Reimagining Settler Law: Navigating the Lawscape on Wurundjeri Country

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1 Acknowledgement of Country

I acknowledge the Traditional Owners of the land on which I live and work, the Wurundjeri people of the Kulin nation. I pay my respects to their elders, past and present, and to the generations of Wurundjeri people who have been custodians of their lands and the laws that weave through them since time immemorial. I acknowledge that colonialism, facilitated by the settler law that I carry with me, remains an ongoing system of dispossession, violence and oppression that denies Indigenous Australians their relations to their Law and land. I recognise that many Indigenous Jurisprudences are 'figured from the patterning of relations out of and into the land' (McVeigh 2017: 167 citing Black 2010: 16–19). I also recognise that the way in which settler law facilitates ongoing structures of colonial violence and ecological destruction constitutes a very real threat to both these law stories, and the continued existence of life on earth. For a jurisprudent working within the settler legal system, I acknowledge the urgency and necessity of addressing the mechanisms that work to perpetuate and reinforce these violences. I hold a responsibility as a jurisprudent to deepen understandings 'of where laws are, how they work, and how we might better live "with" not only our own forms of law, but the laws of others' (Barr 2017: 221). To do this well, I must first recognise that the land on which I write remains patterned with Wurundjeri Law.

Sovereignty was never ceded.

This always was and always will be Aboriginal Land.

2 Into the Lawscape

In the summer before I started law school, the air was 'thick with crisis' (Philippopoulos-Mihalopoulos 2012: 2).

Literally thick.

Suffocating.

Not even the Narrm metropolis, the cocoon that usually keeps crisis confined to the shadows, was able to provide shelter this time.

We could smell it before we could see it.

At first it was pleasant; aromatic, with a rich earthiness and the undertones of a eucalypt sweetness that stirred memories of stories shared on starlit summer nights; as well as sunset strolls and evening snuggles in the depths of winter.

We felt guilty for enjoying it. If only for a moment.

The aroma, and the memories it conjured, decayed quickly into a stale, charcoal haze. For the coming months, as we moved through the city, it lingered – a visceral reminder of the *Black Summer's* devastation permeated the atmosphere.

With it, came a liminality, disorienting and inescapable.

Viscous. Overpowering yet diminishing.

Impossible to ignore.

3 Introduction

My time at law school has been bookended by two summers of unprecedented ecological crisis. In 2019, along the east coast of what is now called Australia, 18 million hectares of Country burned. Almost 500 people died (Hitch 2022). Over a billion mammals perished (Bishop and Tynan 2022: 594, Fletcher et al 2021). In 2022, parts of that same eastern coast were deluged with almost a year's rainfall in three days. Entire towns were underwater – areas that had never flooded before – tens of thousands of homes lost (Hughes et al 2022).

When the air is thick with crisis, where might law reside?
Not a statute in sight.
Not a case to be heard.

These disasters, of course, did not come out of the blue. Anthropogenic climate change, and runaway forces of destruction facilitated by an anthropocentric 'expansionist colonial-capitalist individualist mentality' have led us to this point, threatening all human and more-than-human ways of being on this planet (Davies 2017: 158). So too has the settler-colonial legal system which continues to neglect and destroy the rich tapestry of Indigenous law and culture that has formed the basis for their custodianship over Country since time immemorial.

As long as the forces that continue to perpetuate colonial mentalities of anthropocentrism permeate our institutions; and the laws of Indigenous custodians that dictate how Country must be cared for continue to be ignored and supressed, the likelihood and intensity of these highly destructive and extreme events is only predicted to increase (Fletcher et al 2021, Hughes et al 2022). Given the present climate, this is a situation that does not fill one with much hope for the future.

What then, might it mean, to reconfigure our understanding of law, especially a settler law: one that is maladapted, universalised and imposed on the land now known as Australia; (Davies 2017: 142) one

that has facilitated two hundred and fifty years of ongoing colonial violence and ecological destruction; one that embodies a destructive condensation of a Western Enlightenment common-sense[2] that claims an expansionist universality which dictates how we all live, here on *Terra Australis*?

Further, what might it mean to do this as a settler – the 'master identity' of Western law (Norman 2021: 49) – the one for whom the stories of law were written by and for – when these stories facilitate ongoing violence and destruction of colonialism that privileges settlers like me immensely? While rescuing a more positive future with law can certainly be productive for communities experiencing marginalisation,[3] might this task present little more than an attempt to rescue a settler futurity of an easier path to reconciliation akin to another kind of 'settler move to innocence' (Tuck and Yang 2012)?

Where might we find the possibility of a different future with law?

What might this look like?

Undoubtedly, there is an urgent need to think with and beyond the deathly and colonial functions of law, and imaginings of a decolonised world guided by Indigenous scholarship are vital in achieving this task. However, settlers too hold a responsibility to transform their own institutions and subjectivities in a way that allows relations with Indigenous peoples and cosmologies to exist outside the deeply habituated logics and practices of domination (Bell et al 2022: 609). Writing this reflective essay on unceded Wurundjeri Country in Narrm/Melbourne in the midst of my last semester of law school, this paper traces my ongoing and necessarily incomplete attempt to do so. A venture into the realm of minor jurisprudence, this essay is a journey guided by a process of diffraction (Barad 2007); wherein we engage with different theories and perspectives though one another in a way that emphasises connection and relationality, in order to better articulate and understand how we might come to imagine decolonised law, and the tensions that emerge in the process.

