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The Ethos of the Historian: The Minutes of Evidence Project, and Lives Lived with Law on the Ground

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Abstract

I sit writing this from Lewes, a town that nestles by the chalky edge of the Downs in Southeast England. I have come here to spend some sabbatical leave at the University of Sussex, with colleagues and friends, historians like me. We have been working together for several years on a project called Minutes of Evidence, in which we have tried to make sense of the myriad ways in which settler colonialism operated, as a matter of law and administration, across the British Empire and within individual colonies, and to consider its impacts on everyday lives and questions of justice, past and present.

The Ethos of the Historian: The Minutes of Evidence Project, and Lives Lived with Law on the Ground

Julie Evans□

1 Attending to Place

I sit writing this from Lewes, a town that nestles by the chalky edge of the Downs in Southeast England. I have come here to spend some sabbatical leave at the University of Sussex, with colleagues and friends, historians like me. We have been working together for several years on a project called Minutes of Evidence, in which we have tried to make sense of the myriad ways in which settler colonialism operated, as a matter of law and administration, across the British Empire and within individual colonies, and to consider its impacts on everyday lives and questions of justice, past and present.¹

While commonly known for its early 20th century association with the Bloomsbury group, Lewes also has a much older history: it is home to a Norman castle with a tilting ground, the ruins of a medieval priory dissolved during the Reformation, a memorial to Protestant martyrs burned at the stake during Queen Mary's subsequent persecutions, and a coaching inn frequented by one-time resident Thomas Paine not long before his writings helped revolutionise established orders in Britain's American colonies, as well as in its long standing (and soon to be defeated) imperial rival, France. But even without such startlingly tangible historical markers, the presence of the past is all around me,

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in other ways. My grandmother Grace was born in 1905, not far from here (by Australian standards at least). She was just nine years old when she sailed off on a journey apparently directed at improving her health, which is how we have come to understand her family's decision to leave the soft lush greenness of rural England for a life of who knew what in Australia. Half a world away, they landed at the docks in Melbourne on a stark November day when the bitumen pavements were stickily melting from the intensity of the early summer heat, then made their way to nearby industrial Footscray to create their lives afresh. Their ship, having completed its maiden voyage, was requisitioned for the war to end all wars.

I can still recall the adult Grace interlacing her restless fingers and staring out through the windows at the dusk, an in-between time when anxieties seem harder to quell, but I have no real idea what she had come to think about her place in the new world, in a nation newly constituted and notionally independent from its colonial past. Here am I, though, all these years later, a granddaughter and historian – returning once again to the old country before returning once again to the new – who spends quite a lot of time openly reflecting on what it means to be a settler Australian, and on the possibilities of living and working ethically in a place where founding injustices have yet to be resolved. It is this relationship I want to explore in this paper: how my sensibilities and duties as an historian, as well as a recognition of the intimacies of lives lived with law on the ground, give rise to professional responsibilities to tell the myriad ways in which broad historical processes and practices are enmeshed in local stories and ways of being in a place. Appreciating the complexities of the past not only brings forth the fullness and variety of lived experience. It also enhances understanding of the continuing significance of the past in the present, and in so doing fosters new ways of thinking about how we might live together justly in settler societies in years to come.

For me, this dynamic is articulated more finely within a critical law perspective. In my long term work, I home in on law and how it was lived in the past, as to watch how law is experienced also offers

the potential to draw out the full importance of earlier equity based practices subsequently suppressed in common law and render them available for justice challenges in the present and future (Goodrich 1990, Dorsett & McVeigh 2012). Each of these ‘forward-looking’ historical approaches (Young 2006: 123) informs my locally-grounded research on how and why it was that exclusive settler jurisdictions came to be authorised and enforced in the Australian colonies as officials moved to refuse, rather than accommodate, possibilities to bring Indigenous and non-Indigenous jurisdictions into lawful relation (Ward 2003, Evans 2005, 2009, Ford 2010, Evans & Fluence 2013). This line of inquiry into how law is lived by Indigenous and non-Indigenous peoples in Australia, where no treaties were negotiated and long-delayed reforms are still conceived within settler rather than relational frameworks, contributes to a larger body of critical scholarship intent on supporting prospects for lawful relations, including through efforts ‘to locate history in its proper place – the present’ (Goodrich 1990: 162). This scholarship makes clear that researchers of different disciplines all have a role to play in those prospects, by taking seriously their different scholarly obligations (see eg Carter 2007). As a consequence, the nature of such obligations has been variously articulated, but here I consider the responsibility of historians in settler societies engaged in what has been named as the conduct of lawful relations (Black et al 2007, Dorsett & McVeigh 2012, Genovese 2014a). These responsibilities are not only to understand, but also to make known, the significance of colonial injustices in entrenching social inequities, and alternative ways to think about how to live together justly.

