Something before, that still remains:

Experiential treaty-making on Kulin Country

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“I, Massimo Amerena, declare that the Master of Applied Research thesis entitled ‘Something before, that still remains: Experiential treaty-making on Kulin Country’ is no more than 60,000 words in length including quotes and exclusive of tables, figures, appendices, bibliography, references and footnotes. This thesis contains no material that has been submitted previously, in whole or in part, for the award of any other academic degree or diploma. Except where otherwise indicated, this thesis is my own work”.

Date: 08/04/2020

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Abstract

Narrm, later named Port Phillip Bay by colonisers, shapes Aboriginal politics. This thesis is a place-based examination of the forms of treaty-making practised around Narrm. It aims to deepen the understandings of settler-Australians and historians of the political sophistication of the Kulin federation, a group of allied Aboriginal nations whose Country covers what is now central Victoria, Australia. Drawing on Aboriginal oral histories and colonial primary sources, as well as anthropological and archaeological scholarship, I use knowledge of Kulin culture and philosophy to explore, imagine, and decolonise the history of their politics from 14,000 years ago to the end of 1835. The forms of treaty explored in this thesis have been continuously practised for thousands of generations and exist within, and as an expression of, Kulin law. This thesis is divided into two parts, each consisting of two chapters. Part I examines the Kulin's pre-colonial traditions of treaty-making, showing political relations were performed with Country, the non-human world and humans. Part II builds on this and shows that when encountering settlers in 1835 the bayside Kulin continued, and evolved, their treaty-making traditions.

To describe these forms of Kulin political agreement-making, highlight Kulin agency and the political role of women, I introduce the term *experiential treaties.* An experiential treaty exists within the Indigenous oral tradition and is a political accord between a sovereign Aboriginal group and another party, be they a neighbouring Aboriginal clan, a refugee, a group of settlers as guests, or the non-human world of Country and animals. Exploring the Kulin world through experiential treaties centres Aboriginal political agency and self-determination. It is important to highlight that the practice of treaty-making does not have to include the modern or colonial settler-state. Experiential treaties are characterised by reciprocity and repetition, as they require iterative renewal through personal interactions between host and guest.

With an imaginative approach based on Greg Dening's historical methodology, I explore experiential treaty-making on Kulin country to decolonise Victorian history and highlight the silences and absences within current revisionist historiography of 1835. Rather than analyse the founding of Melbourne, I turn to the under-researched and unacknowledged political agency of the Waddawurrung living around present-day Geelong. Through exploring interactions with John Batman and his crew, I examine the exclusion of women from the narrative of 1835. Re-interpreting the political relations between the Waddawurrung and settlers camped at Indented Head shows that Kulin political traditions were continued, not disrupted, through what I term the Geelong Treaty based on the principle of iterative renewal and reciprocity.

This thesis has significance in expanding the narrative of 1835 to include Kulin women and the Waddawurrung, but it also gives new depth to understandings of modern treaty-making and Indigenous activism in Victoria. As Wiradjuri legal scholar Mark McMillan states on the history and custom of Indigenous treaty-making: "There was something before, that still remains".

Key Words: treaty-making, Geelong Treaty, Kulin Treaty, Batman Treaty, Aboriginal treaties, decolonisation, Victorian colonisation, experiential treaties, Indigenous sovereignty, settler-colonialism, Kulin agency, Waddawurrung (Waddawurrung, Wathawurrung), Narrm (Port Phillip Bay), Beangala, Indented Head, William Buckley, cross-cultural lawful relations, environmental history, the Yarra camp.

Dedication

This thesis is dedicated to survivors and remainers.

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I would not have made it through this thesis without the support, advice, and love of many people.

