarrindjeri wellbeing.[53] This assessment incorporates: Ngarrindjeri *Kaldowinyeri* (Creation) law; the concept of *Ruwe/Ruwar*; Ngarrindjeri understandings of spiritual connection, *Miwi*; Ngarrindjeri *Yannarumi*, the responsibility to Speak as Country; and Ngarrindjeri *Ngiangiampe*, respectful partnerships (see Table 1, page 46).

The Yarluwar-Ruwe Program brings natural resource management, cultural heritage management, and other related issues together. This is a unique feature of the Ngarrindjeri approach to Caring as Country and is based on the Ngarrindjeri philosophy of being: *Ruwe/Ruwar* (all things are connected). The vision that Ngarrindjeri lands and waters need to be healthy for Ngarrindjeri to be healthy lies at the centre of this approach. Key features of the Program include:

- Formal representation of all appropriate Ngarrindjeri bodies such as Ngarrindjeri Heritage Committee, Ngarrindjeri Native Title Management Committee, Ngarrindjeri Tendi (traditional governance) and others;
- Devolved decision-making—NRA Board has formally established the program to provide a best-practice model for 'Caring for Yarluwar-Ruwe';
- Prioritising the establishment of a program of Statement of Commitments (formal terms of reference) and associated working groups that frame and direct Ngarrindjeri/Government projects and

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[52] Hemming, Rigney and Berg, Ngarrindjeri Futures (2011), above n 33.

[53] Steve Hemming et al 'Murrundi (Murray River): Ngarrindjeri Yarluwar-Ruwe (Caring as Country) Program' Paper delivered at the 18th International River *Symposium,* Healthy Rivers – Health Economies, 21-23 September, Brisbane, 2015. These principles have been refined through engagements with NRM and water planning in projects such as the up-dating the Ramsar Ecological Character Description for the Coorong, Lower lakes and Murray Mouth 'site' and the Murrundi (River Murray) Recovery Project.

programs;

- The development and use of cultural knowledge protection clauses in all NRA contracts, KNY agreements, and research projects (with outside bodies);
- Ngarrindjeri culturally appropriate, decision-making;
- Empowerment of Ngarrindjeri and coordinated, long-term capacity building program;
- Ability to deal with multiple issues and projects including direct engagement in conduct and development of research projects;
- Developing strategies that support cultural change in government policy, programs and practices—'abolition of whiteness in government policy'
- Stakeholder involvement through presentations and small working groups;
- Innovative use of technology with a Ngarrindjeri media team producing award winning documentaries and reports on film and digital formats;
- Diverse engagement and partnership building with research, educational and business sector—partnerships with Flinders University, national and international universities, local businesses, government at all levels, NRM Boards, community groups; and
- Supporting and developing business opportunities and employment - securing NRM contracts and facilitating relevant training and education.[54]

In 2009, following the formalisation of the whole-of-government KNYA, the State Department for Environmental Water and Natural Resources (DEWNR) and the NRA began working closely to develop the Ngarrindjeri Partnerships Project, one of nineteen management actions under the Coorong, Lower Lakes and Murray Mouth program incorporating its key Aboriginal engagement strategy. This Partnership Project is supporting the development of core capacity within the NRA and it begins the long process of ensuring that the Ngarrindjeri Nation's knowledge, experience and cultural values are appropriately incorporated into regional policy. The Partnership Project has supported the NRA to develop the Ngarrindjeri Yarluwar-Ruwe Program and project objectives include securing the future of the innovations that re-assemble the contemporary contact zone enabling Ngarrindjeri to Speak as Country.

The NRA is also working with DEWNR on a project under the broader Murray Futures Program, called the Riverine Recovery Project, which focuses on 'water savings' and increasing river and wetland health. The NRA renamed their involvement in the project as the Murrundi (River Murray) Recovery

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[54] Hemming and Rigney, Indigenous engagement in environmental water planning, above n 33.

Project and have identified a key Ngarrindjeri objective as 'Ngarrindjeri working together to bring life to Murrundi (River Murray)'. The Murrundi Recovery Project has been strategically repurposed as a Ngarrindjeri Nation re-building program. The key aims of the Murrundi Recovery Project include: building the capacity of the Mannum Aboriginal Community Association (member organisation of the NRA) to care for Murrundi; bringing Ngarrindjeri interests, cultural principles and rights and responsibilities for *Ruwe/Ruwar* (country/body/spirit and all living things) into water management and natural resource management; and developing long-term strategies for culturally appropriate community development. The NRA began developing a tailored wellbeing assessment process (Ngarrindjeri Yannarumi assessment) that is being applied to wetland complexes and is also seeking wetland registration under the *Aboriginal Heritage Act 1988* (SA) as part of the well-known Ngurunderi creation story of Murrundi.[55] The NRA expects that the Sugar Shack Complex near Swan Reach will become an example of best-practice Indigenous-led management of wetlands in the Murray-Darling Basin.

Through these partnership projects, South Australia has developed a form of partial Indigenous 'co-management' of environmental water that has been Indigenous-led and characterised by the KNYA strategy. Co-management has been identified in environmental management literature as a useful conceptual direction towards better recognition of Indigenous interests in water management and there is also a growing interest in ecological character descriptions and their potential for better recognition of Indigenous responsibilities for Country.[56]

A crucial aspect of the co-management partnership concerns Indigenous involvement in processes of research and the shared development of relevant and ethically-generated knowledge. Historically, Indigenous peoples have been the objects of research designed and conducted by non-Indigenous 'experts'.[57] This standard colonial approach to knowledge formation typically alienates Indigenous expertise and devalues Indigenous intellectual authority, while also

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[55]   Ibid. The Goyder project supported the research input of Hemming and Rigney in the development of the Ngarrindjeri *Yannarumi* assessment process in relation to wetland planning. See Ngarrindjeri Nation, Yarluwar-Ruwe Plan, above n 16, 8 for account of Ngurunderi Creation Story.

[56]   Poh-Ling Tan and Sue Jackson, 'Impossible dreaming —does Australia's water law and policy fulfil Indigenous aspirations?' (2013) 30 *Environment and Planning Law Journal* 132; Sue Jackson, S, and Lisa R Palmer 'Reconceptualizing ecosystem services: Possibilities for cultivating and valuing the ethics and practices of care', (2015) 39 *Progress in Human Geography* 122; Hemming and Rigney, Indigenous engagement in environmental water planning, above n 33; Steve Hemming and Daryle Rigney *Restoring Murray Futures: Incorporating Indigenous knowledge, values and interests into environmental water planning in the Coorong and Lakes Alexandrina and Albert Ramsar Wetland,* (Technical Report Series, Goyder Institute for Water Research, in press).

[57]   Linda Tuhiwai Smith, *Decolonising Methodologies: Research and Indigenous Peoples* (University of Otago Press, 1999).

failing to realise the wealth of Indigenous insight developed over millennia. As part of the Nation re-building agenda and the reclamation of self-governing authority, Ngarrindjeri have actively pursued a program of Indigenous co-direction of scientific and social research that is conducted on Ngarrindjeri Country and investigating issues affecting Ngarrindjeri well-being. This has resulted in an enrichment of conceptual and scientific understanding for both Indigenous and non-Indigenous participants, who have begun to develop a new understanding of where cross-cultural philosophical synergies lie and may be utilized for maximum mutual benefit, reflecting a belief that 'we will be stronger if our knowledge places are multiple.[58] Not entirely different, but not the same either'.[59] Chickasaw theorist Jodi Byrd expresses a similar view:

> Indigenous critical theory could be said to exist in its best form when it centres itself within indigenous epistemologies and the specificities of the communities and cultures from which it emerges and then looks outward to engage European philosophical, legal, and cultural traditions in order to build upon all the allied tools available.[60]

The Ngarrindjeri philosophy *Ruwe/Ruwar* rests on a broadly 'ecological' understanding that 'all things are connected and that the lands and waters are a living body'. The connectivity principle is something that environmental scientists see as a priority for further research in the SAM-DB region. Ngarrindjeri share research interests that focus on the identification of key species that both act as environmental health markers and rely on the connectivity of the River Murray, Lakes and Coorong.[61] Ngarrindjeri hold deep cultural knowledge about these features of Ngarrindjeri *Ruwe/Ruwar*, passed on through Ngarrindjeri creation stories such as Ngurunderi, Thukeri and Thukabi.[62] This deep, long-term 'environmental' knowledge is increasingly acknowledged by non-Indigenous science as valuable and practical. Over the last few years, for example, Ngarrindjeri have worked with research scientists and DEWNR on a project designed to translocate crucial plants such as *Ruppia* (submerged herb) in the Coorong.

Using the KNYA strategy it is now possible to support Ngarrindjeri engagements with scientific research projects that continue the process of increasing non-Indigenous recognition of the value of Ngarrindjeri knowledge. It is also important for the State Government to support Ngarrindjeri-led

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[58] Kirby et al, above n 55; Hemming and Rigney, Ngarrindjeri futures (2012), above n 55; Morgan, Weir and Strelein, above, n 30; Heming and Rigney, above n. 62.

[59] Law, above n 25, 11.

[60] Jodi A Byrd, *The Transit of Empire: Indigenous Critiques of Colonialism* (University of Minnesota Press, 2013), xxix-xxx.

[61] Birckhead et al, above n 24; Hemming and Rigney, Ngarrindjeri futures (2012), above n 55; Hemming and Rigney, Indigenous engagement in environmental water planning, above n 33.

[62] Ngarrindjeri Nation, Yarluwar-Ruwe Plan, above n 16.: 9; Hemming, Trevorrow and Rigney, above n 14.

'environmental' research that brings scientific research together with Ngarrindjeri research. For example, an environmental scientist was seconded to work with the NRA to support the NRA's Murrundi Recovery project. Through intensive lobbying alongside KNYAs the NRA's research team has worked on developing the support of the State Government, regional agencies and other research bodies to support the development of Ngarrindjeri research capacity. For example, the SAM-DB NRM Board funded a project titled 'Developing Ngarrindjeri Research Capacity: Ngarrindjeri Yarluwar-Ruwe Institute for Research, Education and Training (2009–10)'.[63]

Another pertinent example of research partnership is the collaboration between the NRA, Flinders University and the Goyder Institute for Water Research, which has produced valuable outcomes relating to Indigenous engagement in water and NRM with direct impacts on relevant South Australian policy settings.[64] An engaged, collaborative and inter-disciplinary research methodology was used in Goyder-funded research: an approach that recognises and values Ngarrindjeri nation building.[65] This research methodology has provided an opportunity for Indigenous knowledge, experience and research to directly inform the research in ways that directly support transformational policy changes. This methodology also assists with connecting scientific research more directly with Indigenous and government programs.[66] The Ngarrindjeri Nation was a formal research partner on the CSIRO Water-For-A-Healthy-Country Flagship Project, the 'Economic and Cultural Values of Water to the Ngarrindjeri People of the Lower Lakes, Coorong and Murray Mouth' and senior Ngarrindjeri leaders jointly authored the final report, as is clearly reflected in its content:

> We argue that because Ngarrindjeri water, wetlands and floodplains are so intimately tied to Ngarrindjeri wellbeing there must be a holistic, long-term program for Ngarrindjeri to address the impacts of extensive environmental degradation of Ngarrindjeri lands and waters. This means developing research, employment, education/training, planning, cultural and spiritual processes. In this way Ngarrindjeri can hope to achieve wellbeing in a globalising economy, a twenty-first century world and on Yarluwar-Ruwe that is affected by global warming and destructive non-

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[63]   Developed and led by Steve Hemming and Daryle Rigney. See Steve Hemming and Daryle Rigney, *Developing Ngarrindjeri Research Capacity: Ngarrindjeri Yarluwar-Ruwe Institute for Research, Education and Training*, Final Report to the Ngarrindjeri Regional Authority (NRA) and the South Australian Murray-Darling Basin Natural Resource Management Board, (2010, NRA Research, Policy and Planning Unit, Flinders University).

[64]   Hemming and Rigney, Indigenous engagement in environmental water planning, above n 33.

[65]   Steve Hemming et al, 'Caring for Ngarrindjeri country: collaborative research, community development and social justice' (2007) 6(27), *Indigenous Law Bulletin* 6; Birckhead et al, above n 24; Hemming, Rigney and Berg, Researching on Ngarrindjeri *Ruwe/Ruwar*, above n 9; Yasminah Beebeejaun et al, 'Exploring Ethos and Method in Co-Producing Research with Communities' (2013) 49(1) *Community Development* 37 developed and applied in a number of Ngarrindjeri research projects.

[66]   Smith, above n 63; Hemming and Rigney, Unsettling sustainability, above n 24.

Indigenous land and waters practices.[67]

Future directions hold some hope for collaborative research that supports the leadership and partnership of Indigenous nations in developing water policy, planning and environmental science. At a national level the National Water Commission is continuing to sponsor Indigenous water research.[68] The National Cultural Flows project is a major initiative led by the National Water Commission, the M-DBA and peak Indigenous bodies such as Murray Lower Darling Indigenous Nations, Northern Basin Aboriginal Nations, and Northern Aboriginal Land and Sea Alliance.[69] The concept of 'cultural flows' is, however, one that the NRA has distanced itself from in recent times.[70] For Ngarrindjeri all flows of 'water' are cultural flows and securing Indigenous capacity and agency in NRM and water management are considered the priority objectives as part of the Ngarrindjeri nation building strategy. Water research, policy development and planning, therefore, remain important NRA and KNYA Taskforce objectives. The NRA continues to collaborate with Flinders University through its NRA Research, Policy and Planning Unit and is currently a partner organisation on two Australian Research Council (ARC) Linkage projects that have relevance to the developing NRA approach to caring for Yarluwar-Ruwe.[71] The NRA is currently also focusing its research activity on the further development of 'cultural health/First Nation health' or *Yannarumi* assessments for areas such as the Lower Lakes, Coorong and Murray Mouth and wetlands along the River Murray south of Morgan. This work has parallels in Aotearoa (New Zealand) where, for example, the *Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010* (NZ) incorporates indigenous values and interests and a 'cultural health index' into a co-management regime.[72] Importantly, regional Ngarrindjeri engagement and

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67   Birckhead et al, above n 24, 42.

68   National Water Commission, *A review of Indigenous involvement in water planning* (National Water Commission, 2014).

69   Sue Jackson and Joe Morrison 'Indigenous perspectives on water management, reforms and implementation' in Karen Hussey and Stephen Dovers (eds) *Managing Water for Australia: the Social and Institutional Challenges* (CSIRO Publishing, 2007) 23.; Joe Morrison, 'Caring for country' in Jon Altman and Melinda Hinkson (eds), *Coercive Reconciliation: Stabilise, normalise, exit Aboriginal Australia* (Arena Publications Association, 2007) 249; Northern Australia Indigenous Land and Sea Management Association, *Guidelines and Protocols for the Conduct of Research* (NAILSMA, 2007); Michael O'Donnell, 'Indigenous Rights in water in northern Australia 2011', (TraCK Project 6.2, North Australian Land and Sea Management Alliance, 2012).

70   Sue Jackson and Marcia Langton 'Trends in the recognition of indigenous water needs in Australian water reform: the limitations of 'cultural' entitlements in achieving water equity' (2012) 22(2/3) *Journal of Water Law* 109; Hemming and Rigney, Indigenous engagement in environmental water planning, above n 33.

71   This article was produced with support from the Australian Research Council for projects titled: 'Negotiating a space in the nation: the case of Ngarrindjeri' (DP1094869); 'Indigenous nationhood in the absence of recognition: Self-governance insights and strategies from three Aboriginal communities' (LP140100376); and 'Return, Reconcile, Renew' (LP130100131).

72   Linda Te Aho, 'Indigenous Challenges to Enhance Freshwater Governance and

research strategy is also producing innovations in national water planning.[73]

Despite this promising and busy outlook for Ngarrindjeri innovations in NRM research and policy development it is important to point out that environmental planning literature often fails to recognise their significance.[74] For example, this has an impact on local resourcing and the capacity of the NRA to sustain the Yarluwar-Ruwe Program, and for federally funded programs such as the Murray Futures Project to leave a regional legacy. Further research is required to better understand this continuing gap in the published research literature, but historical understandings of Indigenous Australia constructed in anthropological, archaeological and historical' discourses remains part of the answer.[75] These are gaps that can impede effective, long-term Indigenous engagement in areas such as water research and policy development. Indigenous and non-Indigenous researchers have recognised that Indigenous capacity is crucial to Indigenous engagement in water management, but changes are required in government processes and funding models to prioritise increased capacity of Indigenous nations.[76]

Management in Aotearoa, New Zealand – the Waikato River Settlement' (2010) 10 *Water Law* 285.

[73] Neva Collings, *Indigenous Cultural & Spiritual Values in Water Quality Planning* (Australian Government, Department of Sustainability, Environment, Water, Population and Communities, 2012); Murray Darling Basin Authority, above n 29; and Benjamin Docker and Ian Robinson 'Environmental water management in Australia: Experience from the Murray-Darling Basin' (2014) 30(1) *International Journal of Water Resources Development* 164.

[74] Carla Mooney and Poh-Ling Tan (2010) 'Critical Times. Practical Measures. Water Planning Tools. Pilot social impact study of changes in water availability below Lock 1 in South Australia' (Informant Report, July 2010); Sue Jackson, 'Indigenous Water Management: Priorities for the next five years' in Jessica Weir (ed), *Country, native title and ecology, Aboriginal History. Monograph 24* (ANU Press, 2012) 163; Sue Jackson et al, 'Principles and guidelines for good practice in Indigenous engagement in water planning' (2012) 474 *Journal of Hydrology* 57.

[75] Marcia Langton, 'Urbanizing Aborigines: The Social Scientists' Great Deception'. (1981) 2(2) *Social Alternatives* 16; Bain Attwood and John Arnold (eds), 'Power, Knowledge and Aborigines. A special edition of Journal of Australian Studies' (1992) *Journal of Australian Studies*; Steve Hemming and Daryle Rigney, 'Decentring the New Protectors: Transforming Aboriginal Heritage in South Australia', (2010) 16(1&2) *International Journal of Heritage Studies* 88.

[76] See, for example: Hemming, Trevorrow and Rigney, above n 14; Birckhead et al, above n 24; Jackson, above n 80; Richard Howitt et al, 'Capacity Deficits at Cultural Interfaces of Land and Sea Governance' in Ryan Walker, Ted Jojola and David Natcher (eds) *Reclaiming Indigenous Planning* (McGill-Queen's University Press, 2013) 313; M. Barber et al, 'Working Knowledge: characterising collective indigenous, scientific, and local knowledge about the ecology, hydrology and geomorphology of Oriners Station, Cape York Peninsula, Australia' (2014) 36 *The Rangeland Journal* 53.

Conclusion

It is clear that, in southern South Australia, natural resource management has been transformed through a sustained Indigenous-led strategy focused on Indigenous nation building. The Ngarrindjeri KNYA process has led to a unique working relationship between an Indigenous nation and non-Indigenous interests represented by the government at all levels, universities and other groups.[77] Key to the Ngarrindjeri strategy has been the development of a peak governance body, increased research, policy and planning capacity focused in the Ngarrindjeri Yarluwar-Ruwe Program and strong local, regional and international partnerships. As a marker of the success of this strategy the Yarluwar-Ruwe Program recently won the Australian Riverprize 2015 for delivering excellence in Australian river management.[78] The success of the NRA model has also inspired a new policy direction in Indigenous affairs in South Australia: Aboriginal Regional Authorities.

