

INDIGENOUS AS ‘NOT-INDIGENOUS’ AS ‘US’?: A DISSIDENT INSIDER’S VIEWS ON PUSHING THE BOUNDS FOR WHAT CONSTITUTES ‘OUR MOB’

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All of these labels just depended on how the official saw you... [i]t didn't make any difference to us Yanyuwa mob what the whites, the welfare and the police reckoned and wrote down in the long, ruled books. We lived with our mothers and relations the way all our generations had for thousands of years – hundreds of generations. I didn't know any [']half-caste['] kids when I was living with my mother and our people. We were all Yanyuwa.

Hilda Jarman Muir¹

I Introduction

In Australia, ‘Aboriginality’ is often defined by people in constrictive ways that are heavily influenced by the coloniser’s epistemological frameworks. An essential component of this is a ‘racial’ categorisation of peoples that marks sameness and difference, thereby influencing insider and outsider status. In one sense, this categorisation of people acts to exclude non-aboriginal ‘others’ from participation in pre-invasion indigenous ontologies, ways of living that may not have contained such restrictive identity categories and were thereby highly inclusive of outsiders. One of the effects of this is that aboriginal peoples’ efforts for ‘advancement’ – either out of ‘disadvantage’ and/or towards political independence (ie, sovereignty) – become confined and restricted by what is deemed possible within the coloniser’s epistemological frameworks. This is so much so that aboriginal people are at risk of only reinforcing and upholding the very systems that resulted in their original and continuing dispossession.

In this paper I will draw upon my experiences and knowledge of the Yanyuwa aboriginal people’s laws and history in an effort to problematise the criteria for ‘aboriginality’ in Australia. I will focus particularly on the legal definition of Aboriginality and reveal its inherent colonial racial criteria and purpose. I will contrast this with Yanyuwa conceptions

of ‘aboriginality’ which will reveal their non-rationally exclusive nature. In doing so, I seek to contest both the Australian legal construction of ‘Aboriginality’ as well as the effects that it has on First Nations peoples’ construction of their own (legal) identities.

II A Note on Language Use

Before I position myself in relation to what follows, I would like to say a few things about my use of language in this paper. I wish to problematise the use of the English language in the Australian context and point to its reinforcement of colonial power structures. In order to do this, certain proper nouns will be given a lower case letter instead of the usual uppercase first letter. And as I write this, I am already faced with the resistance to my approach as Microsoft Word reinforces the Australian hegemony by supposedly correcting my apparent misuse of lower case letters.

My intention is to use lower case letters for proper nouns and initially make a play on the use of the word ‘proper’. In un-capitalising the proper nouns I will be suggesting that there was nothing ‘proper’ about how these names came to predominate in this land called Australia (sic); nothing proper about how these names were super-imposed on a landscape that was already named; nothing proper about how people who claimed to be the epitome of civilised beings conducted themselves in a most uncivilised manner when they came to this land mass; nothing proper about how these people failed to act in accordance with being a ‘proper’ (civilised) guest; nothing proper about how they didn’t ‘wipe their shoes’ when they came into the new host’s domain and brought all manner of diseases that decimated aboriginal populations; and nothing proper about how these people usurped the hosts’ position and supplanted themselves as the new

and supposedly more legitimate hosts. Their legitimacy is therefore under question.

Furthermore, in using 'capitalise' as an intransitive verb where it means to 'profit by' or 'take advantage of', the de-capitalising also functions as a device to counter the 'profit'-making at the expense of aboriginal peoples' interests (ie land, family, ways of being in the world). Additionally, using 'capital' in its adjectival form where it means 'principal' ('constituting or belonging to the highest category'), the de-capitalising functions as a decolonising gesture that seeks to at least question the position of white power and privilege as being the centre from which all things (negatively) 'differ'.² And lastly, using capital as a noun, where it means 'material wealth' (being equated with global capitalism that is preoccupied with the self-interested and exploitative accumulation of material wealth) the de-capitalising again functions as a decolonising endeavour that aims at bringing non-capitalist indigenous interests to the fore.

This "decolonial turn"³ away from and against the trajectory of coloniality⁴ is not enacted without contradiction. The reader will see a number of these in the paper. But such contradictions shouldn't be taken as negating the decolonial movement or rendering it ineffective. Rather, these *apparent* contradictions provide insight into the great extent to which colonial frameworks have ingrained themselves into our lives. They provide insight into just how hard it is to enact decolonial resistance while one is so firmly rooted in colonial epistemologies. In the revealing of their presence, there then arises the possibility for the construction of a new language that strives to become more reflective of the reality in which it seeks to engage.

