Raw Law: The Coming of the Muldarbi

and the Path to its Demise

Irene Margaret Watson

In writing this thesis I have engaged in a personal struggle to decolonise myself, so it is written in a style which is part of that ongoing process of decolonisation, it is a writing of a song that still sings within. A song circles, so does the written form it does not always follow the rules of grammar or 'normal' academic structure, although I would argue the ideas and arguments are there, they are perhaps just positioned differently.

A thesis submitted for the degree of Doctor of Philosophy of the University of Adelaide

In the Faculty of Law

May 1999
This thesis is about the origins and original intentions of law; that which I call raw law. Law emanates from Kaldowinyer, that is the beginning of time itself. Law first took form in song. In this thesis I argue that the law is naked like the land and its peoples, and is distinguished from that known as law by the colonisers, which is a layered system of rules and regulations, an imposing one which buries the essence and nature of law.

The thesis is a writing from ‘inside’, it is from my Nanga - Aboriginal perspective that I write. In writing this thesis I have engaged in a personal struggle to decolonise. The thesis is written in a style which is part of that ongoing process of decolonisation. It is a writing of a song that still sings within.

I write about nakedness, of naked law, land and people. The loss of nakedness and the clothing of the body, where dress was imposed by force and domination, is the movement away from being naked in body and in law. Terra nullius of the land, law and people, is what the coloniser clothed the land and its peoples in.

Law has a dimension which is spiritual; we believe that we are descended from beings of the dreaming. They are called ngaitji or totems. The ngaitji represent our spiritual attachment to our ancestral beings. Our ngaitji teaches us about the unity we share with all things in the natural world. That is law. The spiritual relationship we have with the natural world is one which is in opposition to a western perspective of the natural world being like a supermarket where all things become a commodity for use and consumption. The colonisers have no concept of the natural world as a relation. The use the land as a commodity has the same meaning to us as the consumption of one’s mother.

I write about the historical and contemporary faces of the muldardi and its past and continuing policies of genocide against indigenous peoples. I also discuss how the mainstream in Australia cannot see the muldardi behind the masks it wears. The masks are many; some of them are protection, assimilation, native title, cultural rights, and international laws. Native title is a muldardi because it is a killer of raw law. Native title is ‘known’ to recognise indigenous rights to land, but it is an illusion. Instead, it will open our lands to further rape of their natural resources.

In this thesis I explore the availability of space away from the genocide, and the possibility of re-establishing an indigenous horizon. In finding that space I journey through the trauma of all peoples to include those who call themselves non-indigenous; I look at issues of co-existence, treaties, and international law, and its development of an indigenous rights discourse, and how it is we can travel a path of peaceful co-existence.
# Table of Contents

## Chapter 1: Kaldowinyeri – Munaintya
1.1 In the beginning ........................................... 1
1.2 We are the natural world it talks to us ............... 7
1.3 Being of cycles ........................................... 11
1.4 Maldarhi the enemy I seek to defeat ................ 20
1.5 Voice and being a song ................................ 23
1.6 Land and peoples ........................................ 30

## Chapter 2: Raw Law: the law of song and ruwe
2.1 Introduction .............................................. 35
2.2 Being the Law ............................................ 37
2.3 Future cycle of Law and its relationships ........... 37
2.4 Murrabima ................................................ 40
2.5 The law is in the song ................................... 41
2.6 Law is in the land ....................................... 43
2.7 Laws relating to land ................................... 49
2.8 Law is the song of the collective .................... 55
2.9 Can you kill the law? .................................... 58
2.10 Law and secrecy ......................................... 60
2.11 Learning the Law ....................................... 62

## Chapter 3: Nakedness: the coming of cloth
3.1 Introduction .............................................. 79
3.2 Naked and invisible ..................................... 82
3.3 The ragged cross and the ragged clothing .......... 83
3.4 Shame a form of extinguishment ..................... 88
3.5 Enter the church, exit naked ........................... 94
3.6 Dressing the law: in rules and regulations .......... 96

## Chapter 4: Who Am I?
4.1 Introduction .............................................. 101
4.2 This is my country this is me ......................... 105
4.3 The story –song is who we are ....................... 109
4.4 Anthropology
4.5 The kinship construction of Nunga identity and culture
4.6 Am I the enemy?
4.7 Coloured skin
4.8 The process of making invisible
4.9 And who are you?
4.10 The universal order
4.11 Exclusion on a global stage
4.12 Self-determination
4.13 Draft Declaration of the Rights of Indigenous Peoples
4.14 Peoples not populations
4.15 Who's your People?

Chapter 5: Dressed to Kill

5.1 Introduction
5.2 The theory of emptiness: terra nullius and genocide
5.3 Genocide where it is?
5.4 Protection, segregation, journey to death
5.5 Assimilation final absorption and the imposition of the national pattern of the oppressor
5.6 Forced removal of children and the destruction of the national pattern of the oppressed group
5.7 Cultural genocide and the destruction of the national pattern of the oppressed group
5.8 Kumarang a case study in cultural genocide
5.9 Genocide in your face: its not happening
5.10 Genocide the celebration of it
5.11 Where can our stories be told in a forum which will not whitewash the blood and act as though they never heard a scream?

Chapter 6: Power of the muldarbi

6.1 Introduction
6.2 The muldarbi power of right knowing
6.3 The culture of zapu, what we call raping the ruwe
6.4 Women's law
6.5 Seeing my women is not a white one
6.6 And when white women struggle for equality I have to ask: equal to what?
6.7 The muldarbi has many faces
6.8 Securing protection from the muldarbi
6.9 A guide to steering clear of the muldarbi
Chapter 7: Indigenous ways of being: a future

7.1 A Circle of difference
7.2 Knowledge
7.3 Song in the land of the mudarbi
7.4 Can we come to peaceful co-existence?
7.5 Australia a place of reconciliation?
7.6 Naked black bodies, love not hate
7.7 Lawful and spiritual obligations to the earth

BIBLIOGRAPHY