> a control practice or institution, that is, an organised set of long-term and short-term, specific and diffuse actions, coordinated roles, and a body of norms. ... The overall control effects are not achieved by any one action, although individual actions are indispensable.[70]

B Indigenous Law

The Indigenous law is a permanent reality, beyond human agency. Gerontocratic authority,[71] as Myers says of the Pintupi,[72] is the carrying on and passing on of the law. It includes looking after the young, and mediating an assumed cosmic order. In Pintupi exemplification, public goals and legitimate collective injunctions of personal autonomy exist a priori to society. Older men can articulate norms and their rules from the dreaming, arguably an instance of phylogenesis, as rules transmit through this psychoanalytic form of necessity. Phylogenesis is a biological form of process by which a taxon, as a group of one or more populations of an organism, or organisms, forming a unit of any rank, necessarily appears.[73] The term 'dreaming' likely refers to the time of creation, causing consciousness of something's necessary manifestation, when removed from an inapplicable frame transformation.[74]

Freud's writings assert his belief in the transmission of tradition through phylogenesis. According to Freud, a person's life is influenced by what he has experienced in the past and repressed into the unconscious, and also by innate factors, that is by what he called 'elements with a phylogenetic origin — an archaic heritage'. [75] Freud's writings see proof of this in the universality of symbolism in language, which is beyond extinguishment.[76]

Older men teach these rules, which therefore become imperatives for all juniors in the networked group.[77] Keen suggests that Indigenous Australian neatly bounded collective social worlds do not exist, network-based social models being a more appropriate characterisation.[78] The evidence shows that transitions between different Indigenous law schemes are sometimes gradual, and sometimes sudden. They tend to be policed through the bicultural skills of people living at the schemes' edges.[79] Sometimes differences are great, especially where people with only a recent history of non-Indigenous contact assert their own law in dialectic with that of weaker populations exiting the hinterland.[80] This type of disjunction raises serious questions of

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[70] Ian Keen, 'Aboriginal Governance' in Jon Charles Altman (ed), *Emergent Inequalities in Aboriginal Australia* (Oceania University of Sydney, 1989) 38.
[71] A gerontocracy is a society where leadership is reserved for elders. See George L Maddox, *The Encyclopedia of Aging* (Springer, 1987) 284.
[72] Fred R Myers, 'The Cultural Basis of Politics in Pintupi Life' (1980) 12 *Mankind* 197; Fred R Myers, 'A Broken Code: Pintupi Political Theory and Contemporary Social Life' (1980) 12 *Mankind* 311.
[73] Ernst von Mayr, *Das ist Evolution* (Goldmann, 2005); Storch von Volker, Ulrich Welsch and Michael Wink, *Evolutionsbiologie* (Springer Verlag, 2007); Rifat Hadžiselimović, *Introduction to Anthropogenesis Theory* (Svjetlost, 1986); Nipam H Patel, *Evolution* (Cold Spring Harbor Laboratory Press, 2007); Peter J Bowler, *Evolution: The History of an Idea* (University of California Press, 3rd ed, 2003).
[74] Interview with Rita Metzenrath, Senior Records Officer of the Australian Institute of Aboriginal and Torres Strait Islander Studies (Canberra, 22 November 2016).
[75] Freud, above n 20, 98.
[76] Ibid.
[77] Myers, 'A Broken Code: Pintupi Political Theory and Contemporary Social Life', above n 72, 312.
[78] Keen, above n 70, 19.
[79] Sutton, above n 61.
[80] Erich Kolig, 'Dialectics of Aboriginal Life-space' in Michael C Howard (ed), *'Whitefella Business': Aborigines in Australian Politics* (Institute for the Study of Human Issues, 1978) 49–80; John E.

disadvantage for the non-Indigenous imposed colonial legal regime, for the recognition of native title. Cases may arise when Indigenous senior law people disagree over the allocation of proximate tenure to a particular zone,[81] the frame transformation following their disagreements exposed publicly, to their detriment, in native title claims in Australian courts.[82] As an example of colonial judicial policy, in the 1931 case of *Eshugbayi Eleko v Officer Administering the Government of Nigeria*,[83] the Judicial Committee of the Privy Council crafted a highly pejorative formula for application of local customary law. They inferred that natives were barbarous, and that British colonisers were a civilising influence.[84]

The principle of the forming of the local law, and its lore, by the regional interests inheres within founding myths of the different regions of Australia, its transmission being by song. Typically, in these mythical narratives, a significant ancestral figure travels across the landscape, allotting areas of land to various groups.[85] These ancestral beings are archetypal entities,[86] giving great authority to elders instructing the young.

Groups with their lands are, from their formation, bonded with many similar such entities, forming part of an intelligible provincial cultural scheme. Stanner states his frame transformed interpretation as follows.

Stanton, 'Old Business, New Owners: Succession and 'the Law' on the Fringe of the Western Desert' in Nicolas Peterson and Marcia Langton (eds), *Aborigines, Land and Land Rights* (Australian Institute of Aboriginal Studies, 1983) 160–171; Kingsley Palmer, 'Migration and Rights to Land in the Pilbara' in Nicolas Peterson and Marcia Langton (eds), *Aborigines, Land and Land Rights* (Australian Institute of Aboriginal Studies, 1983) 172–179; Sutton, above n 8, 13.

