

AUSTRALIAN SOVEREIGNTY, INDIGENOUS STANDPOINT THEORY AND FEMINIST STANDPOINT THEORY

First Peoples' Sovereignties Matter

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Much has been written by non-Indigenous Australians in the wake of the 1992 *Mabo* case following its rejection of *terra nullius* in Australia. What is surprising about this literature is the lack of discussion about sovereignty, which is a logical consequence of the *Mabo* decision's conclusion that the basis for Crown sovereignty was incorrect. What little has been said about sovereignty since *Mabo* can be placed into two broad groups. The first calls for various forms of First Peoples' sovereignties, and is made up almost exclusively of First Peoples scholars. The other group is dominated by non-Indigenous people who speak instead of citizenship, shared responsibility, native title, reconciliation, rights, self-management, multiculturalism, colonisation and postcolonial theory. This article is directed to non-Indigenous scholars who write on these topics. It is a critique of their scholarship, notwithstanding its merit to the extent that literature questions injustice, dispossession, genocide, discrimination and colonial policy. The basis for this critique is that this scholarship fails to bring First Peoples' sovereignties to the fore, and for this reason persists as colonial knowledge. To make this argument, the article identifies with feminist standpoint theory and Indigenous standpoint theory to contend that First Peoples' sovereignties must be embraced by non-Indigenous scholars.

Introduction

It is now 20 years since the *Mabo* case held that the legal basis for Crown sovereignty in Australia was based on a fiction – that Australia was *terra nullius*.¹ In the same decision, the High Court declared that it was beyond its jurisdiction to decide questions of sovereignty, which are the domain of international law.² Since *Mabo*, there has been a deafening silence in the legal literature about the non-legitimacy of Crown sovereignty and the so-called 'elephant in the room': the status of Aboriginal and Torres Strait Islander sovereignties.³ Lawyers simply assume that sovereignty is settled as

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¹ *Mabo v Queensland (No 2)* (1992) 175 CLR 1 at 39–43.

² *Mabo v Queensland (No 2)* (1992) 175 CLR 1 at 32.

³ This article adopts the terminology of National Congress of Australia's First Peoples, except where the names and words of other people are used. In most instances, the terms

a legal matter, and improbable as a political issue. Perhaps the media can take some responsibility for this, given the way they have turned their backs on the Aboriginal Tent Embassy in Canberra (other than for occasional derision) and more recently the way they ‘managed’ the 2012 Australia Day protest incident. This saw Australian media focus on the ‘safety risk’ to opposition leader Tony Abbott, then Prime Minister Julia Gillard, and any role played by Gillard’s staffer in the incident without mention of the reason why several thousand Aboriginal and Torres Strait Islander peoples and their supporters were protesting on that particular day.

The silence on First Peoples’ sovereignties outside Aboriginal and Torres Strait Islander communities is all the more puzzling considering how widespread the practice of acknowledging traditional owners of Australian land has become at official ceremonies, during university business and in the mass media. It is even stranger considering both the persistence and extent of First Peoples’ voices drawing attention to the anomaly left by the *Mabo* decision.⁴ The anomaly is that if Crown sovereignty was based on a fiction, then what legitimacy can there be to deny First Peoples’ sovereignties? This article embraces First Peoples’ sovereignties, and questions non-Indigenous scholarship to the extent it excludes recognition of First Peoples’ sovereignties.

A critical reading of post-*Mabo* scholarship would acknowledge Aboriginal and Torres Strait Islander peoples have never relinquished their sovereignties, and instead continue to assert them. Because most scholarship fails to recognise Indigenous sovereignties, it is unlikely to address injustice and is instead a diversion from a fundamental issue – whether inadvertent or not. The main reason for this is a failure on the part of non-Indigenous scholars to question their own ‘whiteness’⁵ – a problem identified elsewhere by many, including Howe.⁶ Howe embraces intersectionality and the work of Alcoff, Crenshaw, Mohanty and Spivak to critically assess the absence of feminist analysis stemming from ‘retreatism’ implicit in the literature critical of the Northern Territory Intervention.⁷ In this article, I start from a similar position to critically assess the absence of engagement with First Peoples’ sovereignties in post-*Mabo* literature, bringing together feminist standpoint theory and Indigenous standpoint theory.

The article commences by noting a gulf between the voices of First Australians and other Australians concerning Australian sovereignties. This gulf is then shown to be a manifestation of the situated knowledge of scholars in terms of their relation to colonial power. Situated knowledge is then problematised through a genealogy of standpoint theory to argue that

‘Aboriginal and Torres Strait Islander peoples’ and ‘First Peoples’ will be used interchangeably. See further <http://nationalcongress.com.au>.

⁴ For example, see the collection of essays in Moreton-Robinson (2007).

⁵ Moreton-Robertson (1998).

⁶ Howe (2008).

⁷ Howe (2008), p 49.

standpoint theory provides a way for scholars to conduct ethical research aimed at transforming colonial power.

The Gulf Between the Voices of First Peoples of Australia and Other Scholars

This article started off as a contribution to a symposium on citizenship.⁸ It was intended to be a critique of liberal citizenship as it concerns First Peoples of Australia. As I researched the literature, it quickly became apparent that since the *Mabo* case there have, broadly speaking, been two relatively distinct narratives and comparatively little engagement on the part of non-Indigenous scholars to connect with the work of Aboriginal and Torres Strait Islander scholars.⁹ First Peoples more often than not link discussions about their status, rights and citizenship with sovereignty, while non-Indigenous scholars, with rare exceptions,¹⁰ discuss status, rights and citizenship without mentioning sovereignty, or specifically First Peoples' sovereignties.¹¹ Non-Indigenous scholars tend to ignore First Peoples' sovereignties, assuming that sovereignty is not central to their lives. Instead, they tend to write about postcolonial theory, citizenship, rights, equality, reconciliation and social justice.¹²

⁸ Symposium (2010).

⁹ A handful of non-Indigenous scholars who I found to have engaged with Indigenous sovereignties were Brennan et al, Buchan, Burke, Chartrand, Hocking and Hocking, Maddison, Mercer, Nicoll, Otto, Reynolds, and Strelein. Respectively: Brennan et al (2004); Buchan (2002–03); Burke (2002); Chartrand (2009); Hocking and Hocking (1999); Maddison (2009); Mercer (1993); Nicoll (2000); Otto (1995); Reynolds (1996); Strelein (2002–03). Of these, Burke, Nicoll and Otto approached Indigenous sovereignties as alternatives to Crown sovereignty. The other authors who engaged with Indigenous sovereignties ranged anywhere between regarding Indigenous sovereignties as different from Crown sovereignty through to something subordinate to Crown sovereignty.

¹⁰ The 'rare exceptions' tend to be those scholars who identify with critical whiteness theory. See, for example, the Australian Critical Race and Whiteness Studies Association, <http://www.acrawsa.org.au>.

¹¹ See, for example, Dillon (1999); Dodson (1997); the edited collection of essays in Moreton-Robinson (2007).

¹² In terms of citizenship, see, for example, the papers presented at the 50th Anniversary of Australian Citizenship Conference, University of Melbourne, 21–23 July 1999 – for example, Dillon (1999); Robbins (2005). In terms of postcolonial theory, see, for example, the website of the Australian-based Institute for Postcolonial Studies, <http://ipcs.org.au>. The Institute for Postcolonial Studies declares: 'The spectre of colonialism still haunts the world, despite assertions about the end of formal colonial control and the rise of democracy and universal human rights. The aim of the Institute of Postcolonial Studies is to understand and undo the continuing legacies of colonialism today: dispossession, displacement, racism, and intercultural violence. In particular, this entails understanding social and economic pressures and cultural prejudices faced by indigenous peoples and impoverished communities, supporting those facing the consequences of political upheaval and violence, and generating dialogue across worlds of continuing and often positive cultural difference.'

