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Introduction

Most of the scholarly works that consider the question of genocide in Australia focus on the ‘dispersal’ extermination campaigns of the 1800s and/or the issue of the ‘Stolen Generations’.¹ Such studies often dwell on the seemingly ubiquitous problem of genocide scholarship – a preoccupation with positive and provable genocidal intent. In the Australian case this is perhaps understandable since many indigenous fatalities were not the direct consequence of an intended policy of extermination. Unknown illnesses such as smallpox accounted for the greatest number, while alcohol, malnutrition, demoralization and despair played their fatal part. Moreover, it could be argued that the intent was to take over a land, not to eradicate an ethnic or religious group. In this sense we could say that territoriality is settler colonialism’s specific, irreducible element.² Yet, the British desire to plant colonies in Australia meant *supplanting*,³ and as Patrick Wolfe observes ‘land is life—or, at least, land is necessary for life (and) thus contests for land can be—indeed, often are—contests for life’.⁴

Where culturally distinct indigenous or ‘placed-based’ peoples are concerned, the basis of their culture is the land. When indigenous people struggle to preserve their cultural and spiritual distinctiveness, they are fighting to maintain control of their land⁵ because their land embodies their “historical narrative.”⁶ This means their “practises,

rituals and traditions,” as well as their political and economic cohesion, in other words their mode of production (MOP), is insolubly bound up with the land and the concomitant ecosystems which constitute the essential foundations of most, if not all, indigenous groups.

The ensuing land grab involved such significant amounts of violence and, what some now term, ‘ethnic cleansing’ against indigenous groups; when considered alongside the effects of illness and malnutrition, it seemed ‘inevitable’ that the indigenous peoples of Australia would die out and disappear.⁷ In a seminal essay, which takes issue with an overly intentionalist take on the question of genocide in Australian history, Tony Barta suggests that ‘it is not too simplistic to see in this dominant opinion the most comfortable ideological reflection of a relationship which could only be recognised in good conscience for what it was—a relationship of genocide.’⁸

While writers like Barta and Wolfe imply that genocidal structuring dynamics are still at work in Australia,⁹ there is a distinct minority opinion in genocide scholarship and popular discourse. Present day indigenous/non-indigenous social and political relations, and the colonial structures in which they operate, are rarely discussed through the analytical lens of genocide. Yet, while direct physical killing and genocidal child removal practices may have ceased, some indigenous people contend that genocide is a continuing process in an Australia that has failed to decolonise and continues to assimilate.¹⁰ Such a contention, we suggest, is predicated not only on the original formulation of the genocide concept¹¹, but also on a victim’s understanding of the culturally genocidal dimensions of settler colonialism and the central importance of land to the survival of many indigenous peoples as peoples.

Moreover, Lemkin,¹² the Polish jurist and the neologist of the concept of genocide, understood that invariably throughout history, genocide was inextricably bound up with colonisation, arguing genocide involved a two-fold process of destruction of the group life of indigenous populations and their replacement by what he called the ‘national pattern’ of the colonizers. However, the towering influence of the UN Genocide Convention and the overbearing expediencies of the Cold War bent the arc of intellectual history towards an impoverished and bowdlerized definition of genocide which served to occlude this critical cultural dimension of the genocidal process. Yet, it is precisely the overlooked and misunderstood categories and properties of genocide—the key concept of culture and the insoluble link with colonization, that are pivotal in capturing both the historical and lived experience of culturally vulnerable groups like indigenous peoples around the world.

Of course, today, in a ‘post-colonial’ world, where modern sovereign nation states with internationally agreed borders, rarely, with a few honourable exceptions, invade and annex other territory, colonialism and the colonial settler/indigenous relations reproduce themselves and endure in modified form. Thus, the colonial modality referred to as ‘internal colonialism’ is a more apt category which captures the lived experience of vulnerable indigenous groups who continue to suffer from systematic legal, political and social oppression and discrimination at the hands of the colonial state machine, *within international agreed borders* (Tully, 2000). Thus, a Lemkian ontology is well suited to illuminating the kind of colonial-settler regimes, like Australia, that continue to subject internal indigenous populations to genocidal structuring dynamics.

A Mode of Eco-genocidal Destructive Production

The Colonial structures which have yet to be dismantled, have persisted throughout the history of Australia as a colonial settler state, in various modalities and historically specific phases; the long chain of genocide mutates and evolves through time. In other words, as with any social phenomenon, it has a history. There are common threads and sharp breaks, continuities and discontinuities. The task is to be able to identify and trace the varying modalities, discourse and institutional formations.¹³ The genocidal structuring dynamics that once fuelled the initial colonisation phase and frontier violence in North America and Australia, were superseded by periods of forced assimilation and Eurocentric colonial discourses of ‘development’ that sought to shroud colonial-settler relations in a cloak of authority and legitimacy.¹⁴ In the post second world war juncture, the ‘logic of elimination’¹⁵ that underpins colonial settler land grabs were and still are farming, national park schemes and, above all, industrial mining. However, what all the various links in the chain have in common is the structure of the capitalist MOP: the settler state that sought to suppress Indigenous sovereignty to preserve its own was also a capitalist state.

In the following section the authors will attempt not to provide an entire history of the political economy of genocide, but draw from the store house of history, as was the habit of Foucault,¹⁶ to illustrate the manner in which the genocidal structuring dynamics, today, just as they were during the ‘rosy dawn’¹⁷ of Australian settler capitalism, are ever being conditioned by the imperatives of capital accumulation and the global chain of capitalist production and trade.

The capitalist MOP was implicated in the genocide and dispossession of the indigenous population long before the British Empire first arrived on the Australian continent in 1788, with its first fleet of officers and convicts. The colonisation of New South Wales and Van Diemen's Land was driven by the need to offload a surplus population of convicts, vagabonds, prostitutes and, generally, the immiserated and pauperised social layers filling British prisons; the deportation of this 'surplus' population acted as a social and political pressure valve.¹⁸ This penal settlement became all the more important with the loss of the American colonies in the 1770s.¹⁹

In order to understand the social and economic drivers behind the creation of a surplus population of 'undesirables' and thus the initial impetus on the part of the British empire to establish a penal colony in Australia as a depository for criminals and then later political criminals, which ultimately set in train a historical process that would unleash ecocidal and genocidal forces, we must turn to the laws of motion of the capitalist MOP; in particular the general laws of capital accumulation. To accumulate the maximum extent of capital, the capitalist class will seek to exploit labour either extensively (by extending the working day) or intensively (by increasing the intensity of work and the output of labour in a given time period). With the introduction of laws governing the working day and increasingly other such labour regulations, the latter form of exploitation would become the dominant form in the colonial metropole. The manner in which this was and is done involves the application of labour-saving technology and machinery which enhances labour productivity and thus the relative extent of the means of production that it can transform into goods and services. The ultimate effect of this change in the technical and value composition of social production, however, is a

pathological one (from the point of the capitalist system taken as a totality), since it reduces the labour component (labour power or its value form variable capital) as a factor of production relative to the means of production such as goods, machinery, materials etc (constant capital).²⁰ In other words, “the growing extent of the means of production, as compared with the labour-power incorporated into them, is an expression of the growing productivity of labour.”²¹ Ultimately, the net effect is the production of a surplus population or ‘reserve army of the unemployed,’ who at various moments in the production cycle can no longer be profitably employed.

“The lowest sediment of the relative surplus population dwells in the sphere of pauperism”²², a sediment that included ‘vagabonds’, prostitutes and the lumpenproletariat, many of whom had either failed to adapt to the fast-changing conditions of production, outlived their productive life span, or became victims of the dangerous conditions of industry. It would be many of these who, in a condition of pauperism, would commit crimes against the sanctity of property and fill the jailhouses of Great Britain and eventually the fleets sailing to Port Jackson (Sydney). In essence, the population dynamics unique to the capitalist MOP gave fateful impetus to the establishment of a penal colony on the other side of the globe.

Once the penal colonies had been established, of course, they would have to become self-sufficient. In the beginning this proved difficult, and when it became clear that the settlers were there to stay and competing for game, land and water, low intensity guerrilla warfare broke out between the aboriginal population and the colonists. Nevertheless, by the early nineteenth century, with the end of the Napoleonic wars and a deterioration in the state of the British economy, the flow of immigration, both convict

exiles and emancipist free labourers, increased rapidly, providing a much need supply of labour for the burgeoning capitalist economy.²³

It is from this time that we see the emergence of a form of settler capitalism hitched to the rise of the world market created by the European empires and European industrialisation. A world market that involved both flows of capital and labour and manufactured goods into Australia and flows of strategic raw materials out of Australia. This would include the discovery of minerals such as copper and later gold, which would further fuel the displacement of aboriginal peoples from their lands and a rise in emancipist immigration. The temperate climate and extensive grasslands of NSW and later Queensland lent itself to European style agriculture, and crucially sheep and cattle grazing, wool becoming a crucial export supplying the textile Mills in the Colonial Metropole.²⁴ The thirst for wool in the heart of the empire would drive a land grab throughout Australia from the early 19th century to the early 20th that would dispossess the indigenous population and deprive them of access to their means of subsistence and their way of life more generally,²⁵ By the 1860s, 400 million hectares of land in the south-east and been occupied by 4,000 Europeans with 20 million sheep²⁶; this wasn't just genocidal but ecocidal.

In this connection is revealed the global interconnectivity of the structure of genocide with a larger chain of global capitalist production and trade. Wolfe²⁷ remarked that settler colonialism:

“presupposed a global chain of command linking remote colonial frontiers to the metropolis. Behind it all lay the driving engine of international

market forces, which linked Australian wool to Yorkshire mills and, complementarily, to cotton produced under different colonial conditions in India, Egypt, and the slave states of the Deep South.”

In any case, whether it was settler pastoralism, the capital intensive and land extensive extractive industries or even the pearling industry, the impact on Aboriginal societies was devastating. The combination of dispossession of ancestral land, frontier violence that necessarily flowed from the dispossession, inter-tribal warfare compounded by the dispossession, malnutrition and disease, all contributed to the collapse in the aboriginal population and with rare exceptions, the total destruction of the aboriginal way of life and their MOP. Ultimately, their predominantly nomadic MOP was incompatible with settler capitalism. The ‘logic of elimination’ that Wolfe speaks of,²⁸ flowed from the imposition of an alien economic system, of capitalist property relations that would prove the undoing of the essential foundations of aboriginal group life, not a premeditated, state-led plan to kill a group.

To understand why relations of genocide equate here with capitalist relations we must turn to the study of political economy. The central economic mechanism behind this incursion into, invasion and annexation of indigenous land are ‘settler colonial expansionist land grabs,’²⁹ expropriations otherwise known as primary accumulation: the violent and predatory process that originally transformed feudal relations of production into market relations dependent on the commodification of the means of economic subsistence.³⁰ In violation of what Marx called ‘the everlasting nature-imposed conditions of production,’ or ecological conditions for sustainable development, the

‘treadmill of accumulation’³¹ that characterises the capitalist MOP transgresses the ‘metabolic interaction’ between human beings and nature, accumulating beyond the ‘limits to growth’ to feed its insatiable appetite for new resources.³² This necessarily entails expanding into non-capitalist territory, “into a world dense with cultural difference”³³ beyond the circuits of capitalist production and outside the realm of ordinary ‘expanded reproduction’, to forcibly incorporate or ‘enclose’ materials, resources and labour not yet subject to the laws of generalised commodity production, the global accumulation process and the realm of exchange value. In other words, the eco-destructive processes that help sever the relationship to the land that is key to the indigenous genos, processes manifest in industrial agricultural, extractive and other projects, are only made possible by a preceding history of forceful and violent colonisation of indigenous land by colonial-settler states.

