Global Journals LaTeX JournalKaleidoscope™
Artificial Intelligence formulated this projection for compatibility purposes from the original article published at Global Journals. However, this technology is currently in beta. *Therefore, kindly ignore odd layouts, missed formulae, text, tables, or figures.*

The Birrarung Act: Between a Decolonial Nation-State and Settler-Colonialism

Elliott Leonard Provis

Received: 11 December 2020 Accepted: 31 December 2020 Published: 15 January 2021

Abstract

The Yarra River Protection (Wilip-gin Birrarung murron) Act 2017 (Vic) established a ?new and independent? body as the ?voice of the river. The Victorian state government considers it to be at the legislative forefront in the emancipation of First Nations Australians. Whilst attempting to replicate some of the languages behind other political settlements agreed between settler- colonial states and First Peoples over rivers and their guardianship, the Victorian Act grants no legal personhood to the Birrarung. It does not establish First Nation Australians as the legal guardian of the river, either. Instead, the Act sets up a statutory advisory body which mandates at least two Indigenous Traditional Owner representatives out of twelve appointees (representing other stakeholders), as made by the Minister for Planning (Yarra River Protection (Wilip-gin Birrarung murron) Act). Despite the limited representation of Indigenous Peoples in the advisory body, the legislation does contain substantive provisions, indicative of a minor ?decolonial moment? in the face of sustained ?coloniality? by the nation-state. A philosophical analytical framework of ?coloniality? is applied to the legislation to undrape exactly where the cutting edge of First Nations? emancipatory legislation actually is.

Index terms— birrarung, yarra river protection act, decoloniality, legislative analysis, settler-colonialism

1 Introduction

he Yarra River Ministerial Advisory Committee was formulated in January 2016 to delve into issues impacting the environmental, cultural, social and economic values of the Yarra river (hereinafter the 'Birrarung') (Yarra River Protection Ministerial Advisory **??**ommittee et al., 2016, p.4). Between January to March 2016 a number of workshops were held with key stakeholders to help frame what would become the through an Act of the settler-colonial parliament, whilst the legislation is spruiked as decolonial. This paper recognises that despite the decolonial logics adopted in the presentation of the Birrarung Act, the reality is it explicitly avoids challenging the existence of the nationstate -in this way it reinforces the legitimacy of the existence of the settler-colonial state (Sium, 2012). While it cannot be considered a truly decolonial moment, its creation reflects a growing trend of collaborative engagement between First Peoples and the settlercolonial nation-state when compared to prior water management regimes of the Birrarung.

Based on the case of the Birrarung Act, it is argued that the reformed governance structures of the Birrarung have adopted some decoloniality logics through the inclusion of the Birrarung Council (with its mandated inclusion of two indigenous members). The attempt at management of the river as a 'living entity', the recognition of past wrongs committed against First Nations Australians (and attempts to remedy these) reflect this. Similarly controls aimed at maintaining the biodiversity, and protecting inter-cultural values along the river are also understood to be some of these decoloniality logics. Finally, the limited public participation and engagement mechanisms, and the attempt at 'border' epistemologies bookend the analysis of the limited efforts towards decoloniality. ii It is apparent however, that there are far more examples of the coloniality hegemon being reinforced through this legislation. A number of further reforms could have furthered decoloniality without delegitimising the legal basis of an entire settler-colonial society.

1 INTRODUCTION

Analysis will be grouped around the objects and principles of the Birrarung Act (2017) and elements within the Act constituted from the MAC Final Report (2016), the Action Plan (2017), and the Strategic Plan (2020). The research paper itself will start by addressing the context of the Birrarung's governance: its history in settlement and coloniality. The paper will then advance beyond, into how this legislation challenges the colonial ways of managing lands, peoples, and waters in Australia. This section will also delve into how these approaches are reflective of the broader 'development' processes in Australia. The final section will be addressing the failures of the Act to highlight some of the precepts of decoloniality as advanced by leading academics in the field. This paper's primary interest lies in its application of an epistemic lens of analysis to the newly created legislation of a settler-colonial state. In adopting a law and development lens to deconstruct legislative technology in a Global North nation-state, it is possible to compare the treatment of Indigenous Australians, with Indigenous Peoples of Global South nations. The resonance between these two groups, and how they're 'developed' connects to Australia's continued settlercolonial modernist agenda. Viewed through this lens, the continued mobilization of legislative technology affirms that domestic legislation continues to colonize, and yet parts of the legislation actually meet the standards argued for in the premise of decoloniality. In this respect, the legislative technology is a doubleedged sword.

To analyse the case study, the framework of coloniality and decoloniality as it is conceived by Aníbal Quijano and Walter D. Mignolo in their respective chapters in the theoretical work 'Globalization and the Decolonial Option' (2013) will be used (Quijano, 2013;Mignolo, 2013). Their research is globally recognized for its radical undraping of logics behind Western Imperialisms, and has led to the conceptualisation of the coloniality of power matrix (Hoffman, 2017). To understand the arguments of the colonial matrix of power, it must be recognised that modern nation-states as they exist today are ordered according to the historic distribution of power that colonisation and empire crafted (Pahuja, 2005). This modernist paradigm has come to ensconce the law and development field (Pahuja, 2005), because empire so focused upon the subjugation of civilizations it conquered. James Baldwin debated William F. Buckley in 1965, and argued that the Western system of reality (as he termed it) had sought to subsume within it civilisations' it considered below itself (Debate Transcript: James Baldwin Debates William F. **??**uckley, 1965). He went onto to state the most private affect this violence has on the individual, was to destroy their own sense of reality (Debate Transcript: James Baldwin Debates William F. Buckley, 1965, p.1). Baldwin's critique is critical in understanding how the construction of reality, or epistemology plays an intrinsic role in the creation of knowledge systems. The allencompassing nature of what is termed 'empiricism', and the historical realities of where this method of knowing the world comes from, are reason enough to query traditional tools of analysis that are founded in these methods. This is especially so, when observing ostensibly decolonial legislation, under the microscope.

Mignolo, and Quíjano argue that empire was key to the advances of Euro-America during the age of enlightenment and the renaissance period, giving birth to the scientific method of enquiry (Mignolo, 2013;Quijano, 2000). The scientific method of enquiry is introduced here, because conceptualising this method, as a child of the empire-colonial-modernism reveals that it cannot be unbiased in its interpretation of phenomenon (Quijano, 2013;Mignolo, 2013Mignolo, , 2011;;Quijano, 2000;Mohr, 2019;Harding, 1997). These biases ensures that not only are sciences to distorted along ideological beliefs, but that to this day the application of scientific truths that fundamentally constitute reality are warped (Quijano, 2000). At worst, they are inaccurate and untrue. Therefore modernism, and the history that lead to the construction of that epistemology cannot be trusted to be without prejudice

The Birrarung Act: Between a Decolonial Nation-State and Settler-Colonialism lobal Journal of Researches in Engineering ( ) Volume Xx XI Is sue I Version I J (Armstrong, 2002;Quijano, 2000). This extends to anthropological sciences, which have influenced successive law and development paradigms. For reasons of internalised bias, the attempts at decolonising guided by anthropology remain epistemically at odds with indigenous ontology. Whilst each new law and development paradigm has attempted to reshape the legal systems of former colonial subjects, the underlying conflicts between modernist epistemology, and indigenous ontologies ensures these reforms remains captive to modernist/post-modernist epistemology, and the agenda of 'development' (Escobar, 2007). Quíjano argues that empirical sciences are trapped within the epistemology of universalities and the 'ultimate scientific truth' (Quijano, 2013). This preconceived notion of abstract universals and scientific truth, is part of the 'colonial matrix of power', iii as described by Quijano and Mignolo (Quijano, 2000). These are deconstructed as empirical vestiges of coloniality, rather than being true representations of knowledge. To remedy these incongruencies, Quijano and Mignolo advocate building inter-cultural understandings between modernity and indigenous ontology **??**Mignolo, 2013, p.500). The law and development agenda continues to maintain a steadfast belief in this universal truth, and struggles to balance this against indigenous epistemology (Mignolo, 2013). Mignolo states that decoloniality arose from the limits of of the universality of coloniality.

Additionally, elimination and assimilation are adopted as tools of enquiry into the nature of this legislation. Patrick Wolfe adopts the terms elimination, and assimilation, of indigenous identity (hereinafter 'indigeneity') as lenses of analysis in their critical article 'Settler colonialism and the elimination of the native'. Wolfe argues that colonisation is a structure of a society, rather than a historic event. From this vantage, Wolfe suggests that the elimination of indigeneity (through assimilation into the dominant settler-colonial social order, or elimination through genocide) is a common feature of these settler-colonial societies (Wolfe, 2006). Paul Havemann in 'Denial, Modernity, and Exclusion: Indigenous Placelessness in Australia' further argues that colonisation has been the

key feature of modernity and, it's imperative has been to conquer space for economic growth and state order building (Havemann, 2005). Havemann goes on to argue that First Peoples have been consistently excluded from modernisation processes in Australia, and that the violence in exclusion from modernisation, has been masked specifically through the use of legislative technologies (Havemann, 2005). So it is argued that law has been complicit in hiding not only the atrocities of colonisation, but also denying the advances which modernisation brings, to First Peoples (Havemann, 2005).

The above described analytics will be utilised to understand where modernisation and its mobilisation of the concept of 'development' originated. These concepts will be used to examine the Birrarung Act and some parts of the legislative and policy regimes. In making this analysis the paper will argue from a decolonial perspective that this 'moment' of decolonisation within a colonial society is exactly that -a moment. It is a critique of this instant.

2 II. From Indigenous to Settler-Colonial

Paradigms Governing the Birrarung

The Birrarung (name translated as 'river of mists and shadows') has always been of central importance to the Wurundjeri-Willam people of the Kulin Nations who reside in close proximity to it (Wurundjeri Tribe Land and Compensation Cultural Heritage Council, 2013). It has provided innumerable resources to these peoples since time immemorial, and their relationship with it extends back tens of thousands of years to when their spiritcreator Bunjil formed their people, the land, and all living things (Koori Trust, 2019; Wurundjeri Tribe Land and Compensation Cultural Heritage Council, 2013). For First Peoples, it provided food as well as shelter. Bluestone, carved out by the riverbanks, was heated and then rapidly cooled to create sharp chisels. From these chisels, the blue gums along the Birrarung could be carved into, and this provided a sustainable source of materials for shields and canoes **??**Koori Trust, 2019). The trees would continue to grow afterwards, being unaffected by this process **??**Koori Trust, 2019). Lerpscale (collected from Eucalypt leafs) was consumed as breakfast, and Possum skins would be harvested and woven into elaborate cloaks detailed with the events of individuals lives' **??**Koori Trust, 2019). Eel traps set in the Birrarung still stand today as a testament to the agricultural traditions of these sophisticated nations (Koori Trust, 2019). All of these economic activities were entirely dependent upon the Birrarung and were strictly governed by local custom and law.