This journey is one that is quite personal, continually shaped and muddied by my positionality as a settler, as well as the positionality of

those who may engage with this piece in some way. In it, we consider an attempt at holding on to settler law, while reimagining it in a way which might help further decolonial aims. To do so, I develop a minor jurisprudence predominantly based upon Andreas Philippopoulos-Mihalopoulos' heavily-Deleuzian influenced Lawscape (2012, 2013, 2015). By bringing ideas from continental philosophical traditions into conversation with Indigenous scholarship, while maintaining a critical reflexive politics of location, this article aims to spark a new mode of 'identifying, understanding, acknowledging, and redressing colonial structural injustice' by establishing a 'productive meeting point' between different forms and ontologies of law (Balint et al 2020: 136).

To do this, the article conceptualises the Lawscape through the extended motif of a walk that builds upon Olivia Barr's (2017) *Legal Footprints*; where author and reader embark on a generative nomos-building journey while meandering along the Merri Creek in Narrm/Melbourn. On this walk, we encounter plural cultures of legality, lawfulness and lawlessness, considering possibilities for the agitation and reimagination of law. The purpose is not to reach some sort of universal truth, but instead to 'unfold a descriptive richness' that is highly localised, affective, and adaptive to the environment in which we find ourselves (Love 2010, cited in Moreno-Gabriel and Johnson 2020: 10). Through unsettling dominant ways of thinking with law and the subjectivities that underpin them, this paper invites a point of encounter to critique, reflect and build on the processes by which we each may come to, transform and reconfigure understandings of law.

4 Minor Jurisprudence as Method

The goal of this essay is to agitate settler law and its subjectivities in a way that may help facilitate a decolonisation that is accountable to Indigenous sovereignty and futurity (Tuck and Yang 2012: 35). Although the approach taken in this essay may be somewhat unusual when compared to dominant approaches of academic writing, much of the theory and method remains firmly rooted in a Western (Deleuzian) tradition. This choice emerges not only because the focus remains

on settler law, but also from my own situated politics of location – where and how I have come to understand law thus far. By bringing continental theory into conversation with Indigenous scholars through a process of diffraction (Barad 2007), my method invites consideration, critique and reflection on how we might agitate these understandings through traditions that are familiar to me, while reflecting on the relational politics that occur encountering cosmologies that are less familiar to me given how my legal education is situated.

My avenue into understanding how one might agitate and unsettle dominant subjectivities within Western jurisprudence was through Peter Goodrich's (1996) translation of Deleuzian minority into the jurisprudential realm. For Goodrich (1996: 2), minor jurisprudence can escape 'the phantom of a sovereign and unitary law.' Neither pretending nor aspiring to be universal, nor the 'only law' (Goodrich 1996: 2), minor jurisprudence is a method I believe may help unsettle the Enlightenment project of self-sovereignty in accordance with instrumental reason that advances an imperial universalism present in ideologies of colonialism (Rigney, Bignall, and Hemming 2015: 337). By committing to that which is 'simultaneously plural, subaltern and subversive', minor jurisprudents commit to noticing that which is 'otherwise overlooked – patterns of movement where stillness is seen'; exploring things usually taken for granted – noticing lines, places, memories or laws that are otherwise overlooked by dominant narratives (Barr 2017: 221).

The value in adopting minor jurisprudence as a method lies in its ability to make space for topics, techniques, concepts and practices to softly emerge that have otherwise been overlooked or actively destroyed by dominant, colonising jurisprudences. It aims to offer new potentialities for jurisprudential thought – critiquing but thickening our understandings of how laws work; where they are; how they are embedded in and relate to the other bodies and laws that float around them (Barr 2017: 221). In doing so, minor jurisprudences provide an avenue for displacement and counter-hegemonic thought (Croce 2019: 79). Minor jurisprudence can very much emphasise the 'ways in which

meanings and institutions can be at loose ends with each other, crossing all kinds of boundaries rather than reinforcing them' (Sedgwick and Goldberg 2012: 200). By writing in an unfamiliar reflective style, I seek not only to unsettle dominant subjectivities, but through this method give life to plural law that may allow for more just encounters between settler and Indigenous sovereignties.

Necessarily incomplete; minor jurisprudence calls into question the systematicity of law, while acknowledging that not everything can be noticed at once (Antaki 2017: 57, Barr 2017: 221). Consequently, our experiences with minor jurisprudence are highly localised within the relational context in which we are situated; informed and clouded by our positionalities. However, particularly relevant for decolonial work, it is important to note the somewhat-paradoxical task of using minor jurisprudences is to 'un-minor' without reproducing the major (Antaki 2017: 59). To do this, reflexivity and attention to the politics of location when employing this method is vital. Ultimately, by seeking to position 'with' law in this fashion, we can accept some aspects of law 'while agitating others, noticing what is already there,' while remaining attuned to the context in which such agitation occurs, and how bodies are situated in relation to that work (Barr 2017: 222).

It is for this reason, through tone, voice and structure, that I continually emphasise the relationship between author and reader in this article. By inviting you, as reader, to co-create this journey with me; the form of this work provides a constant reminder of the plural agencies that are involved in the production of knowledge – not only those of our individual beings; but also, of the other human and more-than-human entities with which we become entangled along the way.