This consolidates *de facto* and *de jure* control of indigenous land by creating the necessary legal and institutional architecture in the form of private property regimes and asserting the legal and political jurisdiction of the relevant settler colonial state. This process of primary accumulation is the essence of colonisation. In other words, as mentioned earlier, “territoriality is settler colonialism’s specific, irreducible element.”³⁴ Crucially, the processes of primary accumulation\, or what others have described as ‘accumulation by dispossession’ (ABD)³⁵ necessarily involves the “‘creative destruction’ of pre-capitalist [indigenous] ecological-political orders.”³⁶

In the second phase, the various eco-destructive industrial, agricultural and extractive processes referred to earlier, then follow. Taken together, these phases,

properly understood, can be read as the political economy of genocide, or what elsewhere the authors have described as a *mode of eco-genocidal destructive production*.³⁷

Situation Coloniale

However, what is often elided from this account in the genocide studies literature and the popular understanding of the genocidal process in Australia, is that it wasn't simply the land that was desired by the colonists, but occasionally the labour of the indigenous peoples too. In the vast majority of case studies conducted by Post-liberal or structural genocide scholars,³⁸ the *situation coloniale* did not necessitate the retention of any native labour force, simply the expropriation of native land. Consequently, the indigenous nations were either physically eliminated or forcibly assimilated via a whole series of gambits that preserved and extended the reconstitution of native land into a Lockean form of alienable individual freeholds.³⁹

The work of Schaller⁴⁰, however, illustrates how Lemkin's formulation can be applied to modalities of colonization such as that in colonial Africa, where the situation coloniale necessitated the retention of indigenous labour and not just the acquisition of land. Therefore, the population would have to be preserved as a servile class or 'allowed to remain', in Lemkin's words.⁴¹ This would have implications for the methods of genocide that were to be employed. Total physical extermination would be impractical and not serve the interests of the white landed, mining and financial colonial elites; only those techniques that disable the group's ability to resist would prove consistent with the needs of capital accumulation.

Rarer still is this understanding examined through the lens of the political economy and a broader narrative of the changing imperatives of Australian settler capitalism and the broader exigencies of the world market. What is at issue here is the dialectical and contradictory relationship between *the logic of capital accumulation and Indigenous “elimination”*. To borrow a phrase from the philosopher and sociologist Michel Foucault, doing this will deepen our understanding of the ‘history of the present’, as we shall see later, when we turn our gaze to contemporary genocidal structuring dynamics in Australia.⁴²

It is beyond the scope of this chapter to examine the full range of literature on aboriginal participation in Australian Economy, sufficed to say towards the latter half of the 20th century pathbreaking works emerged on this theme, with a growing expansive literature emerging in the early 21st century.⁴³ However, due to institutional and academic inertia, it has taken time to filter through various disciplines, even Australian labour history taking relatively long to acknowledge Aboriginal involvement in the settler economy.⁴⁴

What is generally meant by participation is what some scholars have described as ‘hybridisation’,⁴⁵ in which elements of both settler capitalist or market relations and the concomitant forces of production and technologies are fused with the largely nomadic Aboriginal MOP.⁴⁶ From the outset, it’s worth stressing that employment of aboriginal labour and hybridisation was not the general rule; it was the product of varying degrees of coercion and was confined to those industries that were to some extent compatible with those aboriginal communities who, as a necessary precondition, were already

partially destroyed by colonisation and its associated techniques of land theft, violence and disease.

The relationship of dependence, though founded and reproduced through relations of genocide, did in fact swing both ways. As Lloyd argues:

Indigenous societies were 'made ready' as it were for the possibility of hybridization ... Their traditional lands had been penetrated and they were now in a partially dependent relationship. On the other hand, the emerging settler-capitalist forms on the frontier also had to adapt, and that meant sometimes using indigenous people as labourers, trading with indigenous people for food supplies and using traditional knowledge.⁴⁷

The industries that were compatible with the Aboriginal mode of life were so because they relied on intermittent and seasonal labour which allowed Aboriginal peoples to maintain a conditional though warped connection to their traditions and land. One such example from the mid-19th century was cattle stations, where the landholdings, particularly on the land extensive developments in the northern semi-arid zones, could be as large as a million hectares, thus allowing aboriginal workers to live on the land on the cattle stations, in the forms of family camps. Once the terror and violence during the frontier violence phase had settled down, the squatter pastoralists slowly realised that Aboriginal peoples had skills and knowledge that could be harnessed in the cattle industries. In fact, aboriginal people would be hired as horse breakers, shepherds, stockmen, guides, diplomats and property managers.⁴⁸

The work was poorly paid, often by rations, nomadic and seasonal and thus could not only be compatible with the Aboriginal MOP but was also very difficult to fill using fully proletarianized workers. Arguably, this form of labour was not just more convenient, given the difficulty of sourcing labour seasonally in very remote northern and central regions, but also hyper-exploitable both because they could be paid paltry wages, if at all, and because the capitalist agricultural industry didn't have to concern itself with the *costs of their reproduction*. The fact that they were not fully and completely severed from their relationship to the land nor killed for that matter, and thus not fully integrated into the circuits of capital, increased further the surplus that could be extracted from their labour. With the advent of canning of meat by the 1860s and refrigeration by the 1880s, the Australian livestock and cattle industry was being exported around the world.⁴⁹

In a landmark essay, Bob Thorpe argued that Aboriginal peoples were kept alive to the extent that they could be profitably employed as 'colonised labour' using this framework to analyse Aboriginal participation not just in the 19th but also 20th centuries, whether it was employment in the remote pastoral stations or employment, underemployment and mass unemployment in the most menial jobs in the late 20th century.⁵⁰

Ultimately, at each historical juncture, the precise nature and form in which the relations of genocide would take shape would be determined by the chain of global capitalist production and trade, the place within the global division of labour that Australian settler capitalist economy would assume, and of course "the rapacious alliances in the settler states and capitalist landed, mining and financial classes in all the settler zones".⁵¹

‘Cultural Genocide’ and the Politics of Recognition

Unlike the US, Canada and New Zealand, the colonisation of Australia did not entail any formal settlements, involving dialogue and treaties, between the European invaders and the indigenous people. Throughout the last 200 years, the indigenous peoples of Australia have been the victims of appalling injustice and racism that was compounded and legitimised by the lack of negotiated treaties and recognition of rights to land. It was this historical lack of a negotiated treaty or treaties that led the National Aboriginal Conference in April 1979 to instigate a concerted campaign for a treaty. The ATC hoped to secure a treaty that would recognise and restore Aboriginal rights to land and self-determination, compensate for the loss and damage to traditional lands and way of life, while protecting Aboriginal identity, languages, law and culture.⁵² The principle of self-determination imposes requirements of *participation and consent*, and comprises a world order standard at odds with colonialism.⁵³ Indeed, the substantive content of the principle inheres in the precepts by which the international community has held colonialism illegitimate.⁵⁴ By granting genuine self-determination⁵⁵ and meaningful land rights to indigenous peoples across Australia, a treaty or set of treaties of this nature had the potential to break the colonial ‘relationship of genocide’⁵⁶.

The term ‘treaty’, however, elicited strong opposition from prominent politicians which resulted in the treaty idea undergoing political dilution into a ‘reconciliation’ initiative that made no commitments to address any of the treaty campaign’s key priorities, and certainly made no commitment to granting indigenous peoples self-determination or land rights. While the dilution of the treaty idea into reconciliation

ensured that return of land to indigenous peoples was not promised as part of the process, the issue was thrust to the fore of political debate by the High Court shortly after the instigation of the official reconciliation process. In 1992, the High Court handed down its landmark *Mabo* judgement (*Mabo and Others V Queensland (No 2)* 1992), which held that in certain situations indigenous groups *might* have rights to land or ‘native title’ that had survived colonisation.

However, in order to qualify for native title rights, a series of colonial tests to legitimate claims must be passed, claims that embody what Wolfe (1999, ch.6) described as ‘repressive authenticity’, such as: proof that your nation or clan have maintained occupancy and traditional governance structures since original colonisation in 1788, or that you still practise a culture considered ‘traditional’ and authentic. Moreover, in the wake of the 1992 *Mabo* decision in the Australian High Court and the subsequent Native title legislation (NTA) passed one year later, for those few Aboriginal groups who were lucky enough to successfully claim native title rights on crown land (therefore land which hadn’t already been expropriated as private property in the previous 200 years), they were critically denied the right to veto where mining and other industrial development project were concerned, forcing them in an unenviable ‘colonial dilemma’ between refusing to be party to the ecological destruction of their land but risk having the land expropriated by the relevant state authority anyway. This could happen under the provisions of the NTA if it was deemed in the ‘national interest’ and thus not benefit from any potential royalties.⁵⁷ This amounts to a denial of effective indigenous sovereignty and de facto extinguishment of native title. ABD and the crippling of indigenous MOP is secured through such asymmetrical exchanges of mediated forms of state recognition and

accommodation, and thus fails to purge Aboriginal identity of racist and derogatory images, leaving essentially untouched the capitalist MOP and its underpinning socio-economic structures of dispossession.

At this point, it is useful to note that Australia has the world's largest reserves of uranium, lead, silver, zinc, titanium and tantalum, while there are large quantities of uranium on Northern Territory indigenous lands (approximately 30% of the world's currently identified uranium reserves). Australia is among the world's top six countries in its reserves of coal, iron, aluminium, copper, nickel and diamonds.⁵⁸ Consequently, soon after the High Court had handed down its judgement in *Mabo* the Commonwealth came under immense pressure from powerful vested interests, and the extractive industries lobby in particular, to 'limit' the application of native title, with some industry commentators advocating outright 'extinguishment' – a modern day example of what Patrick Wolfe has termed the 'logic of elimination'.⁵⁹ This followed a long history of the mining industry vehemently opposing and degrading indigenous land rights from the beginning of the land rights era in the 1970s.⁶⁰

A mining lobby campaign of misinformation was particularly successful, and in no small part influenced the government's legislative response to *Mabo*,⁶¹ ensuring that only a right to negotiate, rather than veto, was granted native title holders over future developments on their land. Indigenous groups would not be able to resist development or develop on their own terms. The right of veto was an integral part of the Northern Territory Land Rights legislation back in 1976, the absence of which, as Mr. Justice Woodward suggests, renders indigenous land rights largely meaningless⁶² – which is why the veto was a key indigenous demand after *Mabo*. The 1993 Native Title Act's primary

purpose was the *validation* of existing commercial titles and the provision of guarantees that future land negotiations would be conducted within the parameters set by existing colonial power inequalities – thus ensuring that the native title regime would offer indigenous peoples no protection from settler colonial expansionist pressures powered by the engine of global capitalism. Only this time dispossession would not happen through brute force and naked exercise of power but through ostensible attempts by the colonial power to ‘reconcile’ with the indigenous population by offering to enshrine certain substantive and procedural rights. As Coulthard⁶³ argued: “colonial relations of power are no longer reproduced primarily through overtly coercive means, but rather through the *asymmetrical exchange of mediated forms of state recognition and accommodation*”. [emphasis added].

Once again, the precise form and modality of genocide would be shaped by the imperatives of the colonial settler state MOP.”

