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H12439

Coranderrk
Oct 2nd 1875

J. William Barak

Remember of Coranderrk

I would if you be so kind to help us for we are in trouble and with some the shame of those who are willing to live and die here these are those that agree to stop)

(The day the Month we had a meeting here)

Harry	Willie Barber
Bobby Warden	Willie Bushman
Johnny Webster	Maxton Simpson
Tommy Webster	Johnny Phillip
Dick	Tommy Arcoa
Peter Hunter	Tommy Miller
Tommy Benfield	Tommy Barber
James Barber	Willie Judge
Tommy Donally	Tommy Hunt
George	Tommy Rice
Edward	
Johnnyerrick	all present
Johnny Hazmer	
Johnny Charles	

We want a man whom God chooses to lay the foundation of Coranderrk Station for he it is appointed us to the living God and that's Mr Green for if it was not for him we what a been all dead and that's all we request just now & may the Lord bless you Sir and
Yours good knowledge

I remain you
Kind Friend
William Barak

Petition written and signed by William Barak and Coranderrk residents, 20 October 1875. Public Record Office Victoria, VPRS 3991/Po, Unit 834, Item 75/H12439. Reproduced with cultural permission from Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation.

Chapter 1

INTRODUCTION—ENCOUNTERS BETWEEN LAW AND COLONIALISM

From Structural Injustice to Structural Justice

1881: In the British settler colony of Victoria, John Green—a Scottish Presbyterian lay preacher and respected founding manager of the Coranderrk Aboriginal reserve—explained his decision to resign a few years earlier rather than follow the direction of his superiors to remove residents from the home they had sought to establish following their initial dispossession in the wake of “settlement” almost fifty years earlier. Green was required to declare his position before an official inquiry into the growing unrest surrounding the evident determination of the Board for the Protection of Aborigines to break up the reserve and sell the profitable land to settler farmers. He testified: “I know that I could move the Aborigines if I could assure them it was for their good to do so . . . but I will not try—decidedly not.”¹

Green’s thoughts and actions were supported by the testimonies of other prominent colonists who openly condemned the devastating impact of British settlement, rejecting prevailing views that Koori peoples had no stake in the land or future in the colony, and calling on settler law to support ways for everyone to live together justly in light of the circumstances in which they now found themselves. William Barak, the *Ngurungaeta* (clan head) of the Wurundjeri people of the Kulin nation and leader of the various men, women, and children who were residing at Coranderrk, used the forum to bring their case before colonial officials. This was just one of many episodes in Barak’s long and powerful campaign for social and political relations between Koori and settler communities to be



Figure 1. Uncle Jack Charles playing William Barak and Tom Long playing John Green in *Coranderrk: We Will Show the Country*, a dramatic reenactment of the testimony at the 1881 Parliamentary Inquiry into the Coranderrk Aboriginal Reserve, Victoria, Australia. From a 2011 performance by the Ilbjerri Theatre Company at La Mama Courthouse Theatre: Isaac Drandic (director), Rachel Maza (dramaturgy), Giordano Nanni and Andrea James (script), with actors Syd Brisbane, Uncle Jack Charles, Jim Daly, Peter Finlay, Greg Fryer, Liz Jones, Tom Long, Melodie Reynolds and Glenn Shea. Photograph: Steven Rhall.

conducted according to the laws, values, and interests of both groups, rather than by simply imposing European ways of knowing and being in the world. In so doing, Barak was following in the footsteps of Kulin leaders Billibellary and Simon Wonga, who had previously sought to forge ongoing sovereign relations between the different peoples whose lives had been brought together through the violence and immediacy of the broader settler colonial enterprise in Australia where the need for formal legal engagement with Indigenous peoples was not acknowledged.²

Calls for Indigenous and non-Indigenous laws to be brought overtly into relation to agree on social order were unusual at this time in the Australian colonies where settler interests had commonly assumed precedence by the mid-



Figure 2. Melodie Reynolds plays Caroline Morgan in *Coranderrk: We Will Show the Country*, a dramatic reenactment of the testimony at the 1881 Parliamentary Inquiry into the Coranderrk Aboriginal Reserve, Victoria, Australia. From a 2011 performance by the Ilbjerri Theatre Company at the La Mama Courthouse Theatre, Carlton, Victoria: Isaac Drandic (director), Rachel Maza (dramaturgy), Giordano Nanni and Andrea James (script), with actors Syd Brisbane, Uncle Jack Charles, Jim Daly, Peter Finlay, Greg Fryer, Liz Jones, Tom Long, Melodie Reynolds, and Glenn Shea. Photograph: Steven Rhall.