[81] Peter Sutton, Petronella Morel and David Nash, *The Muckaty Land Claim* (Northern Land Council, 1993) 40.

[82] Similarly, in Hong Kong, the British were able to induce public contradictions in the experts' evidence. D E Greenfield, 'Marriage by Chinese Law and Custom in Hong Kong' (1958) 7 *International and Comparative Law Quarterly* 437 450; Government Printer, *Chinese Marriages in Hong Kong*, 1960, 20(1). The Hong Kong legislation, forming the basis of choice of Chinese Customary Law, provided dissonantly for Chinese law: 'such of the laws of England as existed when the Colony obtained a local legislature, that is to say, on the 5th day of April, 1843, shall be in force in the Colony, except so far as the said laws are inapplicable to the local circumstances of the Colony or of its inhabitants, and except so far as they have been modified by laws passed by the said legislature.': *Supreme Court Ordinance 1873* (HK) s 5.

[83] [1931] AC 662 ('*Eshugbayi Eleko*').

[84] 'Their Lordships entertain no doubt that the more barbarous customs of earlier days may under the influences of civilisation become milder without losing their essential character of custom. It would, however, appear to be necessary to show that in their milder form they are still recognised in the native community as custom, so as in that form to regulate the relations of the native community inter se. In other words, the court cannot itself transform a barbarous custom into a milder one. If it still stands in its barbarous character it must be rejected as repugnant to 'natural justice, equity and good conscience.' It is the assent of the native community that gives a custom its validity, and, therefore, barbarous or mild, it must be shown to be recognised by the native community whose conduct it is supposed to regulate': *Eshugbayi Eleko* [1931] AC 662, 673 (Lord Atkin).

[85] Ronald Murray Berndt and Catherine Helen Berndt, *A World that Was: The Yaraldi of the Murray River and the Lakes, South Australia* (Melbourne University Press, 1993); Sutton, above n 8, 12. Sutton referred to these people as heroic figures, but technically they are not heroes.

[86] Interview with Rita Metzenrath, Senior Records Officer of the Australian Institute of Aboriginal and Torres Strait Islander Studies (Canberra, 22 November 2016).

> When everything significant in the world was thus parcelled-out among enduring groups, the society became made up of perennial corporations of a religious character. ... The religion was not the mirage of the society, and the society was not the consequence of the religion. Each pervaded the other within a larger process.[87]

It is not apparent from whence Stanner derives his parcelling, corporations, religious character, and, pervasion. One suspects these are reverse constructs, operating similarly to the British inevitable application of its frame of denizen theory, but applied in Australia. The target audience for this power rhetoric is most likely British colonial officials and ethnic-British residents, suggesting a technique for frame transformation, of moving the rhetorical target away from those most affected.

The broader Indigenous land title systems include underlying titles from which individual people and groups can make local claims through succession, inheritance, or incorporation. This communal title is not destroyed when a group might be compacted into a single person. For cases of succession, an extinct land-holding group can be revived from the conception or succession of a single person. The title even retains its communal character in its proximate form.[88] Even non-Indigenous people appear to recognise this point in, for example, the *Aboriginal Land Act 1991* (Qld) ('*QALA*'). Section 3 of the *QALA* partially describes a 'group of Aboriginal people' as 'if there is only one surviving member of a group of Aboriginal people — that person', suggesting a snippet of recognition of a subsisting communal element to Indigenous land title.

C Continuity of Underlying Title During Processes of Succession

When a local land-holding group dies out, proximate title may continue lawfully without holders for more than a generation.[89] Sutton uses here the term 'ceased to be an estate'. However, this apparent frame transformation is incorrect, as there are no legal estates in the Indigenous land system.[90] There are documented customary rules for succession to the land, and for the appointment of either individual or collective proxies to hold custody of local title, in the event of delayed succession. In the case of unresolved succession to vacant land, the land title continues its former status. It will not be terra nullius.[91]

However, completely ignoring this example of Indigenous customary laws, as if it were a nullity, NSW Governor Bourke's Proclamation of 1835 implements the doctrine of terra nullius administratively, basing British settlement on it, and reinforcing the repressed notion that the land of the Australian continent belongs to no nation prior the British Crown's claims to possession.[92] According to this frame transformation, Indigenous people therefore cannot sell or assign the land, nor can they acquire it, other than through distribution by the British Crown, because the Crown thinks they are not there. Although people of the relevant times recognise that Indigenous occupants have

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[87] William Edward Hanley Stanner, 'Religion, Totemism and Symbolism' in Ronald Murray Berndt and Catherine Helen Berndt (eds), *Aboriginal Man in Australia* (Angus and Robertson, 1965) 237.
[88] Sutton, above n 8, 14.
[89] Nicolas Peterson and Jeremy Long, *Australian Territorial Organization: A Band Perspective* (Oceania University of Sydney, 1986); Sutton, above n 61, 59.
[90] Interview with Douglas Amar Amarfio (Canberra, 5 November 2016).
[91] Evidence to the Joint Select Committee on Aboriginal Land Rights in the Northern Territory, Parliament of Australia, Canberra, 1977, 1002–1014 (Nicolas Peterson, Ian Keen and Basil Sansom); Kolig, above n 80, 49–80; Kim Akerman, 'Kimberley and Dampier Land' in Peter Sutton, *Country: Aboriginal Boundaries and Land Ownership in Australia* (Aboriginal History Monographs, 1995) app 2 99; Sutton, above n 61, 59.
[92] Sir Richard Bourke, *Governor Bourke's Proclamation 1835 (UK)*, No 3, 26 August 1835.