However, I might not always do this successfully. You might find my use of the plural pronoun jarring. It could be that the use of the 'royal we' may reek of superiority; a nosism that may both perpetuate or placate a settler move innocence rightly condemned by Tuck and Yang (2012). Alternatively, it might be jarring simply because the plural pronoun muddies the genre-based expectations you hold as a reader (Pahuja 2021); its use usually discouraged in the social

sciences and humanities because it fails to distinguish between ideas of sole authorship and co-authorship (Blanpain 2008: 43). However, unsettling this is precisely my intention. By inviting you to co-create this journey with me, we are constantly reminded of the plural agencies that are involved in the relational co-production of knowledge – not only those of our individual beings; but also, of the other human and more-than-human entities with which we become entangled along the way (Bawaka Country et al 2019). Through this, we attempt to 'step beyond the static, unidirectional nature of sharing' that is generally inherent in a written essay (Bawaka Country et al 2019: 964), while remaining reflexive about our own agency with respect to how that knowledge is produced; and the care and responsibility with which we carry that knowledge. To do so provides an acknowledgement and constant reminder of our relationality; and the fact that words travel, forming connections to different people, places, and contexts where meaning and power dynamics are entangled by the complex web of relations that we each bring to the table (Bawaka Country et al 2019: 964). It also recognises that the intellectual work that may facilitate decolonisation, while answerable to Indigenous futures, takes the collaboration of many diverse perspectives to design (Yunkaporta 2021: 27, Bignall 2014).

5 Going Together

I must therefore make clear that wherever we go on this journey, we do so together. While I may guide you through it, and bring you into my world, the nomos that we will inhabit is one we build together.[4]

You, as reader, have a vital, agential role in this process.

We are complex beings, defined by the visceral and complex webs that form the entirety of our relations, yet we are only momentarily entangled; combined partially and contextually in the piecemeal and selective context of this essay. We connect in uneven ways, making 'piecemeal insertions' into each other's lives' unevenly and incrementally that affect only certain aspects of our relations, while leaving many

others untouched (Bignall 2014: 12). The vast complexity of the constitutive relationships we experience remains unique and fully unknowable, rendering it impossible for us to hold absolute knowledge or transparency about the nature of our entanglement (Bignall 2014: 12). While we can attend selectively to the particular elements of the affective relationship that develops on this journey, and break it down into its elemental sites of encounter, this lack of complete knowledge means that any conclusions we may draw are, at best, a partial perspective (Bawaka Country et al 2016: 470). This journey is therefore not one of truth-seeking, but one of constitutive collaboration.

This attempt to reimagine law is underpinned by making a conscious effort to identify and actively strengthen positive affections based on shared understandings, while remaining aware of and responsible to our disparate communities of relations that make up our wider beings (Bawaka Country et al 2020, Bignall 2014). As such, the nature of our shared relations holds consequences for any understandings that we may reach about how we might reimagine settler law. We are each clouded by our positionality, but given understanding of the complex agential forces that underpin the collaborative production of shared affect, we hold an 'embodied responsiveness' that bestows a level of care and responsibility in terms of how we use and share these understandings (Bawaka Country et al 2016: 470). By understanding place, space, and our lawful relations in new ways, through the shared production of positive affect, we might be able to move beyond colonialism's 'mythic landscape of separation and extinguishment' and move towards more hopeful future of decolonial legal relations (Howitt 2001). However, we can only do so if we simultaneously remain aware of the tensions that emerge in this process – and how they might be produced or engrained by our positionality.

On its own, this text does little. It, like all beings, human or more-than-human, exists in a stage of emergence and relationality. While every 'human, animal, plant, process, thing, [and] affect [is] vital and sapient' in its own right, their very being is constituted through the constant generation and regeneration of relationships (Bawaka Country et al 2020: 3, 2016: 456).

It is these relationships; that give meaning, order and balance.

Given that we are both responsible for the creation of knowledge in this journey, and anything that emerges from it must be guided by an ethics of care and responsibility, there are some important things we much ask of each other.

Firstly, we must be open and honest about our positionality. Aileen Moreton-Robinson (2004: 77) argues that the construction of knowledge in Western academic systems relies on an establishment of difference with the assumption that 'the raced body of the knower is irrelevant to knowledge production', thereby universalising whiteness in research. In order to decentre whiteness, and the other privileges afforded to me by my positionality, I must first make their presence explicit. I am a white, queer and mostly male-presenting settler, with predominantly Italian and also some British/Irish heritage. I am engaged in the relatively early stages of my formal training in settler law on unceded Wurundjeri Country – where I have lived almost my whole life, and my family has called home for about sixty years. The privileges I have been afforded are immense – a comfortable, middle-class upbringing in the inner-north of Narrm/Melbourne; an education at a 'prestigious' law school that affords me both the ability and means to think, write, and travel. I benefit immensely from colonialism and the rights, protections and opportunities that are afforded to me while living on stolen land. Further, by operation of *jure sanguinis*, I have been a member of the Italian and EU bodies politic my entire life, there also granted all the rights and protections of their laws, and the ability to participate fully in their political decision-making processes. Meanwhile, those upon whose land I live, having been denied a constitutionally enshrined Voice, still fight for self-determination, and recognition of their sovereignty.

By 'coming out' in this fashion (Nicoll 2000), I not only acknowledge and reflect on my capabilities and limitations as a researcher (Smith and Smith 2019) but lay bare an obligation to ensure 'past injustices committed against Indigenous Australians and their antecedent

legal orders have the possibility of being recognized, addressed, and redressed' (Balint et al. 2020: 55). I must also recognise that any potential contributions to the wider projects of decolonisation on my part must occur in a way that helps to unsettle the universality of my white experience. I aim to do this in a way that invites honest reflection, collaboration, and criticism where appropriate, while recognising the need to tread a delicate line in order to avoid problematically dwelling on settler moves to innocence and affects of settler discomfort (Tuck and Yang 2012).

