

ONTOLOGICAL EXPLORATIONS

Indigenist Critical Realism

Human Rights and First Australians'
well-being

Gracelyn Smallwood



Indigenist Critical Realism

Indigenist Critical Realism: Human Rights and First Australians' well-being consists of a defence of what is popularly known as the Human Rights Agenda in Indigenous Affairs in Australia. It begins with a consideration of the non-well-being of Indigenous Australians, then unfolding a personal narrative of the author Dr Gracelyn Smallwood's family. This narrative is designed not only to position the author in the book but also in its typicality to represent what has happened to so many Indigenous families in Australia.

The book then moves to a critical engagement with dominant intellectual positions such as those advanced by commentators such as Noel Pearson, Peter Sutton, Gary Johns and Keith Windschuttle. The author argues that intellectuals such as these have to a great extent colonised what passes for common sense in mainstream Australia. This common sense straddles the domains of history, health and education and Dr Smallwood has chosen to follow her adversaries into all of these areas.

This critique is anchored by a number of key philosophical concepts developed by the Critical Realist philosopher Roy Bhaskar. The book advances and analyses a number of case studies – some well-known, even notorious such as the Hindmarsh Island Affair (South Australia) and the Northern Territory Intervention; others like that of the author's late nephew Lyji Vaggs (Qld) and Aboriginal Elder May Dunne (Qld) much less so.

Representing one of the first attempts to engage at a critical and intellectual level in this debate by an Indigenous activist, this book is essential reading for students and scholars interested in Critical Realism and colonialism.

Since 1968 **Dr Gracelyn Smallwood** continues to be an outspoken advocate for the rights of Aboriginal and Torres Strait Islander peoples. Gracelyn was the first Indigenous Australian to receive a Masters of Science-Public Health (1986) and the first Indigenous PhD graduate from the Division of Tropical Health and Medicine (2011) at James Cook University. She is an Adjunct Professor at James Cook University, Queensland, Australia.

Dr Smallwood holds a number of awards including: the NAIDOC (National Aboriginal and Islander Observance Committee) Person of the Year Award (2014) and appointed a member of the Queensland Mental Health and Drug Advisory Council; the James Cook University Outstanding Alumni Award (2014); the United Nations Association of Australia Queensland Community Award-Individual (2013) in recognition of her service to Public Health, in particular to HIV-AIDS, contribution to Australian Universities and consultation to the World Health Organisation; and she received the Deadly Award for Outstanding Lifetime Achievement in Indigenous Health (2007) and was awarded an Order of Australia Medal (AM) in 1992 for her work in public health.

Ontological explorations

Other titles in this series:

From One 'Empire' to the Next

Radha D'Souza

Science for Humanism

The recovery of human agency

Charles R. Varela

Philosophical Problems of Sustainability

Taking sustainability forward with a critical realist approach

Jenneth Parker

Dialectic and Difference

Dialectical critical realism and the grounds of justice

Alan Norrie

Interdisciplinarity and Climate Change

Transforming knowledge and practice for our global future

Edited by Roy Bhaskar, Cheryl Frank, Karl Georg Høyer, Petter Naess and Jenneth Parker

Conversations about Reflexivity

Edited by Margaret S. Archer

Relational Sociology

A new paradigm for the social sciences

Pierpaolo Donati

Sociological Realism

Edited by Andrea M. Maccarini, Emmanuele Morandi and Riccardo Prandini

The Economics of Science: A Critical Realist Overview

Volume 1: Illustrations and philosophical preliminaries

David Tyfield

The Economics of Science: A Critical Realist Overview

Volume 2: Towards a synthesis of political economy and science and technology studies

David Tyfield

Ontology Revisited

Metaphysics in social and political philosophy

Ruth Groff

Childhoods, Real and Imagined

Volume 1: an introduction to critical realism and childhood studies

Priscilla Alderson

Naturalizing Critical Realist Social Ontology

Tuukka Kaidesoja

What's Critical about Critical Realism?

Essays in reconstructive social theory
Frederic Vandenberghe

Integrating Knowledge through Interdisciplinary Research

Problems of theory and practice
Dominic Holland

Post-Secularism, Realism and Utopia

Transcendence and immanence from Hegel to Bloch
Jolyon Agar

Critical Realism, Somalia and the Diaspora Community

Abdullahi Haji-Abdi

Reality and Self Realisation

Bhaskar's metaphilosophical journey toward non-dual emancipation
MinGyu Seo

The Contradictions of Love

Towards a feminist-realist ontology of sociosexuality
Lena Gunnarsson

Capitalism, Citizenship and the Arts of Thinking

A Marxian-Aristotelian linguistic account
Kathryn Dean

Understanding Mental Health

A critical realist exploration
David Pilgrim

Indigenist Critical Realism

Human Rights and First Australians' well-being
Gracelyn Smallwood

The Denial of Nature

Environmental philosophy in the era of global capitalism
Arne Johan Vetlesen



Gubulla Munda (Carpet snake) is the totem for the Juru Clan of the Birri Gubba Nation. Gubulla Munda holds sacred, cultural and spiritual significance to the traditional owners. This monument commemorates the resting place of remains for a number of members of the Birri Gubba Clan and stands in memory of the people who occupied this land before the Europeans came.

Scientific evidence suggests that Aboriginal people have lived in this country for over 40,000 years. The memorial was erected by their living descendants, with the support of the Burdekin Shire Council and the Archaeology Branch of the Department of Community Services, Queensland.

Gubulla Munda Dreaming comes from higher powers of Mother Earth. Gubulla Munda travelled through the waters, up to the dry land and rested, the perspiration of Gubulla Munda formed the hills, mountains, rivers and streams. Gubulla Munda travelled back down to the water and rested. As Gubulla Munda moved through the waters, the droppings formed the islands. This is the Juru Clans sacred story of the Gubulla Munda Dreaming (source: <http://monumentaustralia.org.au/themes/culture/indigenous/display/90447-birriguba-resting-place>. Used with permission of the Gudjuda Reference Group Aboriginal Corporation).

Indigenist Critical Realism

Human Rights and First Australians' well-being

Gracelyn Smallwood

First published 2015
by Routledge
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

and by Routledge
711 Third Avenue, New York, NY 10017

Routledge is an imprint of the Taylor & Francis Group, an informa business

© 2015 Gracelyn Smallwood

The right of Gracelyn Smallwood to be identified as author of this work has been asserted by her in accordance with the Copyright, Designs and Patent Act 1988.

All rights reserved. No part of this book may be reprinted or reproduced or utilised in any form or by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying and recording, or in any information storage or retrieval system, without permission in writing from the publishers.