One particular anomaly that the reader will notice throughout this paper is a seeming contradiction in both the use and contestation of the word "aboriginal". This colonially imposed word may be said to have two different usages: a social and a legal usage. When people identify themselves with this word, they are often times using it as a means to refer to their own First Nations group, and all that is associated with this group's epistemologies, ontologies and 'legal' jurisdictional realities. However, when this same term is used in Australian law it is referring to something completely different, as highlighted below. I would like to distinguish these two senses of the word by using the uncapitalised form, the adjectival form of the word, to allow for its ability to 'point' to the First Nations group, albeit in an

imperfect way. The other form of the word is the capitalised proper noun form "Aboriginal", which I associate with the colonial legal construct that will be the focus of this paper.

III Positioning this Paper

I was born in the southern part of the northern territory in Arrente country in a little place that, in very recent times, has been called Alice Springs. But despite being conceived and born in the desert I was sustained and grew into manhood mostly in the Larrakia country of the northern tropics in a place now known as Darwin. My mother's mother was stolen from her Yanyuwa country and family in the Gulf of Carpentaria, but against the overwhelming forces that sought to keep her disconnected from her family and country, myself and a number of others helped steal her back home at various times. I wear the external colour of privilege in my light skin, but I grew up a life relatively devoid of privilege. I eventually studied law at the University of Queensland, but only after 'studying' law in Yanyuwa country. I never really practiced (Australian) law, but I am continually bound by it being practiced upon and through me. I did practice Yanyuwa law and I struggle continually to have it bind me. So I am Aboriginal ... officially, but I am not Aboriginal real-ly. I am Yanyuwa, most definitely and real-ly, but not officially. Race marks me and is sought (by others) to become me, but I'm in a continual struggle to resist its imposition and its insidious affects.

IV 'Race' within Australian Law

In Australia, race is so entrenched into the legal and social system that one could almost be excused for failing to acknowledge that race has for many years been relegated to the annals of pseudo-scientific history along with phrenology, eugenics and humorism. Despite years of archaeological,⁵ anthropological,⁶ and now genetic research,⁷ which have shown us that race is not a biological nor physical reality (but more of a social and political fantasy), we still live our lives heavily influenced by its apparent reality.

I want to be very careful here not to suggest that race is therefore without influence on the daily lives of people, in the ways that 'different' people regularly interact with each other. I am all too aware of white privilege and the power that it asserts over black bodies.⁸ My suggestion here is more of a recognition that racialised thinking is akin to a kind of mental illness, being a delusion upon which one acts. Although

the objects of the delusion are in many senses not real, the manifestation of one's interaction with them is completely real. The effects of acting in the world in accordance with a race delusion is the stuff of racial taunting, racial violence and the control of racial 'others'. It is a very 'bad trip'.

Australia's founding legal document, the *australian constitution*, has race firmly entrenched within its text. Section 51(xxvi) of the *constitution* allows the federal parliament to make laws for 'the people of any *race* for whom it is deemed necessary to make special laws' (emphasis added).⁹ There is even a *racial discrimination act 1975* (cth) ('rda') that seeks to benevolently address something that technically cannot exist.¹⁰ Is it any wonder that for aboriginal people whose 'race' continues to be the subject of legal definition, administration and control, that there is an overwhelming sense in which elements of racial thinking are a normalised part of identity formation?

Aboriginality has gone through more than 67 different definitions¹¹ since the colonisers arrived, but consistent throughout all of these definitions was the will to control these 'different' people. Protectionist legislation like the *aboriginals protection and restriction of the sale of opium act*¹² enabled the control of such things as where people lived, where they could travel, who they could marry and their utilisation in the labour force. One may well ask, do current definitions of aboriginality have similar elements of control? If so, how does this control operate and what are its effects?

At the federal level, there are approximately 65 different pieces of legislation in which the word 'race' is found. In approximately 20 of these laws, reference is made to the 'Aboriginal race of Australia'. Whilst these 65 different pieces of legislation enable the protection and provision of beneficial measures to all races (whatever that may be), the 'Aboriginal race of Australia' is the only named race in these laws. This legal category of Aboriginality has been further clarified by judicial pronouncement to be people who:

1. Are descended from the aboriginal peoples of australia,
2. Self-identify as an australian aboriginal, and
3. Are accepted as an aboriginal by a community of aboriginal peoples.¹³

At the heart of this definition of Aboriginality is the racially-aligned criterion of 'descent'. Descent is the feature that links aboriginality to the biological characteristic of genetic

lineage. This aboriginality is therefore bound up with biological descent from the aboriginal people who lived on this continent pre-invasion. At first glance this appears self-evident, but I wish to problematise the em-bodied essentialisation of Aboriginality by later contrasting it with what I consider to be more important ontological considerations. However, before I do this, I want to follow on with considering how this legal identity construct functions to enable the colonial control of this constructed identity and the resultant effects of this control.