With this in mind, I ask that you too be constantly aware of your own positionality; the processes by which you seek to understand and relate to your own laws; and the affective responses that emerge when they come into conversation with mine. If the construction of knowledge is situated within the limited spatiality and temporality of our relations, anything we take away from this journey is only a 'partial perspective' (Haraway 1988: 581). It is neither stagnant nor fixed; it emerges from the ways in which we interact with each other, what we think and feel. It is guided and muddied by the positionalities we bring to the table. While we may momentarily inhabit other worlds, we cannot completely transcend our own. From this partial perspective, we must understand the importance of our co-constitution; not just with each other, but any of the ideas, beings, and structures that we may carry with us on this journey (Bawaka Country et al 2016: 470). No thing is ever independent of its normative position in the world (Philippopoulos-Mihalopoulos 2013: 36). By remaining reflexive in our engagement with each other, we may better understand our positioning and agency within the structures that privilege some knowledges/relations/beings over others.

Further, I need you to help hold us to account. Many of the tensions with which we engage are fraught with complexity and are muddled immensely by my positionality as a settler scholar who lives and works on unceded Wurundjeri Country. The destructive path of the laws I carry with me has been well documented and critiqued. As famously declared by Sir William Blackstone (1765), the common law is the 'birthright' of every English subject. It is attached to their bodies, 'so

wherever they go, they carry their laws with them' (Blackstone 1765: 106). As the soldiers, prisoners and settlers of the British Empire moved throughout the new colony of New South Wales, 'common law stretched into "desert and uncultivated lands"' – an imagined and fictitious *terra nullius* that would both justify and mask a violent invasion of Aboriginal and Torres Strait Islander Country (Barr 2017: 229). While the legal fiction that justified the invasion of Australia was overruled in *Mabo v Queensland (No 2),* the designation of *terra nullius* continues to frame settler law's relations to the fragile and complex, yet rich and vibrant lands upon which they are imposed (Davies 2017: 127). Blind to the rich tapestry of legal relations that emerge from the land,[5] the complex relational understandings that underpin Indigenous cosmologies remain largely unconsidered by, and unknowable to the settler legal system, as well as to non-Indigenous people, like me. When engaging in work that seeks to agitate or open up settler institutions to better relations with Indigenous ways of being, it is vital to not only be wary of any risk of appropriation, but also remember we cannot escape the violent and destructive subjectivities that underpin their foundation. While work must be done to move beyond these understandings, we must recognise and confront an incommensurability between rescuing settler futurities and the aims of decolonisation (Tuck and Yang 2012: 35). Decolonisation is not accountable to settlers and is thereby not predicated on resolving the shaky foundations of settler law. The usefulness of agitating settler law as part of a wider decolonial project emerges only insofar as it allows space for plurality and the (re) centring of displaced legal worlds, while accommodating difference that facilitates Indigenous-led thinking without subsuming it into its own universal frameworks.

The very context within which this work exists may make this task difficult. I work in an academic system that values publishing as a performance and ranking metric, and engages in extractive modes of knowledge production that obscure one's privilege and complicity in colonial violence (Hernández et al 2021). I am in the early stages of my career, and, for the time being, pursuing academia. I have thought long and hard about my motivations for publishing this piece.

It began as a paper for a legal research unit as part of my JD studies, and the process has proved an invaluable learning experience for me to develop how I position myself in relation to law. However, I continually question the extent to which my motivations for developing this piece further towards publication are rooted in a desire to help facilitate decolonisation, or primarily serve to further my own career progression in a way that may be extractive and appropriative. Because of my positionality, I cannot fully absolve myself of this tension.

On many levels, there is a real risk that this piece may further perpetuate the extractive and destructive mechanisms that underpin colonial mentalities. There remains a fear that this process may constitute little more than a 'settler move to innocence' that Tuck and Yang (2012) rightly condemn, and an anxiety on my part that publishing this work opens myself up to criticism of this kind. However, the unsettling nature of this process and discomfort that I may feel as a settler is something I must neither dwell on nor centre, but instead render productive (Slater 2017, Watson 2007). By sharing this work, and inviting critique/criticism, I am inviting accountability for the way in which I and other settlers may think through and reimagine our own subjectivities. The anxieties which might lead me keep these processes private run counter to my obligation to give my best effort at addressing and redressing the injustices of the settler order which privilege me. I must accept the discomfort involved in this and hold myself accountable to communities that this work seeks to assist.

As such, it is important to be clear about the processes by which I have attempted to ensure that this work best suits its stated goals. Firstly, acknowledging that we are 'all connected to structural processes that produce injustice' but that 'we are not all equally positioned' formulates a sense of ethical responsibility; one that requires us to first own 'our moral and political accountability for our positioning and complicity in systems that are unjust,' and work towards dismantling them (Bawaka Country et al 2019: 691). Secondly, by acknowledging and tending to genealogies of thought and action that can advance a decolonising and anticolonial ethos, we can work to manifest and

nurture the communities of thought that should be recognised for their intellectual and emotional labour (Hernández et al 2021: 841). The materials that may help us to shape and live with our own law may be closely connected to Indigenous Laws and Cosmologies. While the content of Indigenous Cosmologies and Laws will remain largely unknowable for me, we must endeavour to recognise their relations to Western knowledge and the power dynamics that underpin them, while resisting the temptation to subsume and assimilate them into the cogs of the Western knowledge machine. We think about these relations not just to share knowledge, but because the connections themselves are important (Bawaka Country et al 2019: 964). What we do with these connections, and where we go to thereafter, remains vital in ensuring that we are engaged in careful and responsible knowledge practices and lawful relations.