nineteenth century.³ But, in this case, the findings of the Coranderrk Inquiry—formally known as “The Board Appointed to Enquire into, and Report upon, the Present Condition and Management of the Coranderrk Station”—left open the possibility of advancing more equitable relationships between Koori and settler peoples, their worldviews, and systems of law. For even though colonization continued as a grave injustice imposed upon Koori peoples, the local influence of humanitarian sentiment in Victoria meant that successive administrations had early on acknowledged their obligation to provide at least a degree of safety and cultural autonomy through a system of land-based “protection” on missions and reserves.⁴ The 1881 Coranderrk Inquiry went even further. Through inviting the testimonies of Koori residents, publicly hearing and recording their assertions

of self-determination and belonging, and ultimately finding that the station was indeed ill-managed following Green's departure, the Inquiry held out an official opportunity to consider possibilities to accommodate pluralist expressions and practices of law, governance, and landholding in the colony. Within five years, however, a new government, bolstered by an increasingly self-interested electorate, passed landmark legislation designed to entrench the racialization and assimilation of Koori people, deny their sovereign claims, and uphold the kind of exclusive settler jurisdiction that eventually unfolded throughout the Australian colonies. Even though their success was commonly short-lived in settler colonies across the British Empire, such potentially productive encounters between law and colonialism in the past maintain profound significance in the present.⁵

Law, Colonialism, and the Question of Justice

This book focuses on a series of such encounters between law and colonialism across time and space. It is concerned with questions of justice and injustice, particularly questions of structural injustice and the possibility of structural justice. Through our analysis of different types of engagements between law (plurally conceived) and colonialism—including the settler colonial context we have introduced above—we seek to underscore the distinctively structural nature of colonial injustice. Such injustice becomes embedded in the social, political, legal, and discursive arrangements of certain polities where it continues to have a material impact in the present. Yet we also draw attention to the possibilities for justice that nevertheless remain. These possibilities include, quite clearly, the importance of structural reform and legal redress for past harms; but they are also more expansive, implicating and involving law in different ways. We argue, for example, that possibilities for justice can also be found in a greater recognition by law (as a discursive field) of colonial harm, in the legal record of colonial injury and its ability to be reactivated in the present to pursue just ends, and in an acceptance of our individual responsibility for our own laws and practices. Ultimately, we show that law is not only a site and source of colonial harm but also a potential means of keeping hold of justice.

The book focuses first on identifying the role of law in instantiating structurally unjust relations in colonial contexts; second, reflecting critically on the limits and capacity of law to recognize and redress the past and enduring harms of colonialism; and third, considering the possibilities for structural justice that may arise and that can still be generated within the

colonial encounter. We discuss a diverse selection of encounters between law and colonialism to demonstrate how such encounters generate new ways of understanding law and possibilities for new modes of interrelation. Our methodology, as we draw out below and in the conclusion, is to bring together different experiences, perspectives, temporalities, and laws (including ways of knowing law) in order to spark new ways of understanding colonial harm and the potentiality for justice.

For us, keeping hold of justice means working within unjust structures in ways that at once acknowledge, challenge, and diminish their hold. It means keeping hold not only of prospects for structural justice existing within past and present colonial orders but also of the responsibility this entails for each of us in bringing about their more fulsome expression in the future. Our central concern is thus the complex relation between colonialism, law, structural injustice, and structural justice, its manifestation in the past, present, and future, and the possibilities for justice that remain.

This book is part of a larger interdisciplinary, cross-sectoral, and Australian-based research endeavor called the Minutes of Evidence project. This unique collaboration brought together Indigenous and non-Indigenous researchers, performing artists, educators, and community and government agencies interested in promoting new ways of comprehending structural injustice and the possibility of structural justice across the spheres of research, performance, and education.⁶ Comprising eleven organizational partners from Victoria and two from England, the project drew on the 1881 Coranderrk Inquiry to foster greater awareness of local colonial injustices and increase public understanding of constructive ways forward. Using the medium of live performance to make this task engaging and accessible, and with the generous support and involvement of descendants of the Coranderrk community, the project produced a verbatim theater play called *Coranderrk: We Will Show the Country*.⁷ Based on the Inquiry's archived "minutes of evidence," comprising the actual record of testimony from the Inquiry, and drawing on letters, newspaper articles, and petitions from the time, the play created a number of "meeting points" to share and interrogate Victoria's (and Australia's) past in schools and universities, in theaters, in other public venues, and on Country in Aboriginal lands.⁸ These "meeting points" were designed to foster proximity,⁹ creating space for new forms of relational engagement.

Situated in the colonial encounter of Victoria, and unusually for the time in-

cluding testimony from Aboriginal residents of Coranderrk reserve along with settler supporters and opponents, the Coranderrk Inquiry was uniquely suited to conveying the meaning and significance of complex socio-legal phenomena (such as structural injustice and colonial injury) to public and school audiences, while the play brought to life more abstract theoretical accounts of settler colonialism. The broader story of the Inquiry also informed the collaborative development of new modules and classroom resources for the History and Civics and Citizenship curriculum in secondary schools, with protocols for engaging appropriately with local Koori communities. The project further transcended the conventional academic sphere through its commitment to sustaining respectful personal relations and professional partnerships between Indigenous and non-Indigenous peoples, organizations, and communities.

In terms of its methodology, the Minutes of Evidence project sought to connect different Indigenous and non-Indigenous knowledges, insights, and perspectives on our shared colonial past, and to highlight the significance of working collaboratively toward structural justice in the present and the future. The creation of such meeting points made the project innovative in both nature and scope. And this book is an attempt to apply this same methodology—of bringing together the past, present, and future; different disciplines and perspectives; and Indigenous and non-Indigenous ways of knowing—within the academic sphere to further develop some of the broader project's intellectual concerns with structural injustice and structural justice.