V The Relationship between Race and Special Measures

Presently, one of the major reasons for the existence of this legal identity category "Aboriginal" is for the provision of special measures in accordance with the *international convention on the elimination of racial discrimination* ('icerd')¹⁴ via the *rda*. These special measures allow for an effective positive discrimination on the basis of race so as to alleviate recognised disadvantage.¹⁵ Special measures often come in the form of additional resources like those provided under the federal government's 'closing the gap' measures. Ironically however, in order to address disadvantage, these measures reinforce the use of the same kind of racial categories that not only originally led to the disadvantage, but that social scientists and geneticists tell us are an outdated and inappropriate way of categorising people.

If one looks at the ideas surrounding special measures one can see that 'Aboriginality' is being used as a means to assimilate that very difference into a non-Indigenous norm. How does this work? Special measures are only to be used up until they relieve the disadvantage that they were originally put in place to overcome.¹⁶ At this point, the special measures are deemed to have achieved their purpose and are no longer justified in continuing. One of the indicators of this is the achievement of standard indicators of wellbeing, defined in accordance with the measures of health and wellbeing of the dominant culture. What this means at present is that the category of 'Aboriginal' as a legal and administrative identity is used as a means of controlling the homogenisation of heterogeneous indigenous groups for the purpose of having them live lives in accordance with indicators of well-being that they have not had any part in creating; indicators of well-being that may be said to conflict with and exclude some aboriginal peoples' indicators of well-being.¹⁷ Assimilation by stealth?

One may then ask, what happens to the definition of aboriginality when this parity has been achieved? Would there still be a need to have the definition in place after the special measures are no longer in place? One could say that the definition still functions as a means by which parliament can use the race power of the *australian constitution*¹⁸ to assert a level of non-beneficial, or paternalistic 'beneficial', control over aboriginal people, as was exercised in the hindmarsh island bridge matter¹⁹ and the northern territory intervention.²⁰

The recent proposed amendments to the *australian constitution* seek to ensure that this control is not used to indigenous people's detriment. However, the proposed amendments nevertheless still reinforce the use of racial categories to distinguish people (ie, 'Aboriginal and Torres Strait Islander peoples' (sic)).²¹ As stated earlier, this is problematic because it reproduces, in australia's foundational legal document, ideas that have no basis in reality. And if they are in any sense 'real', as a socio-political reality (or fantasy), they should not be legitimised and reified in legal documents. The high court of australia has already dismissed one fundamental fiction upon which our society had been based (*terra nullius*),²² although the effects of undoing this fiction have not brought indigenous people the justice that was sought. Should our greater political and legal system also be concerned with ridding itself of this other equally insidious fantasy of 'race'?

VI 'Race' and Epistemological Colonisation

One effect of constructing aboriginality in the way that it has been defined in the australian legal system is that it creates a problematic binary between aboriginal, and its silent opposite, non-aboriginal. This binary is predicated on the homogenisation of the several hundred distinct First Nations aboriginal peoples on the basis of an imposed race-based criteria. This racially-based essentialising of a pan-aboriginality serves to maintain the colonial logic of subordination and control. Part of this logic is revealed when one interrogates the nature of the binary that is constructed between aboriginal and non-aboriginal. According to Jacques Derrida, all binaries exist within a 'violent hierarchy' where one party to the binary holds a dominant position in relation to the other party.²³ In the Aboriginal/non-Aboriginal binary, the non-Aboriginal party retains the dominant position. As such, much that is associated with Aboriginal people retains a subordinate positioning, particularly those elements that are not assimilated and exploited by the non-Aboriginal party.

This subordinate position entails a negative positioning of Aboriginal lives, peoples and ontologies; a differentiation from the more valued non-Aboriginal norm and an exclusion from being able to influence this norm.

