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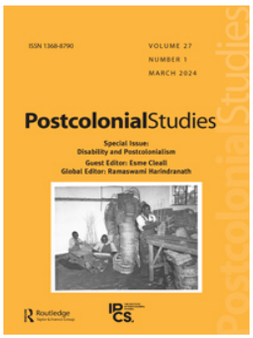

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CRITICAL DIALOGUE

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Growing law in Goolarabooloo Country

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The Children's Country is a culmination of work resulting from Stephen Muecke and Paddy Roe's long relationship with each other and the Goolarabooloo region (in Western Australia's Kimberley region). Muecke, with the late Roe weighing in, tells the story of a divisive struggle to protect the Goolarabooloo region from the development of a gas precinct by Woodside Petroleum. More than an account of these events, Muecke draws upon decades of work to compose an ambulatory exploration of the various knowledge communities at play, experimenting with new decolonial approaches and staking positions on a number of important disciplinary issues. There are a multitude of insights to be drawn from the work that will be important to those working with Indigenous knowledge, traditional and environmental law, science studies, and environmental politics. A central contribution is made through Muecke and Roe's sustained meditation on what Aboriginal Australians refer to as Country – a living thing in and of itself that is intricately connected to Aboriginal people and their ancestors. Through this, the authors make the case that, to decolonize white European institutional understandings of Country, it is necessary to radically revise the mechanisms through which institutional knowledge is re/produced. Muecke reflects on the events of the Woodside controversy to consider how this project might be approached, and why it is necessary. This important contribution is relevant in its central principles to the Goolarabooloo region and to postcolonial regions everywhere.

The fundamental problem Muecke contemplates is both ontological and epistemological. It concerns dominant and alternative human-environment relations and culturally different knowledge-making practices. It especially concerns the development of dominant and alternative institutional knowledge and the systemic limitations of knowledge-sharing that result from the persistence of colonial power hierarchies. Muecke uses a concept he calls the 'knowledge valve' to describe the currency of knowledge extraction: Knowledge-resources are removed from a location, community, or people and processed *in*to European-model institutions to further the project of globalization. Muecke's focus on the apparatus of knowledge extraction follows scholarship on colonial and scientific knowledge production by figures such as Doreen Massey (2003)[1] and Bruno Latour (1999).[2] Critically, the knowledge valve is a one-way system. Latour and Muecke both ask: is it possible for knowledge to travel both ways? Muecke goes further to reflect on the empirics of this idea: assuming there can be a two-way conversation between

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different knowledge systems, then how is such a conversation to take place, and how can it be mobilized to generate genuine institutional reform? For example, if knowledge production were less extractive and more cooperative, how might alternative (in this case, totemic) legal systems be repositioned as rational knowledge systems that not only inform but transform whitefella (i.e. European) law?

Cooperative knowledge production, Muecke suggests, would make space for a new question: what does the *Bugarrigarra* – the local institution – have 'going for it?' (p 6).[3] Finding value in the local might seem nothing new to either the field of grassroots environmentalism or, as Muecke discusses, the discipline of Anthropology. Indeed, local consultation is now standard in many policy-making frameworks. Yet none of these fields avoid the extractive practice of taking local knowledge and putting it *in*to practice, publications, and policy, showing that even reformist institutional approaches remain subject to the reproduction of fundamental colonial ontological principles. Muecke and Roe consider an alternative. They ask what the local institution (i.e. the *Bugarrigarra*) has (i.e. its 'attachments' or 'mode of belonging' (ibid)) that could elucidate and – most importantly – *interrupt* these reproductions? How might alternative institutions inform our understanding not just of what these mechanisms *are* but of how and why they persist? This question really is at the heart of the decolonial project, and the work of answering it is a slow process of institutional change. As both Muecke and Deborah Bird-Rose have argued, the reasons for doing so are pragmatic. If European-style knowledge systems are without an institutional mechanism for resolving ontological differences with the local (Indigenous) knowledge system, the two remain mutually exclusive. Most important to the politics of Muecke and Roe's book, institutions subject to this problem continue to produce laws and policies that are maladapted. That is, they cannot be effectively implemented in postcolonial societies where they compete with alternative (Indigenous) knowledge systems.

Muecke makes this point by examining the mechanisms through which Indigenous legal knowledge is extracted and processed within the framework of whitefella law, and particularly how that knowledge is represented in the legal concept of native title. As Muecke and others have argued, native title – a construct of whitefella law – is a fundamentally flawed concept.[4] Muecke gets underneath the politics of the concept to examine a more fundamental problem, namely: that until the *mechanisms* of knowledge production in whitefella law are revised, concepts like native title that develop from them, will remain incompatible with the central principles of Aboriginal jurisprudence. This incompatibility starts with ontological differences between Aboriginal and Modern European human-environment relations. Aboriginal human-environment relations are radically different, as reflected in traditional legal principles and in the methods used to develop legal instruments. Muecke, quoting Mary Graham, states that Aboriginal law is 'grown' not 'made' (p 53). But what is the process of 'growing' law? How precisely does 'growing' differ from 'making'? Muecke argues that Aboriginal law 'grows' through alternative acts of reasoning (p 63). It is a rationalization of social practice around custodianship of Country. Aboriginal law 'grows' from an empirical form of jurisprudence that is based on the intergenerational knowledge and *practice* of Country. Aboriginal law cannot be separated from Country. By contrast, modern European human-environmental relations are characterized by the concept of nature, and social institutions – like the law – are rationalized as separate from nature. It is true to say

that European law is made, rather than grown, not just because of a difference between statutory and customary law but because European law is anthropocentric. It is not an institution or social practice that 'grows' from holistic, sustainable, environmentally-based rationales.