In his pathbreaking book, Coulthard fruitfully adapts the insights of Marxist theories of imperialism and ABD, and re-orientates it to a study of how, through the modern politics of ‘recognition’ and reconciliation conducted by colonial-settler states, such as Australia, Canada or Israel, indigenous peoples continue to be internally colonised.⁶⁴ Coulthard, Samson and Gigoux, and Crook and Short⁶⁵ rightly emphasize that we must recognise that colonialism and ABD is not a purely historical process confined to the history books but is a contemporary, ongoing lived experience for indigenous peoples living under settler-colonial states all over the world. “There has been no meaningful decolonisation applied to indigenous peoples”.⁶⁶ In the Australian

‘reconciliation’ process, we see precisely the continuation of ABD through the beguiling modality of ‘recognition’ politics and the granting of ‘rights’ to land and procedural rights which merely act to enable the continued dispossession and colonisation of indigenous peoples and the expanded reproduction of Australian mining capital. In this current post-Cold War historical juncture and the salience of the human rights regime and human rights discourse in international diplomacy, such a reconfiguration of settler state - indigenous relations and the political economy of genocide, became a necessary ideological cloak to secure the expanded reproduction of Australian mining capital. To secure the interests of any particular fraction of the ruling class and by extension political power and the *active* consent of those ruled (a necessary prerequisite in Western-type societies with a developed civil society), the Italian Marxist philosopher Antonio Gramsci argued that two things were necessary. Firstly, some concession to the interests of other social groups would be necessary. This would call for at least some sacrifice of the ‘corporate’ interests of mining capital⁶⁷: conceding procedural and consultation rights to affected Aboriginal groups under the NTA. Secondly, the elaboration of a sophisticated ideological discourse that could unite disparate class fractions and other social groups: The construction of the ‘recognition’ and reconciliation’ paradigm. The reconciliation process - what Coulthard, in a Canadian context, called the ‘modus operandi’ of colonial power in the modern period - was an exemplary exercise in securing the hegemony of mining interests. As Freeman reminds us, human and other rights are the products of balances of power such that during the process of institutionalisation, they are so, in a manner which diminishes, denudes and bowdlerises them in a form less able to challenge the structures of power they originally arose to address.⁶⁸

In 1996, responding to another High Court case, the Howard government amended the *Native Title Act* to detail a host of white property interests that would automatically extinguish native title.⁶⁹ This modern day act of dispossession has been described, quite rightly, by the United Nations monitoring *Committee on the Elimination of all forms of Racial Discrimination* as a racially discriminatory piece of legislation.⁷⁰ The Committee subsequently recommend the government enter into genuine negotiations with indigenous peoples to find an alternative. This has not been done; instead the Commonwealth Government began a process of erosion (termed ‘reform’) of the only land rights Act in Australia that contained a de facto right of veto over development on indigenous lands: the Aboriginal Land Rights (Northern Territory) Act (ALRA) 1976.

Significant erosion of the veto had already begun in 1987 with amendments restricting the veto to the exploration stage where before that they had a veto at both the exploration *and mining stages*. During 2004-2005, the Commonwealth Government developed a new package of reforms to the ALRA, with a particular attention paid to changing arrangements for leasing of indigenous land, followed in September 2006 by a review of the permit system (which hitherto allowed a degree of indigenous control over access to their land). Of key importance are the new sections 19A–19E which provided options for 99-year head leases of Aboriginal land to a Commonwealth or Northern Territory government entity. The provision for long-term leases over townships on Aboriginal land was allegedly to ‘make it easier for Aboriginal people to own homes and businesses on land in townships’,⁷¹ but while the leases were still subject to the provision of free, prior, informed consent by traditional owners, if a head lease were signed, then the permit system would be relaxed to allow in a sublease holder or anyone with

‘legitimate business’ in the lease area. The overriding rationale of the amendments appears to be less about individual home ownership and more about promoting ‘economic development on Aboriginal land by providing for expedited and more certain processes related to exploration and mining on Aboriginal land.’⁷²

Following the now familiar settler state tactic when dealing with indigenous interests, *none of these amendments were produced via consultations with those indigenous peoples likely to be affected by them.* It is unsurprising then that few indigenous communities have opted to go down this road to ‘economic development’ with very little incentive being offered to forego the available exercise of authority over the land they own.⁷³ These amendments, however, were only the start of a far more sinister attack on indigenous land rights, autonomy and cultural integrity that has led some indigenous peoples to describe their present day lived experiences as tantamount to genocide.

The ‘Intervention’

The benign use of government language – mainstream services, practical reconciliation, mutual obligations, responsibilities and participation in the real economy - cloaks a sinister destination. ... The extinguishing of indigenous culture by attrition.⁷⁴ Pat Dodson

This is about the beginning of the end of Aboriginal culture; it is in some ways genocide.⁷⁵ John Ah Kit

In 2007, the Howard Government introduced the *Northern Territory National Emergency Response Act* (often referred to as the Intervention). The Intervention was a discriminatory package of changes to indigenous welfare provision, law enforcement,

land tenure and basic freedoms. The Howard Government justified the legislation on the basis of the *Little Children are Sacred* report,⁷⁶ commissioned by the Northern Territory (NT) Government and written by former NT Director of Public Prosecutions, Rex Wild QC and senior Aboriginal health worker, Pat Anderson. *Little Children are Sacred* found that the sexual abuse of Aboriginal children in the NT was seriously widespread and quite often goes unreported. According to the Inquiry, sexual abuse of indigenous children was happening largely because of the breakdown of indigenous culture and society, *as a consequence of colonial dispossession* and the combined effects of poor health, alcohol and drug abuse, unemployment and poor education and housing. The Inquiry made 97 recommendations which included suggestions to: improve school attendance; provide education campaigns on child sexual abuse and how to stop it; reduce alcohol consumption in Aboriginal communities; build greater trust between Government departments, the police and Aboriginal communities; strengthen family support services; and *most importantly to empower Aboriginal communities to take more control and make their own decisions about their future*. This key recommendation would be decidedly ignored.

The Howard Government ignored the breadth of the *Little Children are Sacred* recommendations, and ‘suspended’ the operation of the Racial Discrimination Act 1975 to enable what the United Nations has since denounced as racially discriminatory⁷⁷ measures, such as: bans on alcohol consumption, the compulsory acquisition of Aboriginal townships through five year leases, the removal of customary law and cultural practice considerations from bail applications and sentencing within criminal proceedings, the suspension of the permit system on indigenous land, retaining a

proportion of welfare benefits to all recipients in the designated communities and of all benefits of those who ‘neglect’ their children and the abolition of the Community Development Employment Projects, which had previously acted as an alternative to Welfare.

Beyond the government rhetoric, the compulsory land acquisition measure seemed to have little to do with preventing child abuse as it was simply a further development of a policy of land tenure reform *first started back in 2004 - well before the Little Children are Sacred* report. As discussed above, during 2004-2005 the Commonwealth Government developed a new package of reforms to the ALRA which altered leasing arrangements for indigenous land. The Intervention’s five year lease compulsory acquisition provisions would further corrode aboriginal sovereignty and thus allow the Commonwealth to ‘negotiate’ 99-year leases under grossly asymmetric colonial power relations, which would leave indigenous owners extremely vulnerable to ‘sweeteners’ from the Commonwealth⁷⁸ -- such as the promise of better housing and infrastructure in return.

The overarching human rights rationale of the Intervention’s measures, though accepted by a few high-profile indigenous spokespersons,⁷⁹ betrayed a misunderstanding of international human rights law, since interpreting a state party’s obligations under a human rights treaty is only possible by reading *all* of the human rights treaties to which a state is party as a whole. Australia’s obligations under the *Convention on the Rights of the Child* must therefore be understood in conjunction with Australia’s obligations under other human rights agreements such as the *International Convention on the Elimination of All Forms of Racial Discrimination*⁸⁰ and the *United*

Nations Declaration on the Rights of Indigenous Peoples – which the Australian government has now belatedly endorsed. The right of Aboriginal people to enjoy their rights free from discrimination on the basis of race cannot be abrogated on the basis of promoting the rights of women and children as ‘more important’. Moreover, since the enquiry recognised that colonial dispossession was a key driver of the rise of various social pathologies such as child and alcohol abuse, compulsory land acquisition, without free, prior and informed consent, and by extension the diminishing of aboriginal sovereignty, would ipso facto compound the very problem the Intervention sought to prevent.

At this juncture it is worth bearing in mind a crucial point made earlier: the social death that is central to the concept of genocide may result from forcible, and ultimately misguided, attempts ‘to do good’. The overwhelming majority of indigenous peoples actually affected by the Intervention were strongly opposed and spoke of losing control, of losing land and of losing their culture. The combination of such factors caused some to talk in terms of *genocide*.

The Prescribed Area Peoples’ Alliance (PAPA) represented Aboriginal people from communities affected by the NT Intervention. More than 130 people joined the Alliance over two meetings in Mparntwe – Alice Springs on 29 September and 7 November 2008. Following the latter meeting, they released a statement, from which the following is an indicative extract:

These assimilation policies destroy our culture and our lives. It is the Stolen Generation all over again. ... The government is refusing to build us any housing unless we sign over control of our land for 40 years or more. We say NO LEASES. We will not sign. ... The government having this control is no good. Our lives depend on our land. It is connected to our songlines, our culture and our dreaming.⁸¹

The key issue was the forcible assimilationist nature of the Intervention and its consequences. Along with the immediate repeal of the Intervention laws, territory wide consultations and the implementation of the UN Declaration on the Rights of Indigenous Peoples a key demand in the PAPA letter drafted for the media and key players and MPs was to: ‘Stop the promotion of genocide. By the UN Genocide Convention, one definition of genocide is; Conditions of life set to destroy the group in whole or in part’.⁸²

In March 2010, the Australian Indigenous Doctors’ Association (AIDA), in collaboration with a University of New South Wales research centre, launched a comprehensive health impact assessment of the Intervention.⁸³ The research utilised a methodology, which invoked *an Aboriginal interpretation of health* that includes five dimensions – cultural, spiritual, social, emotional and physical and which involved interviews with over 250 affected people.⁸⁴ The report unequivocally concluded that ‘the intervention does more harm than good’ and predicted that ‘the intervention will cause *profound long-term damage to our Indigenous communities* ... with any possible benefits to physical health largely outweighed by negative impacts on psychological health, social health and wellbeing, and *cultural integrity* [emphasis added].’⁸⁵ Such a conclusion is entirely at odds with the claims of the then Rudd government, and those supporters of the Intervention like Langton and Pearson, who saw the Intervention as key to indigenous survival. On the contrary, in the context of an on-going colonial relationship and the culturally genocidal effects of the denial of self-determination, such a far-reaching policy of control measures imposed on indigenous groups, especially compulsory land acquisition, would inevitably produce yet more culturally genocidal effects. The AIDA report ended with the now familiar conclusion that negative impacts may be minimised,

‘only if governments commit to working in respectful partnerships with Indigenous people [emphasis added]’.⁸⁶

Returning to the crucial issue of land, given that the 2006 *ALRA* reforms were promoted to open up Aboriginal land to mineral exploration and development, the Intervention’s compulsory acquisition of townships has created a dangerous precedent for other Aboriginal lands.⁸⁷ In late 2007, the Howard Government signed up to the US-led Global Nuclear Energy Partnership initiative (GNEP),⁸⁸ which committed Australia to mine and enrich its uranium, export it to other countries, then re-import the resultant radioactive waste to be stored for ever more in the Australian desert. Approximately 30% of the world’s currently identified uranium reserves are to be found on NT indigenous lands and since last year the number of exploration licences for uranium in the NT has doubled, with nearly 80 companies either actively exploring or having applied to explore. With the *ALRA* amendments and the Intervention’s compulsory acquisition measures, indigenous peoples will have no effective means to resist the now ‘inevitable’ increase in uranium mining in Australia,⁸⁹ resulting in yet further culturally genocidal pressures on some indigenous groups, alongside the inevitable ecocidal impacts of uranium mining on their local environment.⁹⁰ This may seem to be conflating *forcible* settler appropriation and exploitation of land with the issue of cultural genocide, but if the relationship to land of many indigenous peoples is properly understood this is entirely correct. Indeed, when the *genos* in question is an indigenous social figuration with a relationship to land at its identity core, and where the settler exploitation involves *intentional forcible* dispossession then the effect is quite simply culturally genocidal even where the primary *motive* is economic expansion.⁹¹

Rebranding the Intervention

Despite the failure of the racially discriminatory government policies, broad policy continued with minor changes and a new name. In late 2008, following a review of the Intervention, the Australian Government pledged to form a legitimate relationship with the indigenous people based on ‘consultation’, acknowledge Australian human rights responsibilities and reinstate the Racial Discrimination Act of 1975. Following these consultations, on 23 November 2011, the government introduced legislation⁹² to Parliament and released the ‘Stronger Futures’ policy statement, which stated that the Australian Government was committed to providing voluntary five-year leases and would not extend the measure for compulsory five-year leases in the Northern Territory Emergency Response Act. In addition, ‘the Australian Government and Northern Territory Government would continue to negotiate leases with Aboriginal landowners to ‘manage social housing in remote areas.’ However, the legislation would continue the policy of opening up indigenous land for commercial use by designing regulations that ‘ease leasing on town camp and community living area land’ in the Northern Territory in order ‘to encourage Aboriginal landowners to use their land for a wider range of functions such as economic development and private land ownership’.