Another problematic aspect of the binary between non-Aboriginal and Aboriginal is revealed in the ways that it is resisted by aboriginal peoples. One such way that aboriginal people have resisted this essentialised (pan)aboriginal/non-aboriginal binary has been through the self-identification with one's language group. Therefore people will say things like '...is descended from the Gagadju people...', '...a Larrakia man...' and '...comes from the Arrernte people...'. If one looks at *Black Politics*²⁴ for example, one can see that the overwhelming majority of the biographies of the 30 indigenous interviewees who contributed greatly to the content of the book - make reference to the original nation with whom these people are associated. I would fall short of suggesting that this type of self-identification is a conscious means by which people resist race-ist pan-aboriginal essentialism. However, it is nevertheless an assertion of an aboriginal-centred way of identifying one's self which seeks to counter colonial categories of self which homogenise the several hundred different australian aboriginal groups into one mega-group. In doing so, it has the potential effect of resisting one of the fundamental elements of the colonial category of 'Aboriginal' (sic): the very idea that there is a biologically essential component to aboriginality.

I will talk more about the detail of this soon, and about how this resistance to racially-based identity criteria is enacted. What I would seek to emphasise now is that despite these kinds of acts of resistance, aboriginal people are continually bound by overwhelmingly dominant colonial frameworks that emphasise racially-oriented thinking.

One glaring example of this is with the indigenous group who, one may say, represents one of the most publicly organised and colonially opposed positions in the continent: the national congress of australia's first peoples ('*ncafp*').²⁵ The *ncafp* take a strong stance in pursuing a position based upon the continuing sovereignty of indigenous australians.²⁶ This stance is reflective of a position which holds that indigenous people did not cede their sovereignty over the various parts of the australian continent, nor was this sovereignty extinguished by the coloniser's arrival and entrenchment. This is a strong statement of colonial resistance - a strong *political* statement of colonial resistance. However, there is a

sense in which the level of *epistemological* resistance²⁷ has not matched the political resistance of the *ncafp*. If one looks at the criteria for membership of the congress, one can see that the colonially-imposed, pan-aboriginal and racially-centred definition of aboriginality is reinforced by the *ncafp*. In order to be a member of the congress one must:

1. be of aboriginal/torres strait islander descent,
2. self-identify as aboriginal/torres strait islander, and
3. be accepted as an aboriginal/torres strait islander by an aboriginal/torres strait islander community.²⁸

Despite its resistance to the power of the coloniser in its assertion of continuing sovereign rights, the congress demonstrates just how overwhelming that colonisation is, how ingrained that colonisation is, and how much the coloniser's epistemologies have become a part of us. This is so much so that we ironically now see our very own decolonisation within frameworks of understanding that reinforce colonial discourses. In adhering to such definitions, the obvious question to ask then becomes 'to what extent will our own efforts at achieving "advancement" end up replicating the very epistemologies, cultural practises and institutions of the coloniser?' I'm not suggesting here, as Pearson warns us, that to be aboriginal, to resist colonisation, we must adopt the exact antithesis of colonial practices and knowledge.²⁹ Rather, what I am suggesting is that we be fully aware of where they have originated, how they function, and their impacts on our thoughts and actions. And where they are seen to limit thought and action, then they should become the subject for close analysis in order to ensure that they do not constrain our efforts.

VII Resisting 'Race', Resisting Colonisation

I want to now go back to a point that I earlier deferred. I stated previously that aboriginal peoples' identification of themselves in accordance with their original nation (and not as 'an aboriginal') provides the possibility of a resistance to the race-based identity categories of the coloniser. How is this so? In essence, 'race' is not an aboriginal concept. Race is a concept that was brought to this continent by the colonisers. Race is as foreign in this continent as the feral animals that the colonisers brought here, and it has caused as much, if not more, destruction here as they have. In Yanyuwa, there is no word that equates to race. Nevertheless race has now become a concept *for* aboriginal people and *of* aboriginal people. Aboriginal people have been raced and made racial.

Aboriginal people have been forced to perform race and been forced to think race. However, aboriginal practices that resist the (pan)aboriginal/non-aboriginal binary – aboriginal ways of relating to people that do not neatly play these racial categories – may shed light on how to eradicate this feral colonial legacy from our legal and social landscape.

Yanyuwa practices of customary adoption³⁰ are an example of this non-adherence to racialised thinking, and in their very operation they point to different criteria for inclusion into Yanyuwa-*neity*; a different criteria for who is a part of 'our mob'.³¹ In Yanyuwa customary adoption practices there are two markers of an outsider's inclusion within Yanyuwa society: one comes in the form of a name that situates a person within a social context, the other comes in the form of a name that further situates a person within the landscape. The former name is a kinship name that determines how a person is to relate to every other person in the Yanyuwa social world (and aboriginal worlds beyond Yanyuwa country). The kinship name, or *nda-ngalki*,³² will usually be one of the 16 subsection names or its equivalent, locating a person at a certain 'generational level' within one of the four semi-moieties.³³ When one has moved from being an outsider to then having one of these names, one is then given a position (a relational term) in Yanyuwa society that influences how they are to appropriately relate to all others in the Yanyuwa social environment.

