

1998

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Recommended Citation

Watson, I., Naked peoples: rules and regulations, *Law Text Culture*, 4, 1998, 1-17.

Available at: <http://ro.uow.edu.au/ltc/vol4/iss1/2>

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Abstract

I am writing about the law of this country now called Australia. Kaldowinyeri [the creation time or the dreamtime], in the beginning, the ancestors come to know law. The law is naked like the land and its people, it is raw. Raw law is unlike the colonial legal system which comprises of layer upon layer of rules and regulations. The law is raw. Law is birthed by the creation. And like the birthing of the people, the law was born naked. All law was at Kaldowinyeri naked. The law is filled with the spirit of creation. It is a law of the land for the peoples to know and to live by as the ancestors have.

Naked Peoples: Rules and Regulations

Irene Watson

I am writing about the law of this country now called Australia.¹ *Kaldowinyeri* [the creation time or the dreamtime], in the beginning, the ancestors come to know law. The law is naked like the land and its people, it is raw. Raw law is unlike the colonial legal system which comprises of layer upon layer of rules and regulations. The law is raw. Law is birthed by the creation. And like the birthing of the people, the law was born naked. All law was at Kaldowinyeri naked. The law is filled with the spirit of creation. It is a law of the land for the peoples to know and to live by as the ancestors have.

Raw law, indigenous law, unlike other legal systems, exists in all matter. It emanates love, caring and sharing, respect for all things. The law guides and teaches us. The law teaches us about the interrelationship of all things and of humanity's responsibility to act as custodians of the natural world. We have an intimate relationship to our *ruwe* [land], she is our mother. The law teaches us to respect and to treat the earth beneath our feet with love and reverence, it is the mother we walk upon.

My ancestors were naked peoples, and at some point in the history of humanity we were all naked, our beginnings in *Kaldowinyeri* were as naked as the law and the land. From birth the ancestors lived naked and in death their naked bodies were rolled in a woven grass mat, to be later buried.

There are no words that I have come across in our indigenous languages² to describe nakedness. Prior to the colonists' invasion of our territories there was no reflection of our nakedness. The reflection of nakedness came with the other, the clothed colonising peoples. Now there are few who physically walk the land naked. Those who remain undressed of the modern world, and its views of law, time and space, are the few who still walk naked in the law. Most of humanity however has now forgotten how to be naked in law.

The coloniser - the bringer of cloth to Australia - through the use of force, rape, and violence dragged us into their world of dress and the covering of the naked body. By forcing the ancestors to be other than who they were, the colonisers did not apply law; instead they imposed theft and tyranny upon the indigenous law, its lands and peoples. As we were forced out of nakedness we moved away from living raw in the law.

Today most peoples inhabit a clothed, 'colonised' place - a place where the dominant legal system maintains a clothed state of being through its regime of rules and regulations. It is a place where law is no longer raw. Nakedness lies beneath the dress of colonial rules and regulations. Colonisation brought to an end raw law and nakedness as we knew, lived and felt it.

We had no traditional costume to identify and cover ourselves with. We were naked peoples. Nakedness was our identity and culture. What is our culture now? Still nakedness? Yes it is, but it lies suppressed beneath the covering layers of colonialism.

The dominant colonising culture has covered our being with its rules and regulations. It imposed a system that violated the law, and its peoples and lands. This was more than an act of dispossession of land; it was a dispossession of law, and the disposal of nakedness.

Law, land and people now clothed by colonialism, nakedness is made illegal and the naked body is subjected beneath layers of domination. The carriers of law await the time that is still coming where the covering layers will be peeled away, to be naked again. *Kaldowinyeri* or the beginning: to become the present and the future, as has always been before the coming of cloth. A cycle destined to begin again: when the *muldarbi* [the demon spirit] is dismantled, we will again be naked.

In bringing the cloth the colonist also brought to us a reflection of our naked self. We came to know nakedness through the clothed body, and since that time, we have covered our raw and lawful being. The act of covering nakedness was not initially done as a shamed response, but rather a necessary act of survival against domination, and the threat of violence. Early colonists used force wherever the ancestors protested or resisted by remaining naked. Now behaviour has been modified, the response is one of shame.