Our book is interdisciplinary and collaborative in orientation, addressing scholars working across criminology, history, and law. It thus represents another “meeting point”: between a criminological concern with hidden and structural harms; an historical studies commitment to acknowledging the nuanced complexity of the past and its relation to the present and future; and a socio-legal focus on understanding the intricate connection between law, structural inequality, and questions of justice. While we each took initial lead on separate chapters (Julie Evans for chapter 2, Mark McMillan for chapter 3, Nesam McMillan for chapter 4, Jennifer Balint for chapter 6), their arguments and conceptual frameworks emerged from our conversations, debates, and interactions on the Minutes of Evidence project over several years, and are shared intellectual products. Moreover, this introduction, the conclusion, and chapter 5 are purposively cogenerated. The book as a whole therefore sits alongside the broad body of work produced by academic and practitioner collaborators on the project while also

making a specific contribution to more wide-ranging scholarly consideration of the relation between law, history, and colonialism.¹⁰

Like the broader Minutes of Evidence project, we also draw on the Coranderrk Inquiry to ground our own analysis and concerns. Accordingly, the next section of this introduction provides further details of the Inquiry, and its re-performance in the present, as a way of explicating our key themes and locating our analysis of law, colonialism, and structural injustice in time and place. In the chapters that follow, we expand our gaze to the experiences of British settlement in other parts of Australia; to claims for justice made by the Kenyan Mau Mau both under the colonial administration and later in the United Kingdom against the British state; and to contemporary international justice institutions and their willingness and ability to recognize the impact of colonialism in the context of the 1994 Rwandan genocide and more broadly. In so doing, we bring historical episodes of structural injustice into contact with contemporary justice frameworks such as transitional justice, and with reference to new and emerging global institutions. We do so not to conflate or to offer a prescriptive Western-centric or universally applicable agenda for the future. Rather, we engage with our different case studies in their specificity to deepen our consideration of the continued influence of the colonial past in the present and of the extent of law's potential in helping realize structural justice in the future. Indeed, as drawn out more fully in chapters 2 and 3, our discussion is informed by the importance of bringing normative European frameworks into meaningful relation with Indigenous ways of knowing and being in the world, and the significance of dialogue and collaboration in recognizing and addressing entrenched historical harms and promoting lawfulness.¹¹ It is this methodology of establishing productive meeting points between different historical experiences, temporalities, forms of law, and, significantly, ontologies of law that we consider a key contribution of our work.

Through our interdisciplinary and creative method, however, we do seek to advance a central argument: one that demonstrates both the structurally unjust nature of colonial harm and also the possibilities for justice and just relations that continue to exist despite the advent of colonialism. Our discussion thus speaks directly to an enduring socio-legal concern with the relationship between law and justice, with our focus specifically on the relation between law and justice within the colonial encounter. Socio-legal theorists have both acknowledged and interrogated the common association between law and jus-

tice.¹² They have demonstrated that although justice is often conceptualized as a legal end, law in practice has frequently functioned to reflect and embed dominant social, political, and cultural power dynamics and uphold and legitimate an unjust status quo in many modern Western democracies.¹³ The debate about whether law itself can redress structural inequality, or is too deeply implicated in it, is a seminal and ongoing socio-legal concern.¹⁴ Meanwhile, calls to “de-center” law as the site of analysis have also given rise to an exploration of the different ways of conceiving of and enacting justice as not only legal but also social, symbolic, economic, and even transformative.¹⁵

Our intervention in these debates is to explore the complex nature of the relationship between law, justice, injustice, and colonialism with reference to a range of times and contexts. We focus quite specifically on colonialism as a structural injustice—one that continues to affect people’s lives and opportunities long after apparent declarations of “postcolonial” independence—and the possibilities of a structural justice. Our emphasis on the enduring significance of “past” colonial harm is accordingly informed by postcolonial theory’s attention to the resilience of colonial forms of knowledge and forms of social, political, and legal arrangements that continue to influence global and national relations and affect the life experiences and aspirations of the groups and individuals they encompass.¹⁶ This conceptualization of colonialism as a distinctively structural injustice also draws on explanatory frameworks offered by historian Patrick Wolfe and political theorist Iris Marion Young, whose work we elaborate below. Meanwhile, our overall approach acknowledges law as plural and diverse and is attentive to possibilities for improving the quality of relations between the different peoples and laws involved in continuing colonial encounters. In this respect, we are indebted to the specific understanding of lawful relations articulated by Shaunnagh Dorsett and Shaun McVeigh in their book *Jurisdiction* and to the writings of other critical scholars whose work attends to the quality of engagement between Indigenous and non-Indigenous ways of knowing, including ways of knowing law.¹⁷ Meanwhile, our expansive consideration of structural injustice and structural justice as both discursively and materially manifest—involving questions about the social, political, and legal recognition of colonial harm and its practical redress—draws on the work of cultural theorists and critical criminologists that demonstrates the ethical salience of *how* experiences of justice are socially and publicly regarded.¹⁸

These diverse literatures are used alongside and in conversation with other

sociolegal and critical legal theory on living law,¹⁹ legal encounters,²⁰ legal pluralism and legal proximities,²¹ and the cultural particularity of Western and international legal frameworks.²² Together, these literatures and our case studies support us in exposing, understanding, and interrogating past, present, and future practices of law (expansively conceived) as ways of knowing that not only help legitimize and embed structural injustices but also offer possibilities for just relations.