Every effort has been made to contact copyright holders for their permission to reprint material in this book. The publishers would be grateful to hear from any copyright holder who is not here acknowledged and will undertake to rectify any errors or omissions in future editions of this book.

Trademark notice: Product or corporate names may be trademarks or registered trademarks, and are used only for identification and explanation without intent to infringe.

British Library Cataloguing in Publication Data

A catalogue record for this book is available from the British Library

Library of Congress Cataloging-in-Publication Data

Smallwood, Gracelyn.

Indigenist critical realism : Human Rights and First Australians' well-being / Gracelyn Smallwood.

pages cm. – (Ontological explorations)

I. Aboriginal Australians—Social conditions. 2. Aboriginal Australians—Civil rights. 3. Aboriginal Australians—Health and hygiene. 4. Aboriginal Australians—Education. 5. Human rights—Australia. 6. Social justice—Australia. I. Title.

DU124.S63S63 2015

323.1199'15—dc23

ISBN: 978-1-138-81036-5 (hbk)

ISBN: 978-1-315-74955-6 (ebk)

Typeset in Times New Roman
by Wearset Ltd, Boldon, Tyne and Wear



Printed and bound in Great Britain by
TJ International Ltd, Padstow, Cornwall

Vale Roy Bhaskar (1944–2014)

This is the third obituary that I have written this year and in many ways my grief makes it the hardest. Not many of my readers will have heard of Roy Bhaskar, who died a few days ago of heart failure. He was a philosopher and the founder of Critical Realism and the leader of the Critical Realist movement. I was introduced to his work by my good friend Gary MacLennan. I used Bhaskar's philosophy in my thesis to give rigour and depth to ideas and beliefs and intuitions that I had held for a lifetime. Chris Sarra and Grace Sarra also used Critical Realism in their dissertations.

I was able to meet Roy in South Africa when I went to present a paper on my own doctorate. I found him to be a kind and very gentle person. He expressed a great interest in my work and the struggles of our people to emancipate ourselves from colonialism. I am told that at the recent conference in London in his key note address he made special mention of my thesis, which he was kind enough to describe as 'very special and brilliant'. He also urged the conference members to buy my book when it comes out.

Roy had visited Cherbourg with Chris Sarra in 2006 and spoke to the men's group. His fondest wish was to visit Uluru because as he told me he knew that he would feel the spirituality of our people there. Alas, that was not to be and his projected trip for 2015 will not now take place.

There are many short films on YouTube of Bhaskar speaking on his philosophy. His latest work with its emphasis on our ground state of love, altruism good faith and solidarity is, in my opinion, very close to Aboriginal spiritual beliefs. Should readers be interested, I think the best introduction to his work is the series of interviews he did with Mervyn Hartwig (Bhaskar and Hartwig, 2010). Bhaskar, R. and Hartwig, M. (2010). *The Formation of Critical Realism: A Personal Perspective (Ontological Explorations)*. London: Routledge.

I thank him for his support and in helping me complete my dreams of publishing this book and wish his family and friends my condolences. He was a great man, and he will leave a great legacy for us all.

Contents

<i>List of illustrations</i>	x
<i>Foreword</i>	xi
<i>Acknowledgements</i>	xiv
1 Introduction	1
2 Methodology	13
3 Narrative and testimony	33
4 The tradition of all the dead generations ... the tradition of all Indigenous generations...	50
5 Engaging Sutton and Pearson	78
6 The education wars	101
7 Human Rights and the Aboriginal people of Australia	124
8 Human Rights: the Hindmarsh Island Affair, the Northern Territory intervention, the cases of Lex Wotton and Lyji Vaggs	146
9 Conclusion	165
<i>References</i>	171
<i>Index</i>	191

Illustrations

Figures

2.1	Differentiating the Other	28
2.2	A 1967 referendum poster urging vote to recognise the first people of this land as Australians	30
3.1	Mum and Dad's wedding 1949	41

Tables

1.1	Communicable diseases detected in Indigenous peoples	8
1.2	Effects and consequence by time period	10
8.1	Comparison of child abuse cases – NSW and NT	153

Foreword

Indigenist Critical Realism: Human Rights and First Australians' well-being is in important ways a book that I myself very much wanted to write, but could not find the inner resources to accomplish because, for one thing, my own story is bound up with the overseas expansion of European peoples that unleashed Western modernity's catastrophic dispossession and unspeakable holocaust of Indigenous peoples across the face of planet Earth. I grew up 700 miles down the track from Gracelyn Smallwood and Birrigubba country, in the beautiful upper Moocooboola River valley of southeastern Queensland, home of the flourishing Gubbi Gubbi (Kabi Kabi) people until we colonists arrived. Towards the end of the Second World War, at the age of seven or eight, I watched in utter astonishment as a battalion of strapping African American soldiers swung past the tenant farm I then called home, handing out chocolates and other tokens of good will. Outside of the annual Gympie Show, when inmates of the local Aboriginal 'reserve' at Cherbourg, in the Barambah (South Burnett) valley some 30 miles as the crow flies to the west, were wheeled out to perform a corroboree, then wheeled back to camp that same night – the Aboriginal as Exotic, Comical and Despised Other (pp. 29–32) – I had never seen a black person before. Within a century of the European invasion of their country the Gubbi Gubbi had been utterly effaced from the upper Moocooboola landscape – absented. Heroic resistance had been followed by defeat, disease and de-agentification, and during the three decades preceding my birth the survivors, the pulse of freedom still beating in their breasts, had been rounded up and dumped at Cherbourg, along with their counterparts from many other dispossessed First Nations throughout Queensland and northern New South Wales. In many districts the economically useful were exempted from this policy of forced removal, the threat of which was used to maintain and discipline their cheap labour and to control residual local Aboriginal communities living in 'fringe camps', but such had been the impact of the Gympie goldrush (from 1867) and closer settlement, it would seem, that no Gubbi Gubbi fell into this category in the upper Moocooboola valley by the time of my childhood.