Clothed by colonialism, the naked body (law, land and peoples) is subjected under the layers of the colonists' rules and regulations. Nakedness awaits the time when the covering layers are peeled away, to be naked again. And the cycle and the beginning comes around like a circle again. The song waiting to be sung.

The Naked and Invisible

In early colonial writings there are few references to our nakedness.

It is as though we were never there; as though in being naked we were invisible to the coloniser. It was a surprise to me that little is written about the way the colonist felt when confronted by the naked bodies of indigenous women, men

and children. Perhaps this void in commentary tells us something about the repressed sexuality and shamed attitudes of early colonists towards nakedness.

We were made invisible by the colonists as was our connection to law and place. They did not see us or their own creation - genocide. They made their role as perpetrators of the genocide invisible also. Invisibility was made legal by the *muldarbi* terra nullius. The illusion - invisibility of indigenous peoples - is a tool of the colonists and all others still today who seek to steal the land and violate the law. bell hooks calls it 'white supremacy', the power to make black invisible, erasing all traces of subjectivity (1995: 35). The making of invisibility serves to marginalise all aspects of life which stand in the 'white supreme' way, the way of 'progress'.

The *muldarbi* terra nullius, or the erasure of the indigenous being, is an historical process which continues today. While many commentators will argue terra nullius is no longer functional in the post-*Mabo* era, the dynamics of the *muldarbi* live on.³ While the *muldarbi* terra nullius, a colonial rule of law, no longer legitimises the ongoing holocaust, it takes on other forms. The idea of extinguishment is one example which works in the same way terra nullius has in the past; making all that is indigenous invisible. Our invisibility continues. There is no visible public presence of our naked being (and minuscule visibility of our clothed being) to remind the other of our continuing presence in the face of the holocaust - genocide. And so it is we are vanished, invisible. In struggle to be.

The Rugged Cross and the Ragged Cloth

The old people⁴ talk of a time before trousers and after trousers. The bringing of cloth marked a point of radical change in indigenous history, a history rooted in *Kaldowinyeri*.

When we became clothed, what did we become, as we came into the awareness and presence of the coloniser? Did we become more visible, with their reduced embarrassment and shame of our nakedness? No. We still remained objects of their domination. Other ways of seeing the naked indigenous self were imposed by the *muldarbi* colonialism. Our being became subjected beneath the rags of the coloniser.

The writings of early colonists expose their way of knowing and seeing us through a 'white supremacist' lens. The colonist 'knew' us as inferior, Loyd in 1846, in his 'Visit to the Antipodes' wrote:

We saw a number of half-naked dusky savages...lounging down the street with spears and waddies in their hands, filthy and slimy and greasy, leaving behind them an odour enough to turn the stomach of the stoutest dog (Harris 1990).

Bull wrote in 1837 of a meeting between Governor Hindmarsh, newly arrived to the 'free settlement of South Australia, and a group of Kaurna:

On the double party reaching the tents they were met by Governor Hindmarsh. There had been some anxiety about their fate. His Excellency expressed himself shocked that Mr. Stuart should have brought the naked black men amongst the tents of the numerous immigrants, and immediately called on Mr. Gilbert, the Government storekeeper, to supply the men with clothing, which being brought forth, some of the sailors, who were ashore from the Buffalo, took the natives in hand to dress and pet, pressing on them pipes and grog, which at the time the blacks declined, preferring sugar and fat pork; but alas! How soon they acquired a taste for the indulgences offered! The dressed-up black men displayed anything but comfort or content in their unaccustomed array, which on becoming apparent, the Governor, on advice, was considerate enough to order blankets to be exchanged for the unpopular garments (Bull 1884: 36).

From the earliest contact the Kaurna peoples of the Adelaide plains were forced to cover their naked bodies, to not offend early colonists. Blankets and clothing, contaminated with the smallpox virus, were provided for that purpose and also for purposes of genocide.⁵ Under the pressure to cover nakedness many of our ancestors refused to conform and for this they suffered the consequences.