The policy would be widely condemned by Aboriginal community leaders and ‘leading Australians⁹³ because it continued to fall foul of the Racial Discrimination Act and fail to meaningfully consult or seek the consent of the aboriginal communities affected, thus continuing to entrench relations of genocide and secure the interests of mining and extractive capital in the long term. The requirement of neoliberal capitalism

to secure more and more ever scarcer resources, and the process of extreme energy is a guarantee that the issue of land rights and opening up indigenous lands to development will never go away. Indeed, since the Stronger Futures policy was initiated the government has reiterated its push for 99-year leases over Aboriginal townships, once again on the back of a number of ‘review reports’. Two such review reports in 2014, *Creating Parity—the Forrest Review* and the Federal Parliament’s Joint Select Committee on Northern Australia’s: ‘Pivot North’ would both be heavily laden in pro-market rhetoric and a Lockean logic of ‘mixing labour with land’ that argued that Aboriginal Land Rights in the Northern Territory and the Native Title Acts were an impediment to ‘development’ in the north.”⁹⁴

The Hon Ian Viner, Aboriginal Affairs Minister responsible for the Aboriginal Land Rights (NT) Act in 1976 wrote a scathing critique of these developments⁹⁵ in which he argued:

The whole framework and security of traditional Aboriginal land, protected by the Land Rights Act, is in danger of being subverted by Governments, bureaucracies and people who have no real understanding or sympathy for traditional communal land ownership. 99-year town leases turn traditional ownership upside down. In reality they put the Commonwealth back into ownership and control of traditional Aboriginal land like it was before the Land Rights Act was passed...A Commonwealth Head Lease is a device by the Commonwealth to take control of Aboriginal land away from traditional owners. It is thoroughly misleading for the Commonwealth to suggest giving the Office of Township Leasing a 99-year lease of Aboriginal land is the same as 99-year leases in the Australian Capital Territory (ACT). The ACT leases Crown land to people instead of granting freehold ownership. Aboriginal traditional owners already have freehold title, the best form of ownership in Australia. There is good reason to think the Commonwealth devised 99-year leases and the Office of Township Leasing as the head lessee as a way to avoid having to compensate Aboriginal people on just terms under the Constitution for taking control of their traditional lands. The Commonwealth objective is the permanent alienation of traditional land from Land Trusts.

The culturally genocidal practice of alienating indigenous people from their lands shows no signs of abating, indeed, as we shall see later in this chapter, the indigenous peoples of Australia, like North America, are now having to deal with the genocidal and ecocidal process of extreme energy.

Cultural Genocide through Urbanisation

In the early 1970s, an indigenous ‘post-colonial’ initiative⁹⁶ saw Aboriginal peoples in the Northern Territory migrate out of government settlements and missions, returning to live once again on their traditional lands. This process of migration and decentralisation was termed the ‘outstations movement’, or ‘homelands’ movement⁹⁷ and today there are an estimated 560-630 communities with populations of fewer than 100 people dotted across the Territory.⁹⁸ Almost all are located on Aboriginal-owned land that covers 500,000 square kilometres – nearly half of the NT.⁹⁹ While there is significant diversity in outstations activities, some with vibrant local economies built on arts production, employment as rangers and wildlife harvesting; with others highly dependent on welfare income, their key commonality is the determined *choice* they have made to actively engage with their land; based on a desire to protect sacred sites, to retain connections to ancestral lands and ancestors, to live off the land, or to escape social dysfunction that might be prevalent in larger townships.¹⁰⁰ Despite this the ‘viability’ of outstations/homelands has been under review in policy circles since the late 1990s and a public debate began in earnest in 2005 when the Indigenous Affairs Minister Amanda Vanstone described remote Aboriginal communities as ‘cultural museums’.¹⁰¹ A

neoliberal commentary ensued, largely championed by the Bennelong Society, including the 'Leaving Remote Communities' conference in Sydney in September 2006,¹⁰² which appears to have had significant influence on policy.

Indeed, in 2009 the Intervention was renamed 'Closing the Gap in the Northern Territory' under the National Indigenous Reform Agreement plan purportedly to 'address indigenous disadvantage in Australia'.¹⁰³ 'Closing the Gap' is implemented through a series of 'National Partnership Agreements', which commit state and territory governments to a common framework of outcomes, progress measures, policy directions and, crucially, funding. A key agreement for people living in remote communities is the agreement on 'Remote Service Delivery'. This agreement establishes the priority or 'hub' town model, which effectively transfers funding to selected, larger economic centres, relying on them to act as 'servicing hubs' for outlying areas where many Aboriginal peoples live.

The Northern Territory government sought to implement this agreement under the so-called 'Working Future' initiative, which seemed designed to produce urbanising pressure on those remaining indigenous peoples living in remote communities by moving financial support away from outstations to twenty larger Aboriginal communities it called 'Territory Growth Towns' (now expanded to 21 and rebranded as 'Major Remote Towns' because they are stagnating and failing),¹⁰⁴ alongside which it committed to building *no more new homes outside these centres and no new homelands* would be established in the Northern Territory. The desired intention was clear:

Effective implementation of the broad policy objectives in 'Closing the Gap' will inevitably require the elimination of those smallest dots on the landscape. A core element of approach is a re-energized state project to recentralise

homelands people as occurred during the transformation at the frontier to colonial assimilation.

Underpinning such an approach is the neo-liberal paradigm that seeks to meet the labour and resource needs of mature capitalism while eliminating non-state spaces.¹⁰⁵

But, as Altman points out:

During the past 30 years, a growing body of research has indicated that life at outstations is better – in health outcomes, livelihood options, and social cohesion, even housing conditions – than at larger townships, despite neglect. ... Many Aboriginal people remain determined to live on their ancestral lands, pursuing a way of life that is informed by fundamentally different value systems. *Working Future* envisages only a conventional mainstream future for remote-living Aboriginal people.¹⁰⁶

In a protest press release at the time the Gumatj clan nation from the MataMata

Homeland in NE Arnhem Land wrote:

the Northern territory Government is ‘proposing to stop all funding to small remote communities, called Homelands or Outstations. These communities - like that we live in here at MataMata - is the cultural source of identity, pride and indigenous religion and law. These are sacred Homelands that the people WILL NOT leave.’¹⁰⁷

In 2011, an Amnesty International report took a rights-based critique of the initiative stating: ‘Aboriginal Peoples have the right to live on their traditional homelands without being effectively denied access to services like public housing and related infrastructure.’ While Patrick Dodson argued that the Government has ignored the positive attributes of outstations, including the health benefits of people living on their lands and ‘to ignore that, in a manner to force people, ultimately, to come to these designated major centres, is really, slowly but surely, a way of *killing people's culture and extinguishing the strength of Aboriginal life* [emphasis added]’.¹⁰⁸

In 2013 the then new Abbott conservative government introduced its Indigenous Advancement Strategy (IAS) which was yet again a rebranding exercise,

this time of ‘Closing the Gap’. Examining the effects of the IAS framework on the Kuninjku nation, Altman showed how each of the policy prescriptions of the IAS could be empirically linked to Lemkin’s original eight techniques of genocide. For instance:

In the *economic* field, the centralisation of Kuninjku has seen them deprived of their means of existence, while their well-documented reduction in standard of living and access to cash has undermined their connection to country and ceremony, what Lemkin terms cultural-spiritual requirements. In the *political* field, local institutions of self-government have either been destroyed or depoliticised, with different patterns of imposed administration, many more police and a Canberra-appointed community overseer with powers to report back to Canberra ... In the *social* field, the legislated requirement to ignore customary laws and the enhanced imposition of Australian laws are further impoverishing already poor people with fines or imprisonment for fine defaulting; and depriving them of their contemporary means of production – trucks and guns ... In the *biological field*, children who are assessed as ‘failing to thrive’ are removed to Darwin, fostered with non-Indigenous families and experiencing language and cultural loss. The struggle for livelihood is seeing a lowering of survival capacity, increased mortality rates and likely future morbidity risk for the young. This is partly because in the *physical field* there is an endangering of health with low-quality overcrowded housing, a lack of access to hunted game replaced in the name of ‘food security’ by unhealthy fast foods in local shops” [emphasis added].¹⁰⁹

In essence, the Aboriginal residents of the Homelands are being herded into larger towns to imbibe norms and values, employing what Altman calls “a western logic of behavioural economics.”¹¹⁰ Unfortunately, preliminary census-based indications are that the urbanisation feared has already started to happen. Indeed, a report on population shifts in the NT outlined a significant redistribution of people: ‘the Indigenous population of the NT is redistributing internally over time with progressive urbanisation (lower proportions living in remote parts of the NT) being the main pattern.’ Perhaps most worrying for cultural sustainability was the finding that ‘overall, in comparison to the Indigenous population of the NT as a whole, there was

substantially higher growth in the young and youth cohorts (aged zero to 20 years) at Territory Growth Towns (TGTs)'. There was a striking absolute increase in the Indigenous male population aged 10-14 years and 25-29 years at TGTs from 2006 to 2011. The report concluded that 'the Indigenous population of TGTs grew at double the rate of the NT as a whole'.¹¹¹

To return to the issue of the imperatives of the Australian settler capitalist MOP, the drivers behind this cultural destruction of the Intervention, homelands movement and indigenous lifeways more generally, appear once again to be the imperatives of extraction of minerals and fossil fuels and the engine of capital accumulation. We agree with Altman when he argues that much of the North, including NT is prospective for mineral extraction and ABD,¹¹² land, much of which, due to the legacy of the land rights movement, aboriginal resistance to colonisation and the ALRA and NTA more specifically, happens to be under Aboriginal land tenure and forms a part of the ever-expanding indigenous estate. This estate could prove an impediment to capital accumulation.