The importance of the complex Indigenous relationship with 'Country' stands at the centre of the Ngarrindjeri vision for a healthy Indigenous nation; engaging with this vision through the NRA programs is a proven pathway for non-Indigenous projects and programs similarly aimed at fostering the health of communities and their environments. The NRA stresses the need for governments to understand and respect Ngarrindjeri responsibilities to Speak as Country (*Yannarumi*) and to act as an Indigenous Nation. This has required attention to re-assembling the actor networks that constitute the contemporary contact zone between Ngarrindjeri and the settler State. The emerging approaches to engagement between Ngarrindjeri and the State are comparatively unique, locally and regionally relevant, address relevant UN treaties and provide useful directions for environmental and resource management in Australia and overseas.

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[77]   Hemming, Rigney and Berg, Ngarrindjeri Futures (2011), above n 33.

[78]   The International RiverFoundation's Riverprize is Australia's top award for effective and sustainable river basin management. The NRA's win was in partnership with the SA Department of Environment, Water and Natural Resources (DEWNR), and also includes support from Flinders University, Goyder Institute for Water Research, the Commonwealth Department of the Environment and the Australian Research Council.

Table 1 Ngarrindjeri Yannarumi Assessment of the 'health' of Ngarrindjeri Yarluwar-Ruwe – Ramsar Ecological Character Description Project 2015

	Kaldowinyeri Creation, Change	Ruwe/Ruwar Country, body, spirit, all living things	Miwi spirit, connection resilience	Yannarumi Speaking as Country, responsibility, management	Ngiangiampe Relationships, partnerships	Ngarrindjeri Yarluwar-Ruwe Health assessment
Kaldowinyeri Creation	Ruwe/Ruwar All things connected	Katjeri Beautiful, healthy	Pritji Strong	Rupelli Elders Speaking as Country	Tendi, Nguldun Governance, agreements, Being healthy	Katjeri Beautiful healthy
Parpun miwi Colonisation, Longing for wellbeing	1985, Ramsar listing, locks, barrages, land cleared	Wiran, Wurangi, Sick, Bad	Pritji, wurreng-wulun Strong, Sorrowful	Blewilin Unhealthy	Wurangi Bad, disrespectful	Blewilin, Pukali Unhealthy, indicators of sickness

IMPLEMENTING A PROJECT WITHIN THE INDIGENOUS RESEARCH PARADIGM: THE EXAMPLE OF NATION BUILDING RESEARCH•

Alison Vivian, Miriam Jorgensen, Damein Bell, Daryle Rigney, Stephen Cornell, and Steve Hemming∗∗

A senior Indigenous academic receives a call from a non-Indigenous colleague. The colleague says, 'I've been meaning to call for ages—I hope you are well. Anyway, I am applying for an ARC Discovery grant and the application is due soon. I wonder if you might be interested in being a Chief

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> *Investigator. Actually, maybe we should think about applying for an ARC Discovery Indigenous grant too?'*
>
> *At a forum on ethical issues arising in relation to research with Indigenous communities, a senior non-Indigenous academic exclaims in frustration, 'That's all very well but you never get the budget that you apply for. Community feedback sessions just have to be cut when they're not funded.'*
>
> *A researcher presents an outline of their proposed research at a community meeting. When the participants point out that the researcher is going to gain a great deal from the research but wonder, 'How is this going to benefit the community?', the researcher replies, 'Good question. I will have to think about that.' Seeking advice, the researcher raises the question with a senior scholar, who remarks, 'In all the years I have been doing research with Indigenous people, I have never been asked what's in it for them.'*
>
> *At a public forum, a PhD candidate asks a senior non-Indigenous researcher who is well respected for ethical research approaches for advice on how to get ethics clearance for research with Indigenous communities. The researcher replies: 'Get to know the Indigenous rep on the Human Research Ethics Committee.'*
>
> *A PhD student provides an overview of their methodology at a forum. The student makes much of their adoption of Participatory Action Research principles and engagement with 'the Aboriginal community'. Questioning reveals that this engagement is with a single Aboriginal person.*
>
> *A reviewer of a research proposal that embraces Indigenous voices as a critical aspect of the methodology writes, 'Aren't we well beyond a polemical rhetoric on colonising research?'*

Limited and self-serving approaches to academic research on Indigenous [1] issues are not confined to history. As the anecdotes attest, some researchers still proceed in ways that disregard Indigenous voices and views and, ultimately, diminish research quality.

Fortunately, none of these exchanges went unremarked. Each spurred further conversation and learning about the characteristics of ethical Indigenous-focused research. In fact, a now significant literature describes key principles by which such research should proceed. A central theme is that both its processes and outcomes should promote Indigenous community self-determination.

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[1]   In this paper, we use the term 'Indigenous' to refer to Aboriginal and Torres Strait Islander people collectively. We also use that term to refer to Indigenous peoples internationally. When referring to communities/nations that are Aboriginal or Torres Strait Islander communities, we refer to them specifically as 'Aboriginal' or 'Torres Strait Islander'.

A smaller literature wrestles with the question of how to translate principles into practice. This step raises challenging questions:

- How can the principles that are together described as 'Indigenous research methodologies' be implemented?

- How can the principles underpinning an Indigenous research paradigm be reconciled with the methods of academic disciplines, and conversely, how can the methods of academic disciplines be used to provide reliable and ethical findings for Indigenous communities?

- How can Indigenous communities manage academics whose expertise they wish to leverage?

- What does it mean to conduct research in support of Indigenous nation self-determination within Australia, where the concept of Indigenous nationhood often has been suppressed?

By describing the approach taken in a recent Australian Research Council Discovery project, this paper illustrates how one research team has attempted to conduct research *with* and *for* Aboriginal communities rather than *on* and *about* them. It attempts to provide both general information (answers the questions above) and specific examples of how the team operationalised Indigenous research principles. Ultimately, it describes a way to organise community-research relationships so that they generate work that is ethical, disciplinarily valid, and intellectually stronger than it would have been if the principles were not applied—and a way to organise research work so that it recognises and respects the sovereignty and self-determination of partner Indigenous nations.

We approach this exploration of Indigenous research as a group of Aboriginal and non-Indigenous researchers who are firmly committed to supporting Indigenous nation self-determination, self-government, and capacity building. We reflect on our various roles as researchers, community members and allies who are, to use Nelson and Stolterman's term, acting 'in service' to Indigenous sovereignty and Indigenous nation building.[2]

Section I reprises the arguments for decolonising research. Section II summarises the general response to these arguments by laying out the requirements of an Indigenous research paradigm and by describing the interrelationship of research principles, methods, and methodology. Section III describes the methodology used in our specific effort to conduct a project within the Indigenous research paradigm, Section IV details several

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[2]   Harold Nelson & Eric Stolterman, 'Design as being in service' in David Durling and Ken Friedman (eds), *Doctoral Education in Design. Foundations for the Future* (Staffordshire University Press, 2000) 23, 24.

implementation challenges we faced and our responses to them, and Section V concludes.

I.   A general critique: Research on and about Indigenous Peoples

Much academic research on Indigenous topics has been 'inextricably linked with European imperialism and colonialism'.[3] In part this is the result of researchers' tendency to 'interpret' Indigenous existence according to a 'dominant cultural model of knowing'.[4] Remarkably, this positional interest is assumed to be not positional at all but to represent the interests of knowledge itself. The implicit assumptions are that researchers are neutral observers of Indigenous peoples, their cultures, and their lives; that research is a mechanistic exercise where knowledge waits to be unearthed; and that it is best unearthed through western approaches. As a result, researchers embed Eurocentric values and ideas not only in their research questions and findings but also in the overarching processes and institutions that support research.

The allocation of research roles is another vehicle for imperialism. Often, research projects on Indigenous issues are organised so that only western-oriented researchers have 'the power and knowledge to determine what should be researched'.[5] What Indigenous peoples might consider to be worthwhile research is rarely considered, and hence, there is little scope for research to be initiated by Indigenous people or communities.

While invariably identified as 'rational', 'objective', 'neutral' or 'scientific', data collected under these assumptions—that is, without Indigenous community engagement and oversight—may be inadequate or even incorrect, and the conclusions drawn from it may be incomplete or misdirected. On the one hand, Kuhnian logic suggests that all fields of inquiry progress with error until a corrective new theory arises. These changes in understanding occur as researchers employ new questions to address previously collected data.[6] On the other hand, Kuhnian transformations occur at a much slower pace when a more thoroughgoing corrective is required which is exactly the demand in Indigenous research. Because the colonised research orientation misidentifies what even counts as data, a decolonising research approach must ask new

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[3]   Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (University of Otago Press, 1999), 1.

[4]   Christopher Dunbar Jr, 'Critical Race Theory and Indigenous Methodologies' in Norman K Denzin, Yvonna S. Lincoln and Linda Tuhiwai Smith (eds), *Handbook of Critical and Indigenous Methodologies* (Sage Publications, 2008) 85, 86.

[5]   Steve Hemming, Daryle Rigney and Shaun Berg, 'Researching on Ngarrindjeri *Ruwe/Ruwar*: Methodologies for positive transformation' (2010) 2 *Australian Aboriginal Studies* 92, 97.

[6]   Thomas Kuhn, *The Structure of Scientific Revolutions* (University of Chicago Press, 1962).

questions *and* re-identify data. Lacking such corrections (of frameworks and of data), it is inevitable that a distorted body of 'ideologically laden' information about Indigenous peoples accumulates *and persists* over time.[7]

Ultimately, 'colonised' research may be both ethically and intellectually compromised. Its techniques and approaches objectify Indigenous peoples; deny Indigenous peoples' agency as researchers; entrench racist misrepresentations, stereotypes, and attitudes; devalue Indigenous cultures, viewpoints, ideas, and institutions; and appropriate information that Indigenous peoples generated or shared. Even when the stated intention of research is to 'solve' Indigenous problems, it 'has traditionally benefited the researcher, and the knowledge base of the dominant group in society,' more than the Indigenous group(s) involved.[8] In fact, research based on the assumption that outside researchers know best often fails to improve conditions for the people who are researched and, worse, may even cause harm.

Unsurprisingly, these failings have led many Indigenous people to become suspicious of academic research and reluctant to engage with academic institutions. Put bluntly, too much research on Indigenous topics—both in the past and even in the present—has been conducted with Indigenous people or peoples as the objects of research, rather than as experts.

II.   A general response: Research *with* and *for* Indigenous Peoples

Researchers seeking an alternative can strive to work within an 'Indigenous research paradigm'.[9] In our view, this approach blends disciplinary methods with principles that forefront Indigenous research leadership, Indigenous community engagement, and Indigenous worldviews.

II.A. Principles inherent to an Indigenous research agenda

A significant and growing literature explores what are now typically termed 'Indigenous research methodologies'. Valuably, it provides guidance to scholars and researchers (whether they are from the academy, an Indigenous community, or both) about the characteristics of Indigenised research.

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[7]   Smith, Decolonizing Methodologies, above n 4, 170. Emphasis added.

[8]   Ibid 175-176.

[9]   Worby and Rigney were early proponents of the term 'Indigenous research agenda' to describe an appropriate approach; see Gus Worby and Daryle Rigney, 'Approaching ethical issues: institutional management of indigenous research' (2002) 45(1) *Australian Universities' Review* 24. We prefer the term 'Indigenous research paradigm' because it more completely expresses the idea that the approach requires a shift in epistemology; see, for example, Kathleen Clapham, 'Indigenous-led Intervention Research: The Benefits, Challenges, and Opportunities,' (2011) 4(2) *Journal of Critical Indigenous Studies* 42.

According to that literature, appropriately conceived and executed research should:

- *Support Indigenous community self-determination*. Such work places Indigenous nation sovereignty and community control at the centre of any investigation, acknowledging that whatever the research question, these outcomes are central to Indigenous existence. [10] Accordingly, academic researchers should understand that when Aboriginal communities or organisations 'commission' their research (ie, request, approve and partner in it), they have been engaged as experts whose skills and experience are expected to advance Aboriginal aspirations, goals, and strategies, [11] Arguably, support for Indigenous nation/community self-determination is the defining attribute of the Indigenous research paradigm.

- *Promote an Indigenous version of social justice*. This work is action-oriented. It often involves interrogation of power relationships within the nation-state and challenges colonisation, racism, and injustice in their old and new forms. [12] It may explicitly include strategies and practices that can disrupt the 'history of exploitation, suspicion, misunderstanding, and prejudice.'[13] In making this point, some writers argue that an Indigenous research paradigm is informed by principles of resistance,[14] which aligns ethical Indigenous research with mainstream conceptions of social justice (in short, pushing the oppressor out of the drivers' seat). Others note that the pursuit of social justice may be markedly different in Indigenous and non-Indigenous communities. Their re-orientation shifts the focus from resistance to assertion and affirmation, and from the story of the past to the story of the future,

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[10] Juanita Sherwood, *Do No Harm: Decolonising Aboriginal health research* (PhD Thesis, University of New South Wales, 2010) 62; Aileen Moreton-Robinson, 'Towards an Australian Indigenous Women's Standpoint Theory' (2013) 28 (78) *Australian Feminist Studies* 331, 336; Smith, Decolonizing Methodologies, above n 3, 117.

[11] Daryle Rigney (The construction and maintenance of racism in sport: Nunga perspectives on Australian Rules Football' (Master of Education thesis, University of South Australia, 1997) 32.

[12] Hemming, Rigney and Berg, Researching on Ngarrindjeri Ruwe/Ruwar, above n 6, 92; Moreton-Robinson, above, n 10, 331; Smith, Decolonizing Methodologies, above n 4; Linda Tuhiwai Smith, 'On Tricky Ground. Researching the Native in the Age of Uncertainty' in Norman K Denzin, Yvonna S. Lincoln (eds) *The Landscape of Qualitative Research* (Sage Publications, 3rd ed, 2008) 113; Lester Irabinna Rigney, 'Internationalisation of an Indigenous Anti-Colonial Cultural Critique of Research Methodologies: A Guide to Research Methodologies and its Principles' (1999)14(2) *Wicazo Sa Review: Journal of Native American Studies* 109.

[13] L I Rigney, above n 12, 119.

[14] LI Rigney, above n 12, 118; Smith, Decolonizing Methodologies, above n 3, 128; Sherwood, above n 10.

emphasising that 'decolonisation is accountable to Indigenous sovereignty and futurity'.[15] This conception of social justice is highly parallel to the preceding goal (research supports Indigenous community self-determination) and, as noted there, requires researchers to provide Indigenous peoples with information that supports their own transformational agendas.

- *Respect Indigenous peoples' agency and humanity.* Researchers working in an Indigenous research paradigm look to Aboriginal communities to specify what research projects serve community interests, and they view Aboriginal communities as the 'authorisers' of their work.[16] They do not see community members merely as sources of data. Instead, they seek collaboration with Indigenous people and work to develop personal relationships with colleague researchers and research participants.

- *Respect Indigenous knowledge in theorising and in research design.* The research effort thus recognises Indigenous peoples' 'sovereign right' to determine their own research plans 'informed by [their] politics and commitment to social justice.'[17] It privileges Indigenous voices[18] and applies Indigenous peoples' 'perspectives and understandings to social research and methodologies.'[19] It creates space for Indigenous communities, families, and individuals to theorise their own lives and connect their histories with their futures.[20] In so doing, respect for the direction and input of Indigenous peoples and people is extended to every stage of the research process—from conception and design to execution, analysis, and dissemination—and each stage is itself understood to be amenable to the incorporation of Indigenous voice, story, knowledge, culture, and values.

- *Support Indigenous communities in reclaiming knowledge, language, and culture.* Rather than enabling ongoing appropriation, the work positions Indigenous knowledge, language, and culture as the 'property' of Indigenous peoples.[21] In so doing, it explicitly concentrates on the return of knowledge, language, and culture to Indigenous peoples and on their revival within Indigenous communities.

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[15] Eve Tuck and K. Wayne Yang, 'Decolonization is not a metaphor' (2012) 1(1) *Decolonization: Indigeneity, Education and Society* 1, 35.

[16] Sherwood, above n 10, 126; Moreton-Robinson, above n 10, 336.

[17] Moreton-Robinson, above n 10, 336.

[18] L I Rigney, above n 12, 119-120.

[19] Aileen Moreton-Robinson & Maggie Walter, 'Indigenous Methodologies in Social Research' 'Indigenous Methodologies in Social Research' in Maggie Walter (ed) Social Research Methods (Oxford University Press, 2009) 2.

[20] Smith, Decolonizing Methodologies, above n 3, 119.

[21] Ibid.

- *Recognise the greater potential for learning*. Work within the Indigenous research paradigm understands that there is an improvement, by any measure, of research quality when community and academic researchers undertake 'joint intellectual effort'.[22] Creating a research process in which community experts and academic partners are jointly engaged in figuring things out results in a more complete understanding of phenomena. Potential intellectual gains include the identification of new lines of inquiry, the inclusion of previously unrecognised data and improved analysis, particularly through an appreciation of nuance otherwise invisible to outside researchers.

- *Reject the minimal 'protect-the-institution' model of research ethics.* In part in response to past abuses and an aversion to the risks of future improper conduct, universities have standards for ensuring that research involving Indigenous communities is 'ethical'. These standards focus primarily on mitigating harms to individuals and communities, including the misuse of Indigenous knowledge and other data. Responsible Indigenously focused research upholds higher ethical standards, including a commitment to collaboration, mutual benefit, and the support of Indigenous people and peoples in their exercise of self-determination, maintenance of cultural integrity, and pursuit of claims for justice. Scholars working from this perspective strive to honour and respect Aboriginal social mores and community and cultural protocols, including those that govern research.[23]

- *Seek to transform research institutions.* Researchers working within the Indigenous research paradigm understand that the very institutions in which they operate are vehicles for carrying a colonial history into the present. They are aware of this reality and actively seek to challenge and change it, transforming relations between the coloniser and colonised.[24] In other words, it is not simply the role of individual researchers but also the role of universities, think tanks, policy shops, etc, to engage with Indigenous people and communities as 'partners' rather than as 'subjects'. For example:

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[22]   Stephen Cornell, 'Becoming Public Sociology: Indigenous Nations, Dialogue, and Change' in Vincent Jeffries (ed) *Handbook of Public Sociology* (Rowman & Littlefield Publishers Inc, 2009) 263, 272.

[23]   Increasingly, Indigenous nations have their own protocols for approving research in their communities, a development that further spurs the adoption of higher standards. See for example, Deborah J Morton et al, 'Creating Research Capacity Through a Tribally Based Institutional Review Board' (2013) 103(12) *American Journal of Public Health* 2160.

[24]   Smith, Decolonizing Methodologies, above n 4, 120.

> Respect for Indigenous sovereignty means that *the university* provides
> information, analysis, and education at the request of Native clients with
> the conscious intent of arming Native decision-makers and communities
> with, hopefully, high quality raw materials from which those decision-
> makers and communities can fashion their own solutions to their own
> problems and concerns.[25]

Succinctly, appropriately Indigenised research reconceptualises the relationship
between Indigenous and academic partners and is part of 'excolonialism', or
the process of exit from 'settler-interested modes of social production'.[26]

II.B. The interaction of principles and methods

The listed principles help researchers act as Indigenous community allies. And
yet, 'Indigenous research methodologies are not a set of research rules and
techniques. Rather, they are a research orientation, a fluid process of problem
solving, meaning-making, and emancipatory praxis'.[27] In other words, they
provide ethical guidance but say little about actual research methods.

This situation can create tension for scholars. They must be accountable to
multiple audiences.[28] They must grapple with the sometimes uncomfortable or
contentious question of how to reconcile the research methods of their fields
(sociology, anthropology, political science, economics, medical science, etc)
with the principles of ethical Indigenous research. Their work will be judged
poorly by in-discipline peers if it does not fulfil disciplinary standards, and it
will be judged poorly by Indigenous or Indigenous-focused audiences if it fails
to take Indigenous knowledges, concerns, and perspectives into account or fails
to fully engage Indigenous peoples in the research enterprise.