title rights in the land, as confirmed in a House of Commons report on Aboriginal relations as early as in 1837,[93] Australian positivist law still followed the principles in Bourke's proclamation, until the Australian High Court's decision in the Mabo decision in 1992,[94] despite Brownlie's advice as to the resultant kind of title.[95]

Terra nullius is a Latin expression from Roman sources of European-based international law, meaning 'nobody's land'. In this form of international law, it describes territory never subjected to the sovereignty of any (European style of) state, or over which any prior (European style of) sovereign has relinquished sovereignty. For an example of re-framing through dictation of international law, see the following example.

In the Western capitalist world, suppression of the weak by the strong and the eating of small fish by big fish are not only tacitly condoned by bourgeois international law but also are cloaked with a mantle of 'legality'.[96]

According to this apparently regional form of European international law,[97] apparently frame transformed into worldwide international law, sovereignty over territory, which is terra nullius, might be acquired through occupation.[98] Indicating an alternate frame in which the international law between Indigenous nations subsists, there has been very little reliable evidence of Indigenous groups forcibly encroaching on boundaries and taking land, although some cases exist. It appears to be abhorrent to Indigenous people.[99]

D The Status of Estates Subject to Disputed Proximate Title

Observations from many parts of the Australian land mass show that, without local resources or significant demarking features, boundaries of local estates or dreaming track pathways (songlines) are either shared by the abutting groups, or are the property of all the locally connected groups. At these zones, the adjoining lands are without specific borders. This is the case in both Arnhem Land and Central Australia.[100] Pink makes anthropological field observations in collaboration with senior Arrernte people, in Central Australia, addressing the questions of clan estate borders and no-man's lands. They observe that non-owners respect totemic clan sites strictly, and treat them like boundary posts. Desert areas, and country without water at the peripheries, lack any associated transmitted songs or painted designs. They are organised communally as what Pink calls 'tribal land', rather than as private clan holdings.[101] In this sense, 'tribal

[93] Report of the Parliament Select Committee on Aborigines (British Settlements), Parliament of Great Britain (20 February 1837).
[94] *Mabo (No 2)* (1992) 175 CLR 1.
[95] Brownlie, above n 57, 146.
[96] Ying Tao, 'Recognize the True Face of Bourgeois International Law from a Few Basic Concepts' in Jerome Alan Cohen and Hungdah Chiu (eds) (1960) *People's China and International Law: A Documentary Study* (Princeton University Press, 1974) 42.
[97] It appears that this problem arose for the People's Republic of China, in the 2015 South China Sea Arbitration. China declined to participate in the arbitration, for the reason that it did not recognise principles of Roman Law, and international judicial decisions, supplemented by force of frame transformation into public international law. See Gary Lilienthal and Nehaluddin Ahmad, 'The South China Sea Islands Arbitration: Making China's Position Visible in Hostile Waters' (2017) 18(2) *Asian-Pacific Law and Policy Journal* 1, 39.
[98] *New Jersey v New York*, 523 US 767 (1998).
[99] Typescript from Peter Sutton, researcher on aspects of traditional Aboriginal land takeovers marked by conflict, to the Northern Land Council, party to the Finniss River Land Claim, 1980, app.
[100] Sutton, above n 61, 59.
[101] Olive Pink, 'The Landowners in the Northern Division of the Aranda Tribe, Central Australia' (1936) 6 Oceania 275, 283–4; Sutton, above n 8, 15.

lands' means lands with perpetual community title, where no alienation is allowed, inferring communal allodium.[102] This suggests a boundary taxon emerging as an organism in, but not confined to, a specific land title context,[103] as transmission of collective memory in land title by phylogenesis. Since it appears as necessary and continuing creation, it can be frame transformed into mere singing of tracks, to a non-Indigenous audience whose cultural background represses allodial land title.

Wheeler describes 'tribal over-rights',[104] which may be a reverse construct. He observes that small groups own small areas. All members of the larger tribe, to which these groups belong, have general access to all the lands.[105] Trespass is a criminal offence constituted by one tribe entering the territory of another.[106] In the western part of Cape York Peninsula, 'main places',[107] ('*aak mu'em*'), are available freely to visiting groups from elsewhere in the immediate region. They are not free to camp, without permission, at the more private places.[108] Within *aak mu'em*, visitors can have regular shade areas allotted to them, just like a public space within a hotel.[109] These are aspects of reciprocal usufructuary rights within lands, held by those not claiming them as their own. Mutatis mutandis, colonial invaders commit local criminal offences, their superiors having denied the existence of local law, when they so encroach on such lands.