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Selected Glossary

Kulin languages

Arweet	Chief. Used by the Boonwurrung and some coastal Waddawurrung clans (Barwick 1984, 107; Blake 1998, 100).
Barrabool	Oyster (Clark & Heydon 2002, 24). The Waddawurrung term for the territory and people of the *Wadda Wurrung Balug* clan surrounding present-day Geelong to the west (the Barrabool Hills)
Beangala	Part of the Bella-wein (Bellarine, meaning elbow) Peninsula, territory of the *Bengalat Balug* clan of the Waddawurrung (Clark & Heydon 2002, 28; Morgan 2002 (1856), 67). In 1835 colonisers referred to the entire Peninsula as Indented Head.
Bunjil	The creator the Kulin peoples, their Country and Waters they lived on, and all living non-human life (Briggs 2014). He travelled in the form of a wedge-tailed eagle, and was the ancestral moiety being for approximately half of the Kulin population (Presland 2010).
Corroboree	A catchall term that British colonisers used for Aboriginal performances of song and dance, originating from the Dharug language west of modern Sydney (Cahir & Clark 2010).
Kulin	A cultural and political federation of Aboriginal nations in central Victoria, consisting of the Boonwurrung, Dja Dja Wurrung, Taungurung,

	Waddawurrung and Woiwurrung. While related, Kulin languages are divided into Eastern and Western blocs.
Narrm	The bay, and territory under it, at the centre of Kulin Country. Named by colonisers Port Phillip Bay (Clark & Heydon 2002, 182).
Ngammadjidj	A pale Kulin person resurrected from the dead with no memory. From Western Kulin languages (Clark 1998, 7).
Ngurungaeta	Chief. Used by the Woiwurrung and other Central and Eastern Kulin clans (Barwick 1984, 107-108).
Murrangurk	William Buckley's Waddawurrung name (Dawson 1881, 110).
Tanderrum	A political ceremony in which Kulin people welcomed guests to Country and consented to their accessing land and natural resources.
Tarnuk	A watercarrier or bowl carved from gnarls in gum trees, used widely by the Kulin.
Waddawurrung	The south-western Kulin nation and language group made up of 25-27 clans (see Figure 6 and Table 1). Waddawurrung Country extends west from the shore of Narrm to Mt Emu and Fiery Creeks. There are 133 recorded ways of spelling 'Waddawurrung', most often Wathawurrung, Wathaurong, Wathaurung (Clark 1990, 309-310; Day 2019).

You Yangs	A mountain range on the land of the *Yawangi Balug* clan, approximately 20 kilometres north-east of modern Geelong and 12 kilometres inland from Narrm (see Figure 12). In Waddawurrung they were called Wurdi-Yawang (large hill). The You Yangs are currently a popular walking and picnic area and are protected as a Regional Park.

1835

The Camp	The temporary camp and garden established by Port Phillip Association employees on 9 June 1835, at Beangala on Waddawurrung Country. It was likely near the present-day townships of St Leonards and Indented Head (Munster 2008, 15-17), which in Waddawurrung were named Nearnenenullock or Unwillock (Campbell 1987, 116).
Country	Specific and localised territory, including lands, waters and geographic features, to which Indigenous people have ancestral and political ties. In the Australian Aboriginal context Country "implies a four-dimensional landscape with deep languages, beliefs, customs and clan associations of which the latter is responsible to only speak of the lands and waters to which they have traditional affiliations and responsibilities to look after" (Jones, D, Choy & Clarke 2016, 280).
The Djilong Deed	The document John Batman presented to colonial administrators claiming to have purchased title to 100,000 acres of

	Waddawurrung land, including Beangala (the entire Bellarine Peninsula) and the area surrounding Corio Bay and modern Geelong. See the Djilong Deed in Figure 8 and 10, and the area claimed by the Deed in Figure 9.
The Dutigala Deed	The document John Batman presented to colonial administrators claiming to have purchased title to 500,000 acres of Woiwurrung and Boonwurrung land, stretching from Narrm to present-day Sunbury. See the area claimed by the Dutigala and Djilong Deeds in Figure 7.
Experiential treaty	The practise of iterative, inter-personal political and economic agreement-making between Kulin peoples and guests upon their Country, characterised by reciprocity and compensation for ongoing land access.
The Geelong Treaty	The experiential treaty the Waddawurrung negotiated and practised with settlers on their land from June-December 1835.
Indented Head	The colonial name for the entire Bellarine Peninsula (Beangala), probably coined by Captain. Matthew Flinders in 1802. Indented Head was used by subsequent explorers including John Batman (Batman 1856, 10-11; Clark & Heydon 2002, 105). In this thesis Indented Head refers to the entire Peninsula (not the modern township) unless otherwise specified.
Kulin Agency thesis	Critical historical scholarship which highlights the political agency and pragmatism of Kulin leaders in responding to settlers in 1835.