This ethic, and insistence, was a foundation for the Minutes of Evidence project. The project’s early conceptualisation in 2009, and its trajectory and purpose, was centrally influenced by the responses of Koori poet, novelist, and historian Tony Birch to the stultifying public controversy surrounding the so-called ‘history wars’ that had unfolded a few years earlier in Australia. Addressing the bitter irony of divisive debates about the nature and meaning of so-called ‘frontier violence’ taking place almost entirely between white historians, Birch called for academics to accept responsibility to engage more critically

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with the notion and practice of history as an authoritative discourse and for non-Indigenous Australia generally to think of new ways to bring about ‘a willingness to accede to the principles of Indigenous sovereignty, amongst which are respect for Indigenous knowledge systems and the historical landscapes from which they were created’ (2007: 114). Birch emphasised, too, the ethical and strategic need ‘to shift the burden of carrying the memory of colonial violence on behalf of the white community’:

We live with this because the wider community refuses to take on its responsibilities; because governments in this country have been historically deficient – morally, legally and ethically (2006: 23).

Indigenous communities across Australia have become the memory bank of white Australia’s violence by proxy. It is time for white Australia to take over that responsibility. Perhaps it is time to make an ethical withdrawal of responsibility (Birch 2006: 24).

Speaking more specifically to the academy, Birch observed the need for Indigenous and non-Indigenous scholars and others to work collaboratively to ‘put creative, political and ethical spaces into being in Australia; places where we can bypass these regressive debates and do something more productive’ (2006: 19).²

I think about the Minutes of Evidence project in terms of doing something more productive, in Birch’s terms, and as a practice of lawful relations. Funded in 2011 by the Australian Research Council’s Linkage Grant scheme, together with substantial cash and in-kind contributions from the Victorian Government and leading cultural institutions and community associations, the project has been a multi-faceted collaboration between Indigenous and non-Indigenous creative artists, educators, researchers, and organisations. The official records of an 1881 Board of Inquiry into allegedly rebellious conditions at the Coranderrk Aboriginal Reserve, situated in the hills of the Yarra Valley not far from Melbourne, serve as the basis for a series of joint initiatives designed to encourage better public understanding and more informed conversations about Victoria’s shared colonial history, raise awareness about matters of structural injustice, and consider ethical ways forward.³

For the academics and writers immediately involved in the planning – we are drawn from the disciplines of history, criminology, socio-legal studies, law, and cultural geography – the project is directed towards exercising responsibility to acknowledge, account for, and engage with, the historical injustices that have shaped, and continue to shape, conditions of life in Australia, and to do this locally, in our own backyard, in and around the city of Melbourne where most of us live and work (Genovese 2014a, 2014b). While continuing to theorise and conceptualise the enduring impacts of colonialism in our various research spheres, our primary goal in attending to place in this way is to move beyond more abstract analysis and open ourselves up to the challenges and uncertainties of a different way of working as scholars.

The story I want to share about the project is how I have participated in it as an historian. This has as much to do with making lives lived with law a question of record, and of just, or lawful, relationship, as it does with making clear the specificity of the historian's task (Curthoys et al 2008: 16-18). In these terms, what I want to describe is how the Minutes of Evidence project has not simply, or only, been about responding to a past injustice. From the very beginning, it was also, and continues to be, the staging of an encounter. This encounter is not about witnessing the past *per se*, or collecting testimony in isolation (though these two things are important and connected). Rather, we have been involved in a purposeful project of taking responsibility for the encounter at Coranderrk as a conduct of lawful relations. Through the fostering of collaborative and personal relationships between Indigenous and non-Indigenous peoples and organisations, project participants and audiences have been engaged together in bringing common and distinctive experiences and worldviews into meaningful relation. This is arranged around telling the story of the 1881 Coranderrk Inquiry as a unifying lens through which the broader public, and especially secondary school children, might also come to see, and appreciate, the justice possibilities of the past, present, and future. Through realising these ambitions in a structured partnership, the project has sought to expand the field within which responsibilities for lawfulness might be exercised, within a process that tries to be deliberately personal,

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relational, and individual (Dorsett & McVeigh 2012).⁴ And as historian, my job in this collective practice was to do justice to the materials in order to hold the encounter in place. This is not done in the same way that lawyers might do, but with a different care for archive and story, and a duty to make that story available in ways that could be meaningful to a wide range of audiences today.

This is the ethos of the historian; and I will turn now to explore that ethic through a description of what happened in 1881 at Coranderrk, before I return to it as a practice of lawful relations – of how lives are lived with law – today.

2 The Call for Lawful Relations in Colonial Victoria: The 1881 Coranderrk Inquiry

The minutes of evidence of the *Board Appointed to Enquire into, and Report upon, the Present Conditions and Management of the Coranderrk Aboriginal Station* (Government of Victoria 1882) lie at the heart of the Minutes of Evidence project.⁵ The Inquiry's commissioners heard testimonies from 22 Koori men, women and children who spoke directly to the individual and systemic injustices they experienced under colonial rule and how their situation might be improved; from settlers and officials who openly condemned unfair and cruel policies towards Aboriginal peoples and supported their various quests for self-determination; and from other settlers and officials who strongly endorsed existing repressive practices and sought to extend them. The nature and composition of the witnesses was unusual for a time when few Aboriginal people were invited to speak before such a forum. In this case, as in their previous endeavours, the residents of Coranderrk had themselves been instrumental in forging opportunities to promote official consideration of their past, present and future circumstances, and despite the risk of serious repercussions, welcomed the prospect of engaging formally with the state.