Prior to European interventions into the Birrarung, there was a waterfall close to the present day location of the Melbourne Aquarium **??**Koori Trust, 2019). This divided the saltwater from the freshwater, and prevented larger ships from travelling further up the Birrarung (Koori Trust, 2019). As Melbourne had yet to be proclaimed, much of the environment remained in pristine condition; large marshes lay across what is now Southbank (Wurundjeri Tribe Land and Compensation Cultural Heritage Council, 2013). Along the length of Elizabeth street was a large creek which empties into the Birrarung (Koori Trust, 2019). These wet and productive marshes offered a near constant supply of food to the Kulin Nations, and furthered the importance of the Birrarung to the traditional owners.

In these pre-colonial times, there was a strict adherence to local custom, and clan-based rules and laws (Wurundjeri Tribe Land and Compensation Cultural

The Birrarung Act: Between a Decolonial Nation-State and Settler-Colonialism lobal Journal of Researches in Engineering ( ) Volume Xx XI Is sue I Version I J Heritage Council, 2013). The legal systems of the First People was (and continues to be), underpinned by vastly different conceptions of country; rather than 'owning' the land, instead they belonged to the land (Wurundjeri Tribe Land and Compensation Cultural Heritage Council, 2013). In this sense, the Birrarung was centrally important as it acted as a wayfinding point, as well as a marker, delineating different nation's land title **??**Koori Trust, 2019). In those times, each clan was expected to remain within the bounds of their title, and not to cross into adjacent nations' land (Wurundjeri Tribe Land and Compensation Cultural Heritage Council, 2013). Exception was made in the cases of large natural disaster; but even in such an instance agreement needed to be sought (and permission granted) before moving into the land of another tribe **??**Koori Trust, 2019). Consent to move onto the land of another group was signified by Tanderrum, a message stick given by one tribe to another in those times of natural disaster; without this message stick, taking food or other resources from the land would be considered trespass and an offence to the local elder council **??**Koori Trust, 2019). If conflict arose between nations or language clans, or if there were individuals who had broken Aboriginal law, the ngurungaeta (head man) of tribes would meet at corroboree's to resolve these disputes (Wurundjeri Tribe Land and Compensation Cultural Heritage Council, 2013). Even now, the traditional legal systems and customs of these peoples continue to be practiced and respected by the First Peoples who call this land their own. What is most apparent from these histories of the Birrarung is that it has consistently been important to First Peoples.

Since the beginnings of colonisation in Melbourne in the 1820s, the Birrarung has undergone three periods of extended change in form: first during the Gold Rush years of the late 1800's; the post-war immigration and baby boom of the 1950's-1980's; and now, the recent and rapid expansion of Melbourne's population since the mid 2000's.

The most important of these settler-colonial governance tools over the Birrarung have been the 1989 Victorian Water Act, and the 2017 Birrarung Act. The Water Act is the current governing legislation for water in the Birrarung. This set up the numerous water management corporations which are now responsible for the

management of water resources along the Birrarung (The Water Act). The National Water Initiative introduced as an intergovernmental agreement between the Commonwealth and the states/territories began the process of 'unbundling' water licenses, from land ownership, and opening up 'water markets'; inevitably this has led to further dispossession of First Peoples from water rights (Macpherson, 2017;Marshall and Kirby, 2017;Macpherson, 2019). Repetition of this has led to the term aqua nullius being coined by Virginia Marshall, to describe the continued disenfranchisement of First Peoples from their sovereign assets (to be discussed further in proceeding sections). It is argued the water markets have been another settler-colonial institution separating First Peoples and their waters (Marshall and Kirby, 2017;O'Bryan, 2017). In 2007 the National Parks Act (passed in 1975) was amended to turn over the governance of the Yarra Parklands (the source of waters which drain into the Birrarung basin), retaining it as crown land (The National Park Act). This land is titled as a possession of the crown, and its representatives (the state) in this instance.

In 2017 the Birrarung Act received royal assent. Stemming from the MAC Final Report, and the Action Plan, the Birrarung Act mandates the creation of a community vision; a strategic plan from this vision to manage the river and lands adjacent to it (the Strategic Plan); new management arrangements to make certain this plan is implemented (the Birrarung Council); legislative backing of the plan (the Birrarung Act itself); and auditing/reporting on the implementation of the plan (as achieved by the Birrarung Council). iv The Birrarung Council, is a statutory advisory body formed with a mandated two First Nations Australians on the council of twelve, and reports on the implementation of the plan as well as general submissions for change to the Minister for Planning (Yarra River Protection (Wilip-gin Birrarung murron) Act). Most importantly though, the Birrarung Act is an example of mediating between competing interests by considering water planning and land-use frameworks together. This is the first piece of Victorian legislation to expressly consider the water resources and land management together, under the planning scheme. The Strategic Plan explicitly includes a land-use framework in a water planning document (Department of the Environment, Land, Water and Planning, 2017b, p.27).

3 III. Asserting the Argument For a Law

and Development Lens of Analysis to be Applied to the Wilip-Gin Birrarung Murron Act

Centralised planning is a consistent feature of 'development' initiatives and, more broadly, of coloniality. Speaking on the innate connections between law and development, coloniality, and modernity, Sundhya Pahuja argues that the transformative logics of development have acted as both a proxy for global inequalities and an implication that the only solution to such inequities is to mirror the West (Pahuja, 2005). They go on to argue that the promotion of the 'rule of (Pahuja, 2005). Again a universality is apparent in these logics, negating the pluri-versalities so advocated through coloniality/decoloniality. Urban planners have themselves have advocated for the need to 'decolonise planning' (Porter, 2016;Porter and Barry, 2016;Jackson, Porter and Johnson, 2017;Wensing and Porter, 2016). It has been suggested by many that academic urban planning needs to not only better integrate and engage First Australians, but to also decolonise its institutions and recognise its role as an agent of colonisation (Wensing and Porter, 2016). Planning has worked alongside centralising authorities to project ideologies of modernity onto the natural and built form; it is indivisibly tied to the continued domination of First Australians. For that reason, the centralization of power (and its associated planning for control) is not surprising in development initiatives. Intentionally done or not, these initiatives further such power dynamics.

This thesis is more thoroughly explored through the work of Peter Wolfe who propounds the following three tenets: 1. "[Coloniality] presupposed a global chain of command linking remote colonial frontiers to the metropolis" (Wolfe, 2006, p.394), therefore 2. "Agriculture was key to supporting a larger population than non-sedentary modes of production; in settlercolonial terms" and "this enable[d] a population to be expanded by continuing immigration at the expense of native titles and livelihoods" **??**Wolfe, 2006, p.395). These were enforced by the centralized command chain, which led to '3. the settler-colonial nations' "ceaseless expansion" and, '[its'] agriculture progressively eat[ing] into indigenous territory' **??**Wolfe, 2006, p.395). The accumulation of agricultural resources turned "native flora and fauna into a dwindling resource" and "curtail[ed] ? indigenous modes of production' **??**Wolfe, 2006, p.395). Partha Chatterjee terms this as development planning and argues that this approach was premised upon "one consciousness and will -that of the whole" and therefore particular interests needed to be "subsumed within the whole" and made "consistent" with the "general interest" of settler-colonial society writ-large **??**Chatterjee, 1995, p.204).

Undoubtedly the above described contours are similar enough to those in the Birrarung Act, in that it is a categoric reinforcement of the 'development' narrative in action. That this legislation is under the urban planning ministerial portfolio (not the Minister of Indigenous Affairs; not the Minister of State; not the Attorney-General; not the Minister of Water; nor the Minister of Agriculture) reinforces this. It speaks to Chatterjee's statement that all types of planning and development are intrinsically linked. It is also reflective of the importance of omnipotent control of the river by the settler-colonial state; the river plays an important role in the functioning of the settler-colonial city. Despite the stated aim of protecting the river and celebrating indigenous values, the minister for planning has the discretion to 'call-in' any planning permit application under section 97 of the Planning and Environment Act 1987 (Vic) (hereinafter 'P&E Act'), and Section 58, Schedule 1 of the Victorian Civil and Administrative Tribunal Act 1998 (Vic) (hereinafter 'VCAT Act') (The Victorian Civil and Administrative Tribunal Act.; The Planning and Environment Act; Department of the Environment, Land, Water and Planning,

2017a). They may and approve or reject the project as they see fit without any regard to regular statutory process (The Victorian Civil and Administrative Tribunal Act.; The Planning and Environment Act). In addition, the decision to 'call-in' any planning application can be made if the matter is being heard by the Victorian Civil and Administrative Tribunal and if the minister considers that the proceeding raises a major issue of policy (The Victorian Civil and Administrative Tribunal Act., p.1). Alternatively, if the ministers considers proceedings may have a substantial effect on the achievement of planning objectives, they may also call-in the application for approval or rejection (Department of the Environment, Land, Water and Planning, 2017a, p.1). In the case of the Planning & Environment Act 1987 (Vic) (hereinafter 'P&E Act'), the minister can call in a decision if the same is considered above, or if the decision on the application has been 'unreasonably delayed', disadvantaging the applicant (Department of the Environment, Land, Water and Planning, 2017a, p.1). The minister may also call-in a decision under the P&E Act if the 'use or development' that the application seeks to be approved is required to be considered by the Minister' -such as a planning permit for a heavy industrial use (Department of the Environment, Land, Water and Planning, 2017a, p.1.). This backdoor centralisation of power perhaps elucidates a common thread throughout this legislation -that indigenous concerns are important, but a legitimate escape clause is forever present. This opaque and unreserved power for development approval means in spite of all the planning permit regulations; protection of environment clauses; or protections from development, these protections can easily be overcome. In essence, these protections can be vetoed by the minister through approval of planning permit. Furthermore, the decisions of the minister are only able to be reviewed by a planning panel -appointed by the minister for planning. Such reports can only be released at the discretion of the minister (Department of the Environment, Land, Water and Planning, 2017a; The Planning and Environment Act; The Victorian Civil and Administrative Tribunal Act.). This has the effect of making decisions under made under the aforementioned provisions quite opaque (Department of the Environment, Land, Water and Planning, 2017a, p.1). The Victorian planning minister has comparatively more

The Birrarung Act: Between a Decolonial Nation-State and Settler-Colonialism lobal Journal of Researches in Engineering ( ) Volume Xx XI Is sue I Version I J discretionary powers, than fellow counterparts in the other jurisdictions of Australia (Environmental Justice Australia, 2014). This fact, coupled with the lack of transparency of decision-making has been roundly criticized in the past, v and yet there is no indication of reform on the horizon. Although it is arguable that ministerial discretion is a feature of most legislation, this does not invalidate the fact that a backdoor 'escape' has been deliberately included within the Birrarung Act. Additionally, broader questions about the role of democracy in urban planning decisions, as it relates to First Peoples, need to be asked -as do questions about the Minister of Planning's discretionary powers (Department of the Environment, Land, Water and Planning, 2017a).