When one has performed one's social role properly, one may then be given another name which will determine how a person will relate to the totality of Yanyuwa country (the physical and spiritual environment). This name is referred to as *nda-wunyingu*,³⁴ or one's 'bush name', and relates one (in substance) to the land, including things *on* the land and things *in* the land (including original ancestors). The conferral of this name may be said to be a more 'deep' inclusion into Yanyuwa society.

It is quite common for people who have spent a small amount of time in a country like Yanyuwa country, where traditional kinship systems are still highly influential on everyday social interactions, to be given a kinship name. There is often a feeling of deep gratitude, and of humility, in response to this hospitable gesture to accept them into their family. However, such a gesture of hospitality is akin to an invitation to 'come inside'; to come inside the Yanyuwa world. It is akin to an invitation to 'make yourself at home', but as a guest. However, when one is given a bush name it

is more akin to saying 'here are a set of keys to the house, it's ours together'. In this way, the once outsider is given the rights and responsibilities associated with being a host. When one then performs both one's social and environmental roles appropriately, one may be said to be fully Yanyuwa, or 'proper Yanyuwa'. This is literally what Yanyuwa Elders say when a once-outsider has, for example, participated in initiation ceremonies where, as a necessary pre-requisite, and in the very activities of the ceremony, one has performed both their social and environmental roles properly (on Yanyuwa terms). At this point the customary adoption may be said to be more complete.

A major point of significance in this process of customary adoption is that it applies to aboriginal people *and* non-aboriginal people alike.³⁵ In applying to both, it reveals the fact that criteria other than race, or other inherent embodied 'substances', are in operation in determining one's Yanyuwa-ness. In a broad sense, this criteria relates to the dual relational realms that are considered important for Yanyuwa people: appropriate relationships amongst people and appropriate relationships with the greater environment. The criteria underlying these relationships are echoed in Bird-Rose's ethical principles of decolonisation: relationality, mutuality, connectivity, and an engaged responsiveness in the present.³⁶ This is by no means the exhaustive list of criteria for inclusion into Yanyuwa-ness, but, importantly, they point very strongly away from racial criteria and more towards *ontological* matters as founding one's inclusion as one of 'our mob'; as Yanyuwa. They point to the pre-eminence of not 'indigenous knowledge', but Yanyuwa knowledge', and by extrapolation, Meriam knowledge, Pitjantjatjara knowledge, Tangane-kald knowledge, Guugu Yimithirr knowledge, etc. This affirms the pre-eminence of the colonially-uninfected epistemologies and ontologies of the different First Nations peoples of the place called Australia in determining who is in and who is out or who is one of our mob and who is not.³⁷ This emphasis points to the pre-eminence of the canon of thought of these many different peoples that had existed and developed over tens of thousands of years and were contained in the song cycles and associated stories.³⁸ The fundamental 'philosophical' principles of this true Australian canon, for lack of a better word, remain relatively uninterrogated for their value in producing valued knowledge in the academy and beyond, and continue to be cast as the lesser stuff of mythology, culture and exotic spirituality. A real reconciliation in Australia also involves engaging with this canon because

the "country" (the totality of being/s in this place) has also suffered the effects of colonial violence.

VIII Post-race ... proceed with care

One of the challenges in pursuing a cautious post-race agenda for the disentanglement of our lives from problematic fantasies of race is how to draw upon the lessons of Yanyuwa-like knowledge and ways of being so as to apply them outside of Yanyuwa country. In other words, how can a greater decolonising project be effected on the basis of deconstructing essentialised categories of race and reconstructing different ('more real') bases of group formation? How can 'our mob' be defined on our terms, to achieve our ends and not reproduce and reinforce deep-rooted and destructive colonial frameworks? As aboriginal people only make up roughly two and a half per cent of the Australian population, if we confine the striving and realisation of lesser-colonially-effected aboriginal aspirations to only people from certain descent lines, then the chances of their ever influencing dominant norms are greatly decreased. So should we ask ourselves, 'what is fundamentally more important, the biological descendants of the continent's first inhabitants (and their empowerment, colonially-influenced or otherwise), or those peoples' ways of being in the world?' If we lean too much towards the former then we will be seduced by race fantasies and have our lives controlled by neo-colonial interests that are served by defining us in those artificially colonial terms. If we lean towards the latter then the emphasis shifts from *who* we are to *how* we are in relation to each other and the world around us. The possibility for having more people work together for the realisation of common values is enhanced and therefore the influence on the dominant norm is potentially greater. The strength of this approach is that it is based upon enduring principles that have sustained human life on this continent for thousands of years (the "true Australian canon") and also the very practical reality of allowing for greater numbers of people to be a part of this 'mob'.³⁹ This is not to suggest that 'non-aboriginal' people can be 'aboriginal'. Nor is it to suggest that 'non-aboriginal' people can be 'allies' of aboriginal people. Let us get rid of this racially-entrapped word altogether - or at least let us get rid of its colonial racial criteria. Let us not reinforce its homogenising effect with the use of capital 'A' in 'Aboriginal' (sic), which cements the colonial racial intent by giving this newly-created homogenised group the status of a proper noun of the type that we use to refer to nations of peoples like Germans, English or Russians. There