The German emigrant Listemann, in 1851 a settler to the Adelaide Hills, records in his journal a time when the old people were threatened by incarceration for walking naked. He saw comedy in their attempts to cover nakedness. However in my reflections I see a situation where there was no choice; incarceration and humiliation were an inevitable consequence of colonisation:

They clothe themselves with a mat wrapped around their bodies and around the shoulders wear a sheep skin or a skilfully sewn rug made from opossum skins. In the vicinity of Adelaide, many wear pieces of European clothing which often give them a comical appearance. Thus I met a young beauty whose long cotton dress swept the dust for half an ell behind her, and a 'black dandy' seemed to enjoy his appearance in his finery consisting of white shirt, vest, cravat with collar and once-white gloves, just as much as our young gentlemen in their most elegant outfit. There is, by the way, a law that no native may enter the city unclothed; any such intruders are immediately evicted by the constables (Arnold 1988: 4).

The Adelaide Chronicle in 1840 reported the people of the Murray region were coming into Adelaide to '...ramble about our streets in a state of nudity...' (25/02/1840, in Pope 1989: 44). Another local paper, the Adelaide Examiner, in 1843 recommended '...some means should be taken to exclude the numbers from the streets, that now wander about... in a state of nudity...' (28/01/1843, in Pope 1989: 44).

The Protector of Aborigines, Moorhouse (1842), adopted the practice in Adelaide of '...locking up the Natives for 24 hours...'. Imprisonment was imposed without any formal hearing; for the early colonists it was a simple remedy, the clearing of the streets of naked black bodies.

In correspondence between Moorehouse and the Colonial Secretary he advised that:

The suggestions of locking up the Natives for 24 hours, if they are found wandering about town in a state of nudity, is in my opinion, good and lenient enough it would tend greatly to check the indecent exposure which Mr. Teichelmann (missionary) mentioned in his letter. If the Natives continue to annoy the shopkeepers as much as they recently have done, I should decidedly recommend the same punishment to be applied; it would shew them really that they must, in common with Europeans, be subjected to laws that ensure good behaviour. I have had the natives assembled and have translated to them the order of the Commissioner of Police (in Pope 1989: 44).⁶

The new Police Commissioner Finnis suspended the practice of incarceration without trial; 'naked Aborigines' were to be taken before a magistrate before being imprisoned (Clyne 1987: 86). The courts however showed little tolerance, insisting that Aboriginal workers remain covered with blankets while undertaking physical work. The South Australian (5/09/1843) reported that fines were imposed when several Aboriginal workers were

...brought before the magistrate, for going about naked in the centre of the city of Adelaide. They had been cutting wood or carrying water, and their employers had either requested or permitted them to put off their blankets for convenience of working.

They were fined, and inevitably imprisoned for being the naked and the enslaved.

It is this way of knowing us which we struggle against, in our journey to decolonise our minds, bodies, souls and spirits. To decolonise oneself is to become whole again. We work to decolonise our thoughts and the thinking that has been integrated, thinking that has resulted in our placement in the institutions of the coloniser, their prisons, mental institutions and medical institutions - thinking that has made us invisible in a land that is ours.

Shame: A Form of Extinguishment?

Judge Barron Field of the Supreme Court of NSW in 1825 commented:

Without faculties of reflection, judgement or foresight, they are incapable of civilisation. They are the only natives in the world who cannot feel or know that they are naked and they are not ashamed (Field 1825: 224; see also Harris 1990: 32).

But what was and is still not realised, is that there was no shame. And the shame that was sought was in its seeker. Nakedness and the awareness of it came to the old people through the reflection of the other, and the other's shame.

In Adelaide Cawthorne wrote during 1844, about the Kurna of the Adelaide Plains:

I took a walk amongst them who were in their wurlies, saw a collection of naked boys and girls, men and women, either entirely or half so. They are quite innocent in this respect and the women think nothing of (stalking) bolt upright in perfect nudity. Of course, this is not observed amongst themselves and it is only strangers who notice it (Foster 1991: 39).

