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### Law's Empire

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## LAW'S EMPIRE

Edited by Rob McQueen (Griffith University School of Law) and W. Wesley Pue (University of British Columbia)\*

A symposium issue of *Social Identities*, forthcoming autumn 2007.

Scholars of culture, humanities and social sciences have increasingly come to an appreciation of the importance of the legal domain in social life, while **critically engaged socio-legal scholars** around the world have taken up the task of understanding "Law's Empire" in all of its cultural, political, and economic dimensions. The questions arising from these intersections, and addressing imperialisms past and present forms the subject matter of a special symposium issue of *Social Identities* under the editorship of Griffith University's Rob McQueen, and UBC's Wes Pue and with contributions from McQueen, Ian Duncanson, Renisa Mawani, David Williams, Emma Cunliffe, Chidi Oguamanam, W. Wesley Pue, Fatou Camara, and Dianne Kirkby.

The central problematique of this issue has previously been explored through the 2005 **Law's Empire conference**, an informal but vibrant postcolonial legal studies network (<http://faculty.law.ubc.ca/Pue/pocolsprogramme.htm>), in publications of Melbourne University's **Postcolonial Studies Institute**, UBC Press' **Law & Society series** ([http://www.ubcpres.ca/books/series\\_law.html](http://www.ubcpres.ca/books/series_law.html)) and through special issues of **Law Text Culture**, **Law in Context** and **The Journal of Social Justice and Global Development** ([http://www2.warwick.ac.uk/fac/soc/law/elj/lgd/2003\\_1/](http://www2.warwick.ac.uk/fac/soc/law/elj/lgd/2003_1/)).

**Social Identities** is published in the United Kingdom under the editorship of Pal Ahluwalia, Ethnic Studies, University of California, San Diego and Toby Miller, Professor of English, Sociology, and Women's Studies, University of California, USA. The journal's International Editorial Advisor Board includes distinguished scholars from many disciplines and from all 6 continents.

### Symposium Contents:

Rob McQueen, 'Speaking and listening to words is how we know who we are': An Introduction to 'Laws Empire'  
Ian Duncanson provides a thoughtful and subtle assessment of such themes, in his essay on '*Identities in the Colony and the Family: tragedies of ascription and transgression in two Australian films*'.  
Renisa Mawani '*Legalities of Nature: Law, Empire and Wilderness Landscapes in Canada*'  
David Williams, '*Maori social identification and colonial extinguishments of customary rights in New Zealand*',  
Emma Cunliffe '*Anywhere But Here: Race and Empire in the Mabo Decision*'  
Chidi Oguamanam and W.Wesley Pue '*Lawyers' Professionalism, Colonialism, State Formation and National Life in Nigeria, 1900-1960: 'the fighting brigade of the people*'.  
Fatou Camara '*Women and the Law – A Critique of the Senegalese Family Law*'  
Dianne Kirkby '*Honorary Chinese? Women Citizens, Whiteness and Labour Legislation in the Early Australian Commonwealth*'

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## ‘Speaking and listening to words is how we know who we are’: An Introduction to ‘Laws Empire’

by Rob McQueen

Law’s Empire special issue,  
Social Identities

The title of this collection embodies multiple meanings. The first is in regard to the manner in which particular forms of legal subjugation were utilised to secure and maintain dominion over a range of subject people’s in the far flung colonial possessions of the European powers during the period of imperial dominion. Judicial and military hegemony were deployed during this period as pre-existing forms of law in the colonised ‘possessions’ of these empires were marginalised, ignored, or erased. The failure of Empire to recognise existing forms of dispute resolution, familial relationships, property ownership, sacred responsibilities for land, and many other aspects of social and political life in these colonised places continues to resonate today in relationships between indigenous peoples and descendants of the newer peoples who arrived in the wake of imperial expansion.