Finally, it must be noted that centralised powers have an outsize role in shaping the development narrative (Chatterjee, 1995). This reflects the modernist paradigm which now sees planning as a tool to be wielded over First Peoples. Wide latitudes under which to make decisions over the management of the Birrarung have been granted through the passage of this legislation. Such powers were previously unavailable to the Minister for Planning. Such a change reflects a growing trend of consolidation of executive power, and is of particularly note due to the outsize role centralised powers have had in setting the development agenda.

Most important to the justification for the novel approach of adopting a law and development lens of analysis in a Global North nation-state, is that the narrative of development being applied to those considered the 'other' becomes apparent. Havemanns' arguments about the exclusion of First Nations Australians from modernisation processes and this being hidden by the law, qualify that First Australians' are indeed considered the 'other' (Havemann, 2005). By being ensconced within 'otherness', Indigenous Australians become the subjects to whom the logics of modernity, coloniality and development can be applied. Then it follows that the logics of modernity/ coloniality/development are not restricted to Global South economies, but are designed for those not yet ingested in service of the nation-states expansive appetite for modernization and development.

'Coloniality, in other words, is constitutive of modernity -there is no modernity without coloniality' -Walter D. **??**ignolo (2011, p.1) Walter D. Mignolo, and Aníbal Quijano in the book 'Globalization and the Decolonial Option' define coloniality as beginning with the formation of the modern nation-state. It is suggested that the 'modern' nationstate that has emerged since the 1500's has come into being through colonisation; and that power is distributed according to a global order that has since ensued. The 'colonial matrix of power' is defined by Quijano as the four interrelated domains by which colonisers subjugated indigenous lands. These include the control of economy (land appropriation, exploitation of labor, control of natural resources); the control of authority (institution, army); the control of gender and sexuality (family, education); and the control of subjectivity and knowledge (epistemology, education and formation of subjectivity) (Quijano, 2013). It is through these domains, that the modern nation-state and its logics continue to assert universalism in our global modernist/post-modernist paradigm.

Most important to Quijano and Mignolo's analysis is the privileging of the 'ultimate truth' and how this is articulated through the 'rational' scientific method (itself a product of the enlightenment period). This was when the first 'modern' precepts of rigorous empirical testing, hypothesizing, and validating of data to explain phenomenon was conducted (Mignolo, 2013). These processes coincide with the beginnings of empire throughout Europe; first the Iberian Catholic faces of the Spanish and Portuguese empires; then the 'heart of Europe' empires in the form of England, France and Germany (This period was also characterized by the discovery and

colonisation of the American mainland) and finally with US-American empire, led by the United States (Mignolo, 2011(Mignolo, , 2013 **??**Mignolo, , 2017, p.454), p.454).

Karen Armstong, in her book Islam: A Short Story, suggests that until the sixteenth century, Europe had only truly achieved in two spheres: economy and epistemology (Armstrong, 2002;Mignolo, 2011). The economic sphere spoke specifically to the transition from a feudalist society to a capitalist one (although this transformation had not been completed by this point), and the epistemic refers to its understanding of art, science, and knowledge (Armstrong, 2002). Armstrong makes reference to the new and evolving economics of the societies of Europe (and its American colonies) during this period (Armstrong, 2002). This new economics sought to reinvest surplus production into itself, which allowed for the first radical transformation in the West (Armstrong, 2002). This transformation allowed the West to reproduce its resources indefinitely (many of these resources being abstracted from imperial colonies (Armstrong, 2002). The second transformation was epistemological, and is largely associated with the Renaissance (and then the Enlightenment) (Armstrong, 2002;Mignolo, 2011). Naturally the surpluses generated from these new economies that would come to fund the Renaissance and the Enlightenment (and the burgeoning scientific method of enquiry) were extracted from the wealth of the colonies (Armstrong, 2002; as per: Mignolo, 2011). Additionally, this transformation allowed the domain of knowledge to be attained at unprecedented rates; it gave the empires a greater control over the environment than had ever been achieved before (Mignolo, 2011). Suddenly, a new paradigm was possible for these empires, and a lens through which the world came to be was born. This then led to Euro-American belief in how the rest of world would, and should develop. It could be created within the fixed image of these modernist states (Mignolo, 2013). Arguments about coloniality assert the existence of a 'universality' in human 'development', inextricably tied to the modern nation-state. 'Developing' nations are conceived to be on the same trajectory of western nation-states, merely less 'developed. In this view the West conceives of itself as the future for the rest of humanity, and so implements 'development' policies accordingly **??**Mignolo, 2011, p.458). It follows then, that decoloniality is constituted by a rejection of universality, and instead is founded on a 'pluri-versality' of epistemologies and ontologies constructing a knowledge of the world. vi It is important to recognise the nature of colonisation within Australia and how it has come to define the legal and social order. Mary Williams argues that Australia has 'never desisted in colonialism' and that colonialism will 'draw upon (and twist where necessary)' other discourses to 'facilitate its ends of continually dispossessing and delegitimising' First Nation Peoples (Williams, 2018, p.1). Wolfe builds upon such thinking by arguing that because of the settlercolonisers intent to stay (and dispossess), the invasion was transformed into the undergirding for the presentday social structure (Wolfe, 2006). This is reflective of post-colonial societies that have emerged the world over; they are a social order that has been mobilised throughout history, premised on the elimination of indigeneity **??**Wolfe, 2006, p.390). Elimination of indigeneity did not preclude genocide entirely, but focused instead on the destruction of permanent indigeneity (Wolfe, 2006); whilst the mass murder of Indigenous Peoples was common, elimination was not predicated on mass murder **??**Wolfe, 2006, p.390). Genocide was one 'tool', of a number of tools to be used in the process of eliminating indigeneity **??**Wolfe, 2006, p.396). Assimilation into the 'modern' and coloniality-driven society was just as acceptable an approach, so long as it was predicated on the dispensation of indigeneity. **??**Wolfe, 2006, p.397).

Assimilation and extinguishment of indigeneity continue to define these settler-colonial societies; the judiciary keenly reinforce these in their rulings, which void claims of indigenous land tenure systems (under the common law) due to the 'tide of history' having 'washed away' all remnants of these societies. vii Despite having common law doctrines to rely upon in statutory interpretation, the High Court of Australia has often favored the sovereignty of Parliament (Blackshield, 2007). Therefore, it is from this frame of racialization and assimilation of Indigenous Australians (coinciding with the 'closure' of the 'frontier' of settler-colonial societies) that analysis of coloniality will be informed. This decisive point also happens to be when active warfare against indigenous peoples was transmuted to subversive and destructive policies and laws, further highlighting why such tools of analysis are of importance in understanding coloniality.

As such, questions over euro-centric representation of histories must be asked to understand the degree to which aboriginal-ism has been intrinsic to the formation of the Victorian state legal system of present. Transposing the assertions made in Mignolo, Quijano, and Wolfe's works will form the basis of the tools of analysis in proceeding chapters.

The terms 'Intercultural border epistemologies/intercultural understandings' refers to the construction of knowledge where two different cultures interface. In this instance, the tools of analysis are querying if intercultural' understandings of politics, economics and ethics are present in the Act **??**Mignolo, 2011, p.453)? This draws into the broader concerns of coloniality/decoloniality, and whether one single vision of the future (a 'totality'), of the modern Australian nationstate (specifically the state of Victoria) are being implied. To operationalise the assertions made by Mignolo and Quijano through coloniality/decoloniality to be a lens of analysis, they were transposed into questions. This resulted in the following lines of thematic enquiry being developed:

? Are there links made between the analysis of coloniality and future strategies present in the Birrarung Act (and its instruments'), which are conveyed with a self-awareness of the continuity of coloniality? ? Are 'reason' or 'rationality' and 'nature' presented as two mutually exclusive entities **??**Mignolo, **??**Quijano, 2000, p.173). This should all indicate that it is possible for free production, criticism, changes and exchanges of culture and society to occur, as Mignolo and Quijano so vigorously advocate for **??**Mignolo, 2011, p.497). These assertions are relevant because Australia is a settlercolonial state similar to those from which Mignolo, Quijano, and Wolfe

write. As this context is legitimately comparable to Australia, the tools proposed to analyse are able to uncover structures of power behind the regulation of the Birrarung.

The primary focus of analysis is concerned with the intercultural understandings of politics, economics and ethics, as Mignolo argued that these are constituent of a singular common totality of the modern nationstate. Looking specifically at the 'Objects' of the Act, the 'Guiding Principles' will first be analysed; and then examination will move on to the 'Recommendations' made in the MAC Final Report. Strategies outlined within both the Birrarung Act and the MAC Final Report are analysed in relation to the above described thematic questions.

