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## Settler-Colonial Continuity and the Ongoing Suffering of Indigenous Australians

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Central to the discourse of contemporary indigenous affairs is the notion that settler-colonialism is an unfortunate historical event that has since ceased. Such assumptions fail to recognise the enduring settler-colonial structures that continue to shape the oppression of modern indigenous Australians. It is precisely this notion that this essay seeks to deconstruct. The present essay will argue that the experience of indigenous Australians has been shaped throughout history, and continues to be shaped in the present by what will be referred to as the settler-colonial 'logic of elimination.' In making this argument, the basic precepts of settler-colonial theory will first be sketched, in which it will be contended that the concept of settler-colonialism is best viewed as a continuous structure aimed at expropriating and maintaining control over land, rather than as a concluded genocidal event that exists only in the history books. Tracing Australian settler-colonialism in chronological stages, the argument will then follow that by denying sovereignty to the 'uncivilised native' in the pre-colonial stages, the 'civilised settler' eliminates the native first in a notional sense within international law discourse, thus justifying the subsequent colonial advancement into the 'discovered' territory. This notional elimination manifested in a particularly potent form in Australia – by designating the entire continent as 'uninhabited land', British colonial authorities essentially eliminated indigenous Australians under international law as if they had never existed in the first place – thus bypassing the legal requirement of treaty-making. It shall then be argued that the frontier era, characterised by overt violence and forced spatial segregation, can be best understood as the first stage of actual elimination aimed at clearing the native from his land. It will then be submitted that assimilationism continued this structural process of elimination by removing the growing population of 'half-caste' children from their tribes and recategorizing them within white settler-society.

Turning to the present, it will be contended that elimination persists in the form of a culturally-coded definition of indigeneity which renders the majority of indigenous Australians, mostly those in urban areas, to be too extensively assimilated into the settler-society to be eligible for native title rights. Finally, it will be argued that these enduring settler-colonial structures have shaped the ongoing dispossession, erosion of identity and subsequent inequalities in health and social wellbeing metrics that characterise the experience of modern indigenous Australians. By drawing a clear link between the experience of indigenous Australians and the historical continuities of settler-colonial logic, this paper permits a greater understanding of the root causes of ongoing problems faced by indigenous Australians.

At the outset, it is first necessary to outline the basic features of settler-colonial theory. Unlike other forms of colonialism that rely on preserving the colonised society for resource extraction and economic exploitation, the economic imperative of settler-colonialism lies in the land itself and the use to which it can be put, thus requiring permanence (Wolfe 2006: 395). Settler permanence presupposes both the notional and actual elimination of indigenous societies in order to establish its own legitimate claim to the land. Under this 'logic of elimination', settler-colonialism proceeds in identifiable stages with the purpose of eliminating the 'native' as a sovereign identity and suppressing the significance of prior and current Indigenous presence (Evans 2009: 9). It is important to acknowledge that whilst on the one hand, the settler-colonial logic seeks the total elimination of the native, and the native correspondingly seeks to repulse the settler from his lands on the other, the intentions of neither side are ever completely fulfilled (Veracini 2014: 311). Thus, rather than a concluded historical event, the structure of settler-colonialism should be viewed as an enduring binary relationship of shifting balances in which the settler always possesses some degree of ascendancy (Wolfe 1994: 94). As settler-colonialism persistently seeks its own

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transcendence by declaring itself a thing of the past, it is important not to fall victim to its logic by accepting that colonialization is a concluded historical event (Wolfe 2013: 285). As will be shown, the utility of interpreting Australian colonialism through this lens is considerable as it reveals the ongoing binary between settler and native and the way in which this continues to shape modern indigenous affairs.