The origins of the 1881 Inquiry had arisen earlier in the century, in the wake of intensive settler incursions in the far south of the colony of New South Wales. By 1835, the Port Phillip District had been

proclaimed and within two decades, Koori peoples were grappling with the violence and dislocation of 'settlement' that sought to convert their separate countries into the new colony of Victoria. In such devastating 'post-frontier' circumstances, some leaders chose different ways to assert sovereign relations with the colonial governments that were intent on denying them.⁶

By the 1860s, *ngurungaetas* (clan leaders) of the Kulin nation, Billebellary and Simon Wonga, responded to the crisis by seeking a permanent stake in the land in order to maintain what they could of their communities and cultures. They adopted a two-fold strategy to achieve this goal: first, to build personal relationships with settlers who supported their cause, and second, to exercise diplomatic relations with the colonial state, creating a sovereign to sovereign connection wherein they could assert the right to self-determination within the limits that history had so dramatically imposed upon them. Through writing to newspapers, petitioning influential officials, and forming delegations to make the long walk to parliament, they pressured the new colonial government to grant them land in the hills to the northeast of Melbourne (Barwick 1998, Nanni & James 2013).

A place in Wurundjeri country called Coranderrk, named after a native bush, was where people eventually settled. The stability enabled them to build permanent dwellings, and begin farming the land to support themselves. The land had been gazetted as a temporary reserve soon after their deputation to Governor Barkly, an event depicted in an engraving that appeared in the *Illustrated Melbourne Post* in 1863. Coranderrk leaders presented the Governor with handcrafted rugs and blankets for the Queen and traditional weaponry for Prince Albert. As an assertion of sovereign status, Simon Wonga, who could speak English, delivered his address in Woiwurrung language and the government-appointed Aboriginal 'Protector' William Thomas translated (Nanni & James 2013: 9, see also Lester 2014).

With the assistance of Scottish lay preacher John Green, who helped found and manage the station, and who later became a key witness at the Inquiry, Coranderrk became the most economically successful of the six

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missions and reserves that the Board for the Protection of Aborigines (henceforth BPA) administered in the colony. It also absorbed people who were seeking refuge far from their own countries, and became a thriving community with a school and a working farm that provided meat and vegetables for the residents and won prizes for the quality of its hops. Over time, however, the on-going viability of Coranderrk came under more and more pressure from settlers eager to purchase land whose potential in European eyes had been so productively developed, as well as from BPA officials intent on undermining efforts to make the settlement permanently self-supporting (Lester & Dussart 2014, McLisky 2015, Furphy 2015). Under the leadership of *ngurungaeta* William Barak, and in the face of threats to break up the station, Coranderrk residents persisted in their strategy of engaging directly with the state and modelling ways in which different legal and political entities and worldviews might talk to, and with, each other.

With the BPA and its supporters fanning broader anxieties that Kulin activism might ‘contaminate’ other reserves and disrupt their management, an inquiry was eventually held into so-called disturbances at Coranderrk. But far from securing the immediate removal of residents to Yorta Yorta country in the north of the colony, the Inquiry effectively delivered a space within which Aboriginal and non-Aboriginal experiences, perspectives and ways of knowing were brought into relation. In so doing, it offered up an opportunity to consider lawful ways to manage the complex circumstances in which they were all placed (Evans & Nanni 2015).⁷ Indeed, the Commissioners’ report initially delivered a positive outcome for residents and their supporters: the Government moved quickly to have Coranderrk gazetted as a permanent reserve, the incompetent manager John Strickland was removed, and it seemed that a measure of lawful relations might be established, albeit within the broader confines of colonial rule.

Nevertheless, within a few years, a new Government favourable to conservative interests passed the *Aborigines’ Protection Act* 1886 (Vic) that prohibited Koori people designated as ‘mixed descent’ from receiving government support or living on BPA reserves. In forcibly removing

such individuals, these powerful racialising provisions undermined the viability of Coranderrk and the reserve system more generally, while its destructive effects in separating families and communities continue to the present day. Through providing a legal basis for reducing the numbers of people counting officially as Aboriginal, the so-called 'Half-Caste' Act became the model for similar assimilationist legislation adopted in other jurisdictions throughout Australia.⁸

This outcome to the Coranderrk community's call for lawful relations conforms to how settler colonial theory understands the different stages through which settler interests and privilege eventually become entrenched in settler societies: Indigenous peoples' lands are taken through the violence and upheaval of dispossession; survivors are pressured to move on to missions and reserves; they are subjected to comprehensive regimes of state management and control; and are eventually targeted for assimilation into European society (Wolfe 1994, 2001, 2016, Veracini 2010, Lester & Laidlaw 2015). Yet despite the enormity of the challenges Koori peoples were facing at Coranderrk, their story did not end in the closing years of the 19th century but lived on as individuals and communities continued to campaign against injustice throughout the 20th century and beyond (Attwood 2003, Nanni & James 2013: 188-9). It is their story, too, that vitalises the Minutes of Evidence project and its renewed call for lawful relations between Koori peoples and the state in Victoria.