In asking these questions of coloniality and decoloniality, it is possible to critically analyse the languages of the legislation, its delegated instruments, and the foundational advisory materials for governance reform. These questions are of particular significance because of the urban nature of this river; Mignolo observes that 'coloniality of power' is strongly associated with the emergence of urban, capitalist social relations **??**Quijano, 2000, p.175). This Act is therefore constitutive not just of a decolonial moment in the settler-coloniality nation-state, but in the structure of coloniality because it intersects with urban, capitalist and social relations. Through this analysis of intercultural understandings, along with conceptions of coloniality and looking to see if traditional and modern theories of knowledge have been brought together in the Act, insights can be gained into what structures of decoloniality are at work in a modern coloniality-driven nation-state -and how they may be mobilized through legislation.

V. Deconstructing the Birrarung Act 2017 (vic): Challenging 'Coloniality' and 'Development'

'SO far as Indigenous People are concerned, where they are IS who they are, and not only by their own reckoning' -Patrick **??**olfe (2006, p.388) In Part 2 of the Birrarung Act, the 'Yarra Protection principles' are set out. These entail subsections entitled 'General Principles', 'Environmental Principles', 'Social Principles', 'Recreational Principles', 'Cultural Principles', and 'Management Principles'. For the purposes of our analysis, focus is directed towards the 'General Principles', 'Environmental Principles' and 'Social Principles'. Of the General Principles, the first general principle states that (1) Proposed development and decisionmaking should be based on the effective integration of environmental, social and cultural considerations in order to improve public health and wellbeing and environmental benefit' (Yarra River Protection (Wilip-gin Birrarung murron) Act, p.11).

The implicit statement in this guideline is that 'cultural' considerations (referring to Indigenous Australians 'dreaming'; but also, the values of diverse non-Indigenous cultures and heritage) is valued equally with environmental and social considerations. Although further within the Birrarung Act there is reference to cultural diversity and heritage (including post-European colonisation buildings), there is an evident desire to build intercultural knowledges and understanding. Arguably, including both pre-and post-colonial heritage and cultural diversity is itself an example of seeking to combine settler-colonial, and indigenous values as one and equal. In Principle (4) it is stated that:

(4) 'Each generation should ensure that the environmental, social and cultural benefits that have been acquired are maintained or enhanced for the benefit of future generations (Yarra River Protection (Wilip-gin Birrarung murron) Act, p.11).

In this statement, longevity and intergenerational nature of intercultural understandings and values is referenced. While the adoption of 'should' suggests that these 'benefits' cannot be codified and protected under the Act, it also places the onus of responsibility of maintaining these 'benefits' on a future generation. By lengthening timescales out, this aligns with institutional expectations that these can, and will be, a part of the future of the Birrarung (and its' peoples). The links that are made, reflect an epistemic shift (even if tenuous) in the politics of how the Birrarung is perceived. The changing polity reflects a new notion of what is important to people, and what should therefore be protected under law. In Social Principle (1), it is stated that

(2) 'The existing amenity of Yarra River land, including its natural features, character and appearance, should be protected and enhanced for the benefit of the whole community' (Yarra River Protection (Wilip-gin Birrarung murron) Act, p.12).

Amenity is described as the 'features' of the parkland that 'engage community connection with nature, culture, heritage' in addition to 'enhanc[ing] community health'. ix There are elements of the modernist conception of humans as above the natural world (implicit in the demarcation of 'human' and 'nature' as separate entities). However, the definition of 'amenity' to include different values reflects the rejection of traditional notions of the value of 'nature' **??**Kanth, The Birrarung Act: Between a Decolonial Nation-State and Settler-Colonialism lobal Journal of Researches in Engineering ( ) Volume Xx XI Is sue I Version I J 2017). This is because of Euro-American modernisms' fundamental belief in the hierarchy of human above nature, and therefore the culture and heritage (of humans) are valued more.x It also reflects a partial deconstruction of 'nature' in that previously 'nature' had been perceived as being completely separate from the functioning of modern society; now the intrinsic values and health benefits that 'nature' provides to the wider community, are recognised in law. Although this recognition continues the modernist trend of commodifying nature to achieve anthropogenic wants and needs, the fact remains that nature is recognised to be of intrinsic value to humans.xi The inclusion of health is important because already there is a copious amount of evidence linking human interaction with nature to improved health outcomes for humans.xii The health benefits of public open space and 'natural' environments are clearly one of the features being sought after through the inclusion of urban parklands along the Birrarung.

The languages adopted in the first and second Environmental Principles demonstrates the dualism of ideologies at play within the Act. Both allude to the precautionary principle, a well-known (albeit, poorly defined) concept in international environmental law (one which is also defined in domestic legislation) **??** The rhetoric presents a dichotomous transmodernity, a merging of indigenous and modernist epistemologies. Both principles rely on the mobilisation of the modernist scientific method (a product of coloniality), to 'protect' the cultural assets of Indigenous Peoples (a moment of decoloniality). The Birrarung Act states that if there are 'serious threats' of irreversible environmental damage to the river, then a 'lack of scientific certainty' in assessing this risk, is an invalid excuse for proceeding. Here it appears the precepts of modernity (and its reliance on empiricism) have been pressed into service for the defense of Indigenous assets. That the Indigenous values of this river should have consequence and in-built protection mechanisms for these specified within the legislation, reflects a growing awareness of these cultural values. It is difficult to justify this as decolonial in the nature that Quijano or Mignolo might conceive, not least because it is technically assimilating indigenous values it into the Australian legal system. Nevertheless, it reflects a desire to build an intercultural discourse which recognises, and protects part of the broader Indigenous Estate. Furthermore, this is revolutionary within Australia because it is one of the few instances in which indigenous holdings, so intrinsically important to these peoples, have been recognised in statute in the middle of an Australian city (Department of the Environment, Land, Water and Planning, 2017c).

To fulfill its legislative requirements in section 17(3) of the Birrarung Act, the Strategic Plan 'must' include 'active community participation and co-design' (Yarra River Protection (Wilip-gin Birrarung murron) Act, p.17). To establish this community vision Melbourne Water began a process in 2017 which culminated in the randomised selection of 24 citizens (known as the 'Yarra Community Assembly), to write a fifty-year vision (Imagine the Yarra, 2020, p.1). The Yarra Community Assembly disseminated information from traditional owners, in addition to information discerned from other community engagement session (Imagine the Yarra, 2020, p.1). The Yarra Community Assembly then created the fifty-year vision, which has since been endorsed by the Victorian Government and the Birrarung Council (Imagine the Yarra, 2020, p.1). According to the legislation, the community vision is set to be reviewed each decade. This process is reflective of a broader drive to the institutions of deliberative democracy, which stem from Western Liberal Democracy. They have currency as an effective approach to allow public engagement, and are conceivably a trans-modernity, because they bring together traditional knowledges and modernist processes of state. Importantly, this approach reflects the principles of 'co-design'. 'Co-design' community engagement is defined in the Victorian Auditor General's Report 'Public Participation in Government Decision-Making' (Greaves, 2017). It is described as 'sitting at the more intensive level of the public participation spectrum, between Collaborate and Empower' (as depicted in Figure 1 In this respect, the Birrarung Act performs well. Seeking the contributions of traditional owners into the institutions of deliberative democracy is an important step towards trans-modernity.

Major overhauls of the Victorian Environmental Protection Act 1970 (Vic) have passed, in concert with the Birrarung Act. Under the new Environmental Protection laws, community members directly affected by the breach of environmental protection laws will be able to seek remedy through a court (Department of Environment Land, Water and Planning, 2019, p.4). By extending the scope under which individuals who may take civil or criminal action if affected by breaches of environmental protection laws, there is further impetus for polluters to adopt the precautionary principle when interacting with the Indigenous Estate. This is a practical outlet through which a degree of power-sharing can occur, in that First Nations are now able to seek to enforce protection of their cultural assets through civil and criminal suits in court.

A similar agenda can be seen in the establishment of the Birrarung Council. Inclusion of First Nations members on the council allows for the expression of decolonial logics by First Nations. The intangible value that such voices are able to bring is recognized by their mandated appointment to the council. By making a space for these voices to be heard, intercultural epistemology building and border epistemologies understanding can occur. This reflects a broader change to societal values currently underway; prior to the Birrarung Act there was no mention of indigenous values, assets, or of the central importance of the Birrarung to First Peoples in major water management policy documentation.xiv of similar import, was the foreword to the Action Plan, written by representatives of the Wurundjeri Council. They noted they were pleased to be 'sitting upstream, at the table where decisions are made' rather than their usual position downstream 'learning about processes that had occurred, and decisions made, 12 months' prior (Department of the Environment, Land, Water and Planning, 2017b, p. iii).

Importantly, these new discussions have been enabled in the context of a wider push towards substantive engagement and inclusion of the Indigenous community in government processes. In spite of these decolonial modalities, the clear direction of the Birrarung Act and its delegated authorities is to reinforce coloniality and subsume elements of indigeneity into the common law, rather than. For one, the Birrarung Council is restricted to advisory status on implementation of the Strategic Plan, and general recommendations on the Strategic Plan. These are but the tip of the iceberg, and issues which fundamentally conflict with the precepts of decoloniality shall be explored further in proceeding sections. In assessing the Objects (A) subsections (i) and (ii) of the Act, a genuine push to re-envision the role the Birrarung appears in the desire to sustain the biodiversity and indigenous 'cultural expression' (through cultural activities) along the Birrarung. xv In spite of these aspirations, the languages of coloniality are already adopted in (A), which places the 'economic prosperity', at the centre of the Objects of the Act, then proceeds to make mention of 'vitality' and 'liveability'. Immediately the value

of the river is commodified; whilst this may appear an innocuous at first, it's important to note that the Yarra Protection Principles within the Birrarung Act do not conceive of any such economic principle which could be mobilized by First Nations. This is a glaring omission as such principles could allow for Indigenous water rights which could assist in economic advancement of First Nations.xvi Instead, their distinct exclusion ensures that no basis for such a right to the use of water, could ever be made out from this legislation. This is especially contentious because of the significant amount of work Indigenous Australians have put into try and realise such Cultural Flows. What is apparent from the Objects in s 5(A) is a liberal conception of the landscape as something to be dominated and exploited for economic gains, not to economically liberate First Nations (Vincent, 1998;de Geus, 2001;Gleeson and Low, 2000;Quilley, 2011). If the intent was for the former, then such a provision could be articulated within the Objects or Principles of the Act. Instead, there is no special dispensation to First Nations to advance under such notions.