THE CORANDERRK STORY AND THE MINUTES OF EVIDENCE PROJECT

The 1881 Coranderrk Inquiry has great ethical, legal, and historical significance for Australia. While Koori people are often intimately familiar with its history, it is virtually unknown in the broader Australian community. One of six Aboriginal reserves in colonial Victoria, Coranderrk was established in 1863 following a campaign by Kulin leaders Billibellary and Simon Wonga to secure a permanent home for their people once the force of colonization had overwhelmed their hold on traditional lands. Their efforts had been supported by the local Protector William Thomas, and by the lay preacher John Green who subsequently became the trusted manager of the reserve. For the first ten years or so, Coranderrk operated as a successful working farm, with certain opportunities for self-determination.²³ But as political pressures mounted to sell the valuable property to settler farmers, and for the removal of Green as manager, Wurundjeri *Ngurungaeta* William Barak and Taungerong clan head Thomas Bamfield led Coranderrk residents in actively lobbying the government to hold an official inquiry into the deterioration of its conditions and management.

Contrary to common practice, many Aboriginal people appeared before the commissioners of the Inquiry and their testimonies were recorded in the “minutes of evidence,” creating an unrivaled means of recalling their voices from the past. Despite evident risks to their well-being, these witnesses spoke of intensely personal lived experiences of settler colonialism, including their original dispossession, their individual pathways to residing at Coranderrk, the illnesses and deaths of their children, the increasing exploitation of their labor, their mistreatment at the hands of management, and their fears for the future of the reserve.

Dja Dja Wurrung woman Caroline Morgan, for example, powerfully set

out the result of the failure of the Board for the Protection of Aborigines to provide adequate blankets for Coranderrk residents, stating that she “[t]ore it [her blanket] into two—I have two beds,” and succinctly declaring “This is my evidence.”²⁴ Young Taungurong woman Alice Grant put on record the inequity of the failure to pay wages for work done by residents when she explained that she no longer did the ironing for Mrs. Strickland, the wife of the current manager at Coranderrk. In response to the question “You do not believe in working for nothing?” she replied “No.”²⁵ The lived experiences of colonial harms were individualized and rendered explicit following years of dispossession, violence, upheaval, prejudice, and decades of political struggle to maintain what remained of Koori lands, communities, and cultures. But witnesses also spoke directly to their aspirations for justice in the future, of their determination to support themselves by continuing to farm the reserve land they had been granted at Coranderrk and to expose consistent efforts by the Board for the Protection of Aborigines to undermine their self-reliance and economic independence, move them to the far north of the colony, and make the now profitable land available for private purchase.

The different interests and concerns of individuals and groups within the settler community were also aired and interrogated at the Inquiry. The first manager, John Green, and wealthy landowner, Ann Bon, spoke passionately about their long-held collaborations with Coranderrk residents, their general support for the quests of Koori people to protest the injustices that colonization had imposed on them, and their disapproval of increasingly repressive policies and attitudes. Meanwhile, Board member Edward Curr and the Moravian missionary Friedrich Hagenauer openly declared that the perceived inadequacies of Aboriginal people justified their subjugation, including through the removal of “half-caste” children; the unsuitability of the reserve for its current residents; and the dangerous example that their activism at Coranderrk was presenting to the stability of reserves throughout the colony.

The outcome of the Inquiry initially boosted hopes of forging a different, more equitable future in Victoria: the incompetent and violent Frederick Strickland, the reserve manager, was dismissed, the Board’s attempts to remove Coranderrk residents and break up the reserve were resisted, and the land was gazetted as a permanent reserve. But these prospects for building a stable basis for pursuing lawful relations in the colony were soon quashed. The Board achieved its end in other ways when a new government passed the so-called

Half-Caste Act in 1886.²⁶ Henceforth, Koori people deemed not to be “full blood” were no longer entitled to live on reserves or receive government support. The Act foreshadowed similar racializing legislation in other Australian colonies with the effect of breaking up and dispersing Aboriginal families, and subjecting individuals and communities to lasting regulation, surveillance, and control.²⁷

The story of the Coranderrk Inquiry testifies to the strength and resilience of Koori people in the face of the injustices that were becoming structurally embedded in Victoria, and is also an important demonstration of strategic alliances between Indigenous and non-Indigenous peoples in search of better ways forward. This history, and its restaging in the present, grounds our examination in this book of four main conceptual concerns: the complex relation between law and colonial injustice; the distinctively *structural* nature of colonial injustice; the intertwined nature of the colonial past, the present, and the future; and the possibility of just ways forward.