This fundamental difference between narratives treating sovereignty at the core of everything else and non-Indigenous scholarship emphasising everything else except sovereignty prompted me to abandon citizenship and explore instead the silencing of Aboriginal and Torres Strait Islander sovereignties within legal scholarship. Not only are First Peoples' sovereignties effectively silenced, it begs the question put by Irene Watson, 'What space do Aboriginal peoples occupy in this one-nation Australia?'¹³

There is also another significant difference between First Peoples' scholarship and other scholarship. The few non-Indigenous scholars who tackle sovereignty tend to debate or map changes in legal approaches to European and Western sovereignty since the absolute sovereignty envisaged by Hobbes or Bodin.¹⁴ For non-Indigenous scholars, sovereignty is an abstraction. It is a matter of legitimacy and authority, whether speaking politically or legally or both. By contrast, First Peoples scholars consistently maintain that their sovereignties continue as embodiments of themselves, despite assertions of Crown sovereignty. They have tended to write about heterogeneous Aboriginal and Torres Strait Islander sovereignties and their significance for Australia.¹⁵ This is more than a difference in genealogy and tradition: it is bound up with power and exploitation. This aspect will be taken up shortly.

Therefore, there is a discernible gulf between the narratives of First Peoples of Australia and the narratives of other scholars concerning sovereignty. Without naming names, it is possible to assert that too frequently non-Indigenous scholars write about First Peoples without accepting the latter's sovereignties.¹⁶ Often, where they do mention sovereignty, it is presumed to be an immutable Crown legal sovereignty that at best might be tempered with some notion of popular political sovereignty, but rarely ever does this work accept the legitimacy of First Peoples' sovereignties or consider them as rivals to Crown sovereignty.

This is significant for at least three reasons. The first is that there is a fundamental discord between what Australia's First Peoples experience and discuss, and what well-intentioned non-Indigenous scholars think is important to First Peoples – a criticism applicable to my own work until now. As such, this is a form of colonialism because it mutes the voices of those who have been marginalised by colonisation. Consider, for example, how this silence contributes to maintaining 26 January as 'Australia Day'.

¹³ Watson (2007), p 15.

¹⁴ See, for example, Brennan et al (2004), pp 310–11.

¹⁵ Brady (2007), p 140; Bunda (2007), p 75; Dodson (2002); Mansell (1998); Martin (2008); Shaw (2002); Watson (2007), pp 15–32; and ABC Radio National (2010).

¹⁶ Brady (2007). At p 140, Brady points to the ahistoric character of Australian discussions about sovereignty: 'The struggle in the minds of many Australians regarding sovereignty revolves around the question of becoming a republic and how power is exercised between and within the federal and state governments. It has not been openly discussed in regard to Indigenous Australians except when the federal government had to deal with the issue of native title and Aboriginal land rights.'

Australia celebrates its national day, Australia Day, on 26 January each year; this was also the date of the commencement of the colonial invasion of this continent. For many First Peoples of Australia, 26 January represents the beginning of their dispossession, murder and colonisation from 1788 through until the present day. Instead of being a public holiday to celebrate the founding of a nation, it is known to First Peoples as ‘invasion day’.¹⁷ Most other Australians seem ignorant of this situation, despite the annual protests mounted by First Peoples in each of the capital cities around the country on 26 January. These protests are barely mentioned by mainstream media, and rarely mentioned by non-Indigenous scholars writing about ‘Aboriginal issues’. The only time in recent memory that there was some public debate among non-Aboriginal Australians about shifting the national day to a more appropriate date was in 2009 when both the then prime minister, Kevin Rudd, and the opposition leader, Tony Abbott, were quick to dismiss the idea as something that was not at the front of the minds of most Australians.¹⁸ This dismissal of prior and continuing First Australian sovereignties is questioned by many First Peoples scholars. It is not that First Peoples’ sovereignty issues are not covered by Australian media; rather, the issue is the restricted political terms on which this coverage rests. In recent years, the media have given extensive coverage to conservative ideologues, who deny that First Peoples’ sovereignties ever existed, or frame this as a threat to national interests and identity.¹⁹

Similarly, Australian courts and parliaments have buried First Peoples’ sovereignty in favour of the ‘possessive logic’ of ‘white patriarchal sovereignty’.²⁰ The significance of this characterisation, as Moreton-Robinson points out, is that ‘the possessive logic of patriarchal white sovereignty operates to ensure its continued investments in itself’.²¹ So, instead of recognising the grand theft of the Australian land mass from First Peoples, colonial rule issues token²² ‘replacements’ such as ‘native title’, ‘reconciliation’ and ‘self-management’, notwithstanding the tangible changes that may have resulted from these measures.

Second, the gulf between scholars raises important questions about the quality of scholarship, and it exhorts a critical assessment of the research

¹⁷ See, for example, Creative Spirits (nd). It is known to other First Australians as ‘survival day’. Brennan et al (2004), p 321 mention that another possibility might be to celebrate the federation of Australian states. However, even this would be exclusionary because the Australian Constitution was a racist statute of the colonial Parliament and it excluded Indigenous people. As Brennan and colleagues (2004) explain, ‘The Australian Constitution is set out in s 9 of the *Commonwealth of Australia Constitution Act 1900*, an Act of the British Parliament.’

¹⁸ ABC News Online (2009).

¹⁹ Moreton-Robinson (2007), pp 2–3, referring specifically to Keith Windschuttle and Michael Connor.

²⁰ Moreton-Robinson (2007), p 4.

²¹ Moreton-Robinson (2007), p 4.

²² Dillon (1999), p 4; and Mansell (2002), p 83.

methods of non-Indigenous scholars. In particular, postcolonial discourse and positivist rights-based arguments are silent on First Peoples' sovereignties.

The term 'postcolonial' participates directly in a power struggle over the construction of knowledge. This claim may be made even though it would be a mistake to collapse the vast array of literature under the banner of postcolonial writing into a single homogenous genre.²³ Despite noble intentions,²⁴ instead of redressing the wrongs of a colonial history, postcolonial theory reproduces a 'white' history.²⁵ Literature produced by people other than Aboriginal and Torres Strait Islander Peoples written about the latter 'does not merely record history by putting events into words, the words themselves manufacture history'.²⁶ For Fielder, the postcolonial emphasis on the 'aesthetic and textual' has a tendency to mask power relations that are by no means in the past.²⁷ Similarly, Trees and Mudrooroo contend:

Does the term postcolonial suggest that colonialism has passed? For whom is it 'post'? Surely not for Australian Aboriginal people ... In countries such as Australia where Aboriginal sovereignty, in forms appropriate to Aboriginal people, is not legally recognized, postcolonialism is not merely a fiction, but a linguistic manoeuvre on the part of some 'white' theorists who find this a comfortable zone that precludes the necessity for political action.²⁸

²³ Fielder points out that, 'As the signifiers postcolonialism and postmodernism become more widely mobilised, the need to explain and reassess colonialism and modernism has become increasingly important. But what has emerged as of greater political significance than the move to signal the movement past or beyond colonialism/modernism (accentuated by the hyphenated versions of postcolonialism and post-modernism) is the complicity of these terms. This is, in part, due to the fact that the politics of the 'post' are more visible, foregrounded, "up front," whereas the coalition of postmodern-postcolonial culture impulses is a more insidious network of power relations. The insidiousness comes from the fact that, in many ways, colonialism and modernism work hand-in-hand to establish a hierarchy that privileges "the metropolitan centre over the 'underdeveloped' periphery, Western art forms over Third World ones [and] ... 'masculinist' forms, institutions, practices over ... 'feminist' ... ones.'" [1] However, the fact that some critics see postmodernism as countering the Eurocentrism and phallogentrism of modernism, while others regard it as a continuation of these imperialist tendencies, means that it is difficult to make generalisations that assume postmodernism is a singular, homogenous object.' in Fielder (1992), quoting in the original note [1] Hebdige (1986).

²⁴ Buchanan (1992). Buchanan writes: 'In the past decade the mode of analysis calling itself postcolonialism has begun to flourish. Prompted by a need to redress a number of imbalances and oversights within the field of cultural and literary studies, postcolonialism takes as a major goal the writing of history's colonial wrongs.'

²⁵ Buchanan (1992).

²⁶ Buchanan (1992). Buchanan adds: 'History written in the present pretends to operate in the domain of the past, but in reality it fabricates that past in its own present.'

²⁷ Fielder (1992), pp 28–9, quoting Webb (1992); and p 30, quoting Mishra and Hodge (1991).

²⁸ Trees and Nyoongah (1993).

