



Kaiela Institute, gundja wamadaman woka Kaielthban, Yorta Yorta

Kaiela Institute is located on the lands of the Kaielthban of the Yorta Yorta.

Yoorrook reference: Land water sky

‘ ... prisoners [convicts] were obliged to come here against their will, but immigrants [including those who became the squatting class] came of their own accord, to rob the black man of his land and [they] gave him no food ...’ –
 (comment from an Aboriginal man in 1843 to a convict, cited in Kristyn Harman, *Aboriginal convicts*, 2012, UNSW Press).

This Submission on ‘Land Water and Sky’ is made to Yoorrook Truthtelling Commission Reference on behalf of Kaiela institute.

Kaiela Institute will be making a more detailed submission about the implications in our Economic Prosperity submission in March.

In this submission we address the following matters:

1. The colonial system ensured that all First Nations economic assets were stolen without recompense or provision of any other compensatory resources to maintain their livelihood.
2. The imposed legal and reserve system destroyed the supportive value of communities and families and effectively imprisoned and prevented First Nations people from participating in the growing economy.
3. The imposed legal and financial systems discriminated against First Nations people so that any economic support would only be at the poverty line at best and this was intended to facilitate control.
4. Institutional structures like banks combined with the informal colonial cultural systems of systemic racism to exclude First Nations people from any economic opportunities.
5. Many of the systemic, institutional and cultural barriers still operate in a discriminatory manner today

In what is now called Victoria Aboriginal people have been subjected to wave upon wave of land and water theft since colonisation began.

This theft entailed the permanent deprivation of millions of acres of land and all the associated creeks, rivers and wetlands, and it began even before the colonial government approved this level of dishonest and cavalier appropriation.

Arguably the culture of land theft in Australia had already started to create the conditions of intractable intergenerational poverty amongst Aboriginal people by the late 1830s. Aboriginal people clearly appreciated the scale of the theft of land and waters as they responded across the colony of NSW in the years 1842-44 in a seemingly coordinated way with what was described by commentators as 'The Rising'.

In respect of grants made by governors in 'NSW' it is noteworthy that Governor Bligh granted none in the years 1808-9 and his replacement Paterson granted 15,064 acres and 66, 641 acres to the Rum Corp immediately after Bligh was overthrown.¹ Bligh was overthrown for that and other reasons, but his resistance to the land amassing ambitions of the Rum Corp was central.

It is well known that the colonising military officers and others all took advantage of every opportunity to obtain 'grants' of land. They and others made it impossible for Aboriginal people to continue in occupation and use of the country that they had carefully managed for thousands of years.

Very little if any money exchanged hands for the grants that were made. Land in NSW was virtually a 'free good' for well-connected and/or ambitious and avaricious Europeans.

Aboriginal people were not just killed and forced off country (instances of this are documented in the selective publications found in the Historical Records of Australia) they also found it impossible to access river systems as they were driven off the country that abutted water sources. The colonial land and water access theft associated with the Hawkesbury River is a good example of how this worked.

Governor Brisbane 'granted' 199,294 acres (in 1823) and 55,091 acres (in 1831) to members of the Rum Corp and their associates.

Between those years – in 1824 – Brisbane also declared martial law against Aboriginal people around the area now called Bathurst. Remarkably no 'report' was ever provided about the extent of the purge of Aboriginal people undertaken. 1824 was the year a grant of 1 million acres was made to the Australian Agricultural Company (John Macarthur's 'shadow' directorship through his son/nephew).

The story of the Henty family is instructive.

Because of his asset base Thomas Henty was 'entitled' to a grant of 84,413 acres in WA. He sought to 'swap' this unproductive country for acres in Tasmania but a change in government policy meant he would have to 'purchase' it from the government. Henty rejected that direction. At the time he was told the 'free gift' of land was no longer available there was said to be very little 'unoccupied' land left in Tasmania. This was the case by 1832. That gives an indication as to how much land had been gifted to colonisers.

¹ Andrew Seltzer (LSE), Martin Shanahan (Uni SA) and Claire Wright (UTS) - all working through the ANU Centre for Economic History - detail the extent of land grants.

In Victoria, after unsuccessful lobbying of the government in the UK (to which the Hentys, but not Aboriginal people, had ready access) the Hentys stepped off their boat in the western district, to take up what was described as 'some of the 'enormous area of empty land' in the 'almost unknown' Port Phillip area (quotes from the Australian Dictionary of Biography - Thomas Henty entry published in 1966).

Ignoring the government's clear rejection of their claims, the Hentys, guided by Major Mitchell's observations about good land, 'squatted' on the rich Indigenous country around the Wannan River.

The Hentys went so far as to complain when they, as 'pioneers' actually had to bid at auction on land at Portland when the town was created.

By 1849 the Hentys won their battle with Governor Gipps and were 'compensated' for the loss of the Aboriginal people's country that they had annexed free of charge.