Port Phillip Association (the Association)	The group of investors and political lobbyists who financially backed John Batman's expedition to Narrm in 1835. Originally named the Geelong and Dutigala Association.

Prologue: ‘Looking for an orchard’

January 1836 –

The scent of eucalyptus and smoke wends through the gums and casuarina, out across the sand and tea-tree to the bay, Narrm, and the ghost rivers beneath it. Nights are warm and days hot. Waddawurrung families around the fire share roast kangaroo, waterfowl, shellfish and crabs, and stories of old times and recent dramas. They toy with steel, cloth, and glass; gifts from their departed guests. The foreigners are all gone now, to bother mob on the other side of Narrm. Sitting on the Beangala shore you can track passage of wooden ships across Narrm from the heads to the Yarra: their passing more frequent by the week. But traces linger of the settlers who camped here for almost six months.

Piles of sod bricks from dismantled huts lay strewn around the camp. The strongest wood and building materials were catalogued and salvaged for use at the Yarra. Only a few lengths of frayed rope were left behind. When they first arrived last June it was winter, and their steel was put to use. Axes brutalised plants, shovels *overturned* soft soil. They cleared a patch, eight by eight, and burnt what was there before. To stop native creatures *stealing* their hard work, they erected a fence around their jealous plot.

The seeds planted in Beangala’s fertile soil initially thrived but unattended by *real* farmers, struggled in summer. Country heals itself, letting the foreign vegetables run their course before returning to its natural balance of acacia and banksia. Re-growth rejecting re-placement. If not already picked and eaten, the alien crops would be bolting; flower heads shooting off carrot, potato, onion, lettuce and radish. Under the hot summer sun they would wilt and die like the withering maize nearby. Only the beans and peas were able to make it. Able to withstand sun and heat they could reproduce. A chaotic kitchen garden.

Outside the fence lay the orchard, the settlers’ perennial contribution to Beangala. We can only imagine the apple and orange orchard abandoned by the white men in late 1835; the fruit trees don’t appear in any sketches or paintings and are only mentioned a handful of times in primary documents. If grown from seed, the orchard would be little more than a foot tall; hardly worth commenting on. Dormant rootstock takes time to activate, for the roots to take hold and spread. But, they must have been mature if they were worth returning to Beangala for, months after the settlers and their hollow threats had left this beach. Returning with axes and shovels to the camp a year after the orchard was planted, under orders to uproot the trees and bring them to the Yarra (Todd 1989, 67).

The orchard was violently pulled up before its roots could spread deep and wide, the sweetness of mature, ripe fruit denied to the Waddawurrung locals. When settlers came back for the fruit trees in July 1836, their colleagues and employers on the other side of Narrm committed their first massacre of Kulin people; the Geelong Treaty was terminated. How many times were these trees planted in, and accepted by Aboriginal Country only to be uprooted, fruitless?

Who remembers this place?

December 2019 –

One month ago I was on *Pindjarup* Noongar country, near Perth, for Ron Adams' Performing the Word writing retreat.[1] Urged to be creative with my research I grew transfixed by the orchard. I have come to find it.

It is my third visit to Indented Head this year and the sun is beating down on a still and shimmering turquois bay. On a weekday afternoon the hamlet is quiet (if you can ignore the hum of jet skis), but the hot air is heavy with flies and anticipation for the summer crowds.

Some regulars have already arrived, pegging out their summer foreshore *claims*. Makeshift bars and barbeques are stocked so once-a-year neighbours can be invited over for a cold one under weathered canvas awnings or corrugated sheets. Soon all the bayside *reserves* — Anderson, Batman, Taylor, Bengalat, Karrong — will be occupied with temporary residents grumbling over a 10pm curfew.[2] Fruit trees would not last in this campground.

It is cooler under the Monterey Cyprus, migrants from California imported to break Narrm's winds. Their thick sprays of foliage cast an immense shadow. I almost walk all the way to the cairn without feeling the sun on my skin. The tall, thin stone tower sits in its own grove; a solemn dedication to Flinders and Batman, the first white aristocrats to set foot on this country. The first Waddawurrung men they met — Woolmudgin, Gulgoing, Pulmadaring, Dryberry and Moimboring — are not mentioned. The adjacent asphalt tennis court burns. There are no fruit trees out on that sandy shore.