And:

Postcolonialism is a 'white' concept that has come to the fore in literary theory in the last five years ... as Western nations attempt to define and represent themselves in non-imperialist terms.²⁹

Trees and Mudrooroo also identify postcolonial theory as a 'white' industry consuming and commodifying the work of First Peoples':

This beast is called postcolonial literature, and like all predators it will eat your writings up, digest them, and shit them out as turds of colonial bullshit. Here, the 'your' refers to those practitioners of contemporary Aboriginal culture, who participate in, say, seminars and conferences devoted to the postcolonial. It is one of those postcolonial problems, perhaps inherent in language, and the academic and colonial process, that even if you deny the postcolonial beast, your discourse still continues to feed its voracious appetite.³⁰

This consumption, reworking and commodification of First Peoples' knowledge through corporate capitalist institutions tends to render the practices of the colonising group invisible – a problem identified effectively elsewhere by critical race and whiteness scholars.³¹

Other legal scholarship might be well intentioned, but it is framed within either a liberal rights framework or a nihilistic cultural relativism, which in both cases is part of an emergent industry in academic literature. This industry in knowledge production is driven by market ideology, instrumentalism and the commodification of higher education.³² Knowledge construction takes place in a 'publish or perish' managerialist context informed by Taylor's notorious scientific management.³³ As Birch argues this has meant, among other things, that well-meaning scholars have made careers as self-appointed experts while inadvertently hindering First Peoples:

Those opposing the conservatives may well believe that they have acted with the interests of Indigenous people in mind. But, importantly, [at 109] too many liberal historians are as equally concerned with their self-appointed role as the gatekeepers to Australia's past. In this sense – not unlike the conservatives – the interests of liberals are in the protection of versions of white nationalism in Australia which have historically trod too softly over the landscapes of the past, ensuring that white Australia's 'blemishes' do not outweigh its 'triumphs' (historians refer to this approach as 'balance').³⁴

²⁹ Trees and Nyoongah (1993).

³⁰ Trees and Nyoongah (1993), pp 264–5.

³¹ See, for example, Luker and Nielsen (2008) and the other articles in that issue.

³² Cooper and Poletti (2011).

³³ Rose (1981). Taylor's scientific management involved the timing and benchmarking of factory production tasks to lift productivity. Short-term productivity gains were later undermined by the dehumanising effects. This early twentieth century lesson has emerged to be a feature of the professions, notably law, in the late twentieth and early twenty-first centuries. See further Rose (1981), pp 277ff.

³⁴ Birch (2007), pp 108–9.

This exhorts arguments frequently made by Aboriginal and Torres Strait Islander scholars about the symbiotic relationship between sovereignty, colonisation and knowledge construction. It also raises important issues about Western epistemology and its critique according to feminist standpoint theory, which accords with emerging Indigenous standpoint scholarship. This is discussed later.

Third, this gulf between narratives has practical consequences for policy in the sense that policy left uninformed by First Peoples' scholarship is more likely than not to continue to fail. Since 1788, policy has been formulated on the assumption of an absence of First Australian sovereignties. It should be no surprise that it has been an abject failure to the present day.

Despite the trend away from singular absolute authority and legitimacy, sovereignty in Australia remains with the Crown.³⁵ First Peoples of Australia do not have the right to govern, and are instead governed by a colonial majority. They are not recognised by other nations according to international law – even with the concession of native title through an alien legal system³⁶ First Australians are excluded from the lands they have occupied for more than 40,000 years. They are forced to learn English and are not taught their own languages, except in rare circumstances. Rarely do First Australians share the same power enjoyed by other Australians, whether legal or political. Sovereignty as the ultimate source of authority and power is therefore central to the struggle for justice – but not just any sovereignty.

Many First Peoples scholars question the suitability of abstract notions of Western sovereignty. As Buchan observes, First Australians seek liberation from this colonial European abstraction on their own terms. He writes:

By invoking an *Indigenous* sovereignty, Indigenous peoples seek (in part) to redress this legacy of subjection to a sovereignty that in many cases was forced upon them, to which they did not freely and fairly consent, and to them effectively remained 'foreign'. To claim Indigenous sovereignty is thus not simply to claim an independent political existence (though it could mean that), rather it is to claim a sovereignty that encompasses the claims of Indigenous people to a substantive recognition of their collective identities. (Strelein 2001; Dodson and Strelein 2001).³⁷

³⁵ Nicoll (2002), p 1. Nicoll comments: 'However what is striking in the current sovereignty debate is the absence of references to the sovereignty struggles Indigenous people have waged and continue to wage in and over this place since 1788. Following Foucault (1976), I will approach this silence as a positive production of the power-saturated field of Australian race-relations.'

³⁶ Watson (2002), p 27.

³⁷ Buchan (2002), p 4. There Buchan adds: 'The understanding of Indigenous sovereignty must also have recourse to the substantive claim of Indigenous people to recognition that their collective identities have survived contact and colonisation, and whose future development should lie in their own hands. Acknowledging Indigenous sovereignty thus means recognising more than the political motivation of Indigenous people for greater

Reconciliation and rights must be forged on the express presumption that First Peoples' sovereignties – however they may be self-articulated – are a fact of Australian history, and survive as surely as there are First Australians. To assert reconciliation and rights without this basic presumption is to participate in a continuing process of colonisation.

These three reasons why non-Indigenous scholarship has largely struggled to adequately address First Peoples' sovereignties is worthy of further investigation. In particular, the nexus between a failure to recognise First Australians' Sovereignties and the utter failure of policy warrants more scrutiny. Here I focus instead on the need for scholarship to be transformative and accountable to First Australians. Legal scholarship can be both transformative and accountable to First Australians by embracing their sovereignties, and working with feminist standpoint theory and Indigenous standpoint theory. Accountability and transformation will only be possible when non-Aboriginal Australians try to metaphorically stand in the shoes of First Australians – hence the relevance of standpoints.

Standpoints Matter

Both Indigenous standpoint theory and feminist standpoint theory expect a researcher to address their privilege in relation to those they research.³⁸ First Peoples' protocols require me to introduce myself.³⁹ This is a matter of respect. For First Peoples of Australia, entry on to land necessitates this step along with the requirement that the 'intruder' explains the purpose of their 'visit'.⁴⁰ As an author writing about Australian sovereignties, a First Peoples issue, I am expected to declare who I am and on what basis I write. I am a 'white middle-class' male legal academic.

Why is a 'white' man writing on First Peoples' sovereignties and questioning Crown sovereignty? There are two related answers. The short answer is that it relates to the way I was brought up. When I was a little boy, I stole a metallic purple Monaro matchbox car from the boy down the road. On recognising that the toy was not mine, my mother scolded me, and made me knock on the door down the road, apologise and return the toy. Likewise, sovereignty was taken from First Peoples of Australia and should be returned. This anecdote also fits with the ethics of many Australians who have cited (without proper attribution)⁴¹ Xavier Herbert's statement of principle:

control over their own affairs, it means that an acceptance needs to be made by the "sovereign" authority and its society of the collective identity of Indigenous peoples.'

³⁸ Nakata (2007), p 11; Haraway (1988), p 585.

³⁹ Mamajun (1994), pp 25, 30.

⁴⁰ See, for example, Meyer (2008), pp 5–7; AIATSIS (2000).

⁴¹ A Google search of this quote on 6 November 2010 produced 203,000 hits. This quote is recited by many, but rarely if ever with a pinpoint reference. After reading the two books incorrectly cited for the quote (*Capricornia* and *Poor Fellow My Country*) I stumbled on the correct citation in an edited volume featuring Herbert's work.

Until we give back to the black man just a bit of land that was his and give it back without provisos, without strings to snatch it back, without anything but complete generosity of spirit in concession for the evil we have done him – until we do that, we shall remain what we have always been so far: a community of thieves.⁴²

Unfortunately, most of those who cite Herbert fail to take his sentiment far enough to embrace First Peoples' sovereignties, and instead regard formal rights and native title as adequate reparation. So the short answer is that Australia belonged to the First Peoples of Australian before it was colonised and in the absence of a good reason for Crown sovereignty, sovereignty should be assumed to be with Aboriginal and Torres Strait Islander Peoples.

