Overlapping Worlds: An Indigenous Jurisprudential Approach to SeaCities

C. F. Black

1 The Winding Path of Commentary

This chapter is more of a commentary than straight discourse. It is a winding path of storytelling and discourse of considerations on the influences that are shaping the public discourse around sea rise which in turn influences risks and opportunities when planning the urban tactics for flooding in cities such as the Gold Coast, the Gold Coast being the traditional lands of my mother’s ancestors.

As an indigenous jurisprudence scholar, I endeavour to understand major cultural shifts through an analysis of influential ‘popular culture’ narratives of the past and the present, to ascertain a society’s principles and value that guide practice, decision making and in the case of the topic of this book.

But first, I will give an example of indigenous legal thinking with a quote from the book—The Land is the Source of the Law.¹

A further realization of land as the law comes from the understanding that law is not dependent on human action for its continuity, for the Law is already posited in the land. If anything, man would appear to be a redundant species when it comes to maintaining the law, as shown in the following dialogue between Malnic and Senior Law Man Mowaljarla:

What about the area where there are no Aboriginal people still surviving or at least not living traditionally there any longer?

You’re wrong there thinking like that. The land remained, you can’t get away from that. It acts for the people and the imprint is still there. If the land sinks into the ocean, the symbols will still be there. Only if the whole continent is blown to pieces and nothing is left of it, then it will be finished. (Mowaljarlai and Malnic 1993: 192)

This quote is an example of how sea rise does not mean the end of relatedness to a landscape, but a continuing relationship which many coastal engineers are learning}

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¹Black (2011a).

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J. Baumeister et al. (eds.), SeaCities, Cities Research Series,
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when dealing with indigenous peoples. I will therefore turn to an indigenous legal fiction or story to bring context and meaning to the commentary.

2 Turning to a Story— Measurement and Speed

Indigenous people can be forgiven for thinking that an influential group of non-indigenous have a strong relationship with measurement and speed. I will therefore tell a story to make my point. This story is about two creator beings. They were the creator beings who gave birth to the profession called engineering. These creator beings were called Measurement and Speed.

Measurement and Speed came to the Earth from ‘a galaxy far, far away’ to measure every aspect of existence on Earth, right down to the nanoscale. They did this with the greatest of speed. The intention being to ensure that they knew everything about the planet Earth and could return to their home planet and tell them all about Earth and discuss its potential for exploitation and invasion, but more importantly, the reshaping of the landscape to look like their home planet.

At the same time this was happening, a young Aboriginal man was learning the law.

3 Straight Lines and Winding Paths

There was this young man standing on a high cliff. He looked out across the landscape for a waterhole as he had a mighty thirst. There he saw a waterhole off in the distance, so he worked out in his mind the fastest way to get there. This invariably led him along a straight line. Little did he know he was being watched by a group of elders. The young man jumped down from the cliff and happily made his way in quick time to the waterhole. Upon arriving at the waterhole, he was met by a group of angry elders. They proceeded to tell him he was about to be punished for walking in a straight line instead of walking along the natural paths made by the Earth which were winding and, in some cases, difficult to get across. They further explained that he had not let the land teach him how to approach with an integrated sense of how the water and land interact, nor of the various species of food he might find on the winding path, that he would miss on the straight path. Instead, all he had thought about was ‘the risks and opportunities’ to quench his thirst.

As Yungaporta in his doctoral thesis\(^2\) originally argued:

There were stories of ancestral heroes who had broken the law by travelling in a straight line. They were punished for this, as the right way to travel is taking a winding path. The idea of a winding path as a map for learning was explored in local cultural contexts like painting,

\(^2\)Yungaporta (2009).
and it was found across many activities relating to native knowledge and learning. It came out in shapes in the landscape as well, in winding rivers and old pathways.