To resolve or at least minimise this tension, we distinguish between
'methodology' and 'method'. Method refers to the practical methods of data
collection and analysis; methodology includes method but adds to it the

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[25]   Joseph Kalt and Dennis Norman, *Universities and Indian Country: Case Studies in
Tribal-Driven Research* (University of Arizona Press, 2015) 6 (italics added). Worby
and Rigney, above n 10, likewise argue that universities have both an ethical obligation
to do research well *and* the responsibility to support Indigenous nations in the exercise
of their self determination; they view this as universities' responsibility to work on
behalf of social justice. Going even further in their institutional support of
decolonisation, some universities – UTS, for example— are adopting Indigenous self-
determination as part of their strategic plans.

[26]   Simone Bignall, 'The collaborative struggle for excolonialism' (2014) 4(4) *Settler
Colonial Studies* 340. Also see Kalt and Norman, above n 25, chapter 1.

[27]   Tristan Reader, *Tohono O'odham Food Sovereignty* (Draft PhD Thesis, 2015) chapter
9, 28. Draft as at December 2015; draft on file with Miriam Jorgensen.

[28]   Lanita Jacobs-Huey, 'The Natives are Gazing and Talking Back: Reviewing the
Problematics of Positionality, Voice, and Accountability among "Native"
Anthropologists' (2002) 104(3) *American Anthropological Association* 791, 797.

underpinning principles outlined above that guide the conception, design, and execution of research. Principles guide method; method operates within the constraints of principles. The two together form methodology. In other words, our view is that a full decolonising research methodology emerges from an interaction of the 'Indigenous methodologies' principles with specific (disciplinary) research methods.

Indigenous scholars also observe that a balance can be struck between Indigenous research principles and the rules and techniques for research approved within a field. They note that the language and commitments of Indigenous research may be unfamiliar to particular western disciplines, and that an Indigenous research agenda focussed on self-determination, healing, decolonisation, and spiritual recovery may seem at odds with positivist research and its various methodological practices. But they further stress that Indigenous research principles provide a strategy for reorienting the aims and objectives of both the ways and means of research on Indigenous issues.[29]

Ideally, an Indigenous research methodology (principles *plus* methods) also is reflexive and recursive. The distinctions between principles and methods remind us that there are dangers in going too far in one direction or the other: A methodology that is all principles and no method is unlikely to produce defensible or usable results; a methodology that is all method and no principles may end up replicating western ways of viewing the world and reinforcing the colonial project. Thus, researchers need to regularly interrogate their assumptions, their choices, and the consequences of those assumptions and choices and, in response, be willing to revisit and refine their methodology. In so doing, researchers working within an Indigenous research paradigm meld the methods of their academic disciplines with Indigenous research principles to co-generate a methodology for a defined joint endeavour, and embrace an understanding of research as a process of learning, developing, and critiquing in support of larger goals.[30]

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[29]   Martin Nakata, 'Ongoing Conversations about Aboriginal and Torres Strait Islander Research Agendas and Directions' (2004) 33 *Australian Journal of Indigenous Education* 1; LI Rigney, above n 13; Smith, Decolonizing Methodologies, above n3, 117.

[30]   Indigenous Allied Health Australia (IAHA) actually requires research partners to engage in this type of reflective and re-focussing work, a process it calls 'knowing, being, and doing'. For example, in proposals to IAHA, individual researchers are asked not only to identify what they want to research and why but also to reflect on what their perceptions of and assumptions about Aboriginal and Torres Strait Islander peoples and communities are. At other points during the research engagement, IAHA works with research partners to make sure they have not lost sight of 'who they are' and what their purpose is (Donna Murray, IAHA chief executive officer, personal communication, 16 August 2016).

III.   An Example of Research Practice: The Indigenous Nation-Building Collaboration

We reflect on exactly these issues in in our research on Indigenous nation building in Australia. Our work attempts to marry principles and methods in a research practice that produces both community and academic results. This section describes our research questions, methodology, specific research practices, and how we have structured our relationship with partners.

III.A. Background

In our usage, 'nation building' refers to the processes by which an Indigenous nation enhances its own foundational capacity for effective self-governance and for self-determined community and economic development.[31] Our activities have the following overarching research objectives:

- *To assess the relevance to Australia of North American research results* concerning Indigenous nation building produced over 30 years by the Harvard Project on American Indian Economic Development and the Native Nations Institute (NNI) at the University of Arizona. Specifically, do the results established in North America, showing that empowered and culturally legitimate Indigenous political governance is more efficacious in pursuit of Indigenous goals than so-called 'standard' approaches to addressing Indigenous socioeconomic conditions (typified by top-down, externally imposed programs, structures, and policy[32]) apply in Australia? Do the recommendations based on those results also apply?[33]

- *To identify strategies of nation self-government from two Aboriginal nations* that combine effectiveness, cultural legitimacy, and—at least in their core principles—transferability across Indigenous situations. Specifically, what are Indigenous nations' strategic and institutional innovations in self-government? And, in support of social

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[31]   Miriam Jorgensen, 'Editor's Introduction' in Miriam Jorgensen (ed), *Rebuilding Native Nations: Strategies for Governance and Development* (University of Arizona Press, 2007) xii. Some Indigenous people prefer the term nation *re*building. See, for example, Oren Lyons, 'Foreword' in Miriam Jorgensen (ed), *Rebuilding Native Nations: Strategies for Governance and Development* (University of Arizona Press, 2007). We use the term 'nation building' throughout, but it could generally be read as 'nation rebuilding'.

[32]   For an accessible summary, see Jorgensen, above n 31, especially chapter 1.

[33]   Acknowledging that the legal, political, constitutional, and historical circumstances of North America and Australia differ, the research asks whether Indigenous nations and communities were exercising self-government as understood in North America. This inquiry required the translation of the language of Indigenous government, sovereignty, nationhood, and nation building for an Australian context.

transformation, what can Indigenous nations learn from each other in the struggle to establish and expand genuine self-governing power?

- *To identify techniques for commencing the process of Indigenous nation building.* Specifically, how might the process be kindled in Australia, where there is quite limited formal colonial government recognition of Indigenous self-government and where, within a given Aboriginal community, a sense of self-governing power may not currently exist?

This work occurs through several connected, ongoing research projects undertaken by Gunditjmara and Ngarrindjeri organisations and community members and by researchers at both Australian and US academic institutions, a group that we refer to here as the Indigenous Nation Building Collaboration ('INB Collaboration'). The INB Collaboration commenced through an Australian Research Council ('ARC') funded Discovery Project, with the working title 'Changing the Conversation: Rediscovering Indigenous Government', undertaken by the Jumbunna Indigenous House of Learning at the University of Technology Sydney and NNI ('the Jumbunna-NNI DP')[34]. Jumbunna and NNI partnered on this project with the Gunditjmara People from what is now south-western Victoria and the Ngarrindjeri Nation located in the River Murray, Lakes and Coorong region of what is now South Australia. The partnership was facilitated through two Aboriginal organisations, Gunditj Mirring Traditional Owners Aboriginal Corporation ('Gunditj Mirring') and the Ngarrindjeri Regional Authority ('NRA'). Growing Aboriginal nation interest in the work and additional funding streams [35] expanded our partnerships. At the time of writing, in addition to the original partners, the INB Collaboration also formally includes individuals and groups from the Wiradjuri Nation in what is now NSW and five additional universities (University of

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[34] In 2010, Jumbunna Indigenous House of Learning at UTS was awarded an Australian Research Council Discovery grant (DP 1092654) titled 'The applicability of research and practice on nation rebuilding in North American Indigenous communities to Australian Indigenous communities' (Jumbunna-NNI DP) to collaborate with the Native Nations Institute at the University of Arizona. Professor Larissa Behrendt, Research Director of Jumbunna IHL, was Chief Investigator and Dr Miriam Jorgensen, Research Director of the Native Nations Institute at the University of Arizona and of the Harvard Project on American Indian Economic Development, was Partner Investigator. Professor Stephen Cornell, co-director and co-founder of the Harvard Project and Faculty Chair of the Native Nations Institute, was expert adviser to the work. Dr Alison Vivian from Jumbunna IHL and Dr Mark McMillan from Melbourne Law School were Senior Research Associates for the project.

[35] The work of the Collaboration is supported by two grants: an ARC Linkage Grant (LP140100376), titled 'Indigenous nationhood in the absence of recognition: Self-governance strategies and insights from three Aboriginal communities' and a Melbourne School of Government Cluster Grant, titled 'Indigenous Nation Building: Theory, Practice and its emergence in Australia's public policy discourse'.

Melbourne, Flinders University, Charles Sturt University, RMIT, and Australian National University).[36]

III.B. The INB Collaboration Methodology

Our methodology combines the Indigenous research principles presented in section II with three research methods—the extended case method, comparative analysis, and action research.

- *Extended case method.* The extended case method involves data gathering in a single or small number of communities. 'Extended' has two meanings. For one, it refers to the timeframe of the research, as in an ethnography that extends over time or a longitudinal community study. For another, it refers to contextualisation, or moving the inquiry beyond a study of activities (what people in the community are doing) to a study of social forces and processes that constrain, facilitate, or otherwise shape what people do. The method makes known relationships and connections across the community; the structure and organisation of power; specific policy regimes; the impacts of markets, colonialism, racism, etc; and the histories of those forces.[37]

- *Comparative analysis.* The Ngarrindjeri Nation, the Gunditjmara People, and individuals and groups of the Wiradjuri Nation share a number of characteristics. Among them are the catastrophic legacies of colonialism; their position within the Australian policy regime; a determination to reclaim self-governing power over lands, waters, and community affairs; and an engagement in practical processes of Indigenous nation building. At the same time, the Ngarrindjeri, Gunditjmara, and Wiradjuri differ in their cultures, specific histories, the effects of those histories, their current circumstances, and their positions within nation building processes. Through comparison and contrast, this method helps point to key factors (here, strategic visions, practical

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[36] We have been approached by a number of other Aboriginal nations who are interested in commencing nation building work but do not (yet) have formal research arrangements with them.

[37] The phrase 'Extended Case Method' originated among scholars associated with the Manchester School of social anthropology working mostly in Africa in the mid-20th century (eg Gluckman 1958, Van Velsen 1967). Their ethnographic work paid close attention to the effects of colonialism on social processes in groups, communities, organisations, and nations. The method has parallels in some American ethnographies in the latter part of the century that were interested in extra-local determinants of (for example) urban race and class relations (eg, Liebow 1967, MacLeod 1987). Burawoy (1998, 2009) not only provides an overview of the history and logic of the method—an overview that has substantially informed our own understanding—but also has considerably expanded the discussion of its principles and possibilities.

> political strategies, patterns of action, and so on) that may be instructive concerning nation building trajectories and outcomes.

- *Action research*. We use this term to refer to an array of methods, including participatory action research, community-based participatory research, critical action research, tribally driven participatory research, and empowerment evaluation, that are intended as 'human inquiry with transformative and emancipatory intent'[38]. Through participation, socio-political analyses, and study of organisations and relationships, this research method seeks to identify and implement actions that will 'improve things'[39]. Echoing Zandee and Cooperrider[40], we note that the approach is not value-free; it intentionally embeds values because it seeks to support communities in their quest for whatever they identify as 'better'. A key benefit of this method is its clear focus on supporting sovereign Indigenous nations' inherent right to self-determination and their progress toward community goals.

Our experience is that this methodology (Indigenous research principles and specific data-gathering methods) is capable of identifying critical insights, general relationships, inferences about causation, and other material for theory building. Further, we expected it to yield insights for Indigenous and colonial governments' strategies, policies, and inter-governmental relationships—and it has. It is particularly successful at identifying problems and opportunities in public policy and at generating transformative knowledge that Aboriginal nation governments, colonial governments, community leaders, and researchers can use to make change. Significantly, these products are not simply 'end results'. Outcomes formed as the research methodology developed, research practices were established, and publishable findings emerged. For example, changes to nation policy and a more robust theory of nation building (our 'identify, organise, act' framework[41]) became apparent in the research process itself.

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[38] Danielle P Zandee and David L Cooperrider, 'Appreciable Worlds, Inspired Inquiry' in Peter Reason and Hilary Bradbury (eds), *The SAGE Handbook of Action Research: Participative Inquiry and Practice* (Sage Publications, 2008) 192; Patricia Mariella, Eddie Brown, Michael Carter, and Vanessa Verri. 'Tribally-Driven Participatory Research: State of the practice and potential strategies for the future' (2009) 3(2) *Journal of Health Disparities Research and Practice* 41.

[39] Stephen Kemmis and Robin McTaggart, 'Participatory Action Research: Communicative Action and the Public Sphere' in Norman K Denzin and Yvonna S Lincoln, *Strategies of Qualitative Inquiry* (Sage Publications, 3rd ed, 2008), 273.

[40] Ibid.

[41] Learning during the Discovery Project emphasised that the process of Indigenous nation building occurs in three phases: identification (determining what group of people constitutes the 'self' in 'self-government'), organisation (creating institutional structures to make and implement decisions for the nation), and action (undertaking actions through these governing structures that forward the goals of the nation). These phases may occur sequentially or with feedback, but they nonetheless are distinct and

III.C. Operationalising the INB Collaboration's research methodology

The specific activities we undertook to implement our research methodology included: desktop research on Aboriginal nations and university partners; 'meet and greet' visits with team members and community members in each partner nation and with Victorian and South Australian government representatives as requested by the nations; twice-annual research-focused site visits by the entire team and many further visits by individual team members; attendance at key community and Aboriginal government meetings (Gunditjmara Full Group meetings, Ngarrindjeri Regional Authority meetings, and community-government partnership meetings such as those of the Lake Condah Sustainable Development Project); attendance at special Aboriginal community events (including openings, public presentations, celebrations, and funerals); participation in inter-nation summits (gatherings of nation builders from each of the INB Collaboration nations and select additional Aboriginal nation representatives at which strategies and successes were shared); monthly full team meetings both via telephone/VOIP and at least annually in person; executive education of Aboriginal government leaders in each partner nation and of non-Indigenous government personnel; and joint project research. Over the years we also have had numerous formal and informal conversations and interviews with Elders, community leaders, and other nation advisers; personnel from Gunditj Mirring Traditional Owners Aboriginal Corporation, Winda-Mara Aboriginal Corporation, the Ngarrindjeri Regional Authority, and other Gunditjmara and Ngarrindjeri organisations; non-Indigenous allies; and representatives of relevant local and state governments.

From the outside looking in, a typical assumption may be that research relationships reflect some natural affinity among the research partners. In fact, the relationships might be described more accurately as 'constructed affinities' between 'complex, prickly partners' with distinct and sometimes complementary, sometimes contradictory interests.[42] In short, these are 'willed interactions'. [43] Tension is to be welcomed as a sign of passion and commitment.[44] Thus, in order to make our research activities really work—in order for ongoing engagement to occur and for these activities to yield information and products relevant both to Aboriginal nations and to the academy—team members from Aboriginal nations and from the academy had

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individual necessary parts of the process. See Stephen Cornell, 'Processes of Native Nationhood: The Indigenous Politics of Self-Government' (2015) 6(4) *International Indigenous Policy Journal*.

[42]   Bignall, above n 26, 350.
[43]   Ibid 350-352.
[44]   In fact, Damein Bell, an INB Collaboration partner and co-author of this article, demands it.

to develop trust and confidence in each other.[45] Our primary strategy for doing so was to commit to reciprocity as a fundamental tenet of our relationships. It is exemplified by an operational structure for the work that is best described as being composed of two sets of interests that are at once symbiotic, hierarchical, and equitable (but not equal).[46]

The interests are symbiotic in that neither can achieve their respective goals without the other. They are separate but not mutually exclusive realms of inquiry. The Aboriginal partners—experts[47] in Country, culture, language, law, ceremony, traditional economy, their communities' values, norms, and ambitions—seek to 'nation build' to strengthen their communities. The academic partners—experts in political science, sociology, law, philosophy, and communication design—seek to learn about transferrable examples of strategic and institutional excellence and about the processes, tools, language, experiences, and analyses that trigger and enliven Indigenous nation-building.

The interests are hierarchical in that all parties seek to act as Indigenous nation builders and to support the Aboriginal partners as they assert their nations'

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[45] No doubt this evolution has been aided by the fact that some INB Collaboration team members are both Aboriginal nation representatives and part of the academy.

[46] Although used in a different disciplinary context, namely that of design, the language used by Nelson and Stolterman to describe the designer being *in service* is helpful to understand the dynamics of the relationship between academic and Aboriginal researchers in the INB Collaboration. See Nelson and Stolterman, above n 2. As Nelson and Stolterman explain, being in *service* does not equate to subservience but is to midwife that which 'could not have been imagined fully from the beginning by either [party]' (24). 'A service relationship is a distinct, complex, systemic relationship with a particular focus on the dimensions of responsibility, accountability, and intention that are embedded in the relationship' (24). The relationship is proactive and distinguishes between 'finding meaning in things that happen and making meaning by causing things to happen' (24).

[47] Hemming and Rigney and others have described the hazards of dealing with the external expert who seeks to measure or assess the 'authenticity' of Indigenous peoples, which often leads to 'Aboriginalist myths of cultural extinction'. They describe Ngarrindjeri strategies in response, which seek to create a body of Ngarrindjeri expertise that interrupts the recycling and activation of the colonial archive and instead inserts Ngarrindjeri aspirations, narratives, priorities, and principles into the written record. Ngarrindjeri leaders and advisers have been prolific in publishing articles, book chapters, and descriptive pieces that reinforce Ngarrindjeri perspectives, outline strategy and approaches, and privilege Ngarrindjeri values and worldviews. See Hemming, Rigney and Berg, Researching on Ngarrindjeri *Ruwe/Ruwar,* above n 5; Steve Hemming and Daryle Rigney, 'Unsettling sustainability: Ngarrindjeri political literacies, strategies of engagement and transformation' (2008) 22(6) *Continuum: Journal of Media and Cultural Studies* 757; Steve Hemming and Daryle Rigney, 'Decentring the new protectors: transforming Aboriginal heritage in South Australia' (2010) 16(1-2) *International Journal of Heritage Studies* 90; Robert Hattam, Daryle Rigney, and Steve Hemming, 'Reconciliation? Culture, nature, and the Murray River' in Emily Potter et al (eds) *Fresh Water: New Perspectives on Water in Australia* (Melbourne University Press, 2007) 105.

inherent rights to self-determination and self-government. The academic partners, being a large multidisciplinary team with different areas of expertise, take instructions from the Aboriginal nations about their nation-building aspirations and, with the Aboriginal partners, devise tasks that may enhance the nations' capacities to fulfil these aspirations. The Aboriginal partners then utilise the research team's expertise about building effective and legitimate governing systems, which gives the partnership the flavour of a client to professional practitioner relationship. In fact, we describe the process of negotiating the research engagement as 'ethically *commissioned* research'.[48]

Among others, examples of instructions given by the Aboriginal partner nations include the following:

- *Gunditjmara decision-making matrix.* Every month, at a known time and place, the Gunditjmara 'Full Group' meets. Initially established as a means of generating instructions for the native title process, it has evolved into a forum for deliberation and decision-making on all issues relevant to the Gunditjmara People. Transparency, accountability, and free prior and informed consent are the fundamental principles underlying the Full Group's processes, but current methods for implementing these principles are expensive, result in an increasingly large volume of material for review each month, and require lay community members to address increasingly technical or specialist topics. The solution devised by the Full Group is to establish a set of decision-making principles that it could use to 'pre-inform' meeting attendees and that could assist future generations of decision-makers. Further, the Full Group has directed the INB Collaboration to work with it on this nation-building challenge.