Similarly, the Discussion Paper referred to 'improved arrangements' to ensure 'efficient and effective' accountabilities (Yarra River Protection Ministerial Advisory Committee and Department of Environment Land, Water and Planning, 2016). The adoption of these languages reflects a preference for technocracy in the distribution of government power. Paradigmatic of coloniality, classical liberalism is inferred to be directing action, apparent in the deployment of rhetoric of market logics. The assertion of liberal rationalities in the genesis of the Birrarung Act conflicts with the tenets of traditional values and indigenous epistemologies that do not conceive of 'ownership', 'property', and 'marketisation'. We can derive from this that the management of the Birrarung under the new Act is more akin to a wheel in the machinery of capitalist coloniality, than an act of decoloniality.

Section 5(B) of the Birrarung Act aligns with a First Nations conception of the Birrarung and its parklands as 'one living and integrated natural entity' (Hawker and Murray Lower Darling Rivers Indigenous Nations, 2010, p.2). This follows directly behind s 5(A) of the Act, an alignment reflective of the implied order of importance as determined by the settler-colonial state. Through this lens, the continued domination of the settler-colonial state is obvious; but what is less prevalent is in these flagrant contradictions; there is a separation between the 'rational' (human) and 'nature'a hallmark of coloniality as Quijano argues (Quijano, 2013). The 'rational' is the settler-colonial state and its order-building; the implied 'irrational' stems from the natural, the Indigenous. This is obvious because of the way the familiar modernist and 'rational' rhetoric is listed as Objects 5(A), whereas the Indigenous conception of one single integrated entity (as founded in Aboriginal episteme) is secondary to this, instead finding itself as Objects 5(B). This silhouette outlines the contours of coloniality so clear within the Birrarung Act.

Furthermore, the use of the term 'environmental significance' is commonly associated with empirical research, and establishes a hierarchy defining that which is considered significant in the environment (and worthy of protection) and that which is not significant. This commodification of values, whilst expedient is problematic because it requires the assimilation of Indigenous values into a settler-colonial paradigm. Assimilation does not equate with recognition of Indigenous epistemologies as equal, because there is no 'more' or 'less' significantly valuable parts of the river systems in Indigenous Australian epistemologies. As Cooper and Jackson note, there is only a 'whole' and singular living entity (Cooper and Jackson, 2008). This is contradictory to the recognition of a single integrated living entity.

In Object s 5(B) of the Act, reference is made to the river being a 'whole entity'. However, this precedes the primary definition of the river as being a 'public park'. Furthermore, no significant reference is made to the Birrarung (and Parklands) being a 'sovereign asset' of the riparian First Nations'. xvii This inclusion subordinates the indigenous conceptions of the Birrarung beneath the colonial constructions of the river, the parkland and the fauna, according to the undergirding logics of coloniality. Indeed, the nationstate retains title over the bed, soil, and banks of the Birrarung (Yarra River Protection (Wilip-gin Birrarung murron) Act, p.8). Interestingly by identifying itself as the 'protector' of these abstractions, the nation-state implies that had such sovereignty over the Birrarung been handed to First Nations Australians (either via a grant of title over all such land along the banks, and bed of the Birrarung; or by giving legal guardianship of the Birrarung to First Peoples), First Nations would not have been capable of governing the Birrarung appropriately. Would control of the Birrarung by First Nations be in service of the modern nation-states' goals? The J assumption appears to be that it would not, and therefore such a possibility was not considered.

Objects s 5(C) establishes an 'overarching policy and planning framework' to coordinate for the 'use development, and protection' of the Birrarung. In instituting this, before creating the Birrarung Council in Objects s 5(D), the importance of 'development' (presumably 'economic' development as mentioned in Objects A) is reaffirmed. Despite the claims made in Objects s 5(D) of this act, claims which assert the continued protection and preservation of the Birrarung, it is apparent that the ensuing protection of First Nations cultural assets are subject to the continued whims of Objects s 5(C) and the colonial-settler society writ-large. The continuing relevance of economic development in this Birrarung Act are reflective of the broader development agenda inflicted upon First Peoples the world over. Modernist development projects have consistently been mobilized in service of the logics of coloniality, and this should serve as a cautionary tale about the use of seemingly nebulous and innocuous terms in centralised planning legislation.

Unfortunately, paragons of coloniality were also present in the formative MAC Final Report. The MAC Final Report developed the framing for the Birrarung Act as it now stands, and was co-authored by four individuals

appointed by the Victorian government (Yarra River Protection Ministerial Advisory Committee et al., 2016, p.2). All of the appointees came from a professional background working as either government bureaucrats, lawyers, architects, or water managers (Yarra River Protection Ministerial Advisory Committee et al., 2016, p.3). As described earlier, the Wurundjeri Council was only invited to submit feedback for the MAC Final Report and not the Discussion Paper. xviii The Wurundjeri Council was also not invited to stakeholder consultations as a key stakeholder (Yarra River Protection Ministerial Advisory Committee et al., 2016, p.4), nor was it engaged when the Ministerial Advisory Committee was appointed (Yarra River Protection Ministerial Advisory Committee et al., 2016, p.4). This approach cannot build intercultural understanding or border epistemologies, primarily because it does not align with the 'co-design' community engagement as above described (Greaves, 2017). As co-design sits is a more intensive level of the public participation to form a border epistemology would require high level engagement with First Nations to conceive of the issues right at the beginning. This would then be broadened into a response which satisfies the concerns of First Australians. This was not the approach taken by the in the MAC Final Report. Although this was remedied somewhat by later engagement of the Wurundjeri Council in the MAC Final Report and then in the Action Plan. Wurundjeri Council representatives stated in their foreword to the Action Plan that their invitation to participate was 'highly significant' and that they hoped this would mark a 'genuine paradigm shift' to codesigning of decisions and policies (Department of the Environment, Land, Water and Planning, 2017b, p. iii). Nevertheless, without greater awareness of to co-design as an approach to development planning, it will be difficult for this assimilative approach to break-free from its roots in coloniality.

The statutory functions of the Birrarung Council, to only report and audit on the implementation of the Strategic Plan, are another representation of assimilation as opposed to co-design. The Birrarung Council is restricted to only make recommendation on the implementation of the Strategic Plan, reflecting its limited role to make fundamental change. The mandated inclusion of only two indigenous members, out of the twelve members do not equate to a majority of First Nations members on the council; the optics of this appear to show egalitarian reform in the governance of the Birrarung in action. By presenting these progressive credentials, and yet ensuring that the council membership is instead stacked with interest aligned with those of the settler-colonial society the decisions made by the council will have a faux air of legitimacy about them.. Wolfe argues that as similationist programs of the settler-colonial societies, whereby First Peoples are brought into the settler-colonial legal systems are common (Wolfe, 2006). They suggest that by attempting to cite native advancement as the reasons for this assimilation, a justification for the processes of coloniality are established (Wolfe, 2006). It is important to recognise that the constitution of the council with two First Nations members represents this assimilation of First Nations peoples into the broader legislative processes of 'development' and management of the Birrarung.

Throughout the Act, the scientific research method is relied upon to mediate where specific management practices should be implemented (Department of the Environment, Land, Water and Planning, 2017b), attempting to further subsume Indigenous knowledges within Western empiricism. These methodologies are derived from the age of enlightenment and as such, are premised on the 'abstract universality' of 'truth' in the world: a binary through which it is inferred science can explain reality (Quijano, 2013). Throughout the Birrarung Act references are made to the precautionary principle, implicit in these is the statements is the presumption that empirical data will be relied upon for decisionmaking (Yarra River Protection Ministerial Advisory Committee et al., 2016; Department of the Environment, Land, Water and Planning, 2017b). This data is often used to then benchmark against the strategic implementation of key performance indicators. These methods for testing and obtaining data are inextricably linked to coloniality (and abstractions of universal rationality), because of the historical circumstances

The Birrarung Act: Between a Decolonial Nation-State and Settler-Colonialism lobal Journal of Researches in Engineering ( ) Volume Xx XI Is sue I Version I J under which empiricism came to be. As Quijano and Mignolo note, it is irreconcilably biased because of its rooting in the epistemology of Western modernity. As indigenous epistemologies do not have the same contours as empiricism (raw data sets, specific measurements, consistent methodologies, and a lack of easy comparison), these knowledges are considered subsidiary to those which make use of empirical methods. Wolfe's argues that the elimination of indigeneity was most prominently the goal of settlercolonial societies (Wolfe, 2006). This included the erasure of indigenous identities, and indigenous ontology (Wolfe, 2006). This subjugation of episteme by claiming one form of knowing the world as more superior than the other, shows the same elimination Wolfe discusses, in action at this very moment (Wolfe, 2006).

Elimination can also be seen in Section 13: Management Principles. These are in the form of elimination of intercultural understanding. Principle (3) describes that:

It is curious that strong phrasing such as 'aim for continuous improvement' and 'extend beyond compliance' would be used in conjunctions with the term 'natural resources'. This raises questions over the way in which these natural resources will be managedare these resources to be expropriated for profit in the future? The use of the term 'resources' is also problematic, because it falls into the lexicon of extractive colonial industries. Without clear definition, the Birrarung Act leaves the onus of defining 'natural resources' up to future -most likely in costly litigious battles. Taken together, Principle (3) implicitly suggests that further intensification of development activities along the river are inevitable. Indeed, the existence of this very principle establishes a specific threshold over which the settlercolonial state inserts itself into the management and defacto control of

that resource. This principle protects not just the nation-state's existing rights to extract values from along the river (as deemed necessary), but also extends this right even further. In extending this right further, it is possible in the foreseeable future it could be legal basis to expand resource extraction.

The fact that the imported British common law is the chosen vehicle for instituting these legal reforms system, and efforts to interface between traditional legal systems and the common law appear so limited raises concern over how 'liberating' this legislative technology might be. The 'legislative backing' of the strategic planning document reflects the translation, assimilation, and (by this fact) the subordination, of traditional legal systems beneath the Australian common law.

Indigenous land tenure legislation exists in both the state, and Commonwealth jurisdictions, and yet it is excluded as a possible avenue to mediate between the Australian legal systems, and indigenous legal systems. Furthermore, in assimilating the Birrarung (First Nations 'sovereign asset') into the common law, the right to refuse development of the Birrarung is brought under scrutiny. True thought it may be that this right for First Nations peoples simply did not exist prior; however, by adopting the logics of coloniality, modernity, and development into plans and legislation, the momentum justifying intervention into the Birrarung is formalized under the pretense of 'advancing' Aboriginal peoples.