Among its many highly original qualities, Gracelyn Smallwood's book is the first detailed empirically based application of the Critical Realist theory of explanatory critique that we have, not just by an Indigenous, but by any scholar.¹

It demonstrates by immanent critique and sharp polemic that the policies and practices of Australian governments and leading social theorists in relation to First Australians are false or misleading or inadequate in important ways in relation to their object and/or objectives. Next, it provides a social scientific explanation of these mistaken policies and practices, issuing in a value-imperative to change their social sources, other things being equal. Finally, it reconceptualises them in the form of more adequate theories and practices generated by the explanatory-critical analysis. In broad but more concrete terms, the upshot of Smallwood's extended argument is that the current neo-liberal and neo-positivist agenda should yield to one based on Human Rights and social justice for Indigenous peoples, entailing far-reaching transformative change in Second as well as First Australia. Her fundamental message is that there can be no Reconciliation except on the basis of the full truth about Second Australia's treatment of First Australians and the Indigenous lived experience of it, a sensitive awareness to the massive weight of the past in the present, and the extension in practice of rights as well as responsibilities and social justice to all. Until this happens, Second Australians will never feel truly at home in the Great South Land, glimpsing only its possibility from time to time across an unhealed gash in our social being, as Patrick White has shown in his novels, all the while nursing our dirty secrets. It is particularly fitting that an Indigenous scholar and activist should be first to write a book in the field of empirically based explanatory critique, as such an approach is integral to emancipatory projects. We can expect that the wider human eudaimonian project as such will be among the significant beneficiaries of such work, as scholars and activists tap into the wealth of resources Indigenous peoples harbour.

In the course of this extended argument Smallwood makes an original contribution to Australian historiography by brilliantly deconstructing the frontier/post-frontier dualistic model of Australian history favoured by liberals and neo-liberals, drawing on the figure of the presence-of-the-past-in-the-present to articulate an understanding of a distanced present stretching over several centuries and incorporating a structural incubator of racist violence – 'more of a racially based continuity than a rupture', a 'transgenerational scourge of violent colonization' (p. 73 and p. 74).

Indigenist Critical Realism: Human Rights and First Australians' well-being places the issue of rights squarely on the agenda for emancipatory theory and practice, which has been too prone to view them as exclusively abstractly universal, the handmaid of the coloniser and the imperialist. That they indeed often have been and are, including within Australia, but Smallwood demonstrates in a practical way that an understanding of rights as flowing from a core universal human nature or common human needs, comprehended in terms of the concrete, not abstract, universal, is indispensable for Indigenous depth-strugglers, and accompanies this with a critique of the abstractly universal and egoistic assumptions informing the discourse of modernity.

In accordance with a widespread convention of Indigenous scholarship, Smallwood prefaces her extended argument with a fascinating 'self history'

accompanied by photographs and illustrations. This tells the researcher's own story of experiencing and resisting the horrors of colonisation as a condition for truth-telling in the wider context. It serves as an unforgettable reminder of the concretely human and ethical dimension of the wider narrative she unfolds – a profoundly moving account that 'radiate[s] out from my own story' as a real type of what Aboriginal people in general have had, and have to endure and of their struggle for emancipation (pp. 33–49). 'To lend a voice to suffering', as Theodor Adorno has observed, 'is a condition for all truth', and I am deeply honoured to try to assist in some small way with this Preface.

Mervyn Hartwig
London, August 2014

Note

- 1 The superb extensive recent work, not yet published in book form, of a Second Australian, Hugh Lacey, in the area of explanatory critique and emancipatory movements provides a partial exception to this statement.

Acknowledgements

I would like to make the following acknowledgements with the hope that in this process that I do not leave anyone out. It would be impossible to mention all who have assisted me during my lifetime, through the writing of my thesis and in the writing of my book. Still, I will try to do everyone justice in this short summary.

First, I want to thank my Creator and my Ancestors, as my prayers always seem to be answered. Thanks to my amazing, strong political and cultural family, you are all 'TOO DEADLY'. To my Grandparents: Alf and May Stanley and family who have had a profound effect on my life and thank you so much for being there.

I especially want to thank my parents Grace and Archie Smallwood for teaching me from a very young age how to be an activist, and a particular thank you to all of my 19 siblings and their offspring, as there are way too many to mention. You have all supported me on my long journey, both in life and in this book.

I particularly want to thank my eldest sister Dorothy, her husband Sammy, and their family. My achievements would not be possible without your strong cultural and family support to myself, my children and my grandchildren.

Thank you also to my Sister Jeanette Wyles for your honesty when proofreading my work over the years and especially for telling me like it is.

To my brother Alfred Smallwood, you are certainly an inspiration as after 40 years of alcoholism and now eight years sober – keep strong.

This book has developed and evolved from my PhD. To my Principal Supervisor – Dr Rick Speare, and your wonderful wife, Dr Kerry Kelly, you have both played a major role in my life for more than 30 years. I am deeply grateful, as you continue to advocate for our community in 'Closing the Gap'. To my other Supervisor – Dr Jenni Judd, a heartfelt thanks to you and your wonderful partner Louise Scanlan. Thanks also for the support during the development of this book. To my research assistant and friend – Dr Gary MacLennan, what can I say, thank you for the long hours yourself and your wonderful family spent with me over the years. I am also so grateful for your support and assistance with this book.

To my Elders Auntie Renata Prior, Dr Ernie Hoolihan and Auntie Josephine Saylor, your support, language, culture, politics and stories over the years have contributed greatly to who I am.

Thank you to Mrs Karel Gallagher nee Spina, your three sons Mario, Michael, Marty and Mr Joe Spina for giving me my first job at the age of 14 years and for our continued friendship over the years. Thank you to all my friends, family and activists-(too many to name) for your prayers, culture and political support to everyone who has assisted me on this long journey in Human Rights. A particular thanks to the Building Indigenous Research Capacity (BIRC) NHMRC project and BIRC Scholars for peer support, research training and mentoring.

Thank you to my son Christopher and his wife Michelle and family, my daughter, Dorothy and her partner John and family and my son Alfred and partner Rhianna and family, for your love patience and support over the years. I dedicate this book to all First Nations' peoples in the world and to their fights for Human Rights. 'WADAMOOLIE' and peace and justice to ALL.

Gracelyn 'Gullidala' Smallwood

NB. Gullidala means seagull in my Birrigubba language.