For indigenous Australians, their deprivation of sovereignty is the fundamental feature of their relationship to settler-society, a deprivation that constituted the foundational justification for British colonisation. Thus, it is first necessary to demonstrate how this elimination of indigenous Australians as a sovereign identity was first manufactured within international law discourse before colonisation could proceed. The importance of grounding the denial of indigenous sovereignty on international law foundations was centred around the desire of European powers to enjoy exclusive rights to a particular colony over that of other European powers by claiming legitimate entitlement to the territory through the processes of international law (Evans 2009: 19). Indeed, recent critical legal scholarship has revealed the colonial origins of the doctrine of sovereignty itself – international law's key component. Rather than arising autochthonously in Europe as a governing principle of relations amongst European powers, evidence points to the doctrine of sovereignty as being developed as an exclusionary principle applied against non-European societies to facilitate Europe's expansionist ambitions (Anghie 2006: 741). Early international legal texts emphasized the uncivilised nature and evident 'lack of reason' of non-European societies, evinced by their radical cultural difference and resistance to European encroachment, as the principal basis for deeming them non-sovereign and correspondingly distinguishing European societies as civilised, and thus deserving of sovereignty (Evans 2009: 16). As such, on account of the supposed 'uncivilised' nature of non-European societies, European expansion into their territory was purportedly justified. Viewed in this way, the doctrine of sovereignty serves as the theoretical or 'inchoate' stage of settler-colonialism in which the 'uncivilised' natives who inhabited the territories so desired by European powers were notionally eliminated within the discourses of international law.

In the case of Australia, the denial of sovereignty to indigenous peoples was particularly potent, as British authorities deemed indigenous Australians to be too primitive to consider their land properly inhabited. It will be demonstrated that this represented a particularly aggressive form of discursive elimination and erected the operational boundaries of actual elimination that was to follow. Drawing on Captain Cook's observations of sparsely populated coastal regions devoid of European-style farming practices, British colonial authorities deemed Australia to be uninhabited, a characterisation that flies in the face of what we now know of the considerable complexity of pre-contact indigenous societies (Pascoe 2018: 15). Under the 'doctrine of discovery' – developed as a concomitant to colonialism in order to prevent conflict between rivaling European powers – acquiring territory by deeming it uninhabited or '*terra nullius*' was one of three ways that new territory could be lawfully acquired (Banner 2005: 96). The other two modes were through direct conquest, which required a declaration of war, or the transfer or 'cession' of land by its inhabitants, usually enacted by a treaty. On this point, it is significant to note that the acquisition of territory by the latter two mechanisms does not alter the customary laws that ground indigenous societies in their cultural practice, whereas a designation of *terra nullius* immediately furnishes the land with the laws of England and renders indigenous landless in their own land (*Milirrpum v Nabalco Pty Ltd* 1971: 141). Thus, not only were Aborigines subjected to foreign laws that dismantled their own system of customary law, but on account of their lack of a right of occupancy, their mass murder by colonists was frequently justified on the basis of safeguarding colonial investments in crops and livestock (Wolfe 1994: 102). Consequently, the colonisation of Australia stands out as a clear exception to the common colonial practice of treaty-making with natives, which in other contexts provided a basis for redress and tentative coexistence (Banner, 2005: 96). Thus, by drawing on a uniquely sharp application of the binary between 'civilised' and 'uncivilised' societies under international law, British colonists bypassed the administrative inconveniences associated with recognising prior ownership and set the trajectory of indigenous suffering that was to follow.

It shall now be argued that the transition from notional elimination within international law to the actual elimination of the frontier period, characterised by homicidal belligerence and subsequent segregation of survivors onto reserves, was the critical stage of elimination in which indigenous peoples were removed from their land in order to render it available for the establishment of settler-colonial society. During these incursions spanning 1788 to the mid-1850s, uneasy coexistence between settlers and natives within a given locality would inevitably descend into violent confrontations as the encroachment of an aggressive pastoral economy inevitably depleted indigenous food sources and disrupted their way of life (Evans 2009: 8). For example, in response to indigenous resistance efforts to defend