Further along the coast on St Leonards' foreshore is a "place of contemplation". The Labyrinth tells us how 'lost' William Buckley was during his 32 years living with the Waddawurrung. The modern local people venerate Buckley, paving this memorial 201 years after he arrived. Some believe he camped with the first settlers near here in 1835, by the bird-filled St Leonard's creek.

[1] For a detailed explanation of Adams' creative techniques for post-graduate students, based on Greg Dening's theory of scholarly performativity, see Adams, Ron 2017, 'Making the Future of Humanities, Education and Creative Industries', paper presented to The Future of Humanities, Education and Creative Industries, Sarajevo.
[2] These reserves are named after "gentlemen who lived in the area some time ago". See Figure 15 for full explanation.

Turning away from the beach, generous yards and verandas sprawl. The town “where every day is Sunday” beckons. Wandering the streets, ovals and courts, I search for fruit. Palm trees circle an empty concrete lake: **Seachange Estate Now Sold Out.** Further out are the fences, beyond them wide, flat, golden-brown fields. There are plenty of sheep out there.

Even with all the damage and compacting hooves have done to the soil, it is still famously productive. A few miles further inland, over the hill there is an olive grove, beyond that vast canola fields. More recently berries and grapes have taken off, vineyards spreading all over the Peninsula. Apples and oranges have not been here for almost 200 years, but something still remains. A memory of the orchard at the making of treaty; English fruit was grown on Aboriginal Country. Kulin Country. Waddawurrung Country.

Today there are around 3,000 people settled in Indented Head and St Leonards, but in the coming months they will multiply. How much do they know about ‘Victorian’ treaties, in 1835 or 2019?

The orchard is here, even if we can’t see it now. Roots under the soil.

Introduction

This is a story without a beginning or an end. One cannot say when Aboriginal and Torres Strait Islander peoples assumed the responsibility of caring and speaking for their Country on the continent now known as Australia, but through this custodial relationship they are the land and water's sovereigns (Poulter & Nicholson, B 2017, 5).[3] Those rights and responsibilities are ancient and continuous, allodial and immemorial. In 1835 British colonisers challenged Aboriginal sovereignty on the country which would come to be known as Victoria.[4] These white men had come to stay. The bay of Narrm, later dubbed by the colonisers 'Port Phillip Bay', lies at the heart of this thesis.[5] Politics flow through Narrm. Narrm itself is a political actor: before and after invasion a space of power and of negotiation.[6] This thesis explores forms of treaties practised around Narrm; the political threads that connected Aboriginal people to their Country and their guests: before and at the first moments of colonisation, through to the present.

I will speculate on traditional treaty-making practices and critically interrogate historians' views on the treaties of 1835 to demonstrate the continuity and innovation of Kulin political agency in treaty-making, to reject notions of Aboriginal passivity or nativity towards colonisation. I introduce the term *experiential treaties*, to describe Kulin political traditions of inter-personal agreement making which are practised through everyday interactions, with humans as well as Country, Waters, and non-human entities. The following chapters explore Kulin cultural and political philosophies and forms of pre-

[3] Prior to colonisation the terms Aboriginal or Torres Strait Islander did not exist, the continent was made up of over 300 independent nations, and well over 1000 clan groups. Indigenous peoples differ culturally and politically across the continent but were grouped together by colonisers; as historian Bain Attwood puts it, they were *made* 'Aboriginal'. See Attwood, Bain 1989, *The making of the Aborigines*, Allen & Unwin Academic, Crows Nest. Using Aboriginal, Torres Strait Islander, or Indigenous in political and scholarly literature has both useful and problematic specificity, especially regarding the legal category of 'traditional owner'. See Edelman, David 2009, 'Broader native title settlements and the meaning of the term 'traditional owners'', paper presented to National Native Title Conference, Melbourne. I acknowledge that using these terms reproduces colonial systems of classification, and I have made all efforts to use specific nation and clan identifiers to subvert this.