E The Role of Regional Elders in Validating Proximate Entitlements

The Indigenous Australian social and governance structures feature knowledge specialists, for enquirer referrals.[110] In some land claims, in the Northern Territory and Queensland jurisdictions, elders from groups with adjoining country give evidence to vouch for the applicants' claims, and to waive any entitlement to make their own claims. Elders also may vouch for those whom Government officials remove from their country.[111] These elders appear to represent the regional system of land dealings, in underlying title. Their waivers of local entitlements to others' countries are of proximate title. They can influence public acceptability of proximate title claims. Regional elders meet from time to time, to work through conflicting land claims.[112] Depopulation during successive administrations, and the thought of having to establish an Anglo-Australian form of legal title in court under Australian law, may accentuate the need for such assemblies. Arguably, such legal title is foreign to the core of the Indigenous systems, and its publicly stated purposes may be specious.[113] The evidence is strong that there has been a widespread and continuing system of regional assemblies

[102] Interview with Douglas Amar Amarfio (Canberra, 5 November 2016).
[103] Nicolas Peterson and Jeremy Phillip Merrick Long, *Australian Territorial Organization: A Band Perspective* (Oceania University of Sydney, 1986) 53-54.
[104] Gerald Clair Wheeler, *The Tribe, and Intertribal Relations in Australia* (John Murray, 1910) 40, 44–45, 62.
[105] Ibid 45.
[106] Ibid 46.
[107] *aak mu'em* in Wik-Ngathan. See Peter Sutton, *Wik-Ngathan Dictionary* (Caitlin Press, 1995) 48.
[108] See Keen, above n 53, 114, where a similar distinction applies in North-East Arnhem Land.
[109] Sutton, above n 8, 16.
[110] Interview with Douglas Amar Amarfio (Canberra, 5 November 2016).
[111] In one Northern Territory case a group of male elders drawn from the relevant wider region gave evidence, which did not support a group's claims, but the group was nevertheless legally successful. See Aboriginal Land Commissioner, *Finniss River Land Claim* (Australian Government Publishing Service, 1981).
[112] Sutton, above n 8, 16.
[113] Interview with Douglas Amar Amarfio (Canberra, 5 November 2016).

of this kind.[114] A senior jural public, in what Sutton calls 'religious matters',[115] is what he asserts is a commonplace theme in the various ethnographies.[116] If Sutton is using this term 'commonplace' in its technical sense, this suggests non-Indigenous social scientists write the ethnographies with a pejorative purpose of denunciation in the characterisation of the assemblies as religious.[117] In his frame transformation, Sutton views land tenure as being at the heart of a 'religious system'.[118]

Rather, Strehlow describes a land title succession dispute in Central Australia, observing '[t]he conflicting arguments were irreconcilable; neither of them was supported by sufficient legal authority to win general acceptance'.[119] Likewise, Strehlow explicitly acknowledges the role of the region's senior men, who articulate the customary law, and whose authority opponents have to satisfy.[120]

Proximate title can be revived whenever a larger group has become defunct. If the underlying customary title subsists, and there are either authoritative people or a consenting public with juridical personality, new proximate title-holders can have their title ratified.[121] In some places, indicia of title can include significant objects, held by the region's elders, used in cases of reviving extinct groupings. For example, a child can be conceived in the pertinent area, thus founding a revived group with rights to the local title. Ultimately, the child may be recognised as the lawful holder of the land's significant indicia of title.[122] A child itself may not make claims over such indicia of title, because they are of communal significance, knowledge specialists being in charge of their administration. Elders confer them on the child with approved rites,[123] thus conferring juridical personality onto the child.

These procedures infer the practical distinctions between underlying and proximate title. Inter-group competition for individual members provides another example. In the Tennant Creek region, where two differing regional land title systems and language categories adjoin, the ceremonial interests on both sides may claim one individual as a member of both systems. Each of the two regional groups may assign this person to custodianship of different sites, without resolving the matter. Once, a man from one group killed a man from the other. By way of compensation, the killer's father gave his

[114] Keen, above n 70, 17–42.
[115] The use of the word 'religious' suggests a reverse construct from an English frame of reference. See Interview with Douglas Amar Amarfio (Canberra, 5 November 2016).
[116] Commonplace is an amplification of something that was already agreed, like a publicly disliked error, putting the target person in the same category as all other similar and disliked actors. It amplifies evils attached to something, fitting all people taking part, in common. It may be used as a judicial attack on those involved by denouncing them for mere errors, which might be so disliked publicly, that these mere errors might be attached to oratory of criminal offences and used as additional criminal denunciations. George Alexander Kennedy (trans), *Progymnasmata: Greek Textbooks of Prose Composition and Rhetoric* (Society of Biblical Literature, 2003) 79, 105, 148, 201, 202.
[117] Interview with Douglas Amar Amarfio (Canberra, 5 November 2016).
[118] Sutton, above n 8, 16.
[119] Theodor George Henry Strehlow, *Aranda Traditions* (Melbourne University Press, 1947) 156.
[120] Ibid.
[121] This would be beyond colonial policy, with its resort to a deliberately pejorative terra nullius theory. The frame transformation is achieved by annihilating Indigenous juridical personality. See especially the argument on abridgment of juridical personality by public pejorative rhetoric, in Lilienthal and Ahmad, above n 38.
[122] Keen, above n 45, 272–91; Keen, above n 70.
[123] Strehlow, above n 119; Theodor George Henry Strehlow, 'Culture, Social Structure, and Environment in Aboriginal Central Australia' in Ronald Murray Berndt and Catherine Helen Berndt (eds), *Aboriginal Man in Australia Essays in Honour of Emeritus Professor A P Elkin* (Angus and Robertson, 1970) 121–145.

