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To cite this article: Ambelin Kwaymullina & Blaze Kwaymullina (2010) Learning to read the signs: law in an Indigenous reality, *Journal of Australian Studies*, 34:2, 195-208, DOI: [10.1080/14443051003721189](https://doi.org/10.1080/14443051003721189)

To link to this article: <https://doi.org/10.1080/14443051003721189>



Published online: 23 Apr 2010.



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## Learning to read the signs: law in an Indigenous reality

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This article examines Aboriginal views of knowledge, time and space, and discusses the implications of these views for understanding Aboriginal legal systems. In doing this, we adopt an Indigenous perspective formed and informed by the ancient holistic knowledge systems of Aboriginal people. The article is part of a new wave of Indigenous scholarship where Indigenous thinkers worldwide are seeking to elucidate the nature of our systems and their interaction with Western ways of knowing.

**Keywords:** Indigenous Australians; Aboriginal law; knowledge systems

In a discussion with one of my grandfathers, he commented that he thought Captain Cook was a man who couldn't read the signs. He was talking about an intuitive way of knowing, a fluid and dynamic language grounded in country and linked to the wider world, that our old people are very adept at. Country is alive. The world is alive. This is the essential unchanging nature of the universe. This is the reality of life for Indigenous peoples.<sup>1</sup> (Sally Morgan, Palyku artist and author)

When Captain Cook landed on the east coast of Australia in 1770 he carved the date of his arrival and the name of his ship, the Endeavour, into a nearby tree. For Cook, the carving was a way of marking presence and territory, a warning to the other colonial powers that the British Empire now had a legal interest in this land. But to the Aboriginal peoples who already occupied the territory that Cook sought to annex, this statement of legal claim was itself a violation of laws far more ancient than those governing the colonial powers of Europe. Unbeknownst to Cook, he had just made first contact with one of the many thousands of living beings inhabiting a vast continent, a contact that had ended with mutilation. The same act that signalled ownership to European colonial powers signalled just the opposite to the Aboriginal custodians of the land, whose right to inhabit country is premised on a responsibility to care for all the life within it. This initial clash of cultures has, in many respects, yet to be resolved. While praiseworthy efforts have been, and are being, made to engage with Aboriginal understandings of the world, the historical dominance of Western knowledge systems and the damage wrought by colonisation mean that there is still much work to be done before there can be a true and lasting meeting of minds, hearts and worlds.

This article will examine Aboriginal views of knowledge, time and space, and discuss the implications of these views for understanding Aboriginal legal systems.

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While this paper presents an Aboriginal perspective – and in particular a perspective influenced by the culture of the Palyku people to whom we belong – it is not to be read as the only Aboriginal viewpoint on these issues. The perspectives held by Aboriginal peoples of Australia are many and varied, informed as they are by the specific Aboriginal country from which we each come, the people to whom each of us belong, and our individual and collective experiences of the trauma of colonialism.

### Knowledge in a holistic worldview

In Aboriginal philosophy the universe is a pattern comprised of other patterns, of systems inside systems. It is a holistic view in which everything is interrelated and interdependent. Nothing exists in isolation. All life – and everything is alive in an Aboriginal worldview – exists in *relationship* to everything else:

Imagine a pattern. This pattern is stable, but not fixed. Think of it in as many dimensions as you like – but it has more than three. This pattern has many threads of many colours, and every thread is connected to, and has a relationship with, all the others. The individual threads are every shape of life. Some – like human, kangaroo, paperbark – are known to Western science as ‘alive’; others, like rock, would be called ‘non-living’. But rock is there, just the same. Human is there, too, though it is neither the most nor the least important thread – it is one among many, equal with the others. The pattern made the whole is in each thread, and all the threads together make the whole. Stand close to the pattern and you can focus on a single thread; stand a little further back and you can see how that thread connects to others; stand further back still and you can see it all – and it is only once you see it all that you recognise the pattern of the whole in every individual thread. The whole is more than the sum of its parts, and the whole is in all its parts. This is the pattern that the Ancestors made. It is life, creation, spirit, and it exists in country.<sup>2</sup>

Aboriginal knowledge systems exist within the context of relationships, and because all relationships interconnect, so does all knowledge. In a sense, the way one thing relates to another is the core of what knowledge is. It is in the dynamic interplay between relationships that information is shaped, defined and becomes ‘known’. This has been described, in Western terms, as a ‘holistic’ worldview because it stresses the connections between the parts and the whole. Aboriginal knowledge systems do not compartmentalise knowledge or ways of knowing into specific disciplines, because intellectual, emotional, physical and spiritual understandings of the world cannot be divorced from one another.

Many, but not all, conflicts between Aboriginal and Western ways of knowing are derived from a clash between a reductionist view of the world and a holistic one.<sup>3</sup>

It was this form of ‘knowing’ that dominated during the colonial era where the powers of the West believed they had a mandate to take dominion over the earth, and it continues to exert a strong influence over Western ways of knowing.