Ultimately, we must always continue to ask difficult questions about whether we are welcome, whether we should be doing research in particular contexts; and how we can honour any knowledge that we co-create; who it can be shared with, and ultimately how it can challenge ourselves and the immensely imbalanced social structures in which we are situated (Hernández et al 2021: 901). To do this, we can take inspiration from the 'lifework' of the Creatures Collective, a group of researchers comprised of both Indigenous and non-Indigenous authors, which recognises that the relationships formed through research must foster more-than-human accountability, reciprocity, and capacities for resistance. These relationships constitute living protocols – ones where we must learn and honour all laws, while tending to and caring for more-than-human relationships. We must also prioritise healing and repair in the wake colonial harms, while acknowledging and working through the disagreements and tensions that emerge from generating knowledge. We cannot just co-create or 'disseminate' knowledge; we must also take good care of it (Theriault et al 2020: 901, 983).

With this in mind, how might it be possible to respond with and provide space for the relational ontologies which may enable more hopeful foundations for settler law? How might we generate legal

spaces of more-than-human relationality when the 'whole settler project has been – is, and will be – to destroy and displace' such relationships (Bawaka Country et al 2019: 696)?

The ability to recognise our relationality and positionality is crucial, as is the ability to respond. We do this first and foremost by learning how to notice and how to pay attention to and care for the vibrancy of more-than-human becomings; but also by engaging in 'the concrete work of healing and sustaining the relationships' that settler laws continually act to destroy (Bawaka Country et al 2019: 696).

> *Together we take response-ability for this journey (Barad 2007), and the knowledge that may emerge from it.*

Differently positioned, we are obliged to use this knowledge to challenge and derail damaging, destructive and extractive colonising discourses, while remaining accountable to our relational communities. Wherever I fail to do this, you should hold me to account.

> *We cannot do this alone.*
>
> *We have to go together.*

Indigenous knowledge systems and ontologies have respect and legitimacy outside Western knowledge structures. However, if we are to imagine a hopeful future of a settler legal system that is more *careful of*, *responsible to*, and holds itself in *better relations with,* the land on which it is situated (and everything which emerges from it), so too must the mechanisms of knowledge that form the intellectual building-blocks for these futures.

> *It matters what ideas we use to think other ideas* (Haraway 2016: 12).
>
> *We must be answerable for 'what we learn how to see'* (Haraway 1988: 583).

6 Reimagining Settler Law

So far, we've engaged with some of the tensions that emerge from attempting to reconfigure settler law. It is at this point that we attempt to do just that, embarking on a nomos-building journey that shares one of many possible approaches of imagining law otherwise.

A Into the Lawscape

Our journey begins in early May; smack-bang in the middle of what we might call Autumn. It's an uncharacteristically sunny day among what has been an extremely wet few weeks.

The warm glow of the midday sun, despite hanging quite low in the sky, fills us with a radiance that gets harder to hold onto as the days get shorter and colder.

To make the most of it, we decide to take a stroll along the Merri Creek, a meandering tributary of the Yarra River that runs its way through the heart of the northern suburbs of what is now Melbourne. We wander slowly, trying to notice as much as we can, all the while fundamental jurisprudential questions stew in our minds:

What is law?

Where might we see it?

Our walk is filled with sites that have been influenced by law, sites that appear before us before we even get down to the creek. As we head towards the creek, we see streets filled with heritage overlay Victorian era terrace houses, each block divided by alternating tarmac roads and cobblestone laneways that are lined with the crispy crimson leaves of English plane trees. Pigeons – the 'creatures of empire' that travelled with European colonists all over the world, perch on the power lines above us (Haraway 2016: 15). To get down to the creek's banks we head through an underpass as a train passes overhead. 'Cyclists Dismount: Pedestrians ahead,' we read.

As we emerge out the other side, the low notes of the train's wheels echo along the creek banks; the wooden slats of the train tracks rattle with rhythmic candour, while the high-pitched harmonic squeals of metal against metal fill the valley with a piercing whistle.

Then, we meander along the creek, as an icy breeze blows atop the water, carrying with it a musty scent akin that emanates out of a nearby stormwater drain. Despite the odour, the water looks surprisingly clean and fresh – glistening in the sunlight as it gently cascades over a rocky bed; etching an ever-deeper path through the tall, jagged basalt cliff-

face that we overlook.

The banks are lined mostly with grasses, eucalypts, and wattles. The occasional cactus shoots up out of the exposed cliff-face, sticking out like a sore thumb. Further in the distance, we see a fenced off area, just above the floodplain. Above it, a billboard reads:

THE WILDS
Merri Creek
FIFTEEN CREEK FRONT HOUSES
3, 4 & 5 BEDROOMS FROM $1.9M
A Collaboration with Nature…

There's no doubt that what we see, smell, and hear, is shaped by law in some way. Environmental protection legislation, land zoning laws, council bylaws, stormwater management regimes, heritage law – the material consequences of law are all around us. However, here, we are far away from all the resources with which we'd normally understand settler law. Far from the textbooks,[6] the law reports, without a statute in sight. How then, might we bring in what we hear, see, smell, and feel into our jurisprudential discussion:

What is law?
Where might we see it?