is no Aboriginal nation. If there is anything nation-like about aboriginal peoples' jurisdictions then it is concerned with the Turrbul nation, the Jagera nation, the Yorta Yorta nation, the Larrakia nation etc. Words like 'Aboriginal' (sic) only help to keep like-minded and like-being people apart, preventing them from combining their efforts and increasing their power to achieve mutually agreeable ends.

In pursuing such decolonial ends, we must be cognisant of the need to still address pressing needs like many of those that come under the banner of 'indigenous disadvantage'. But how can this disadvantage still be addressed without reinforcing and reproducing racial fantasies? The paternalistically imposed strategic essentialist⁴⁰ approach of special measures can be beneficial in many respects, particularly with regards to the administratively expedient way that it can target resources to address 'indigenous disadvantage'. However, this approach can all too easily lead to the problematic epistemological colonisation outlined above. A creative and continuing discussion needs to be had on how we may differently identify this disadvantage in order that resources can be targeted at alleviating that disadvantage. John Gardiner-Garden identified similar issues (but from outside of a decolonising endeavour):

'Aboriginal' is effectively being used as a surrogate for something else, a poor proxy for 'people with the needs which a piece of legislation is trying to address'. ... Another approach entirely may be required. Perhaps these difficulties will be alleviated only when the surrogate/proxy term is abandoned and the 'something else' is spelt out. If legislation is intended to benefit people with a particular need, why not define the need?⁴¹

From my de-colonial stance, I would go somewhat further than Gardiner-Garden and state that 'Aboriginal' is a category of disadvantage that entitles one to the receipt of special measures for the alleviation of *that very disadvantage itself* of being 'Aboriginal'. This is not to say that all aboriginal people are disadvantaged in reality. Like other recognised categories of disadvantage (for example unemployment, homelessness and being uneducated) where the disadvantage-alleviation measures are aimed at providing the negation of those categories (ie, employment, housing and education), 'Aboriginal' is similarly a category of disadvantage whose disadvantage-alleviation measures are aimed at achieving its negation (non-Aboriginal - 'normal', assimilated, Australian - aboriginal no more). In an effort to spell out that 'something

else' to which Gardiner-Garden refers, more discussion needs to be had around two broad areas:

1. The standards of living that are seen as reflective of 'living well' in this place called Australia. These indicators of wellbeing should not only *not* be silent to aboriginal ontologies that have seen well-functioning communities live sustainably in this place for many thousands of years, but they should seek an active inclusion of such ways of being in this place, and;
2. The means by which disadvantage (in relation to the above indicators of wellbeing) is both characterised and sought to be alleviated. This discussion needs to be predicated on the erasure of racial discourse from the law, while also ensuring that no further disadvantage be brought to bear on the people who are presently racially classified.

The special measures approach to dealing with aboriginal peoples in Australia is a product of its time, but it is now due for reconsideration. This way of providing 'benefit' to aboriginal peoples came about in 1975, after a long period where explicitly race-ist laws and policies were the norm for controlling aboriginal peoples' lives. In a virtual strategic essentialist sense, the rda put in place a similar racial discourse, but one that was aimed at using the essentialised category of 'the Aboriginal race of Australia' to achieve apparently more humane outcomes than pre-1975 legislation. But the strategic essentialist approach envisaged by special measures legislation is an assimilatory colonial regime in which aboriginal peoples no longer enact aboriginal ontologies; where being aboriginal becomes a way of becoming not-aboriginal.

IX Conclusion

Ultimately, the phantasm of race continues to influence the operation of Australian society in fundamental ways via legal fictions that maintain and legitimise people's race-deluded engagement with the world. An analysis of Yanyuwa practices of customary adoption serve a dual purpose of both highlighting the powerful effects of the epistemological colonisation that creates and maintains this delusion, as well as possible ways forward for their decolonisation.