Gladys and Jill Milroy of the Palyku people comment on this, in relation to the invention of the wheel as a mark of human ‘progress’:

The British valued the wheel, but they did not value its connection to the tree. The invention of the wheel is tied inexorably to the progress of Western civilization, but at the heart of the wheel, was the death of the tree ... the spiritually rich nature of Aboriginal cultures, where knowledge and relationships between people, country and all living things are highly prized, went unappreciated [by the British] because they could not see beyond the missing wheel to the living tree. What they valued was the resources and material wealth the land could provide, with no understanding of, or care for, the deeper story.<sup>4</sup>

A reductionist worldview, which has at its core the idea that the whole is never more than the sum of its measurable parts, results in compartmentalised disciplines of knowledge. It results also in a belief that the only way to understand the world is to stand apart from it; that it is both possible and desirable to disconnect from surrounding relationships so as to become an 'impartial' observer. Central to this notion of impartiality is the need for emotional distance or objectivity, the requirement to sever most of the self from the subject in order to acquire knowledge of it, leaving only a tenuous connection of the intellect.<sup>5</sup> But Indigenous peoples across the world have experienced, all too intimately, what it was to be researched by those who had disconnected their intellect from their hearts:

To know of culture, they took story, song, knowledge; to know of body, they measured skills and stole bones, leaving spirits shrieking from collector's shelves and behind museum glass. To know of sacred places, they trespassed and violated. Their learning dispossessed – of song, story, dignity, humanity, voice – and the findings of that learning justified those dispossessions. They gazed through a fragmented vision of their understanding at all they took; they categorized, classified, named – they described each part in a minutiae of detail, and understood nothing of the whole.<sup>6</sup>

In Aboriginal systems, the world can only be known by acknowledging and respecting relationships, not by ignoring or denying them. Disconnection can only result in inaccurate observations – for any observer, if only by the mere fact of their presence, must always affect that which surrounds them. In the words of Gagudji elder Bill Neidjie '[m]an can't split himself'.<sup>7</sup> All learning is shaped by the broader nexus of connections that is the world, and it is by locating the self within this nexus, rather than removing the self from it, that understanding is to be gained. Thus, far from producing valuable knowledge, Indigenous systems would view a perspective based in disconnection as a fundamentally flawed one – for, since the whole is in all its parts, there is no distance in creation. Indeed, a state of being where the individual sought to remove themselves from the system, to sever or suppress their connections to the web of relationships that forms the world, might well be termed exile. Such a state, which would result in a failure to perceive connections that inevitably leads to a failure to value them, could only end in destruction for both the individual and the collective. Nunga lawyer Irene Watson writes of this in the context of contemporary Western law:

Today in the modern world the will to live in a place of lawfulness is lost to the greater humanity. Evidence of this is found in the growing list of global crises, poverty, environmental disasters, famine, war, and violence. What the greater humanity have come to know as law is a complex maze of rules and regulations; the body of law is buried, barely breathing. Law came to us in a song, it was sung with the rising of the sun, law was sung in the walking of the mother earth, law inhered in all things, law is alive, it lives in all things ... Law was not imposed, and those who lived outside the law

did just that, they were in exile from the law. We could say the greater proportion of humanity now lives in exile from the law.<sup>8</sup>

The privileging by the colonising nations of Western Europe of their own reductionist knowledge-systems above all others led to a systematic devaluing of holistic Indigenous worldviews that is only now being overcome. In the legal field, a colonial inability to conceive of Aboriginal legal systems as equal to those of the West is reflected in the persistent description of Aboriginal legal systems as comprising ‘custom’ or ‘customary law’. Such terms are inevitably burdened by historical constructions of Indigenous societies as inferior and lacking in ‘real’ law. In addition, the concept of custom – which rests on the notion that behaviour practised over long periods solidifies into rules of conduct – inherently contradicts Aboriginal views on the origin of law in Australia. Aboriginal creation stories tell that law was given by the same Ancestors who made the world and continue to live within it, and that the purpose of the gift of law was to show all life how to sustain country. In this context, Aboriginal statements that ‘something is to be done because the Ancestors did so’ – historically often misinterpreted as indicating that an individual is blindly copying the behaviour of previous generations – in fact reveal a complex legal system premised on the interconnection of life in country and of the place of human beings in sustaining that life. It is possible that a scholar employing a reductionist Western perspective might disagree with Aboriginal views on the nature of creation, but what is important is that Aboriginal systems are based on this view being true. It seems strange indeed to assert that an understanding of Aboriginal law can be gained by employing a descriptor, such as ‘customary’, that both echoes colonial prejudice and contradicts Aboriginal views of legal origins.

In a holistic Indigenous worldview, law cannot exist in isolation from the connections between all life. Law both sustains and reflects the nexus of relationships, the pattern of creation that is the world. Law is part of a larger way of knowing the world, one which is formed by a living landscape where time is measured by cycles, not lines; and the ‘space’ of country is both physical and metaphysical.

### The nature of time

When the British arrived in Australia in 1788, they brought with them a concept of time that found expression as both a linear constant and a philosophical value. This linear perspective may be expressed as shown in Figure 1.