Further on Cawthorne wrote:

Today taking a walk down on the banks of the river I resolved to cross, the natives being encamped on the other side, but finding the water deep in parts, so as not to wet my brik's, I was going back again - the natives seeing this sent one of their young girls across, in all her naked blessedness, to escort me over. The innocent creature obeyed with alacrity and took hold of my hand to lead me through, which I declined. What a scene I thought to myself, there I am, lone white, in the bed of a river and a naked virgin pointing me out the way, a few stray blacks in the distance. What pure innocence and where is the wretch who would take advantage. Such an act is the very way to raise the native character in my esteem. There is no false shame about them, all is pure and innocent, no false delicacy - the decency of the English is only another name for lewdness, it's false as Satan, as deceitful as the devil, and so on (Foster 1991: 54).

Not many early colonists shared Cawthorne's view. The colonial 'reality' of 'blackness,' 'wildness,' and 'backwardness' combined with nakedness to fuel ideas of white superiority. And through the force of white supremacy we become 'shamed,' erased, and extinguished to the back blocks of Australia.

Enter the Church, Exit Naked.

William Carey in 1792 wrote about Indigenous peoples as being '...poor, barbarous, naked pagans' (Harris 1991: 32). The wearing of clothing was fundamental to the early colonist and Christian way of being. Early missionaries demanded the body be covered, nakedness was seen by them as being sexually permissive.⁷

In the Book of Leviticus, the Lord told Moses:

You shall not uncover the nakedness of your father, which is the nakedness of your mother; she is your mother, you shall not uncover her nakedness (Ableman 1982: 32).

Clothing was a prerequisite to being a Christian, and Reverend Taplin, a missionary to the people of Pt McLeay, wrote in 1873:

Our congregations at first were often strangely dressed. Some would be enveloped in the original opossum-skin rug. Some of the men would wear nothing but a double-blanket gathered on a stout string and hung round the neck cloakwise, others with nothing but a blue shirt on, others again with a woman's skirt or petticoat, the waist fastened round their necks and one arm out of a hole at the side; as to trousers, they were a luxury not often met with. To our horror and dismay one Sunday a tall savage stalked in and gravely sat down to worship with only a waistcoat and a high-crowned hat as his entire costume. Of course I sent him out quickly (Taplin 1879: 79).

Taplin wrote in his Journal in 1859:

This horrid rite (ceremonial law) is much calculated to throw them back into barbarism, whatever good instruction they may have received in youth. Whatever sense of cleanliness, or love of European clothes may have been acquired is by this rite completely swept away. This custom must be done away with. . . . I told all the blacks plainly this morning, that they obeyed the devil, and that Jehovah would send them to hell with the devil if they did not cease to obey him (Jehovah)'.

Nakedness was erased by early missionaries, thought by them to be backward, a step to be eradicated in the overall chain of evolution. Bishop Short writing in 1853 said:

Many young adult natives, who would have belonged to the most degraded portion of the human family, are now clothed and in their right minds sitting at the feet of Jesus (Harris 1990: 530-531).

Wiradjuri man Kevin Gilbert (1994: 6-7) wrote about the way Christian missionaries set about to indoctrinate and modify the behaviour of Aboriginal peoples through the separation of children from the old people:

The mission blacks were taught by missionaries to deny their 'animal nature'. Fundamentalist rectitude locked young blacks, male and female, in separate dormitories to save them from themselves. There they stayed, in these prison-like dormitories, at all times except in class hours or prayer meetings, until the youngsters were well past marriageable age and had been so indoctrinated against their 'unclothed heathen' brothers that they accepted their new lot in return, perhaps, for eventual salvation.

Leaving naked to become clothed however did not alter or change the superior attitudes of whites towards indigenous peoples. Perhaps it was only Christian sensibilities and embarrassment that were taken care of. The ancestors were treated as being outside the reality of the colonists, only becoming a little bit real and visible when clothed in the dress of the colonist. And when dressed the colonists' embarrassment of the naked body began to subside. But their superiority remained.

Dressing the Law in Rules and Regulations.

The colonial legal system comprises of layers of 'man-made' rules and regulations. These are rules which have come into being not through the creative process of song but through a process which is to a large degree reliant upon the *muldarbi* - power and the force of arms to maintain itself.

The colonists' own raw law has been covered over for centuries, by rules and regulations. Its naked body is no longer identifiable to them. Their raw law has faded from their minds, memory and imaginings and now their own raw law is

invisible almost unknowable to them. And where it has surfaced, it is looked upon by them as being uncivilised, not real law, but a mere custom of primitive peoples.