Although Ockham's razor holds that the shorter of two explanations should be preferred,⁴³ the longer reason for writing reveals more about my motivation and goes to the heart of this article. In any case, both explanations here are linked, since I cannot dissociate my subjectivity from my scholarship. It should also be made clear that this is not an attempt to legitimise a Western theory such as feminist standpoint theory using a First Peoples cause. My purpose is to show that scholarship failing to address First Peoples' sovereignties is flawed, and standpoint theory illuminates why this is the case, thus providing a more ethical and accountable way to do research. I do not make the claim that standpoint theory provides the only explanation, rather that it has the potential to address oppression through scholarship.

So my second reason for writing on this topic is as a legal academic deeply committed to the belief that human hierarchy and oppression are not natural or inevitable consequences of human nature and/or laws of nature, and are rather the outcome of historical and continuing conflicts between people.⁴⁴ The outcomes of these conflicts are social constructions 'justified' through naturalising ideologies – whether biological, theological or some other deterministic nonsense. I started from this informed belief while researching my doctoral thesis concerning law and naturalising ideologies, and applied it to critically assess, among other things, the colonisation of Australia. Despite a long struggle against colonisation, First Peoples of Australia not only endured extreme human rights abuses and dispossession; they endured an insidious form of colonisation – naturalising ideologies based on Western knowledge that

⁴² Xavier Herbert's sexist quote comes from his 1978 Press Statement, 'Australia Has the Black Pox', a press statement on Aurukun and Mornington Island, April 1978, which is reproduced in Groen and Pierce (1992), pp 227–8. It should be noted, too, that Xavier Herbert's famous fictional works *Capricornia* and *Poor Fellow My Country* are not necessarily regarded as appropriate representations of Indigenous people: see, for example, Heiss (2003), p 10.

⁴³ Rothman (2002), p 33. More precisely, according to Rothman, Sir William of Ockham's 'razor of parsimony' 'states that the simplest hypothesis is to be favoured over the more complex'.

⁴⁴ Ardill (2008).

purported to be superior to Indigenous knowledge, thereby ‘justifying’ the injustice of colonisation meted out to the present day.⁴⁵

This intellectual journey exposed me, among other things, to Indigenous standpoint theory and feminist standpoint theory, which overlap in significant ways.⁴⁶ Both ‘theories’ are really ways of approaching research, resolving conflicts and constructing knowledge. Both theories lead to the same conclusions about the illegitimacy of Crown sovereignty and the legitimacy of First Peoples’ sovereignties. Equally importantly, both theories reveal how and why most researchers, lawyers, policy-makers and those privileged enough to construct knowledge fail to embrace First Peoples’ sovereignties. So an explanation of both theories is warranted.

Feminist Standpoint Theory

Standpoint theory itself does not specifically account for engagement with First Australian sovereignties. Rather, it is part of a growing body of literature critical of orthodox scholarship to the extent that scholarship fails to acknowledge the role it plays in the maintenance of power relations, and regardless of whether that scholarship draws upon liberal rights theory, postmodern or postcolonial theory traditions – or indeed some critical scholarship. Standpoint theory sheds light on the maintenance of power relations, and aims to transform those relations through the production of knowledge. Therefore, it has the virtue of not just showing why non-Aborigines are not mindful of First Australian sovereignties; it also provides a just way forward. This emerging scholarship is of two different kinds: feminist standpoint theory and Indigenous standpoint theory – although they resonate with each other in important ways. This article embraces both approaches to the construction of knowledge and an outline of each follows.

Feminist standpoint theory (FST) emerged in North America in the 1980s, though its roots reach further back in time.⁴⁷ Although Dorothy Smith credits Sandra Harding with introducing FST as an innovation to feminism, it was also developed separately and collaboratively by a number of other feminists, including her.⁴⁸ In many respects, and in retrospect, there was an element of ‘progression’ to the emergence of FST because it represents an intuitive response to the intersections between Marxism and feminism, and in turn their joint impact on positivism, together with the effects of postmodernism.⁴⁹

⁴⁵ Ardill (2009).

⁴⁶ Phillips et al (2007), p 1; Foley (2003), p 45.

⁴⁷ Key names credited with developing standpoint theory among others are Patricia Hill Collins, Kimberle Crenshaw, Donna Haraway, Sandra Harding, Nancy Hartsock, Chandra Mohanty and Dorothy E Smith in, respectively, Collins (1986); Crenshaw (1989); Haraway (1988); Harding (1986); Hartsock (1983), p 283; Mohanty (1986); Smith (1987).

⁴⁸ Smith (1997), p 392.

⁴⁹ Harding (1997), p 389.

Early on, Marx and Engels had shown the partial nature of eighteenth- and nineteenth-century scholarship, which was constructed by bourgeois men under conditions favourable to capital.⁵⁰ Harding notes:

Marxist theories ... remind us that the categories and criteria that come most immediately to mind for judging truth are likely to be those of the dominant groups.⁵¹

Hence Marx and Engels pioneered the space for what became FST because they ‘used the standpoint of the proletariat to produce their account of class relations from the standpoint of workers’.⁵² However, this was also a key reason why feminists and others critiqued Marxism, and why feminism was subsequently critiqued by African-American, Indigenous and lesbian women.⁵³ Marxism also laid the foundations for what was to become postmodernism in the sense that Marx and Engels were the first to challenge Enlightenment concepts of knowledge.⁵⁴

These ideas were taken up and refined by feminists keen to broaden Marxist critique from its primary concern with economic class and capital to the realm of patriarchy and its oppressive institutions, structures, theories and ideologies.⁵⁵ Significantly, feminists have shown the partial nature of positivist science, which had represented nature according to the sexist values of the men who practise science.⁵⁶ In addition, critical race scholars, along with other disempowered and oppressed groups (Indigenous men and women, migrants, etc.), identified the partial nature of critique according to the values of Marxists and feminists, which were projected on to the subject-matter or simply assumed to be universal values. Queer theorists did the same.⁵⁷ This gave rise to the ‘cannibalisation’ of radical critique, and meshed

⁵⁰ Engels and Marx (1998), vol. 1, p 81: ‘It made natural science subservient to capital’ and p 42: ‘It is not consciousness that determines life, but life that determines consciousness.’ See also Marx (1998), vol. 1, pp 1–5 and Marx (1965).

⁵¹ Hartsock (1997), pp 370–1.

⁵² Harding (2001), p 516.

⁵³ Hartsock (1997), p 368.

⁵⁴ Hartsock (1997), p 367. Hartsock is ‘struck by the extent to which the Marxist roots of standpoint theories have gone unrecognized’, adding at 369 that it is crucial because Marxism denies essentialism treating human nature as socially constructed: ‘I see Marx as an anti-Enlightenment figure on balance, although it must be recognized that his relationship to the Enlightenment and whole tradition of Western political thought is that of both the inheriting son and the rebellious son.’

⁵⁵ Hartsock (1997), p 373; and Collins (1997), p 377.

⁵⁶ Spanier (1991), p 329.

⁵⁷ Harding (1997), p 385: ‘This kind of structural political “difference” was exactly the point of standpoint theory projects, although which “system of domination” was centered depended on whether Marxist men or northern feminists or male antiracists and postcolonialists were doing the thinking. However, it took feminists of color, multicultural and global feminisms, to develop the powerful resources of “intersectionality” necessary to analyze social relations from the standpoint of their daily lives, which were shaped by

with another significant factor in the emergence of FST: the impact of postmodernism.

Postmodernism rendered all views partial and political, and as a consequence led to the demise of grand narratives. It virtually destroyed the idea that scientific procedures could deliver truth, objectivity, accuracy and the like. Just as Marxist and feminist scholars had established that value-free science and research were rarely met in practice, postmodernism held that 'value-free research [was] an unachievable ideal'.⁵⁸ The values that tended to be projected were the values of the dominant groups conducting the research because they were 'poorly equipped to identify oppressive features of their own beliefs and practices'.⁵⁹ However, just like bourgeois science, critical scholarship tended to be partial.⁶⁰ The standpoint of workers was not a sufficient basis to mount a critique of the systemic and multifarious ways in which oppression manifests.⁶¹ Stated differently, a proletarian standpoint is a partial standpoint because it does not automatically understand, for example, the oppression of Indigenous people, gays, lesbians and transgender people. Similarly, white middle-class feminists excluded and arguably silenced other disempowered women's voices by universalising their own particular forms of oppression and praxis.⁶² Therefore, the combined effect of postmodernism and the cannibalisation of radical theories meant that although all critical perspectives had something to offer, none of them was sufficient.⁶³

At the same time, it was abundantly clear that in an increasingly 'networked' world there were overlapping features common to all forms of oppression.⁶⁴ In other words, Marxism and feminism – although partial – still had merit the oppressed and disempowered to work with.⁶⁵

the mutually supportive or sometimes competitive relations between androcentrism, Eurocentrism, and bourgeois projects (e.g. hooks 1981; An-zaldúa 1987; Collins 1991).'