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 - 2 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) 75-88; Ramon Grosfoguel, 'Decolonizing Post-Colonial Studies and Paradigms of Political-Economy: Transmodernity, Decolonial Thinking, and Global Coloniality' (2011) 1(1) *Transmodernity: Journal of Peripheral Cultural Production of the Luso-Hispanic World*, 1.
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 - 4 Anibal Quijano, 'Coloniality and Modernity/Rationality' (2007) 21(2-3) *Cultural Studies*, 168.
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 - 6 See, eg, Conrad Phillip Kottak, *Anthropology: Appreciating Human Diversity* (McGraw-Hill Higher Education, 2012) and Alan R Templeton, 'Human Races: A Genetic and Evolutionary Perspective' (1998) 100(3) *American Anthropologist* 632.
 - 7 See, eg, Human Genetics Society of Australasia, Submission G050 to the Australian Law Reform Commission, *Protection of Human Genetic Information*, 14 January 2002, 66; Robert J Sternberg, Elena L Grigorenko and Kenneth K Kidd, 'Intelligence, Race, and Genetics' (2005) 60(1) *The American Psychologist* 46; Lynn B Jorde and Stephen P Wooding, 'Genetic Variation, Classification and "Race"' (2004) 36(11) *Nature Genetics* 28; Nadia Abu El-Haj, 'The Genetic Reinscription of Race' (2007) 36 *Annual Review of Anthropology* 283.
 - 8 See, eg, Richard Dyer, *White* (Routledge, 1997); Ruth Frankenberg, *Displacing Whiteness: Essays in Social and Cultural Criticism* (Duke University Press, 1997); Ghassan Hage, 'White Nation: Fantasies of White Supremacy in a Multicultural Society - Response to the Reviews' (2000) 70(3) *Oceania* 276; Aileen Moreton-Robinson (ed), *Whitening Race: Essays in Social and Cultural Criticism* (Aboriginal Studies Press, 2004); Cheryl I Harris, 'Whiteness as Property' (1993) 106(8) *Harvard Law Review* 1707.
 - 9 *Australian Constitution* s 51(xxvi).
 - 10 The *rda's* use of 'colour and national or ethnic origin' is less problematic.
 - 11 John McCorquodale, 'The Legal Classification of Race in Australia' (1986) 10(1) *Aboriginal History* 7.
 - 12 *Aboriginals Protection and Restriction of the Sale of Opium Act 1897* (Qld).
 - 13 *Commonwealth v Tasmania* [1983] HCA 21 ('tasmanian dam case').
 - 14 *International Convention on the Elimination of Racial Discrimination ('ICERD')*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969).
 - 15 *ICERD* art 1(4).
 - 16 *ICERD* art 1(4).
 - 17 See, eg, Jon C Altman and Sean P Kerins, *People on Country: Vital Landscapes, Indigenous Futures* (Federation Press, 2012). Altman and Kerins offer an aboriginal-influenced reconceptualisation of what is considered to not only be 'work' per se, but extremely valuable work. Also, see Jonathan Kingsley, Mardie Townsend, Claire Henderson-Wilson and Bruce Bolam, 'Developing an Exploratory Framework Linking Australian Aboriginal Peoples' Connection to Country and Concepts of Wellbeing' (2013) 10(2) *International Journal of Environmental Research and Public Health* 678. This paper offers a reconceptualisation of notions of health as being concerned with communal interests and not wholly individualistic in nature.
 - 18 *Australian Constitution* s 51(xxvi).
 - 19 *Kartinyeri v Commonwealth* (1998) 195 CLR 337.
 - 20 *Northern Territory National Emergency Response Act 2007* (Cth).
 - 21 Expert Panel on Constitutional Recognition of Indigenous Australians, *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report of the Expert Panel* (Commonwealth of Australia, 2012).
 - 22 *Mabo & Ors v Queensland (No 2)* (1992) 175 CLR 1.
 - 23 Alan Bass and Jacques Derrida, *Positions* (Athlone Press, 1981) 41.
 - 24 Sarah Maddison, *Black Politics: Inside the Complexity of Aboriginal Political Culture* (Allen & Unwin, 2009).
 - 25 See the *ncafp* website at: National Congress of Australia's First Peoples, *A National Voice* (2014) <<http://nationalcongress.com.au>>.
 - 26 National Congress of Australia's First Peoples, *Congress Key Issues: Constitutional Reform* (2012) <<http://nationalcongress.com.au/wp-content/uploads/2012/01/Congress-Key-Issues-Constitutional-Change.pdf>>.
 - 27 Walter D Mignolo, 'Epistemic Disobedience, Independent Thought and Decolonial Freedom' (2009) 26(7-8) *Theory, Culture & Society* 159.
 - 28 Additionally, one has to be 18 years of age, which aligns with