son to the father of the man the son had killed. The receiving father assigned the replacement son into his own land title group. However, the son's land identity retained his ancestral origin despite his re-identification.[124]

Group local entitlements may be reduced or forfeited, either through long-term out-migration, or by relevant regional elders making a communal decision. All proximate title interests are by consent. Divestment or withdrawal of proximate rights is possible, because people all have multiple legitimate rights in several different local countries. This is because they remember ancestors from several countries. Thus, withdrawal of local land rights by community consensus does not leave people landless. Instead, it shifts their focus to another place.[125]

Stanner says that totemic disinheritance is 'not really possible', but cites cases where the children of men who marry incorrectly lose their paternal totems. He observes: 'There are rules, both religious and secular, governing acquisition [of totems], so that a person's totem could be said to be a matter of right, but public ascription and agreement (disputes do arise) both seem necessary conditions'.[126]

These are not cases of alienability of land. It is impossible, under Indigenous land holding customary laws, to alienate land by exchange. Rather, people may succeed to proximate title by operation of law, or may be divested of it by operation of another law,[127] implying the title cannot be extinguished. This indicium of the rule of law appears to eliminate some capriciousness of lordship in land title.

F The Possibility of the Divestment of Proximate Entitlements

A group's local title can be reduced or forfeited, by long-term out-migration, or by authorised elders making a communal decision. People all have multiple paths to rights in different countries at the same time, whenever they remember ancestors from those different countries. Withdrawal of local title from a small group by communal decision merely shifts their primary focus to their other entitlements,[128] the titles themselves remaining stable.

G The Relative Stability of Geographic Units of Land Affiliation

The issue of drainage in demarcating land units suggests land titles' capacity for long-term stable endurance.[129] In western Cape York Peninsula, the profile and substance of the lands remain relatively constant and clear-cut, inferring political and ecological stability.[130] In the Princess Charlotte Bay region of eastern-central Cape York Peninsula, careful mapping, along with linguistic research, shows the local small clan estates have very old names, possibly many centuries old. From a very large sample, they often have names, which are both cognate and different, in many of the region's languages. This

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[124] Sutton, above n 8, 18.
[125] Stanner, above n 87, 207, 230.
[126] Ibid.
[127] There were also 'secret waters' for use only by senior local men. See Keen, above n 53, 114, where a similar distinction applies in North-East Arnhem Land; Sutton, above n 8, 52.
[128] Stanner, above n 87, 207–237 230; Sutton, above n 8, 18.
[129] Nicolas Peterson, 'The Natural and Cultural Areas of Aboriginal Australia: a Preliminary Analysis of Population Groupings with Adaptive Significance' in Nicolas Peterson (ed), *Tribes and Boundaries in Australia* (Australian Institute of Aboriginal Studies, 1976) 50–71; Sutton, above n 61, 50.
[130] Peter Sutton, *Wik: Aboriginal Society, Territory and Language at Cape Keerweer, Cape York Peninsula, Australia* (PhD thesis, University of Queensland, 1978) 59–60.

indicates their continuing use in those languages for several centuries, diverging from common original roots. Many clan names derive from focal site names.[131]

The clan names are very stable. Kolig finds that as soon as a clan ceases performing its duty of looking after their assigned lands, others have to step in. This does not allow a clan to expand its land holdings, because those who are the next most closely affiliated with the abandoned lands take over. However, within two to three generations, ties between the two groups, and the memory of their common origin may dissolve.[132] Similarly, in the Cape Keerweer region of Cape York Peninsula, totemic personal names and language affiliations suggest that certain pairs of geographically separated clans are a single clan in a single land title region.[133] In observing North-East Arnhem Land, Keen says that Yolngu people 'contested the definition of country, as well as rights over it. The definition of country was not "objective" but relative to a person's perspective, interest, and loyalties'.[134] Lush coastal countries tend to have widely agreed country definitions more than in inland areas. Moiety and group identities in coastal areas are less disputed.[135] Identity and location of so-called nodal sites[136] are more consistent than clan identity, with some evidence of colonial attempts at their erasure.[137] Such sites are nodes in lacework patterns of what are known as 'songlines'.[138]

IV The Songlines

In his 1987 book The Songlines, the British author Bruce Chatwin describes 'the songlines' as: 'the labyrinth of invisible pathways which meander all over Australia and are known to Europeans as "Dreaming-tracks" or "songlines"; to the Aboriginals as the "Footprints of the Ancestors" or the "Way of the Lore"'.[139]

Indigenous Australian creation myths tell of fabled totemic beings, which roam over the continent in the Dreamtime. Actually, there are many of these ancient entities. Dreamtime is a British frame transformation, which refers to an ancient time of creation, suggesting a reframe into the European idea that creation happened sometime in the past.[140] This being sings out the name of everything whose path it crosses: birds, animals, plants, rocks, waterholes. In this way, it sings the world into existence.[141]