Although the Birrarung Act represents a 'lite' attempt at decoloniality, it is under the trajectory of coloniality -in which the coloniser leads, by attempting to decolonise themselves. Mignolo's compares this to the notions of 'emancipation' as opposed to 'liberation', explaining that Hegel's transcendent freedom of subjectivity and critical self-reflexivity informed the concept of individualism **??**Mignolo, 2013, p.467). This individualism then sought to 'emancipate the individual', allowing autonomy which later came to be associated with liberalism as envisioned by Locke. xix To that end the concept of 'emancipation' cannot escape the epistemology of coloniality because of its theological links with modernism **??**Mignolo, 2013, p.467). Attempts by the coloniser to adjust their own agency as a matter of self-deconstruction are tawdry, because without disestablishing basis of its' own power and control, the colonizer cannot truly self-deconstruct. Rather than fundamentally seeking to reconceive of reality, the veil is lifted to show the Birrarung Act is more akin to a 'feel good' project rather than addressing the epistemic splits of coloniality.

4 VII.

5 Concluding Remarks

There is a great deal that can be improved within this act. It is difficult to conceive of how this legislation can reach the theoretical standards of decoloniality as conceptualized from Wolfe, Mignolo and Quijano's work, without entirely unraveling the foundational hegemon of the settler-colonial society. Nevertheless, this does not appear to be the objective of the analytical tools of Mignolo, Wolfe, or Quijano. The aspiration to endorse a 'pluri-versal' world of knowledges and understanding can begin from places such as border epistemologies, and by developing a discourse of engagement between First Nations Australians and the settler-colonial nation-state.

Despite the challenges to traditional settlersociety law and development logics manifested in the Act, it continues to recognises Aboriginal sovereignty in a very limited capacity. It adopts a thoroughly western approach to watercourse management, and it ensures that a minority of members on the Birrarung Council are indigenous. The advisory committee itself, only serves an advisory role to the minister. The Birrarung Act makes no reference to the traditional legal systems of the First Nations of the Birrarung. Instead, the legislation offers predictability, rationality and formality within the imported Australian legal system.

The thematic questions, developed from the coloniality/decoloniality writings of Quijano, Mignolo, and Wolfe have been responded to in both the affirmative, and the negative. The strategies presented in the Birrarung Act (and its instruments'), are both actively pursuing decoloniality, and furthering settlercolonial hegemon.

In certain circumstances science/rationality, and reason are as one; but in other instances they're separate. Traditional knowledges are recognised to be of equal importance in certain statements, and in others there is a very clear privileging of scientific empiricism, and no inclusion of traditional knowledges. The silhouette of modernity and the development agenda can be clearly outlined, and yet the Birrarung Act does try to engage with decoloniality, and intercultural border epistemologies. From these vantages the Birrarung Act does offer a critique of the colonial matrix of power, but only in small actions and statements.

The Birrarung Act does bear the hallmarks vanity, in hawking its egalitarian and progressive qualifications, whilst only promoting marginal change. Nevertheless, a small space is carved out for intercultural understanding, reflecting the possibility of a pluri-versality in logics and reasoning. Small though it may be, there is space for critical insights, and exchanges of cultures and societies.

Ideally the pathway forwards would've been mapped by First Nations taking the lead entirely, and the legislative implemented in collaboration with government.

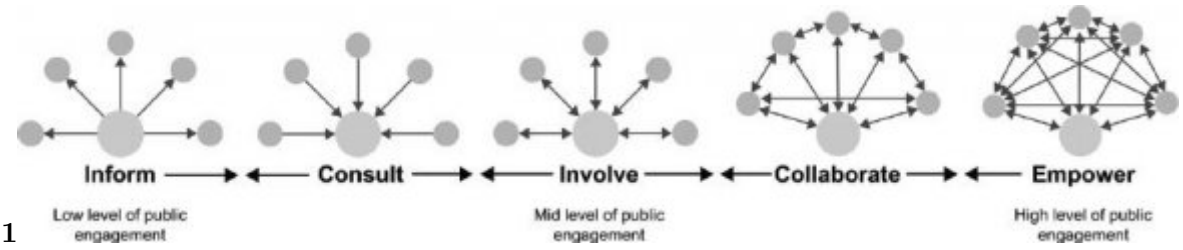
Current practice within specific departments of the Victorian government is to support self-determination and to co-design, and co-create policy with Traditional Owners and other Indigenous communities as evidenced in numerous policy documents (Aboriginal Victoria, 2019a, p.1, b, p.1; Department of the Environment, Land, Water and Planning, 2019b, p.1, a, p.1; Local Government Victoria, 2016). In this respect, whilst it is heartening to see engagement of first peoples in this process, it would be ideal to see further steps towards decoloniality going into the future (whatever these may be).

This paper sought to investigate legislation and its role in shaping cultural norms and systems of knowledges. By applying an analytical lens drawn from the law and development field, specifically coloniality/decoloniality and elimination/assimilation episteme, the asymmetric power relations could be uncovered. The processes of exclusion of First Nations were shown to be more extreme than would otherwise have been exposed using modernist tools of analysis.

The unusual approach of looking at law and development in a first world country (in relation to its First Peoples) shows that the pitfalls of modernism and development continue, if however Janus-faced. They are not restricted to Global South economies, but seem to be applied to the 'other' -most often those not directly engaging with the modernist development agenda. and Luis Eslava who both contributed to the development and writing of this paper. Acknowledgement is made of Marcus Lancaster who contributed useful knowledge in the commencement of writing of this paper. Similarly, acknowledgement of Jane Bloomfield's' insights which contributed to the writing of this paper, are also made. I pay my respects to First Nations elders past, present, and emerging.

Both Indigenous Standpoint Theory, and Feminist Standpoint Theory expect a researched to address their privilege in relation to those they research (Ardill, 2013). At this juncture, the author acknowledges their own biases, which are likely to distort their standpoint, and understanding of phenomena. The author of this paper draws upon Paul Hagemann's standpoint analysis as described in their text 'Denial, Modernity and Exclusion: Indigenous Placelessness in Australia', to inform their own standpoint analysis (Havemann, 2005). As a matter of respect for the First Peoples of Australia, the author identifies themselves as a white, upper-class, male, who has been afforded the opportunity to do this research, due to the many privileges they enjoy. In respecting the traditions of First Australians, and being someone who comes from privilege, entering onto the epistemic 'lands' of these peoples, the author is expected to declare who they are, and what purpose they have. So then, the author makes note that they are writing from a point of privilege, and that they're writing about settler-colonial legislation, and trying to unpick its contents. Again, the author states they're an outsider who does not live through this experience every day. The author also makes note that their education has been formed through a process developed as part of the colonial matrix of power, and this will also likely affect the authors judgements.

6 References Références Referencias



1

Figure 1: Figure 1 :

Year 2021
( ) Volume Xx XI Is sue I
Version I J
lobal Journal of Researches in Engineering

IV. Development Lens, to 'Coloniality/ Orienting from a Law and Decoloniality' and 'Elimination/ Assimilation' as a Framework for Analysing the Wilip-Gin Birrarung Murron Act

Figure 2:

[1]

2013,
p.172);
? Are there are clear examples of how many
traditional theories of knowledge (as drawn from
indigenous cultures) and 'modern processes' are
bought together inside the Act; viii
? Within the Act, does the 'rhetoric' of modernity
appear (Mignolo, 2011, p.462);
? Does the Birrarung Act offer some kind of critique of
the 'colonial matrix of power' (Mignolo, 2011);
? And finally, are specific epistemologies being
privileged above others (Quijano, 2013)?

Figure 3:

1. Aboriginal commitment to self-determination. [Statutory Body -Victoria, 2019a. Government's Information] The

Figure 4:

.1 Acknowledgements

Acknowledgement is made to Sundhya Pahuja

The Birrarung Act: Between a Decolonial Nation-State and Settler-Colonialism lobal Journal of Researches in Engineering ( ) Volume Xx XI Is sue I Version I J i The term 'coloniality' is defined further in proceeding paragraphs.

ii 'Inter-cultural' refers to the meeting points of Indigenous and 'modern' societies and cultures, and in this instance refers to areas valued by both the Indigenous and 'modern' societies. 'Border epistemologies', like 'inter-cultural' is knowledge created at the point at which two cultures meet (it doesn't necessarily involve modern and Indigenous societies') (Mignolo, 2013). iii This term is elaborated further upon in proceeding sections. iv Funding for infrastructure arrangement as dictated by the plan is also included as part of these arrangements. See generally: Yarra River Protection Ministerial Advisory Committee and Department of Environment Land, Water and Planning (n 4). v Due to call-in powers enjoyed by the minister for planning, a number of controversy's have arisen. There are wide latitudes for third parties and individuals to appeal these decisions as they relate to the Victorian Planning Scheme, which are not afforded in the Birrarung Act. Further examples in which controversy has arisen, and the requisite action of community groups in response can be found in Cook et al (2012).

vi 'Being' and 'understanding' referring to the acts of building intercultural knowledge between Indigenous and non-Indigenous peoples; and the mobilisation of this 'intercultural' dialogue into every day practices of living **??**Mignolo, 2011, p.453). vii The case which Wolfe refers to in his writing is the Members of the Yorta Yorta Aboriginal Community v. the State of Victoria & Ors (2002) case, which narrowed the scope for interpretation and therefore recognition of Indigenous land tenure in Australia hugely in 2002 (Case, 1999; as per: Wolfe, 2006, p.393). viii 'Processes' refers to agricultural, industrial, engineering, and other such processes which are considered to be the foundations of 'modern' society, this includes areas such as medicine and health **??**Mignolo, 2011, p.462). ix It is assumed that 'nature' is all the biological, and ecological values within the landscape and other nonhuman produced entities -even this definition is somewhat of a fallacy (Yarra River Protection (Wilip-gin Birrarung murron) Act, p.4).

x This is a very brief summary of an extremely complicated argument, and further reading can be found in Kanth (2017). xi It is not within the scope of this essay to debate philosophical arguments over anthropocentrism and deep-ecology -nevertheless -further analysis of the history of separation between man and 'nature' beginning in Judaeo-Christian religions can be found in seen generally in Kanth (2017). xii Faster recovery times; improved long-term mental health have been associated with access to greenery. There is readings on articles which have established empirical data reflecting these health benefits (Park and Mattson, 2009a;Ulrich, 1984). xiii (Greaves, 2017, p.1 [5]. Source: VAGO based on IAP2. This diagram is produced subject to the Copyright Act (1968). Acknowledgement is made to the original copyright owner (the VAGO). No official connection is claimed between this article and the VAGO. The material is made available without charge or any cost, and the material is not subject to inaccurate, misleading or derogatory treatment.) xiv Under the Water Act (1989) and the National Water Initiative (2004) provisions were made for indigenous submissions to water plans, overarching documents which manage the way in which water resources are used in water systems, but these were the only spaces in which indigenous voices could be expressed in relation to the management of water. Macpherson writes specifically on this topic (2017). xv 'Cultural expression' along the Birrarung is defined by Keryn Hawker as being achieved through the maintenance of the health of the riparian corridor and associated ecologies along the river. Part of this expression is found in the health of these environments. Hawker et al. write on this generally (2010).