⁵⁸ Harding and Norberg (2005), p 2010.

⁵⁹ Harding and Norberg (2005), p 2010.

⁶⁰ Hartsock (1997), p 371: 'To claim that we can understand the totality of social relations from a single perspective is as futile an effort as to claim that we can see everything from nowhere.'

⁶¹ Cf Lukacs (1971), pp 149–209.

⁶² Indigenous women such as Moreton-Robinson protest that white-middle-class feminisms had this effect on Indigenous women – see Moreton-Robinson (1998) – along with African American women such as Collins (1986) and lesbian women as in Thompson (1991).

⁶³ Hartsock (1997), p 368.

⁶⁴ Boyd (1994), p 563; Crenshaw (1989), pp 154, 166–7; Haraway (1988), p 580; Mohanty (2003), pp 501, 505; Gavigan (1993), pp 591–2; Moreton-Robinson (1998), p 50; Sengupta (2006), p 635; Thompson (1985), p 130.

⁶⁵ Collins (1997), p 377; Harding (1997), p 385; McCall (2005), p 1773; Mohanty (2003), p 505.

As a result, the climate was ripe for the emergence of post-positivism, and in particular FST.⁶⁶ This is not to suggest that FST was inevitable. The scholars who pioneered FST also had to endure the hardship that attaches to 'lone wolves' in the patriarchal capitalist academy.⁶⁷ It was more the fact that there were several 'loose ends' that needed to be tied off within the broad band of critical scholarship.⁶⁸ These loose ends were that particular standpoints were necessarily partial, knowledge tended to be the product of more powerful standpoints, truth was an unattainable goal, there was some validity in all the critiques emerging from disempowered standpoints, there was a need for greater accountability and responsibility from scholars for the effects of their work and, as a result of postmodernism, there was no agreed way to 'rank' standpoints, theories, ideas and strategies.

McCall, like Harding, situates FST as part of a broader post-positivist movement that is in the process of negotiating these loose ends.⁶⁹ Post-positivism embraces the thrust of the postmodern assault on the modernist Enlightenment view of knowledge, objectivity, truth and so on, treating science and its methods as another form of rhetoric with its conventions as to persuasiveness. Feminist standpoint theory accepts this starting point, and adds another layer to it by drawing upon marginalised standpoints for the purposes of deconstructing hierarchy and oppression.⁷⁰

At its core, FST is a political theory or strategy aimed at understanding how power works by learning from the standpoint(s) of the less powerful.⁷¹ Hence the objective of FST is to change society not necessarily describe it.⁷² It is more a strategy than an epistemology – a political strategy 'crucial for

⁶⁶ Like Harding, I see standpoint theory as a link between critical discourses: in Harding (1997), p 515; see also Hartssock (1997), p 368.

⁶⁷ Marcus (2005), p 214; Scott (1997), p 698; Harding and Norberg (2005), p 2009: 'conventional standards for "good research" discriminate against or empower specific social groups no less than do the policies of legal, economic, military, educational, welfare, and health-care institutions; in fact, these standards actually enable the practices of these institutions.'; Mohanty (2003), p 504. Mohanty declares: 'These effects range from being cast as the "nondutiful daughter" of white feminists to being seen as a mentor for Third World/immigrant women scholars; from being invited to address feminist audiences at various academic venues to being told I should focus on my work in early childhood education and not dabble in "feminist theory."' Practicing active disloyalty has its price as well as its rewards.'

⁶⁸ Harding (1997), p 389.

⁶⁹ McCall (2005), p 1793; Harding (2001), p 520.

⁷⁰ Mohanty (2003), p 505.

⁷¹ Martin et al (2002), p 670; Sprague (2001), p 534: 'Standpoint theory is not a theory – it is a political stance and a methodological strategy. It poses political questions for each scholar: whose questions do we ask; from whose lives, needs, and interests do we begin; whose ordering of experience do we take seriously; to whom are we responsible to communicate; when has a question been adequately answered?'

⁷² Stimpson (2000), p 1008. This is a variation of Marx's original comment, 'The philosophers have only interpreted the world, in various ways; the point is to change it': Engels and Marx (1998), p 571, para 11.

designing effective projects of social transformation'.⁷³ Unlike other approaches, FST attempts to empower through knowledge construction by recognising the relationship between power and vantage points. For this reason, it has been taken up by First Australian scholars. For other Australian scholars, FST would mean looking at sovereignty in terms of power, requiring self-reflection on how research might contribute to the relative absence of First Australian sovereignties and the maintenance of Crown sovereignty, and how research can be conducted in ways more accountable to those disempowered through Crown sovereignty.

Indigenous Standpoint Theory

Many First Australian scholars are working with feminist standpoint theory to produce what is called Indigenous standpoint theory (IST).⁷⁴ Other First Australian scholars,⁷⁵ while not necessarily expressly identifying with feminist standpoint theory, produce knowledge broadly fitting with IST.⁷⁶

Nakata speaks specifically about feminist standpoint theory, and provides an account of his own engagement:

Since the early 1990s, I have investigated possibilities with standpoint theory and, in particular, an Indigenous standpoint as a theoretical position that might be useful – something from the everyday and not from some grand narrative.⁷⁷

For Nakata, IST is an approach to knowledge production appropriate for First Australians to negotiate what he calls the 'cultural interface'.⁷⁸ This is the contested domain of competing knowledge systems (viz colonial/European and First Australian knowledges). Nakata declares that in this 'contested space between the two knowledge systems, the cultural interface, things are not clearly black or white, Indigenous or Western'.⁷⁹ Therefore, for Nakata, IST is a method to critically assess the construction of colonial knowledge about First Australians. It is not an attempt to substitute some First Australian truth, but to expose 'the workings of knowledge and

⁷³ Harding and Norberg (2005), p 2011; Smith (1997), p 396: 'I stress "method of inquiry" since what I do as theory is not really an epistemology, although it must wrestle with epistemological problems; it is surely not a theory foundational to feminist theory, nor yet a theory of history, society, the laws of social systems, or anything of that kind.'

⁷⁴ In particular, Lester-Irabinna Rigney and Martin Nakata, among many others as the footnotes below reveal. Respectively: Rigney (2001); Nakata (2007), p 11 and further forward.

⁷⁵ See, for example, Moreton-Robinson (2007, 1998); Martin (2008), among many others as the footnotes below reveal.

⁷⁶ Rigney (2006), p 38, referring to Moreton-Robinson.

⁷⁷ Nakata (2007), p 11.

⁷⁸ Nakata (2007), pp 9–10.

⁷⁹ Nakata (2007), p 9.

how understanding of Indigenous people is caught up and is implicated in its work'.⁸⁰ Nakata explains:

As an interested 'knower', I am asking to understand how I come to understand – to know within the complexities at the interface where our experience is constituted in and constitutive of the corpus.⁸¹

Among other things, IST contests 'accounts of relations that "knowers" located in more privileged social positions are not attentive to'.⁸² For Minniecon and colleagues, the aim is not to replicate the Western scientific pyrrhic obsession with truth, but to recognise the place of power in the construction of knowledge and to transform that power.⁸³

Minniecon and colleagues bring together IST and Nakata's cultural interface to 'examine' the possibility for an interface that prioritises First Australian epistemologies and voices.⁸⁴ They reject the way 'non-Indigenous researchers have determined what knowledge is legitimate, resulting in Indigenous knowledge being seen as inferior', and instead demand recognition that 'whiteness' has been oppressive.⁸⁵ To begin with, 'whiteness' must be recognised as fundamental to the status quo, 'as an epistemological a priori provides for a way of knowing and being that is predicated on superiority, which becomes normalised and forms part of one's taken for granted knowledge'.⁸⁶ It is 'whiteness' that has historically framed knowledge and constructed an image of First Peoples of Australia through the disciplines. This construction continues to inform the mainstream imagination.⁸⁷ In the absence of an appreciation of 'whiteness' or a commitment to IST:

Non-Indigenous researchers come to the interface both as outsiders to Indigenous worlds of experience and embedded in an academic environment with organisational and academic traditions and procedures rooted in the privileging of certain forms of knowledge.⁸⁸

It is no wonder, then, that few 'white' lawyers concern themselves with First Australian sovereignties, and instead emphasise those things *they* consider are important to First Australians.