“Law’s Empire” also references the juridical field’s relation to ‘the social’. Ronald Dworkin’s classic text of the same name<sup>1</sup> attacks the premises of legal positivism, denying that there can be any general theory of the existence and content of law. Indeed he argues that moral principles that people hold dear are often wrong, even to the extent that certain crimes are acceptable if your principles are skewed enough. This collection is about recognizing “Law’s Empire” in both senses and beginning to work through the implications of that recognition in interrogating what is moral and what is not.

The first contribution to this collection, by Ian Duncanson, reminds us, the manner in which we respond to others, the manner in which we encounter and deal with difference, is intimately tied to our identity. To fail to recognize this is to fail to recognize ourselves. As Subcommandante Insurgente Marcos, in one of his communiqués on behalf of the Zapatista Army of National Liberation (EZLN) has stated:

*We teach...that the word, together with love and dignity, is what makes us human beings...We teach them to speak and also to listen. Because when people talk and don’t listen they end up thinking that what they say is the only thing that is worth anything...Speaking and listening to words is how we know who we are, where we come from, and where our steps are going. Also it’s how we know about others, their steps, and their world. Speaking and listening to words is like listening to life<sup>2</sup>.*

Ian Duncanson provides a thoughtful and subtle assessment of such themes, in his essay on ‘*Identities in the Colony and the Family: tragedies of ascription and transgression in two Australian films*’. The inter-subjective nature of identity, as advanced by David Hume, and the importance of ‘listening’ as well as ‘speaking’ are explored at some length in this piece. The failure to listen to, let alone understand, colonised populations led to a certainty of action and a moral blindness on the part of colonisers. The legacy of this moral blindness, and the practice of colonisers in ‘*thinking that what they*

<sup>1</sup> Dworkin, R (1986) *Laws Empire*

<sup>2</sup> Communiqué from Subcommandante Insurgente Marcos from the EZLN to ETA, 13<sup>th</sup> January 2003, translated by Laura Feche in *La Jornada*, 27/01/2003 as ‘*I shit on all revolutionary vanguards of this planet*’.

*did was the only thing that was worth anything'* (Duncanson) has not only repercussions in the past, but aftershocks in the present. The implications of these past actions for us in the present and the painful, but important, process of assuming responsibility and guilt for the past are amongst the themes explored in Duncanson's paper. He approaches these topics through an examination of the problematisation of identity embodied in a number of recent films, most notably in two Rolf de Heer films, *The Tracker* (2002)<sup>3</sup> and *Alexandra's Project* (2003)<sup>4</sup>. As Duncanson states, his concern is to interrogate *'the impossible dilemmas and the failure to obtain secure guidance from moral rules in circumstances where identity is questioned and certainties arising from normal processes of sociability are undercut and/or removed'* (Duncanson, this volume).

Duncanson also examines the 'fictive' world of the recent film *The Proposition* (2005)<sup>5</sup>, a world not unlike that also portrayed in the recent Home Box Office (HBO) television series *Deadwood* (1<sup>st</sup> series 2004)<sup>6</sup>. These are worlds in which there are no fixed values other than self-preservation and aggrandisement. These are frontier worlds in which relationships (sociability) with others are reduced to the bare essentials – this is a world in which relationships have been reduced to the bare essence of 'friend and enemy' in the Schmittian sense. Duncanson wryly notes the manner in which the recent drift in world politics towards a stark delineation of 'friend' and 'enemy' is not unlike the world of *The Proposition*, and hints at some of the implications of this contemporary slide into a politics without moral parameters. There are, according to Duncanson, lessons for us to learn from both the writings of Hannah Arendt<sup>7</sup> and Giorgi Agamben<sup>8</sup> as to the implications of a slide from the 'benign authoritarianism' of liberalism into less 'social' forms of political rule.

The importance of accepting moral responsibility in the present for dispossession of colonised peoples and the destruction of their ways of life throughout the various empires of the colonial period is a recurring theme of many of the contributions to this collection. The importance of acknowledging these wrongs in the present is a recurrent refrain of many of the contributors. The papers are not principally about financial recompense or reparations; they are about the moral imperative of acknowledging the fact of dispossession and the denial of this in the past. Most contributors allude to the inter-relationship of such expiatory acts to the reclamation our moral 'identity' in the present.