Therefore, the health of the landscape or seascape depends on a jurisprudence which is built on the Law of Relationships. The relationship is built on the knowing through thousands of years of engagement that the human is one of the many species of the Earth and is subject to the whims of the Earth. I know this is hard to swallow and blasphemy in some religious quarters. But God did not hand over the real estate rights to the newcomers just because they planted a flag and thought up something called “squatters right” and then engaged in a war, that is still going on 200 years later.

This long-term relationship then builds up knowledge that is empirical and relational, rather than instrumental and exploitative, as evident in the management of Australian rivers. The Murray Darling river being one of the most obvious debacles.

The recent arrivals, however, have used instruments to come here and have been using them ever since. However, with one major blind spot. They still seem to think they live in the Northern hemisphere. Just take the fact they refer to the seasons as being four seasons. The cyclical six seasons of some areas of Australia, or the seemingly annual cycle of flood, drought and fire from a casual observation might seem more likely to be the norm, rather than something like the arrival of spring should be on or near the first of September. This rigidity and boxing in of the weather is frightening, as it is so illogical.

When a knowledge of a subject comes via instruments rather than engagement or relational, a disconnection and objectification come about. This includes the objectification of other human beings.

I know that many readers are thoughtful and environmentally conscious participants. The goal of the Dutch sea rise management concept of ‘Room for the River’ is to give the river more room to be able to manage higher water levels.4

These types of concepts overlap well with indigenous thinking. However, what concerns me is that this wonderful thinking is based on the following thinking:

If focus is turned back towards this asset, this natural resource, we could start treating it better and improving the condition of the waterways.5

This type of thinking is still one in which humans are saving the day and are in partnership with the Earth. A fundamental flaw by the instrumentalist is that they believe that they can be (equal) partners. This is false thinking as humans are not partners. The Earth does not need them for its survival. Take Mars for example; for that planet to exist, it is not dependent on any species at all. But rather, species are dependent on the planet for the development of an ecosystem in which to survive. We are in the fortunate position that the Earth allowed the enhancement of the ecosystem to allow the development of humans. But there has developed over recent times a

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3 Black (2011b).
4 https://www.ruimtevoorderivier.nl/english/.
5 https://www.dezeen.com/2015/12/09/floating-architecture-buildings-will-offer-improved-way-of-living-amphibious-housing-houseboats/.
culture of garbage generating. This cultural behaviour is now rampant on the Earth’s surface, with small pockets of the original civilised humans living in the Amazon, Africa and other parts of the world where Coca Cola and coal are not the staple diet. Many are trying hard to change this cultural tendency, but it is a losing battle, especially if they live in cities.

My suggestion is that if they want to survive, they will need to step down from the false notion that they are the apex species, and humbly stand to one side, and work out how to fit in with all the species of the Earth. After all most of the innovation in the world is based on mimicking nature, i.e., stealing the IP of the species of the Earth rather than humbly acknowledging the source of the basic concept.

This brings me back to the book’s theme to recognise the risks and opportunities of the Earth’s turnings. How do we adjust and mitigate the impact on our cities? Can I suggest, as argued early, we begin by shifting the apex of design and planning from the desires of the humans to that of one of the many ‘stakeholders’. I do believe the Native American use of the terms such as Stone Nations, Bear Nations, Spider Nations which is a way of constantly reminding the humans they are not the only stakeholders in the need for survival, but rather treats the non-humans, as political entities with their own rights and responsibilities to the Earth.

To extrapolate the reasons for the need for an appreciation of the relation to the sea and land, let me turn to the issue of why I believe the Earth is making it very uncomfortable for consumer societies.

Last November, I carried out research in Copenhagen, Denmark, in relation to the works of Hans Christian Andersen and Norse Myths. One cannot but help when in such a city to notice the sea and the canals. When travelling the canals, one must duck his/her head to go under the bridges due to sea rise. And I must say it is quite a tight fit going under some of those bridges. But of course, they have built dykes, so they live in a self-satisfied environment that is safe due to a technological fix. In other words, their relationship with the sea is one of defence, rather than following a traditional ‘law of relationship’.