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[131] Peter Sutton, *Flinders Islands & Melville National Parks Land Claim* (Cape York Land Council, 1993) 31.
[132] Kolig, above n 80, 62–63.
[133] Sutton, above n 131, 82–83.
[134] Keen, above n 53, 102.
[135] Ibid 105.
[136] Canberra contains an intensity of Songline nodes and Canberra's street design appears to follow the Songlines. See Interview with Shane Mortimer, Social Scientist and Senior Ngambri Nation Elder (Canberra, 20 May 2015).
[137] Sutton, above n 8, 19.
[138] Interview with Douglas Amar Amarfio (Canberra, 5 November 2016).
[139] Bruce Chatwin, *The Songlines* (Random House, 2012) 2. Many Indigenous peoples in Australia do not have a linear concept of time. In their perspectives, yesterday is the same day as today, only different. Tomorrow is all the same day for them. Thus, although the Dreamtime may be the creative period in the distant past, it nevertheless reaches to the present. See William Edward Hanley Stanner, *White Man Got No Dreaming* (Australian National University Press, 1979) 23–40.
[140] Interview with Rita Metzenrath, Senior Records Officer of the Australian Institute of Aboriginal and Torres Strait Islander Studies (Canberra, 22 November 2016).
[141] Chatwin, above n 139, 2.

A songline, which many non-Indigenous people frame transform to a dreaming track, is one of the pathways across the land or sky,[142] marking the ancient routes created during the ancient times, which local creator-beings follow. There is thus a suggestion of their navigation at least partially by the stars. These songlines are embedded in customary songs, dances, painting and stories. A person with this knowledge can navigate the land by using the song's words, which describe waterholes, landmarks, and other natural occurrences. Sometimes, the creator-beings' paths are apparent from their imprints, or petrosomatoglyphs, in the land, such as for example, large land depressions as their ancient footprints.[143]

By singing these songs in the prescribed sequence, Indigenous people may navigate huge distances, often through Australia's interior deserts. The Australian continent contains a wide-ranging lace-like network of songlines. Some are a few kilometres, and others are hundreds of kilometres through the lands of many different Indigenous peoples. They traverse areas peopled by those with different languages and different cultures. Thus, different sections of the song are in different languages. Such foreign languages are not a navigation obstacle, because the song's melody itself also describes the land, over which it passes. The rhythm is critical to interpreting the song. Listening to the land's song is essentially cognate to walking the songline and observing its described land.[144]

Molyneaux and Vitebsky observe that Dreaming Spirits 'also deposited the spirits of unborn children and determined the forms of human society,' so establishing common law and its totemic paradigms.[145]

The Yolngu people of Arnhem Land tell of Barnumbirr, a creator-being connected with the planet Venus, coming from the eastern island of Baralku. This being guides the first people to Australia, then flies across it from East to West. It names and creates the plants, animals, and the land's natural features.[146]

Woodford's frame transformation states that songlines are connected to Indigenous art sites within the Wollemi National Park in New South Wales,[147] apparently unable or unwilling to see evidence of lawful sovereign land demarcation.

V Chains of Connection

The Tingari are a group of ancestral elders who, during creation, travel over western deserts performing rituals by which they create or open up the country.[148] In the course of their many adventures, they become the physical features of the sites they so open up. Thus, their archetypes become the symbolic meanings of the physical land features,

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[142] Hugh Cairns and Yidumduma Bill Harney, *Dark Sparklers: Yidumduma's Wardaman Aboriginal Astronomy: Night Skies Northern Australia* (H C Cairns, 2003).
[143] John Bradley, *Yanyuwa Families, Singing Saltwater Country: Journey to the Songlines of Carpentaria* (Allen & Unwin, 2010).
[144] Ibid.
[145] Brian Leigh Molyneaux and Piers Vitebsky, *Sacred Earth, Sacred Stones: Spiritual Sites and Landscapes, Ancient Alignments, Earth Energy* (Duncan Baird, 2001) 30.
[146] Ray Norris, Priscilla Norris and Cilla Norris, *Emu Dreaming: An Introduction to Australian Aboriginal Astronomy* (Emu Dreaming, 2009).
[147] James Woodford, 'songlines across the Wollemi', *Sydney Morning Herald* (Sydney), 27 September 2003.
[148] Lloyd D Graham, *The Nature and Origins of the Tingari Cycle* (AusAnthrop, 2002) 1 <ausAnthrop.net/research/articles.php>.

and thus, these features represent a marking-out of the land.[149] These archetypal mythic narratives lack spatio-temporal perspective, and some manifest in the form of long tracks spanning vast distances.[150] Graham proposes that this reasoning evidences a continental customary cultus, which forms clans, marks out land territories and therefore implies part of a body of Indigenous customary laws.[151]

Throughout northern and central Australia, there are places acknowledged as revered sites with a range of associated restrictions. However, this is not mere reverence. It is arguably evidence of operational common law. The restrictions can be divided into secret men's and secret women's business, and their nature can depend on the nature of the site. For example, the site can be an increase site, or a custodianship site.[152] Colonial archaeological and ethnographic investigations all suggest that some of these sites may be so constituted, for from a few hundred to many thousands of years. Some of these locations are used for initiation, or for teaching. Some of them are designated for 'increase' ceremonies, so that species of plants or animals may thrive.[153] This suggests the operation of legislation and acts of administration.