Lawyers have played a crucial role in the colonisation of Australia, both deliberately and inadvertently. Indeed, as an academic lawyer, I teach two compulsory property law courses that normalise and naturalise existing colonial sovereign and property relations. Regardless of the critical nature of one of these courses and four weeks of 13 lectures dedicated specifically to

⁸⁰ Nakata (2007), p 12.

⁸¹ Nakata (2007), p 12.

⁸² Nakata (2007), p 12.

⁸³ Minniecon et al (2007), p 23-4.

⁸⁴ Minniecon et al (2007), p 24.

⁸⁵ Minniecon et al (2007), p 24.

⁸⁶ Minniecon et al (2007), p 24, quoting Moreton-Robinson (2004), pp 75–6.

⁸⁷ Nakata (1998), p 3.

⁸⁸ Minniecon, Franks and Heffernan (2007), p 30.

the survival of First Australians in the face of whiteness and colonialism, ultimately I am contributing to the reproduction of a colonial structure. This is implicit in the assumptions and doctrine of what I am expected to teach. Still, I am able to explain this to my students, and I try as far as possible to subvert that structure. This might provide an explanation for my participation in a conflict – even possibly an excuse – but it does not mean I can hide behind my privilege, which clearly comes at the expense of First Australians who have not benefited from my sovereign status as a white man.

Elsewhere, I have more discretion, as do other academics within the domain of research. In this realm, my privilege as a white man continues – although here I can aim to be accountable and to confront the oppressive colonial structure of which I am a part. The academy remains active within a colonial structure because ‘history has shown a poor relationship existed between Indigenous peoples, researchers, universities, governments and policy makers’, and ‘Historically, the tensions and dilemmas between researchers and Indigenous peoples included issues of representation, power and control’.⁸⁹ Researchers must avoid simply grafting First Peoples’ ‘traditions, expectations, and conventions’ on to a Western method because this also subordinates Indigenous knowledge and results in ‘methodological erasure’.⁹⁰ Instead, what is desperately needed is a paradigm shift.

A paradigm shift will only be possible when research about First Peoples starts from ‘Aboriginal and Torres Strait Islander people identifying their own priorities and their own research questions and that the communities, particularly the elders in that community, support the research’.⁹¹ Taking this as a starting point will facilitate ‘Indigenous control over research’ so that questions are ‘framed differently’, priorities are ‘ranked differently’, problems ‘defined differently’ and Indigenous people can ‘participate on different terms’.⁹²

This means self-awareness is fundamental to the research process because it ‘should result in a researcher role that is respectful and not disruptive, aggressive or controlling’.⁹³ Martin provides an excellent metaphor for researchers to consider when working on Aboriginal issues:

For Aboriginal People, being in someone else’s Country is akin to visiting them in their homes and requires the same levels of respect.⁹⁴

Stated another way, researchers need to critically assess their own privilege in relation to the people/topics they study. The researcher must then reflect on:

... how we position ourselves, how we relate to each other (and the tensions that inevitably exist) and how we position Indigenous people

⁸⁹ Rigney (2006), p 34.

⁹⁰ Martin (2008), p xxiv.

⁹¹ Minniecon et al (2007), p 25.

⁹² Minniecon et al (2007), p 25.

⁹³ Martin (2008), p 99.

⁹⁴ Martin (2008), p 127.

and communities within the practice of research and knowledge production. In addition we need to consider, what is the purpose of the research? Who benefits from it, and how? Is the research valued by Indigenous communities? Does the research respect and value Indigenous peoples and their culture? Are protocols being met and communities own ethics process being considered?⁹⁵

Despite this, much of what passes as research aimed at reform fails to be any more than intellectual colonialism. What has passed as ‘the Aboriginal problem’, ‘reconciliation’, ‘rights’, ‘self-determination’ and ‘sovereignty’ must be reconsidered and framed not by colonial and Western traditions, but rather framed according to the standpoints of First Peoples of Australia. This is not to imply that there is some homogenous First Peoples standpoint or unitary sovereignty. Just as there is no universal Western standpoint, Aboriginal and Torres Strait Islander standpoints and sovereignties vary according to individuals, communities and contexts.⁹⁶ Therefore, the question becomes: *Whose* standpoint?

Whose Standpoint?

Feminist standpoint theory does not arbitrarily privilege one standpoint over another in the name of ‘objectivity’. Instead, standpoint is understood in an attempt to address power. Nor does it romanticise the standpoints of oppressed/marginalised groups. Instead, FST aims to learn from the standpoints of those who are disempowered in a specific conflict. This is because ‘a standpoint specifies a relationship to power’ and ‘one way to understand how power works is to learn from the standpoint(s) of the less powerful’.⁹⁷ As Sprague explains:

A fully social standpoint theory offers us a strategy for constructing knowledge that explicitly takes into account the distortions prompted by social relations of domination and works to ground and reconcile divergences. Ultimately, it presents us with a political challenge and holds us accountable as scholars for our role in meeting it. The surest way to increase the commensurability of standpoints is to use them strategically to construct knowledge that exposes and undermines the social relations that now divide us.⁹⁸

Feminist standpoint theory is transformative in the sense that it provides a ‘way to understand how power works’ by ‘learning from the standpoints of the less powerful’ and using them to construct knowledge to undermine oppression.⁹⁹ It requires that a researcher ‘stand in the shoes of an oppressed

⁹⁵ Minniecon et al (2007), p 31.

⁹⁶ Birch (2007), p 107; Brady (2007), pp 140–1, 150; Watson (2002, 2007).

⁹⁷ Martin et al (2002), p 670.

⁹⁸ Sprague (2001), p 535.

⁹⁹ Martin et al (2002), p 670.

group' to the extent that is possible (a point taken up later).¹⁰⁰ In metaphorical terms, Harding illustrates the strategy by referring to the appearance of a stick stuck in a pond.¹⁰¹ Depending on where one stands around the pond, the stick appears bent to different extents and from other locations it looks straight. An important point to take from this metaphor is that standpoint theory seeks 'to discover the shape of the pond that positions the people and their perspectives vis-à-vis one another'.¹⁰² In other words, by looking at all the available narratives, including the powerful and the disempowered, and by privileging the most disempowered, it becomes possible to understand those narratives in terms of asymmetrical power.¹⁰³ This metaphor also indicates that not all standpoints are equal, and they are variously impaired according to their vantage-point. Harding points out that 'not all such social situations are equally good ones from which to be able to see how the social order works', and privilege tends to exclude and obscure 'how social relations and nature operate' while naturalising 'relations of domination, exploitation, and oppression'.¹⁰⁴

Consequently, standpoint theory analyses power relations from the perspective of marginalised groups rather than individuals.¹⁰⁵ However, group analysis is not at the expense of individuals,¹⁰⁶ except as an abrogation

¹⁰⁰ Harding (2001), p 516, at note 9: 'in principle others can learn how to think from the standpoint of those who engage in such activities. For example, male child-care workers, nurses, and "house-husbands" learn to think about social relations from the standpoint of activities usually associated with women.'

¹⁰¹ Harding (1997), p 384: 'Recollect that ancient lesson from elementary school science classes: "Is that stick in the pond that appears to be bent really bent? Walk around to a different location and see that now it appears straight as it really is." ... different "locations" ... tend to generate distinctive accounts of nature and social relations. (They do not determine them, but only "tend to generate" accounts different from the dominant ones in distinctive ways.) Thus, the kinds of daily life activities socially assigned to different genders or classes or races within local social systems can provide illuminating possibilities for observing and explaining systemic relations between "what one does" and "what one can know." Observing these differing relations is like walking around the pond. Distinctive gender, class, race, or cultural positions in social orders provide different opportunities and limitations for "seeing" how the social order works. Societies provide a kind of "natural experiment" enabling accounts of how knowledge claims are always "socially situated."'