In the current world division of labour, Australian settler capitalist MOP is positioned within it as a major exporter of mineral and fossil fuels, where more than half of Australia's commodity exports come from mineral and fossil fuels and is worth 15 per cent to the national economy. This, according to the UN, makes is a 'mineral dependent economy.'¹¹³ According to many, the mineral export trade is in the 'national interest'.¹¹⁴ It may be the case that, unlike at the dawn of Australian settler capitalism, in the pastoral and cattle industries, Aboriginal labour is not central to this process of ABD.¹¹⁵ Nevertheless, again, we see genocidal structuring dynamics being

conditioned by the imperatives of capital accumulation and the global market. The rise of extreme energy in Australia and the attendant genocidal pressures

Ecocide and extreme energy ¹¹⁶

Indigenous peoples in Australia have had a difficult relationship with extractive industries to date,¹¹⁷ and in recent years it has become even more problematic as the process of extreme energy has driven the development of new technologies to open up previously untapped resources such as natural gas (mostly methane) which is locked within coal seams under high pressure. It is an extreme energy technology which requires large numbers of wells across a landscape (as opposed to conventional gas which requires fewer wells that tap into large gas pockets that are thousands of metres below the surface). CSG suitable coal seams are typically nearer the surface - usually no more than 400 meters below - and are often less than a metre thick and are clustered over large areas.¹¹⁸ The process is considerably more intense than with conventional wells. Indeed before gas can be produced, the balance in the coal structure needs to be significantly altered through dewatering and hydraulic fracturing.¹¹⁹ The well must be drilled, the coal seam de-watered (sometimes at a rate of 400,000 litres of water per day as happened with one of the first wells in the Surat Basin), primed with potassium chloride and then hydraulically fractured with water, sand and chemicals that are pumped into the seam at high pressure and once the process is complete theoretically all the surface area of the coal is propped open and gas flows.¹²⁰ There are around 40,000 square kilometers of Queensland that have CSG leases currently being developed.¹²¹ Like other fracking processes, what goes on

below the surface is just part of the picture. Indeed, fracking's associated activities and infrastructure usually require the construction of roads and pipelines for the gas and saline water, building of water treatment facilities, gas compression stations, high tension power lines and well pad and pipe route rehabilitation.¹²² Even though the environmentally destructive impact on the surface is only around two hectares during drilling and a half hectare thereafter, cumulatively CSG production is a landscape altering phenomena of some magnitude. In common with shale gas production, CSG wells do not produce large amounts of gas per well and production declines very quickly and thus every gas field requires a multitude of interlinked wells, some clustered on 'pads', but which can extend thousands of square kilometers.

Much like shale gas fracking, CSG production has produced a similar range of negative environmental and social impacts which include methane migration, toxic water contamination, air pollution, increased carbon emissions and a general industrialisation of the countryside; whereas CSG specific impacts include depletion of the water table and potentially subsidence.¹²³ Despite this, CSG is expanding rapidly in Queensland and is moving in to northern New South Wales and the industry anticipates development in other parts of Australia. The rapid expansion of CSG has made it even more difficult that with conventional mining for aboriginal people to have any kind of say in how it develops and where it develops. In a recent study, Trigger et al¹²⁴ found that 'issues raised by Aboriginal people in relation to agreements arising from CSG and broader development aspirations' were largely concerned with 'links to land (or 'country'), membership of groups of beneficiaries, cultural identity negotiations, representation of collective Aboriginal interests and related governance

of groups, and leverage required to negotiate with and extract real outcomes from resource companies'. They further note that 'these challenges appear to reflect the scale and speed of CSG development, relative to the time taken for making collective decisions by Aboriginal groups and for resolving native title claims in the courts'¹²⁵. The study noted 'a diverse range of views within and across Aboriginal populations about CSG developments', with some in favor of CSG development and while many others objected to it 'as a form of land use'. For many indigenous peoples CSG development is but the latest example of the colonial dilemma – accept environmental destruction, and its cultural corollary, for some degree of involvement (be it a negotiated land use agreement with some fiscal benefits, or short-term employment opportunities) with the 'development' process. Three recent cases highlight the problems.

Determined in 2007, and covering some 1120 km² of Queensland and northern New South Wales, the Githabul native title determination (granting a non-exclusive right), which includes nine national parks and thirteen state forests,¹²⁶ has been the source of significant conflict regarding the CSG issue of late.¹²⁷ Following an application by the New South Wales Aboriginal Land Council for gas prospecting in the Tweed and Byron Shires – areas covered by Githabul Native Title – some Elders and representatives decided to distance themselves from both the land council and the Native Title registrar.¹²⁸ Githabul spokeswoman Gloria Williams argued that the Native Title agreement was being wrongly used to allow coal seam gas interests into the region:

because we signed off on a consent determination agreement (...) and when we sign off on a consent determination agreement we are literally giving them

consent to come and do what they want...(via) Native Title... they are coming through our country mining the hell out of it.¹²⁹

Commenting on this statement, Trigger et al argue that it ‘glosses over underlying factors in the dispute about CSG; namely, intra-Indigenous contestation about representation and authority among Githabul people’, when it seems to actually highlight such intra-indigenous contestation.

Sentiments like that of Gloria Williams are no doubt fueled, at least in part, by the fact that the NSW Aboriginal Land Council (NSWALC) lodged their application without prior consultation with NSW Aboriginal people. In January 2013, Githabul opponents of CSG were reported to be ‘planning a legal challenge in an international court if necessary against their own to dissolve the Githabul Nation Aboriginal Corporation (GNAC), which approved mining on their country without their consent or approval’¹³⁰. However, NSWALC CEO Geoff Scott accused a reluctant NSW government of ‘pandering’¹³¹ to opponents in the environmental movement who are fighting its plan to become a player in the coal seam gas industry. The land council’s board decided to become involved in resource extraction apparently in order to generate long-term income and job opportunities for Aboriginal people. In Geoff Scott’s words:

it’s employment opportunities and long-term income streams we are after from this.¹³² Do you want to get benefit from it or do you want to continue to get the scraps off the table? Do you want to continue to rely on government for your livelihood? I think we owe our children better than that.¹³³

For many indigenous peoples the rapid rise of CSG poses yet another stark choice between a settler colonial rock and a hard place; a native title system devoid of a veto power and extreme energy ‘solutions’ being presented, counterfactually, as

environmentally ‘safe’ and the only realistic lifeline for economically disadvantaged indigenous communities. The economic reality of CSG production, however, is far more complicated. For example, a recent study¹³⁴ has highlighted how Aboriginal people are not as able to access employment opportunities as they had expected from CSG projects. CSG impacted Aboriginal people identified a range of barriers to such access, including:

- the rapid development of the industry outpacing a group’s ability to establish or expand a business interest;
- a lack of access to contracts/contractors, because contracts are too large for local or fledgling businesses to take on;
- a lack of requirements for indigenous business development in major contracts;
- balancing work and cultural responsibilities;
- lack of appropriate formal qualifications;
- limited ability to hold companies and contractors accountable for poor performance and failing to achieve commitments related to Aboriginal employment; and
- frustration with continued training without resulting employment.

As is the case with extreme energy projects around the world, the rhetoric doesn’t square with the empirical reality. Despite disagreements between community groups and their elected representatives, such as can be seen with the Githabul example above, other potential CSG development areas are seeing more consistent resistance born out of a greater awareness of the ecocidal externalities of extreme energy technologies and the usual flow of economic benefits. For example, Gomeroi

country extends from the QLD/NSW border region to Tamworth, Aberdeen/Muswellbrook, Coonabarabran and Walgett, all areas rich in subsurface resources. In January 2012, representatives of the Gomeroi people filed an application in the National Native Title Tribunal. The following year the Gomeroi Native Title claimants lodged an injunction on mining.¹³⁵ Claimant Alf Priestley said the:

Aboriginal people are the land. We are connected to the land, trees, rocks and waters...Aboriginal people have been forced to sit on the fence about this. Either way our land is being taken away from us. There is only 17 per cent of vegetation left in Australia and that's because these farmers and cities have cleared the land to put crops in and to build big towers. We aren't benefiting out of CSG and neither out of stopping CSG.

Fellow claimant Anthony Munroe stated:

Mining is coming to our country but we are going to fight them every step of the way through the courts, through the protests, and through the support of the Gomeroi people. The Gomeroi people will not be lying down.

While Michael Anderson, the last remaining member of the original Tent Embassy activists alive, and fellow Gomeroi claimant argued that:

native title has not been extinguished on water, and Native Title has never been extinguished over our trees, plants, animals and everything else. We don't care what title you've got, but we're not going to allow you to destroy our connection with all those things.'

Running through Gomeroi perspectives on coal mining and CSG is an appreciation of the ecocidal impact it will have on their land and a hope that their decision to fight mining will inspire others in the country to do the same.¹³⁶ There was considerable support for the Gomeroi stance from the anti-fracking movement's Lock the Gate Alliance¹³⁷ which is a national grassroots organisation made up of over 30,000 supporters and more than 230 local groups who are concerned about unsafe coal and gas mining. These groups are located in all parts of Australia and include

farmers, traditional custodians, conservationists and urban residents. Many of such groups use the influential 'CSG-Free Community Strategy' launched by CSG-Free Northern Rivers which goes beyond the idea of locking individual gates to take resistance to the community level; with communities being trained in non-violent civil resistance and encouraged to form local committees to lock local roads to CSG activity, the idea being that as local networks link up then whole valleys and communities will become CSG-Free areas.¹³⁸ North West Alliance representative Anne Kennedy said 'I am delighted to support the stand of the Gomeroi people...In our area, Wun-Gali representatives have resolved to declare a moratorium on all coal seam gas activities on their traditional lands and in the Coonamble Shire'. Tambar Springs farmer David Quince stated, 'I have the greatest respect for the stand made by the Gomeroi people, working to make sure this magnificent land remains healthy and capable of supporting humans, and also fauna and flora'.¹³⁹

Indigenous resistance to CSG looks to be spreading. The Mithaka People, traditional owners of Queensland's Channel Country, have written to the UN's Special Rapporteur on the Rights of Indigenous Peoples arguing that the government has ignored international law by failing to consult with them over planned coal seam gas activity on their land.¹⁴⁰ Mithaka representative Scott Gorringer was particularly concerned about CSG's effect on water:

Most of our stories start and end around water...Our main significant sites are around water. Not only culturally, environmentally I think it's critical for that country especially...You start mucking around with rivers out our way and damaging underground water, it's sitting on the Great Artesian Basin. And we don't know what potentially can happen. You know, mining companies are telling us one thing and they're tainted with a brush. And Government's telling us another and I think they're tainted with the same brush. There's a whole lot of other opportunities that would present themselves out there if people would

be strong enough to hold back and have a look at this stuff and have a talk to us about the opportunities we see. But we're not getting that opportunity. The Queensland Government's not talking to us.¹⁴¹

Following a tour of Australia's gasfield regions, international lawyer and prominent End Ecocide advocate, Polly Higgins wrote:

The stories I heard over the last two weeks about CSG, the fracking I saw and the extreme levels of community concern I experienced led to the question: is this not an Ecocide? Surely it cannot be right to subject our people and planet to gasfield processes that cause significant harm.¹⁴²

For indigenous peoples in Australia, many of whom are struggling to survive as distinct peoples in the face of the relentless culturally genocidal pressures we have just discussed, to feel that they have little option but to become involved with an ecocidal industry is a searing indictment of modern Australia and where it is heading. Jarred Diamond has argued that Australia may well be the first world's 'miners' canary: a developed country facing a rapid decline in living standards as its burgeoning population outstrips its rapidly degrading natural resource base.¹⁴³ Indeed, for all the corporate and political talk of extreme energy technologies providing 'sustainable' energy, it is a gross misunderstanding at best and a barefaced lie at worst. There is nothing sustainable about scraping the bottom of the fossil fuel barrel. Indeed, as I mentioned earlier, it is testament to the fact that most conventional sources of energy have peaked. In a holistic analysis, Diamond goes further than detailing unsustainable ecocidal energy extraction to discuss Australia's profound ecological crisis. He highlights acute problems of soil fertility and salinization, land degradation, diminishing freshwater resources, distance costs, over-exploitation of forests and fisheries, importation of inappropriate European agricultural values and methods and alien species, alongside related problems of trade and immigration policies. Diamond

concludes that the ‘mining’ of Australia’s natural resources i.e. their unsustainable exploitation at rates faster than their renewal rates since European settlement began, means that Australia illustrates in extreme form the exponentially accelerating horse race in which the world now finds itself. ("Accelerating" means going faster and faster; "exponentially accelerating" means accelerating in the manner of a nuclear chain reaction, twice as fast and then 4, 8, 16, 32 ... times faster after equal time intervals.) On the one hand, the development of environmental problems in Australia, as in the whole world, is accelerating exponentially. On the other hand, the development of public environmental concern, and of private and governmental countermeasures, is also accelerating exponentially. Which horse will win the race?¹⁴⁴

The environmental picture for Australia is even worse if we consider the wider impact of this ‘mining’ of a continent – its impact on global emissions. Much like with recent studies of shale gas in North America, recent studies concerning fugitive emissions from CSG fields in Australia is reporting concerning results regarding potential methane emissions. The report¹⁴⁵ found consistently elevated methane and carbon dioxide concentrations within the CSG fields of the Darling Downs. The study clearly showed that there is something going on in these areas leading to increased atmospheric greenhouse gas concentrations but, of course, the negligent, arguably criminal, lack of baseline studies makes it very difficult to prove the chain of causation. However, the study’s lead author, Dr Damien Maher, said there were clues as to where the methane and carbon dioxide was coming from: ‘The technology we used gives us additional information about the methane and carbon dioxide, and the

methane in the atmosphere of the Darling Downs gasfield has a very similar fingerprint to methane in the CSG of the region.