Dr. Renisa Mawani's paper *'Legalities of Nature: Law, Empire and Wilderness Landscapes in Canada'* deals with Stanley Park in Vancouver, a 'not to be missed' tourist attraction and exemplar of the natural beauty of Canada - a core characteristic of Canadian national character and identity. Her account is, however, not a celebration of this pristine wilderness in the heart of the City of Vancouver. Rather, it is an examination of the manner in which law has intersected with nature in constituting Stanley Park, and how, rather than simply being a place of pristine 'nature', the Park has been, and continues to be, a place of struggle and contestation between indigenous inhabitants and colonisers. The failure to settle claims as to Stanley Park, and the past characterisation of traditional owners as 'squatters', 'trespassers' and/or 'vagrants' presents a moral challenge to a number of the prevailing narratives of Canadian identity. The notion of Canadians as 'fair-minded' and progressive is challenged by the past inability to reach a fair accommodation of Coastal Salish people's claims in respect to the area now constituting

<sup>3</sup> For more details see Internet Movie Data Base @ <http://www.imdb.com/title/tt0212132/>

<sup>4</sup> For more details see Internet Movie Data Base @ <http://www.imdb.com/title/tt0338706/>

<sup>5</sup> For more details see Internet Movie Data Base @ <http://www.imdb.com/title/tt0421238/>

<sup>6</sup> For more details see Internet Movie Data Base @ <http://www.imdb.com/title/0556296/>

<sup>7</sup> In particular see *The Origins of Totalitarianism* (1951) and *Eichmann in Jerusalem: The Banality of Evil* (1963)

<sup>8</sup> In particular see *Homo Sacer* (1998) and *State of Exception* (2005)

Stanley Park. So too does the past habitation of Stanley Park for millennia by indigenous Canadians potentially challenge the Canadian colonial narrative of the taming of a wilderness, and the subsequent adaptation to a harsh but beautiful land to a range of 'productive' uses. Such narratives tend to be less convincing when others have adapted to the 'wilderness' prior to the arrival of colonists, in the process inscribing their own narratives on the physical landscape.

Whilst recently the displays at the Park have acknowledged the habitation of this area by the Coastal Salish peoples over a long period of time there has still never been any settlement of these lands by treaty, conquest or otherwise. Rather the appropriation of the Stanley Park area was more surreptitiously achieved over a period of time, with the gradual relocation of 'dawdlers' from the late nineteenth century through to the 1920s. A range of means was utilised to displace the traditional owners from their places of abode within the Park, many being forcibly removed after sections of the Park were designated a military reserve early in the twentieth century, others who either returned or remained were rehoused in the 1920s to public housing in Vancouver. Nevertheless these peoples never stopped returning to the Park and observing ceremonies when required. Also, redevelopments of sections of the Park continue to give rise to disputes, with the disruption and desecration of ancient burial middens giving rise to significant concern. Despite their rehousing, it is clear that these peoples still regard this place as an important traditional site with significant continuing obligations for them. For these traditional peoples this is no 'empty space', nor a pristine wilderness. It is their home.

Mawani notes that despite the recent acknowledgment in the Park of the presence of indigenous Canadians well before white settlement, or its appropriation as a representative example of 'Canadian wilderness', there nevertheless is an ambiguity at the core of these new displays in that they simply gesturally suggest a future which is one of accord and co-existence. Whether the display signifies a shift in respect to attitudes to Stanley Park, or is simply gestural, is the conundrum Mawani leaves us with.

Dr. Mawani's paper is followed by that of Professor David Williams, '*Maori social identification and colonial extinguishments of customary rights in New Zealand*', which provides us with a critical examination of the judicial and legislative travails respecting the recognition of Maori customary rights in New Zealand. Despite a solemn declaration in the Treaty of Waitangi in 1840 that these rights would be recognised by white settlers Williams account chronicles the sad history of such claims during the colonial period, which constituted a consistent failure on the part of white settlers to respect the solemn promises embodied in the Treaty of Waitangi.