- *Gunditjmara research approvals process.* The Gunditjmara People experience frequent requests by students and academics for permission to conduct research on Gunditjmara Country or with the Gunditjmara People. On many occasions, the proponent of the research already has formulated a proposal and obtained funding, suggesting a presumption that the Gunditjmara People's approval is a mere formality. To ensure that Gunditjmara processes and research priorities are fulfilled, the Gunditjmara Full Group requested assistance from the INB Collaboration to create a Gunditjmara research approvals process. Under this process, researchers will be required to familiarise themselves with Gunditjmara research principles and protocols, submit a formal application, and explain how the proposal responds to Gunditjmara

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[48] This is a term coined by INB Collaboration partner Raymond Orr, a faculty member at the School of Social and Political Sciences at the University of Melbourne.

interests. Reciprocity and ongoing connection beyond the life of the project will be central to the consideration of whether consent is granted.

- *Ngarrindjeri Regional Authority structural review.* The Ngarrindjeri Regional Authority (NRA) has had notable success in establishing processes, mechanisms, and structures for Ngarrindjeri Nation decision-making. Crucially, this governing structure reflects the political climate—both Ngarrindjeri and Australian—at the time of its creation. It has served the Ngarrindjeri Nation well to date, but changing circumstances and the nation's expanding authority and broader jurisdiction suggest that structural review is now appropriate. Realising this, the NRA instructed the INB Collaboration to assist in the review. In response, the collaboration has assisted by providing interview data, executive training, and strategic input.

The overall research partnership is equitable in that the academic partners and the Aboriginal nations each gain from the work, although they are not 'equals' in a non-hierarchical sense (as observed above). In yielding nation-building products for the partner nations, the research work also yields academic and scholarly products. The diagram below demonstrates this mutual progress of nation building and research outcomes. Above the diagonal, successive nation-building projects connect with and build upon each other to increase the self-governance and self-determination capacities of an Aboriginal nation. Below the diagonal, successive research activities connect and build upon each other to increase academic knowledge and scholarly outcomes. The diagonal shows a balance between the two, although at any moment in time, the effort may swing somewhat more to the left or right, depending on how collaborators are arrayed to produce the desired work. Over time, collaboration leaders use team meetings and other partnership interactions to rebalance and continue to progress the work.

Figure 1. Reciprocity & progress in both nation building and research activities
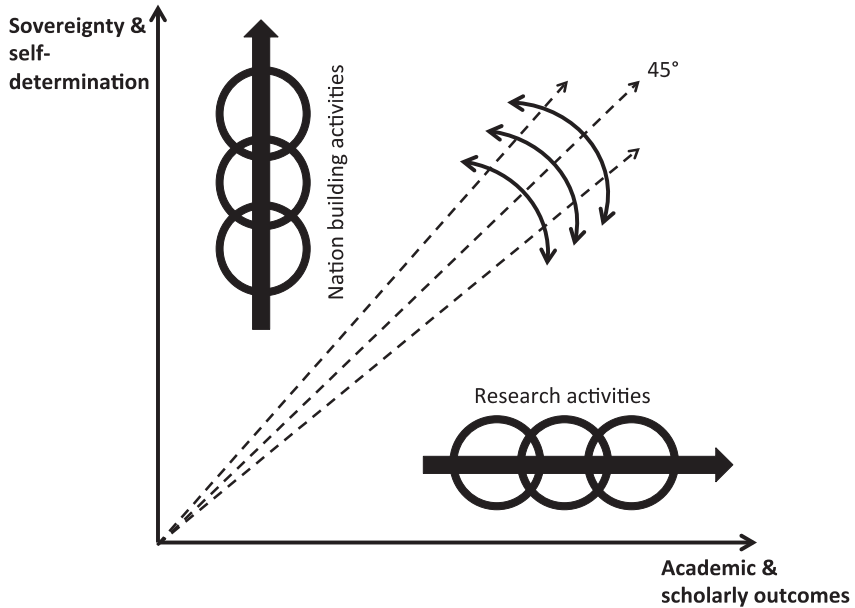
IV.   Our Stories: Challenges, and Responses to Those Challenges, within an Indigenous Research Paradigm

As we commenced our research, we faced (and continue to face) challenges to our efforts to work within an Indigenous research paradigm. We tell three specific stories here, which stand as practical examples of how we are seeking to enact our methodology.

IV.A. Pursuing research ideas that do not come from Indigenous communities

As noted in Section II, co-production throughout the research cycle[49] and respect for Indigenous knowledges are hallmarks of the Indigenous research paradigm. But what happens when academic researchers have an idea for a research project, which their experience suggests may be of interest to

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[49] To reiterate the argument of Section II, an Indigenous research paradigm requires engagement at each stage of the project, from developing the research proposal, to implementing and monitoring research activities, analysing data and co-producing findings, obtaining permission to share research findings, and sharing them with Aboriginal partners, other Aboriginal nations, and with the broader research environment.

Indigenous people or peoples? Further, what happens if the proposed project requires collaboration with Aboriginal partners who fulfil certain pre-determined criteria? Can such research represent the respectful and mutually beneficial encounter that the Indigenous research paradigm demands? Can it comply with the principles of appropriate Indigenous research? Is it inevitable that it represents the worst kind of research 'done to' Indigenous peoples by external experts?

This was the situation faced by the Jumbunna-NNI Discovery Project team. From the research team's broad experience working with Aboriginal communities across Australia, and in a variety of capacities, we were confident that the issues we sought to explore—Indigenous nationhood, Aboriginal nation self-government, and Aboriginal nation self-determination—would be of interest. But how could we engage our prospective partners without appearing to present a pre-determined research question and pre-packaged research approach?

Our response was to create a three-stage recruitment and research design process:

- The *first stage was to identify Aboriginal nations/communities* that demonstrated the characteristics of self-governing political collectives, according to five indicators that we had distilled from North American research. We were looking for examples of Aboriginal nation self-determination and self-government as opposed to examples of self-managing Indigenous community organisations or corporations.

- The *second stage was to share findings from Harvard Project and Native Nations Institute research* with those communities, discuss with them the potential relevance of those findings within their own nations, and seek their consent to negotiate project design.

- In communities interested in collaboration, the *third stage was to establish an ongoing consultation process for determining the partner communities' desired research goals and outcomes*. The Gunditj Mirring Traditional Owners Corporation and the Ngarrindjeri Regional Authority both agreed to engage in the research project with us but proposed different outcomes and different collaboration approaches. The result was separate, ongoing alliances, such that the conduct of the inquiry and the outcomes for the two nations were markedly different over the life of the Jumbunna-NNI Discovery Project and our later projects.

Further, we resolved that a two-tiered human research ethics approval process should accompany this staged engagement, which is not the usual approach at Australia universities. In particular, our work required that community recruitment become a formal aspect of the research methodology, and we asked

the UTS Human Research Ethics Committee to create a preliminary approval process for this stage of the work. Once our Aboriginal community partners agreed to collaborate with us, we proceeded through the standard ethics approval process, a review of the specific methods we would use as we worked with each nation.[50] To our knowledge, the UTS Ethics Committee had not previously been asked to accommodate a two-stage approach but was supportive of it. A broader lesson from these interactions is that to truly accommodate an Indigenous research paradigm, university human research ethics approvals processes should flexibly accommodate each research project—and researchers should be proactive in working with them to motivate such accommodation.[51]

IV.B. Fulfilling the responsibility to protect Indigenous cultural knowledge

The conventional institutional standard for human research ethics approval processes is that potential individual 'human research subjects' be fully informed about the nature of the research in which they may be involved, its implications, and its possible consequences, and that their agreement be based on a full understanding of such information. However, 'acquiring' knowledge in Indigenous communities or producing knowledge based on Indigenous experiences may have consequences that are unintended or even entirely unknown to the researcher. It suggests that where external researchers are ignorant of potential consequences, consent may not be fully informed, making the concept highly problematic in research with Indigenous people and peoples.[52] Two common issues arise from the fact that under conventional standards, consent is obtained on an individual basis.

- *Problem: conventional standards make no distinction between individual and collective knowledge.* In many Aboriginal communities, only some knowledge can be appropriately/lawfully held individually; other knowledge is appropriately/lawfully held collectively. Cultural knowledge (discussed in greater detail below) is an example of the latter. In research engagements, there is the potential for an individual research participant to disclose collective knowledge despite the fact that he or she cannot lawfully share or give permission to use the knowledge. In this situation, consent obtained from an individual is unlikely to represent consent to lawful disclosure.

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[50]   In fact, although evidence of community support typically is preferred for submission of an ethics application, at Australian universities, even at this stage it often is not required.

[51]   This kind of engagement can provide a useful opportunity for researchers to educate university human research ethics committees about Indigenous methodologies.

[52]   Stella Coram, 'Rethinking Indigenous Research Approval' (2011) 11(2) *Qualitative Research Journal* 38.

- *Problem: conventional standards fail to respect authority to speak for particular issues or particular knowledge*. Again in many Aboriginal nations, only certain people or groups of people have authority to speak about particular issues or Country and to authorise publication about these matters. If lines of authority have broken down, it is quite possible that certain individuals have knowledge about these issues or Country but not know whether they are authorised to share the knowledge. In fact, they may not even know that authorisation is required. It is conceivable that such knowledge could be shared by people who are not even be aware that they lack authority to do so.

Bird Rose explains:

> Law belongs to country and to people. It is embedded, of course, in society and culture, and is intellectual property, which is not freely available to all. Essentially, if knowledge is constituted as evidence of relationships among persons and between persons and country, then it is most assuredly not available to all and sundry. Such a system is subverted through any form of 'freedom of information'. If there is one thing that is absolutely not free, in Aboriginal tenure systems and Aboriginal politics, it is knowledge.[53]

Thus, ethical research must reframe what constitutes genuine 'informed consent' to honour Indigenous peoples' right to protect collective and cultural knowledge. Further, it must engage Indigenous collectives in dealing with these complexities, rather than dismissing them as something that can be dealt with 'procedurally'.[54] These complexities can be some of the most difficult issues to deal with in research engagements.

The INB Collaboration addressed these complexities with four decisions:

- First, *the research team acknowledged that Indigenous cultural knowledge is not a species of intellectual property as understood in Australian law*. Australian law is not relevant because the law related to the ownership and dissemination of Indigenous cultural knowledge is Indigenous law, with a different source of authority to Australian mainstream law.[55] Therefore, Indigenous cultural knowledge cannot and

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[53]   Deborah Bird Rose, *Nourishing Terrains: Australian Aboriginal Views of Landscape and Wilderness* (Australian Heritage Commission, 1996) 32 quoted in Sherwood, above n 11, 61.

[54]   For instance, some researchers working in Aboriginal communities simply tell participants that it is adequate to refuse to answer questions they are unable to answer (for whatever reason). But this work-around does little to address the fact that there are actually different kinds of information and different parties who might approve its revelation, and that information/knowledge itself is a collective, sovereign good.

[55]   Hemming, Rigney, and Berg, Researching on Ngarrindjeri Ruwe/Ruwar, above n 5. See also the discussion of Indigenous intellectual property issues in Terri Janke (2003)

should not be subject to Australian legal intellectual property considerations and cannot be owned by any academic researcher or any academic institution.

- Second, *we determined that our most important research protocol is that Indigenous cultural knowledge only can be published with consent of a collective*. That is, while information may have been disclosed by individuals who gave their consent to be interviewed, we sought publication approval from the Ngarrindjeri Research, Planning, and Policy Unit or the Gunditj Mirring CEO (delegated with that authority by the Gunditjmara Full Group) for assessment as to whether cultural knowledge or other private collective knowledge had been disclosed.

- Third, *the research team agreed to include cultural knowledge protections in all its processes*. For the ARC Discovery project, UTS included a cultural knowledge clause in its research agreement with the Ngarrindjeri Nation. For the ARC Linkage project, we required that the partnership agreements entered into by the seven universities involved include clauses protecting Indigenous cultural knowledge (see Appendix); this was challenging for some institutions but agreement ultimately was achieved. The research team is grateful to the Ngarrindjeri Regional Authority for permission to use these clauses that were originally drafted for its use.

- Fourth, *we drafted and agreed upon research protocols governing the conduct of the academic partners within the INB Collaboration*. With reference to the point immediately above, the INB Collaboration's internal protocols also outline the team's commitment to protect Indigenous cultural knowledge, as do our consent forms and information sheets for research participants.

Fortunately, the INB Collaboration was able to turn to the Gunditjmara Full Group and Ngarrindjeri Regional Authority for help in making decisions about collective knowledge, for referrals to appropriate knowledge holder/s, and for connections with assessment entities so that appropriate determinations about the disclosure and use of sensitive knowledge could be made. In other words, the guardians of cultural knowledge are readily identifiable and gaining consent has been a matter of negotiation.

'Minding Culture: Case Studies on Intellectual Property & Traditional Cultural Expressions' prepared for the, World Intellectual Property Organisation (WIPO, 2003) <http://www.wipo.int/edocs/pubdocs/en/tk/781/wipo_pub_781.pdf>; Terri Janke (1998) *Our Culture: Our Future—report on Australian Indigenous cultural and intellectual property rights*, (Australian Institute for Aboriginal and Torres Strait Islander Studies, 1998).

Nonetheless, we recognise that a determination of who has the right to speak for any particular cultural knowledge can be contested, and definitive resolution of the issue may not be possible. In some Australian Indigenous communities, protocols about authority to hold or share knowledge would have been understood and strictly enforced historically but are relatively unknown and have little force today. There are many examples of community discord or conflict that stem from different conceptions of cultural knowledge; among them, the Kumarangk (Hindmarsh Island) Bridge crisis is one of the most well-known [56]. In such circumstances, collective or cultural knowledge may be inadvertently shared by individuals without appropriate authority, or inadvertently acquired simply through observation. Therefore, even the ethical researcher can be tested where consensus about appropriate protocols related to the acquisition and dissemination of collective knowledge is difficult to achieve.

Nonetheless, it should be non-negotiable that mutually developed protocols for information sharing or acquisition in the research process strive to protect Indigenous knowledges. For example, where protocols relating to the authority to share knowledge may not exist or might not be well known, the researcher can specifically ask research participants about their views on an appropriate process for protecting cultural knowledge. That process may involve particular Elders, groups of community members, or others whom they view as having the capacity and authority to give approvals.

Interestingly, we understand these questions and considerations about research protocols to be nation-building considerations. Uncovering existing protocols or creating new protocols appropriate to contemporary circumstances involves questions about leadership, authority, jurisdiction, and what is culturally appropriate in today's environment, which are issues fundamental to nation building.

IV.C. Determining publication approval protocols

As noted above, Aboriginal partners and academic partners in a research collaboration have different but complementary interests. The Aboriginal partners are rebuilding their nations; the academic partners want to understand

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[56]   For a detailed overview of the crisis, see Margaret Simons, *The Meeting of the Waters: The Hindmarsh Island Affair* (2003). For discussion of how the crisis impacted upon Ngarrindjeri strategic approaches, see Steve Hemming, Daryle Rigney, and Shaun Berg, 'Ngarrindjeri Futures: Negotiation, Governance, and Environmental Management' in Sarah Maddison and Morgan Brigg (eds), *Unsettling the Settler State: Creativity and Resistance in Indigenous Settler-State Governance* (Federation Press, 2011) 98, 104-109. See also Tom Trevorrow and Steve Hemming, 'Conversation: Kungun Ngarrindjeri Yunnan—Listen to Ngarrindjeri People Talking' in Gus Worby and Lester-Irabinna Rigney (eds) *Sharing Spaces: Indigenous and Non-Indigenous Responses to Story, Country, and Rights* (API Network, 2006) 295.

the nation-building processes that Aboriginal nations are using in Australia. Supporting the Aboriginal partners, groups, and individuals to audit their current systems, policies, and approaches entails an exploration of: community dynamics and aspirations; different approaches to cultural legitimacy, leadership, and governing bodies; what works and what doesn't; what needs to change and what needs to remain the same; what must be protected; and who or which body has the authority to speak for which issues. Such an exploration means that the academic partners become knowledgeable about the *what* in addition to the *how* of nation building and encounter knowledge that may be sensitive, including Indigenous cultural knowledge which may not be legitimately known by external parties.

Thus, our publication protocols must be stringent in identifying that for which the Aboriginal partners grant publication approval. Publication approvals are gained through a two-stage consent process. First, research participants consent to being interviewed; second, they consent to be quoted or to have their stories told. They are given control over the telling of their stories through opportunities to read drafts of proposed publications, to amend quotes, and to determine how they are referenced (if at all). As described above, potential publications also are reviewed for collective knowledge or Indigenous cultural knowledge by appropriate authorities. The preference for all parties is that publications are co-authored with community members.

The Collaboration is aware of suggestions that our publication protocols might be labelled by some as 'censorship' or as lacking academic rigour, a characterisation that we reject. Our research requires an understanding of confidential matters, which we will learn about only if the partners have established mutual trust. Subjecting publications to Aboriginal partner approval contributes to that trust. Reiterating an argument made earlier in this paper, this level of mutual understanding is likely to result in research that is both more ethical *and* better quality than research on and about Indigenous people that is conducted outside an Indigenous research paradigm.

We additionally observe that this approach reaches a standard of replication (an apparent test of rigour) that is similar to that of survey and ethnographic research.[57] Researchers cannot precisely replicate a survey because they cannot replicate the exact sample. Researchers cannot precisely replicate an ethnography because it reflects a particular time and place and because the identities of relevant communities or participants may have been suppressed for their protection. In short, would-be replicators can approximately replicate our efforts by building relationships for themselves, pursuing comparable questions

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[57]   We make this observation while also understanding that there are many critiques of ethnography itself as a method and practice.

with comparable methods, and determining whether our publications hold up to scrutiny.

V.   Analysis and Conclusions

The INB Collaboration has particular advantages in enacting an Indigenous research paradigm. Unquestionably, the most important factor that has shaped this ongoing and evolving research project is our acknowledgment of Aboriginal nations' sovereignty and their inherent right to self-determination. This understanding frames and positions all interactions, modes of inquiry, protocols, and interests in our endeavours together.

Thus, the first advantage our project enjoys is that the aims and objectives of our inquiry explicitly mirror the foremost principle of an Indigenous research agenda.

Second, the Gunditjmara People and the Ngarrindjeri Nation are experienced research collaborators. Both nations have created (or are creating) their own research approval protocols, have engaged in partnerships with research institutions over many years, and will consent to proposals *only* when the research has substantial benefit to them (as defined by them). They expect to be full and equal partners in the research and expect to take advantage of opportunities to utilise the skills, expertise, and resources presented by an institutional partnership. They expect that the relationship will help them leverage partnership and funding relationships with other university, government, and private sector entities. In other words, the principles underlying an Indigenous research orientation provided the parameters for discussion about benefit and outcomes. They were not new or unfamiliar concepts to any of us, and we were all able to quickly converge on similar understandings and develop complementary expectations.

However, success of the collaboration to date and optimism for its future success cannot be credited to the subject matter or the sophistication of Indigenous nations alone. Instead it lies in our ongoing reflection on how research principles are melded with disciplinary methods to create a particular methodology for this particular project—and, we believe, in our team's effort to embrace but also move beyond critical methodology, into a fully collaborative and reciprocal process of knowledge production.