I give some legal grounding to our noticing by turning our attention to the work of Andreas Philippopoulos-Mihalopoulos (2011, 2013, 2015, 2021) whose heavily Deleuzian-influenced minor jurisprudence views law as inherently spatial. Law exists within an 'open ecology' that combines 'the natural, the human, the artificial,

the legal, the scientific, the political, the economic and so on, on a plane of contingency and fluid boundaries,' which weaves through and produces the space in which it is situated (Davies 2017: 134). Law exists in its materiality, as an emplaced corporeal normativity that is interfolded within the very being of space and matter (Philippopoulos-Mihalopoulos 2012: 3). For Philippopoulos-Mihalopoulos (2015: 52), we cannot think of law apart from its materiality; from the spaces in which it is situated – any attempts to do so is a gross epistemological simplification, 'or even worse, a disciplinary violence.' To conceive of law, we must understand it through the spaces it helps to create, and in doing so how it holds capacity for 'fragmentation, homogenisation and hierarchical ordering' of such spaces (Shaw 2020: 424-427). While major jurisprudences understand law solely in its concrete abstraction, Philippopoulos-Mihalopoulos' work highlights that such concrete abstractions are tethered to and actively made in the material world; they are ideas and notions that become 'true in practice' – entangling with matter through 'doing and becoming' (Barad 2007, Shaw 2020: 424). Philippopoulos-Mihalopoulos (2013) terms the onto-epistemic tautology between law and space as the Lawscape – and it is through this generative continuum which we can examine and understand law. Our corporeal experiences of law are therefore facilitated by the combination of law's transcendent immateriality with the immanence of embedded materiality (Philippopoulos-Mihalopoulos 2013). The Lawscape is what guides the flux and flow of meaning and matter, as 'law intra-acts within an open ecology of affective forces between bodies moving and encountering each other' (Shaw 2020: 246).

Where then, does such a jurisprudential training leave us on our stroll. Might it help answer our guiding questions: *What is law? Where might we see it?*

In this tradition, Law is space, space is law – the two are mutually constitutive, constantly generating on a plane of immanence; continually interlacing and intertwining within our each and every experience; a fractal infinite plane of embodied regulation, present on every surface, in every object, smell, colour or taste. 'The "where?" of law

can only be answered with an ambiguous "all over."' (Philippopoulos-Mihalopoulos 2013: 35)

We might then ask how our roads, shapes, footsteps, birds, rhythms and land may carry with them particular sets of (often colonial) lawful relations, and themselves hold jurisprudential stories.[7] However, we might also consider what might happen when law slips away; retreating into the shadows in some sort of vanishing act (Sheikh 2021: 7).

Let's walk a little further.

Merri Creek has a long, complex history. Under the custodianship of the Wurundjeri people for thousands of years, it has long been entangled with a multiplicity of human and more-than-human relations. It has also been a frontier for many aspects of the Australian colonial project. You wouldn't know it, but barely two metres in front of that billboard we were looking at lies the site at which *Batman's Treaty,* the only documented time when Europeans negotiated their presence and occupation of Aboriginal lands, was allegedly signed in 1835 (Harcourt 2001). A significant, albeit contested moment of colonial Australia's history. Does anything remain of it?

Back in 2004, on this spot, while doing remediation works, the local council found a concrete block believed to have been used as the base for a plaque, memorialising the site (Romanov-Hughes 2004). We look for it up and down the muddy banks.

We can't see anything,

We search a bit further, meandering through the waist-high overgrown grass. There aren't too many snakes around this time of year, but we stamp our feet loudly just to be sure.

Nothing.

All we see is that damned fence and billboard – the writing now three times as large:

THE WILDS
Merri Creek
FIFTEEN CREEK FRONT HOUSES
3, 4 & 5 BEDROOMS FROM $1.9M
A Collaboration with Nature…

Where might law reside? We wonder.

In the frustrating visibility of that soon to be gargantuan housing development? In the frustrating invisibility of community 87 families who lived in the public housing estate demolished to make way for it?[8] Or in the even greater invisibility of this important historical moment, and the dispossession and violence that it represents? What does it say about how settler laws weave through this space? How they relate to the plurality of assemblages that also make up this 'open ecology'? How about the Wurundjeri laws, the songlines that emerge from this land? Where in these relations might we notice evidence of Law's ecological violence and colonial destruction?

In this world, what is made visible, and what is not,
becomes an important jurisprudential question.

While the bulk of my own legal and philosophical training lies squarely within the continental Western tradition, we can see that much of Philippopoulos-Mihalopoulos' sentiment of a relational and material law is mirrored in Indigenous jurisprudences. For

example, Kombumerri/Munaljahlai scholar Christine Black (2009: 202) emphasises how a Law of Relationship emerges from Country; a relational jurisprudence that connects people, land and cosmos – exploring the 'consolidation of the interpenetration of the liminal space between the world of the seen and unseen.' Further, Wiradjuri scholar Mark McMillian contrasts the abstracted majoritarian understanding of Western law as existing beyond the corpus of the human with the Wiradjuri practice of holding law (Balint et al 2020: 44,54). Through bringing different ontologies of law into conversation with each other, we are invited to think through the ways in which settler law and pluralist Indigenous legal systems may interact with each other. It is clear that Philippopoulos-Mihalopoulos' Lawscape is reflected in some relational Indigenous ontologies, but what might be gained from bringing these two separate traditions into conversation with each other?