In this view, when a person travels either ‘back’ into the past or ‘forward’ into the future, they move away from the present where the self is located. Relationships are therefore centered around the temporal ‘hub’ of the ‘now’, leading to a process of

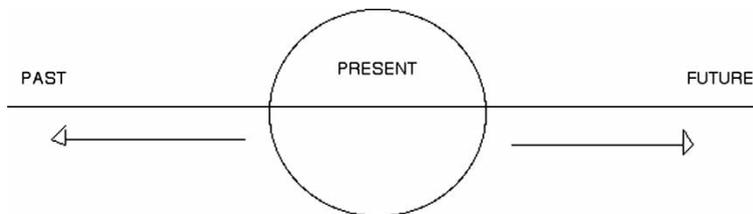


Figure 1. The linear perspective.

relational distance whereby the further someone travels temporally in either direction the less ‘connected’ they are to events or potential events. In a colonial context, this relational distance is heavily ideological. Time becomes paradoxically at once absolute – in that the passage of time runs inevitably from the past to future and cannot be altered – and relative, in that the position of people, landscapes and events can be dictated by colonial mythos. Thus, Indigenous peoples were ‘backward’ and had no ‘future’; landscapes could be newly ‘discovered’ despite having been occupied by Indigenous peoples for thousands of years; and the cultural and legal history of a continent could be said to ‘begin’ with the arrival of the British.<sup>9</sup>

In a post-colonial context, a perspective of relational distance can become even more problematic, as events which cast colonial antecedents in a less than flattering light are pushed further and further away from the present, while other, more palatable events – or versions of events – are drawn nearer. By locating events of continuing legal significance – whether it concerns the removal of Aboriginal children or the wholesale dispossession of Aboriginal people – in the far-off past, the damage caused by these events can be viewed as ameliorated, or least shorn of some of their legal consequences, by the passage of time. Thus, one of the hurdles facing Stolen Generations claimants are limitation statutes – which operate to bar legal claims after a certain period of time has passed – while native title claimants must establish an unbroken connection to country in linear terms. Ironically, while Aboriginal law is formed by a worldview which did not contain notions of linear time, the increasingly heavy burden placed on native title claimants is tied to Western perceptions of Aboriginal ‘traditional laws and customs’ which must be shown to remain substantially unchanged through the passage of linear years.<sup>10</sup> So, while Australian law moves into the future, Aboriginal people are faced with the unhappy task of proving they have never left the past in order to have rights recognised in the present.

In an Aboriginal worldview, time – to the extent that it exists at all – is neither linear nor absolute. There are patterns and systems of energy that create and transform, from the ageing process of the human body to the growth and decay of the broader universe. But these processes are not ‘measured’ or even framed in a strictly temporal sense, and certainly not in a linear sense:

I walked and walked and walked. Everywhere I looked men and women and houses in front of me stood frozen – even insects in the air were unmoving as if someone had stopped time. But it was more than this, everything also felt *fixed* in place. Then suddenly I was somewhere else and in front of me I could see a large group of long tall spirit beings dancing. And I could see through them through the earth into the smallest molecule. And as they danced, everything – the earth, even the air – moved with them, danced with them. Then one of them placed one hand on that other place of stillness I had been and his other hand reached and touched on the place I now was. And I knew what he was saying. Their history is still. Ours moves.<sup>11</sup>

Time, like all things, is relative to the enduring physical and metaphysical context of country. Even the Dreaming – the myriad of universe-making events from which all Aboriginal knowledge is derived – is not fixed in time. Rather, it is a complex ongoing happening that Aboriginal peoples engage with through songs, dance, ceremony, art and story. In the words of Yanyuwa Elder Mussolini Harvey:

In our ceremonies we wear marks on our bodies, they come from the Dreaming too, we carry the design that the Dreamings gave to us. When we wear that Dreaming mark we

are carrying the country, we are keeping the Dreaming held up, we are keeping the country and the Dreaming alive.<sup>12</sup>

It was through movement that the world was created, and through movement that the world is recreated and renewed. Everything lives, and everything is in constant motion, turning and rotating in relation to other life. The cycles of seasons, animal migrations, tides, correspond to the larger movements of the earth, the stars and the Milky Way. They also relate to smaller movements, of blood circulating through the human body, and of processes occurring at the microscopic level. This rotation and movement, which some might frame as ‘gravity’, is the pull of relationships moving in dynamic interaction. The same underlying principle that makes the earth orbit the sun draws a person to their totem, as relationships move some patterns together and others apart. But since everything must interconnect and interrelate to survive, if a pattern is fixed in time, it loses its ability to dynamically connect with other patterns. To be temporally fixed is therefore to be isolated; frozen. In an Indigenous worldview, it is, in fact, an impossibility – for that which cannot move, cannot interact, and that which cannot interact is inanimate. And there is nothing inanimate in country.