[4] Aboriginal (denoting all Indigenous peoples on mainland Australia, Tasmania, and islands except those in the Torres Strait) is used most often in this thesis because it makes no claim over the environmental or political systems of the Torres Strait peoples. For detailed discussed on the nuances of using these terms relating to identity, law and treaty-making see: Birch, Tony 1993, 'Real Aborigines- Colonial Attempts to Re-imagine and Re-create the Identities of Aboriginal People', *Ulitarra*, vol. 13, no. 4, pp. 13-2; Heiss, Anita 2003, *Dhuuluu-Yala: To Talk Straight-Publishing Indigenous Literature*, Aboriginal Studies Press, Canberra; Mansell, Michael 2016, *Treaty and Statehood: Aboriginal Self-Determination*, Federation Press, Annandale, pp. 92-94; Taylor, Louise 2003, 'Who's Your Mob?' - the Politics of Aboriginal Identity and the Implications for a Treaty', in ATSIC (ed.), *Treaty- Let's Get it Right!*, AIATSIS, Canberra.

[5] Like many sites in colonial Australia, the bay's name was unfixed and subject to revision. It was first named in Port King in 1082 to honour then New South Wales Governor but was changed several years later to commemorate the first coloniser of Australia, Arthur Phillip. See Flinders, Matthew 2001, *Terra Australis: Matthew Flinders' Great Adventures in the Circumnavigation of Australia*, Text Publishing, Melbourne.

[6] Note that I do not use colonisation and invasion interchangeably. Part II of this thesis concerns the events of 1835 on Southern Kulin Country, which I do not consider to be invasion due to the practise of experiential treaties around Narrm. I describe these treaties in terms of colonisation, as at least initially the Narrm Kulin were compensated for the presence of settlers on Country. I use the term invasion to describe the rapid expansion of British colonisation throughout Victoria which was done without the *consent* of the local Aboriginal peoples.

colonial experiential treaty, to provide necessary background for the case study of the Geelong Treaty, a political agreement negotiated between the Waddawurrung and settlers in the latter half of 1835 and practised at Beangala, which colonisers later named 'Indented Head' (Morgan 2002 (1852), 67).

The Kulin nations —Woiwurrung, Boonwurrung, Dja Dja Wurrung, Waddawurrung, Taungurung — have Country in central Victoria, Australia and are the focus of analysis in this thesis (Presland 2010).[7] These nations have been linguistically divided into Western (Dja Dja Wurrung and others), and Eastern Kulin (Boonwurrung, Woiwurrung, Taungurung), while the Waddawurrung is considered distinct (Blake 2011; Bowe, Reid & Lynch 2010, 315-316; Clark 1996).[8] While there are differences in language I follow anthropologist Diane Barwick (1984, 104) and historian Ian D. Clark (1990, 276) in referring to the five nations collectively based on their cultural and political similarities. These nations have existed as independent sovereign entities for tens of thousands of years on Country which now encompasses central Victoria, and through political alliances came to be collectively known as the Kulin peoples.[9] The Kulin peoples are bound by belief in the creator-spirit Bunjil, and the laws he passed down to both the Aboriginal people and the non-human beings he created (Massola 1968). This thesis is a place-based political history of Narrm primarily focussing on the three bayside nations. It charts the bay's environmental evolution alongside the forms of treaty practised around the bay to deepen perceptions of the political sophistication of Waddawurrung, Woiwurrung and Boonwurrung, and the Kulin more generally. I pay close attention to the Waddawurrung, which was the most powerful Aboriginal nation in Victoria's west pre-colonisation (Cahir 2001, 1). So much information on Waddawurrung culture and social organisation was lost due to the rapidity their land was invaded by sheep and settlers from 1836 (Clark 1990, 277; Jones D, Choy and Clarke 2016, 7;

[7] As highlighted by archaeologist Gary Presland there are many ways in which to spell the language groups of the Kulin, due to the many interpretations of colonists with an interest in amateur anthropology. I have used the widely published contemporary spelling of Kulin names throughout this thesis.