3 Renewing the Call for Lawful Relations in Victoria: *Coranderrk: We Will Show the Country*

The varied testimonies given before the 1881 Inquiry offer a unique account of how law was lived by Koori and non-Koori peoples in late nineteenth-century Victoria, and through entering the legal record they remain available to inform and challenge present and future generations (Balint 2012). Yet the persistent assertion of lawful relations in Victoria, including as expressed through this inquiry, is little known outside the oral histories of Koori communities. For these reasons, the Minutes of Evidence project places the story of the

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Inquiry – and Victoria’s shared colonial history more generally – at the centre of its varied concerns. These include drawing public attention to a compelling story of law, to the possibilities and limits of British law in attending to its place more generally in Australia, where other laws and other ways of knowing were already located and embedded.

Inspired by the potential of the Inquiry to bring such knowledge and insights before a broader audience, and under the auspices of the Minutes of Evidence project, writer and historian Giordano Nanni, together with Yorta Yorta playwright Andrea James, turned months of testimony into a script for the verbatim theatre play *Coranderrk: We Will Show the Country*. Produced and developed by Ilbijerri Theatre and La Mama Theatre, the staging of the play in a closeted inquisitorial atmosphere draws out both the immediacy and the enduring significance of Victoria’s colonial past in an engaging and accessible way. In drawing precisely on the words spoken at the Inquiry, the verbatim form gives life to the individual and collective perspectives of Coranderrk residents concerning the injustices they suffered; of the settlers who were committed to embedding such injustices; and, also, of others who openly contested the coercive policies, practices, attitudes and behaviours many settlers upheld. It personalises history, naming individuals across the colonial divide who were living law in very different ways in the years leading up to Federation. While the play confirms that the history of Victoria has much to say about the repressive and destructive nature of colonial governance, it demonstrates, too, that in the past, as much as in the present, Aboriginal and non-Aboriginal peoples could also share concerns about justice, despite seemingly overwhelming pressures to consider their welfare and interests as separate.

Through the appeal of theatre, *Coranderrk: We Will Show the Country* gives audiences an opportunity to consider the questions of lawfulness that become apparent through the Inquiry: the identification of both general and localised colonial injustices and the explicit interests of those who sought to entrench them; the potential for collaboration rather than separation between Indigenous and non-Indigenous

peoples around such structural concerns; and suggestions for fairer ways forward, including through non-Indigenous peoples understanding the nature of their own history and law and taking responsibility for their lived effects in the past, present and future.

A sense of the potential of the performance to bring the past into the present can be gleaned through some brief examples of what the audience witnesses. *Taungerong* clan head Thomas Bamfield, for instance, testifies that the BPA had failed to maintain fencing on the farm, enabling stock from neighbouring properties to wander and graze at will on Coranderrk land, effectively undermining the reserve in the hope that it would be disbanded and residents removed: 'I think they have done enough in this country to ruin the blacks without taking it from us anymore' (Nanni & James 2013: 78).⁹ The one female Commissioner Ann Bon – a wealthy Scottish landowner and long-time supporter of self-determination for Coranderrk – asks influential squatter and member of the BPA Edward Curr if he thinks it 'desirable to send [the Aborigines] away from Coranderrk against their own will?'. Curr responds 'Anyone who knows the blacks knows their will is nothing ... They might have a serious objection now which they would not remember three months afterwards' (Nanni & James 2013: 66-7).¹⁰ Friedrich Hagenauer, the manager of Ramahyuck mission in the east of the colony, speaks to the perceived threat posed by the Coranderrk model and of his fear that 'his' residents would become unsettled: 'The natives read the newspapers, and say, "The Coranderrk people get this and this allowed; we want that too"'.

Audiences also become aware of past cooperation between Aboriginal people and settlers. Thomas Bamfield had powerful allies in the settler community who supported him when he was singled out for persecution for his prominent involvement in Coranderrk's justice campaign. The politician John Dowd, for example, publicly defended Bamfield claiming that he was attacked 'because he had the feeling of a free man, and would not be hunted from the land which belonged to him' (Nanni & James 2013: 75). Commissioner Bon, a long-time friend of William Barak, asks questions designed to focus the Inquiry's

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attention on the issues underlying the discontent at Coranderrk, including that Koori peoples' country had been taken away and once was at risk of being taken away again. Coranderrk's original manager John Green, in delivering his long and moving testimony towards the end of the play, describes his relationship with residents and specifies the failures of the BPA and the government to engage lawfully with Koori peoples:

I always treated them as free men, and reasoned with them. I made [a] law with their own sanction ... and also fined some of them for drinking. [But] that was the Aboriginal law, that if any got drunk they were fined. They were fined ... and some of them were chastised according to their own law. If the Aboriginal is put into the question, he will strive to keep his own law. That is where I consider you have failed ... (Nanni & James 2013: 167).