Colonial Injustice and the Law

First, for us, the Coranderrk story exemplifies the complex nature of the relationship between law and the structural injustice of colonialism. On the one hand, as a clear instrument of governance of the colonial state, law is deeply implicated in colonial harm. In this case, legislation is used as a framework for entrenching separation and repression, and is a collaborator and companion in injustice. Law and the state have a particular relationship: law is dependent upon the state for its power, but also exerts its own. And as an instrument of colonial power, it exerts a particular force. As Zoë Laidlaw has pointed out, “The law was a medium within which the practices, priorities, and nature of British colonialism were debated; it served both to enable and to constitute colonialism.”²⁸ Violence and the law are bound together: as Elizabeth Kolsky has noted, for example, in the context of British colonial rule in India, “law itself was part of the structure of violence.”²⁹ This is clear also at the international level, where it is international law, and its predecessors, that historically produced Indigenous peoples per se as categorically ineligible for sovereignty on the basis of their perceived departure from religious, cultural, or economic norms.³⁰ The profound discursive effects of this centuries-old relation between law and colonialism were evident in the lived historical experiences of Indigenous people across the British Empire, including those residing at Coranderrk and elsewhere

in the Australian colonies. They still prevail in contemporary Australia where settler law commonly fails to come into meaningful relation with Indigenous sovereignty.

Yet on the other hand, for Coranderrk residents and their settler allies, and for other Indigenous communities such as the Kikuyu in Kenya, settler law offered a language and a process for making justice claims about the everyday realities of settler colonial rule, the “everydayness of injustice.”³¹ It is this conceptualization of law, as a tool of injustice yet called upon for justice, that we draw upon in the book.³² Regarding Coranderrk, it was through using one of the mechanisms of settler law—an official public inquiry—that residents highlighted to a broader community the inequity of life in the colony and asserted their own perspectives on what needed to be done. And it was that Inquiry’s hearings that pointed to the contradictions of settler law’s claims to fairness and exposed its complicity in legitimating and entrenching settler interests. In turn, it is also settler law that created an enduring record of the violence and discrimination it condoned, a record that can be drawn upon in the present to facilitate new conversations about lawful and just futures.

Colonialism as a Structural Injustice

Second, we emphasize that colonialism is a distinctively structural injustice, a normalized form of harm that becomes entrenched in the social, political, legal, and discursive arrangements of individual polities. To understand the enduring impact of colonialism and begin to move toward its redress, we argue that it is crucial to appreciate colonialism as a structural harm. Political philosopher Iris Marion Young conceptualizes structural injustices, such as socioeconomic inequality, as different from forms of injustice that are more readily attributable to identifiable perpetrators either through “the wrongful action of an individual agent or the repressive policies of a state.”³³ For Young, structural injustices are a “kind of moral wrong” whose sources are commonly so multifarious, widespread, diffuse, or located in a distant past that it is misplaced to seek to blame any set of individuals or institutions.³⁴ Young’s conceptualization also benefits from earlier work in related fields, including that of Johan Galtung, founding scholar of peace and conflict studies, who defined the term “structural violence.” Galtung explained “direct” violence as associated with an individual actor and “indirect” (or “structural”) violence as that which “is built into the structure and shows up as unequal power and consequently as unequal life chances.”³⁵ While the work

of anthropologists Nancy Scheper-Hughes and Philippe Bourgois is informed by localized ethnographies, it too adopts a similarly broad purview, claiming that structural violence should be understood as “the violence of poverty, hunger, social exclusion and humiliation.” They explain that “the social and cultural dimensions of violence are what give violence its power and meaning.”³⁶

The structural injustice of colonialism was revealed in the Coranderrk Inquiry—for example in Taungerong clan head Thomas Bamfield’s statement that “I think they have done enough in this country to ruin the natives without taking it from us anymore.”³⁷ Bamfield testified to the poor management of the station since John Green had been forced out, but also importantly took the inquiry from being about the conditions on the station to the structure of dispossession.³⁸ Indeed, colonialism is an archetypal structural injustice. As political theorist Catherine Lu explains:

Like most political, social, and economic injustices that affect large groups of people, colonial injustices involved not simply wrongful acts by individual or state perpetrators. They also relied on social structural processes that enabled and even encouraged individual or state wrongdoing, and produced and reproduced unjust outcomes. Acknowledging colonialism as structural injustice does not displace assessments of individual or state liability for wrongful actions, but identifies other contributory agents in the production of colonial injustices, and raises the question of their remedial responsibilities.³⁹

Moreover, when arising in the particular context of settler colonialism, structural injustice remains inherently associated with the historical foundations of contemporary nation-states. Patrick Wolfe’s influential articulation of settler colonial theory identifies the unique structural relation between colonizer and colonized in settler societies such as Australia, Canada, New Zealand, and the United States of America where the colonizer never leaves and where (in contrast to slave or franchise formations) the economic interest lies primarily in permanently “settling” the ancestral lands of Indigenous peoples and claiming them as their own.⁴⁰ Settler colonial theory therefore seeks to account for the unique nature of settler states where the continuity between the colonial past and the present is more literal: with a lack of any official transition to a decolonized state, such polities effectively remain colonial formations.

Wolfe’s historical analysis illuminates the structural nature of settler colo-

nial harms where the violence of the dispossession of Indigenous peoples and their ongoing subordination to colonial interests helps to constitute an exclusive settler sovereignty, which seeks continually to fortify its legitimacy by repressing or marginalizing Indigenous claims. His schema characterizes settlement as “a structure rather than an event” that unfolds in stages according to a persistent “cultural logic of elimination” in support of settler hegemony.⁴¹ This never-ending process is therefore evident not only in the initial periods of invasion and dispossession but also in subsequent periods of incarceration on reserves and in relentless racializing efforts to assimilate Indigenous peoples into no longer counting as sovereigns.