¹⁰² Smith (1997), p 396.

¹⁰³ Sprague (2001), p 531.

¹⁰⁴ Harding (1997), pp 384-5.

¹⁰⁵ Hartsock (1997), p 372, quoting Weeks (1996), p 101: 'A standpoint is a project, not an inheritance; it is achieved, not given.' See also Collins (1997), p 376.

¹⁰⁶ Collins (1997), p 377: 'The existence of the group as the unit of analysis neither means that all individuals within the group have the same experiences nor that they interpret them in the same way. Using the group as the focal point provides space for individual agency. While these themes remain meritorious, they simply do not lie at the centre of standpoint theory as a theory of group power and the knowledges that group location and power generate.'

of the ideology of liberal individualism.¹⁰⁷ Rather, the social category is essential to understanding oppression and hierarchy at the individual level¹⁰⁸ – that is to say it is the ‘common location within hierarchical power relations that creates groups’ and inequality not universal identity applied to individuals as race, class, gender, sexuality and so on.¹⁰⁹ What this means is that the narratives of disempowered groups are used to understand relationships situated within power relations.¹¹⁰ And how are groups to be conceived for the purposes of standpoint theory? Collins’ answer is:

standpoint theory concerns the commonality of experiences and perspectives that emerge for groups differentially arrayed within hierarchical power relations.¹¹¹

For Haraway, group standpoints are about shared power and vulnerability: ‘Situated knowledges are about communities, not about isolated individuals.’¹¹²

So the question of *whose* standpoint turns not on identity but on power.¹¹³ Standpoints must be flexible enough to recognise intersecting oppressive structures because in a globalised patriarchal capitalist framework it is possible, as Sengupta has shown, that an Indian woman working in a call centre in Delhi for a European finance company might be bullying an unemployed sole parent father in Los Angeles for loan arrears.¹¹⁴ Power is relative to a structural context because oppression is not a ‘timeless universal structure’, but a plastic concept that continues to renew.¹¹⁵ An oppressor today may be oppressed tomorrow, and for this reason what matters more than individuals or their ‘identity’ is their relation to the structural power involved.¹¹⁶ As Sengupta argues, ‘men do not

¹⁰⁷ Heyes (2003), p 1097; Collins (1997), p 375: ‘Individualism continues as a taproot in Western theorizing, including feminist versions. Whether bourgeois liberalism positing notions of individual rights or postmodern social theory’s celebration of human differences, market-based choice models grounded in individualism argue that freedom exists via the absence of constraints of all sorts, including those of mandatory group membership. Freedom occurs when individuals have rights of mobility in and out of groups, much as we join clubs and other voluntary associations.’

¹⁰⁸ Haraway (1988), p 586: ‘Identity, including self-identity, does not produce science; critical positioning does.’

¹⁰⁹ Collins (1997), p 376.

¹¹⁰ Heyes (2003).

¹¹¹ Collins (1997), p 377.

¹¹² Haraway (1988), p 590. For Haraway (p 589), power and vulnerability are the issues, not pluralism. And (p 590) on the question of ‘Whose standpoint?’, Haraway says, ‘None’ since it is vulnerability that matters not an individual’s position: ‘location is about vulnerability; location resists the politics of closure’.

¹¹³ Sprague (2001), p 529.

¹¹⁴ This example is adapted from one given by Sengupta (2006), p 633.

¹¹⁵ Connell (1997), p 703.

oppress women because they are men; they do so because one of the forms in which oppression gets articulated happens to be patriarchy'.¹¹⁷ Patriarchy has at times benefited some women at the same moment it has oppressed other women and men. In this way, deference is extended to marginalised groups as opposed to romanticising or blindly embracing their situated knowledge.¹¹⁸

Although the oppressed may not always be 'innocent', their relative position is important for an understanding of power relations and for the possibility of transforming an unjust world.¹¹⁹ What this means is that a standpoint theorist will start their analysis from the group most oppressed, marginalised or disempowered within a particular regime of power.

As a feminist standpoint theorist, it is necessary to recognise that I am a man of European descent and cannot avoid participating in the continuing conflict between those who have belonged to this land for the past 40,000 to 50,000 years, and their colonial oppressors. Instead, I attempt to draw on the voices of resilient, marginalised and disempowered groups to which I do not belong.¹²⁰

Speaking for Others?

Can I speak for a disempowered group to which I do not belong?¹²¹ It is unlikely that a non-Aboriginal Torres Strait Islander man can speak at all for First Peoples of Australia or is able to adequately dispense with any privilege relative to the subjects of this research.¹²² I recognise and accept the criticism made by many scholars belonging to particular marginalised groups directed at other scholars who, without 'belonging' to their group, purport to speak for or represent their group's viewpoint.¹²³ There is a vast

¹¹⁶ Sengupta (2006), 631: 'The trouble with the deployment of identities as a means of offense or defense is that, given a change in the equations of violence in any instance, which may have to do with anything from local politics to broader geopolitical crosscurrents, the victim very quickly becomes the oppressor.'

¹¹⁷ Sengupta (2006), p 635.

¹¹⁸ Haraway (1988), pp 583–4.

¹¹⁹ Haraway (1988), p 584: 'The standpoints of the subjugated are not "innocent" positions. On the contrary, they are preferred because in principle they are least likely to allow denial of the critical and interpretive core of all knowledge. "Subjugated" standpoints are preferred because they seem to promise more adequate, sustained, objective, transforming accounts of the world.'

¹²⁰ Harding and Norberg (2005), p 2012: 'the researcher and the researched usually bring different amounts and kinds of social power (class, race, gender, ethnicity, urban or rural backgrounds, etc.) to the research situation. [And] research processes themselves produce power differences in terms of who defines the research project ...'

¹²¹ In writing about transgender people as a non-transgender bisexual lesbian academic, Heyes declares her privileged standpoint, noting the inherent risks of 'Orientalism' – a term she borrows from Edward Said (1987), p 3 – meaning 'a Western style for dominating, restructuring, and having authority over the Orient': Heyes (2003), p 1096.

¹²² Haraway (1988), p 576.

¹²³ See especially Walters (1996) and Moreton-Robinson (1998).

difference between living an oppressed or disempowered life and empathising with the narratives of oppressed and disempowered people for the purposes of critiquing privileged and empowered groups, structures, ideas and theories.¹²⁴

Walters raises this issue in her analysis of the postmodern inspired ‘queer theory’, pointing to heterosexual academics writing under the banner of queer theory, and Moreton-Robinson points to the misappropriation of Aboriginal voices by privileged white anthropologists.¹²⁵ I agree with their arguments. However, the ‘flip-side’ of this view is that if pursued to the fullest extent, it would play into the hands of oppressors who would be more than happy to silence other privileged people who draw on empathy to critique power on behalf of disempowered people.¹²⁶ Furthermore, if empathy in scholarship is ruled out, there is no hope or prospect for justice at all.¹²⁷

Instead, where the critic does not belong to the disempowered group upon which they draw for their critique, they are accountable to those disempowered people.¹²⁸ A privileged voice – no matter how well intentioned – that lacks the lived experience of disempowered people risks perpetuating or exacerbating asymmetrical power relations, just as white feminist anthropologists had done when ‘speaking’ for Aboriginal women.¹²⁹ Therefore, the critic of dominant power structures must acknowledge their own privilege, recognise that they are accountable and responsible for their work to the disempowered, and speak by quoting and paraphrasing the narratives of disempowered groups, bearing in mind that the final arbiter is the disempowered group concerned, or other well-intentioned folk who might be misled by the research.¹³⁰ To expect more than this would render critical scholarship impractical, apart from the rare occasions when disempowered people are able to speak for themselves.¹³¹ To do less than

¹²⁴ Walters (1996), p 841.

¹²⁵ Walters (1996), p 840; Moreton-Robinson (1998), pp 58–60, 214. At pp 58–60, Moreton-Robinson outlines the ‘Bell-Huggins Debate’ in which anthropologist Professor Diane Bell wrote about intra Indigenous rape purporting to have the authority for this from her Indigenous friend Topsy Napurrula Nelson.