While these broad cycles of movement cannot be fixed on a linear time scale, it is possible to discern recurring patterns within them. As Indigenous scholar Leroy Little Bear writes:

The cosmic cycles are in constant motion, but they have regular patterns that result in recurrences such as the seasons of the year, the migration of the animals, renewal ceremonies, songs and stories.<sup>13</sup>

Country signals to us when patterns change, and we react in response. The Yolgnu people of the north knew the white-tailed stingray was plentiful when the white flowers bloomed,<sup>14</sup> and a smoke-hazy sky in the south told the Nyoongah the salmon were running.<sup>15</sup> A notion of time as both linear and absolute might ascribe not just a date but an *expectation* to the movement of stingray and salmon, a belief that they would always be found in a certain location, in certain numbers, at a certain time of year. **But in an Aboriginal worldview, the movement of stingray and salmon would depend not on the independent passage of time, but on action and interaction in country. A failure to maintain the proper balance of country, to sustain the relationships that reflect the order of the world, would affect all life within it. Time, in the sense of movement and progression, is therefore not an inevitable force. The stingray and the salmon swim, the flowers bloom, and the sky turns hazy only if the relationships that form the world are sustained, maintained and renewed. Life does not move through time; rather, time moves through life.**

### **The nature of space**

Related to the Western conception of time as a linear absolute was one of space – and particularly of the natural world – as knowable, measurable and susceptible to hierarchical order. Like time, space was conceived of as both absolute and relative.<sup>16</sup> **Absolute, in that space, in the absence of a major geographical upheaval, was fixed. Relative, in that the value ascribed to space depended upon its use and occupation by the human cultures of the West – so much so, that any existence in space unlike that of the West was not only meaningless but formed an ideological basis for annexation**

by the colonial nations of Europe.<sup>17</sup> Non-Aboriginal Australian law itself grew out of this colonial context where the driving need to sustain and justify a campaign of dispossession lent itself to starkly framed contrasts between black/white, savage/civilised, inferior/superior, heathen/god-fearing, other/self.

These binary pairs of theoretical opposites found their ultimate legal expression in *terra nullius*, the idea that the vast space of the Australian continent was unoccupied because Aboriginal peoples were not 'civilised' enough to possess a legal right to the land. *Terra nullius* relies upon a civilised/uncivilised oppositional construction that characterises the cultures of Western Europe as not only the most fully realised, but the *only* possible expression of civilisation, making all other cultures 'uncivilised' by default. Anthropologist Deborah Bird Rose comments on this idea in the context of the Western notion of Indigenous-occupied landscapes as a 'wilderness', untouched by human influence:

[S]tandard European and American-derived concepts of wilderness ... all involve the peculiar notion that if one cannot see traces or signs of one's own culture in the land, then the land must be 'natural' or empty of culture. In the context of Australian settlement by Europeans, it does not require a great leap of imagination to realise that the concept of *terra nullius* (land that was not owned) depended on precisely this egocentric view of landscape. Not seeing the signs of ownership and property to which they were accustomed, many settlers assumed that there was no ownership and property, and that the landscape was natural.<sup>18</sup>

Geographical landscapes were viewed primarily as physical rather than metaphysical spaces; and indeed much of space was characterised as inanimate; non-living and non-feeling. Like consciousness, knowledge was the purview of humanity alone – human beings could know things about space, but space did not have knowledge of its own. The interaction shaped by this philosophy was not, and could never be, a relationship of equals. Space was something for the humans to tame and subdue, to conquer and make their own. It can now only be speculated what course events might have taken had the colonial nations of Europe been able to conceive of civilisation in a different form to their own – for embedded within the ancient knowledge-systems of Indigenous nations worldwide were sophisticated conceptions of the interconnectivity of time and space that were already far in advance of eighteenth century science.<sup>19</sup>

In an Aboriginal worldview, space is both alive and conscious, and the source of all life and all consciousness. The original pattern of creation – the web of relationships that is the world – finds its ultimate expression in country, and it is through our interactions with country and the multiplicity of relationships it contains that we sustain and renew creation itself. As all relationships are a part of space, and space is a part of all relationships, it is as true to speak of space as bringing meaning to humans, as of humans bringing meaning to space. Western maps are now filled with geographical features named both by and for colonial explorers – Ayers Rock, Flinders Ranges, Lake Eyre. But in an Aboriginal system, though a person and a rock might share the same name, it is not the rock that is named after the person. It is the *person* who is named after the rock. Each part of country is not only alive, but has a life of his or her own – and is as capable as human beings of resistance and subversion. As Nyoongah and Ingebundi man Noel Nannup comments:

People don't realise it, but there is some very strong country here around the City of Perth. Take a place like Kings Park for example. It's an important place now, but it was important in the old times too. The spirit in that land is so strong that it saved itself from development. That happens sometimes: the land protects itself.<sup>20</sup>

The Ancestors – who themselves came in many forms, and who went back into country – gave law to *all* life, not just life in human forms. As Yanyuwa Elder Mussolini Harvey tells us: 'The Dreamings are our ancestors, no matter if they are fish, birds, men, women, animals, wind or rain. It was these Dreamings that made our Law. All things in country have law, they have ceremony and song, and they have people who are related to them'.<sup>21</sup>

Space is both subject to, and the source of, the dynamism that shapes all creation. The earth rotates, tectonic plates shift, continents drift a little further each year. Wind moves through trees and over water, tides rise and fall, the light of the stars travels across the sky and we move with it. In the words of Ngarinyin elder David Mowaljarlai '[a]s you sleep beside the campfire at night you may think you are stiff on one side and turn over; in reality, you are following the Milky Way as it turns around the Earth'.<sup>22</sup> In a world composed of relationships, space is a primary attractor, a centre around which other relationships orbit. Indeed, so great is the power of some spaces that – like Kings Park – they are able to affect even those who do not recognise their conscious nature, moving colonisers to acts of preservation rather than destruction. Thus, space *causes* action rather than simply being subject to it. Indeed, the very reason we as humans often cannot perceive space moving around us – ascribing shifting in our sleep to stiffness rather than a following of the stars – is because space moves us to a far greater degree than we move it.

