QUT Law Review
Volume 15, Issue 1, pp 174-178.
ISSN: (Print) 2205-0507 (Online) 2201-7275
DOI: 10.5204/qutlr.v15i1.660

BOOK REVIEW

IRENE WATSON, *ABORIGINAL PEOPLES, COLONIALISM AND INTERNATIONAL LAW: RAW LAW* (ROUTLEDGE, 2015) ISBN: 978-0-415-72175-2 (188PP)

IVAN INGRAM*

Professor Watson's *Aboriginal Peoples, Colonialism and International Law: Raw Law*[1] is presented in a multi-dimensional narrative, from the perspective of Aboriginal laws and customs, which are usually confined to Western epistemologies and ideologies related to the anthropological classification of Indigeneity. Professor Watson opens by prefacing the ultimate aim of this text as: 'decentering the usual analytical tendency to privilege the dominant structure and concepts of Western law'.[2] Irene Watson is a Research Professor of Law at the University of South Australia and is a well-respected scholar in the legal fraternity. She is also a well-known advocate for Aboriginal and Torres Strait Islander people's rights. This text is the ideal vessel to demonstrate the clear mastery of knowledge and perspective needed to have a meaningful conversation about these serious and what some would view as 'controversial' issues. The disenfranchisement of Australia's Aboriginal and Torres Strait Islander Peoples is well documented, as the survival and long-term effects of the so-called 'colonial project' persist.

Professor Watson opens Chapter 1 'Introduction' acknowledging that the historical underpinnings of the narrative 'began at a time immemorial and when law was raw'[3] which has since been eroded, clothed, and in some cases 'extinguished'. This text is richly supplemented with the history and cultural nuances of the people Professor Watson belongs to, who have given her permission to incorporate their story. Also notably the issues and themes raised are not only restricted to Australia's Aboriginal and Torres Strait Islander people, but where colonisation has affected Indigenous peoples globally: '[c]ivilisation demanded the total absorption of First Nations Peoples, but this has not occurred and across the planet more than 300 million Indigenous people have survived the genocide of colonialism'.[4] This sets the tone of the text, which may perhaps sit uneasily for the conservative reader, but nonetheless is a powerful narrative: 'First Nations Peoples resisted the genocide and ecocide it threatened–and we continue to resist it',[5] an enterprise that called for the genocide of a people who endured the 'colonial project' and continues to work within a framework that does not give true legitimacy to Indigenous ways of being, noting that '[t]o

* BAppSc (Biotech) (Queensland University of Technology), LLB (Hons) (Queensland University of Technology), GradDipLP (Australian National University). Ivan is a Lawyer at Gilkerson Legal, and a Sessional Academic at the Queensland University of Technology, Faculty of Law; he is currently an LLM candidate in the Indigenous Peoples' Law & Policy Program at the James E. College of Law, University of Arizona, Tucson.

1 Irene Watson, *Aboriginal Peoples, Colonialism and International Law: Raw Law* (Routledge, 2015).
2 Ibid Preface.
3 Ibid 1.
4 Ibid.
5 Ibid 2.

conceal its evil intent, colonialism was badged as a civilising mission, a mission to convert savagery into the universal civilisation of Europe'.[6] Underpinned by international law, it is suggested that Australia's legal systems are incapable in their current form to adequately acknowledge Aboriginal and Torres Strait Islander peoples.[7]

Chapter 2 'Kaldowinyeri', articulates a concept of time in a manner that is different to the modern science where time is immutable, constant and singular. This flowing of traditional time is linear, rather it describes a sense of being rather than a direction — Kaldowinyeri is presented to incorporate the past, present and future. First Nations People came from a period where time was not a concept of measure, but a philosophy of being: 'a continuous cycle; being always returns to become and, return to its beginning, past, future. This process cannot be extinguished, it is the law'.[8] This chapter introduces one of the recurring themes in this text, the 'illusion of recognition'— by which colonial laws apply to the people who were deemed to have none,[9] and the imposition of laws as a means of legitimising the colonial project and leading to the attempted genocide of a society. This clearly demonstrates the incompatibilities between the two peoples in respect of the 'legal understanding' of land and property law, each attributing value in completely different meanings: one is based a quantum of value, the other is ancestral and spiritual connection.[10]