In Australia, for example, as a range of scholars have shown,⁴² the 1992 *Mabo* High Court decision (which recognized a limited form of Indigenous land rights) and resultant native title legislation have yet to produce a comprehensive point of rupture given the difficulties many claimants have had in bringing their cases before the courts, and in securing legal determinations in their favor. Similarly, in the international legal order, enduring structural injustice is manifest in the continued primacy of Western notions of sovereignty that were produced and developed not only within Europe but also through the colonial encounter.⁴³

While settler colonial theory highlights the insistent privileging of settler interests we note, too, how such analytical insights clarify the urgency of meaningful change in such societies rather than denying its possibility. Indigenous and non-Indigenous scholars have observed of the Australian case, for example, that despite the seriousness of its constraints, the *Mabo* decision nevertheless still signals the capacity of settler law to acknowledge its potential to improve the quality of its relations with Indigenous peoples and laws.⁴⁴

A key problem, however, regarding the recognition and redress of structural injustice is making it visible and appreciable. That is, the nature and power of structural injustices is traceable to the way in which they become significantly naturalized over time so that populations commonly perceive their manifestation in entrenched inequalities persistently suffered by particular groups as taken-for-granted, if regrettable, social norms. Young emphasizes that in contrast to willfully imposed harms, structural injustices can be perpetuated through the mass of the population simply taking part, for example, in a market economy that is structured to benefit certain groups at the expense of others. Such generalized structural inequalities are reproduced over time not just

through the material structures of a society but also through the ways in which unequal relations between different groups are continually rationalized through persistently privileging certain narratives. Contemporary economic and ideological processes therefore “carry the effects of past assumptions, decisions, and interests with them,” inevitably either supporting or constraining the actions and aspirations of individuals and groups “even as we try to transform them.”⁴⁵

The hidden nature of structural injustice is importantly constitutive of the harm it causes. That is, the social, political, and legal nonrecognition of any injury is not simply a barrier to its redress but also a form of violence. Scholars from diverse disciplines have been at pains to highlight and problematize the lack of public attention to certain experiences of suffering and to draw attention to the inequalities that mark whose suffering is acknowledged and whose is not.⁴⁶ Here, critical scholars, notably Judith Butler, emphasize the political and affective significance of the way in which—or the frames through which—people’s suffering is publicly regarded. She argues that the frames we use to conceptualize and rationalize certain violence (such as war) and understand its effects are politically and ethically salient, shaping “what ‘can’ be heard, read, seen, felt, and known” in the sociopolitical sphere.⁴⁷ These insights underscore the problematic nature of structural historical injustice and its contemporary legal and political obfuscation, which is itself intrinsically injurious.

To sum up this theme of our analysis, we argue that a conceptualization of colonialism as a distinctively *structural* injustice is thus crucial in recognizing it as materially and individually experienced and yet inextricably connected to and occluded by seemingly neutral and objective social, political, legal, and discursive structures. As will become evident throughout the book, it is such a recognition of the structural character of colonial injustice that compels a greater contemporary engagement with the enduring significance of the past (chapter 2) and the necessity of structural reform (chapter 5) as well as the importance of legal (and social and political) recognition of colonial harm alongside its concrete redress (chapters 3, 4 and 6). Hence the significance of the Coranderk Inquiry in hearing and recording the testimonies of so many Indigenous witnesses to the injustice they experienced on a daily basis and of their rearticulation before public, student, and academic audiences in the present through the Minutes of Evidence project; again, demonstrating the potentialities of justice within colonialism and through law.

Bringing the Past into the Present

Third, and relatedly, the Coranderrk Inquiry sheds light on the intertwined and nonlinear relation of the past, present, and future. Through the Minutes of Evidence project, testimonies that were delivered originally in 1881 were brought back to life in the verbatim theater play *Coranderrk: We Will Show the Country*. It is in these testimonies, which outline both the structural injustice of colonialism and the just alternatives that remain, that the potential for lawful and just relations in the past is made visible in the present and available for the future. The reactivation of these testimonies created a “meeting point” for consideration that the past is not solely a site of harm but also holds the possibility of establishing *just relations*.

Introducing one of the early performances, Koori academic, novelist, and poet Tony Birch asked the audience to reflect on what it means to *hear* these voices from Victoria’s colonial history, to learn at once, and in such a personal way, about the nature and scope of past and present injustices; the bravery, strength, and resilience of Aboriginal people in speaking openly to a legal and political system that sought to oppress them; their alternative visions for justice that were shared by named settler supporters; and the possibilities such historical examples of interpersonal collaboration continue to represent for an ethical future. Birch explained further that for all his intimate familiarity with the written records of the Inquiry,

to hear these words *spoken* for the first time . . . 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 I think that to consider when you listen to these men and women that over . . . 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.⁴⁸