Permission for Son of Mine from My People

Author: Oodgeroo

Copyright Wiley & Sons

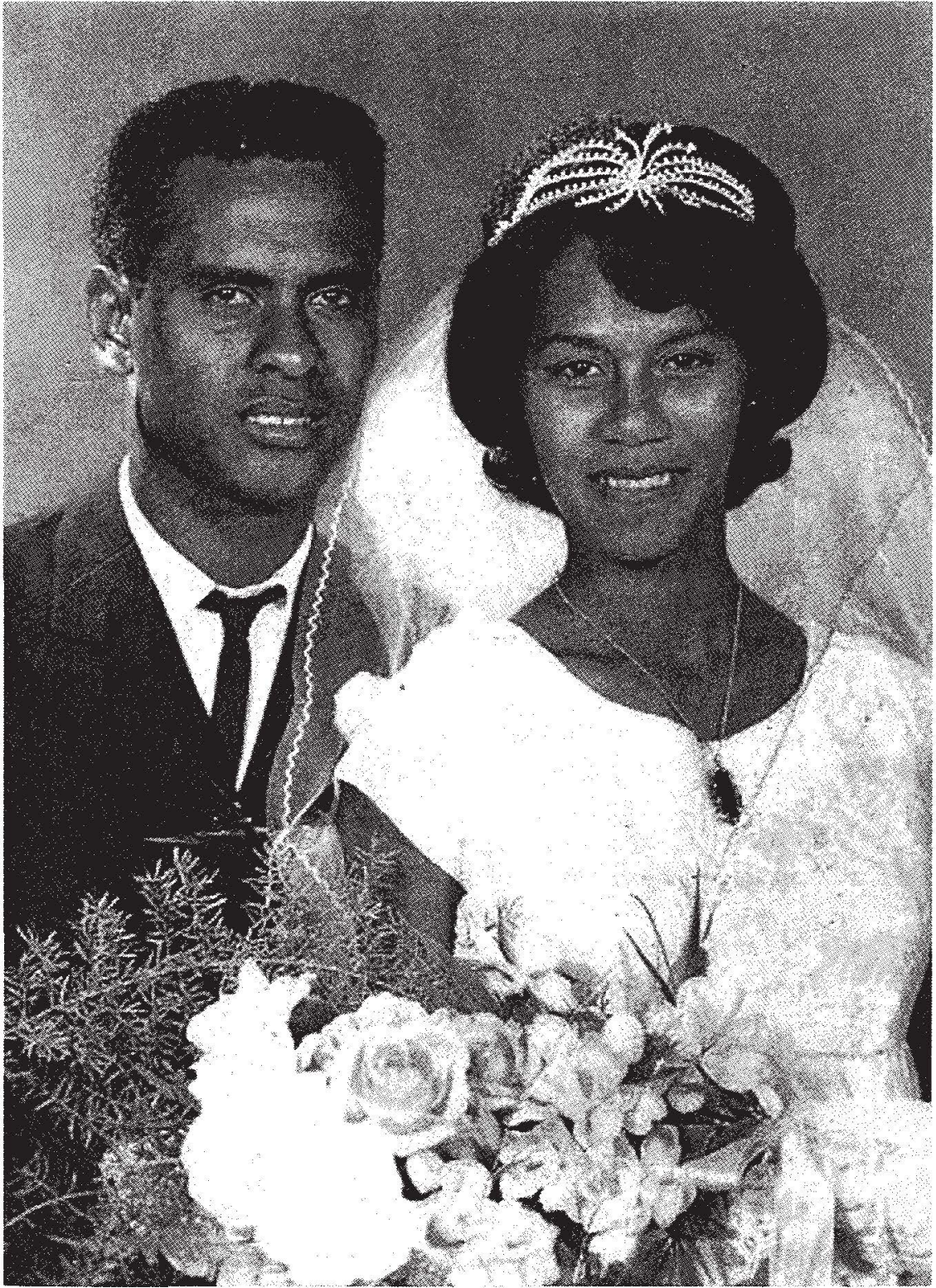
Reproduced with permission of John Wiley & Sons Ltd.



Jeff McMullen, Gracelyn Smallwood, daughter Dorothy and son Alfred at the launch of her PhD in 2012.



Eldest son Christopher, Gracelyn and daughter Dorothy at the graduation ceremony Townsville, December 2011.



Sam and Dorothy Savage, at their wedding (Gracelyn's eldest sister and brother-in-law).

1 Introduction

The impulse to write this book has come from a lifelong struggle for the rights of my people, the First Australians, and also for the rights of the Torres Strait Islander people of Australia. I also write partly in response to urgings, such as those made by Branson for all of us to do what we can to ensure respect for Human Rights, be it at home, at school, at work or in the streets. I would add, as will be seen in Chapter 9, the universities, the hospitals and the prisons.

I make no apology for the at times angry tone that I write. However, while I spurn a spurious neo-Kantian identification of the objective with the impersonal, I am more than willing to admit that this is not a neutral book. Rather, this book is informed by a clear commitment to a Critical Realist notion of the truth, in that I seek to uncover the reason for things not propositions (2008, pp. 211–218). Moreover, the intent of my book is also inspired by Critical Realism, in that it will, I hope, contribute in a small way to the emancipation of my people.

My overall intention has been well expressed in another context by Vicki Grieves. In her response to Keith Windschuttle's (Windschuttle, 2002) shameful pro-colonialist book *The Fabrication of Aboriginal History, Volume One: Van Diemen's Land 1803–1847*, Grieves (2003, p. 198) writes:

Deeper understandings of the complexities of our histories will enable us to chart an optimal future for this country. That is, a future free of the colonial yoke, informed by new understandings of our humanity and the need for social justice, reflected by the intelligentsia and in popular culture.

So despite the *engagé* and at times even *enragé* tone of what follows, I have endeavoured throughout to produce a work that consists of a reasoned response to the question: How important are the notions of social justice and Human Rights in the emancipation of First Australians?

On the face of it this question would appear to be rather banal and to cry out for a simple non-controversial affirmative answer. However, my book is being written at a time, when the notion of a policy based upon the Human Rights of the First Australians has come under sustained, powerful and influential attack (Johns, 2006a; Merlan, 2009; Sutton, 2009; *The Australian*, 2011; Windschuttle, 2002, 2009). Indeed, the anthropologist, Sutton (Sutton, 2009, p. 11), as we will

2 Introduction

see in Chapter 5, explicitly blames what he terms the ‘rights agenda and the redistribution of power’ for the current state of First Australians. On 15 April 2011, this charge was repeated in an *Australian* editorial which claimed:

Australians want to see better outcomes and an end to the shameful conditions endured by any First Australians. Yet the professional class of urban blacks is more interested in bridge walks or the agenda of the Human Rights and Equal Opportunity Commission.

(*The Australian*, 2011, para.4)

Sutton’s (2009) work is part of what Barry Morris and Andrew Lattas have termed a ‘collective pretence’. They would have it that:

...it has not been inadequate funding, high staff turnover, poor planning, constantly changing policies and ineffective management which have led to poor health, education, housing, employment and material living standards for Indigenous people. Instead, Aboriginal culture and self-determination are blamed even though there is good reason to question the token and limited forms of self-management given to Indigenous citizens.

(Morris and Lattas, 2010, para.3)

If Human Rights based policies are under attack, so is the allied notion of social justice. It has been subject to scorn and criticism by the followers of the neo-liberal Friedrich August Hayek who has been described as ‘one of the greatest political thinkers of the twentieth century’ (Tomasi, 2007, para.13). Typical, here, is the work of Thomas Sowell (1999).