Meanwhile, *ngarangaeta* William Barak is explicit about lawful ways forward: 'Leave us here, give us this ground and let us manage [Coranderrk] and get all the money. Why do not the people do it themselves?' (Nanni & James 2013: 89). Barak reads, too, the words of the petition, signed by forty-six people, which closes the play: 'We want the Board and the Inspector, Captain Page, to be no longer over us. We want only one man here, and that is Mr John Green, and the station to be under the Chief Secretary; then we will show the country that the station could self-support itself' (Nanni & James 2013: 175).

Viewers in the present hear, too, how certain settlers in the past had chosen to exercise responsibility for their own law. The prominent newspaper editor and journalist George Syme, a member of one of the colony's most influential families, resigned his position on the BPA rather than be associated with its attempts to break up the reserve. John Green, in confirming this view of the BPA's intentions, also lays out his refusal to comply:

I may state that on one occasion [BPA Secretary] Mr Smyth came to Coranderrk, and told me that there were influences being brought to bear upon the Board and the Government to have the Aborigines removed from Coranderrk ... and he believed that they would be well

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inclined to give way. But, he said ... 'Of course we know we cannot move them without you. You know you can easily move them'.

I stood and listened to him. I said, 'Mr Smyth, I know that I could move the Aborigines if I could assure them it was for their good to do so, because I could speak to them as men and brothers and I know they would go, but I will not try — decidedly not.

I think it would be most cruel to move them, because there is no doubt that many of the Aborigines who came there as children have been taught that it would be their home if they would stay and work. I was sure no Government would seek to take away that piece of ground if they would do their work. [...]

So I was dismissed because I would be no party to moving the Aboriginals from Coranderrk (Nanni & James 2013: 169).

Coranderrk: We Will Show the Country has been presented on Country at Coranderrk, in Melbourne and Sydney, as well as regionally in Victoria, in public venues and in schools.¹² Tony Birch, who had helped move the Minutes of Evidence project through its early uncertain stages, introduced the play to audiences during its initial performances, noting the remarkable nature of the people and events depicted, from the wisdom and foresight of William Barak and the younger Coranderrk residents who helped advance his vision, to the character of John Green who respectfully engaged with Aboriginal people and stood up for their autonomy and independence. It was not just the strength of Barak and Green but the relationship between them, Birch noted, that held particular significance for both Aboriginal and non-Aboriginal people today. He finished by telling the audience how remarkable it was to hear words that were spoken in 1881 spoken again more than a century later. As familiar as he had long been through studying the historical documents of the Inquiry,

to hear these words *spoken* for the first time it was something completely different ... the power of the spoken word for me was something remarkable and I firmly believe that we are witnessing another historical moment to have this hearing ... spoken to us. And

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I think that to consider when you listen to these men and women that over a ... 130 years later ... some people would be sitting here and appreciate those voices, and that struggle, is something that we should be so pleased to be involved in (Minutes of Evidence 2013).¹²

Aunty Joy Murphy Wandin, Senior Elder of the Wurundjeri people, has reflected too on the effects of the performances:

Coranderrk offers no less than the truth. It captures the strength and stamina of a people who stood tall and publicly fought together for the rights of all people. And they almost won! Hearing these words today, from this rare occasion, helps to heal the hurt within, knowing that the same caring for each other still lives on between our families (Murphy Wandin 2013: viii).

The importance of telling the Coranderrk story in this way is evident in these observations, which understand it as respecting the struggles and survivals of Koori peoples in the past and present, as acknowledging expressions of a shared sense of justice, and as renewing calls for lawful relations in the present and future. It is for all of these reasons that the Minutes of Evidence project calls on the 1881 Inquiry to support broad-based opportunities for Aboriginal and non-Aboriginal people in Victoria to appreciate the common and distinctive legacies of our shared colonial history, and to develop the grounds for respectful constitutional, institutional, and individual relationships. Accordingly, the story of the Inquiry – and the story of the project – is also a story of striving to practise lawfulness.

4 The Ethic of the Historian in the Conduct of Lawful Relations

From my perspective as Lead Investigator, I reflect briefly here on our efforts as a research team to come into meaningful relation with the people and communities whose stories informed and sustained our hopes for the project; to find partner organisations that shared its goals and ambitions and could help accomplish them in different forms; and to ensure that the collaboration would produce outcomes of lasting significance in fostering mutual understanding and respect.

At the project's beginning in 2009, I discussed with Giordano Nanni how best to bring together his idea to adapt the minutes of evidence for verbatim theatre performance, with my concern for the 1881 Inquiry to tell not only a local story but also a story that elaborated the experiences of Indigenous and non-Indigenous peoples elsewhere in Victoria and Australia and in other settler polities like New Zealand, Canada and the USA. That is, by positioning the 1881 Inquiry as the performative hub of a much larger cross-sectoral and multi-disciplinary project, it would be possible to inform a public audience about how and why law is lived differently on the ground, and in a way that explicitly connects relatively abstract scholarly theory with past injustices and present circumstances. By doing this locally, accessibly, and movingly – and with a range of academic and non-academic outcomes – an elaborated project could foster greater community awareness of the possibilities for constructing new ways forward for Indigenous and non-Indigenous peoples.