National coordinator for Lock the Gate, Phil Laird, welcomed the report:

This study takes a landscape approach to fugitive emissions. It suggests that, not only do wells, pipes and other infrastructure leak, but the ground may also be leaking through cracks and fissures after the coal seams are depressurized and the gas is mobilized. It is devastating for human health and the environment. Fugitive methane emissions are strong indicators of the presence of toxic gasses such as sulphur oxide, nitrogen oxide and volatile organic compounds. Gases that likely contributed to health impacts to the residents of Tara... This study shows that people and gasfields should not mix... The research clearly shows that unconventional gas is far from a “transition fuel” and is in fact a dirty, emissions heavy energy source that neither community health nor the planet can afford. It is reckless in the extreme that both state and federal governments allowed drilling to commence without strong baseline studies in place.¹⁴⁶

It is not hard to see why Australia has recently been named the worst performing industrial country on climate change.¹⁴⁷ The report states: ‘The new conservative Australian government has apparently made good on last year’s announcement and reversed the climate policies previously in effect. As a result, the country lost a further 21 positions in the policy evaluation compared to last year, thus replacing Canada as the worst-performing industrial country.’¹⁴⁸ The report, produced by the thinktank Germanwatch and Climate Action Network Europe, covers the top 58 emitters of greenhouse gases in the world and about 90 per cent of all energy-related emissions. Jan Burck, one of the report authors stated: ‘It is interesting that the bottom six countries in the ranking – Russia, Iran, Canada, Kazakhstan, Australia and Saudi Arabia – all have a lot of fossil fuel resources. It is a curse. The fossil fuel lobbies in the countries are strong. In Australia they stopped what were some very good carbon laws.’¹⁴⁹ While Erwin Jackson of the Australian charity the Climate Institute argued,

‘Australia has been heading backwards by undertaking actions such as attempting to kneecap the renewable energy industry through regressive policy changes’.¹⁵⁰

Such a direction for Australia is particularly concerning given the world’s need to drastically reduce greenhouse gas emissions. Moreover, it is positively irrational if you consider that much of Australia’s environment is currently a very harsh and inhospitable place. Combine that with the ecological crisis Jarred Diamond has highlighted, and the recent Commonwealth Scientific and Industrial Research Organisation (CSIRO) and the Bureau of Meteorology report that predicts climate change will hit Australia harder than the rest of the world.¹⁵¹ Indeed, the current irrational preference for a ‘business-as-usual’ approach to burning fossil fuels will likely hit Australia with a catastrophic temperature rise of more than 5C by the end of the century, outstripping the rate of warming experienced by the rest of the world.

Here we can see another dimension of the genocide-ecocide nexus; the possibility of viable human adaptation and survival in an even harsher environment is currently being undermined by the continuing culturally genocidal policies inflicted on indigenous peoples by the settler colonial authorities. If we consider how we have responded as a species to environmental changes in the past, unlike other creatures that adjusted to change in their environment through gradual biological adaptation, humans generally created innovative ways to live and communicate, and passed such knowledge down to their children.¹⁵² Cultural diversity – the multitude of ways of living and communicating knowledge – gave humans an adaptive edge; developing analytical tools to identify and assess change in their environment to search out or devise new strategies, and to communicate and incorporate these strategies throughout

their group.¹⁵³ As anthropologist Barabara Rose Johnston points out, ‘for the human species, culture is our primary adaptive mechanism’. The continued culturally genocidal pressures on indigenous people in Australia endanger not just their own survival as distinct peoples but also the adaptation potential for the settler nation more broadly.

A series of ongoing capitalist genocides and ecocides

Use of the term ‘genocide’ to describe the colonial experience has been met with scepticism from some quarters... Yet the political posturing and semantic debates do nothing to dispel the feeling Indigenous people have that this is the word that adequately describes our experience as colonised peoples.¹⁵⁴

Larissa Behrendt

It may be that the Australian case is not a continuing genocide as such but *a series of continuing genocides* in which possibly hundreds of distinct indigenous social figurations are suffering dispossession, loss of autonomy, significant mental and physical harm, cultural erosion and ecocidal damage to their environment. Even though genocidal social death can be produced without specific ‘intent to destroy’ we would argue that there is reasonably foreseeable intent here. Whatever the underlying *motives*, certainly the forcible dispossessions *are intentional*, the exertion of *forcible* control over peoples’ lives *is intentional*, and the moves to *forcibly* coerce people off their sacred Homelands *are intentional*. Although the resulting physical, cultural and mental harm may be the opposite of the alleged motivation and hence not *prima facie* intentional as such, in traditional British legal parlance ‘foresight and recklessness’ as to the consequences of action are ‘evidence from which intent may be inferred’.¹⁵⁵ How else should we interpret the repeated reckless disregard for the views of those indigenous peoples affected by

policies like the Intervention in its various guises *and* the repeated failure of successive governments to learn the ‘great lesson’ articulated by the Royal Commission into Aboriginal Deaths in Custody back in 1991?

The great lesson that stands out is that non-Aboriginals, who currently hold all the power in dealing with Aboriginals, have to give up the usually well intentioned efforts to do things for or to Aboriginals, to give up the assumption that they know what is best for Aboriginals ... who have to be led, educated, manipulated, and re-shaped into the image of the dominant community. Instead Aboriginals must be recognised for what they are, peoples in their own right with their own culture, history and values.¹⁵⁶

Along with this emphasis on self-determination, a central conclusion of the Royal Commission was that the root cause of current structurally entrenched social inequality was the dispossession of land. Over the last few decades, numerous other official reports have reached the same conclusions and yet ‘Aboriginal Affairs’ policy continues to move ever further away from measures that could halt the genocides – genuine de-colonising self-determination, meaningful land rights and respect for the principle of ‘free prior and informed consent’ towards further dispossession, disempowerment and assimilation. This is genocidal, although of course not in international law since the cultural methods of genocide were largely removed from the final Convention. Nevertheless, by invoking a broader understanding of genocide in keeping with Lemkin’s ideas, this chapter has sought to highlight the *continuing* genocidal context in which many, but not all, indigenous peoples in Australia live, the seriousness of *present day* culturally destructive state policies and a potentially de-colonising pathway out of the ‘relationship of genocide’.¹⁵⁷

Fundamentally, this chapter has sought to reveal how the important dimensions of the genocide-ecocide nexus; from the settler colonial land grabs at the ‘rosy dawn’ of Australian settler capitalism, to the modern day ‘minocracy’ that shapes Aboriginal affairs and episodes like The Intervention and the cultural destruction of the homelands movement, or the rise of the capitalist driven process of extreme energy and CSG production; at every juncture and turning point, the continuities, breaks and departures in the relations of genocide must be understood in articulation with the imperatives of capital accumulation and the global chains of capitalist production and trade.

Notes

¹ Indeed, Dirk Moses writes, “The term genocide is used to refer to two phenomena in Australian history: frontier violence, mainly in the nineteenth century, and the various policies of removing Aboriginal children of mixed descent from their families, mainly in the twentieth century.” A. Dirk Moses, “Genocide and Settler Society in Australian History,” in *Genocide and Settler Society: Frontier Violence and Stolen Indigenous Children in Australian History*, ed. A. Dirk Moses (Oxford: Berghahn Books, 2004), 16. For detailed discussion on the question of cultural genocide in Australia, see Robert Van Krieken, “The Barbarism of Civilization: Cultural Genocide and the ‘Stolen Generations,’” *British Journal of Sociology* 50, no. 2 (1999): 297–315; “Rethinking Cultural Genocide: Aboriginal Child Removal and Settler-Colonial State Formation,” *Oceania* 75, no. 2 (2004): 125–51; and in particular “Cultural Genocide in Australia,” in *The Historiography of Genocide*, ed. Dan Stone, 128–155 (London: Palgrave Macmillan, 2008).

² Patrick Wolfe, “Settler Colonialism and the Elimination of the Native,” *Journal of Genocide Research* 8, no. 4 (2006): 388.

³ Tony Barta, “With Intent to Deny: On Colonial Intentions and Genocide Denial,” *Journal of Genocide Research* 10, no. 1 (2008): 115.

⁴ Wolfe, “Settler Colonialism and the Elimination of the Native,” 387.

⁵ Smith, A. (2005). *Conquest: Sexual Violence and American Indian Genocide*. Cambridge: MA: South End Press: 121.

⁶ Abed, Mohammed (2006) Clarifying the Concept of Genocide, *Metaphilosophy*, 37:3–4: 326.

⁷ As Barta put it, “They appear actually to vanish from the face of the Earth.” See Tony Barta, “Aborigines and the European Project in Australia Felix,” *Journal of Genocide Research* 10, no. 4 (2008): 519 — 539.

⁸ Tony Barta, “Relations to Genocide: Land and Lives in the Colonization of Australia,” in *Genocide and the Modern Age: Etiology and Case Studies of Mass Death*, eds. Isidor Wallimann and Michael N. Dobkowski (Syracuse: Syracuse University Press, 2000), 248.

⁹ Barta ends his paper suggesting that “relations of genocide are alive,” while Wolfe (ibid) argues, correctly in our view, that settler colonialism is structure not an event. See Barta, “Relations to Genocide,” 248; Wolfe, “Settler Colonialism and the Elimination of the Native,” 387.

¹⁰ Such as Kevin Buzzacot and Darren Blomfeld from the Tent Embassy, Michael Anderson and John Ah Kitt, to name a few.