Thomas Henty died in 1839 and it was remarked that his 'dying days ... had been shadowed by anxiety' about the status of these land claims. The Hentys had taken possession of Indigenous country without compensation but expected it themselves. As a result of the availability of Indigenous land to them the Hentys held 60,000 acres at Muntham, another 14,000 acres called Merino Downs, 12,000 acres at Sandford, a mansion in Melbourne called Offington, and another mansion called Findon. Merino Downs continued in the family right through to the 1960s. Family members – there were seven sons, were elected to represent squatters' interests in the Victorian parliament and Tasmania, were employed in banking, church work and education, and one was appointed Colonial Secretary. This provided them with the opportunity to take good care of their interests.

The exposure of Aboriginal people in the Portland district to violence, mass killings, and rape, at the time the Hentys were making their first fortunes is well documented.

Across the 1830s and 1840s Aboriginal people were being killed to remove them from country and to delegitimize their claims to land by squatters who, apart from committing mass murder, knowingly 'misappropriated' from the Crown (not Aboriginal people) hundreds of thousands of acres without any colonial legal sanction.

McKillop and Smith condoned (if they didn't actually perpetrate) the murder of at least 40 Aboriginal people by their stockman Frederick Taylor at a place that is now called Glenormiston in the western district. Taylor fled the country fearing prosecution as employers and authorities turned a blind eye.²

Squatter Niel Black assumed this western district stolen 'run' in the full knowledge of the killings that made it 'safe' for him to occupy it. Black diarised his knowledge of this singular (but not unusual) shocking act of dispossession. He then linked the considerable effort he went to to retain his 'squatted run' in his diary entries where he spoke of the land as being 'magnificent', better than anything he had ever seen in his home country, Scotland.

Although Black wanted those who read his diary to think better of him than of McKillop, Smith and Taylor, he also wrote of an occasion when he and other men galloped down on a number of Aboriginal women on country, terrifying them to such an extent that one of them

² This also occurred in respect of the principal Myall Creek massacre perpetrator, when Fleming the squatter who led the mass killings avoided the execution of a warrant and escaped prosecution while apparently living quite openly at the Hawkesbury River.

held out her child in entreaty. Black also diarised an event where he and others destroyed a hut which was occupied by local Aboriginal people.

Black and others who acquired their interests by squatting on Indigenous lands and waters was open about how extraordinarily wealthy this system of occupation made him and other squatters. There is nothing unusual or unique in his story.

And the theme is?

Kill people. Terrify them. Destroy their means of taking down food. Smash their housing. Remove them from their country and do it with violence and threats. Then, take over country without having to pay anyone for it, and turn it to massive profit.

Up towards the Ovens in the north-east, the Faithfull brothers (the sons of a member of the Rum Corps who had himself been given land grants in NSW which he called Springfield after the rifle), were overlanding 6000 sheep, destroying Aboriginal people's country during a drought year in 1838.

Having offended against the traditional owners in some undescribed manner the Faithfull party were met with summary justice themselves at the Broken River or Winding Swamp at Benalla. There, 7 of their stockmen were killed by an Aboriginal reprisal party which had followed them from the Ovens River. Almost immediately a party of Europeans gathered, and mounted and armed, they pursued a group of Aboriginal people across the plain near Wangaratta where according to John Bourke, the mailman at the time, they 'riddled' them with shot, followed them to the river and shot those who went into the water.

The person who led that charge was Peter Snodgrass whose father had briefly served as Lieutenant Governor in NSW. During his appointment he authorised the mass murder of hundreds of Aboriginal people by Major Nunn at and around the Waterloo Creek in January 1838. Nunn was never charged or tried for these mass killings. Nunn's murderous campaign preceded by a few days the murders that were perpetrated at Myall Creek for which eventually a number of whites paid with their lives after being convicted of murder at a Supreme Court trial. The main street of Benalla – Nunn Street - is named for him.

One of the Faithfull brothers was later to write to La Trobe and record yet another mass murder around 1839, this time perpetrated by him and his men. He said the shooting went on all day (Faithfull - Letters of Victorian Pioneers). In and around Euroa there is a Faithfull Creek and a number of towns have streets named for the Faithfull family. In Seymour there is a memorial to 'pioneers' and one of the Faithfull brothers is celebrated.

Around these years – 1838-40 – others drove massive flocks of sheep across the north-east, destroying the productive pre-colonial capacity of the land, fouling the waters of rivers and creeks, killing Aboriginal women, men and children, and generally hunting them from country. Munro at the Campaspe murdered a number of people (this relates to reports that we know about).

Snodgrass, like so many other colonial squatters, was committed to obtaining land and waters as a free good and to the avoidance of risk at all cost, but he was also just routinely committed to the theft of Aboriginal people's land. He was the person who in the 1850s forced the resumption of the Acheron Aboriginal reserve – land that Aboriginal people had specifically sought as a 'reserve'. He had this productive 'good' country gazetted to a squatting mate called Jones (see Diane Barwick, Coranderrk). The Taungurung have only now had that country returned to them in 2023. They had to buy it.