As with many other contributors to this collection Professor Williams notes the inter-relationship between recognition of customary rights and identity, both for the colonised and for the colonisers. For the Maori people of New Zealand Williams notes that their '*social identity...is inextricably interwoven with land and their customary relationships to land*' (this volume). Cultural and spiritual relationships with land were core characteristics of the prevailing indigenous systems of customary law at the time of colonisation, and the later signing of the Treaty of Waitangi. This relationship to land was not individualistic, but rather is premised on collective, shared responsibilities to the land. Under *tikanga Maori*, as Professor Williams reminds us that '*permanent alienation of land by Maori to settler, or even of ownership of land as such was not imaginable*'. (Williams, this volume)

From the enactment of the first Land Claims Ordinance of 1841, proclaimed just one year after the signing of the Treaty of Waitangi, it was apparent that the understandings respecting land of the colonists and those of the Maori were quite different, indeed reconcilable. The Crown asserted in this Ordinance radical title to all lands subject only to the use-rights of indigenous inhabitants of New

Zealand at the time of colonisation. Maori rejected and continue to reject this ‘legal magic from England’ presuming to expunge the relationship to the land lying at the core of *‘tikanga Maori’*.

Many early cases on Maori customary rights took a somewhat more liberal view to the scope of aboriginal title than what was to follow. Whilst these cases introduced the ‘foreign’ notion of Maori being able to alienate land by sale they did not fundamentally dispute the existence of native title. However, when the consent of native occupiers to alienate land was slow in forthcoming there began to be a shift in opinion with the establishment of a Native Land Court in 1862. This new approach replaced the prior acceptance of customary title with a new system, which instead attempted to individualise ownership by designated Maori. The schism thereby created between identity and land began to accelerate after this system was first implemented.

Professor Williams provides us with a comprehensive account of the progressive erosion of acceptance of the traditional relationship of Maori to land and how, even when appeals to the Privy Council respecting this ingress into the solemn commitments in the Treaty of Waitangi were lost by the colonial government, legislation was used to nullify these decisions.

The culmination of this ongoing battle in the courts was the enactment in 1909 of a Native Land Act by the New Zealand government. This Act boldly proclaimed that native title was not to be thenceforth enforceable against the Crown in any Court proceedings. Therefore, as Williams observes, despite the earlier commitments of colonists to respect customary relationships to land, by the latter part of the nineteenth century this commitment had been eroded to the point of nullity. Williams states that at this point in time: *‘Maori self identification by reference to their customary relationships to and with land was of no concern to the colonial legislature or colonial judiciary of New Zealand’* (Williams, this volume).

The disturbing erosion of customary relationships to land, and the significant assault this represented to Maori identity, which was so inextricably intertwined with responsibilities for and relationships to land, is a story which was repeated in many other parts of the British empire over the same period. Whilst indigenous inhabitants of different colonies had differing relationships with land these relationships were, however, almost always in some way intimately tied to identity, an identity that was invariably rudely disrupted by the processes of colonisation.

In Emma Cunliffes’s paper *‘Anywhere But Here: Race and Empire in the Mabo Decision’* another variant on the manner in which colonial courts have dealt with questions of identity and land is examined. Her focus is on the landmark Australian High Court land rights case *Mabo & ors v Queensland (no.2)*<sup>9</sup> that was, at the time of its resolution, generally hailed as a major development in respect to recognition of native title in Australia. Cunliffe examines the premises underlying the leading judgement by Justice Brennan, and how this judgement, whilst permitting the claim of the Meriam people to native title over their lands, at the same time introduced a set of restrictive conditions in respect to any further native title claims that might be made in differing circumstances. Whilst this may have been the only pragmatic alternative to the court (or at least perceived as such by Justice Brennan and his colleagues in the majority on the High Court) the long-term effect of these restrictive conditions has been to thwart most subsequent native title claims in Australia.