### **Time, space and Aboriginal law**

Aboriginal understandings of the relativity and dynamism of time and space have powerful consequences for the formation and functioning of Aboriginal law, consequences which reach beyond Aboriginal legal systems to influence Aboriginal and non-Aboriginal legal interactions. While it is beyond the scope of this article to examine the multiplicity of these effects, three broad consequences will be examined here.

### ***Law and the context of country***

Law flows from the living hearts of Aboriginal countries, and in this sense is location specific. This is not to say, however, that there are not broad characteristics common to the many Aboriginal legal systems of the many Aboriginal nations of Australia. There are and indeed there must be, for law did not develop incrementally and haphazardly, with every nation independently and in isolation producing its own rules. Rather, it was the Ancestors who gave the law – the ways of living in country – to all life. But while a shared understanding of the nature of time and space inform all Aboriginal legal systems, the specific laws that govern each country necessarily differ.

The purpose of Aboriginal legal systems is to sustain the pattern of creation. Since this pattern finds its ultimate expression in space, all Aboriginal legal systems maintain and renew the physical and metaphysical landscape of country. But this

cannot be done in exactly the same way in different spaces. Some of the specific rules that apply to caring for a desert country, for example, would not be appropriate in a coastal saltwater country, or in a forest country. These specific rules may also change, provided the underlying purpose of sustaining the web of relationships that is the world is maintained. The ultimate source of law is, after all, the Ancestors who are now in country, and as country changes and moves, so too must the law that cares for it.

Every Aboriginal country is a powerful primary attractor, a collection of relationships bound together by the sustaining and renewal of the connections between all life. These centres of country interconnect and overlap, but do not exist in hierarchy and do not invalidate one another. Similarly, each Aboriginal legal system is primary within its own country, but does not invalidate, nor exist apart from, the others. These systems are linked, as Aboriginal people are linked, by song-lines, the paths travelled by the Ancestors. Each Aboriginal legal system is shaped by its country, and each country is the source of its own truth. Take, for example, the Dreaming story of the seven sisters who became stars, a tale told by many different Aboriginal nations across Australia.<sup>23</sup> The story varies between nations, and a Western scholar might well seek the ‘original’ or most ‘authentic’ version, proceeding on the assumption that only one can be true – for, after all, each tale concerns the same sky.<sup>24</sup> But from an Aboriginal perspective, what is important is that it is a different *view* of that sky. Thus, every story is true, within its own space. It is the physical and metaphysical context of country that shapes all meaning.

### ***Law and the web of relationships***

The law sustains the country. But in a land where creation itself is located in the web of connections between all life, country *is* relationships. Further, since Aboriginal law, like all knowledge in country, is holistic – in that it is both part and whole of the pattern of creation that is the world – law is also relationships. It must be, for the primary purpose of law is to sustain life in country, and it is impossible to uphold creation without being creation. Aboriginal law is thus both *formed* by relationships – in the sense that legal systems consist of the web of relationships that is country – and *informed* by relationships, in that the fundamental role of the law is sustain, maintain and renew the network of connections between all life.

Relationships are therefore of primary importance in determining legal roles, with individual and collective rights and responsibilities ordered through a complex kinship system. Ambelin Kwaymullina has previously conceptualised it in this way:

The Aboriginal kinship system recognises the connections, not just between humans, but between humans and all other life. Everyone has a place in this system, and by knowing this place, people know their rights and responsibilities – to provide another with food, to care for a specific story or site, to punish a wrongdoer. And the rights and responsibilities that one person has with regard to another depend on their respective places in the system. It is not the right or responsibility that defines the relationship, it is the relationship that defines the right or responsibility.<sup>25</sup>

The kinship system acknowledged that every part of country is alive, and has both a life and a law of its own. Law therefore extends beyond human beings to all life in country, with the relationship – rather than species – being the primary creator of legal categories. It is, after all, the function of the law to uphold relationships, and these relationships existed before the permanent division of life into different shapes.

Further, shape, as Aboriginal people know, is only a passing thing: '[e]verybody in the tribe had a totem – we call it a *maarlyi* . . . If a person was a kangaroo, that means he was a kangaroo before, and he'll be a kangaroo again'.<sup>26</sup>

Legal anthropologists, and occasionally lawyers, have long puzzled over the exact significance of Aboriginal kinship. As this article has shown, Western and Aboriginal legal systems are formed by such fundamentally different worldviews that it can be, and usually is, misleading to compare part of an Aboriginal system with a potential Western equivalent. However, in the context of kinship, there does seem to be one parallel that might usefully be made, if only to assist Western legal minds in coming to a better understanding of Aboriginal law. Kin relations determine all rights and responsibilities in country – for example, who can tell a certain law-story; who cares for the sacred places inhabited by the ultimate law-makers, the Ancestors; who determines and administers punishment for a transgression; and who interprets or mediates change in specific laws – including by communication with the Ancestors – in order to apply law to new situations. In other words, it is through kinship that laws are made, administered, and enforced; and in the West, the legal institutions that perform these functions are generally conceived of as government. Aboriginal kinship systems are of course different from Western-style governments in many ways, including in that they locate power in individuals rather than central institutions, and in that these individuals include both human and non-human life. But kinship nonetheless remains a system of ordering the world that has proved itself to be both stable, and extraordinarily adaptable, in the face of extreme and traumatic change.<sup>27</sup>