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- ¹¹ Martin Crook and Damien Short, "Marx, Lemkin and the Genocide–Ecocide Nexus," *The International Journal of Human Rights* 18, no. 3 (2014): 298-319.
- ¹² Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Washington, DC: Carnegie Endowment for International Peace Division of International Law, 1944), 79.
- ¹³ Wolfe, "Settler Colonialism and the Elimination of the Native," 388.
- ¹⁴ Damien Short, *Redefining Genocide: Settler Colonialism, Social Death and Ecocide* (London: Zed Books, 2016): 28.
- ¹⁵ Wolfe, "Settler Colonialism and the Elimination of the Native,"
- ¹⁶ Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Pantheon, 1977).
- ¹⁷ This comes from Marx's infamous quip about the brutality and violence of the origins of capital accumulation or, as it known technically, primary accumulation. See Karl Marx, *Capital, Vol. 1* (London: Penguin Books, 1976), 915.
- ¹⁸ Christopher Lloyd, "The Emergence of Australian Setter Capitalism in the Nineteenth Century and the Disintegration/Integration of Aboriginal Societies: Hybridisation and Local Evolution within the World Market," in *Indigenous Participation in Australian Economies*, ed. Ian Keen (Canberra: Australian National University Press, 2010), 24.
- ¹⁹ This was not the only consideration for London. The colonies in NSW also served a strategic importance, in that it would stymie efforts by the French empire to set up a Pacific trading hub on the Australian continent.
- ²⁰ Marx, *Capital, Vol. 1*, 773.
- ²¹ Ibid.
- ²² Ibid., 796.
- ²³ Christopher Lloyd, "The Emergence of Australian Setter Capitalism in the Nineteenth Century and the Disintegration/Integration of Aboriginal Societies: Hybridisation and Local Evolution within the World Market," in *Indigenous Participation in Australian Economies*, ed. Ian Keen (Canberra: Australian National University Press, 2010), 26. It would not be until the 1830s that a purely capitalist form of free labour predominated.
- ²⁴ Ibid., 27.
- ²⁵ Bill Thorpe, "Aboriginal Employment and Unemployment: Colonised Labour," in *Beyond Industrial Sociology: The Work of Men and Women*, eds. Claire Williams and Bill Thorpe (North Sydney: Allen and Unwin, 1992); Charles Rowley, *The Destruction of Aboriginal Society* (Canberra: Australian National University Press, 1972), 157-221.
- ²⁶ A. Dirk Moses, "An Antipodean Genocide? The Origins of the Genocidal Moment in the Colonization of Australia," *Journal of Genocide Research* 2, no. 1 (2000): 96.
- ²⁷ Wolfe, *opcit*, 2006, p. 394.
- ²⁸ Wolfe, "Settler Colonialism and the Elimination of the Native," 388.
- ²⁹ Damien Short, "Cultural Genocide and Indigenous Peoples: A Sociological Approach," *The International Journal of Human Rights* 14, no. 6 (2010): 833-848.
- ³⁰ Marx, *Capital, Vol. 1*, chapters 25-32; Jim Glassman, "Primitive Accumulation, Accumulation by Dispossession, Accumulation by 'Extra-Economic' Means," *Progress in Human Geography* 30, no. 5 (2006): 608-625.
- ³¹ John Bellamy Foster, "The Treadmill of Accumulation," *Organization & Environment* 18, no. 1 (2005): 7-18.
- ³² Crook and Short, "Marx, Lemkin and the Genocide–Ecocide Nexus," 300; Marx, *Capital, Vol. 1*.
- ³³ David Norman Smith, "Accumulation and the Clash of Cultures: Marx's Ethnology in Context," *Rethinking Marxism: A Journal of Economics, Culture & Society* 14, no. 4 (2002): 79.
- ³⁴ Wolfe, "Settler Colonialism and the Elimination of the Native."
- ³⁵ Harvey, David (2003) "The 'New' Imperialism: Accumulation By Dispossession." *Socialist Register*, in L. Panitch, Leo and Leys, Colin (eds.). Halifax: Fernwood, 63-88.
- ³⁶ Paul Havemann, "Mother Earth, Indigenous Peoples and Neo-Liberal Climate Change Governance," in *Handbook of Indigenous Peoples Rights*, eds. Corinne Lennox and Damien Short (New York: Routledge, 2016), 186; Glen Coulthard, *Red Skin, White Masks* (Minneapolis: University of Minnesota Press, 2016).
- ³⁷ Martin Crook, Damien Short, and Nigel South, "Ecocide, Genocide, Capitalism and Colonialism: Consequences for Indigenous Peoples and Glocal Ecosystems Environments," *Theoretical Criminology* 22, no. 3 (2018): 298-317.

³⁸ The historian and genocide scholar Dirk Moses would describe in essentialised terms the rise of two schools in the genocide studies field, the liberal school which adopts a much more legalistic state-centred definition of genocide and a post-liberal or colonial school which adopts a more holistic and historically nuanced definition which sees genocide emanating from social and political structures rather than necessarily inhering in individuals. This arguably stems from the understandable influence of the Holocaust and the legacy of a genocide convention, stripped of its master concept of ‘culture’ and bowdlerized and truncated by expediencies of the cold war. See A. Dirk Moses, “Conceptual Blockages and Definitional Dilemmas in the ‘Racial Century’”, *Patterns of Prejudice* 36, no. 4 (2002): 7-36.

³⁹ Patrick Wolfe, “Structure and Event: Settler Colonialism, Time, and the Question of Genocide,” in *Empire, Colony, Genocide: Conquest, Occupation, and Subaltern Resistance in World History*, ed. A. Dirk Moses (Oxford: Berghahn Books, 2008), 102-132; Martin Crook, “The Mau Mau Genocide: A Neo-Lemkinian Analysis,” *Journal of Human Rights in the Commonwealth* 1, no. 1 (2013): 21.

⁴⁰ Dominik Schaller, “Colonialism and Genocide – Raphael Lemkin’s Concept of Genocide and its Application to European Rule in Africa,” *Development Dialogue* 50 (2008): 75-93, and “From Conquest to Genocide: Colonial Rule in German Southwest Africa and German East Africa,” in *Empire, Colony, Genocide: Conquest, Occupation, and Subaltern Resistance in World History*, in ed. A. Dirk Moses (Oxford: Berghahn Books, 2008).

⁴¹ Lemkin, *Axis Rule in Occupied Europe*.

⁴² Foucault, *Discipline and Punish*.

⁴³ Two pathbreaking studies in Australian historiography which help unearth the history of aboriginal participation in the settler economy are Rowley, *The Destruction of Aboriginal Society*, and Henry Reynolds, *With the White People* (Ringwood, Vic., Australia: Penguin Books, 1990).

⁴⁴ Terry Irving, *Challenges to Labour History* (Sydney, NSW, Australia: UNSW Press, 1994).

⁴⁵ Jon Altman, “Development Options on Aboriginal Land: Sustainable Indigenous Hybrid Economies in the Twenty-First Century,” in *The Power of Knowledge: The Resonance of Tradition*, eds. Luke Taylor et al (Canberra: Aboriginal Studies Press, 2005), 34-48.

⁴⁶ For a detailed study of the Aboriginal MOP, see N. G. Butlin, *Economics and the Dreamtime* (Cambridge: Cambridge University Press, 2010).

⁴⁷ Lloyd, “The Emergence of Australian Settler Capitalism,” 33.

⁴⁸ Reynolds, *With the White People*; Peter Russell, *Recognizing Aboriginal Title: The Mabo Case and Indigenous Resistance to English Settler Colonialism* (Toronto: University of Toronto Press, 2005), 84-86; Heather Goodall, *Invasion to Embassy: Land in Aboriginal Politics in New South Wales, 1770-1972* (Sydney, N.S.W.: Sydney University Press, 2008), 66-88.

⁴⁹ Lloyd, “The Emergence of Australian Settler Capitalism,” 32.

⁵⁰ Thorpe, “Aboriginal Employment and Unemployment,” 157-221.

⁵¹ Ibid.

⁵² Stewart Harris, *It’s Coming Yet: An Aboriginal Treaty within Australia between Australians* (Aboriginal Treaty Committee, 1979), 12.

⁵³ S. James Anaya, *Indigenous Peoples in International Law* (Oxford: Oxford University Press, 2004), 104.

⁵⁴ Ibid.

⁵⁵ Broadly speaking, this concept incorporates the political rights to autonomy and self-government and can be achieved without impacting upon the territorial integrity of the settler state itself. Furthermore, as Pritchard notes, “The right to self-determination embraces a comprehensive scale of realisation-possibilities, including: the creation of a State, secession, self-government and self-administration.” See Sarah Pritchard, “The Rights of Indigenous Peoples to Self-Determination under International Law,” *Aboriginal Law Bulletin*, at <http://www.austlii.edu.au/au/journals/AboriginalLB/1992/16.html>. In the Australian context, the realisation of this right will stretch across the range of possibilities Pritchard lists, varying according to the nature of the indigenous group to which it is directed. For at least those 250 groups who have, to date, proven a continuing connection to their ancestral lands, and who still primarily live in accordance with distinct ‘traditional’ laws and customs, referred to earlier (note 9) it could involve the negotiation of a de-colonising international legal instrument (with the indigenous peoples being regarded as nations equal in status but not in form to the settler state) independent of the institutions of all parties and the establishment of an impartial implementation mechanism. This approach was advocated by the National Aboriginal and Islander Legal Service Secretariat (NAILSS) to the UN in the 1990s. See Pritchard (above) on this and for a more theoretical outline of such ‘treaty federalism’ see the excellent chapter by James Tully, “The Struggles of Indigenous Peoples for and of Freedom,” in *Political Theory*

and the Rights of Indigenous Peoples, eds. Duncan Ivison, Paul Patton, and Will Sanders (Cambridge: Cambridge University Press, 2000), 36-59. For those indigenous peoples whose indigeneity is primarily based on 'placelessness', as Paul Havemann has termed it see "Denial, Modernity and Exclusion: Indigenous Placelessness in Australia," *Macquarie Law Journal* 5 (2005): 57-80), or on a lack of culture and who have been dispossessed from their ancestral lands it could simply involve having a meaningful role in the design and implementation of those government policies directed at them; loosely covered by Pritchard's notion of 'self-administration' (See Pritchard, "The Rights of Indigenous Peoples").

⁵⁶ Barta, "Relations to Genocide," 248.

⁵⁷ Damien Short, "The Social Construction of Indigenous Native Title Land Rights in Australia," *Current Sociology* 55, no. 6 (2007): 857.

⁵⁸ See Jared Diamond, *Collapse: How Societies Choose to Survive or Fail* (London: Penguin, 2006), 396.

⁵⁹ Wolfe, "Settler Colonialism and the Elimination of the Native."

⁶⁰ Jon Altman, "Indigenous Rights, Mining Corporations, and the Australian State," in *The Politics of Resource Extraction: Indigenous Peoples, Multinational Corporations and the State*, eds. Suzana Sawyer and Edmund Terrence Gomez (Basingstoke: Palgrave Macmillan, 2012), 46-74.

⁶¹ See Short, "The Social Construction of Indigenous Native Title Land Rights."

⁶² Albert Edward Woodward, "Aboriginal Land Rights Commission: Second Report, Parliamentary Paper No.69," (April 1974), 418. Available <http://apo.org.au/system/files/36136/apo-nid36136-151601.pdf>.

⁶³ Coulthard, *Red Skin, White Masks*, 3.

⁶⁴ Barta, "Relations to Genocide"; Damien Short, "Australia: A continuing Genocide?" *Journal of Genocide Research* 12, no. 1-2 (2010): 45-68; Haifa Rashed and Damien Short, "Can a Lemkin Inspired Genocide Perspective Aid Our Understanding of the Palestinian Situation?" *International Journal of Human Rights* 16, no. 8 (2012): 1142-69; Coulthard, *Red Skin, White Masks*.

⁶⁵ Coulthard, *Red Skin, White Masks*, 11-12; Colin Samson and Carlos Gigoux, *Indigenous Peoples and Colonialism: Global Perspectives* (Cambridge: Polity Press, 2017), xi; Damien Short, *Redefining Genocide: Settler Colonialism, Social Death and Ecocide* (London: Zed Books, 2016), 17; Crook and Short, "Marx, Lemkin and the Genocide-Ecocide Nexus."

⁶⁶ Samson and Carlos Gigoux, *Indigenous Peoples and Colonialism*, xi.

⁶⁷ Chantal Mouffe (ed.), *Gramsci and Marxist Theory* (London: Routledge, 2014).

⁶⁸ Martin Freeman, *Human Rights: An Interdisciplinary Approach* Oxford: Polity, 2002), 85.

⁶⁹ See Damien Short, *Reconciliation and Colonial Power* (London: Routledge, 2008), 65-86.

⁷⁰ CERD. Decision 1(53); Cerd/C/53/Misc.17/Rev.2, 11 August. (1998).

⁷¹ Mal Brough, "Explanatory Memorandum Aboriginal Land Rights (Northern Territory) Act 1976 Amendment Bill 2006, Commonwealth Parliament of Australia, House of Representatives.

⁷² Ibid.