One of the core requirements imposed by the Mabo decision on indigenous Australians in respect to their native title claims is that they demonstrate uninterrupted connection to their lands and a

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<sup>9</sup> *Mabo & ors v Queensland (no.2)* (1992) 175 CLR 1.

relationship to their lands which is traditional in nature. This is, Cunliffe suggests, a preposterous requirement. Cunliffe notes the manner, in which in delivering his judgment Brennan recognised that the common law needed to adapt and change to changing circumstances, particularly in regard to questions of land ownership and recognition of indigenous customary claims. However, he also introduced a conservative vision of indigenous relationships to land and how these might change and evolve over time, particularly in light of the inexorable effects of colonisation, and the forces of ‘modernity’ encroaching on even the most remote of settlements. The test proposed by Justice Brennan, in respect to native claims was that claimants needed to *‘demonstrate an uninterrupted connection between the traditional laws, the traditional culture and the land’* (Cunliffe, this volume).

Cunliffe notes that the form of ‘authenticity’ expected of native claimants under this ‘test’ is one that cuts to the core of identity. Indigenous Australians are expected to somehow have remained in a time warp to prove their ‘authenticity’ in respect to claims over land that they have inhabited for millennia – their very ‘authenticity’ as indigenous Australians is enveloped in a ‘test’ developed by a court comprised of white Australians. As Cunliffe observes ‘the obstacles presented by the colonial past’ and the myriad of forces operating today on indigenous communities requires them to constantly adapt, but in doing so they at the same time compromise their ‘authenticity’ as claimants under the test proposed by Justice Brennan..

Of course, outside of reality television programs, in which participants are required to live in the manner of colonial forebears nobody would seriously suggest that descendants white-settler Australians should continue to live as they had in the past. This is despite all the mounting evidence that the accoutrements of modernity are destructive to the environment and contribute to global warming. On the other hand, through the *‘white construct’* embodied in the Mabo decision, indigenous Australians are supposed to have remained in some kind of suspended space, eschewing guns for hunting, fishing rods, motors for their boats and cars to get around in. As Cunliffe neatly observes:

*The failure of Brennan, J’s judgement in Mabo is a failure to see that other as being as complex, as changeable and as contemporary as himself* (Cunliffe, this volume)

Cunliffe concludes that as a result of the inability to understand the racist implications of the assumptions in the ‘test’ proposed in regard to establishing the ‘authenticity’ of claimants, the court in Mabo and particularly Justice Brennan, despite his best intentions, did not displace the racism and empire building encompassed in decisions of the place. Unfortunately, according to Cunliffe, *‘it is not possible fully to do justice to indigenous Australians through an Australian common law that owes so much to its colonial past’* (Cunliffe, this volume).

A very different set of issues, but again ones that cut to the core of colonialism and its relationship to particular types of identity, form the focus of Dr. Chidi Oguamanam and Professor W.Wesley Pue’s examination of lawyering in colonial Nigeria *‘Lawyers’ Professionalism, Colonialism, State Formation and National Life in Nigeria, 1900-1960: ‘the fighting brigade of the people’*. They examine the utility or otherwise of some of the extant theories as to the nature and underlying role of legal professionalism in the context of a in a state both under and emerging from a long period of colonisation. In many ways they find these existing theories wanting in respect to providing useful framework for examining the manner in which lawyers conceived of themselves as professionals in such colonial contexts.

This is, according to Oguamanam and Pue, particularly the case in regard to the failure of extant theories of legal professionalism in adequately explaining the engagement of lawyers in a significant array of cultural and political projects *vis á vis* state integration and colonial governance. The questions

that the authors pose in this respect are important in obtaining an understanding of the role of lawyers in such states in contributing to processes of decolonisation and the building of postcolonial states. The authors consider a number of intriguing issues in this regard, such as the manner in which lawyers saw themselves as legal professionals in such contexts, how lawyers saw their own role in advancing cultural projects in an emergent state, and the nature of the modalities through which they expressed themselves and engaged in the process of state formation during the phase of decolonisation.