And more importantly the popular myth is that the sea will rise at a rate, and they have projected it on their models. And yet Nature will have her way:

Even with a 25-year data record, detecting acceleration is challenging. Episodes like volcanic eruptions can create variability: the eruption of Mount Pinatubo in 1991 decreased global mean sea level just before the Topex/Poseidon satellite launch, for example. In addition, global sea level can fluctuate due to climate patterns such as El Ninos and La Ninos (the opposing phases of the El Nino-Southern Oscillation), which influence ocean temperature and global precipitation patterns.⁶

Yet the scientist’s rhetoric is often showing data that assure us…. All the really bad stuff is way off in the future. No wonder the politicians do not listen! Why do we not talk of abrupt climate change, e.g., the abrupt arrival of the bushfires,⁷, the

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⁶https://climate.nasa.gov/news/2680/new-study-finds-sea-level-rise-accelerating/. Accessed 10 April 2020.
⁷https://www.theguardian.com/australia-news/2020/mar/05/bushfire-crisis-conditions-eight-times-more-likely-under-2c-warming-analysis-shows. Accessed 10 April 2020.
floods brought on by sudden inundation of a month’s rain in a matter of hours\(^8\) and most current of all the arrival of Coronavirus, in downtown Southport on the Gold Coast, Australia, in the local shopping mall.\(^9\) Just like an earthquake and its ability to destabilise solid earth, it is in fact destabilising our global economy. The virus is down the road, not way off in a foreign country or all snug across the road in the hospital.

There ‘far, far away in 2100’ rhetoric which is devoid of the both the immediacy of location, let alone the possibility of events that allow for the continued political passivity and apathy towards listening to the risks and opportunities of sea rise. Even when they do see the flooding, there is this ‘deer staring at the head lights’ syndrome. Is this a healthy approach and does it colour how sea rise will be dealt with in the future?

## 4 Wilful Ethics

The Earth is a wilful being. Close attention to the dramatics of a volcanoes, bushfires, and polar vortexes soon dispels the notion of the benevolent mother Earth who deems humans as special. If anything, it is probably only a certain group of humans who think they are so special. Indigenous shamanic and medicinal knowledge soon alerts us to the knowing that other species of the Earth see us as either prey, predator or just plain dumb, as there is no other species on the planet that is constantly filling their backyards and oceans with garbage.\(^{10}\)

If I turn to a podcast by NOAA, the National Oceanic and Atom Administration in the US I learn:

The words ‘garbage patch’ accurately describes what it is, because these are patches of ocean that contain our garbage. But they’re not areas where you can easily go through and skim trash off the surface. First of all, because they are tiny micro plastics that aren’t easily removable from the ocean. But also just because of the size of this area. We did some quick calculations that if you tried to clean up less than one percent of the North Pacific Ocean it would take 67 ships one year to clean up that portion. And the bottom line is that until we prevent debris from entering the ocean at the source, it’s just going to keep congregating in these areas. We could go out and clean it all up and then still have the same problem on our hands as long as there’s debris entering the ocean.\(^{11}\)

These garbage patches across the oceans are a prime example of why there is a need for an Indigenous jurisprudential approach, which asks questions to future designers

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\(^8\)https://www.abc.net.au/news/2019-12-12/brisbane-storms-damage-six-months-rain/11791512. Accessed 10 April 2020.

\(^9\)https://www.goldcoastbulletin.com.au/news/new-coronavirus-cases-found-on-gold-coast/news-story/0b70ddc5844bd70df7c356c0de161b39. Accessed 10 April 2020.

\(^{10}\)Luna (1984).