Appendix: Sample Cultural Knowledge protection clause

Definition of cultural knowledge:

[Name of nation] Cultural Knowledge means all and any cultural knowledge, whether such knowledge has been disclosed or remains undisclosed of the [Name of nation], including but not limited to:

  (a) traditions, observances, customs or beliefs;
  (b) songs, music, dances, stories, ceremonies, symbols, narratives, and designs;
  (c) languages;
  (d) spiritual knowledge;
  (e) traditional economies and resources management;
  (f) scientific, spatial, agricultural, technical, biological, and ecological knowledge;

and includes documentation or other forms of media arising therefrom including but not limited to archives, films, photographs, videotape or audiotape.

Complementing this definition, the definitions of 'intellectual property' rights and 'confidential information' also explicitly state that cultural knowledge is excluded.

Operative clause

Notwithstanding any other clause in the agreement, it is acknowledged that:

  (a) The [Name of Nation] owns all and any [Name of Nation] Cultural Knowledge; and

  (b) Each party undertakes not to collect, use, disclose or handle [Name of Nation] Cultural Knowledge without the prior written consent of the [Name of body/bodies and/or person/persons with the authority to determine whether particular knowledge is cultural knowledge]; and

  (c) Any report or publication resulting from the Project shall be designated a 'Category A Report' or a 'Category B Report' and the following shall apply:

    (i) The publication of a Category A Report shall be unrestricted;

    (ii) The publication of a Category B Report shall be restricted as directed by the [Name of body/bodies and/or person/persons with the

authority to determine whether particular knowledge is cultural knowledge];

Each party (and each of their personnel and students) who records [Name of Nation] Cultural Knowledge in material form does so as a mere amanuensis.

REFLECTIONS ON THE RATES OF CRIME PROJECT[1]

Alison Vivian, Amanda Porter and Larissa Behrendt[*]

Introduction

One morning during the latter stages of our research project, we interviewed an Aboriginal research participant in Kempsey about his views on the nature of crime in his local community. The interview was a 'success' by all conventional markers of qualitative research: the interview itself went for just over an hour, fairly long by most standards; the research participant had plenty to say about the topic, we didn't need to guide him or ask many questions; his tone was warm and pleasant, he made us feel welcome; and finally, the interviewee assured us of the importance of our study, giving the team words of encouragement about the value of our work in this area.

But the research participant also made a comment that made us feel slightly uncomfortable and which has stayed with us to this day. At the conclusion of the interview, he added: 'Kempsey has been more investigated than the pyramids.' As researchers working for Jumbunna Indigenous House of Learning ('Jumbunna IHL') at the University of Technology Sydney—a research unit which defines itself on its commitment to advocacy, transformative research, giving voice and agency to Indigenous peoples, and the highest standard of ethics—the statement caused some unease. The fundamental underpinning of all of our work is to support the self-determination initiatives of Indigenous communities and peoples, which we see being achieved through the agency of Indigenous peoples in setting and achieving their own agendas. Yet this project had a different basis and required a different approach to more typical Jumbunna IHL project.

Like all Jumbunna IHL research, a fundamental objective was to give voice to Indigenous community members about how *they* would like their communities to grow and thrive. However, the project had primarily been designed to

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provide data that would support evidence-based government policy on crime and community safety. How could we reconcile our aspirations with the sobering reality that reports and recommendations are regularly ignored by policy makers? What were we going to do that was different to the previous studies conducted in this township? How could we give back to the participants in the study and the township generally? In short, did the ends justify the means? These concerns lie at the heart of this paper. In this paper, we reflect on the research processes involved in a study conducted by a team of researchers at Jumbunna IHL ('the Rates of Crime', 'the RoC Project' or 'the study').

The RoC Project was concerned with exploring factors that impact upon prevalence in crime in six Aboriginal communities in New South Wales. A great deal has been written about crime rates in Indigenous communities; some of which influences the development of policy in the law and justice arena designed to reduce criminal activity in these communities. However, our searches of the literature revealed a lack of research about how Indigenous residents view crime in their own communities, and what they consider to be hopeful approaches.

We thought that the research was potentially of value because it sought to understand the phenomenon of crime—enormously complex in any event—through an appreciation of the complexity and distinctiveness of each unique Indigenous community. The project focussed on towns that may share similar socioeconomic circumstances and other similarities, but have entirely different levels of recorded crime and other indicators of distress. Our interest arose because of our experience with Indigenous communities that are unique and multi-layered, each with their own individual character and dynamics. We hoped that, by appreciating complexity, the research could complicate notions of policy and practice that apply a broad brush approach to Indigenous towns as if they are uniform in light of complaints from Indigenous communities about top-down, one-size-fits-all government policy are decades old. We were not so presumptuous as to imagine that, in a short amount of time, we could understand the inner workings of the six Aboriginal communities that we visited. However, we did want to begin exploring how a policy approach that has the flexibility to respond to the specific circumstances of diverse towns might be created.

In this paper, we reflect on our research processes—including research design, consultation, execution and dissemination of research findings—as well as some of the ethical and practical questions that arose throughout the research process. These questions extend beyond human research ethics in the conventional, institutional sense of the term, and relate to our broader ethical concerns in the design and conduct of research that should be 'with and for' Indigenous peoples and communities.

We reflect on our experience with the project within an environment of increasing emphasis on ethical methodologies. Whereas ethical considerations are sometimes treated as a nuisance that prolong the start date of important research, there is an important movement that seeks to place issues regarding ethics, methodology and the research process (rightly, in our view) at the fore of research pertaining to Indigenous peoples, communities and issues. The rise of Indigenous methodologies and of 'Indigenist'[2] research puts questions of methodology front and centre in the presentation of research 'findings'.

In recent years, we have seen the emergence of Indigenous research methodologies around the globe. The emerging schools of literature are united by the following principles: firstly, the need to conduct research that benefits local Indigenous communities; secondly, the need for research that is designed by and with Indigenous peoples; and thirdly, research that is accountable to the local community. At the core of this movement lies an attempt to create a space for Indigenous research within higher education institutions or the academy— spaces which have traditionally excluded Indigenous peoples.

Given the emerging nature of the literature on Indigenous methodologies, there are many unsettled debates. These include, for example, whether the research of any Indigenous person constitutes an Indigenous methodology, merely due to his or her Indigeneity. Can non-Indigenous people conduct research that follows an Indigenous methodology or design? Can research with Indigenous people and communities truly be 'ethical' if the methodology does not meet all of the standards of Indigenous research methodologies? Must research always be conducted with direct and tangible benefits determined by the communities at the centre of the research?

These are questions that we have asked ourselves throughout the research process of the RoC Project, and which we continue to ask ourselves today as we reflect on this project and other research that we are conducting. Importantly, we note at the outset that our research was not designed by the local communities that we visited and that the anticipated benefits were not those of the six communities but instead relate to the potential benefits that could accrue from a policy approach that has the flexibility to adapt to the needs of individual communities. We describe our attempts to achieve high ethical standards and the considerations that we had to deal with in making that attempt in those defined circumstances.

This paper is structured in four sections. Part I traces the current literature on Indigenous methodologies and research, both in Australia and internationally. Part II describes our research methodology including conceptual framework,

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[2] Term coined by Lester Irabinna Rigney in Lester Irabinna Rigney, 'Internationalisation of an Indigenous Anti-Colonial Cultural Critique of Research Methodologies: A Guide to Research Methodologies and its Principles' (1999)14(2) *Wicazo Sa Review: Journal of Native American Studies* 109.

key questions, methods, ethics and findings. Part III offers some reflections on the research process. Finally, Part IV provides some conclusions.

I   The Emergence of Indigenous Methodologies and Indigenist Research: A literature review

Indigenous peoples and communities frequently complain that they are over-researched but with few results. Relatedly, there is increasing agreement that research has historically been something that is *done to* Indigenous communities, who have traditionally been afforded little agency or oversight in the planning and execution of research.[3] Smith's ground-breaking manifesto, *Decolonizing Methodologies,* details the ways in which research has been 'inextricably linked to European imperialism and colonialism'.[4] Smith details how research has been 'implicated in the worst excesses of colonialism' and how the legacy of this resonates with and is remembered by Indigenous peoples.[5] Moreton-Robinson and Walter explain this point succinctly:

> The Indigenous subject is historically the object of social research; the research gaze is aimed at Indigenous people, culture and lives and is usually informed by Western traditions and conceived and interpreted by non-Indigenous researchers. There is a quantifiable absence of Indigenous

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[3]   Ibid; Martin Nakata, Disciplining the Savages: Savaging the Disciplines (2007, Aboriginal Studies Press); Linda Tuhiwai Smith, *Decolonizing Methodologies* (Zed Books and University of Otago Press, 2006); Linda Tuhiwai Smith, 'On Tricky Ground. Researching the Native in the Age of Uncertainty' in Norman K Denzin, Yvonna S. Lincoln (eds) *The Landscape of Qualitative Research* (Sage Publications, 2008); Aileen Moreton-Robinson & Maggie Walter, 'Indigenous Methodologies in Social Research' in Maggie Walter (ed) *Social Research Methods* (Oxford University Press, 2009) 1; Juanita Sherwood, *Do No Harm: Decolonising Aboriginal health research* (PhD Thesis, University of New South Wales, 2010); Karen Martin, *Please Knock Before You Enter: Aboriginal regulation of outsiders and the implications for researchers* (Post Pressed, 2008); Lester Rigney, 'First Perspective of Indigenous Australian Participation in Science: Framing Indigenous Research towards Indigenous Australian Intellectual Sovereignty' (2001) *Kaurna Higher Education Journal* 7.

[4]   Smith, Decolonizing Methodologies, above n 3, 1.

[5]   Ibid. A good example can be found in John Danalis' novel*, Riding the Black Cockatoo* (Allen & Unwin, 2009) which deals with the themes of research and repatriation of Aboriginal remains from museums and other international collections. In the book the protagonist, Jason, reveals his feelings when he was working as an intern in the Melbourne Museum:
'''One day I tripped over this box, literally tripped over it. I opened it up, and inside were the remains of my people. Can you imagine that? They tried to keep it a secret from the dumb young blackfella. The more I looked the more I found. Well, I started making noise, asking questions: 'Why do you need all these old ones, what use are they, why can't they go back to country?'
'What did they say?''
'Research, they said, we need them for research.' He spat the words out like pieces of rotten food.

knowledges, perspectives and understandings within the dominant research practice.[6]

As Sherwood states:

> Research … has objectified, oppressed, blamed and devalued Indigenous peoples through the bias of its Western worldview origins. It has appropriated knowledges, exploited and misrepresented its subjects, informed prejudice and racism and created a power imbalance with benefit afforded only to the experts.[7]

Conventional research often treats methodological considerations as 'afterthoughts' to a study, so as not to interfere with or detract from the findings and central argument of the completed study. As a consequence, the reader is often left with very little information about how the study was conducted, the research methods employed, and even less about the background and identity of the researchers themselves. Yet these factors directly or indirectly affect the study and the 'data' that emerges. Knowledge of the research team, the context in which the research was conducted allows a better understanding of the relationship between the research participants and the researcher. How a study is conducted has a direct bearing on the data that is collected, and hence, the veracity of the findings and the conclusions that are drawn from these.

In the Australian context, research about Aboriginal and Torres Strait Islander issues has been criticised on various grounds: for misrepresenting Indigenous peoples in various ways; for historical inaccuracies and distortions; lack of reflexivity; inability to acknowledge the standpoint and biases of the researcher; and at times, for being unethical and degrading.[8] While overtly

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[6]   Moreton-Robinson and Walter, above n 3, 1.

[7]   Sherwood, above n 3, 115. (References omitted).

[8]   A particularly harrowing example was the practice of removing Aboriginal remains throughout the 19th century until the 1940s for research in overseas universities, museums and laboratories for phrenology and anatomy studies. See Nicholas Mikluho-Maclay, 'A Short Resume of Anthropological and Anatomical Researches in Melanesia and Australia' Proceedings of the Linnaean Society of New South Wales, 1882. 171-175. The process of repatriating Aboriginal remains is an ongoing source of distress and unease for many Indigenous peoples to this day. The first museum to repatriate Aboriginal remains was the *Tasmanian Museum and Art Gallery* (Hobart, Tasmania) in 1976, with the return of the remains of Truganini to the Tasmanian Aboriginal community. Since then a number of institutions have committed to the process of repatriating remains, examples including the *Royal College of Surgeons* (Dublin, Ireland), the *Museum of Ethnography* (Stockholm, Sweden), *Edinburgh University* (Edinburgh, Scotland), *Natural History Museum* (Britain). Recently a number of institutions have agreed to return remains, examples including the *University of Oxford* (Britain) the *Charite Medical History Museum* (Berlin, Germany) and the *Booth Museum of Natural History* (Brighton, Britain). Bob Weatherall, activist and Chairman of the Centre for Indigenous Cultural Policy in Brisbane, estimates that there are

racist practices may be less prevalent today (or so we hope), problematic research practices continue. One pervasive issue relates to the misrepresentation of aspects of Indigenous culture and ways of being.[9] In large part, this misrepresentation occurs due to many non-Indigenous researchers not being conscious of whiteness as a race and lack of perception of the racialised nature of different struggles. Moreton-Robinson notes that such research can be condescending as though all [people] have the same aspirations and goals as non-Aboriginal [people].[10]

Importantly, these are not historical reflections about outmoded approaches to doing research. Rather, trends in research which continue to preference researchers' goals and which treat ethics requirements as procedural necessities underscore Indigenous communities' disdain. As an antidote to problematic research, in recent years there has been a proliferation of literature exploring the principles underlying Indigenous methodologies. Broadly speaking, Indigenous methodologies involve the production of knowledge which recognises Aboriginal world-views and which privileges the voices and experiences of Aboriginal peoples.[11] Indigenous methodologies are built on Indigenous protocols and see accountability to Indigenous communities as first priority of Indigenous research. Their emergence is an international phenomenon. Examples of Indigenous methodologies are diverse and include: Kaupapa Māori Research in Aotearoa/New Zealand;[12] Indigenous standpoint

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thousands of Aboriginal remains still held in museums around the world (see generally, Phillips, 2011, Faulkhead, 2010, Lahn, 1996).

[9]   In the 1990s, for instance, Indigenous scholars challenged various allegations made by second-wave Australian feminists about Aboriginal women, along with their characterisation of the principle concerns for Indigenous women. See for example, Larissa Behrendt, 'Aboriginal Women and the White Lies of the Feminist Movement: Implications for Aboriginal women in the rights discourse' (1993) 1 *Australian Feminist Law Journal* 27; Aileen Moreton-Robinson, *Talkin' Up to the White Woman. Indigenous Women and Feminism* (University of Queensland Press, 2000). Perhaps the most famous of these, known as the 'Bell-Huggins debate', concerned the nature and degree of violence in Indigenous communities and who has the right to 'speak' about such issues. See, for example, Jackie Huggins, 'Correspondence' (1991) *Women's Studies International Forum* 14; Diane Bell and Topsy Nelson, 'Speaking about Rape is Everyone's Business' (1989) 12(4) *Women's Studies International Forum* 403. A persistent critique stems from a concern over the authority of non-Indigenous commentators to speak on issues based on what is often only a superficial or surface snapshot. In *Talkin' Up to the White Woman,* for example, Aileen Moreton-Robinson criticises non-Indigenous feminists representations of Aboriginal women and their articulation of Aboriginal women's priorities.[9] Moreton-Robinson states that, 'in the Australian literature whiteness is not interrogated and named as a 'difference', even though it is the standard by which certain 'differences' are measured, centred and normalised' at *xviii*.

[10]   Moreton-Robinson, Talkin' Up to the White Woman, above n 9.

[11]   Moreton-Robinson and Walter, above n 3, 1.

[12]   Smith, *Decolonizing Methodologies*, above n 3; Smith, 'On Tricky Ground', above n 3;

theory and Indigenist research in Australia;[13] Indigenous Action Research in Hawaii;[14] Central American Indigenous methodologies;[15] Indigenous methodologies in Canada;[16] and African Indigenous Research Methodologies.[17]

Many definitions have been put forth, but taken generally key characteristics of Indigenous methodologies include:

- An emphasis on Indigenous needs and priorities
- An emphasis on the development of personal relationships with research participants (not data collection)
- Research which seeks to be collaborative
- Research which honours Aboriginal social mores and cultural protocols
- Research which is conducted in the community, for the benefit of the community and with the community

Australian researchers have been guided by Smith:

> an approach that is active in building capacity and research infrastructure in order to sustain a sovereign research agenda that supports community aspirations and development. … These strategies often have led to innovative research questions, new methodologies, new research relationships, deep analyses of the researcher in context, and analyses, interpretations, and the making of meanings that have been enriched by indigenous concepts and languages.[18]

She proposes guiding principles for conducting research in Indigenous communities:

- What research do we want done?
- Whom is it for?
- What difference will it make?

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13   Rigney, 'A First Perspective of Indigenous Australian Participation in Science' above n 3; Nakata, above n 3; Moreton-Robinson & Walter, above n 3; Rigney, 'Internationalisation of an Indigenous Anti-Colonial Critique of Resarch Methodolgies', above n 2 ;Sherwood, above n 3; Martin, above n 3.

14   Ku Kahakalau, 'Practical Application of an Indigenous Research Framework and Two Qualitative Indigenous Research Methods: Sharing Circles and Anishnaabe Symbol-Based Reflection' (2004) *HÜLILI : Multidisplinary Research on Hawaiian Well-Being* 1.

15   Cinthya Saavedra and Ellen D Nymark, 'Borderland-Medtizaje Feminism' in Norman K Denzin, Yvonna S Lincoln and Linda Tuhiwai Smith (eds) *Critical and Indigenous Methodologies* (Sage Publications, 2008).

16   Margaret Kovach, Indigenous Methodologies: Characteristics, conversations and contexts (University of Toronto, 2010).

17   Bagele Chilisa, *Indigenous Research Methodologies* (Sage Publications, 2012).

18   Smith, 'On Tricky Ground', above n 3, 120.

- Who will carry it out?
- How do we want the research done?
- How will we know if it is worthwhile?[19]

In the Australian scholarship, Indigenous standpoint theory is concerned with the development of Indigenous standpoints as a way for Indigenous scholars to read Western systems of knowledge.[20] According to Nakata, this theorising emerges from a dilemma Indigenous scholars face when balancing their own understandings with representations of Aboriginality as they appear within Western texts.[21] Similarly, L I Rigney argues that using Indigenous methodologies means pushing boundaries 'in order to make intellectual space for Indigenous cultural knowledge systems that were denied in the past'.[22]

Taken together, these writings create a theoretical 'space' to embrace expansive conceptions of knowledges and research produced with and for Indigenous peoples. Indigenous methodologies do not advocate the abandonment of qualitative and quantitative methods, but rather, call for a revitalisation of methods in ways which take into account the axiological, ontological and epistemological position of the researchers.

With this in mind, this article now seeks to set forth the methodology of this research project, including the methods, standpoint of the researchers and our reflections on the research processes. While we consider that this work exceeds the scope and concern of institutional human research ethics, we faced challenges in understanding how to measure the value of research that faced a number of constraints that prevented us from meeting some of the fundamental standards and core principles of Indigenous methodologies.

II   The Jumbunna Rates of Crime Project

In 2009, researchers from Jumbunna IHL commenced a research project which sought to examine the various factors which contribute—positively and negatively—to varying rates of crime in six Aboriginal communities in New South Wales, Australia. The Jumbunna RoC Project sought to address a gap in previous research. While research had been conducted that linked factors (primarily socio-economic) to individual Indigenous offenders' role in crime,[23]

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[19]   Smith, *Decolonizing Methodologies*, above n 3, 173.

[20]   Nakata, above n 3.

[21]   Ibid.

[22]   Rigney, 'First Perspective of Indigenous Australian Participation in Science', above n 3, 9.