[J. Baldwin ()] , <https://nla.gov.au/nla.obj-2347920549> *Environment Protection Amendment Act* J. Baldwin (ed.) 1965. 2019. 2018. Water and Planning. Cambridge University, UK: Cambridge University Union Hall ; Department of Environment Land (Fact Sheet. Available)

[Jan (2018)] , Jan . <https://www.e-ir.info/2017/01/21/interview-walter-mignolopart-2-key-concepts 26 Nov. 2018.

[Law Review (2019)] , Griffith Law Review . org/10.1080/10383441.2013.10854778>. Accessed 21 Apr. 2019. 22 p. .

[Macquarie Law Journal (2019)] , https://search.informit.com.au/documentSummary;dn=335933246027253;res=IELHSS *Macquarie Law Journal* May 2019. p. 57.

[7 -Continuation of the Crown's rights to water. Vic The Water Act (2017)] '7 -Continuation of the Crown's rights to water. Vic'. <http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/wa198983/s7.html#Water20198920Section%207> *The Water Act*, 11 Sep. 2017.

[Nelson et al. (2018)][Nelson et al. (2018)]context=1;query =yarra *A Pathway to Cultural Flows in Australia. Dhungala Baaka. [Law and Policy Reform] Melbourne, VIC: Murray Lower Darling Rivers Indigenous Nations (MLDRIN), Northern Basin Aboriginal Nations (NBAN) & North Australian Indigenous Land and Sea Management Alliance (NAILSMA)*, R Nelson , L Godden , B Lindsay . <http://www.mldrin.org.au/wp-content/uploads/2018/06/Dhungala-Baaka.pdf> 2018. Accessed 19 Mar. 2019. (Available at)

[Hawker and Murray ()] *A short paper on cultural flows -definitions and legislation*, K Hawker , Murray . 2010. (Lower Darling Rivers Indigenous Nations. Non-Government Organisation -Issues Paper] Echuca, VIC. Available at:<https://www.google.com/url?sa=t&rct=j&q=&e

src=s&source=web&cd=2&ved=2ahUKEwjUnYX1 56DcAhXEE5QKHc2qDksQFjABegQIABAC&url=htt p%3A%2F%2Fwww.ewb.org.au%2Fresources%2Fd ownload%2F1238P2010-08-28_00%3A13%3A20%2 FL&usg=AOvVaw11d_8cftFX0q6Egb-N8myp>)

[An Aboriginal history of Yarra ()] *An Aboriginal history of Yarra*, 2013. Agora. 48 p. 59. Wurundjeri Tribe Land and Compensation Cultural Heritage Council (Available at: <https://search. informit.com.au/documentSummary ;dn=737085632581090;res=IELAPA>[Accessed 11 May 2019)

[Kanth (ed.) ()] *Australian Broadcasting Corporation Education. Available at: <#!/digibook/2702964/ exploring-aboriginal-melbourne-with-the-koorieheritage-trust>*, R Kanth . 1. Peter Lang. Koori Trust (ed.) 2017. 2019. (Exploring Aboriginal Melbourne with the Koorie Heritage Trust -History, Geography, Technologies. Accessed 5 May 2019)

[Ardill ()] *Australian Sovereignty, Indigenous Standpoint Theory and Feminist Standpoint Theory*, A Ardill . 2013.

[Porter (2016)] *Available at: <http:// theconversation.com/how-can-we-meaningfully-rec ognise-cities-as-indigenous-places-65561> [Acces sed 11*, L Porter . 2016. 10 May. Jun. 2018. (How can we meaningfully recognise cities as Indigenous places? The Conversation)

[Vincent ()] *Available at: <http://openurl.ingenta.com/content/ xref?genre=article&issn=0963-2719&volume=7& issue=4&spage=443>*, A Vincent . 1998. 7 p. . (Liberalism and the Environment. Accessed 21 Apr. 2020)

[Macpherson ()] *Beyond Recognition: Lessons from Chile for allocating indigenous water rights in Australia*, E J Macpherson . <https://www.academia.edu/33864446/BEYOND_RECOGNITION_LESSONS_FROM_CHILE_FOR_ALLOCATING_INDIGENOUS_WATER_RIGHTS_IN_AUSTRALIA> 2017. 40 p. . University of New South Wales Law Journal

[Quijano ()] 'Coloniality and Modernity/ Rationality'. A Quijano . *Globalization and the Decolonial Option, 1*, W D Mignolo, A Escobar (ed.) (New York, NY) 2013. (1st ed. [online. Routledge. Available at: <https://books.google.com.au/books? id=VbmMA QAAQBAJ&printsec=frontcover&dq=walter+d+mi gnolo+coloniality&hl=en&sa=X&ved=0ahUKEwi56 5bN1u3bAhVKTLwKHWCTCO4Q6AEINTAC#v=one page&q=walter%20d%20mignolo%20coloniality&f= false>)

[Quijano ()] 'Coloniality of Power and Eurocentrism in Latin America'. A Quijano . 10.1177/0268580900015002005>. <https://doi.org/10.1177/0268580900015002005> *International Sociology* 2000. 2018. 15 (2) p. . (Accessed 21 Jun)

[Mignolo ()] 'Delinking: The rhetoric of modernity, the logic of coloniality and the grammar of de-coloniality'. W D Mignolo . *Globalization and the Decolonial Option, 1*, W D Mignolo, A Escobar (ed.) (New York, NY) 2013. (1st ed. [online. Routledge. Available at: <https://books.google.com.au/books?id=VbmMAQ AAQBAJ&printsec=frontcover&dq=walter+d+mig nolo+coloniality&hl=en&sa=X&ved=0ahUKEwi565 bN1u3bAhVKTLwKHWCTCO4Q6AEINTAC#v=onep age&q=walter%20d%20mignolo%20coloniality&f=f alse>)

[Havemann ()] *Denial, Modernity and Exclusion: Indigenous Placelessness in Australia*, P Havemann . 2005.

[Quilley (2011)] 'Entropy, the Anthroposphere and the Ecology of Civilization: An Essay on the Problem of 'Liberalism in One Village' in the Long View'. S Quilley . 10.1111/j.1467-954X.2011.01979.x>. <http://journals.sagepub.com/doi/10.1111/j.1467-954X.2011.01979.x> *The Sociological Review* 2011. 21 Apr. 2020. 59 p. . (1_suppl))

[Gunditjmirring and Barengi Gadjin Towards Cultural Flows project -Glenelg River (2019)] *Gunditjmirring and Barengi Gadjin Towards Cultural Flows project -Glenelg River*, tps://www.water.vic.gov.au/aboriginal-values/the-aboriginal-water-program/gunditjmirring-and-barengi-gadjin-towards-cultural-flows-project-glenelg-river> 2019a. Accessed 16 Apr. 2019. Department of the Environment, Land, Water and Planning (Government -Information)

[Imagine The ()] *Imagine the Yarra/Yarra River Community Assembly*, Yarra Imagine The . <https://www.abs.gov.au/ausstats/abs@.nsf/mf/3238.0.55.001> 2020. Accessed 11 May 2019. (Government -Information] Imagine the Yarra. Available at)

[Macpherson (2019)] *Indigenous water rights in law and regulation: lessons from comparative experience. 1st ed. Cambridge Studies in Law and Society*, E J Macpherson . http://public.eblib.com/choice/PublicFullRecord.aspx?p=5842647 2019. Accessed 13 Aug.2019.

[Williams (2018)] 'Innervating Colonialism: Exploring the Retraction of Indigenous Rights Through Two Sentencing Provisions'. M S Williams . 10.1080/13200968.2018.1547102>. <https://doi.org/10.1080/13200968.2018.1547102> *Australian Feminist Law Journal* 2018. Accessed 30 Apr. 2019. 44 (2) p. .

[O'riordan (2013)] *Interpreting the Precautionary Principle*, T O'riordan . <https://www.taylorfrancis.com/books/9781134165780> 2013. 20 Apr. 2020. (1st ed. [online] Routledge. Available at)

[Hoffman ()] *Interview -Walter Mignolo/Part 2: Key Concepts*, A Hoffman . <http://www.e-ir.info/2017/01/21/interview-walter-mignolopart-2-key-concepts/> 2017. 2018. (E-International Relations. Available at) (Access ed 18 Jul)

[Harding (1997)] 'Is Modern Science an Ethno-Science? Rethinking Epistemological Assumptions'. S Harding . org/10.1007/978-94-017-2948-2_2>. *Science and Technology in a Developing World, Sociology of the Sciences*, T Shinn, J Spaapen, V Krishna (ed.) (Netherlands) 1997. Accessed 30 Apr. 2019. Springer. p. .

[Armstrong ()] *Islam: A Short History. Revised, Updated*, K Armstrong . 2002. New York: Modern Library. (Subsequent edition ed. 1)

[Ministerial interventions for permit applications ()] *Ministerial interventions for permit applications*, <https://www.planning.vic.gov.au/permits-and-applications/ministerial-permits/ministerial-interventions-in-permit-applications> 2017a. 2018. Department of the Environment, Land, Water and Planning (Accessed 25 Jun)

[O'bryan (2017)] *More Aqua Nullius: The Traditional Owner Settlement Act 2010 (VIC) and the Neglect of Indigenous Rights to Manage Inland Water Resources*, K M O'bryan . 2017. 30 Aug. 2017. 40 p. 547. Melbourne Univeristy Law Review (Available at: <http:// heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/mulr40&section=20>[Accessed)

[Mohr ()] *Oppression by Scientific Method: The Use of Science to 'Other' Sexual Minorities*, J Mohr . 2019.