Sowell’s (1999, p. 14) tactics are firstly to argue that the kind of information necessary to rectify social inequalities is not available to governments. One of the examples he considers is that of ‘racial preference’ in admission to colleges (Sowell, 1999, pp. 14–15). Here, he resorts to the metaphor of guiding a river boat. The claim is that the college will have to know every student as thoroughly as the captain knows the river, but this is impossible as each group of people has a unique history, and an accompanying set of reasons for its disadvantage (Sowell, 1999, p. 15). While it is true that every group of people has its own unique history, Sowell exaggerates the scale of the differences, and ignores what really matters to the victims of colonialism, which of course is the similarity of outcomes.

For Hayek (1976, p. 62) the demand for social justice was an instance of ‘naïve thinking’, and:

...a sign of the immaturity of our minds that we have not yet outgrown these primitive concepts and still demand from an impersonal process which brings about a greater satisfaction of human desires than any deliberate human organization could achieve, that it conform to the moral precepts men have evolved for the guidance of their individual actions.

(Hayek, 1976, p. 63)

Hayek's critique of social justice has been well answered by Steven Lukes (1997). Lukes condenses Hayek's arguments to six claims and deals with these in turn. The first claim is that the very idea of social justice is meaningless, especially so in a free market society where prices are set by the impersonal forces of the market. Therefore, no one can be thought to be acting unjustly. However, as Lukes (1997, pp. 72–73) points out, the moral question is raised by the question of what one should do about the consequences of these 'impersonal forces'. The market produces social inequalities and suffering, and to do nothing about this is unjust. It could be added, that there can be no claim, that the social consequences of free markets are not known.

The second claim, that Lukes considers as we have seen in the quote from Hayek above, is that the idea of social justice is a religious or superstitious one. As Lukes points out there is a contradiction, here, between saying that the notion of social justice has an intrinsically religious meaning, and the first claim that the very idea of social justice is meaningless (p. 68). Lukes (1997, p. 72), notes that, earlier, Hayek (1976) has endorsed a religious view of society, and moreover, that the idea of social justice is religious, and hardly constitutes grounds for a rejection of the idea of social justice.

The third claim, that Lukes considers, is that the idea of social justice is self-contradictory. The argument, here, is that the making of a claim for social justice implies that there is someone whose duty it is to provide that. Such however, is not the case in a free market society, where no one is in charge. Lukes' (1997, p. 73) riposte is that markets are always regulated, and the effectiveness or otherwise of these regulations can be judged.

The fourth claim, that Lukes seeks to refute, is that claims for social justice are always ideological, in that they simply represent the claims of a particular interest group being advanced under a general cover. Here Lukes' tactic is to bracket off claim four, and address claim five that social justice is unfeasible. He follows this with a critique of claim six, that all attempts to institute social justice lead inexorably towards totalitarianism.

There are two aspects to Hayek's claim that social justice is unfeasible. The first of these is that there are so many values or contending candidates for the 'good', that it is not possible to choose between them, or to arrange them in a hierarchy. Lukes (1997, pp. 75–76) points out that John Rawls isolates the notion of justice from the various candidates for the 'good', and asserts that it will not favour any particular claim in an *a priori* fashion.

Hayek's second argument, for the unfeasibility of social justice, devolves around the impossibility of any government having sufficient information to enable it to make a just decision with regard to distribution. Lukes (1997, p. 76) counters this by first conceding that Hayek's objection does apply to command economies, but not to mixed economies, where governments would have sufficient information to modify the impact of markets.

The sixth and final point, is that attempts to introduce social justice, would be disastrous, in that they would inexorably lead to tyranny. Lukes claims that Hayek's position is linked to his libertarian notion that the function of law is not

4 Introduction

to strive for fairness, but to limit coercion (1997, p. 77). It is the absence of arbitrary coercion that Hayek defines as justice. Here, as for Sowell (1999, pp. 168–169) the ideal of law is that it be general and abstract and apply to all. Lukes (1997, p. 77) points out that Rawls, in this case, gives the counter example of the Apartheid laws in South Africa as general laws, which were oppressive in their application. He also clinches his case, against Hayek, by pointing out that the latter has no mechanism for addressing the problem of the growing inequalities that the market creates (1997, p. 78). It could be added, that either Hayek, nor Luke, address the point, which Piketty (Piketty, 2014, p. 105) has made, that the source of the inequality is that: ‘[economic] growth rates are lower than returns on capital, and consequently there is a tendency for inequalities to increase rather than decline’.

Despite Lukes’ (1997) critique of Hayek being a very damaging one, the importance of Hayek’s approach to social justice lies in the influence that Hayek and his followers have had on Western governments and, indeed, Eastern European governments for the past 30 years. Although, Friedman (1997, p. 1) argues that Hayek’s political influence was confined, in the UK, to the ‘miraculous year’ of 1989. Davis makes the point that many of the actions of the Howard led governments (1996–2007), in Australia, become understandable, if we see them as motivated, at least in part, by the Hayekian belief in the supreme efficacy of the market in the satisfying of human desires (Davis, 2008, pp. 32–33). I would also point out, in this context, that the role of the Aboriginal lawyer and intellectual Noel Pearson and the origins of his later writings, especially, can be best understood as being extremely influenced by Hayek’s basic approach (Pearson, 2010a; 2011).

It is this triumph of neo-liberalism that defines the broad political background to my book. This triumph has been well described by the late Edward Said (2000). He characterised the consequences of neo-liberalism thus:

What has disappeared is the sense citizens need to have of entitlement – the right, guaranteed by the state, to health, education, shelter and democratic freedoms. If all those become the prey of the globalised market, the future is deeply insecure for the large majority of people, despite the reassuring (but profoundly misleading) rhetoric of care and kindness spun out by the media managers and public relations experts who rule over public discourse.

(Said, 2000, para.7)

Instead of the ‘rhetoric of care and kindness’, I believe that we need a world, where these values are put into practice. To say this is to immediately put me at variance with the deniers of social justice. Here, Spragens has usefully outlined three positions. First is what he terms, somewhat confusingly, the ‘hegemonic’ approach which believes ‘that it is ... possible to ascertain a single substantive standard of social justice that is rationally persuasive’ (Spragens, 1993, p. 194). Spragens gives, as candidates for such an approach, the Platonic notion of justice or *dike* and the Marxist dictum in the *Critique of the Gotha Programme* – ‘From

each according to his ability, to each according to his needs!' (Marx, 1875/1972, p. 17).