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their hunting grounds in western New South Wales, Governor Brisbane's declaration of martial law in 1824 resulted in the slaughter of countless indigenous peoples in the Bathurst Plains (Mar and Edmonds 2013: 345). Whilst the state apparatus often aided and abetted such instances of annihilation, the main instrumentality that reduced indigenous numbers were the land-ravenous hordes of agriculturalists and stockmen seeking to penetrate into unclaimed territory and 'protect' their livelihood from indigenous interference (Wolfe 2006: 391). Here, the market forces of the international economy – drawing on colonial land and labour for raw materials – combined with the desire of Europe's landless peasant classes to establish a livelihood for themselves, come into focus as the principal driving forces of settler-colonialism (Wolfe 2006: 392). The basic fact that those remaining indigenous survivors who avoided slaughter and the wilful spread of European diseases were confined onto 'protection' reserves from the 1850s onwards, rather than being outright slaughtered, further validates the argument that settler-colonialism's primary motive is to vacate and exclude indigenous presence from the land in order to render it available for economic use, rather than to commit outright racialized genocide as an end in itself (Wolfe 1994: 100). In this regard, conservative historians such as Keith Windschuttle who seek to forge a link between the responsibility to address the present suffering of indigenous communities and the capacity to empirically 'prove' the extent of systematic frontier genocide completely miss the point that settler-colonialism is not premised on the genocidal mass-murder of indigenous Australians along lines of racial superiority in and of itself (Evans 2009: 12). Rather, the culpability of settler-society in the suffering of indigenous Australians can be sufficiently established by acknowledging the bare fact that the violent confrontations of the initial frontier period were merely the first of a series of eliminatory stages to move and then keep indigenous peoples off their land – the combined effect of these eliminatory stages resulting in the reduction of the pre-contact indigenous population by almost 90% by 1900 (Harris 2003: 91). In these initial stages of elimination, the binary between settler and native, discursively engineered under international law, is maximally visible in the conspicuous removal of indigenous peoples from their land.

As the completion of geographical invasion signalled the end of the frontier, the logic of elimination turned inward to assimilate indigenous Australians into settler society which, despite being couched in humanitarian rhetoric, was equally as eliminatory as the previous stages of violence and segregation. For settler-colonialism, this strategic shift from exclusion to inclusion was a necessary progression for two central reasons. First, the sexual exploitation of indigenous women by white men during the frontier period proved to be a particularly refractory element of settler-colonialism, giving rise to the 'half-caste menace' who, being almost invariably reared by their maternal kin, were counted as indigenous (Wolfe 1994: 100). Since, unlike genetics, identity and consciousness are mathematically indivisible, the prospect of an exponentially expanding race of settler-native offspring who identified as indigenous posed a substantial ideological threat to settler-society's claim to be the legitimate occupants of Australia (Wolfe 1994: 114). Second, the requirement for settler-state legitimacy within an increasingly humanitarian global climate rendered indiscriminate killings an impractical solution to reduce indigenous numbers (Haebich 2015: 21). Thus, the forced assimilation of settler-native offspring constituted a form of administrative elimination which, at a stroke, exterminated countless indigenous children 'as indigenous' and recategorized them within white settler-society. This initially came in the form of Victorian legislation in 1886, providing for a new racial biopolitics in which the Board for the Protection of Aborigines in Victoria (and similar state boards in later years) were given the power to determine the identity of Aborigines on the basis of blood quanta, essentially deeming those who possessed any degree of white heritage as 'half-caste' and evicting them from indigenous reserves (Mar and Edmonds 2013: 356). This signalled the beginning of almost 80 years of systematic state-licensed child abduction and forced assimilation under the pretext of child welfare. However, child welfare was of limited practical concern to the relevant state authorities, who commonly cited 'being aboriginal' as a sufficient reason for a child's removal (Read 1999: 30). By the 1960s, an estimated one-in-six indigenous children had been forcibly removed from their families (Read 1999: 67). The untold suffering of these victims reflects the reality of the indigenous experience under settler-colonialism's enduring logic, being the oppressed party of the settler-native binary.

Turning to the present, the genetic blood logic of the assimilationist era can be traced to the present emphasis on indigeneity and cultural authenticity as a formula for modern elimination. It will be argued that this current form of elimination mobilises the strategies of both inclusion and exclusion by conceding repatriation in the realm of welfare, whilst simultaneously marshalling a culturally-exclusive concept of indigeneity in order to eliminate the vast majority of indigenous Australians from the reckoning of land rights. The settler-colonial concession to accord limited land rights reflects the considerable gains made by indigenous political mobilisation and organised resistance.