When Cook and the colonists who followed first invaded the shores of Australia, they were dressed in military attire, and they applied their military rules and regulations, and began the genocidal process of dismantling our indigenous being. The military attire was followed by civilian dress and their 'common law', a law the coloniser intended to become common to us all. This was the 'real law', the only law. But it was not common to us, it violated our law. It violated itself also, through the failure of the coloniser to comply with their own rules and regulations⁸, and yet despite two centuries of the imposed colonial legal system and its violations of raw law, the 'law' has lived on.

The law was not known to the coloniser, instead it was patronised as being myth, legend, or lore. The law was seen (or not seen at all) in the same way the old people were in their nakedness, as not really being people. In the same way the law was seen as not really being law, but instead a custom of primitive peoples. But the law encompassed them as it encompasses all today. They walked upon it, they ate it, they transformed and raped it. As they still do today. And when the old people sang the law most of them never felt it, let alone understood it. For their violations of the law the old people saw them as alien, what else could they be when they had alienated self from law.

The High Court in the decision of *Mabo* decided the colonial rule of terra nullius, that is a land empty of people, and law, was wrongly applied to Australia. Prior to this decision the rule of terra nullius underpinned Australian legal history for more than two centuries. Terra nullius made invisible that which was different. And today this same society whose court closed the door on terra nullius turned to open the door to extinguishment. Extinguishment

like terra nullius will continue to erase and make invisible all which comes forward to be different, and to become naked again.

The dominant legal system raped its way into legitimacy, and took form as law, based upon the weight of its military attire and its ability through force to dominant all that is different or fails to conform to those who hold power. This is not law. Law is rooted in creation, it is a song, it is a love of law, and its land and its peoples. This *muldarbi* law works to erase peoples and their law.

In the decision of *Mabo*, Justice Brennan was careful to ensure no radical departure from the existing rules and regulations, when he decided:

In discharging its duty to declare the common law of Australia, this Court is not free to adopt rules that accord with contemporary notions of justice and human rights if their adoption would fracture the skeleton of principle which gives the body of our law its shape and internal consistency. .. Although this Court is free to depart from English precedent which was earlier followed as stating the common law of this country, it cannot do so where the departure would fracture what I have called the skeleton of principle. The Court is even more reluctant to depart from earlier decisions of its own. The peace and order of Australian society is built on the legal system. It can be modified to bring it into conformity with contemporary notions of justice and human rights, but it cannot be destroyed (1992: 16).

If they were to seek out this skeleton of principle, they would instead find layers of rules and regulations, covering a mythical skeleton of legitimacy. A skeleton that was never there to begin with, itself invisible. Perhaps they have reflected their own lack of identity upon us, their own invisibility and the *muldarbi* terra nullius, and perhaps 'the self is unknowable except by reflection'. Is it, then, that in this process of unravelling history we have been the mirror for the other?

The law is naked as it was from the first day; it still lives in the land as it has from the first day.

Notes

- 1 This article is a part of a larger work in progress titled 'raw law'; its first incarnation was a paper presented to the Law and Literature Conference in Brisbane, July 1997. I acknowledge the old people that I have had the great fortune to know as a young adult whom I saw walking naked across their desert country, and also Georgina Williams and Bobby McLeod, whose lands have been ravaged by colonialism but they nevertheless had the courage to walk naked. Thanks are also due to Michael Detmold, Michael Watson and Mary Heath for their valued comments on earlier drafts; I take full responsibility for the final form this paper has taken.
- 2 There are over 500 Aboriginal languages of the country we now call Australia.
- 3 See hooks (1995: 36) for a further discussion on the impact of the legal apartheid in the United States and its ability to continue making invisible black Americans.
- 4 Also referred to as indigenous elders, here I use the terms old people and indigenous elders in a narrow sense to mean those who have grown in the living and the knowledge of the raw law, and not simply grown old.
- 5 For a further discussion of this early form of genocide see Butlin 1983.
- 6 In September that same year several Aboriginal people were reported charged under this colonial regulation.
- 7 See Harris (1990: 530-533) for a discussion of missionary attitudes to nakedness and sexuality.
- 8 The common law was imposed without the informed consent of the ancestors.

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