¹²⁶ Harding and Norberg (2005), pp 2012–13: ‘By designing projects in which they can transform the conceptual frameworks of the disciplines that service powerful social institutions, or projects in which they can directly affect social policy, researchers can use their distinctive powers on behalf of disadvantaged groups. Standpoint methodologies have been perceived [at p 2013] as one way that research projects can turn disadvantaged social positions into powerful intellectual and political resources.’

¹²⁷ Sprague (2001), p 530: ‘Donna Haraway describes the human ability to be empathetic, to listen to and imaginatively put oneself in the position of another, as a key bridging mechanism.’

¹²⁸ Haraway (1988), p 585: ‘one cannot relocate in any possible vantage point without being accountable for that movement. Vision is *always* a question of the power to see – and perhaps of the violence implicit in our visualizing practices.’

¹²⁹ Moreton-Robinson (1998), pp 58–60.

¹³⁰ Minniecon et al (2007), pp 28–9.

¹³¹ Walters (1996), pp 840–1: ‘I do not want to be claiming a sort of essentialist (god forbid!) idea that insists one must be something in order to teach it. Clearly, nongay scholars must

this is to participate in disempowerment, or in the worst cases, oppression.¹³² Surely Bird is correct when she exhorts that white Australians have a responsibility to expose the role of their white privilege in the trauma of colonisation and a responsibility to First Australians to redress these wrongs.¹³³

Feminist standpoint theory has the advantage of avoiding what Walters identifies as the ability of scholars to simply adopt a standpoint for the convenience of publishing their work in a climate of publish or perish on the proviso that they are ultimately accountable and responsible to the disempowered.¹³⁴ At the same time, it provides an opportunity for transforming the conditions and structures maintaining injustice.¹³⁵

Therefore, what I write may be contested by Aboriginal and Torres Strait Islander Peoples as misrepresenting their experience.¹³⁶ I fully accept this argument. However, this article is not about me ‘telling’ First Peoples what is best for them. Rather, it is written for other Australians in an attempt to illustrate how standpoint theory urges the arguments of First Peoples who are calling for their sovereignties to be acknowledged. It seeks to challenge the idea that the pursuit of rights by themselves will deliver justice to First Peoples in the absence of embracing their sovereignties.

Conclusions: Why Aboriginal and Torres Strait Islander Sovereignties Matter

Feminist standpoint theory and Indigenous standpoint theory provide a way to critically assess the post-*Mabo* literature written about Aboriginal and Torres Strait Islander Peoples by other Australians. A literature review of post-*Mabo* legal scholarship reveals two relatively distinct narratives about Australia’s First Peoples, and almost no engagement on the part of other

[at p 841] teach gay “subjects,” as male professors must teach about women and whites must teach about people of color.’

¹³² Sprague (2001), p 534: ‘Standpoint theory, as I interpret it, identifies the authority of our experience as scholars and calls us to take responsibility for how we exercise the social power that we have. Rejecting our own authority is, from this perspective, intellectually irresponsible, as well as politically naive.’

¹³³ Bird (2008).

¹³⁴ Walters (1996), pp 840–1: ‘But the thorny issues of authenticity, experience, and co-optation are not resolved by an assertion that no identity is real. Are we really to evacuate the centrality of experience for the vacuousness of positionality (positionality as indicating the always provisional and temporal nature of political location and action)? While compelling and suggestive, I fear that the concept of positionality tends toward a voluntarism that ignores the multiple, felt, structural determinations on people’s everyday existence.’

¹³⁵ Haraway (1988), p 586: ‘to see together without claiming to be another. Here is the promise of objectivity: a scientific knower seeks the subject position, not of identity, but of objectivity, that is, partial connection.’

¹³⁶ Nicoll (2000).

scholars to connect with the scholarship of First Peoples of Australia.¹³⁷ Aboriginal and Torres Strait Islander scholars more often than not link discussions about their status, rights and citizenship with sovereignty while other scholars with rare exception discuss status, rights and citizenship without mentioning sovereignty – or indeed Aboriginal and Torres Strait Islander sovereignties.¹³⁸ For other scholars, it is assumed that sovereignty is not central to the lives of Australia's First Peoples, and instead they tend to write about postcolonial theory, citizenship, rights, equality, reconciliation and social justice.¹³⁹ Aboriginal scholars Falk and Martin note that:

Clearly, from both an Indigenous perspective and the application of the doctrine of natural justice, the question of how and when Indigenous sovereignty was lost needs to be answered at law.¹⁴⁰

It is here that Feminist Standpoint Theory and Indigenous Standpoint Theory have merit. Both theories situate legal scholarship within relations of power to explain that Crown sovereignty is constructed and understood within a standpoint of colonial rule. This construction positions sovereignty as always Western, European and liberal, and at times democratic or plural. For this reason, First Peoples' sovereignties are ignored, denied or buried as impractical or impossible. Whatever the practicalities of or possibilities for First Peoples' sovereignties might seem to be in the minds of lawyers should not prevent recognition that First Peoples' sovereignties continue to exist and Crown sovereignty has no legitimate basis. Therefore, lawyers inevitably participate in a colonial struggle to the disadvantage of the First Peoples of Australia to the extent they fail to embrace the voices speaking of Aboriginal and Torres Strait Islander sovereignties.

This article has not been concerned with my own journey as a standpoint theorist and what that has meant for me in relation to First Australian sovereignties.¹⁴¹ My objective has been to bring First Australian sovereignties to the fore and to critically assess scholarship that fails to embrace those sovereignties. I have done this as a standpoint theorist to show how standpoint theory can produce more ethical research. This is not enough for a standpoint theorist. Standpoint theory is about tackling power and oppression. Therefore, it concerns me as a person participating in life and not just me as an academic lawyer.

In its broadest sense, sovereignty has always remained with First Australians, but to the extent that sovereignty has underpinned colonial rule and the construction of colonial knowledge, it must be returned. Returning is not a theoretical or academic gesture on my part. It is about me renouncing the

¹³⁷ See generally, Brennan et al (2004); Buchan (2002–03); Burke (2002); Chartrand (2009); Hocking and Hocking (1999); Maddison (2009); Mercer (1993); Nicoll (2000); Otto (1995); Reynolds (1996); Strelein (2002–03).

¹³⁸ See generally, Dillon (1999); Dodson (1997); and the collection of essays in Moreton-Robinson (2007).

¹³⁹ See generally, above n 9.

¹⁴⁰ Falk and Martin (2007), p 38.

¹⁴¹ I have explained how I came to be a standpoint theorist elsewhere: see Ardill (2008).

legitimacy of Crown sovereignty, presuming First Australian sovereignties, and recognising my own white privilege whenever I participate in the construction of knowledge as a ‘teacher’ and researcher, and in the way I live my life. This means recognising that I, along with my extended family, have prospered from the dispossession of First Australians. We have prospered as proprietors of Australian land, consumers of its fruits, and as a result of the doors that open to white Australians that remain closed to First Australians.

Recognition of whiteness is just a first step for a standpoint theorist. Implementing this knowledge into daily life practices is essential. For me, it has meant testing these ideas on acquaintances (family, friends, contacts) whenever the opportunity presents itself, and sometimes at the cost of those relationships. It means confronting the limitations and privilege of my experience in relation to any ladder of privilege that might oppress or marginalise. Since I was a small child, I have struggled to understand (and still do) how family members would fight the exploitation of workers and women, defend the environment, but reject or dismiss the plight of gays and lesbians. Standpoint theory requires all ladders of privilege and oppressive relations of power to be critically assessed.

As an academic lawyer, it means that I design the courses I teach to address First Australian sovereignties and knowledge construction in terms of my own privilege as a white middle-class male. In my property law course, students must grapple with their own privilege in relation to the dispossession of First Australians, the denial of their sovereignties and the role this has played in justifying and bounding property as ‘hierarchical possessive whiteness’. This is not easy, and not without repercussions as student evaluations of courses are always lower for that property law course than for other courses I convene. Still, I am no victim and the truth is I benefit directly from colonisation because I teach law, a system that has denied justice to First Australians and continues to do so in the absence of First Australian sovereignties.

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