In examining these issues in the context of Nigeria, both during that nation's period of colonisation, and during the subsequent period of decolonisation, Oguamanam and Pue note the differing role of lawyers during each of these periods. During the colonial period the almost exclusively English expatriate legal profession played an important role in facilitating and protecting British colonial interests. The system of indirect rule meant that few indigenous Nigerians played a significant role in the legal system at this stage. Nonetheless a number of English trained Nigerian lawyers, particularly in Lagos, began to play a significant role in the movement for independence from the 1950s onwards. These English trained indigenous Nigerian lawyers began to utilise the tools of English law to fight for independence. These educated elites were often looked upon to provide leadership in conflicts between the colonisers and the colonised.

Oguamanam and Pue recount the role of Nigerian lawyers in a number of significant cases in the period leading up to decolonisation. The importance of this elite group in advancing the cause of independence cannot be overestimated. As the authors note, citing Gyatri Spivak, whilst the language of law may constrain certain forms of opposition this language can also empower colonised populations in their battles for recognition and independence. The tools and language of law can prove useful weapons, as well as providing a public forum for battles against the coloniser. However the constraints presented by legal forums also give rise to a certain ambiguity in the pursuit of such claims through such 'legitimate' means.

Drawing on a number of key Nigerian cases of the colonial period the authors seek to demonstrate the ambiguous nature of legal fora as an arena of contestation. The first incident arising from a legal case they draw upon to demonstrate the ambiguous status of official law and its potential for affecting what was an uneasy balance between maintaining a role for indirect rule whilst allowing for commercial and property claims which affected colonial interests to be litigated in common law courts. Before 1914 Southern and Northern Nigeria were separate colonies. The North was predominantly Muslim and was 'ruled' by powerful leaders. The South had a larger presence of English lawyers and a more mixed system of governance. In 1913 a major imbroglio occurred when an English lawyer practicing in the South became involved in a dispute respecting land in Northern Nigeria. In attempting to advance his client's claim as to the legitimacy of their landholding this lawyer issued a subpoena on the Emir of Kano, a powerful traditional ruler. The offence caused by suggesting such a figure should attend a public courtroom to give evidence in such matter precipitated a furore, which saw the introduction of significant reforms respecting the legal system. This incident also provided impetus to efforts curbing the activities of lawyers, particularly when their activities might potentially jeopardise the interests of the colonial administration and/or its relationship with traditional rulers.

These attempted reforms aimed at curbing lawyers in turn gave rise to significant opposition in Nigeria. The independence of lawyers was perceived as a valuable asset, particularly in challenges by Nigerians to aspects of colonial rule. The authors in their account of the Eleko case illustrate the manner in which indigenous Nigerian causes might be defended in courts with lawyers providing a language of opposition and a legitimate basis for challenge in the 1920s. This fascinating case, in which the purported removal of a traditional ruler, who was seen as hostile to colonial interests, was challenged



before the courts, with a number of indigenous Nigerian lawyers representing the Eleko, provided a touchstone for many pent up frustrations with the colonial administration. In utilising the British colonists professed commitment to the 'rule of law' against the colonial administration such cases raised lawyers in the public's eyes to an heroic status: *It positioned them as dependable defenders of cultural institutions and authority and worthy champions of independence and decolonisation struggles that were unfolding*' (Oguamanam & Pue, this volume).