### *Law and the order of the universe*

Before the Ancestors came, the world was without form. The Ancestors brought life where life had not been before, and the pattern of creation that they made shaped, and continues to shape, all existence. Since this pattern is itself the connections between all life, it is vulnerable to harm on many levels – through individual and collective acts of inhumanity; by a series of incremental environmental disasters that damage the physical and spiritual space of country; or in the development of technology that allows us to escape our failings as a species without ever needing to resolve our shortcomings. For if we cannot find a way towards actions, processes and laws that uphold creation, it is entirely possible that the wonders of technology will in the end salvage only the form, and not the spirit, of what it is to be human. Life might continue, but not, perhaps, in any way that we would recognise as living now.

Law, through sustaining the pattern in country, sustains the world, and the effects of unlawful actions are felt across the entirety of creation. The violence of colonialism, enacted through events such as the massacre of Aboriginal people or the stealing of children, has consequences that are not limited to either the geographic location such events happened in, or the people they happened to. The effects of harm radiates out across *all* relationships – disturbing the equilibrium of a molecule, causing sickness in human beings, or even altering the orbit of a meteor. Further, in a reality where time is not linear, there is no escape from the consequences of damaging events through the passage of days or years. The extent to which all of us, individually and collectively, achieve progress is measured by the extent to which damaged relationships are repaired; and the degree to which we each seek to uphold

creation in all that we are, and all that we do. It follows that the law, in containing and upholding the pattern of creation, has a much wider role to play than simply the regulation of human behaviour, or even the regulation of non-human behaviour. It is lawfulness – in the sense of following laws which themselves contain and uphold creation – that makes and re-makes the world.

### **A shared reality?**

The carving inflicted upon the tree by James Cook remains a powerful metaphor for the interaction of, and difference between, Aboriginal and Western legal systems. The mark of Western possession of country was to change the tree with a carving of significance to human beings, whereas the mark of Indigenous possession was that the tree was whole, healthy and happy. And while – like the mark on the tree – the systems and institutions of Western law may today appear more apparent to an outside observer, Indigenous law continues underneath, beating in the heart of the tree itself: '[w]hen the English people found our country and Aboriginal people, they put their cities and their culture all over our country. But underneath this, all the time, Aboriginal culture and laws stay alive'.<sup>28</sup>

Work has been done, and continues to be done, on the ways in which Aboriginal law might be recognised, even codified, into non-Aboriginal Australian law.<sup>29</sup> But at the heart of Aboriginal legal systems are understandings of the nature of time and space – and consequently of the place and role of law – which are very different to the understandings that shaped the non-Aboriginal Australian legal system. It is bridging the gulf between these worldviews that is the key to a true reconciliation of peoples and laws, and this is not a task for the non-Aboriginal legal sphere alone. It cannot be, for it is not only non-Aboriginal law which must shift, but also many of the underlying notions which shape the law, and inform broader Western interactions with Indigenous peoples and Indigenous country.

Comprehending the nature of any part of holistic Aboriginal knowledge-systems necessarily requires comprehending the nature of the whole, and this cannot be achieved through the lens of knowledge fractured into disciplines, or through a way of knowing that disconnects head from heart. What is needed is a larger and more holistic engagement with Aboriginal understandings, one that not only brings together different Western knowledge-disciplines but also connects on a deeper level of human feeling and experience. As physicist F David Peat, discussing how Western scientists might engage with Indigenous ways of knowing, writes:

How then can we grasp the flavour, the odor, the spirit of a profoundly different worldview, one that cannot be approached by reason, analysis, description, and the accumulation of facts alone? . . . the answer, I believe, is that we can come to some form of knowing, albeit in a strictly limited way, through an actual change in consciousness. If we remain as observers, objective scholars of another society, we will never enter into its essence. However, if we approach it in the spirit of humility, respect, enquiry and openness it becomes possible for a change in consciousness to occur . . .<sup>30</sup>

There are no limits on the ways or levels in which engagements between Indigenous and Western ways of knowing can occur, from a simple conversation between individuals to a more structured interaction of knowledge-systems.<sup>31</sup> And the potential of these interactions extends beyond to the hope of a more positive and sustainable relationship with each other and with the land on which we all rely for

our continued survival. In the words of Elder Max Dulumunmun Harrison of the Yuin people:

One of the dreams we can share would be how we can heal the world and how we would go about that . . . One thing is for sure, we all breathe the same air, we all drink the same water. This is the message for everyone and to everyone! . . . If we heal ourselves, then we won't have to destroy the planet, because we will be a part of it.<sup>32</sup>

### Conclusion

In a world composed of relationships, the ultimate value of a law must be determined by how well it sustains, maintains and renews the connections between all life. It hardly needs to be said that, judged by this standard, much of Australian law enacted during two hundred years of colonisation has performed very badly. And in a place where time moves through life rather than life moving through time, progress and distance is not measured by the passage of linear years, but rather in the healing and resolution of relationships.