Early on in the planning, Giordano Nanni met with Senior Wurundjeri Elder Aunty Joy Murphy Wandin to discuss the idea of performing the 1881 Inquiry, and with the assistance of Rachael Maza from Ilbjerri Theatre, our more formal approaches followed.¹³ We relied heavily on local community organisations to mediate further introductions – La Mama Theatre and Ilbjerri Theatre Company are both within walking distance of the University, and were enthusiastic about the prospect of working together on matters of justice and the potential of verbatim theatre to convey the local and broader meanings of events at Coranderrk. With the Koori Heritage Trust now also involved, many meetings followed in the small town of Healesville, near Coranderrk, and in Melbourne where understandings were shared about the telling of the story and how it might be expressed in ways that would reach a wide range of people, including school children. The disciplinary base of the research team expanded, drawing in scholars from Socio-Legal Studies (Jennifer Balint), Criminology (Nesam McMillan), Law (Dianne Otto, and later Mark McMillan) and History (Patricia Grimshaw and Joanna Cruickshank, with Zoe Laidlaw and Tony Birch as specialist advisors). We thought and re-thought possible

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directions and models – and explored the crucial question of how to fund them – and gradually the conceptual framework, material structure and possible outcomes of the project emerged. We raised money to produce ‘performed readings’ of the script, were encouraged by their overwhelmingly positive reception, were cautioned and informed by some criticisms, and galvanised to keep moving forward.

The Victorian Department of Education and Training (DET) and the Victorian Aboriginal Education Association Inc. (VAEAI), already structurally committed to working collaboratively to enrich school curricula and the experiences of Koori and non-Koori students, embraced the opportunity the project presented to extend and develop these joint goals in innovative ways. Victoria’s health promotion foundation VicHealth participated in the project as part of its remit to support the development of community cohesion by tackling the harms of racism and enhancing social inclusion, while Arts Victoria and Regional Arts Victoria wanted to help realize the capacity of verbatim theatre to enhance community engagement with the performing arts in both metropolitan and regional areas. The State Library of Victoria, which holds the original minutes of evidence of the Inquiry and a substantial collection of archival records and material culture from the Coranderrk and other communities, agreed to digitise the minutes to make them publicly available, and to host project events. After more than two years of building relationships with individuals and communities, and with partners from the government, creative arts, and community sectors, the interdisciplinary research team was also finalised with scholars from Royal Holloway University of London (Zoe Laidlaw, History) and University of Sussex (Alan Lester, Cultural Geography) formally joining those from Melbourne in undertaking to analyse the past and continuing significance of the legal, historical, and cultural contexts of settler colonialism, its associated injustices, and prospects for lawful futures. With the support of the Australian Research Council, the project officially began in November 2011.

Once funding was secured, these relations became embedded in the on-going operations of the project. The partnership itself had

been formed through these relations, and with the assistance of an Engagement sub-committee, associations with local Aboriginal communities and organisations were maintained throughout the development of project work across the domains of performance, education and research. Several seasons of *Coranderrk: We Will Show the Country* have been held in and around Melbourne, at the Sydney Opera House, in metropolitan and regional schools, in rural towns, as well as on Country where the audience commonly includes descendants of the original community together with the family of John Green. Most recently, at the end of a hot summer day in February 2016, an historic open-air performance took place before hundreds of people on the very land at Coranderrk where residents had given their evidence to the Inquiry.¹⁴ Question and Answer sessions generally follow performances, enabling members of the public and school children to have their queries and comments about the play, and the history, people, and events it presents, responded to immediately by creative artists, academics, community members, and others. Most audience comments at the 2016 on Country performance came from Indigenous people who had travelled from distant parts to see the re-enactment of the Inquiry. They offered to do anything they could to assist the local community to fulfil their plans to redevelop the farm and restore its strength and vitality. Actors, both non-Indigenous and Indigenous, some themselves descendants, have also spoken compellingly during Q & As of the special significance attached to performing in this play.¹⁵

Maintaining and supporting relations is also a central part of the Teacher and Resource Package (TRP) developed as part of the project. Under the tender conditions stipulated by the Department of Education and Training, Social Education Victoria worked in partnership with VAEAI to consult with community and other stakeholders to produce curriculum modules and resources for teaching Victoria's shared colonial history in *History* and *Civics & Citizenship* in the middle years of secondary school. The TRP was initially trialled at Worawa Aboriginal College on Country at Coranderrk, at Healesville High School and Melbourne Girls College before being further refined in consultation with teachers and students in a range of other school

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settings. When the curriculum is being taught, teachers have access to a protocol guide while each school's links with local communities will be activated or reactivated through VAEAI's and DET's regional and rural organisational support structure. To complement school tours of the live verbatim theatre production, the development team has produced a DVD of to-camera performances of individual testimonies from *Coranderrk: We Will Show the Country* to assist classroom teachers to examine the broader themes the Inquiry raises together with interviews with actors who discuss their reflections on performing in the play and the events it considers. A blog publicises information on the progress of the TRP, and a forum is being organised to continue the dialogue and support on-going collaboration by interested schools and communities. Teachers can also call on the book written by scriptwriters Nanni and James called *Coranderrk: We Will Show the Country* that contextualises the Inquiry, provides biographical information on each of the witnesses, reproduces the verbatim script and meticulously describes the ways in which the original minutes of evidence were adapted for performance.