[Park and Mattson ()] 'Ornamental Indoor Plants in Hospital Rooms Enhanced Health Outcomes of Patients Recovering from Surgery'. S.-H Park , R H Mattson . 10.1089/acm.2009.0075>. <https://www.liebertpub.com/doi/abs/10.1089/acm.2009.0075> *The Journal of Alternative and Complementary Medicine* 2009a. 2018. 15 (9) p. . (Accessed 29 Jun)

[Marshall and Kirby ()] *Overturning Aqua Nullius: Securing Aboriginal Water Rights*, V Marshall , M D Kirby . <https://books.google.com.au/books/about/Overturning_Aqua_Nullius.html?id=pGc9swEACAAJ&redir_esc=y&hl=en> 2017. Sydney, NSW. (1st ed. 1. [online. ReadHowYouWant. com, Limited. Available at)

[Porter and Barry ()] *Planning for Coexistence?: Recognizing Indigenous rights through land-use planning in Canada and Australia*, L Porter , J Barry . 2016. (1st ed. 0. Melbourne, VIC: Routledge)

[Jackson et al. (2017)] *Planning in Indigenous Australia: From Imperial Foundations to Postcolonial Futures. 1st ed. The RTPI Library Series*, S Jackson , L Porter , L C Johnson . url=https://search.ebscohost.com/login.aspx?direct=true&db=nlebk&AN=1554185&site=eds-live&scope=site> 2017. Accessed 26 Mar. 2019. New York. (Routledge. Available at: <https://ezp.lib.unimelb.edu.au/login)

[Cooper and Jackson ()] *Preliminary Study on Indigenous Water Values and Interests in the Katherine Region of the Northern Territory*, D Cooper , S Jackson . <https://www.researchgate.net/publication/257985612_Preliminary_Study_on_Indigenous_Water_Values_and_Interests_in_the_Katherine_Region_of_the_Northern_Territory> 2008. (1st ed. 1. [online] Melbourne, VIC: CSIRO. Available at)

[Environmental Justice Australia (2014)] *projects/propose d-increase-in-planning-powers-will-allow-minister-torun-amok*, Environmental Justice Australia . <https://www.envirojustice.org.au/ 2014. May 2019. (Proposed increase in planning powers will allow Minister to run amok)

[Protecting the Yarra River (Birrarung). [Discussion Paper] elbourne, VIC: Land, Water and Planning Department of Environment (2016)]b61 *Protecting the Yarra River (Birrarung). [Discussion Paper] Melbourne, VIC: Land, Water and Planning Department of Environment*, <http://haveyoursay.delwp.vic.gov.au/protecting-the-yarra-river> 2016. 19 Jun. 2018. Yarra River Protection Ministerial Advisory Committee and Department of Environment Land, Water and Planning (Protecting the Yarra River (Birrarung): Discussion Paper Summary)

[Chesterfield et al. ()] *Protecting the Yarra River (Birrarung): Ministerial Advisory Committee Final Report. Protecting the Yarra River (Birrarung)*, C Chesterfield , E Moran , J Doolan , K Bauer . 2016. 2016. p. . Yarra River Protection Ministerial Advisory Committee, ; . State of Victoria: Department of Environment, Land

[Greaves ()] *Public participation in government decision-making. Public Participation. Victorian Government Printer: Victorian Auditor Generals Office*, A Greaves . 2017.

[Cook et al. ()] *Resident third party objections and appeals against planning applications: implications for higher density and social housing. AHURI RMIT Research Centre*, N Cook , E Taylor , J Hurley , V Colic-Peisker . <https://ro.uow.edu.au/sspapers/3160> 2012. Melbourne, VIC. p. . (: Australian Housing and Urban Research Institute Limited)

[Gleeson and Low ()] 'Revaluing planning'. B Gleeson , N Low . <https://linkinghub.elsevier.com/retrieve/pii/S0305900699000227>[Accessed21 *Progress in Planning* 2000. 53 (2) p. .

[Wolfe (2006)] 'Settler colonialism and the elimination of the native'. P Wolfe . 10.1080/14623520601056240>. <https://doi.org/10.1080/14623520601056240> *Journal of Genocide Research* 2006. 20 Jun. 2018. 8 (4) p. .

[De Geus (ed.) ()] *Sustainability, Liberal Democracy, Liberalism*, M De Geus . 10.1057/9781403900791_2>. <http://link.springer.com/10.1057/9781403900791_2> J. Barry and M. Wissenburg (ed.) 2001. London: Palgrave Macmillan UK. p. . (Sustaining Liberal Democracy. Accessed 21 Apr. 2020)

[Mignolo ()] *The darker side of Western modernity: global futures, decolonial options*, W Mignolo . 2011. Duke University Press. (1st ed. Latin america otherwise: languages, empires, nations. Durham)

[Chatterjee (1995)] *The Nation and Its Fragments: Colonial and Postcolonial Histories. The American Historical Review*, P Chatterjee . <https://academic.oup.com/ahr/article/100/4/1281/22699> 1995. 19 Jun. 2018. 100 p. .

[The National Park Act. Vic Decolonization, Indigeneity, Education and Society ()] 'The National Park Act. Vic'. <http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubLawToday.nsf/95c43dd4eac71a68ca256dde00056e7b/892c620022bbb0d8ca257306000812e5!OpenDocument> *Decolonization, Indigeneity, Education and Society* 2018. 1 (1) p. 13. (Accessed 25 Jun)

[The Planning and Environment Act. 1-11. Vic] *The Planning and Environment Act. 1-11. Vic*, <http://www.austlii.edu.au/au/legis/vic/consol_act/paea1987254/>[Accessed20

[Pahuja (2005)] 'The Postcoloniality of International Law Symposium: Comparative Visions of Global Public Order (Part I)'. S Pahuja . <https://heinonline.org/HOL/P?h=hein.journals/hilj46&i=465> *Harvard International Law Journal* 2005. Accessed 22 Apr. 2019. 46 p. .

[Freestone and Hey ()] *The precautionary principle and international law: the challenge of implementation*, D Freestone , E Hey . 1996. The Hague. (International environmental law and policy series)

[Trouwborst (2007)] 'The Precautionary Principle in General International Law: Combating the Babylonian Confusion'. A Trouwborst . 10.1111/j.1467-9388.2007.00553.x>. <http://doi.wiley.com/10.1111/j.1467-9388.2007.00553.x> *Review of European Community & International Environmental Law* 2007. 20 Apr. 2020. 16 (2) p. .

[The Victorian Civil and Administrative Tribunal Act. 1-11. 532018B. Vic (2017)] *The Victorian Civil and Administrative Tribunal Act. 1-11. 532018B. Vic*, <http://www.austlii.edu.au/au/legis/vic/consol_act/paea1987254/> 20 Aug. 2017.

[Park and Mattson (2009)] 'Therapeutic Influences of Plants in Hospital Rooms on Surgical Recovery'. S.-H Park , R H Mattson . <http://hortsci.ashspublications.org/content/44/1/102>[Accessed29 *HortScience* 2009b. Jun. 2018. 44 (1) p. .

[Case ()] 'Tide of History or Tsunami? The Members of the Yorta Yorta Aboriginal Community v. The State of Victoria & Ors'. N Case . *Indigenous Law Bulletin* 1999. 1998. 4 (17) p. 1.

[Sium ()] *Towards the 'tangible unknown': Decolonization and the Indigenous future*, A Sium . 2012.

[Traditional Owner Partnership (2019)] *Traditional Owner Partnership*, <https://www.water.vic.gov.au/aboriginal-values/the-aboriginal-water-program> 2019b. Accessed 17 Mar. 2019. 16. Department of the Environment, Land, Water and Planning (Statutory Body -Information] DELWP. Available at)

[Wensing and Porter ()] *Unsettling planning's paradigms: toward a just accommodation of indigenous rights and interests in Australian urban planning? Australian Planner*, E Wensing , E Porter . 2016. 2018. 53 p. . (Available at:<https:// researchbank. rmit.edu.au/view/rmit:35214> [Acces sed 9 Jun)

[Blackshield ()] 'Untitled Paper'. T A R Blackshield . *Beyond Environmental Law, 1. Intersections Between Legal Disciplines and the Environment. Sydney* 2007. p. 1. NSW: University of Sydney

[Local Government ()] *Victorian Aboriginal and Local Government Action Plan. Victorian Aboriginal and Local Government*, Victoria Local Government . http://www.delwp.vic.gov.au/local-government/strengthening-councils/victorian-aboriginal-local-government-action-plan 2016. Melbourne, VIC: Victorian Government Printer. (Accessed 28 Feb. 2020)

[Ulrich (1984)] 'View through a window may influence recovery from surgery'. R S Ulrich . <http://science.sciencemag.org/content/224/4647/420>[Accessed29 *Science* 1984. Jun. 2018. 224 (4647) p. .

[Mignolo ()] *Walter Mignolo/Part 2: Key Concepts*, W D Mignolo . Formal Interview] 21. 2017.

[Escobar ()] *Worlds and Knowledges Otherwise*, A Escobar . <https://ezp.lib.unimelb.edu.au/login?url=https://search.ebscohost.com/login.aspx?direct=true&db=sih&AN=24590860&site=eds-live&scope=site> 2007. 2018. 21 p. . (Cultural Studies. Accessed 21 Jun)

[Yarra River Action Plan (Wilip-gin Birrarung murron) ()] *Yarra River Action Plan (Wilip-gin Birrarung murron)*, .vic.gov.au/news/yarra-river-action-plan.html> 2017b. 13. Department of the Environment, Land, Water and Planning (Available at: <http://www)

933 [Yarra River Protection Act ()] *Yarra River Protection Act*, <https://www.planning.vic.gov.au/
934 policy-and-strategy/waterways-planning/yarra-river-protection> 2017c. 2017. 2018. De-
935 partment of the Environment, Land, Water and Planning (Accessed 27 Jun)