\(^{11}\)Garbage Patches: How Gyres Take Our Trash Out to Sea (NOAA Ocean Podcast: Episode 14) https://oceanservice.noaa.gov/podcast/mar18/nop14-ocean-garbage-patches.html. 26 February, 2020.
and planners that give them a pathway of thought, yes a pathway of thought…which takes into account other priorities, which in turn as Mary Graham who comments on governance, postulates is far more economically efficient in the long term.\textsuperscript{12}

## 5 Major Cultural Shifts

An example of that pathway of thought would include questions such as is design built on fear? For example, has there come about a culture of fear of oceans and their relentless encroachment on what has always been considered prime real estate? Even presidential real estate is threatened such as Mar a Lago in Florida, let alone the capital cities such as Djakarta, which are heeding the call and moving north. Well maybe the ruling elite are moving north, but how will it be possible for the poor to move? When it hits the Corporate Kings does that change the attitudes and designs in response to sea level rise? Or will the response to climate change generate another form of inequality? These are the questions many are asking.

Or on a totally different pathway, if I return to my comments on my recent research trip to Denmark: what voices evoke a response? I therefore ask:

Is it when we read in the media, that six-year-old children now worry about climate change?\textsuperscript{13}

Or is it when a Scandinavian youth, suffering from Asperger’s, has to miss school to bring to the attention of the politicians and global leaders of industry, that the future generations want to be able to breathe clean air and fish in the sea, without bringing up tones of plastic rubbish?\textsuperscript{14}

Whose concerns change design, those of the large or those of the small? I could further point out that planning and design now have an extra imperative: how to avoid becoming a target for a future generation’s anger? As we may well return to the 1960s and the global social upheaval of that era? Especially, considering the global economic fallout from the coronavirus.

And rather curiously, why have Viking sagas become so popular with the viewing public?

Is there something the Norse people know that we do not know?

Are their descendants about to hop on their ships and go Viking again? Is the genetic memory of their descendant, Greta Thunberg telling her Ragnarok is about to come upon her people? Ragnarok being the equivalent of the End Times when the giants were on the move. The giants being the natural forces. And the gods were facing 3 years of continuous winter which would mean the end of the good life. Will

\textsuperscript{12}Graham (1999).

\textsuperscript{13}Kuebler and Russell (2019).

\textsuperscript{14}Cwienk, J. Greta Thunberg the teenage eco-activist who took the world by storm. https://www.dw.com/en/greta-thunberg-the-teenage-eco-activist-who-took-the-world-by-storm/a-50018055. Accessed 10 April 2020.
the north see three years of continuous winter or is it that winter will no longer return to the frozen north?

Furthermore, why is the Disney animation Frozen 1 & 11 sweeping the world and influencing the young, like some modern-day Pied Piper. The story is loosely based on the Hans Christian Andersen story of the Snow Queen. The original story by Hans Christian Andersen being that of a young girl named Gerda, who travels across Scandinavia to save her friend Kai, who has been captured by the Snow Queen. The Snow Queen being the epitome of the analytical mind, which freezes out any sense of relatedness to the natural world. The Snow Queen allures Kai by offering instruments which distort both human relations and Nature. He is caught up in her icy palace trying to put back together a shattered ice.

Kai was cleverly arranging his pieces in the game of ice-cold reason. To him the patterns were highly remarkable end of up most important.

In other words, obsessed with scientific discovery. Whilst young Gerda must rely on Nature and good relations with others, to get her across the Scandinavian landscape to the icy palace of the Snow Queen. During the time of this venture, the young girl matures into a young woman. She eventually reaches Kai with the help from a reindeer. Her tears finally melt his icy heart and bring him back into alignment with the world around him.

Is that what we are watching in young Greta Thunberg, who tries to work with Nature and calls on the help of other to bring her ‘mature’ message to those bent on the instrumentalization and exploitation of the Earth and its peoples?