The gulf between Western and Indigenous understandings can seem vast, but it is not impassable. Aboriginal systems recognise that there is some value in reductionist and linear constructions, provided it is understood that there is a difference between the sum of what something is made of, and the substance of what something is. Without such an understanding, knowledge-disciplines – including law – run in narrow channels, creating a world replete with description but empty of meaning. But with the recognition of the existence of a universe far more than the sum of its parts comes the possibility of a meeting of opposites that does not lead to negative outcomes. As Yunkaporta writes:

When you are hunting you look for the places where opposites overlap, because you know that is where to find the highest concentration of life. This is a basic truth in nature – when opposites meet, a dynamic synergy occurs. Where high ground meets low ground, where sea meets land; all through nature, when opposites mix, they create something new that is better than either. It is not a compromise.<sup>33</sup>

Ultimately, if we are to sustain the connections between all life that in turn sustain all of us, we must all learn how to read the signs, to listen to country, and to escape the fixed binaries of colonisation. Perhaps the last word on this belongs to Palyku writer and artist, Sally Morgan:

The possibility of good or evil, love or hate, justice or injustice, cruelty or compassion, destruction or protection, exists in every moment. But if we do not learn to read the signs wisely, then like James Cook we will find ourselves out of our depth and heading for very dangerous waters. The balance which honours and nourishes the interconnect-edness of all life and ensures its ongoing creation is missing from our world . . . [we] have to choose what story we will tell, what story we will live, what story we will pass on to the children who will one day follow in our footsteps. As we make, so we are made . . . Far better then, to embrace a story which not only honours life, but returns it a thousandfold to all those who will come after us.<sup>34</sup>

### Notes

1. Sally Morgan, 'The balance for the world'" in Sally Morgan, Tjalaminu Mia and Blaze Kwaymullina (eds), *Heartsick for Country*, Fremantle Press, Fremantle, 2008, p. 270.

2. Ambelin Kwaymullina, 'Seeing the light: Aboriginal law, learning and sustainable living in country', *Indigenous Law Bulletin*, May/June 2005, vol 6, issue 11, p. 13.
3. It should be noted, however, that while reductionist thinking has, at least since the Enlightenment, heavily influenced Western knowledge disciplines, Western cultures do themselves contain both very old and very new traditions of holistic thought. Quantum physics, for example, has drawn conclusions about the nature of the universe that to some extent echo ancient Indigenous philosophies. See, for example, F. David Peat, *Blackfoot Physics*, Phanes Press, 2002.
4. Gladys Milroy and Jill Milroy, 'Different ways of knowing: Trees are our families too' in Sally Morgan, Tjalaminu Mia and Blaze Kwaymullina, *Heartsick for Country*, pp. 31–2.
5. For a discussion of research practices and Indigenous peoples from an Indigenous perspective, see Linda Tuhiwai Smith, *Decolonising Methodologies: Research and Indigenous Peoples*, Zed Books, London, 1999.
6. Ambelin Kwaymullina, 'Seeing the light', p. 12.
7. Bill Neidjie, *Gagudju Man*, JB Books Australia, 2002, p. 21.
8. Irene Watson, 'Kaldowinyeri – Munaintya in the beginning', *Flinders Journal of Law Reform*, vol. 4, p. 4. See also other work by the same author – 'Naked people's rules and regulations', *Law Text Culture*, vol. 4, 1998, p. 1 and 'Indigenous people's law ways: Survival against the colonial state', *Australian Feminist Law Journal*, vol. 8, 1997, p. 39.
9. Since history in a Western knowledge system has traditionally been constructed on a linear scale, the concepts of 'history' and 'time' are necessarily interlinked. For a discussion of the interconnection of history and time in Western intellectual traditions, see Smith, *Decolonizing Methodologies*, pp. 53–6.
10. For a discussion of the issues caused by an over-particular focus on 'traditional laws and customs', see Simon Young, *The Trouble With Tradition: Native Title and Cultural Change*, Federation Press, Sydney, 2008.
11. A dream experienced by Blaze Kwaymullina 2008. In Palyku systems, dreams are considered an important part of the interface between human beings and the broader universe. They are a means through which knowledge is communicated to human beings by the Ancestors, from whom all knowledge is ultimately sourced. We include the dream in this article as a Palyku primary source, and as a small illustration of a Palyku knowledge process. For other examples of the various ways through which Aboriginal peoples from across Australia communicate with country and the creative forces which shape it, see Morgan, Mia, and Kwaymullina (eds), *Heartsick for Country*.
12. Mussolini Harvey in John Bradley (translator and illustrator), *Yanyuwa Country*, Greenhouse Publications, Santa Clarita, CA, 1988, pp. xi–xii.
13. Leroy Little Bear, 'Jagged worldview colliding', in Marie Battiste (ed), *Reclaiming Indigenous Voice and Vision*, UBC Press, Vancouver, 2000, p. 78.
14. See Nungki Yununpingu, 'Hunting' in Peter McConchie (photographer and recorder), *Elders*, Cambridge University Press, Cambridge, 2003, p. 28.
15. See *Ngulak Ngarnk Nidja Boodja: Our Mother This Land*, Centre for Indigenous History and the Arts, University of Western Australia, Nedlands, 2000, p. 28.
16. For a discussion of Western notions of space in the Australian colonial context see William Lines, *Taming the Great Southland: A History of the Conquest of Nature in Australia*, Allen and Unwin, North Sydney, 1991. For an examination of the relationship between Western conceptions of time and the construction of the 'other', see Johannes Fabian, *Time and the Other: How Anthropology Makes its Object*, Columbia University Press, New York, 1983.
17. For an outline of the historical development of international law in relation to Indigenous peoples, including the range of justifications put forward for the annexation of Indigenous territory, see S. James Anaya, *Indigenous Peoples in International Law*, second edition, Oxford University Press, Oxford, 2004, pp. 15–48.
18. Deborah Bird Rose, *Nourishing Terrains: Australian Aboriginal Views of Landscape and Wilderness*, Australian Heritage Commission, Canberra, 1996, p. 17.
19. For an examination of the parallels between Indigenous understandings of time and quantum physics, see F David Peat, *Blackfoot Physics*, pp. 178–219.