At some very powerful locations, senior men or women can access the power of the familial past, with a view to influencing the present and future, again inferring phylogenetic transmission. Some of these places are where ancestral beings transform the land with enduring, and even disquieting consequences. These are, in effect, proprietal acts over land.[154] Others are final places of rest, where they enter water, stone, or earth. Some are marked with rock art, arrangements of stone, scar trees or temporary clay sculptures. Many are not so marked. Not all of the rock-art sites are revered. Many locations have paintings of some ancestral beings, again suggesting phylogenetic record. In the far north, sacred sites often feature big old banyan trees. In other places, other kinds of trees or plants are also sacred. Destroying them can be said to have precipitated catastrophic storms and floods.[155]

All such places have been looked after with such customs as access restrictions, special ceremonies, songs, or talking with ancestors. Today, many are additionally 'protected' with non-Indigenous legislation, such as national parks statutes, World Heritage declarations and other administrative barriers. The introduction of this range of non-Indigenous positive laws has certain negative outcomes, such as increasing distrust of oral history by those persuaded to the idea of 'development', a term with an obscure meaning, indicative of frame transformation. Another consequence is the isolation of so-called sacred sites from songline tracks and their larger hinterland landscapes.[156]

The connections between these sacred sites are frequently difficult for non-Indigenous officials to understand. Officials routinely dismiss them, or consider them insignificant. One of the reasons for this denial is due to the sheer size of the lands these connections touch. Also, non-Indigenous people have set up obstacles to managing the scope of

[149] Ibid 2.
[150] Ibid 3.
[151] Ibid 4.
[152] Interview with Rita Metzenrath, Senior Records Officer of the Australian Institute of Aboriginal and Torres Strait Islander Studies (Canberra, 22 November 2016).
[153] Paul Taçon, 'Chains of Connection' (2005) 9 *Griffith Review* 1.
[154] Interview with Rita Metzenrath, Senior Records Officer of the Australian Institute of Aboriginal and Torres Strait Islander Studies (Canberra, 22 November 2016).
[155] Taçon, above n 153.
[156] Ibid.

such landscapes, having arranged for them to traverse so many non-Indigenous political boundaries.[157]

A mythic map of Australia would show thousands of characters, varying in their importance, but all in some way connected with the land. Some emerged at their specific sites and stayed spiritually in that vicinity. Others came from somewhere else and went somewhere else. ... Many were shape changing, transformed from or into human beings or natural species, or into natural features such as rocks but all left something of their spiritual essence at the places noted in their stories.[158]

Thus, the continent is demarcated by ancient mythical narrative, inferring ancient transmitted lore, suggesting settled common law. In plotting all these tracks, many correspond with customary seasonal travel paths. Some also correlate with today's highways and other roads. The plot would show a strong correlation between dreaming songline tracks and the so-called 'sacred' places of ancestral beings. There is also a correspondence between meeting places and dreaming tracks, some rock art formations and some stone arrangements.[159]

It constitutes a map comprising integrated social, geological, historical, biological, archaeological and ecological data. It depicts communities of people living in expansive 'provinces', and others living at junctions. It shows converging influences from many directions, or influences in a state of effluxion. Keep River and Riversleigh-Boodjamulla are such junctions. The Kimberley, Cape York and Arnhem Land resemble provinces. Central Australia is special case of a province, in which people travel in and out of, as the climate changes and resources are available.[160]

Prior to recent times of European-colonial destruction, people have maintained these tracks by ceremony, visual art, song, oral history, commercial trade, and other kinds of formal exchange. These tracks conceptualise land differently than by western ideas of roads, printed maps, and political borders.[161] Their methods for connection are both northern and southern phenomena in Australia. Southern colonisers ignore details of Indigenous traditional law, most probably because European colonisation has destroyed so much more in the south,[162] as an effective military scorched earth policy.

The Dreamtime or Dreaming incorporates narrative, history, innovation, traditional practice, religion and individual experience, concentrated onto the land. Thus, the most ancient of lore, generated by the time of creation, is programmed into the land itself. Each Indigenous people expresses its own word and understanding for the Dreamtime, meaning creation. A common theme is of connections and relationships to other peoples, other creatures, the land, the past and the creator ancestral archetypal beings. It generates both the law and the lore for Indigenous peoples, permitting sufficient stored and transmitted wisdom for survival in a harsh natural and political landscape.[163]

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[157] Ibid 2.
[158] Catherine Helen Berndt, 'Aboriginal Mythology' in David Horton (ed), *The Encyclopedia of Aboriginal Australia: Aboriginal and Torres Strait Islander History, Society, and Culture* (Aboriginal Studies Press, 1994).
[159] Taçon, above n 153, 3.
[160] Ibid.
[161] Ibid.
[162] Ibid 4.
[163] Ibid.

VI Conclusion

Allodial title refers, as in argument's opening discussion, to real estate held in absolute independence, not subject to any kind of response to a person in a superior hierarchical position. It is unlikely that any citizen of any English-speaking country has ever held land in absolute independence. These apparently feudal people thus might not imagine that any other person could do so, as they were subject to their own foreign English feudal legal maxim *nulle terre sans seigneur*, meaning there could be no land without a lord. It is most likely that Indigenous land title is true communal allodial title, with the word 'communal' including connotations of ancient forms of governance.