- western notions of adulthood. See, eg, National Congress of Australia's First Peoples, *Membership Application for Individuals* (2013) <<http://nationalcongress.com.au/wp-content/uploads/2013/03/MembershipForm13.pdf>>.
- 29 Noel Pearson, *Our Right to Take Responsibility* (Noel Pearson and Associates, 2000) 63.
- 30 The customary adoption that I refer to here is not actually customary adoption at all; however I use the word for convenience in the present paper. See the following paper in which we talk about 'customary adoption' processes from a decolonial perspective in which it is described as being akin to visa and citizenship processes of nations: Elizabeth Mackinlay and Gordon Chalmers, 'Remembrances and Relationships: Rethinking Collaboration in Ethnomusicology as Ethical and Decolonising Practice' in Katelyn Barney (ed), *Collaborative Ethnomusicology: New Approaches to Music Research between Indigenous and Non-Indigenous Australians* (Lyrebird Press, in press).
- 31 See, eg, Yin C Paradies, 'Beyond Black and White: Essentialism, Hybridity and Indigeneity' (2006) 42(4) *Journal of Sociology* 355. Paradies alludes to customary adoption as a way of breaking down the (pan)indigenous/non-indigenous binary by establishing a more 'inclusive approach to Indigeneity' (sic). However, Paradies' clinging to the word 'indigenous' limits his ability to free himself from the strictures of the coloniser's racial framework. He eventually encounters problems with this when he suggests that there is no essential (pan)indigenous identity and that indigenous people are diverse in nature. He uses circular reasoning (*petitio principii*) to do this by already locating the group within which he is identifying this diversity; a group that he already categorises together along racial grounds (biological descent). In other words, prior to observing the diversity inherent in his indigenous population, he has already separated this group from a non-indigenous population in order to be able to observe this diversity. It is my contention that he does this on the basis of the indigenous people being pre-categorised racially; categorised on the basis of their being descended from the people who lived in Australia prior to invasion.
- 32 Jean Kirton and John Bradley, *Yanyuwa Wuka: Language from Yanyuwa Country: A Yanyuwa Dictionary and Cultural Resource* (Unpublished, 1992) 62.
- 33 Elizabeth Mackinlay, 'Maintaining Grandmothers' Law: Female Song Partners in Yanyuwa Culture' (2000) 23 *Musical Australia* 76.
- 34 Kirton and Bradley, above n 32.
- 35 See, Kathryn A Seton and John J Bradley, "'When You Have No Law You Are Nothing': Cane Toads, Social Consequences and Management Issues' (2004) 5(3) *The Asia Pacific Journal of Anthropology* 205; David S Trigger, 'Indigeneity, Fertility, and What 'Belongs' in the Australian Bush: Aboriginal responses to 'Introduced' Animals and Plants in a Settler-Descendant Society' (2008) 14(3) *The Journal of the Royal Anthropological Institute* 628.
- 36 Deborah Bird Rose, *Reports from a Wild Country: Ethics for Decolonisation* (University of New South Wales Press, 2004) 213-214.
- 37 It is my suggestion here that being physically colonised does not necessarily equate to being epistemologically colonised and that therefore there is no suggested necessary parallel between remote living and 'colonially-unaffected values' or between urban living and epistemologically colonised minds. In this way, I am looking beyond the *expression* of ontologies (ie, 'traditional' forms of cultural expression) and am instead pointing to the fundamental principles that underlie these cultural expressions: fundamental principles that do not depend upon living in the bush for one to therefore embody them.
- 38 John Bradley, *Singing Saltwater Country: Journey to the Songlines of Carpentaria* (Allen & Unwin, 2010).
- 39 Australia's First Nations Political Party seems to be a political party that is based upon these types of ideas. This Party's policy rhetoric is an ethnically-inclusive one that seeks to privilege the ontologies of this continent's 'original' peoples. They field candidates at elections who are indigenous and not indigenous: Australia's First Nations Political Party, *AFNPP* <<http://firstnationsaustralia.weebly.com/index.html>>.
- 40 Gayatri Chakravorty Spivak, 'Subaltern Studies: Deconstructing Historiography' in Ranajit Guha and Gayatri Chakravorty Spivak (eds) *Selected Subaltern Studies* (Oxford University Press, 1988) 13.
- 41 John Gardiner-Garden, 'The Definition of Aboriginality' (Research Note 18, 2000-01 *Parliament of Australia*, 2003) 17.