Furthermore, why is Frozen 11 incorporating the Norse mythological concept of Ragnarok by referencing the need to revisit the past to find out why climate change is occurring in the little kingdom that sits on a fjord. We find in the story that by revisiting the past, through the help of Princess Elsa’s magical power, they find that the King had cheated the indigenous peoples by offering to build a dam, which in turn destroyed their lands. The King did this because he feared their close relationship to nature, which he saw as magic. This story alludes to the real-life controversy relating to the dam building and Saami rights. The Saami tried to stop the building of the Alta Dam on the Alta–Kautokeino River in the far reaches of Arctic Northern Norway in the early part of the 1980s.

This story could also be a timely reminder in modern times when the latest imaginings of the great oceanographers is to build giant dams across the North Sea. In this case, two oceanographers have proposed that dramatic action needs to be taken to continue ‘business as usual’ for 25 million people to protect the ‘important economical regions’ in northern Europe from sea level rise, rather than considering how

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15 Lee, J. & Buck, C. (Dir) Frozen 11, Walt Disney Studios, USA.
16 Andersen (1844).
17 Ibid.
18 Andersen et al. (1984).
many lives of the species who live in the sea will cease, because humans need to continue polluting the seas, so they can live a ‘civilised life’.  

6 The Vikings and Ragnarok

The north would appear to be calling us to look to revisit the ancient past. What was the meaning in the Norse myths of Ragnarok, but more importantly what were the principles and values that guided the Norse people as they faced the time of Ragnarok? I turn to the independent scholar Daniel McCoy and his website which goes into detail to teach the general public about the finer attributes of the Norse culture. He references the major Norse scholars such as Australia’s Professor Clunies Ross.

The Norse peoples of northern Europe and Scandinavia lived in a world full of sacred meaning, much akin to the Australian Aboriginal world. There was an acceptance of ‘the way things are, where nature and culture were one seamless whole rather than a pair of opposites’.  

This did not turn them into nature worshipers as modernity likes to portray any culture which appears to understand they are part of nature and not the bosses of nature. These people accepted that they were not there to ‘save the world’ or make it over in their own image but ‘to encounter the deep enchantment in the world went hand in hand with their hard-headed pragmatism’.  

After all, the pagan Norse peoples believed that ‘the unfolding of events was directed by a blind, implacable fate’. In their worldview, you ultimately could not decide what happened to you; all you could do was react to your lot with ‘honour and greatness or dishonour and smallness’. In such a perspective, there is not really any room for “saving the world”—only for doing the best you can during all the changes.  

Such an attitude to live was not about ‘the inevitability of death and misfortune but instead spurred one onto noble attitude and to do noble deeds—the kind worthy of being recounted by bards many generations after we ourselves are gone’.  

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19 Groeskamp and Kjellsson (2020).
20 McCoy, D. Norse Mythology for Smart People. https://norse-mythology.org/the-enchanted-world/. accessed 20 March 2020.
21 Ibid.
22 Ibid.
23 McCoy, Ibid.
24 Ibid.
7 Conclusion

Therefore, when approaching the issue of *flooding risks and opportunities*, perhaps a more mature attitude is needed when dealing with the public. Rather than pandering to their fears and trying to constantly ‘plug the dyke’, like the little Dutch Boy, and perhaps we should learn from the Coronavirus pandemic, just how quickly people conform if the threat is real,

and how quickly the Earth then cleans its air. Therefore, do we find new pathways to start telling people—the ocean is more powerful than human desire, and just like the virus, it does not care for your economic worries and you must move now! And furthermore, other possible catastrophes are a certainty, not a perhaps.

This would require a re-thinking of just how we tell the stories, write the reports and develop PR material for the public and the business community.

We need to put forward a pathway of stories to show people that they must adjust, just as we have seen with the government’s response to the pandemic. As for foreign real estate developers, they also need to be more accountable. New development must move inland, as the beach-side real estate is no longer feasible. It is a matter of common sense and long-term investment gain.

And finally, I would ask the individual: Do we go Viking and align with the Earth and all her disasters and beauty and be thankful that we can feel that almighty power under our feet?

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