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Importantly, such concessions do not contradict settler-colonialism's central logic of elimination. Rather, they reinforce the notion that because total elimination can never truly be accomplished, the binary relationship between settler and native is an enduring one, constituted by shifting balances and degrees of inequality which, despite invariably lending ascendancy to the settler, can indeed be influenced through organised resistance (Wolfe 1994: 124). The decades-long campaign for indigenous land rights culminated in the High Court's decision in *Mabo v Queensland (No 2)* (1992), which conceded that the doctrine of *terra nullius* did not apply to Australia, instead recognising that indigenous peoples had prior rights to the land under 'native title'. This was shortly followed by the Native Title Act, which prescribed the eligibility criteria for such native title rights (1993 Cth). Despite being heralded by some as a turning-point in the historical continuity of settler-colonialism, Wolfe argues that the Act reinforces the logic of elimination by conceding native title only to those who can prove a 'traditional connection' with the claimed land (1994: 122). In this way, the Act shifts the burden of history from the fact of expropriation to the character of the expropriated, eliminating from the definition of indigeneity those who have already been removed from, and lost connection with, their land – that being a substantial majority of indigenous Australians (Wolfe 1994: 122). Correspondingly, where territory is not involved, the settler-colonial state has sought to reconstitute indigenous affairs internally as a depoliticised branch of welfare bureaucracy, providing substantial funding to social, healthcare and education programs. This, as Veracini argues, represents an assimilationist strategy aimed at reducing the perception of the primary settler-native divide to the status of the many divisions in our modern 'multiculturalist' society, thus protecting the territorial basis of Australian settler-colonialism (Veracini 2007: 281). Thus, by historicising the fundamental settler-native divide through assimilationist welfare concessions, whilst simultaneously excluding the overwhelming majority of indigenous Australians from land rights by marshalling a culturalist criteria for indigeneity that only those least affected by settler-colonialism's destruction can satisfy, these parallel strategies continue to uphold the logic of elimination and protect settler-Australia's claim as the territorial sovereign.

In light of the structural continuity of elimination from pre-colonial international law to the present, we are in position to understand that the experience of indigenous Australians as a collective is being continuously moulded by the enduring structures of settler-colonialism. The modern indigenous experience of oppression centres on their denial of sovereignty and the state-sanctioned regulation of their identity. Maddison argues that the 'authenticity' and 'tradition' requirements inherent in the aforementioned definition of indigeneity perpetuate a hierarchy that denies indigeneity to urban indigenous people (Maddison 2013: 292). Indeed, the structural violence that such forms of contemporary settler-colonialism produce quite often spill over into public discourse and the media, dispossessing indigenous Australians of their sense of identity. As a brief example, an article by prominent conservative media figure Andrew Bolt was the subject of a discrimination lawsuit in 2009 (Van Der Walle 2018: 49). His argument centred on the notion that light-skinned aboriginals in urban areas who identified as indigenous for the purpose of obtaining welfare benefits could not possibly be 'authentic' enough to obtain such benefits (Van Der Walle 2018: 49). The consequences of delimiting indigenous identity in this way are not minor. It has been widely established that possessing a poor sense of cultural identity for indigenous Australians leads to poorer mental health outcomes, as does poor cultural association to higher rates of criminal recidivism (Shepherd 2018: 6). More broadly, the ongoing repercussions of territorial dispossession cannot be understated. Crotty argues that the associated social, cultural, spiritual and economic repercussions of territorial dispossession are impossible to divorce from the fact that indigenous Australians currently have the worst life expectancy of any indigenous population globally and are proportionately the most incarcerated peoples on the planet (Crotty 2018: 36). In sum, so long as settler-colonialism persists, the fundamental binary between settler and native will always be a relationship of inequality and ongoing structural oppression.

To conclude, it has been strongly contended here that the past and present suffering of indigenous Australians is attributable to a singular eliminatory logic inherent to settler-colonialism. As the economic use to which colonial Australia could be put required settler permanence, the central purpose of this logic throughout the course of Australian history has been to eliminate indigenous Australians as a sovereign identity and expropriate their land. Viewing settler-colonialism as an ongoing structure brings the notional elimination of indigenous Australians in international law sharply into focus as the chronological starting-point of present indigenous suffering, from which a series of clearly identifiable stages of elimination throughout Australia's history progressed. It has been the aim of this paper to expose settler-colonialism as an ongoing structural process for two central reasons. Firstly, acknowledging settler-colonialism's enduring logic substantially enhances the extent to which the inequality, persecution and erosion

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of identity faced by contemporary indigenous Australians can be fully understood. Secondly, acknowledging settler-colonialism as an ongoing process permits a framework aimed at addressing inequality and the erosion of indigenous identity to be defined in terms of a parallel and ongoing movement of organised resistance that features indigenous perspectives, beliefs and practices.

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