Chapter 3 'Raw law, song, ceremony, ruwe', opens with 'Waargle', a story about a great flood that swept across the land. The few survivors of this flood clung to the head of a giant serpent above the floodwaters and were those people who maintained a connection to and respect for the law,[11] explaining that law survives all things. Today is another period of similar flux, with Indigenous laws trying to keep afloat the floodwaters of colonialism: '[w]ith the invasion of Australia came a colonial legal system that was and remains today clothed by layers of rules and regulations comprising a system of positivist laws that have been used to justify dispossession and the attempted genocide of First Nations Peoples'.[12] This chapter also recounts the story of *Mabo*,[13] and the recognition of Indigenous laws with respect to property, which sit 'at the lowest end of the property rights hierarchy, simply a beneficial right to use the land'.[14] It also tells of the High Court's inability to recognise any tangible form of Aboriginal and Torres Strait Islander sovereignty, which continues to deprive Australia's First Nations of the ability to self-determine and self-govern: '[t]he principle of extinguishment is an example of a contemporary form of state power with the capacity to annihilate First Nations Peoples' subjectivity, ownership, sovereignty and governance of Indigenous lands'.[15] This leads us to the continuing conundrum of the legitimacy of Indigeneity within Australia, where 'First Nations' laws and their relationship to

6 Ibid 6.
7 See *Wik Peoples v Queensland* (1996) 187 CLR 1, 213-4, as per Kirby J.
8 Watson, above n 1, 17.
9 Ibid 18.
10 Ibid 22.
11 Ibid 29.
12 Ibid 30.
13 *Mabo (No 2) v Queensland* (1992) 175 CLR 1.
14 Watson, above n 1, 37.
15 Ibid 43.

country are frequently in conflict with the colonial legal system'.[16] Professor Watson illustrates this with a number of historical cases that explore the interrelation of the court system and Indigenous laws. Perhaps most interestingly, is an extract of an application made by Arabunna elder Kevin Buzzacott before Justice Crispin of the Australian Capital Territory Supreme Court,[17] where Mr Buzzacott voiced concerns that highlight the immense chasm between the two cultures trying to co-exist: '[t]his is the whole problem that has to be changed … it is this artificial way, the predator created this system … that is the what the whole trouble is'.[18] Notably Justice Crispin acknowledged the limitations of his authority and jurisdiction to hear this matter, and make a finding that would give effect to the Mr Buzzacott's application. This is a dialogue that seems will continue perpetually if fundamental change is never achieved.

Chapter 4 'Naked: the coming of the cloth', traces the history of the covering up of the body of Indigenous Australia, which is symbolic of the gradual veiling of Indigenous law and custom. Extracts of historians noting their perceptions of Australia's Aboriginal and Torres Strait Islander peoples is striking. The historians write from such a privileged perspective, belittling the First Nations Peoples to mere savages incapable of existing in a civilised society. Indeed Watson questions whether such perceptions are truly 'historical', or persist in less overt forms today.

Chapter 5 'Who's your mob? Who are you related?' takes the narrative to the current approaches to Indigeneity. How does an Aboriginal or Torres Strait Islander person identify in the colonial era: 'I remain who I am, beneath the layers of invasion, colonisation and rape',[19] and the tool of anthropology remains strong in its grasp of Indigenous categorisation.[20] This chapter challenges the commonly accepted characterisation of Aboriginal and Torres Strait Islander peoples in relation to their lands and waters, their language and cultural names, suggesting this is born out of the colonisation of the First Nations People rather than a delineation between people with clear and defined boundaries. Importantly it is argued that First Nations People should be afforded a voice that sounds in genuine recognition. Professor Watson suggests they may be capable of having this voice and seat as a 'nation' to engage in meaningful dialogue on an international playing field. It may that the existing demarcation of sovereignty will not allow for 'dual sovereignty' to co-exist harmoniously from 'fear that the recognition of Indigenous Peoples' rights to self-determination will erode the territorial integrity of nation states.'[21]

Despite the inability of Australian courts to recognise a dualist sovereignty within Australia's territorial bounds, using international law and engaging on the international stage (ie through forums such as the United Nations Permanent Forum of Indigenous Peoples), in theory can provide

---

16 Ibid 45.

17 Ibid 47. *In The Matter Of An Application For A Writ Of Mandamus Directed To Phillip R. Thompson Ex Parte Nulyarimma* (1998) 136 ACTR 9; see transcript of proceedings, Friday 17 July 1998. The application sought by Mr Buzzacott was to declare the status of the international crime of genocide as a law of Australia, and particular in relation to the peoples who are affected by this crime—the Aboriginal and Torres Strait Islander families.