In the 1860s and 70s in Victoria grants of 37,023,093 acres (1862) and 19,531,083 acres (1878) were made to non-Aboriginal people. While some of these grants were 'purchased' Indigenous people were not the beneficiaries.

Land Acts in Victoria in the 1860s, intended to stifle squatters' expansion/stop them holding onto their 'runs', were spectacularly unsuccessful. These Acts were never intended to remediate the theft of land from Aboriginal people as at the same time the government was resisting and cavilling at expenditure on those Aboriginal families which had survived the early colonial expansion.

A corruption scandal in the Victorian parliament in the early 1860s exposed the level of graft associated with the appropriation of Indigenous people's country in Victoria. Politicians and others paid other politicians for their votes to protect squatters 'entitlements'. Snodgrass, referred to above, who had parliamentary status as both a MLC and MLA, was engaged in and possibly drove this corruption. He died before findings of corruption were formally made against him. His daughter married the son of 'Big' Clarke and Janet Clarke Hall at the University of Melbourne is named for her largesse with the funds that squatting accumulated.

After 1870, 7,745,000 acres were 'selected' in Victoria. The State Bank was created to assist selectors in these acquisitions. If Aboriginal people gained any country through selections it was an accident of fate.

This land theft was constant. All of this denied people any sort of economic base associated with land or water. The implications are intergenerational.

Land theft ran in tandem with or was followed by concentration of Aboriginal people on reserves at places which were generally not of their choosing.

Having been stripped of the means to make a living off the land, those Aboriginal people who were held on tiny land reserves were forced to rely on government handouts – the 'ration system'. This was nothing more than a hand to mouth existence which encouraged competition amongst those who were in need, and rations were parcelled out arbitrarily and at the discretion of the petty martinets who 'managed' the missions.

Once Australia federated the commonwealth further stripped Aboriginal people of the capacity to build an economic base or survive without relying on handouts by denying them pensions, child endowment, widow's pensions, and other benefits that non-Aboriginal people were receiving.

The list of discriminatory legislative provisions which operated around the time of federation entrenched Indigenous people's intergenerational poverty includes –

- Aboriginal people were not entitled to the Invalid or Age pension (1908),
- Aboriginal women were not entitled to receive the maternity allowance (1912),

As WW1 came to a close and land grants were being provided to soldiers through the soldier settlement scheme, those Aboriginal men who had fought in the war and who 'applied' for country were yet again denied the means of making an independent living from the land. A particularly well known example of this occurred in the western district when members of the Lovett family applied for blocks which were being carved out of the old Lake Condah Mission. These returned soldiers submitted their paperwork, the applications were delegated by the commonwealth bureaucracy to the relevant local government, and files disclose they never received even the courtesy of a reply. No soldier settlement grants went to traditional owners who had served the country. Local landowners generally well represented on local councils saw to that.

In 1939 in northern Victoria Aboriginal people at Cummeragunja, in protest at the authoritarian brutality of the manager of that country, 'walked off'. They built houses on the other side of the Murray River and in Shepparton at the Goulburn River they formed a community on the floodplain where they were always in jeopardy of the torrents of water that came down the Goulburn during floods.

As they struck out for independence from the oppression of the reserve, mission and bureaucratic systems imposed on them, Aboriginal people were yet again forced into poverty in the 1940s. They were now not just forced off their land and waters and pushed into intergenerational poverty by that means, the impacts of that theft was 'locked in' through commonwealth legislation that authorised their 'management' by petty bureaucrats and denied them access to even the most basic social security entitlements:

- Aboriginal families were not entitled to receive child endowment if 'wholly or mainly dependent' on a government for support (1942),
- an invalid pension or old age pension (if approved) could be reduced or paid to an 'authority' (1942),
- a maternity allowance (if approved) could be paid to someone else for the 'benefit' of Aboriginal children (1942),
- Aboriginal missions could be paid the money if child endowment which was authorised for Aboriginal children ((1942),
- the war gratuity payment to Aboriginal people was 10 shillings per month but others got up to 3 pounds ((1945),
- age pensions or invalid pensions, widow's pensions, maternity allowances, would only be paid to Aboriginal people who sought and obtained an 'exemption' (1945),
- repeating the legislative control of 1942, child endowment would be paid to an authority where the child was being held (1945),
- unemployment benefits or sickness benefits were not permitted to be paid unless the bureaucracy was satisfied as to 'character' or 'intelligence' (1945).

Aboriginal people have survived in spite of being routinely and constantly ground down by the colonial system and all those who benefited from it.

The theft of land and water rights which started in 1788 and accelerated and persisted throughout the following 200 years has denied Aboriginal people an economic base and locked in intergenerational poverty.

Reparations are very long overdue.