⁷³ Altman cites one community a whole year later. See Jon Altman, "The 'National Emergency' and Land Rights Reform: Separating Fact from Fiction: An Assessment of the Proposed Amendments to the Aboriginal Land Rights (Northern Territory) Act 1976," briefing paper for *Oxfam Australia*, Centre for Aboriginal Economic Policy Research, The Australian National University, 7 August 2007, p. 6. Consequently, under the new Northern Territory policy 'Stronger Futures' there is even more of a steer towards opening up indigenous land to economic development, with extractive industries no doubt at the top of the waiting list.

⁷⁴ Sydney Morning Herald, Sept 13th 2007 Dodson lashes 'sinister intervention'

⁷⁵ 'Indigenous intervention 'genocide'', AAP, August 07, 2007

⁷⁶ Ampe Akelyernemane Meke Mekarle, *Little Children are Sacred*, Northern Territory Government, Board of Enquiry into the Protection of Aboriginal Children from Sexual Abuse, available at www.inquiryntsaac.nt.gov.au/pdf/bipacsa_final_report.pdf

⁷⁷ See UN Special Rapporteur James Anaya's comments available at <http://www2.ohchr.org/english/issues/indigenous/rapporteur/docs/ReportVisitAustralia.doc>

⁷⁸ Altman, "The 'National Emergency' and Land Rights Reform," 9.

⁷⁹ Marcia Langston, "Trapped in the Aboriginal Reality Show," *Griffith REVIEW*, 19, available at http://www.griffithreview.com/images/stories/edition_articles/ed19_pdfs/langton_ed19.pdf; Noel Pearson, 'Noel Pearson discusses the issues faced by Indigenous communities' ABC Lateline Interview 26/06/2007 available at <http://www.abc.net.au/lateline/content/2007/s1962844.htm>.

⁸⁰ Alison Vivian and Ben Schokman, "The Northern Territory Intervention and the Fabrication of 'Special Measures,'" *Australian Indigenous Law Review* 13, no. 1 (2009): 97.

⁸¹ Prescribed Area Peoples' Alliance, Press Release, November 7 2008, on file with author.

⁸² Ibid.

⁸³ Peter O'Mara, "Health impacts of the Northern Territory Intervention," *Medical Journal of Australia* 192, no. 10 (2010). Executive summary available at http://www.mja.com.au/public/issues/192_10_170510/oma10307_fm.pdf.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ibid. The government has since engaged in 'consultations' with some indigenous peoples but on the understanding that the Intervention will continue – only the fine detail is up for discussion. These 'consultations' have since been exposed as grossly inadequate in a major response from the group known as 'concerned Australians' in conjunction with the relevant Aboriginal Communities in the Northern Territory, and authors Michele Harris, Larissa Behrendt and Nicole Watson titled *Will They Be Heard?* Available at <http://intranet.law.unimelb.edu.au/staff/events/files/Willtheybeheard%20Report.pdf>.

⁸⁷ Altman, "The 'National Emergency' and Land Rights Reform," 9.

⁸⁸ See <http://www.gneppartnership.org/>.

⁸⁹ See comments by the then Resources Minister Martin Ferguson who stated "there's going to be uranium mining on an increasing basis in Western Australia, South Australia and the Northern Territory, we'll see uranium mining in Queensland in due course." Available at <http://www.abc.net.au/news/stories/2009/07/21/2631570.htm>

⁹⁰ For a basic introduction and pictures of the surface impacts of these mines see <http://www.world-nuclear.org/info/Country-Profiles/Countries-A-F/Appendices/Australia-s-Uranium-Mines/> and for but one example of wider environmental impacts see Lindsay Murdoch (2009) 'Polluted water leaking into Kakadu from uranium mine', *The Age*, March 13. <http://www.theage.com.au/national/polluted-water-leaking-into-kakadu-from-uranium-mine-20090312-8whw.html>.

⁹¹ The words 'as such' (interestingly absent from the draft Lemkin penned) in the UN Genocide Convention require groups be intentionally targeted because of who they are and not for any other reason such as economic gain or self-defence. Given that perpetrators may well have multiple reasons for genocidal action it is not surprising that Helen Fein, for one, has advocated a more sociologically realistic approach – 'sustained purposeful action': see Helen Fein, *Genocide: A Sociological Perspective* (London: Sage, 1993), 24. Under such a formula intent can also be inferred from action, which is entirely consistent with a long established principle in British common law - in British common law 'foresight and recklessness are evidence from which intent may be inferred', see J. Wien in *R v. Belfon* (1976) 3 All ER 46.

⁹² Stronger Futures in the Northern Territory Act 2012, 'An Act to build stronger futures for Aboriginal people in the Northern Territory, and for related purposes'. No.100 2012, available at <http://comlaw.gov.au/details/C2012A00100>

⁹³ See the list of supporters here <http://stoptheintervention.org/facts/stronger-futures-legislation/yolngu-statement-and-supporters#cA> and <http://stoptheintervention.org/facts/press-releases/leading-australians-angered-by-government-plans-that-will-continue-discrimination-in-the-nt>.

⁹⁴ See <https://indigenousjobsandtrainingreview.dpmc.gov.au/forrest-review>; Land Rights Under Attack', Land Rights News: Northern Edition, October, 2014, Edition 4. p.1. For more on this see Short, *Reconciliation and Colonial Power*, 31-64.

⁹⁵ Ian Viner, "The Plan to Undermine the Land Rights Act," *Alice Spring News*, 28 October 2014, available at <http://www.alicespringsnews.com.au/2014/10/28/the-plan-to-undermine-the-land-rights-act/>.

⁹⁶ Seán Kerins, "The Future of Homelands/Outstations," Centre For Aboriginal Economic Policy Research, Topical Issue No.1/2010, Australian National University. Available at <http://www.anu.edu.au/caepr/>

⁹⁷ Jon Altman, "Raphael Lemkin in Remote Australia: The Logic of Cultural Genocide and Homelands," *Oceania* 88, no. 3 (2018): 336-359.

⁹⁸ Centre for Appropriate Technology 2016. The Northern Territory Homelands and Outstations Assets and Access Review, Final Report. Alice Springs, Australia: Centre for Appropriate Technology.

⁹⁹ Jon Altman, "No Movement on the Outstations," *Sydney Morning Herald*, 26 May 2009, available at <https://www.smh.com.au/politics/federal/no-movement-on-the-outstations-20090525-bkq5.html>.

¹⁰⁰ Ibid.

¹⁰¹ See Mark Moran, "The Viability of 'Hub' Settlements," *Dialogue* 29, no. 1 (2010): 38.

¹⁰² Ibid.

¹⁰³ See 'Agreements, Treaties and Negotiated Settlements Project'.at <http://www.atns.net.au/agreement.asp?EntityID=5399>.

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- ¹⁰⁴ See <http://www.australiasnorthernterritory.com.au/Living/nt-cities-towns/Pages/remote-towns.aspx>; Altman, "Raphael Lemkin in Remote Australia," 347.
- ¹⁰⁵ Kerins, "The Future of Homelands/Outstations," 3.
- ¹⁰⁶ Altman, "No Movement on the Outstations"; Kerins, "The Future of Homelands/Outstations."
- ¹⁰⁷ Gumatj Statement 26th October 2008, Working Group on Aboriginal Rights Circular, on file with author.
- ¹⁰⁸ Sara Everingham, "Killing Us Softly: Dodson Slams Outstations Plan," *ABC News*, 2 June 2009, available at <http://www.abc.net.au/news/stories/2009/06/02/2587462.htm>.
- ¹⁰⁹ Altman, "Raphael Lemkin in Remote Australia," 352-353.
- ¹¹⁰ *Ibid.* 351.
- ¹¹¹ Andrew Taylor, "First Insights: Population Change for Territory Growth Towns, 2001 to 2011," The Northern Institute / Faculty of Law, Education, Business and the Arts, July 2012, available at www.cdu.edu.au/sites/default/files/research-brief-2012-07.pdf.
- ¹¹² Altman, "Raphael Lemkin in Remote Australia," 354.
- ¹¹³ Altman, "Indigenous Rights, Mining Corporations, and the Australian State," 132.
- ¹¹⁴ Paul Cleary, *Too Much Luck: The Mining Boom and Australia's Future* (Victoria, Australia: Black Inc., 2011), 5.
- ¹¹⁵ Altman, "Raphael Lemkin in Remote Australia," 354.
- ¹¹⁶ The rise of extreme energy itself can be accounted for by reference to the laws of motion of the capitalist MOP. For a full explanation see Crook and Short, "Marx, Lemkin and the Genocide-Ecocide Nexus," 302-304.
- ¹¹⁷ Short, *Reconciliation and Colonial Power*, 31-86.
- ¹¹⁸ See David Trigger, Julia Keenan, Kim de Rijke, and Will Rifkin, "Aboriginal Engagement and Agreement-Making with a Rapidly Developing Resource Industry: Coal Seam Gas Development in Australia," *The Extractive Industries and Society* 1, no. 2 (2014): 176-188.
- ¹¹⁹ Luke Keogh, "Frack or Frack-Off? Coal Seam Gas," *Queensland Historical Atlas: Histories, Cultures, Landscapes*, 14 January 2013, available at <http://www.qhatlas.com.au/frack-or-frack-off-coal-seam-gas>.
- ¹²⁰ *Ibid.*
- ¹²¹ Department of Natural Resources and Mines, 2014.
- ¹²² Trigger, Keenan, de Rijke, and Rifkin, "Aboriginal Engagement and Agreement-Making."
- ¹²³ For a general overview of CSG related problems see Mariann Lloyd-Smith, "Is Australia's Present Britain's Future?" Extreme Energy Initiative, School of Advanced Study, University of London, 20 May 2013, available at <http://extremeenergy.org/2013/05/31/licence-to-drill-is-australias-present-britains-future-podcast/>.
- ¹²⁴ Trigger, Keenan, de Rijke, and Rifkin, "Aboriginal Engagement and Agreement-Making," 176-188.
- ¹²⁵ *Ibid.*, 182.
- ¹²⁶ "Githabul People's Native Title Determination," National Native Title Tribunal, Northeaster New South Wales, 29 November 2007, available at <http://www.nntt.gov.au/Information%20Publications/Determination%20brochure%20Githabul%20people%20November%202007.pdf>.
- ¹²⁷ Hans Lovejoy, "International Court Challenge Over CSG Mining," *EchoNet Daily*, 2 January 2013, available at <http://www.echo.net.au/2013/01/international-court-challenge-over-csg-mining/>.
- ¹²⁸ Elloise Farrow-Smith, "Aboriginal People Reject Native Title Over Coal Seam Gas," *ABC News*, 14 December 2012, available at <http://www.abc.net.au/news/2012-12-15/githubulcsg/4429486>.
- ¹²⁹ *Ibid.*
- ¹³⁰ Lovejoy, "International Court Challenge Over CSG Mining."
- ¹³¹ Angela Macdonald-Smith, "Aboriginal Council Takes on Greens, Farmers Over Gas," *Financial Review*, 14 October 2013, available at http://www.afr.com/p/australia2-0/aboriginal_council_takes_on_greens_OPdixfkeUqHKx0KTnLL14J
- ¹³² *Ibid.*
- ¹³³ Bill Code, *SBS*, 13 February 2013, available at <http://www.sbs.com.au/news/article/2013/02/13/nsw-aboriginal-land-council-battles-csg-fair-share>
- ¹³⁴ Trigger, Keenan, de Rijke, and Rifkin, "Aboriginal Engagement and Agreement-Making," 182.
- ¹³⁵ "Native Title Claimants Fight CSG," *Moree Champion*, 23 May 2013, available at <http://www.moreechampion.com.au/story/1521589/native-title-claimants-fight-csg/>.

- ¹³⁶ Ibid.
- ¹³⁷ See http://www.lockthegate.org.au/missions_principles_aims
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