Looking, from a First Australian's perspective, at the actual world we have, I cannot think that it is one where Platonic notions of justice or Marxist dreams of redistribution are hegemonic. Leaving that objection to Spragens' terminology to one side, let us consider the next approach, that of the sceptics, who could truly be said to be dominant or hegemonic. The sceptics deny the very possibility of social justice and argue that the pursuit of social justice leads necessarily to tyranny. As we have seen, Von Hayek is the most obvious representative of this tendency.

Spragens rejects the sceptic approach as it would lead to the kind of world where the values of Thrasymachus, who argued that 'justice or right is simply what is in the interest of the stronger party' (Plato, *c.*360 BCE/1987, p. 19), would dominate. Indeed, I would maintain that is just the sort of world we have. Spragens also rejects the hegemonic approach on the grounds that, because something is unjust, that does not mean its opposite is just. This, he argues, is due to the gratuitous and arbitrary nature of life. Talents and abilities are not distributed fairly. Nor is suffering; nor the arbitrary selectivity with which one endows others with the gift of love (1993, pp. 208–209). This state of affairs is patently unfair, Spragens concedes but he maintains that attempts to do anything about this would lead to unfairness.

For this reason Spragens outlines and endorses a third approach, which he terms 'pluralist'. There is a recognition here, of the need for a just world, but what can motivate such a world? The two candidates presented are 'self-interest' and civic friendship. Spragens (1993, p. 213) rejects 'self-interest', because at best, he argues, it provides for a truce between natural enemies. Certainly, a politics based on self-interest is neither noble nor inspiring. Instead, Spragens endorses civic friendship, which is based on the need to recognise that we share the same fate that we should face as friends, who have a commitment to the notion of the 'common good' (p. 216).

I tend not to agree with Spragens' ground for rejecting the 'hegemonic approach' to social justice. Frankly, I am drawn to absolute notions, such as that all being is good (Collier, 1999) and that, because we share a common core humanity (Bhaskar, 2008), society should be organised to minimise, at least, those forces that divide us. Here, I think DiQuattro's (1983, p. 54) distinction of 'just inequalities' is important. These are inequalities that do not spring from the unethical workings of an exploitative class based society, i.e. precisely the inequalities that exercise Spragens.

These 'just inequalities' do not, as DiQuattro argues in his leftist reading of John Rawls' two principles of justice, lead to a defence of an unjust society. As a Marxist, DiQuattro (1983; 1986) believes that a just society would be a socialist one. Connin (1985) objected to DiQuattro's attempt to recruit Rawls to the left cause, citing Hayek's endorsement of the Rawlsian principles. DiQuattro's (1986) counter attack stressed that Hayek had misunderstood Rawls. Most convincing, here, is DiQuattro's emphasis on Rawls' belief that the free market did

6 Introduction

not provide a fair distribution (1986, p. 308) (DiQuattro, 1986, p. 308). For Hayek however, there could be no other mechanism than the market and attempts to regulate it would be at best disastrous.

What then of Rawls' two principles? These principles state:

Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others [and] 'social and economic equality are to be arranged so that they are both (a) reasonably expected to be everyone's advantage, and (b) attached to positions and offices open to all'.

(Berkowitz, 2002)

A society governed by these would be a radical advance for First Australians. So would a society governed by Spragens' notion of civic friendship. In both cases such a society would prioritise the question of rights and so in the teeth of the dominance of neo-liberal thought, my argument will still be that, 'yes, Human Rights are vital to First Australians well-being.' And, 'no, we should not put all our faith in market mechanisms'. I also extend this to a rejection of the notion of 'passive welfare' as an explanatory mechanism for the current state of First Australians non-well being, a state which I shall shortly document.

To attack the notion of 'passive welfare' as the one key that fits all, is, of course, to set oneself up against the full panoply of neo-liberal thought. It would be much easier (and more financially rewarding) to parrot back to White Australia what they wish to hear, especially in the arena of welfare, and some Aboriginal Leaders have done just that (Graham, 2010). However, I am deeply committed to speaking truth to power. This means that I disagree strongly, as we will see in Chapter 4, with the Aboriginal leader Noel Pearson. It also means that I agree with Graham when he writes:

Broadly, Noel Pearson believes that the provision of a fortnightly pay packet with no expectation of anything in return is killing Aboriginal people. The free ride inevitably leads Aboriginal people, including mothers and fathers, to drugs and alcohol. Social norms in Aboriginal communities are subverted. Aboriginal people are locked out of the 'real economy' and into a cycle of 'dysfunction,' abuse and early death. Grog and ganja become the problem, rather than just the symptoms of the bigger problems of dispossession and unemployment.

(Graham, 2010, para.6)

Let me now make good on my promise to review the current state of well-being of the First Australians. My purpose is twofold. I want to establish the actuality of Indigenous Australia. The word 'actuality' is chosen deliberately to indicate that, as things actually are, they need not necessarily be. Reality, as Roy Bhaskar has argued, includes the non-actualised and the non-experienced (Bhaskar, 2008). That is, there is potential within Indigenous Australia for the capacity to

absent the constraints that prevent them from absencing those ills, and that the statistics reveal to be plaguing them. I make this point, because I wish it to be clear that, although the condition of my people is, as we shall see, quite deplorable, that does not constitute the sum total of the reality of Indigenous Australia. We are a proud people, and we will rise again.

A statistical overview of Indigenous non-well being

- The life expectancy of the First Australians is around 10 years lower than that of the non-Indigenous Australians.
- In 2006 the unemployment rate for the First Australians was 16 per cent, compared with only 5 per cent for the non-Indigenous population.
- In 2004–2005, 27 per cent of First Australians were living in overcrowded conditions.
- In 2006, the rate [of] homelessness for Indigenous peoples was three times the rate of other Australians.
- In 2005 it was reported that 18.3 of Indigenous women experienced physical or threatened abuse in the past 12 months compared with 7 per cent of non-Indigenous women;
- Indigenous prisoners represented 24 per cent of the total prison population in Australia in 2007.

(Calma, 2009, p. 2)

In terms of the contact between First Australians and the Justice system, the figures show that the gap in disadvantage has been increasing (Willis, 2010). Willis speculates on the impact of the exposure the justice system has on the well-being of Indigenous Australians. Little research has been done here, but it is surely relevant that Indigenous Australians reported suffering from high levels of psychological distress at twice the rate of non-Indigenous Australians. Indigenous women, between 35 and 54 years of age, were the greatest sufferers here. Their levels of psychological distress were as high as 76 per cent (Willis, 2010).