Meanwhile, Australian-based researchers have been closely involved in all aspects of the Minutes of Evidence project, exercising responsibility for administration as well as overseeing and participating in the more personal and informal work of maintaining relations and engaging with the public. We have headed up project sub-committees for performance, education, research, and engagement; organised, chaired, and attended many, many meetings; and experienced the shared joys and challenges of cross-sectoral collaboration. Researchers have spoken at public and community events and performances as well as at academic meetings about the project's broader research concerns, co-presented guest lectures and co-published with actors, presented project information to trainee and in-service teachers, professional groups, and curriculum writers. Together with our international research partners, we have conferred and published separately and collaboratively, bringing Indigenous and non-Indigenous perspectives into critical conversation, and presenting our work across a wide range of disciplines to extend understanding of colonial and structural injustices in settler societies, to enhance the appreciability of their

enduring significance in the present, and to encourage consideration of different futures. We have provided research training for early-career Indigenous researchers at different stages of their academic careers as well as professional opportunities for creative artists, initiatives that produced further meeting points between Indigenous and non-Indigenous ways of knowing. Information about research publications, together with all other project activities, is made publicly available through the project's expansive website while a twice-yearly e-bulletin is distributed to registered subscribers.

In the final months of the project, researchers have sought to extend engagement activities as far as remaining funds permit. These include supporting La Mama Theatre to deliver a series of workshops for communities requesting assistance to present their own histories in innovative ways; making an archival film and a summary video of the landmark 2016 on Country performance; helping find alternative funding sources to keep staging the play in future years; and maintaining the project website for the next ten years.

5 ... The Presence of the Past is All Around Us

As the formal funding period of Minutes of Evidence draws to a close, the questions of lawfulness that contextualised and attended the doing of the project of course remain. Foremost amongst these is the stifling hold of *terra nullius* – the incapacitating effects of the refusal to recognise lawful relations between Indigenous peoples and the state since the formation of the polity are deeply etched. Living with the dogged intentions of this inheritance is poor preparation for bringing about a meeting of laws. Speaking generally, through living with such a constrained conception of law, non-Indigenous people have not become *accustomed* to the notion of lawful engagement, let alone *predisposed* to appreciating the finer contours of what it might mean to respect Indigenous sovereign autonomy beyond, perhaps, occasional or informal expressions of sincerely felt goodwill. This seems to me nowhere more apparent than in the impoverished responses that follow ceremonial Welcomes to Country, which are commonly received more

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as soliloquies than as opportunities to demonstrate and practise lawful relations. Put simply, there is much for the mainstream community to *unlearn* after centuries of preconceptions, of coming to view and experience the world through settler frameworks and rationalities alone. There is much to *learn* in order to *know* that Indigenous sovereignty is not contingent on recognition by settlers or the settler state, while all the time appreciating the significance of such formal acknowledgment; that teaching about colonial injustices, or anything at all, might draw on Indigenous as well as western ontologies; that it's not just what you research but how you research that is important; and that it is the *quality* of relationships that lies at the heart of meaningful collaborations. Each of these examples arising from the doing of the project points to the need for, and the benefits of, coming into lawful relation.¹⁶

Such questions of lawfulness invoke questions of responsibility for institutions as well as for individual scholars. For instance, in the matter of scepticism and distrust around the interests and practices of western research *per se*, institutions might seek to move beyond simply fostering compliance with official guidelines on equal opportunity, or 'reconciliation', or on conducting ethical research (as important as these are) towards accepting holistic responsibility for coming into relation with those Indigenous peoples whose histories post colonialism have been deeply entwined with their own growth and development.¹⁷ Through understanding and attending to their own histories in this way, and in their local time and place, institutions can then be better placed to support researchers to do the same. This is, of course, a challenging conceptual and structural shift, but practical starting points might include extending ideas of what counts as research outside publication-based measures alone; supporting researchers to establish and maintain relationships with partners and communities both before funding is secured and after it expires; and considering what other structures and arrangements might be put in place for institutions and individuals to remain in meaningful relation beyond as well as within the confines of grant-based projects.

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Political philosopher Iris Marion Young understands ‘assigning and taking’ such responsibility as essential for meaningful change wherever ‘an ongoing set of processes ... is likely to continue producing harms unless there are interventions in it’ (Young 2006: 122).¹⁸ A large part of understanding this form of responsibility is through non-Indigenous peoples knowing our own pasts, understanding the complexity of our own histories and how they live on in the present, and appreciating how every local history is both intensely personal and part of a much bigger picture.

Notes

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- 1 ‘Minutes of Evidence Project: Promoting New and Collaborative Ways of Understanding Australia’s Past and Engaging with Structural Justice’, funded by the Australia Research Council 2011-2016. The project formally ended in June 2016, but its legacies continue across each of its three domains of education, research, and performance (see full details at <http://www.minutesofevidence.com.au/>).