[23]   See, for example, Don Weatherburn, *Arresting incarceration: Pathways out of Indigenous imprisonment* (Aboriginal Studies Press, 2014); Lucy Snowball and Don Weatherburn, 'Theories of Indigenous Violence: A Preliminary Empirical Assessment' (2008) 41(2) *Australian and New Zealand Journal of Criminology* 216; Lucy Snowball and Don Weatherburn (2006) *Indigenous Imprisonment: The Role of Offender*

little research had been conducted that focused on the broader dynamics and characteristics of communities and how these might impact on crime rates.[24]

The objective of the study was to identify common themes and factors that may be considered to have an impact on crime rates in six Indigenous communities. In particular, we were interested in understanding the political, social, cultural and economic dynamics contributing to crime rates in a given community. Most importantly, however, we were interested in hearing from key community representatives and personnel from community organisations about the nature of and factors contributing to crime in local communities. We were especially interested in understanding whether there were common themes from those towns with relatively lower crime rates.

To this end, the aims of the RoC Project were as follows:

- To better understand the factors that contribute to significant variances in rates of Indigenous offending in different areas of NSW;

- To explore these factors to better inform policy strategies to reduce crime and increase social cohesion in Indigenous communities;

- To contribute to the broader literature on what makes strong, successful, socially cohesive Indigenous communities.

In terms of our conceptual framework, the study drew on social disorganisation theory to inform the interview approach and analysis of the data. Social disorganisation theory is a common theoretical framework employed by criminologists conducting research in relation to rural or regional communities.[25] Concepts of social disorganisation had previously been described as being relevant to Indigenous communities, the suggestion being that the breakdown of Indigenous informal social controls as a result of

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Characteristics, (NSW Bureau of Crime Statistics and Research, 2006); Don Weatherburn, Lucy Snowball and Boyd Hunter, 'The economic and social factors underpinning Indigenous contact with the justice system: Results from the 2002 NATSISS survey' (2006) 104 (November) *Crime and Justice Bulletin* 1.

[24] A number of studies had been conducted on variations in crime rates in rural communities in NSW but none related to Aboriginal communities in particular. See Patrick C Jobes et al 'A Structural Analysis of Social Disorganisation and Crime in Rural Communities in Australia' (2004) 37(1) *The Australia and New Zealand Journal of Criminology* 114; Patrick C Jobes, Joseph F Donnermeyer and Elaine Barclay, 'A tale of two towns: Social structure, integration and crime in rural New South Wales', (2005) 45 *Sociologia Ruralis* 224; Patrick C Jobes et al, *A Qualitative and Quantitative Analysis of the Relationship between Community Cohesiveness and Rural Crime: Part 1* (Institute for Rural Futures. University of New England, 2000); Joseph F Donnermeyer, Patrick Jobes and Elaine Barclay, 'Social disorganisation, conflict and crime in four rural Australian communities' (Paper presented at the annual meeting of the Rural Sociological Society, Santa Clara, CA, 2007).

[25] Joseph F Donnermeyer, 'Locating rural crime: The role of theory' in Elaine Barclay, Joseph F Donnermeyer, John Scott and Russell Hogg (eds), *Crime in Rural Australia* (Federation Press, 2007) 15, 18.

colonisation and dispossession correlated with high crime rates.[26] However, given the trial nature of the study and its limitations, the research team was open to alternative theoretical explanations or findings that may not support any existing criminological or other theory.

Our analysis suggests that social disorganisation theory did not explain our research findings, but, given the relatively small scope of the research, we cannot make a definitive claim to this effect.[27] However, the key themes that emerged from our discussions with research participants included a number of issues which do not feature heavily in the criminological literature on crime in Indigenous communities, and which we may have predicted to be underlying factors but were surprised to hear them described by research participants as directly contributing to crime. These themes included resourcefulness, history, the role of Elders, respect, segregation, autonomy and self-determination.[28]

In short, the study's focus was on trying to understand some of the broad social, cultural, historical, political and economic factors that might affect rates of crime in these six towns. We were interested in understanding the stories of these six towns that might explain their respective crime rates.

A   *Research Partnerships*

The Research Unit at Jumbunna Indigenous House of Learning is headed by Professor Larissa Behrendt and is the research arm of the student support centre for Indigenous students at UTS.[29] The Research Unit has an established reputation for undertaking advocacy work around Indigenous self-determination and social justice issues. Our preference is to develop deep and enduring relationships with a small number of communities, rather than undertake a range of research projects across a large number of communities. The result is that we ultimately engage with communities in relation to a range of issues that sometimes extend beyond the research interest. We see ourselves as having a responsibility to respond to the issues that these communities raise. In this sense, the Jumbunna Project, being of defined and limited scope, is somewhat of an anomaly.

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[26]   Snowball and Weatherburn, above n 23, 219.

[27]   Ruth McCausland and Alison Vivian, 'Why Do Some Aboriginal Communities Have Lower Crime Rates Than Others? A Pilot Study' (2010) 43(2) *The Australian and New Zealand Journal of Criminology* 301.

[28]   For a more detailed account of these factors, see: Larissa Behrendt, Amanda Porter and Alison Vivian (2015) 'Factors Affecting High and Low Crime Rates in Aboriginal Communities' in Joseph F Donnermeyer (ed) *The International Handbook of Rural Criminology* (Routledge, 2015) 33.

[29]   In terms of personnel, the Jumbunna RoC Project research team consisted of Indigenous and non-Indigenous researchers, including: Larissa Behrendt, Ruth McCausland, Alison Vivian, Terry Priest, Eloise Schnierer, Amanda Porter and Joanna Lunzer. We were 'outsiders', in the sense that no-one had grown up or lived within any of the six communities involved in the study.

The Jumbunna Project was conducted in partnership with the New South Wales Bureau of Crime Statistics and Research ('BOCSAR'), and the Department of Justice and the Attorney General. Key personnel from Jumbunna IHL and BOCSAR set the direction for the research in wondering whether qualitative research would shed light on quantitative anomalies, that is, that towns that on their face have similar socioeconomic circumstances have vastly different rates of crime. BOCSAR provided unpublished crime data that assisted in choosing couplets of towns for the study, and BOCSAR personnel provided assistance with interpretation of the data.

B   *Research design*

The research team consulted with the Murdi Paaki Regional Assembly, New South Wales Aboriginal Land Council, Aboriginal Legal Service (NSW/ACT) and with the Department of Justice and the Attorney General (as it was titled in 2008), in relation to the purposes of, and planning for, the research. There was consensus that current data about socioeconomic indicators linking Aboriginal individuals and propensity to be involved in crime were incomplete without, and could be enriched by, an understanding of the community context. An important goal was to elicit data that could contribute to advocacy about policy change.

Case studies were conducted in three pairs of communities with significant Aboriginal populations that are demographically comparable but with contrasting crime rates, namely Wilcannia and Menindee, Bourke and Lightning Ridge, and Kempsey and Gunnedah.[30] It was not intended to directly compare the towns *per se*, however similar demographics assisted us to identify some contrasts in the communities that may impact on crime rates, but which may not have arisen in unstructured or semi-structured interviews. For example, we found in some towns that research participants held erroneous views about levels of unemployment, population and relative income in some instances which may not have been highlighted in interviews alone.

The towns were selected because they had either notably high or low levels of recorded crime, in accordance with data provided by the New South Wales Bureau of Crime Statistics and Research. The research team was particularly interested in whether there may be identifiable characteristics or strategies that may have a positive impact on crime rates in Indigenous communities.

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[30]   Two initial studies—Wilcannia/Menindee, and Bourke/Lightning Ridge—were pilot studies funded by a UTS Partnership Grant and Australian Institute of Aboriginal and Torres Strait Islander Studies ('AIATSIS') Research Grant respectively. The continuation of the research in the six communities was supported by an Australian Research Council Linkage grant in partnership with the NSW Bureau of Crime Statistics and Research and the NSW Department of Attorney-General and Justice.

We engaged with Indigenous and non-Indigenous people who were key community and organisational representatives and others working in relevant criminal justice, liaison and service delivery roles to gain an understanding of the dynamics and experiences of the community as a whole. In doing so, we sought to access research participants' relevant expertise and knowledge based on their role, rather than people's individual experiences or anecdotes related to crime. We appreciate that asking people to comment based on their professional role rather than personal experience is an artificial construct. However, we hoped to minimise personal accounts or hearsay. Representative and service delivery organisations were key points of contact in identifying with whom to conduct interviews. However, not all organisations that we approached agreed to be interviewed.

Approximately three to four weeks before travelling to the relevant town to conduct interviews, members of the research team would contact potential research participants to introduce themselves and to discuss the purpose of the interviews and the types of issues that would be raised. This would be followed by a detailed email that again explained the purpose of the study and listed the issues that we wished to discuss. Our subsequent experience with research participants suggests that this approach gave them the opportunity to reflect on their communities and their perspectives, which assisted them to prepare for the interview.

In-depth, semi-structured interviews were undertaken, both to better explain the statistical data and as sources of data in their own right. Rather than conduct survey style interviews, the research teams attempted to facilitate questioning and discussion allowing for greater flexibility.[31] The approach was tailored to be receptive to alternative narratives and perspectives on a range of factors affecting crime rates in communities.

Central to our methodology was that research participants lead the interviews, rather than being 'led' to particular topics. Given the (sometimes lengthy) telephone conversations that we previously had about the project in preparation for our field visits, frequently we were not able to start the recorder before the research participant started to speak. In some instances, research participants arrived with written notes. We think the approach of reasonably detailed pre-interview contact resulted in some interesting observations. For example, the research team was struck by the fact that many research participants raised factors such as the history of their town or impact of colonisation early in the interview, sometimes as the first issue to be raised. Had we conducted survey style questions, we suspect that these issues may not have had this prominence and may not have arisen at all.

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[31]   Victor Minichiello, Rosalie Aroni, and Terrence Hays, *In-Depth Interviewing. Principles, Techniques, Analysis* (Pearson Education Australia, 3rd ed, 2008) 64.

Inevitably, different factors that may impact on rates of crime or social cohesion—either positively or negatively—arose in relation to the six communities from different research participants. For example, alcohol consumption was reportedly high in all six communities but there was much greater emphasis on alcohol consumption as a contributing factor in towns with high crime rates. Local factors such as the opportunity to go fishing or specking, and the influence of Kinchella Boys Home also become prominent.

Interviews were recorded unless research participants requested that they not be. Three research teams interviewed approximately 160 people in the six communities, almost half of whom are Aboriginal. Of that total, 17 people agreed to be interviewed but declined to have their interviews recorded. Recorded interviews were transcribed and coded for key themes and common narratives using NVivo^{TM} software. The research teams also attended a number of community meetings including Community Working Party meetings in Wilcannia, Bourke and Lightning Ridge; a community meeting to address escalating crime rates in Wilcannia; a Local Government Crime Prevention Committee meeting in Gunnedah; a NSW Police Local Area Community Aboriginal Committee meeting in Bourke and a Gunnedah Indigenous Service Delivery Interagency meeting.

Because of the potentially sensitive nature of discussing issues of crime, the criminal justice system, community dynamics and different approaches to leadership and service delivery in small communities, research participants were given the opportunity to speak with the research team confidentially. In fact, confidentiality proved to be a pivotal factor in eliciting agreement for involvement in the study. One striking example related to a person who as a general rule would not be permitted by their employer to participate in the research. That person wanted to participate in the study and we were able to accommodate their specific requirements in relation to venue for the interview, recording of the interview and how the person would be described. Ultimately, we were able to agree upon quotes and anecdotes that the person was satisfied would not identify them.

The majority of research participants requested total confidentiality, including that there be no reference to them personally by name or title. A number of people specifically requested that the organisation for which they worked also not be identified. We acknowledge the difficulties in providing confidentiality in small towns. As several research participants observed, they were certain that they would be identifiable in the reports. However, by acting under the research participants' instructions and not identifying the person by name, role or organisation, we ensured that the research participant had control of the process. Similarly, although we interviewed people on the basis of their experiences, expertise and their role in an organisation or representative body, many people wished to emphasise that they were expressing their own views and not that of the organisation in a formal way.

Data from the study (including quotes, anecdotes and observations) that we wished to use were emailed to the relevant research participant for their amendment and/or approval. Hour long conversations can take on a surprisingly personal tone and people may express themselves in a more informal way in a face-to-face interview than they would in writing. People may also say things that they would prefer remain confidential or that, upon reflection, they have reconsidered. Therefore it was essential that the research participants be authorised to determine how they are quoted. We also requested that they determine how they wished to be described. After all, if our publications are purporting to include the views of research participants, then we need to ensure that they correctly reflect the research participants' considered views. Once we had this information, we were able to amend quotes, correct titles and ensure that anecdotes and observations were accurate in draft community reports.

If quoted, research participants were given the option of being identified by position title or by a generic descriptor such as 'community service provider' or 'community worker' but in each case, the description was chosen by the research participant. Few people agreed to be identified by position title, although two participants withdrew their request for confidentiality after reading a draft community report. Research participants could withdraw their consent regarding involvement in the study at any point, and one person did so after reading the draft community report for the Wilcannia/Menindee pilot study.

Upon completion of the draft community reports, we returned to the various communities to meet again with as many research participants as possible to discuss the report and its findings before finalising it. These conversations were frequently much more candid than the initial interview. This change in attitude was particularly marked for one research participant, who had initially been reluctant to participate because of a previous experience with another research team.[32] We speculate that this candour reflected the fact that that we honoured our word. That is, we did not quote research participants without permission, use any anecdotes or observations without permission and that we gave research participants the opportunity to read the draft report before it was finalised.

Due to confidentiality undertakings, a complete list of organisations represented in the study cannot be provided. However, representatives of a wide range of organisations were interviewed for the study including the NSW Police Force (police officers and other employees), Aboriginal Legal Service,

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[32]   Despite assurances to the contrary this person had been identified in a number of publications related to an earlier study. Although not identified by name, this person was identified by role. As the only person in the town with that role, the identification had been unequivocal.

schools, Community Working Parties, Local Aboriginal Land Councils, local governments, Murdi Paaki Regional Assembly, circle sentencing members, health services, counselling services, youth services, government and non-government service providers.

C   *Brief Summary of Findings*

A full statement of the research findings lies beyond the scope of this paper, however here we highlight some of the findings that are essential to this paper's consideration of methodology and ethics.[33]

In a sense, the project did not succeed in achieving its aim of understanding community dynamics that might contribute to lower crime rates. While there was a widely shared narrative in Wilcannia, Bourke and Kempsey as to what factors contribute to their high recorded crime rates, research participants were much less able to articulate reasons for their towns' recorded lower crime rates in Menindee, Lightning Ridge and Gunnedah. In fact in some instances, especially in Gunnedah, there was resistance to the very idea that the town has relatively low crime rates, a widespread perception being that crime is a serious but under-resourced problem.

When asked about crime as a phenomenon in his or her local community,[34] a variety of complex and interrelated social, cultural, economic issues were raised: extremely difficult socioeconomic circumstances of the towns experiencing rural decline and low income/poverty; dangerous levels of alcohol consumption; unemployment and lack of meaningful activity; compounding impact of the inability to pay fines; over-policing and underreporting of crime; limited sentencing options and limited access to alternative regimes; and poor quality housing and overcrowding.[35]

In addition, research participants raised a number of issues which are less frequently articulated in relation to crime and criminal justice issues. Research participants described their communities—positively and negatively—as intimately shaped by their local histories. Many research participants— Aboriginal and non-Indigenous alike—pointed to historical legacies of

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[33]   For an overview of the research findings see For an overview of the research findings see Ruth McCausland and Alison Vivian, *Factors affecting crime rates in Indigenous communities in NSW: a pilot study in Wilcannia and Menindee* (Community Report, 2009); Alison Vivian and Terry Priest, *Factors affecting crime rates in Indigenous communities in NSW: a pilot study in Kempsey and Gunnedah* (Community Report, 2012); Alison Vivian and Eloise Schnierer, *Factors affecting crime rates in Indigenous communities in NSW: a pilot study in Bourke and Lightning Ridge* (Community Report, 2010); McCausland and Vivian, above n 27; Behrendt, Porter and Vivian above n 28.

[34]   Part of this summary of findings is taken from Behrendt, Porter and Vivian above n 28.

[35]   McCausland and Vivian, above n 33; Vivian and Priest, above n 33; Vivian and Schnierer, above n 33; McCausland and Vivian, above n 27.

colonisation, mission histories and assimilationist government policy as influencing the contemporary fabric of the respective communities.

These local histories were argued to impact on contemporary relationships within the local Aboriginal community, between the Aboriginal and non-Indigenous communities, and between the Aboriginal community and the criminal justice system and other service providers. The role of education and policing were specifically noted. Research participants spoke about racism, segregation and inequality; inter-generational trauma, loss, grief and anger; leadership, decision-making authority and autonomy; family conflict and community divisions; stereotyping and expectation; hope and ambition; resilience and resourcefulness; relations with state entities and 'remote control' syndrome. For many research participants, the links between such issues and crime were self-evident; potentially causal.

Interestingly, while it might have been anticipated that historical legacies would be raised as an *underlying* cause of crime, in Bourke and Kempsey in particular, the history of the towns was described as so fundamental to the dynamics of the communities and contemporary relationships, that several senior Aboriginal people described ongoing colonisation as a *primary* cause of high crime rates. Research participants raised racism and segregation; economic and social inequality; intergenerational trauma; the deliberate and systematic suppression of Aboriginal culture and language; the deliberate and systematic undermining of Aboriginal authority and decision-making mechanisms and leadership; difficult relationships between Aboriginal and non-Indigenous communities and within the respective Aboriginal communities; and the inability of Aboriginal and non-Indigenous people to appreciate and celebrate each other's lifeways, values and priorities as clear legacies.

In each of Wilcannia, Bourke and Kempsey, research participants—Aboriginal and non-Indigenous—vividly recounted stories of entrenched racism and segregation, said by one non-Indigenous research participant to be 'part of the fabric of the river towns'. These were argued to be fundamental to understanding the dynamics of these towns. Examples given included that Kempsey had the highest 'no vote' in the 1967 Referendum than any other town in NSW, the appalling legacy of Kinchella Boys' Home, and policies of segregation in public venues including the local swimming pool, cinema, and even essential services such as hospitals. These are not distant events and people told their own family stories, reminding us that Aboriginal people were being put onto cattle trucks and forcibly relocated to missions without volition as late as the 1950s. Grief, loss, bitterness, anger and hostility were described as directly emerging from Aboriginal people's unacknowledged treatment, leading to the outright rejection of the rhetoric that Indigenous people should 'just get over it' and concentrate on the future.

Our study reiterates that factors relating to Indigenous people's contact with the criminal justice system are complex and diverse. Our study began to document the myriad factors which are perceived as contributing to crime rates within local settings. An appreciation of these numerous factors is important, both to academic and policy literature. Specifically, our findings highlight the importance of context and complexity in bringing to prominence factors that may previously have been undervalued or ignored within criminological studies and policy-making on criminal justice and crime prevention. While issues such as policing, substance abuse and socio-economic disadvantage tend to dominate the criminological literature, the Jumbunna RoC Project broadened the ambit of factors that are perceived by local residents as correlated with recorded crime rates. For example, as noted above, a number of research participants started their responses with a discussion about local history. Other research participants spoke about the relevance of certain localised factors, such as the water level of the local river and whether townsfolk could go fishing, being able to walk on Country or going fossicking. Others spoke of the relevance of local events, such as the goodwill shown by townsfolk in 'pulling together' to crowd-fund the design and construction of a local pool. None of these are factors which tend to immediately come to mind when one thinks of 'crime' and 'crime rates', yet they were each seen by local residents as highly relevant in influencing crime at a local community level.