For Ngarrindjeri scholar Daryle Rigney, at first glance, Indigenous ontologies do not mesh well with majoritarian European traditions. However, both Indigenous and Western traditions are diverse, and a 'carefully protected alliance of culturally diverse perspectives can be a collaborative act of postcolonial transformation' (Rigney et al 2015: 346). By bringing traditions into conversation in a way that seeks not to create hierarchies, but is instead attuned to the production of ethical futures of mutuality and relationality, we can see a how minoritarian understanding of productive difference can be used to assist decolonial aims (Bignall 2014). However, to do so requires constant reflection of the dynamics at play when genealogies of thought are brought together. Recognising that Indigenous thought has agency in its own right, rather than utilising it through a process that 'mirrors a Western imperialist experience of self-development' requires 'finding ways to enhance relational agencies in the service of mutual and shared benefit, rather than elevating (particular) human agencies in the mastery of non-human or "less-human" others' (Rigney et al 2015: 45).

How might this work in practice?
Let's head back into the Lawscape.

We ponder one of the problematic assumptions inherent to one of settler law's most important concrete abstractions: property. These fifteen creek front houses; abstract; transportable; fungible; reducible to a dollar figure. We wonder what further destruction will result to this lovely 'natural' environment when they are finally built? What communities and relationships will form in the new, highly segregated public and private 'flagship' housing estate this site will become?[9] In what way can does this constitute a 'collaboration with nature' when the legal institutions that support it do fundamentally the opposite? Further still, how might we reconcile the institution of settler property law while seriously engaging with the fact that decolonisation is ultimately about the return of land to Indigenous people? For Nicole Watson (2019) '[l]and justice has always been at the forefront of demands voiced by generations of Aboriginal and Torres Strait Islander activists. Land is the bedrock of identity, culture and law.'

I'm sure the people that move here will enjoy this creek as much as I do.

But what about the laws, and their affects we don't perceive? The Wurundjeri songlines? The embedded materialisations of repetitions of colonialism's violence that go right over my head as a settler (Shaw 2020: 425), and the 'bedrock of identity culture and law' that emerges from the land on which we stand (Watson 2019)? Is that fence a materialisation of legal spaces that continues to facilitate the dispossession of the Wurundjeri from their land and their culture (Keenan 2009)?

Throughout my legal training, I have had almost no formal exposure to Wurundjeri Law. However, a Welcome to Country is the most common form of Wurundjeri Law I have experienced as a non-Wurundjeri Person living on Wurundjeri land, and I can use it to frame how I might relate lawfully to Wurundjeri sovereignty and think through what is required of me to enter into lawful relations with that sovereignty. For Wurundjeri Elder, Aunty Di Kerr, a Welcome to Country symbolises 'safe passage, and to agree to the laws of Bunjil; not to harm the land or the waterways and not to harm any

of Bunji's Children' (Phenomenom 2018). She implores visitors to 'tready lightly on [her] country … [for] when you look after Country, and look after each other, Country will look after you' (Phenomenom 2018). Recognising this ceremony as an invitation to be in a sovereign relationship to Country, its people and laws (Porter 2018: 239), we are reminded that when we move through space, we do so in a way that is webbed into constant relation with multiple laws; those carried by Country, and those carried to this land through colonisation.

How then, might I consider my perceived obligation under Wurundjeri Law to 'agree to the laws of Bunjil' and 'do no harm' while knowing I remain a subject of and train myself in a legal system that so often does the opposite? By requiring of ourselves increased attention to our surroundings, we might foster better meeting-points of lawful relations between sovereignties; and develop an 'individual and collective legal literacy' that allows us to appreciate our relationship to the laws that are activated and available to us whenever we move through space (Barr 2017: 230).

By stepping out of a formalist understanding of law and into the Lawscape, we can notice how law makes worlds through its aesthetic, representational and material features (Philippopoulos-Mihalopoulos 2015, Shaw 2020). We've seen how the settler city as a white, capitalist space entangles with law to enclose, expropriate, hide and dispose; pervading our capacities to sense, interpret and relate to the world and the plurality of legal systems that exist within it (Shaw 2020). However, this alone is insufficient to meet the demands of decolonisation.

Going further, we can consider the Lawscape as not solely an idea, but an act. The generative role of the jurisprudent in 'lawscaping' – moving through space attuned to the ways in which we create and move within assemblages of (lawful) relations (McVeigh 2017: 176) – enables us to reposition ourselves in relation to certain spaces, ideas, and affects. With awareness of how we bump into and move across other immanent agential forces, we can notice ways which we might affect change amongst our communities; in a way that takes advantage of human omnipresence without remaining 'fooled by the superficial

impression that to be everywhere equates to be central to everything' (Philippopoulos-Mihalopoulos 2015: 63). Any generative conduct brings with it a responsibility that is fully spatialised; 'the responsibility of situating one's body within an assemblage of indistinguishability' (Philippopoulos-Mihalopoulos 2015: 63). Therefore, if we are to engage in 'fuzzy thinking' with settler law (Naffine 2009: 9) and consider ways in which it might be better suited to facilitating decolonisation, we must hold onto the possibility of engaging in fruitful redescription of law, and the methods by which we use to understand it. This exercise presents one of a plurality of ways in which we might do this, and through that plurality we can reopen questions of jurisdiction, and the plurality of laws and legal futures, imagined and real, past and future (Goodrich 1996: 4).

B Towards Novel Futures with Law?

As we enter the last stage of our journey, we begin to wonder – how might we use any of this to conceive of a decolonial future with law? Through entering the Lawscape, we've certainly broadened the horizons of what may be brought into the jurisprudential realm, but this doesn't absolve us from the harsh realities of the ongoing colonial violence and ecocide that settler law facilitates.