Anthropocentrism is problematic in the field of environmental law more generally. One of the suggested remedies is the re/establishment of rights for particular nonhuman entities. In an otherwise anthropocentric legal system, nonhuman rights can give a form of limited legal protection (from human rights) to entities such as rivers. This law is 'made' to place more robust limits on an otherwise unsustainable system of natural resource extraction. By contrast, the concept of nonhuman rights is characteristic of totemistic and animistic societies. As Muecke notes, it is a logical progression within the totemic system to deduce that not just humans, but also nonhumans, have natural rights. This is not just a moral right. These rights are developed as pragmatic legal instruments to sustainably manage traditional lands.[5] This is not to suggest some commonality between totemic concepts and emergent environmental legal concepts of the nonhuman. The legal institutions in which these concepts are situated dictate very different concepts of nonhuman rights with very different possibilities. For example, recent environmental legal instruments give *human-like* rights to nonhumans (e.g. the right to stand).[6] In contrast, Muecke argues for a totemic or 'multirealist' legal concept that would give a river '*river-like* rights' (my italics, p 65). Nonhuman rights in emergent environmental law are effective because they bestow human-like rights on nonhumans in order to protect the nonhuman from competing human rights. These rights are situated in an otherwise extractive society and are, therefore, discrete (i.e. contained). Nonhuman rights in *Buggarigarra* law are effective because they are bespoke legal instruments that are developed using alternative jurisprudence and situated in what Muecke refers to as a 'multi-realist' society. Rather than being discrete rights, they are connected in a system that sustains and reinforces their agency.

What Muecke and Roe achieve with this work is a wonderfully rich and powerful decolonial text. They persuade, through reflective argument, that differences between Aboriginal and settler institutions remain so fundamental as to be largely unseen, and therefore unquestioned, by their practitioners. Much of this has to do with the differences in how knowledge is produced and the more-than-human labour involved in reproducing institutional practices on both sides. The Woodside Petroleum controversy shows that the historical lack of institutional knowledge-sharing, which might otherwise have developed hybrid frameworks of law and governance, has instead resulted in systems that are still unable to account for Aboriginal concepts of kinship and Country where these concepts cannot be translated into the European model.

Environmental change gives new cause to look to alternative systems of ecological management. It also gives rise to new concerns regarding the exploitation of Indigenous knowledge. What Muecke and Roe advocate for, how they suggest extractive practice can be reformed, is by 'renaturalising' institutions within local (Indigenous) knowledge systems. '… [M]odernity, if it is not to fail utterly, needs to be reset, this time with expert input from the locals' (p 142). This project rescales globalizing neocolonial institutions to instead 'fit the territory' (p 129). The idea behind such a scaler adjustment is that it disrupts extractive practice by forcing the institutional mechanisms of knowledge

re/production (the 'knowledge valve') to stop extracting and instead adapt to a more ecologically and economically sustainable model.

Notes

1. D. Massey, 'Imagining the Field', in M. Pryke, Gillian Rose and Sarah Whatmore (eds), *Using Social Theory: Thinking Through Research*, London: Sage Publications, 2003.
2. Latour's concept of 'circulating reference' (B. Latour, *Pandora's Hope: Essays on the Reality of Science Studies,* Cambridge, M.A., London: Harvard University Press, 1999) engages with this dilemma.
3. The *Bugarrigarra*, which has also been called the Dreaming, is the cosmology of the Goolarabooloo region and what Muecke refers to as 'the foundation of the law and culture of the Goolarabooloo people' (S. Muecke and P. Roe, *The Children's Country: Creation of a Goolarabooloo Future in North-West Australia*, London, New York: Rowman and Littlefield, 2021, p 5).
4. The 1998 and 2007 Amendments to the Native Title Act (1993) were particularly controversial because of the restrictions placed on potential claimants.
5. For example, the designation of certain landmarks, places, or species as 'sacred' builds on the concept of a nonhuman rights and can be utilised to sustainably manage seasonal resources. (V. Burns, 'Traditional Water Management as an Adaptive Subsistence Practice: A Case Study from Coastal Timor-Leste', in A. Ahearn and R. Kumar Dhir (eds), *Indigenous Peoples and Climate Change: Emerging Research on Traditional Knowledge and Livelihoods*, Geneva, Switzerland: International Labour Organization, 2019, pp 21–33).
6. See C. Stone, *Should Trees Have Standing?: And Other Essays on Law, Morals, and the Environment,* Dobbs Ferry, N.Y.: Oceana Publications, 1996.

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No potential conflict of interest was reported by the author.

Notes on contributor

Vanessa Burns is an environmental geographer at the Department of Geography, University of Sheffield. Her areas of specialization include decolonizing environmental governance, Indigenous adaptation justice, and geographies of climate change. She has published work in a number of leading academic journals, including *Political Geography, Environment and Planning E*, and *Land Use Policy*.