From these stark figures we turn to the health domain. Once more the overall picture is very grim. I will take just a few of the figures from Calma's (2009) submission to the National Human Rights Consultation. Thus, Indigenous Australians were three times more likely to be in hospital due to self-harming (Calma, 2009, p. 28). The rate for disability was 1.4 times that of the non-Indigenous population (Calma, 2009, p. 29). Moreover apart from the life expectancy shortfall with White Australians, the quite shocking fact is that the life expectancy of Indigenous Australians is now worse than that of Native Americans, Aboriginal Canadians and the Maori (Calma, 2009, p. 24).

If we turn to a range of statistics (Table 1.1) on communicable diseases we find that again there is great cause for concern.

If we proceed from these figures to the consideration of the incidence of trachoma, then the truly terrible condition of the health of my people becomes clearly apparent. As Desmond Manderson points out, Aboriginal Australia is the only

8 Introduction

Table 1.1 Communicable diseases detected in Indigenous peoples

<i>Communicable disease</i>	<i>Detected in Indigenous peoples at ...</i>
Hepatitis A	11.7 times the rate in the non-Indigenous population
Hepatitis B	5.4 times the rate detected in the non-Indigenous population
Meningococcal infection	7.8 times the rate in the non-Indigenous population
Salmonellosis	4.3 times the rate in the non-Indigenous population
Chlamydia infection	7.9 times the rate detected in the non-Indigenous population
Tuberculosis	1.6 times the rate in the non-Indigenous population

Source: Calma, 2009, pp. 26–27.

community in the developed world that suffers from trachoma, a debilitating condition that can lead to blindness (Manderson, 2008, p. 257). Further more, outside the framework of the developed world, countries, such as India, Vietnam and Morocco, have successfully eliminated the disease. To achieve the same result in Australia would cost a mere \$20 million. Yet, where is the consciousness of the need for such expenditure, despite the fact that rates of trachoma among Indigenous Australians are the highest in the world (Manderson, 2008, p. 258)?

If we consider the arena of mental health, where unfortunately as Hunter (2008, p. 206) points out, the data is rather incomplete, we still find that ‘schizophrenia, schizotypal and delusional disorders ... [are] 2.3 and 2.5 times that expected for the population as a whole for Indigenous males and females hospitalised for disorders due to psychoactive substance use’ (Hunter, 2008, p. 207). Hunter tells us that his experience, of over 16 years in Cape York, has convinced him that there is a dramatic increase of serious mental disorders, and that these are occurring at a younger age. Also, of grave concern are the syndromes of foetal alcohol and foetal alcohol syndrome disorder (Hunter, 2008, p. 207).

An examination of the performance of First Australians in the field of education is equally disturbing. Education is, of course, a key element in the Human Development Index (HDI), success in education being positively related to life expectancy and income earning capacity (Australian Institute of Health and Welfare, 2010, p. 242; Biddle, 2010, p. 1). The Australian Institute of Health and Welfare (AIHW) also makes the case that poor health can affect schooling. Thus infections of the middle ear – *otitis media* – are twice as common among Indigenous children as non-Indigenous children. This infection has also been established as a cause of learning difficulties (Australian Institute of Health and Welfare, 2010, p. 244).

It is hardly surprising, then, that on all the educational variables Indigenous Australia lags behind non-Indigenous Australia. Thus, the national figure for attendance is 93 per cent for non-Indigenous students, while it is 86 per cent for Indigenous students. This attendance problem becomes exacerbated at the secondary level, and is much worse in remote areas (Biddle, 2010). Interestingly, the data also shows that the problem of Indigenous non-participation in education is greatest in remote towns, which do not have an Indigenous majority (Biddle, 2010, p. 30). In addition to the attendance problem, the data shows that Indigenous Australians trail non-Indigenous students in the areas of reading,

writing and numeracy. Moreover, the gap gets worse as the students get older (Biddle, 2010, p. 1). Biddle (2010) does not speculate on the reasons for this. However, he does comment that:

There is ... strong evidence that a position of opposition to formal education is adopted by youth that, due to a history of unfavourable experiences, is sanctioned by the [Indigenous] community.

(Biddle, 2010, p. 32)

In addition, recent research shows that the experience of racism in schools is a factor in deterring Indigenous children from attending (Biddle and Priest, 2014). It would seem indeed that, 'The tradition of all dead generations weighs like a nightmare on the brains of the living' (Marx, 1852/1977, p. 10).

I will deal in more detail with the question of time later in this chapter, but, here, I will emphasise that it will be a central and of necessity, a much iterated argument of this book that a radical break from the past will entail the foregrounding of the Human Rights of First Australians. In the meantime, I will conclude this brief survey of First Australians well-being by pointing out that, in terms of the HDI Australia came fourth in the United Nations (UN) rankings (Biddle, 2010, p. 1). What is more, Biddle points out, if the HDI approach was applied to First Australians separately then the result would place Indigenous Australians somewhere above the Occupied Palestinian territories, but lower than Fiji (Biddle, 2010, p. 1). Moreover, it bears repeating that the results for the First Australians population, are worse than that for US American Indians, Alaskan natives and Canadian Aboriginal peoples (Biddle, 2010; Calma, 2009).

Phillips (2003) has made an explicit and valuable attempt to ground, the dismal facts of First Australians (non) well-being, in psychological and historical contexts. His approach is to emphasise the role of trauma as a causal factor in First Australians addiction and alcoholism. The source of trauma is predominantly white colonialism. Phillips' model is basically a before (pre-contact) and after (post-contact) one. As can be seen from Table 1.2, his reading of the pre-contact way of life is positive claiming a strong correlation between First Australians spirituality and well-being. The post contact category is further subdivided into Missionary (Decentralised and Centralised) and Self-determining (Semi and Council). He employs scare quotes around 'self-determination' to indicate that he does not feel that it is full self-determination. His categories are as follows.

Sutton (2009) would, I am convinced, disagree with Phillips' characterisation of pre-contact First Australians well-being. Certainly, Phillips gives no evidence for his claims. Nevertheless, there is the retroductive argument from the empirical fact that first Australian society survived and flourished for millennia. What kind of society could have accomplished that feat? I would argue, only one which bore a close resemblance to Phillips' descriptions.