We are armed with a greater understanding of how law may be interwoven with matter; embroiled in an atmosphere of excessive affect; exerting influence over bodies and assemblages in ways that we might not fully understand, nor be able to control. However, we contemplated that assemblages themselves are bodies; and each body – either individually or collectively; has a degree of power to shift the assemblage one way or another. As a result, might there a chance that the mere act of navigating the Lawscape, with ideas of hopeful transformation in mind, might lead to the kind of change in the law we might seek – a kind of Spinozan freedom – a self-actualisation of each body beyond the constraining and destructive acts of law? (Philippopoulos-Mihalopoulos 2015: 62)

Such an approach, certainly on its own, is not going to deal urgently

with the problems of law we have articulated. Every day, Aboriginal and Torres Strait Islanders continue to be deprived access to their lands, their laws, their cosmologies; incarcerated at obscene rates. These concerns require immediate activism and reform each and every minute. Yet, if we are to ever move beyond that reality, with the knowledge that all forms of social life must be understood immanently through law (Shaw 2020: 426), it is clear we need ideas about how future of settler law to carry with us.

To begin, we might consider the nature of the earth-human relationship underpinned by Western culture: that of a radical discontinuity – a detachment from a 'nature' of which we seek universal control; a mode of consciousness that establishes an extractive and destructive relationship towards the planet's ecological systems, species, and human futures; and think of a way that we might reimagine this with the law in mind (Rigney et al 2015, Theriault et al 2020). This work is already being done in unique and successful ways led by Indigenous thought and activism. For example, Daryle Rigney et al (2015: 335) demonstrate the techniques used by the Ngarrindjeri Nation to bring Ngarrindjeri 'ways of knowing, being and doing' in conversation with the Australian legal system in 'a contemporary hybrid form that is accessible to non-Indigenous negotiation partners.' The nation-building techniques of the Ngarrindjeri nation that constitute de facto exercise of Indigenous sovereignty, irrespective of *de jure* non-recognition of that sovereignty in the settler-Australian legal system demonstrate that bringing plural sovereignties and their underlying ontologies into conversation with each other can constitute a 'collaborative act of postcolonial transformation' (Rigney et al 2015: 346).

To assist such processes of decolonisation led by Indigenous thinkers, there is space for all to focus on developing methods that help navigate and facilitate points of conversation and agitation. If 'lawscaping' is a jurisprudential act that might help us to recognise the immanence of law and engage in its agitation, it can invite us to contribute to world-building that might better suit the plurality of beings; relations and understandings that weave through the localised

space it considers. However, we cannot ignore the tensions that go with it – the structural power imbalances, ongoing dispossession and destruction that weave through the spaces in which we move – and the risks of appropriation and extraction as we consider what we can learn and how we can relate to other worlds.

We must think critically and reflexively about how such a process engages with the wider project of decolonisation, and how these relations are affected by our respective positionalities. Tuck and Yang (2012: 7) make clear that decolonization in the settler colonial context must involve repatriation of land, alongside 'recognition of how land and relations to land have always already been differently understood and enacted.' The act of lawscaping allows me to notice and feel how settler laws displace and unsettle others, while inviting ways of doing law otherwise. However, this must be done in combination with the forms of activism and practical reform that facilitate the repatriation of land and allow for Indigenous self-determination.

For a settler, to think with the lawscape to help further decolonial aims, is to think through how such agitation may constitute an interruption, a space to explore how one is situated to the possessive logic of settler colonialism (Moreton-Robinson 2007, Slater 2017: 13). By continuing to pose questions that invite further reflection what brings communities and laws into relation, we might make space within settler law that can better account for plurality and accommodate difference.

Our journey has been one guided by exploration, curiosity and a willingness to notice; both our own affectual experiences, and how we relate outwardly – to people, communities and ideas. What emerges from these processes of questioning, is a recognition that reimagining law is a task of endless negotiation (Grosz 1995), both within oneself and outwardly, that must sit with and welcome the discomfort that emerges from relinquishing control and sharing space with other ways of being.

7 The Lawscape Remains

In my last summer of law school, the air was no longer thick with crisis.

It was wet.

Soaked.

This time, a terracotta roof provides us with the shelter we need.

We could hear it before we could see it.

At first, a soft gentle shower peppered the pavement; a relaxing rhythm reverberates throughout the yard, lulling us off to sleep.

A guilt-free slumber.

Yet with it, came mud; musty becoming mouldy.

Viscous. Overpowering yet diminishing.

Impossible to ignore.

Endnotes

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2 See Gramsci (1971).

3 As Eve Sedgwick (2003) powerfully articulates when conceptualising her reparative ethos. See also work discussing Indigenous futurities, such as Goodyear-Kaʻōpua (2018), Bishop and Tynan (2022) and Tuck and Yang (2012).

4 See Cover (1983).

5 See Christine Black (2016; 2010).

6 Unbeknownst to me at the time, my first foray into jurisprudence was when, on my first day of law-school, my tort professor: *What is a tort?* His answer – *a tort is whatever is in the tort books*. Looking back at it now, this poignant moment marked the entrance into my positivist indoctrination.

7 For other forays into the realm of minor jurisprudence, see Barr 2013, 2015. See also Haraway 2008 for a discussion on coloniality and pigeons; Hassan 2009 and Wright 2020 for their work on rhythms and time. See also Black 2010 and Graham 2011.

8 The empty lot at which we are staring was formerly the Walker Street public housing estate. It was home to 87 residents until the Victorian government decided to demolish the estate and contract with a private developer to rebuild a range of new private and public residences. For a discussion of the impact of this decision on the community of Walker Street, and public housing more generally, see Lucy McMahon's (2022) documentary *Things Will Be Different*.

9 For further discussion on this point, see Legge (2019).

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