Finally, the extent to which research participants identified the presence or absence of self-determination and autonomy as impacting positively or negatively on the prevalence of crime was notable.[36] Specifically, research participants in Lightning Ridge and Menindee frequently invoked autonomy as a positive contributor to 'success' or relative harmony, where members of the community exercise self-reliance. By contrast, the prevalence of external prescription, undermining of community decision-making and indifference to community-based solutions were frequently highlighted as destructive in Wilcannia, Bourke and Kempsey.

As the research progressed, the research team was struck by the correlation between research participants' observations and Australian and North American research that demonstrates the link between self-determination and communities' capacity to reach their own economic, political, social, and cultural goals.[37]

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[36] Behrendt, Porter and Vivian, above n 28.

[37] For an overview of the research findings of the Harvard Project on American Indian Economic Development, see Miriam Jorgensen (ed), Rebuilding Native Nations: Strategies for Governance and Development (University of Arizona Press, 2007). For a comprehensive survey of Native American nations and communities, see Harvard Project on American Indian Economic Development, *The State of the Native Nations: Conditions under US Policies of Self-determination* (Oxford University Press, 2008). For Harvard Project publications, see http://hpaied.org/publications-and-research (accessed on 11 October 2016).

III   Reflections on the Jumbunna Rates of Crime Project

It is an interesting time to be writing and researching about Indigenous justice issues. On the one hand, it is exciting to see numerous reflections on and guidelines about Indigenous methodologies emerging across the globe. On the other hand, conventional or 'business as usual' approaches to research tend to be the norm and adopting Indigenous methodologies the exception in the overwhelming majority of academic and policy research on Indigenous issues.

In the following section we reflect on some ethical and practical questions that arose during the research process of the RoC Project. We were faced with some practical and methodological constraints that had the potential to affect the ethical conduct of the project as follows:

(a) A limited budget: In fact, Jumbunna IHL significantly subsidised the project to ensure a greater engagement with the six communities than would have otherwise been possible;

(b) A predetermined analysis framework: BOCSAR requested that social disorganisation theory be used to frame the study;

(c) Limitations in co-designing research questions and methodology with partner communities: Indeed, Jumbunna personnel set the research questions;

(d) Due to the large scale of the project, we were unable to maintain ongoing relationships beyond the three/four year duration of the study;

(e) The study required particular criteria for participating communities which meant that Jumbunna personnel initiated the study in particular communities rather than being requested to undertake research by the community.

In terms of the indicia of approaches that demonstrate the principles of Indigenous research methodologies, we consider the following issues:

(a) Defining the 'benefit' of the research
(b) Managing research partnerships
(c) The ethics of conducting research with a limited and policy focussed aim rather than ongoing, community-based research; and
(d) Dissemination of research findings

In light of the constraints listed above, it would be possible to characterise the RoC Project as conventional research devoid of the interests of Indigenous communities. However, our responsibility as Jumbunna researchers meant that we were obliged to create a methodology where we could give voice to the concerns to each of the six Aboriginal communities, notwithstanding any limitations. Throughout this section, it is our intention to share a 'warts and all' account of our methodological practices and ethical concerns, in order to reflect honesty and with candour on some of the challenges and compromises we

faced at various stages in the research in our attempt to conduct robust and ethical research.

A   *Who benefits?*

A crucial, perhaps the most crucial, element in undertaking research within an Indigenous methodologies paradigm is that the research be of benefit to Indigenous peoples and communities as defined by them. There are many layers to the question of benefit, particularly for a study such as ours focussed on policy. Is benefit to be assessed according to direct impact on research participants themselves? Can benefit be assessed according to its potential impact for all Indigenous people? If so, who can consent to the research, provide guidance on the appropriateness of the proposed methodology and give input into the research design?

As outlined above, the RoC Project was supported by a number of Aboriginal peak bodies in NSW which described the potential benefit in producing evidence that might be used by the six communities, these peak bodies and other Aboriginal and non-Indigenous organisations in their advocacy for policy change. The research would also be of broader interest to criminologists and other academics with an interest in understanding the dynamics of crime within six Aboriginal communities.

Notwithstanding that the research did not determine what might constitute direct community benefit for the six towns, the research was conducted on the basis of potential contributions to policy development and to the criminology literature. Some research participants raised the question of community benefit and we were frank in admitting that the primary focus on the research was on evidence based policy outcomes. Some research participants were justifiably cynical about the utility of research for their communities or about the impact that our study might have on policy. However, there was also considerable support for adding to the body of knowledge that illustrates the centrality of community-based solutions for community problems.

In fact, many research participants warmly received our explanation that one of the main reasons for conducting the study was to question the idea that the same policy solutions can be applied across different communities. In reflecting on what is it about *this* community that impacts on crime, we hoped to be able to elicit common features of towns with relatively lower crime rates and towns with relatively higher crime rates respectively. The remarkably different narratives from the six towns and an emphasis on agency and self-determination that was unexpected, demonstrated the need for local solutions as we had hypothesised and as research participants recommended.

B   *Research Partnerships*

As highlighted earlier in this paper, our research partners included BOCSAR and the Department of Justice and Attorney-General. In addition to these partner organisations, the project would not have been possible without the commitment and support of the six communities themselves and, notably, key community leaders and representative entities from the six communities.

The six communities were selected by the research team, in close consultation with BOCSAR. Our reason for doing so was out of methodological necessity: we were interested in exploring community members' reflections on the nature and causes of crime in townships with both high and low recorded crime rates. However, it is point worth noting that this decision deviates from the normal approach adopted by Jumbunna IHL, where research projects are usually initiated at the request of Indigenous communities themselves. As a general rule, Jumbunna does not undertake many research projects but engages deeply with the few communities with which we work. Examples include work conducted by Jumbunna personnel in Borroloola and Bowraville and with the Gunditjmara People and Ngarrindjeri Nation.

However, the Jumbunna RoC Project had a different focus to much of our other work and did not require that deep level of engagement. It was a small study of relatively short duration (three-four years) directed at a relatively simple question. The research methodology would not require in-depth ethnographic research with the six communities. Instead, we would speak to as many people as we possibly could from relevant organisations and representative bodies (approximately 160 interviews or conversations for approximately one hour) to obtain a *broad* overview of community dynamics and circumstances in six communities that varied in their circumstances. On analysis of the numerous interviews in each town, we were satisfied that we obtained a notable degree of consensus, particularly given that our methodology was to not lead research participants to any specific topics.

The success of the RoC Project was largely contingent on the ability of the team to engage as closely as we were able (given our limitations) with research participants and community organisations. We were conscious that a research project that seeks to investigate crime rates in Indigenous communities, community dynamics and aspirations, and which raises issues about leadership, community distress/dysfunction, and community capacity had the capacity to be divisive. Further, some research participants shared stories about previous negative encounters with researchers, describing encounters where they had been identified without permission or felt that they had been quoted out of context.

Our attempts to overcome constraints imposed by limited engagement and maintain faith with research participants who were very generous with their time and insights included the following endeavours:

- Contacting research participants well before the interview for a sometimes lengthy conversation about the project, the issues we were interested in and any concerns they had or suggestions that they wished to make;
- Meeting with research participants at least twice (for a face to face interview and meeting to discuss the draft community report);
- Attending meetings as requested by research participants;
- Being flexible about meeting venues, meeting in groups and being 'on' or 'off the record';
- Getting research participants' explicit approval in relation to quotes and anecdotes before community reports were finalised;
- Returning to the six communities to report to individual research participants, community organisations, Community Working Parties and the Murdi Paaki Regional Authority on research findings before community reports were finalised.

C   *Conducting research with diverse and heterogeneous communities: Consent and research design*

We have noted above that budgetary and research design constraints meant that we were not able to undertake the in-depth consultation that would be required to facilitate community led research design.

However, our observations throughout the research suggest that consent and community-led research design may have proven difficult to obtain in any event. One rich vein of conversation from the RoC Project, which was not, and potentially could not be resolved, relates to the question of how you might obtain community consent to conduct research or engage with 'the community' to negotiate research design in diverse communities which do not have decision making bodies with acknowledged authority within their communities.

Research participants described towns in some instances, as having multiple decision-making bodies and numerous community organisations, and/or several people with authority to speak for different sections of the community. Further several of the towns in which we worked were described by research participants to be fractured, even terminally divided. These divisions in some instances created hostility, even violent encounters, between groups within the towns. In some circumstances, lack of cooperation was a best case scenario. In other circumstances, research participants described deliberate attempts to undermine other groups' initiatives.

Attempting to explain that we wanted to understand community dynamics but that we were not conducting long term, in-depth research was, justifiably, not always easy. However, in obtaining consent from individual research participants, we were conscious to make the attempt. On the rare occasion when the issue of community consent was raised by research participants, we received conflicting (at times directly opposing) advice on who or which bodies we should approach. One person advised us that we should speak to a community service provider based in an entirely separate town to our study. Our impression was that this advice was linked to differing allegiances to groups within these towns. Given the study's findings that research participants frequently correlated high rates of crime with lack of self-determination and with disunity and discord within some of these towns, our perception that the extreme difficulty that obtaining community consent would entail, is in and of itself symptomatic of the factors that influence high crime rates.

Ultimately, we were not required to resolve these difficult challenges because we were not attempting to conduct in depth and ongoing community based research and did not have the capacity to conduct such research. However, our experience does illustrate the common complaint that research funding is inadequate to support robust community-led research. Engagement to conduct research that nourishes Indigenous communities and fulfils their research agenda is enormously time and resource intensive. Given that Jumbunna IHL needed to subsidise this level of engagement, genuine community engagement needed for fulfil the requirements for free, prior and informed consent and participation in research design would be cost prohibitive for much research.

D   *Analysis and dissemination of research findings*

Foundational principles of Indigenous research methodologies are that Indigenous communities should also be engaged in analysis and directing dissemination of research findings. Again, this was beyond the time and resource capabilities of the research team. Nonetheless, we attempted to enable maximum participation of research participants in both of these areas. For example, although we had a framework through which to conduct analysis, we did not let this influence the methodology. Rather, we adopted a grounded theory approach where we attempted to conduct interviews without preconceived ideas and conducted analysis based on the data in front of us. It was only after we coded data that we asked whether social disorganisation theory might apply.

While research participants did not directly take part in analysing the data, we consider that the process of meeting with research participants to discuss with them the draft community reports before publication was an effective means of engaging people in the analysis. After these discussions, we found ourselves in some instances, amending reports, adding particular nuance to some observations and reframing context. We did not always agree with research

participants' observations but were able to have detailed, at times robust discussion about our proposed findings. In one instance, we were not able to agree with comments made by one research participant who ultimately withdrew their quotes and anecdotes from the study entirely.

Another important element of the research process involved the dissemination of research findings to key research partner organisations, government departments and to the communities themselves. We prepared community reports for each 'pair' of communities, met with research participants and gave a number of presentations in each of the six communities about the findings and how the reports might be used. These reports generated a great deal of interest within the Indigenous and mainstream media, the NSW government and NGO sectors, legal service providers including the Aboriginal Legal Service and Legal Aid, the Judicial Commission of NSW, and with academics from a number of disciplines. Members of the research team presented the findings to legal service providers' peak bodies, the Judicial Commission of NSW, at conferences, through guest lectures, including the John Barry Memorial Lecture on Criminology, and through radio and newspaper interviews. Additionally, we distributed the reports to state and federal local members of parliament for the six towns.

IV   A Square Plug in a Round Hole? Reconciling the Aspirations and Practice of Indigenous Methodologies

Ultimately, we consider that our research findings are important and relevant to the body of literature on Indigenous justice issues, and for providing an evidence base for the development of crime and justice policy. We also consider that the Jumbunna Project's research findings have significant capacity to enrich the criminological literature as they addressed factors that are not typically described in the criminological literature.[38] Previous analysis of Indigenous incarceration within criminology had tended to focus on a limited number of topics: alcohol and substance abuse;[39] unemployment and socio-economic disadvantage;[40] parenting;[41] and interactions with the criminal justice system including the police.[42] While each of the factors was raised in our research, it was the elaboration on perceived causes that proved to be the most illuminating. Our research findings point to a complex array of factors that are interrelated and highly contingent upon local context.[43]

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[38]   Behrendt, Porter and Vivian, above n 28.

[39]   See, eg, Weatherburn, above n 23; Snowball and Weatherburn, above n 23; Eliot Johnston, Final Report: Royal Commission into Aboriginal Deaths in Custody (1991, volume 5) 111.

[40]   See, eg, Weatherburn, above n 23; Weatherburn, Snowball and Hunter, above n 23; Johnston, above n 38.

[41]   See, eg, Weatherburn, above n 23.

[42]   See, eg, Weatherburn, above n 23; Johnston, above n 39; Chris Cunnen, *Conflict, Politics and Crime* (Allen and Unwin, 2001).

[43]   Behrendt, Porter and Vivian, above n 28.

One glaring example was the impact of alcohol on crime in the six towns. Alcohol was raised by every research participant as either causing or exacerbating crime. However, the discussion frequently then turned to the use of alcohol as linked to the dynamics and environment of the particular community: such as the impact of systemic racism, disempowerment, marginalisation, dramatic inequality, poor physical and mental wellbeing, intergenerational trauma etc, rather than a cause of crime in and of itself. This suggests that measures targeted at consumption of alcohol that do not address the underlying causes of dangerous levels of consumption are unlikely to succeed.

Finally, and potentially most importantly, the findings of the Jumbunna Project are important for reasons which extend beyond the academic and policy literature. They are potentially beneficial in reinforcing Australian and North American research that self-determination is a fundamental precursor to Indigenous communities their economic, social, political and cultural goals and community development aspirations. According to the evidence, communities which have practical decision-making capacity; culturally legitimate and effective governing institutions that match the community's values and culture; strategic and long-term plans for action; and committed, driven leadership can succeed in their governance and development goals.

The criminological literature similarly emphasises Indigenous self-determination as a necessary basis for reform of the criminal justice system.[44] Cunneen argues that significant institutional change must reflect the Indigenous right to self-determination to achieve decolonisation. [45] Blagg argues that strategies that reflect and build on the Indigenous right of self-determination are needed to 'decolonise' the institution of policing. [46] Similarly, Wootten states that 'for change to be effective it must be built on the basis of negotiation with local Aboriginal communities and have their full support'.[47] Finally, the principles of the Indigenous right to self-determination is evident throughout the Final Report of the *Royal Commission into Aboriginal Deaths in Custody* and in its 339 recommendations. Many of the recommendations either implicitly or explicitly refer to the need for negotiation with Indigenous people and organisations, including recommendation 188 that requires self-determination in the design and implementation of any policy or program or the substantial modification of any policy or program which will particularly affect Aboriginal people.[48]

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[44]   Cunneen, above n 42; Harry Blagg, *Crime, Aboriginality and the Decolonisaiton of Justice* (Hawkin's Press, 2008).
[45]   Cunneen, above n 42.
[46]   Blagg, above n 44.
[47]   Hal Wootten 1991, cited in Cunneen, above n 42, 205.
[48]   Johnston, above n 39.

The Jumbunna Project reinforces numerous calls for a dramatic overhaul of policy as it relates to Aboriginal and Torres Strait Islander people and peoples to support capacity building in Indigenous communities and for Indigenous people and organisations.

Conclusion

This paper has outlined some methodological and ethical approaches to a project conducted by a team of researchers at Jumbunna IHL. Our firm view is that Indigenous methodologies provide the standards against which all research with Aboriginal and Torres Strait Islander peoples should be assessed. We benefited from appraising our ongoing performance in the Jumbunna RoC Project through the insights we have into what might be best practice and what might be improved in the future. However, although our ethos and ethical approaches draw inspiration from the literature on Indigenous methodologies, various constraints on this project meant that we encountered some complex ethical issues in practice.

In an environment where research funding is diminishing, where capacity to undertake community-based research is under increasing pressure, and where community engagement is fraught in fractured communities with multifaceted relationships, the question of what constitutes ethical or appropriate research is complex. There is an interplay between research objectives and impact that can complicate appraisals of whether research was, or is, ethical. For example, researchers frequently claim, as we have, that their findings have the potential to make an important contribution to evidence based policy. However, as we are only too aware, research findings are frequently ignored. Research findings that suggest a complete policy overhaul, as ours do, are likely to be even more difficult to implement.

How our work is judged is a matter for others. We are proud of the research and consider that it makes an important contribution to potential evidence based policy and academic literature. More importantly, it gave a voice to research participants in six Aboriginal communities to describe the complexities of their communities and to insist that top down or imposed solutions will be no more successful in the future, than they have been in the past. Further, it supports the strong stand that Aboriginal and Torres Strait Islander people and communities have taken since invasion, namely that the inherent right to self-determination should be enabled and facilitated.

'TELLING IT HOW IT WAS': FOR WHAT?

Stephanie Gilbert[*]

Introduction

In 2012 I submitted my doctoral thesis examining the identity constructions of women removed from their families of origin due, at least in part, to their biological Aboriginality. A section of that thesis utilized data collected from the 'Bringing Them Home Oral History Collection' in the National Library of Australia. The Collection in which I researched had resulted from a recommendation of the 'Inquiry into the Removal of Aboriginal and Torres Strait Islanders from their Families', to collect the stories of those who were involved with the removal of Indigenous Australian children and the use of material from this Collection signified the second interaction between myself and this Collection. The first had been when I shared my own story as a removed child. The second time was in 2008/2009 when I accessed, via print form, the Collection and it is that experience which is explored more fully in this paper. With the aim of identifying a number of methodological, but also value questions, I explored the censorship process applied to the accessing of those records. There are subsequent methodological issues for me as an Indigenous researcher and a contributor to the Collection such as whose interests are prioritised in oral histories and how access to these records is managed across a larger amount of time when political interests can change..

Background

The 'Bringing Them Home Oral History Collection' came about as result of a recommendation from the 'Inquiry into the Removal of Aboriginal and Torres Strait Islanders from their Families'. Recommendation 1 says:

> That the Council of Australian Governments ensure the adequate funding of appropriate Indigenous agencies to record, preserve and administer access to the testimonies of Indigenous people affected by the forcible removal policies who wish to provide their histories in audio, audio-visual or written form.[1]

The active collecting period for the 'Bringing Them Home Oral History Project' ran from 1998 to 2002 and 'served to collect and preserve the stories of Indigenous people and others, such as missionaries, police and

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[1]   Australian Human Rights Commission Bringing Them Home- Appendix 9- Recommendations, (September 2015),
        <http://www.humanrights.gov.au/publications/bringing-them-home-appendix-9-recommendations>.

administrators involved in, or affected by the process of child removals'.[2] The project was initially funded by the Commonwealth of Australia ($1.6 million) and received some subsequent funding to update some of the collection in 2009/10. When I accessed the Collection in 2008 for the purposes of research, it had already been in existence as a researchable collection since 1998.

Contributing to the collection as a member of the Stolen Generation

Originally, when I decided to contribute to the oral history collection I did so as a means of recording my previously unrecorded story. My decision to contribute my story was, for me, a way of sharing my life story. I wanted to do so in keeping with the Inquiry's recommendation to record the stories so they were not lost. I did not consider my story in any other framework than as a record of what I had lived. I believe that others who gave to the Collection also chose to do as I had and share their experience of removal to record the previously unrecorded. Later it will be discussed how this very point of wanting to give an unedited narrative is different to the interests of the NLA in spite of a range of protections being in place to allow the narratives to stand as they are.