Phillips' work has to be understood in terms of his attitude towards time. He works from the assumption that the people, whose sickness and medical problems

Table 1.2 Effects and consequence by time period

	<i>Pre contact</i>	<i>Missionary centralised decentralised</i>	<i>Missionary centralised and 1967 citizenship</i>	<i>Semi self-determining</i>	<i>Council 'self-determination'</i>
<i>Time period</i>	<i>Pre 1870</i>	<i>1870–1967</i>	<i>1967–1972</i>	<i>1972–1980</i>	<i>1980–</i>
Effect on human feelings/emotions	Independence, strong, tough, steely resolve, loving, sharing, respectful	Severe traumatisation and shaming; pride and dignity maintained; shame-related internalised oppression, intense grief	Right to be citizen and rights to drink seen as same; inhibitions re: drinking discarded; intense grief	Shame and denial of poor coping skills; internalised oppression; pride/dignity eroding	Anger, shame, grief: alcohol and drugs used to cope. Grief and loss due to premature/alcohol related deaths (diabetes, dialysis, injury, suicide)
Consequences	Strong cultural and spiritual practices, healthy and balanced peoples – physically, emotionally, mentally and spiritually	Loss of parenting, family, community and life skills; sickness and premature death; people begin to move away from practicing culture and ceremony – coerced, forced or start to believe in Christianity	Social roles destroyed, alcohol takes off as chief enabler of negative emotions to be released through violence	Sexual, emotional and verbal abuses self-perpetuated, culture practised less and less	Violence increases, women gradually assume more financial and leadership roles; suicides and self-harm increase; hopelessness, believe cannot make any change without others
Family social situation	Strong, cohesive, complex, based on skin/clan groupings	Severely disrupted and weakened: children and family forcibly removed (in chains in the earlier periods); family system gradually replaced by dormitory systems; language, culture and ceremony destroyed and criminalised; loss of access to land; sexual, emotional, spiritual, physical and mental abuses by police, missionaries and other Whites; intense racism; 'dirty drunken Abo' stereotype begins	Men's roles confused as employment decreases; begin drinking more; children forced to go away to school by missionaries/Elders	Men's roles eroded, family breakdown and 'dysfunction' (blaming each other), children taken away because of 'unfit parenting'; families trying to find each other	

Source: adapted from Phillips, 2003, p. 15.

he deals with, have been traumatised by the experience of colonialism. There is, then, the experience of a past-in-the-present. Again, like the argument for the necessity of and desirability of Human Rights, one would have thought that this is a fairly uncontroversial matter. However, the History Wars of the Howard era and, especially, the recent work of the revisionist historian Keith Windschuttle, allied to the 'no-excuses' agenda of the Cape York Institute have resulted in a tendency to either deny (Windschuttle, 2000; 2002; 2008; 2009), or to disregard (Pearson, 2004; Sutton, 2009) the impact of the colonial past on the present. Pearson and indeed Sutton's attitudes towards the past can possibly be understood in terms of the general eclipse of time by spatial notions in postmodernist thought (Bhaskar, 2008, p. 257). It is an eclipse which I am not at all in sympathy with, not least because, as Bhaskar points out, it leads to a fetishisation of the *status quo* (Bhaskar, 2008, p. 257). By contrast, it is the position of this book that Phillips (2003) is correct, and that the present condition of Indigenous Australia can only be properly understood if one takes into account the past.

The next section presents an outline of the book.

Chapter 2: I undertake the task of laying a methodological basis for the book. Here I draw upon a range of Critical Realist and other concepts to ground the narratives and also to motivate my engagement with other writers.

Chapter 3: I advance a personal narrative that positions the lived experience of my family and myself, within the context of First Australians well-being in the twenty-first century. This chapter can also be understood as an attempt to follow the protocols of Indigenous research and writing where a personal narrative is both expected and held to be essential to the process of truth-telling (Sarra, 2005).

Chapter 4: I begin the process of engagement. I endeavour to both characterise and address the main features of the zeitgeist that dominates the current conjuncture. Crucially important, here is an engagement with the thinking of the historian Keith Windschuttle. I have chosen him because of his influence and because his project, the glorification of colonialism, runs so counter to my own.

Chapter 5: I continue the process of engagement. I have chosen to address in a critical, and even polemical, fashion two of the most important figures in contemporary thinking around First Australians issues – the anthropologist, Peter Sutton, and the First Australians' Lawyer and intellectual Noel Pearson. If the concern for the former is of First Australians' culture as a problem, the latter has lately chosen education as his principal field of operation. In this chapter I contribute to the 'education wars', which have raged, largely without a contribution from an Indigenous activist or from a Human Rights perspective. In this chapter I have also drawn upon work I undertook with Dr Gary MacLennan. This was meant to be part of a series of articles addressing the work of right wing intellectuals. Unfortunately, these articles did not get to the final stage of publication. I am grateful though to Dr MacLennan for permission to draw upon these drafts.

Chapter 6: I continue the emphasis on education as a vital arena for the struggle to contest colonisation and as such, it seeks to further my contribution to the 'education wars'. To set the scene here, I draw upon recent writings on the

history of the education of Native Americans. In particular, featuring the debate between Captain Pratt and Samuel Chapman Armstrong over the educability or otherwise of the Native Americans. It is my contention that this same debate has been played out here in Australia.

Following this discussion into the domain of First Nations peoples' Education in the United States, I return to Australia and examine firstly Paula Shaw's account of her teaching in Aurukun. This is followed by an at times polemical review of the work of Gary Johns, of the, now defunct, Bennelong Society, and the late Helen Hughes and Mark Hughes of the Centre for Independent Studies.

Chapter 7: I address some of the key theoretical and political issues associated with the notion of Human Rights. I seek here to argue for the importance of Human Rights and to give an account of how they might be grounded in a notion of human worth.

Chapter 8: I use four case studies to illustrate the macro level and the individual level to discuss how First Australians Human Rights have been infringed. At the macro level I consider the Hindmarsh Island saga, and the Federal Intervention into the Northern Territory.

At the level of the individual, I have chosen two people whose rights I will argue have been compromised by two key institutions. The first of these considers the fate of my nephew Lyji Vaggs who died in the custody of those charged with looking after his mental health. Secondly, I will outline the story of the first Australian leader Lex Wotton and I will seek to show how his rights were infringed by the Criminal justice system. My intention, throughout this chapter, is to show that in each case, the rights of the First Australians were either infringed or set aside to the long term detriment of this country.

In **Chapter 9**, the **Conclusion**, I will attempt to wrap up the main themes of this book, but I will also seek to address what Tim Rowse (2003) has called some of the counterfactuals of the relationship between Indigenous and non-Indigenous Australians.

Conclusion

This chapter has established, what for me is the burning question for Indigenous Australians: How important is the notion of social justice and Human Rights in the emancipation of First Australians? I have provided some of the contextual background of the book which will be expanded in the following chapters. The next chapter introduces the important conceptual frameworks that have informed the methodology. In particular, it draws from Bhaskar's (2008) *Dialectical Critical Realism*, qualitative research and narrative theory, and describes how this relates to Indigenous and non-Indigenous Australia.