Oguamanam and Pue's contribution to this volume is an important reminder of the often ambivalent role of law and lawyers in the process of Empire. Whilst we have seen elsewhere in this volume how some 'legal magic' from the colonising power might effectively remove key aspects of a colonised people's cultural heritage (Williams) Oguamanam and Pue also remind us of the fact that law at other times provided a useful weapon in resisting aspects of colonial rule. They also provide us with a framework within which further analysis might be conducted as to the complex nature of legal professionalism and the manner in which this may 'play out' quite differently in particular settings. Reductionist approaches to lawyering, such as that presented by the 'market control' model, provide us with little guidance in understanding a setting such as colonial Nigeria and the complex manner in which the role of lawyers in that society was demarked, nor as to the manner in which lawyers saw their responsibilities and role as professionals in such a setting.

The ambivalent nature of 'Laws Empire' and its relationship to colonised peoples is well illustrated in the different experiences of particular colonised peoples. Whilst a commitment to the rule of law provided a touchstone for dissent in Nigeria at certain phases of its history, it is nevertheless the case that in other colonial African states when conflict emerged the commitment of the colonial authorities to the rule of law began to evaporate. David Anderson's recent account of the handling by the British authorities of the Mau Mau uprising of the 1950s, **Histories of the Hanged**<sup>10</sup>, provides an excellent illustration of the fragility under colonial rule of the commitment to the rule of law. Situational factors thus also play an important role in the capacity of lawyers in being able to provide a fulcrum for dissent and opposition through the legitimate forum of the courts.

Dr. Fatou Camara's contribution to this collection '*Women and the Law – A Critique of the Senegalese Family Law*' presents a somewhat different perspective on the manner in which colonial legacies and projects of 'modernity' might significantly affect particular groups. Her focus is on how the 'modern' system of family law introduced into Senegal in 1972 after over a decade of consultation and drafting has adversely affected the position of women in family marital disputes in that nation. She compares many aspects of the supposedly 'modern' family law, which now prevails in Senegal, with prior customary indigenous laws respecting marital relationships in that country to demonstrate how imposed systems of legal regulation might have profound adverse effects on the rights of particular sections of a population. Camara states that '*it would appear that the so-called 'Code de la Femme' (Women's Code) hailed as a 'triumph of modernity' over backward traditional custom only trades African matriarchy-based laws for patriarchal rules copied from the French Civil Law and Algerian customs coloured by Muslim laws*' (Camara, this volume)

Camara examines a number of specific aspects of the codified Family Law to demonstrate how this new law profoundly affects the legal status of women in Senegal as compared to the circumstances that

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<sup>10</sup> Anderson, D., *Histories of The Hanged: The Dirty War in Kenya and the End of Empire* (2005), W.W. Norton & Company, New York & London.

On the issue of 'empire' and the rule of law in the colonies also see Kostal, R.(2005), *A Jurisprudence of Power: Victorian Empire and The Rule of Law*, Oxford University Press. Oxford & New York.

prevailed under indigenous laws. Camara points to enshrinement in the codified family law of numerous patriarchal assumptions such as the 'curtailing of women's economic independence'. Under the first iteration of the family law in 1979 the Code specifically prohibited women from taking a job if their husband was opposed to them doing so. This was only changed in 1989.

There are also significant penalties imposed under the Family Law for wives who seek to abandon the marital home, even when this is precipitated by marital abuse on the part of the husband. Camara refers to a recent case in which a 12-year-old wife who had been abused by her husband was ordered to pay significant damages to her husband and sentenced to 6 months jail for abandonment of the marital home. This was despite the fact that the Family Law elsewhere specifies that the minimum age for marriage is 16 year old in the case of women (Camara, this volume).

Camara contrasts the provisions of the Family Law Code with the systems of indigenous 'family law' that prevailed beforehand in Senegal, and which in many instances in practice still prevail today. These indigenous systems of family law were built, according to Camara, on bedrock of mediation and negotiation in the settlement of marital disputes. These systems of indigenous family law practice also were matriarchal in focus, built around women's economic independence. Camara laments the official departure from these systems of indigenous law and practice and asserts that the allegedly 'modern' system of family law introduced by the Code of 1972 has disrupted many aspects of existing practice and led to a significant deterioration in the formal position of women in Senegal. Most particularly gender identities have been significantly disrupted by the 'modern Family law as also have community based mechanisms of dispute resolution.