When my interviewer started my orientation to be interviewed I was told to tell whatever information or story I wanted to. The interview would be transcribed and I would get a copy to check. I had the choice of one of three sorts of access to my interview: no restrictions; read only no photocopying; or no access for a period. After completion of my interview as shown by the letter (5th October, 2001), I received a transcript and copy of my interview *to assist in the correction process* and to keep for my own records. This correction would be restricted to typographical errors and errors of transcription or fact. To quote that letter further it says:

> We believe that it is important to preserve as fully as possible: The conversational style which characterises oral history interviews; Close continuity between the interview tapes and the transcript.[3]

Issues of copyright were dealt with in two ways: copyright of the transcript was assigned to me and I could use it for any purpose, including publication. Secondly copyright of the audio record remained with the National Library of Australia (NLA). That letter in 2001 was the last communication I received from the Library until I organised my visits in 2008 for my research.

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[2]   National Library of Australia, *Bringing Them Home Oral History Project*, (September 2015), <http://www.nla.gov.au/oral-history/bringing-them-home-oral-history-project>.

[3]   Personal communication from National Library of Australia and S Gilbert 5th October, 2001.

Examining access, privacy and testimonial concerns

In 2008, my new relationship with the 'Bringing Them Home Oral History Collection' meant travelling from my home university to Canberra. As a doctoral student, I was interested in looking at the material in terms of how gender influenced the development of Aboriginality in women removed from their families. I believed, and had personally experienced, that the journey to, and through, Aboriginality was complex and constantly changing and knew that the point of the removals had been the very annihilation of Aboriginality itself. I hence wanted to see what others had to say about their own journey.

I found that information at the time to be very distressing as it had been a real financial concern to get to Canberra. That aside though the focus for this discussion is the critical nexus between being a contributor, a researcher of the Collection and the control brought to bear on the material supplied to me for my project as I requested to use it: *in written form*. As I earlier stated I accessed this material with the understanding of two points: one that the copyright of the written transcripts was held by the narrator and that the access was determined by the narrator. When I accessed the material I presumed that by following the access categories I would work in a respectful manner within the narrators' wishes.

My first visit to the Collection early in 2008 aimed to generate a brief of the Collection including how much relevant material would be available to work with and how to do that. On that visit I also accessed some autobiographies and other texts that I hadn't seen before. I met with the woman responsible for the Collection at that point in time and briefed her on what I was looking at and we spoke about how to do that. In conversations during my visit later in that year, I was told that each record I requested would go through the process of being printed, the staff member working on the Collection would have to read the record, if necessary censor it, and then re-read them after I had used them to check I had not amended the record. They explained that the records were having some information that identified other people removed from them. I was left with the belief that their editing process was constituted of deleting the names of people from the record who were accused of perpetrating abuse in the story told.

Thus it quickly became apparent to me there was a couple of issues I had not contemplated existing when I went to use the Collection as a researcher. These included the process of vetting the material carried out by the NLA themselves, before and after my use of the transcriptions. When I accessed the Collection on my second visit I was unable to tell if any of the 40 plus records I read had been edited and which had not. This was surprising to me as when accessing other records from state governments, for instance using Freedom of Information, I have been able to tell clearly what was censored as it remained as blackened blocks in the record.

The final visit of these three occurred shortly before the 2009 Joint Conference of Archivists in Australia and the wider Pacific area. In the lead up to that visit I contacted the Library to negotiate access to the 77 records I still wanted to read. I identified the need to do this because, in addition to the issue of editing, there had previously been a limit of records I could order up from the storage area at any time. This certainly also influenced the way I was able to do my work. When I first accessed the records on the second visit there was incredible slowness of the records appearing. At that time, I had not realised I could have ordered the first ten (I could only order ten at a time) before I left home. Later I learned that someone was checking each transcription of interview *before and after* I read them. So the ordering process became:

- I ordered 10 files;
- They were printed/delivered to back storage area after editing;
- Released to me;
- Checked back in by me when I had worked with them;
- I could order the next ten during this time for arrival at the back storage area; and
- The next 10 were given to me only after first 10 were released after the editing process.

Apparently I was the first researcher to have asked for the written transcripts. Their readers' schedule hampered my own as I was only allowed to access more when the reader had checked them back in. It appeared the reader was on a work schedule far more limited than my own and this lead to a high level of frustration with their timetable. I had a very limited time and amount of funds to be Canberra. Having to work to the reader's speed hampered the volume of work each day and I had gone with the goal of working through the rest of the Collection on those two visits. During that second visit the librarian did increase the number of records I could order at any time but the 'editing' process very much slowed my work schedule.

After the negotiation with the Library before my final visit, they very helpfully got the records ready with the advance notice I had given them (1 month). The librarian mentioned to me that, as they weren't sure how much of the editing processes had been completed they had had to start again at the beginning of the Collection and check them all again. They had had to find another amount of funding to employ someone to work again on the Collection to do this work.

Censorship of the interview transcripts

The realisation that the NLA was involved in a process of censoring the record spoke very much to my identification as a contributor of material to this

Collection. As I earlier stated, my contribution was to assist in the fulfilment of Recommendation 1: to record stories for posterity. There appears to be a couple of elements to creating an understanding of what the NLA was concerned about. When I accessed the National Library Collection in their Reader Services Policy their access restrictions said:

> All responses to enquiries must be handled in accordance with:
> - *The Copyright Act, 1968*;
> - *The Archives Act, 1983*;
> - *The Privacy Act, 1988*;
> - Licence agreements covering the subscription electronic resources;
> - Donor defined access provisions specified for non–published materials; and
> - Collection management policy for fragile materials.[4]

Checking now, there does not appear be an equivalent statement on the website, but the *Privacy Act* and the NLA's own Privacy Statement provide an interesting basis for this discussion. The NLA privacy statement for the web says:

> We will only publish personal information on this site if it has been collected for this purpose with your knowledge or if you have consented to the disclosure. When giving such consent you should be aware that information published on this site is accessible to millions of users from all over the world, that it will be indexed by search engines and that it may be copied and used by any web user. This means that, once the information is published on this site, we will have no control over its subsequent use and disclosure.[5]

Now I should specify here that this particular statement is about publication on the NLA's website. Not somebody named in an oral history. Whilst researching this collection I did ask the NLA to explain the privacy concerns which were leading to the editing and rechecking process they were using with me, but I received no answer.[6] What seemed to be the concern, as previously noted, was the accusation that someone named in an oral history was involved in something untoward with the removed child. In the current iteration of the Privacy Policy it is clear that sensitive data about people should not be kept unless there is a real need to assist in the organisation's functions or activities. In addition, that person must consent.[7]

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[4] National Library of Australia *Reader Services Policy April 2007* (September 2009) <http://www.nla.gov.au/policy/readerservices.html>.

[5] National Library of Australia *National Library of Australia Publishing Personal Information* (23 September 2015) <http://www.nla.gov.au/about-this-site/privacy >.

[6] Question asked of the NLA collections staff 21 September, 2009: I have been accessing the Bringing Them Home collection and I had a question about how the Privacy Act impacts on the oral testimony and people accessing them. Does the collection have to meet particular specific requirements?

[7] Australian Government Office of the Australian Information Commissioner, Privacy Fact Sheet 17: Australian Privacy Principles < http://www.oaic.gov.au/privacy/privacy-resources/privacy-fact-sheets/other/privacy-fact-sheet-17-australian-privacy-principles> (23 September 2015).

But the NLA, along with other like institutions, does have an exemption from the *Privacy Act*.

> This policy does not apply to personal information contained in library material held, managed and made accessible by the Library, whether published (such as books, journals, newspapers and websites) or unpublished (oral history interviews, photographs and archival collections). The Privacy Act includes a general exemption for all such material held by Australian libraries. [8]

This certainly falls into line with my understanding about being able to narrate my story with the copyright being held by myself of the verbal story but that no warnings were given about defamation. But how do we balance these interests? In the case of the NLA they seemed to interpret that a hard copy must be audited but as clearly shown they hold an exemption.[9]

The challenges of being both contributor and academic user

When I went to access the Collection I went as a researcher. This was a significant change from my previous relationship and I noted to people at the time that I was familiar with at least half of the families, or specific individuals, in the Collection including my own and my work colleague's stories. Indeed as part of the balancing act to manage the experience I chose to not look or include my colleagues or my own in my data. I had never had a conversation with my colleague about her contributing the story and whilst we always talked around the subject we had not shared exact details.

I had struggled when I was constructing a methodology for my thesis, how to make sure I was hearing the stories that I read as the narrator of the story wanted their story heard. In academic processes we are asked to interrogate and critically analyse but I needed to balance this against an Indigenous research methodological position of honouring the story itself as it exists in this moment and this iteration. When I went to read the Collection I was still in a process of negotiation regarding how I would treat this data. At all times though I had the goal, as earlier stated, to share, explore and present on the development of identity in stolen generations women *as they told it*. Upon reflection though the concerns the NLA expressed to me almost positioned me as a 'Stolen Generations' reader and assumed that perhaps I may have some personal issues in mind which I might write into the written record. I certainly did not ever get a clear idea what the NLA's concerns were with my accessing the records and their feeling a need to edit them for my use.

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[8]   National Library of Australia Privacy Policy, <http://www.nla.gov.au/policy-and-planning/privacy-policy> (23 September 2015).

[9]   *AustLii Commonwealth Consolidated Acts: Privacy Act 1988- Section 6 Interpretation* (September, 2009) <http://www.austlii.edu.au/au/legis/cth/consol_act/pa1988108/s6.html>.

Cultural and practice access issues at the NLA: embedding Indigenous principles and perspectives

As earlier explained, when I came to the Collection in 2008, I had already had a very strong emotional connection to the topic of Aboriginal child removals. Initially my experience of removals of Aboriginal children had been of my own removal. As a child I was removed from the care of my biological parents, adopted and then returned later to the care of another State Children's authority as a teenager and experienced group homes and foster-care after my second removal. I went to university straight from my foster-care placement in the mid-1980s and studied community welfare and social work. In my honours for social work I examined the legislative structures allowing the removal of children in the state of Queensland. In addition to this work, I had published in the early 1990s my research on the gendered removal of Aboriginal children. That publication had drawn the attention of the Human Rights and Equal Opportunity Commission and they asked me to be an expert witness to the National Inquiry. I provided them with my Honours work and their structure for legislative analysis dovetailed nicely with the structure I had utilised in my Honours. I gave both private and expert witness materials to the 'Inquiry into the Removal of Aboriginal and Torres Strait Islanders from their Families' (1995-1997) and subsequently had given some of my private testimony to the 'Bringing Them Home Oral History Collection'.

My doctoral studies leading to my use of the 'Bringing Them Home Oral History Collection' explored the question: why would somebody identify as an Aboriginal person when, some might argue, they shouldn't, or might choose not to do so? I took a specific gendered approach and analysis in the thesis furthering my previous work in which I argued there was a gendered nature to removals. My focus was the removal of females in particular as I argue, (along with Goodall[10]), that there is a different way that sexuality and cultural transmission is managed with females than when males were removed. The three main collection sources I utilised for the thesis construction were the Collection, private interviews with women, and published autobiographies or biographies. During the development of the NLA's 'Bringing Them Home Collection' over 300 interviews were collected. I studied approximately 118 and these aided the construction of the theoretical grounding to my thesis.

So it seems that my experience at the NLA raised some methodological issues for me; including how to work across being a 'Stolen Generations' contributor of material as well as a researcher of said material. Not all of these are clear as we are not sure what the NLA ever saw as their interests or motivations for the actions they took with me. For my own part though I remain clear, my research project was constructed from within my ideological position as an Indigenous

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[10] Heather Goodall, "Saving The Children": Gender And The Colonisation Of Aboriginal Children In NSW 1788 to 1990' (1990) 2(44) *Aboriginal Law Bulletin*, 6-9.

researcher as well as being constructed within Indigenous research methodologies.

Indigenous research methodologies are concerned to speak to a number of issues of interest for Indigenous people. What must be considered primarily, is the backdrop to the collection of the data. As earlier stated, Recommendation 1 says:

> That the Council of Australian Governments ensure the adequate funding of appropriate Indigenous agencies to record, preserve and administer access to the testimonies of Indigenous people affected by the forcible removal policies who wish to provide their histories in audio, audio-visual or written form.[11]

It appears clearly articulated in the recommendation that appropriate Indigenous agencies ought to have been the ones collecting the testimonies. The National Library attempted to fill some of the inherent values suggested by the recommendation, through strategies such as employing suitable interviewees to collect the testimonies, as well as employing Aboriginal people on the staff at the NLA. It remains to be said though, that the NLA is not constructed with the interests of Indigenous people centralised in the same way that the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS). For instance, AIATSI is interested in the preliminary parts of research projects, part of the negotiation includes where data will be stored, the relationship to the 'interviewee' and who can access it, are all included. As I have earlier articulated, these arrangements were negotiated with the interviewees and only when the NLA proposed the new strategy of putting the interviews online was there a requirement to go back to interviewees for further negotiation. Very few interviewees totally blocked access to their interviews, with a number of them limiting access to a 'read only/no photocopy' limitation. I think this is an indication that interviewees did want their interview material accessible to researchers. In my own situation I restricted access to read only as the personal feelings I had of exposing myself in a way I was not comfortable with.

However, there does seem to be a difference between concerns to do with access, and the issues related to defamation and privacy and as I have shown here these seem to be confused. Unfortunately, the application of interest in this case seem to have been about defamation and not the telling collecting and valuing of these oral histories. Whilst story-telling is a tool highly valued for information sharing and teaching within Indigenous communities, prioritising

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[11]   Australian Human Rights Commission Bringing Them Home- Appendix 9-
        Recommendations (September 2015),
        <http://www.humanrights.gov.au/publications/bringing-them-home-appendix-9-
        recommendations>.

legal concerns about defamation or privacy are new challenges for storytelling's age old process and its implementation as a research methodology. As clearly shown, these concerns have been misapplied in this instance, given the NLA's exemptions.

Indigenous methodologies have prioritised valuing Indigenous people as knowledge holders as well as embedding self-determination. This means that often we are attempting to speak to the silences in our histories and rewriting dominant discourses about our lives. To do this we have predominantly centred on the story that is being told, and not so much to the other concerns that a dominant society want prioritised. Pre-dating this Collection, we saw the investigation of the removal of Aboriginal children be instituted as a National Inquiry rather than a Royal Commission. The Secretariat of National Aboriginal and Islander Child Care (SNAICC) argued that it was too heavy a burden to fulfil the burden of proof as required by a Royal Commission and hence this could mean that the stories of people removed might never be told.[12] This then, like the Collection, constructed how information was given. In both cases, people gave testimonials rather than legally testable 'evidence'.

Once the material is collected in this format, the next thing to consider is who should access material. As earlier stated in this case it appears that the interviewees told their stories understanding that this keeping place would have access processes. The access to information question is a very important question in Aboriginal communities and is constructed within terms of gender, age, status and other considerations. Accessing information in Aboriginal communities can be a very different experience to that instigated by levels of access you get after gaining a readers' card and checking out what you want to look at in a library or archive. Using the NLA resources it is a perception more akin to 'if you can find information, you can see it and use it'. There is often no such premise in many Aboriginal cultures. Sometimes you don't even have a right or ability to ask a question let alone get an answer to that question. So what protocols should the researcher implement in archival or database work?

What processes do I, as the researcher implement? I need to ask whether I should access particular information. Should I look at particular items and should I be told particular things? For example, there are a couple of books that as a woman I have not, and will not ever read, as the secret/sacred information in them was given by the informants without the knowledge that it was to be published in a book. I enact these cultural sensibilities at every turn of the research process. At all times I must respect others whose job it is to teach me

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[12]   Gilbert, Stephanie 'Women and constructing re-membering: identity formation in the stolen generations', Unpublished thesis, (2013) Available at <http://hdl.handle.net/1959.13/936856>.

the correct protocols and set me straight when I get it wrong. Unfortunately, if these sensibilities are unknown to the keepers of data they cannot be enacted for the protection of the material and people themselves.

A researcher should consider how to manage balancing between using archives and talking with the people involved. In the case of the Collection, the database was created from interviewing people and so is there an inherent permission for its use? At what stage might a researcher have to go back to the people for a further negotiation regarding the potential 'new' use of the material, or to be respectful to the contributor of the material?

My sense is that contributors of material cannot know every researcher who might investigate the material for their thesis, and that is a risk they take. Awareness of Indigenous methodologies would encourage researchers to use material honourably and with consideration to the contributor. In my own phd project I managed this balance by using material from the Collection, personal interviews I collected myself, as well as utilising published auto/biographies. In this way I was able to triangulate the 'evidence', the way it was collected and produced for public consumption as well as honouring the contributors by acknowledging that I was listening to their story in the way they chose to construct it.[13]

To flesh out then how to embed Indigenous methodologies, we need to construct research within language and definition and description, constructed, understood and lived by the particular Indigenous group involved. To conceptualise what this means to a project, Bishop (2005) says researchers don't 'have the power to make sense of the events or experiences alone'.[14]

> Researchers in Kaupapa Māori contexts are repositioned in such a way that they no longer need to seek to *give voice to others*, to *empower* others, to *emancipate* others, or to refer to others as *subjugated voices*. Instead, they are able to listen to and participate with those traditionally "othered" as constructors of meanings of their own experiences and agents of knowledge. …The joint development of new storylines is a collaborative effort. The researcher and the researched together rewrite the constitutive metaphors of the relationship.[15]

In this project constructing meaning together meant the critical engagement with people as well as the other sources. I had to think about how I access and

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[13] Gilbert, Stephanie 'Women and constructing re-membering: identity formation in the stolen generations', Unpublished thesis, (2013) Available at http://hdl.handle.net/1959.13/936856.

[14] Russell Bishop, 'Freeing Ourselves From Neocolonial Domination In Research' In Norman K Denzin, and Yvonna S Lincoln, (eds) *The Sage Handbook of Qualitative Research*. (Sage, 3rd Edn, 2005) 123.

[15] Ibid.

use their information and how I honoured the words my informants gave me. I behaved and treated the interviews I accessed in the Collection, as informants to my project. Hence I had to also negotiate meaning with them, although I would never physically meet them. I consciously did not change their words; I honoured those with a restriction on their NLA record and actively and respectfully named them as the source of their meaningful comments. This went beyond just using material to back my thesis, but actually allowing the material to speak its themes to me. I read fully each and every testimony I accessed, and read beyond the ones listed in my thesis, seeking to honour their lives by taking the time to do that whilst I held their words in my hands. It was a humbling experience to read these lives and indeed I would catch myself often releasing tears whilst sitting in the middle of the reading room.

Conclusions

I believe the implementation of Indigenous centred methodologies means honouring our families and the ways we interact as individuals within families, with the rest of the world. I heard a comment from Linda Tuhiwai Smith[16] where she said that Indigenous knowledge holders regularly decide to let some knowledges be carried on or to end with them. It is crucial then to know when to honour the silence as well as bring voice to such silence when the people have had that forced upon them.

So, as this conversation has explored, our challenges include:

- How to care for our knowledges;
- Voice the silence when that is appropriate;
- Listen to what we are told; and
- Generate meaning together.

Lastly, utilising Indigenous methodologies is about us, but it doesn't mean that only Indigenous people should utilise Indigenous methodologies. The NLA and its ongoing custodianship of the 'Bringing Them Home Oral History Collection' is looking after material that includes family stories that families themselves may not have heard. The NLA, as well as other organisations, must constitute their actions as supportive of the self-determination and agency of their interviewees and contributors, and should prioritise the hearing of the stories over concerns about privacy. At the end of the day, we do not know why some people will access some of these stories, but we hope they will serve as an opportunity to strengthen the families and the communities who lost their children to these removal policies in first place.

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[16] The Wollotuka Institute Indigenous Knowledges Roundtable, 29 October 2015.

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