18 Watson, above n 1, 48, quoting Mr Buzzacott, *In The Matter Of An Application For A Writ Of Mandamus Directed To Phillip R. Thompson Ex Parte Nulyarimma* (1998) 136 ACTR 9.

19 Ibid 71.

20 As can be seen in practice with heavy reliance on anthropology reports as to connection and genealogical histories for native title claims.

21 Watson, above n 1, 98.

First Nations People with a voice; a voice that is suppressed and not viewed with legitimate legal standing here in Australia.

Chapter 6 'Dressed to kill', is perhaps the most interesting chapter of the text, hitting hard at issues with dialogue that would never part the lips of politicians or government; the admission of 'genocide' and its many forms perpetrated towards Australia's Aboriginal and Torres Strait Islander peoples: '[w]hen genocide is referred to by Indigenous Peoples as being our experience, our voices are ignored, patronised and marginalised as being the voices of simple people who don't understand law and its meaning, in particular in relation to the crime of genocide'.[22] The colonial frontier where open battles were fought against the traditional owners; the practice of removing traditional owners and relocating them hundreds of kilometres away; the removal of children (that arguably continues to happen under the auspice of the 'best interest of the child'); are all geared at colonising the Aboriginal and Torres Strait Islander peoples of Australia, and cultural erosion that crystallises the 'cultural genocide'[23] of a society and way of life.

Interestingly, one of the key aspects that resonated strongly with the reviewer is the concept of native title, and the melding of Western law and Indigenous law. There are some fundamental shortfalls in the native title regime that are clear from practice. This was eloquently put by Professor Watson as '[t]he idea of extinguishment of First Nations People's relationship and connection to the land that is alien to an Aboriginal ontology'.[24] It is understood that the native title regime aims to confer rights to Traditional Owners, though only if 'connection' can be established since the 'annexation' of Australia, which has been uninterrupted by the 'colonial project', as viewed from a Western anthropological lens. Professor Watson suggests however that native title aims to categorically manage these rights to enable Western concepts of property to assimilate Indigenous ontologies. Although the declaration of native title in *Mabo* was historical, it simultaneously affirmed the power of the 'State to extinguish any recognised Aboriginal title … [i]ts impact nevertheless continues to determine the relations between First Nations Peoples and the state'.[25] This chapter now brings the ultimate points, that the recognition afforded at law, is the cultural de-liberalisation of Indigenous society and culture, leaving it vulnerable to permanent 'extinguishment';[26] extinguishment that is not confined to the legal classification and the abolition of land interests, but also the law's ability to *intervene in Indigenous life*.

In closing her narrative, in Chapter 7 'Indigenous ways: a future', Professor Watson highlights that '[g]lobally, much of the Indigenous world has been damaged and altered beyond recognition',[27] but there are possibilities of moving forward that can attempt to remedy some of the injustices, including the proposition of a treaty system retrospectively validating the colonial project and also to provide recognition to Aboriginal and Torres Strait Islander peoples. This system could also facilitate a new means of consent [28] and provide a platform for co-existence. Ultimately, the system must ensure an equal footing at law to engage in meaningful agreement making and chartering the future relationship. Although this may appear to be an impossible task in Australia's current legal

[22] Ibid 111.
[23] Ibid 121.
[24] Ibid 8.
[25] Ibid 42.
[26] Ibid 129.
[27] Ibid 146.
[28] Ibid 155.

and political climate, this text offers one possible way of embarking on this journey. Supported with a wealth of literature, it is difficult to deny the logic of this proposition, however idealistic it may currently seem.

Professor Watson has delivered to us an evocative text that challenges the very foundations of the relationship between Australia's Aboriginal and Torres Strait Islander peoples and the colonial empire. Perhaps 'too radical' for the less liberally minded person, and always hitting hard at the anvil of colonial oppression, Professor Watson strikes the awkward nerve of Australia's systematic oppression and closeted realities. The reviewer found this text to be thought-provoking and challenging, offering an original perspective on Australia's dogma in respect (or perhaps the lack thereof) of Aboriginal and Torres Strait Islander peoples. I strongly recommend this text, however one must be willing to view things from a very different perspective than that normally attributed to the successes of recent 'progress' in the reconciliation between First Nations Peoples and the Australian nation state.