Indeed, during question and answer sessions held after the performances, some audience members drew parallels between this historical record of structural injustice and contemporary examples, including a 1998 Federal Court judgment (upheld by the Australian High Court in 2002) that denied native title to Yorta Yorta people on the basis that the pastoralist and member of the Board

of Protection Edward Curr, who testified to the Inquiry, had already dismissed their sovereign entitlement to land in his 1883 memoir of life in colonial Victoria.⁴⁹ Parallels were also drawn to the coercive national emergency legislation that was hastily enacted in 2007 by the Australian Government in response to widespread accusations of sexual abuse of Aboriginal children in the Northern Territory. Known colloquially as “the Intervention,” the exceptional Northern Territory National Emergency Response legislation overrode the authority of the Northern Territory Government and local community organizations and was supported by the deployment of soldiers and the suspension of the Racial Discrimination Act.⁵⁰ Such observations highlight the ways in which the structural injustices of colonialism have endured in Australia, and specify the capacities of settler discourses and institutions to reproduce exclusivist notions and practices of sovereignty.

The analyses presented in this book suggest that any attempt to address the enduring structures of injustice inaugurated through colonial discourse and practice demands an acknowledgment of the relation between the past, present, and future. Legal theorist Ratna Kapur argues, too, that a linear conceptualization of time as “progressive” can act as a further means of exclusion, suggesting that “the ‘post’ in postcolonial does not merely mark an end to the colonial moment. It provides the opportunity to interrogate and elaborate on how the past continues to inform the present.”⁵¹ Historical theorist Berber Bevernage also insists on the “radical contemporaneity” of the past, present, and future, resisting their conceptualization as distinct or temporally striated states.⁵² Stewart Motha, in his analysis of sovereign violence has shown how the “archaic forms and assertions of sovereignty persist in the present,” and are sustained by law.⁵³

As observed in our discussion of the 1881 Coranderrk Inquiry and its contemporary reperformance, we see possibilities for just relations in the past, even as structural injustices are being embedded. We suggest that the colonial past is not simply a site of injustice, but an essential basis upon which to make sense of the present. It is only through understanding this interconnection that we can appreciate the full significance of colonialism as a structural injustice.

Ways Forward: Keeping Hold of Justice

Finally, the book draws on the Coranderrk Inquiry to raise future possibilities for justice—what we term a structural justice—within and despite enduring

colonial structural injustice. Coranderrk residents and their settler allies powerfully used their testimonies to offer alternative ways forward, including through pushing Inquiry commissioners to move beyond asking questions about the everyday conditions of the station and to focus on structural issues of land and self-determination. They spoke to the common questions being asked at the time, of how to *live together justly*.

Asked “Would you like the Government to give you all the food you want, and all the clothing, and no work?” *Ngurungaeta* William Barak responded:

If they had everything right and the Government leave us here, give us this ground and let us manage here and get all the money. Why do not the people do it themselves—do what they like, and go on and do the work.⁵⁴

Meanwhile, in roundly condemning official attempts to undermine the reserve, Coranderrk’s founding manager John Green spoke directly to the importance of respectful relations: “If the Aboriginal is put into the question, he will strive to keep his own law. That is where I consider you have failed.”⁵⁵

The “meeting point” of peoples, communities, and laws created through the Coranderrk Inquiry countered the predominant settler colonial narrative of Aboriginal peoples as lawless, lazy, uninterested in work, and as having no stake in the colony’s present or future. It thereby challenged, too, those racializing discourses and practices that increasingly sought to naturalize discrimination by linking perceptions of somatic differences between populations to their eligibility for full sovereign freedom and humanity.⁵⁶ In highlighting the destructive rationale of the colonial enterprise, Koori witnesses asserted their sovereign willingness to be partners in a colony that recognized pluralist expressions of sovereignty.

In this book, we explore ways to *keep hold* of justice, imaginatively, affectively, cognitively, and practically. Keeping hold of justice is an active orientation; it is something that individuals, communities, and societies must keep pursuing. Our overall argument is therefore specifically attuned to recognizing both the possibility and the necessity of a structural justice that is grounded in a comprehensive knowledge of colonial harms, a keen appreciation of their lived experience and effects in the past and present, and a respectful commitment to working collaboratively toward meaningful structural change.

CHAPTER SUMMARY

Our collaborative understanding of structural justice arises within each of the chapters, and through reading the book as a whole. Each of the following chapters considers the significance of the colonial past in the present, drawing out the ways it has shaped contemporary national and international communities and laws (chapters 2, 4), led to ongoing encounters between Indigenous and Western laws (chapter 3), is a necessary partner to structural change and reform (chapter 5), and has produced a legal record that continues to speak powerfully in the present (chapter 6). In so doing, they also emphasize the ways forward that emerge from a greater engagement with these pasts.