Partners: Victorian Department of Education; Victorian Aboriginal Education Association Inc.; VicHealth; La Mama Theatre; Ilbijerri Theatre; Koorie Heritage Trust; Arts Victoria; Regional Arts Victoria; State Library of Victoria; University of Melbourne (host institution); Deakin University; University of Sussex; Royal Holloway, University of London.

Chief Investigators: Julie Evans (Lead CI), Jennifer Balint, Mark McMillan, Nesam McMillan, Patricia Grimshaw (University of Melbourne); Joanna Cruickshank (Deakin University);

International Partner Investigators: Alan Lester (University of Sussex); Zoe Laidlaw (Royal Holloway, University of London);

Partner Investigators: Liz Jones (La Mama Theatre); Rachael Maza (Ilbijerri Theatre); Erin Birch (Koorie Education Unit, DET); Jenny Bates (Koorie Heritage Trust);

Senior Research Associate: Giordano Nanni

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Early Career Indigenous Researchers: Lilly Brown, Simone Gristwood, Olivia Slater, Karri Walker.

- 2 Tony Birch is currently inaugural Bruce McGuinness Research Fellow within the Moondani Balluk Centre at Victoria University. For related forms of taking responsibility as ‘an ethics of responsibility for the forms that law takes on’ see Dorsett & McVeigh (2012: 23); as attending to place see Genovese (2014a, 2014b); and as ‘political responsibility’ see Young (2011).
- 3 See <http://www.minutesofevidence.com.au/>
- 4 Dorsett & McVeigh (2012: ii, 133) note that ‘a jurisprudence of jurisdiction, if it is anything, engages forms of human relation’ and that ‘jurisdictional practices’ are not only about law but ‘also engage the politics of community and the acknowledgement of common humanity’.
- 5 Government of Victoria 1882 *Report of the Board Appointed to Enquire into, and Report upon, the Present Condition and Management of the Coranderrk Aboriginal Station, Together with Minutes of Evidence* The Parliament of Victoria – Parliamentary Paper No. 5 of 1882-3

The full report with minutes of evidence, including names of witnesses and commissioners, is available on the project website (Minutes of Evidence 2013). A note on terminology: In nineteenth-century settler discourse, Aboriginal was the common designation for Indigenous peoples throughout the Australian colonies. Here I use Indigenous peoples when referring to settler societies generally or to Aboriginal and Torres Strait Islander peoples collectively, Aboriginal peoples in the context of Australian mainland and Tasmania, and Koori peoples when speaking specifically to the Victorian context.
- 6 On the notion of the frontier see Evans (2009). For fuller accounts of this Victorian history see Christie (1979), Broome (2005), Attwood (2009), Nelson et al (2002), and the Mission Voices website (Culture Victoria 2016).
- 7 Such spaces have also been conceptualized as ‘middle grounds’ (White 1991, Carter 2007).
- 8 An official inquiry specified the nature and effects of such legislation (see Human Rights and Equal Opportunity Commission 1997)

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- 9 The quotations are drawn from the minutes of evidence of the Inquiry as they are reproduced in *Coranderrk: We Will Show the Country*. The script, discussion of its relationship to the minutes of evidence, historical background, and witness biographies are included in Nanni & James (2013), an outcome of the Minutes of Evidence project.
- 10 Curr was a major figure in Coranderrk's eventual demise. His writings (Curr 1965 originally 1883) were also used to support the continuing denial of claims to land in recent cases brought before the Federal Court. See *Members of the Yorta Yorta Aboriginal Community v Victoria* (1998); on appeal, Justice Olney's decision was upheld by the High Court in *Members of the Yorta Yorta Aboriginal Community v Victoria* (2002). See also Furphy (2013).
- 11 See project website for details (Minutes of Evidence 2013).
- 12 Taken from Tony Birch's filmed address to the audience on Minutes of Evidence website ('Performance' Minutes of Evidence 2013). For a history of the performances see 'Performance History and Credits' (Minutes of Evidence 2013)
- 13 For full details of the project's development see 'Project' (Minutes of Evidence 2013).
- 14 See Friends of Coranderrk (Coranderrk 2016).
- 15 Actor and descendant Melodie Reynolds also contributed to the chapter in Balint et al (2015) alongside project researchers. To-camera interviews with actor and descendant Uncle Jack Charles and actor Greg Fryer are included in the Teacher Resource Package.
- 16 I pay my personal respectful acknowledgement to Mark McMillan for his patient guidance and constant support on such matters.
- 17 An off-shoot of Minutes of Evidence, the 'Beyond Compliance' project, is currently pursuing these concerns locally. Georgetown University has recently released its report into how it will acknowledge and respond institutionally to its history in relation to slavery (Georgetown University 2016).
- 18 Young notes, too, the importance of collaborative political projects between both 'victims' and 'perpetuators' of structural injustice:

Responsibility derived from social connection, then, is ultimately political responsibility. Taking responsibility in

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a forward-looking sense under this model involves joining with others to organize collective action to reform unjust structures. Most fundamentally, what I mean by 'politics' here is public communicative engagement with others for the sake of organizing our relationships and coordinating our actions most justly ... (2006: 123).

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Legislation

Aborigines' Protection Act 1886 (Vic)