In Australia, the British Crown purported to acquire an underlying land title along with a sovereign political power over land, which together was less than absolute ownership of land. The Crown's sovereignty claim in Australia is weak, because it is based on the fiction of terra nullius, a somewhat suspect legal doctrine more like government policy, in which the colonial mind repressed the entire existence of the Indigenous peoples. The Crown's sovereignty claim is only an inchoate title to repel the invasions of other colonial powers. This suggests its so-called radical title is still subject to prior Indigenous land title. Its political power of frame transformation has been used in disregard of Indigenous land title, to try to expand the Crown's claimed underlying title to absolute ownership. This failure to work out title with Indigenous people, in breach of prior Indigenous Australian law, suggests occupation based on fraud, a criminal encroachment, and therefore, an occupation ineffective in law.

British colonial people believed they could freely search denizens, in the perfect pejorative frame transformation of status.[164] It appears British colonialists could not distinguish Indigenous people from what British culture had known as denizens, pejoratively implementing the frame transformation articulating Indigenous land title as merely ephemeral. British colonial rhetoric was not targeted towards Indigenous people, suggesting a British policy of articulating Indigenous people's juridical personality as low status. Rather, colonial rhetoric was targeted towards British officials and their opponent colonial powers.

NSW Governor Bourke's Proclamation of 1835, administratively implemented the doctrine of terra nullius, and Australian colonial behaviour appears to have followed it, through continuing frame transformation, ever since. This is despite a House of Commons report on Aboriginal relations in 1837 reporting that Indigenous inhabitants had title to or rights in their lands.

The radical forced frame transformation was without any Indigenous consent, as they were not its rhetorical audience. Communications with Indigenous people were framed pejoratively, apparently pursuant to the Imperial policy expressed in the 1931 Privy Council case of *Eshugbayi Eleko*. Without effective sovereignty based on legality of transfer, the Crown's radical title must fail in law as mere fraudulent encroachment.

Government officials have used the term 'sacred site' to reframe significant matters administered by Indigenous people of higher degrees of learning. From the above discussion, it is likely they are incapable of such cognition. Stanner's reframing of Indigenous law and lore into a corporate, religious character, suggests a technique for frame transformation, of moving the rhetorical target away from those most affected. This creates serious disadvantage, as people are talked about instead of talked with.

[164] Rappaport, above n 49, 208–9.

Sutton purported to characterise the authority of the Indigenous Elders over land title matters, as having jurisdiction restricted to 'religious matters'. He called it a commonplace theme in the colonial ethnographies, suggesting commonplace denunciations used in the pejorative facets of frame transformation. Woodford's frame transformation informed readers that 'songlines' were merely tracks between artistic sites. Taken together, these frame transformations of a highly sophisticated and ancient legal and social system into a mere religious art gallery, are likely to have constituted sufficient pejorative denunciation to satisfy British officials of their own assertions of terra nullius.

Indigenous law is a permanent reality, beyond human agency, run by gerontocratic authority. It shows many instances of phylogenesis, as rules transmit through this psychoanalytic form of necessity. For example, the term 'dreaming' likely means the time of creation, causing consciousness of something's necessary manifestation, where creation happens anew continually. The very idea of creation being a solely past event is foreign to the customary laws of Indigenous Australians. Freud saw proof of this in the universality of symbolism in language, which arguably could not be extinguished. Boundary taxa emerging organically in specific land title contexts, strongly suggest phylogenetic transmission of collective memory in Indigenous land titles. Graham saw indicia of this in a continental customary cultus, which formed the clans, marked out the land territories and therefore generated part of a larger body of Indigenous customary law. This law is so sophisticated that, the most ancient of lore, integrated with the time of creation, is effectively programmed into the land itself as a library in perpetuity. It cannot possibly be extinguished, unless by military-style scorched earth actions. Taken together, at this level of development of the human consciousness, government officials have insufficient connection to Australian land to be able to understand their ancient environment. No doubt their anxiety at being constrained within a foreign place, and imagining they are in charge, is what has produced their aggressive form of frame transformation, leaving Indigenous peoples at such severe disadvantage.

Trespass is a criminal offence in Indigenous law, constituted by one tribe entering the territory of another. Mutatis mutandis, colonial invaders commit local criminal offences, their superiors having been in denial of the existence of local law, when they so encroached on such lands. They effectively claim Crown immunity from a foreign Crown. It is impossible, under Indigenous land holding customary laws, to alienate land. Arguably, this rule is embedded in tens of thousands of years of practical wisdom, suggesting that the current land title system will ultimately come apart. The continent's network of songlines, which many non-Indigenous people have frame transformed to dreaming tracks traversed by people singing songs at open-air art galleries, is an encoded map of Australia, tied to celestial navigation techniques, as well as to social and legal constraints for travelling and surviving along them. Together, their lace-like network generates land title plots, depicting communities of people living in expansive 'provinces', and others living at junctions. The pejorative colonial frame transformation of Aboriginal law has created relentless human suffering, but is likely to fall into desuetude, just as it has inevitably in so many other parts of the now only ephemerally recognised British Imperial realm. The research suggests the frame transformation can be reversed by well-crafted and judiciously delivered epideictic rhetoric.