The book begins with a focus on case studies defined by a distinct form of legal order—namely, that in which there has been no official point of rupture with the colonial past, no formal process of decolonization. To this end, chapters 2 and 3 offer contextualized analyses of structural injustice in Australia as a settler society. They highlight the relation between the past, present, and future, and how taking responsibility for one's own law can bolster possibilities for justice. Chapter 2 presents an historical case study of life and law on a settler colonial frontier in Wiradjuri country in New South Wales in 1824 when dispossession was beginning to unfold in the context of *terra nullius* (a legal myth deeming Australia to be a land “belonging to no-one”). It charts how, no matter what the abstract claims of settler law, it fell to colonial officials on the ground to grapple with the (often violent) actuality of ordering relations between Indigenous and non-Indigenous peoples and of instantiating structural injustices in support of settler interests. It suggests that in times of crisis in the colonies, localized pragmatic understandings of what might be considered “legal” came to prevail over more fulsome, ethical understandings of what might be considered “lawful” as Indigenous lands were increasingly brought within settler jurisdiction. Through explicating the structural inequity of colonialism, it also teases out the potential for a greater appreciation of such enduring injustice, including ways “to live justly with law”⁵⁷ that may be found in engaging with the lived experience of colonial encounters.

Chapter 3 then gives practical insight into what it means to engage with and between different worldviews and laws, enabling a deeper appreciation of what a meeting of laws, as a practice of structural justice in settler societies, may en-

tail. This chapter demonstrates, for example, the disjuncture between the connection settlers commonly have with their law and the alternative legal position of Wiradjuri peoples as holders of law. It also underscores the ethical imperative of the relationality of Aboriginal and colonial legal systems, which are always in relation despite the overt denial of colonial legality. It thus develops our conceptualization of the past, present, and future by demonstrating continued relationality between Western and Indigenous systems of law and knowing and the possibilities for a more just future that this entails. Accordingly, building on chapter 2, it contends that there is a responsibility for non-Indigenous peoples to think more reflexively and expansively about what it might mean to make a commitment to come more consciously into relation with Indigenous peoples, nations, and laws.

The book then engages with another type of legal order, one where there has been a notional point of rupture, or a purported shift from colonial rule. These analyses demonstrate how such a shift has resulted in a “linear conceptualization” of the past, present, and future through Western and international laws’ disavowal of the continued significance of “past” colonial structural injustice in the present. Chapters 4, 5, and 6 also demonstrate the possibilities for keeping hold of justice in these contexts through a commitment to engaging with the past, acknowledging the past, and reactivating the past.

Chapter 4 focuses on a case study of contemporary international criminal justice. The discussion centers around two sites of encounter between law and colonialism: the jurisprudence of the International Criminal Tribunal for Rwanda, and the negotiations surrounding the potential inclusion of the crime of colonial domination in a Draft Code of Offences Against the Peace and Security of Mankind. Across both these sites, the chapter traces how colonial injustices and their enduring implications are simultaneously recognized and rhetorically and practically contained through their framing as “past,” nonjusticiable, and matters of politics and history rather than of law. Leaving aside the question of justiciability, which is always-already shut down through the presentist and progressive orientation of international criminal law, this chapter considers how else past experiences of colonialism might be made, or enabled, to mean and matter in the international and other legal spheres. It invites further consideration of how international criminal justice might more comprehensively bear witness, discursively and practically, to the devastating and unjust nature of colonial histories and why this might be an important, if not indispensable, gesture of structural justice.

Chapter 5 then engages with transitional justice, a contemporary legal framework taken up internationally that currently facilitates the acknowledgment and practical redress of mass harm. Transitional justice is an internationally endorsed program of legal and social initiatives designed to sustain peace and achieve justice in countries that have experienced genocide and other forms of widespread conflict. This chapter considers how a field of theory and practice such as transitional justice, which has also been critiqued for its presentist nature and its neglect of structural inequalities, is nevertheless an existing “tool” through which colonial harm can be acknowledged and through which the need for a comprehensive “justice agenda” can be envisaged and even pursued. It does so by bringing together the two previously disconnected academic fields of settler colonial theory and transitional justice to consider how they collectively shed light on the possibility of a structural justice and the nature of law’s relation to it.

Opening out further on the possible relations between structural justice and the law, chapter 6 then considers the power of the claims made to law and the record they create. Focusing on the use of law in the colonial Kenyan state during the “Emergency” from 1952 to 1960 alongside claims of genocide advanced by Indigenous peoples in Australia, this chapter demonstrates that despite the role of law as a collaborator in historical injustice, particularly within colonial structures, law continues to be turned to as a site of justice. It shows how law’s capacity to respond to justice claims in the colonies, as elsewhere, is socially and politically determined. Yet it also shows how law contains the possibility of change through the claims made to it, and the ability of such claims to persist and be reformulated over time and place. The record of law, and its limitations, can be referred to as a means for constituting a structural justice that may unfold outside of law. The record of law can be used to *reactivate* claims and create a space where structural injustice is appreciable and a structural justice possible.

Our conclusion brings together our diverse considerations of the structural injustice of colonialism and of the remaining possibilities for structural justice by elaborating further on this methodology of bringing together different encounters, perspectives, and temporalities to chart new ways forward. Our method is relational in bringing and holding together diverse imperatives, orientations, laws, disciplines, and temporal states as a means of raising awareness of structural injustice and sparking new modes of engaging with it. We return to the Minutes of Evidence project as a way of explicating the key contributions of our analysis, namely our demonstration of the continued possibilities for just

relations that persist even within situations of enduring colonial injustice and our method of recognizing and realizing such possibilities.

Keeping Hold of Justice seeks to show that the possibility of a structural justice is found in the productive nature of encounters. It is through a method of establishing “meeting points” that just possibilities in the present and the future can be found.