Camara also notes that one of the paradoxes of the introduction of the 'modern family law is that it is, that least amongst the majority of the Sengalese population, generally not adhered to. This state of affairs is considerably exacerbated by the fact that the Family Law Code is written in a language that a miniscule percentage of the population can read (French), and also is due to the fact that the reach of the legal system into many indigenous communities is still minimal. Nevertheless the formal law, although honoured more by its breach than adherence to its principles, does introduce considerable uncertainty into matrimonial disputes, particular for women. Even though most indigenous communities still adhere to past practices it is nevertheless the case that the Family Law Code of 1972 has introduced significant uncertainty for women in any such dispute, particularly if the husband should seek to obtain legal advice and enforce its provisions. Camara's paper, however demonstrates the often-powerful resistance amongst indigenous communities to imposed laws that have little to do with their traditional beliefs and way of life. Nevertheless as we have seen in a number of other contributions to this collection resistance to impose colonial laws is an often-difficult process, and one often fought on shifting sands for indigenous communities.

The final paper in the collection '*Honorary Chinese? Women Citizens, Whiteness and Labour Legislation in the Early Australian Commonwealth*', by Dr. Dianne Kirkby, deals with the paradox of how it was possible that the emergent Australian state in the late nineteenth century/early twentieth century might on the one hand be extremely socially progressive, being one of the first nations in which women's suffrage was granted, whilst on the other hand amongst the least progressive of nations in respect to its treatment of indigenous Australians and non-white émigrés. Kirkby explores the possible interconnections between these two apparently contradictory aspects of Australian nationhood.

Kirkby notes the clauses in the Australian constitution which specifically excluded on racial grounds indigenous Australians, Asians and Pacific Islanders from the right to vote and citizenship rights could not have alone been motivated by a fear that white settler Australians would be 'swamped' by others in

exercising the franchise, as Australia comparatively speaking had a small proportion of racial minorities at the time of Federation. Rather, Kirkby suggests, these exclusionary clauses were introduced into the Australian constitution as symbolic of the centrality of 'whiteness' to settler identity in colonial Australia.

Kirkby also observes that the wage fixing principles instituted in Australia after federation cast women in a secondary economic category by denying them a full and equal wage. Kirkby states that thereby a direct connection was established between *the enfranchisement or political citizenship granted to white women and the simultaneous denial to those women of their economic citizenship...by awarding men a family wage and women workers 54% of that wage* there was thereby enshrined a notion that '*civilized (white) communities' were based on the protection of women from work outside the family*' (Kirkby, this volume).

Kirkby's central argument is thus that there was an intricate connection between labour market regulation and female wages in Australia and the White Australia policy of racial exclusion of non-whites and the denial of citizenship and the right to vote to indigenous Australians, Asians and Pacific Islanders. The paradox of the new commonwealth both being progressive (in granting (white) women the vote, and conservative at the same time in denying others the vote on racial grounds, indigenous Australians, Asian, Pacific Islanders, etc. is explained, according to Kirkby by the centrality of 'whiteness' to the new Commonwealth's perception of itself.

Kirkby's paper concludes with a reflection on aspects of 'identity' that constitutes a common thread running through the papers in this volume on Law and Empire. The manner in which the intricate connections between the construction of women's identity in colonial Australia and the constitution of the newly federated Australia as a state suffused with a specific racialised conception of itself are neatly unpicked in Kirkby's analysis. The importance of reflecting on the manner in which multiple identities were inscribed in the Australian constitution and labour market practices is foregrounded in Kirkby's examination of the apparent paradox of the conservatism of a policy of racial exclusion and the progressivism of (white) women's enfranchisement in the Australian constitution. Kirkby leaves us with the thought that we must examine how whiteness is enshrined in multiple aspects of social identity and discover ways by which we might better understand how 'whiteness' operates in social structures and how white people understand (our fail to understand) themselves (Kirkby, this volume).