20. Noel Nannup, 'Caring for Everything' in Morgan, Mia and Kwaymullina (eds), *Heartsick for Country*, p. 110.
21. Ambelin Kwaymullina, 'Foreword' in Morgan, Mia and Kwaymullina, *Heartsick for Country*, p. xi
22. David Mowaljarlai and Jutta Malnic, *Yorro Yorro: Everything Standing Up Alive*, Magabala Books, Broome, 2001, p. 5.
23. For a discussion of the seven sisters' stories, see Munya Andrews, *The Seven Sisters of the Pleiades; Stories From Around the World*, Melbourne, Spinifex Press, 2004.
24. For discussion of how Aboriginal narratives can be confused by singular approaches to truth, see Deborah Bird Rose, 'The saga of Captain Cook remembrance and morality' in Bain Attwood and Fiona Magowan (eds), *Telling Stories: Indigenous History and Memory in Australia and New Zealand*, Allen and Unwin, New South Wales, 2001, p. 61–79.
25. Ambelin Kwaymullina, 'Country and healing: An Indigenous perspective on therapeutic jurisprudence' in Greg Reinhardt and Andrew Cannon (eds), *Transforming Legal Processes in Court and Beyond: 3rd International Conference on Therapeutic Jurisprudence*, Australian Institute of Judicial Administration, Melbourne, 2007, p. 2.
26. Guruma Elders Group, Loreen Brehaut and Anna Vitenbergs (collectors and editors), *The Guruma Story*, Jukurrpa Books, IAD Press, Alice Springs, 2001, p. 46.
27. See Morgan, Mia and Kwaymullina (eds), *Speaking From the Heart*, for a collection of essays by Aboriginal people that deal with change and adaption in kin and family networks in the face of colonial trauma. For anthropological accounts of culture, change and survival in two different Aboriginal communities see Deborah Bird Rose, *Dingo Makes Us Human: Life and land in an Aboriginal Australian Culture*, Cambridge University Press, Cambridge, 1992; and Diane Bell, *Ngarrindjeri Wurruwarrin: A World That Is, Was, And Will Be*, Spinifex Press, Melbourne, 1998.
28. Wenten Rubuntja, in *The Land is Always Alive: The Story of the Central Land Council*, Central Land Council, Alice Springs, 1994, p. 67.
29. This has included two Law Reform Commission inquiries – the Australian Law Reform Commission, *The Recognition of Aboriginal Customary Laws*, Report No 31, 1986, Australian Government Publishing Service, Canberra, and the West Australian Law Reform Commission, *Aboriginal Customary Laws: The Interaction of Western Australian law with Aboriginal law and culture*, Project 94, September 2006. The recommendations of these reports remain largely unimplemented. Copies of the reports, as well as a summary of responses and outcomes, are available from the Australian Law Reform Commission website and West Australian Law Reform Commission websites at [www.alrc.gov.au/inquiries/title/alrc31/](http://www.alrc.gov.au/inquiries/title/alrc31/) and [www.lrc.justice.wa.gov.au/094g.html](http://www.lrc.justice.wa.gov.au/094g.html) respectively.
30. F David Peat, *Blackfoot Physics*, pp. 10–11.
31. Indigenous scholars – both within Australia and overseas – are developing Indigenous research methodologies and theoretical frameworks for the interaction of Western and Indigenous knowledge-systems. See, for example, Smith, *Decolonising Methodologies*, and Martin Nakata, *Disciplining the Savages, Savaging the Disciplines*, Aboriginal Studies Press, Canberra, 2007.
32. Max Dulumunmun Harrison, 'Healing' in Peter McConchie, *Elders*, pp. 7–8.
33. Tyson Yunkaporta, *Aboriginal Synergy: Indigenous Alternatives to Binary Oppositions*, 6 April 2006, <http://aboriginalrights.suite101.com/article.cfm/naturalsynergy> (accessed 21 May 2009).
34. Sally Morgan, 'The Balance for the World' in Morgan, Mia and Kwaymullina (eds), *Heartsick for Country*, p. 278.