[8] While Aboriginal languages are often related regionally, they include place-based specificity and terms or sentence structures which only apply to features of Country or local stories, making distinctions important. Several Kulin nations are currently reconstructing their languages from early anthropological and ethnographic texts, but this is an ongoing project based on incomplete information. While the Waddawurrung language shares many similarities in vocabulary with the Western Kulin group, grammatically it diverges enough to be considered a separate tongue. The Western Kulin language grouping includes several nations which were not in the Kulin alliance, such as Djap Wurrung and Jardwadjali, see Figure 5. The Mallee and Murray languages of North West Victoria's also have many connections to the Western Kulin grouping. Similarly, in the Eastern grouping the Ngurai-illam Wurrung is included. Today, the Ngurai-illam Wurrung are not considered a Kulin nation culturally or politically, however they are discussed in this thesis in Chapters 2 and 3 due to their proximity to the Dhungala (Murray River) and their potential as a conduit for passing news of colonisation south to the Narrm Kulin.

[9] Though I focus on Kulin politics and peoples, Aboriginal nations from other districts of Victoria are important in the political development of the colony/state. For instance, Aboriginal peoples in the Western District have a long and rich history of encounter with and resistance to settlers that in many ways are parallel to this thesis. For instance, see Critchett, Jan 1990, *A Distant Field of Murder: Western District Frontiers, 1834–1848*, Melbourne University Publishing, Melbourne. I sparingly use the phrase Victorian Aboriginal peoples, not to imply any allegiance to the modern state of Victoria but as a geographical referent.

Powell B. et al. 2019).[10] I seek to show that understanding hidden elements of colonial history have relevance to contemporary political processes.

When beginning this research in early 2017 I focused on the Victorian Treaty process, initiated in early 2016. It is the first concerted effort of an Australian state or federal government to reckon with the fact that Aboriginal peoples have not consented to, nor been compensated for, the settler-state occupying and managing Country.[11] The political process became "torturous" and "cluttered" with bureaucratic imperatives and confusing jargon (Marks 2018, 160) — in one Parliamentary debate a Labor MP described treaties as "important architectonic processes" — dampening many Victorian Aboriginal activists' hopes for a treaty driven by and for grassroots community (Gregorie 2019; Thorpe 2019b).[12]

Through researching modern treaty processes and learning from Aboriginal activist and grassroots political movements in Victoria I was exposed to alternative notions of treaty-making, which are further articulated in Wiradjuri legal scholar Mark McMillan's scholarship on Indigenous law and jurisdiction.[13] That treaties could refuse the interference or role of the state entirely was a revelation to me, as a student and tutor of International Relations. I was taught Indigenous treaties can be positioned and practised as personal agreements between an Aboriginal group and settlers who occupied their country, without the need for legal teams, bureaucrats, or governments. This thesis explores the forms of treaties that the Kulin peoples practised around Narrm: treaties with Country and Waters, with non-human entities including animals and plants, with refugees, with other Aboriginal nations, and with groups of settlers and individuals who were guests on their Country. Recognising the history and legitimacy of these forms of Aboriginal treaty-making enables alternative forms of modern treaty-making to be considered as viable alongside, or in replacement of, government-led processes.

A notable modern example of alternative treaty-making is Gunnai activist Robbie Thorpe's Black GST (Genocide, Sovereignty, Treaty) campaign in which he argues that settlers can compensate

[10] Historian Ian D Clark constructed a detailed history of the Waddawurrung and its clans, the focus of the later chapters of this thesis, in the early colonial period. I have opted to use 'Waddawurrung' in an effort to use a neutral spelling that does not preference either of two contemporary traditional owner groups (the Wathaurong based in Geelong or the Wathaurung based in Ballarat).

[11] While the Victorian Premier Daniel Andrews deserves credit for heeding the Aboriginal community's call for treaty, it is incorrect to say that his government initiated the process. The call for treaty was made in early 2016 when Aboriginal community leaders told then Minister for Aboriginal Affairs Natalie Hutchens that they rejected the notion of being symbolically recognised in the Commonwealth Constitutional (Victoria has recognised Aboriginal nations as the state's First People since 2004).

[12] For the Labor Member's quote see Hansard Victorian Legislative Assembly 5 June 2018.

[13] McMillan argues that modern treaties are processes to reconcile two legal systems, one Indigenous and ancient, one settler and relatively new on Aboriginal Country. McMillan and colleagues Shaun McVeigh, Joanna Cruickshank, Ann Genovese, Julie Evans and Crystal McKinnon have begun an ARC research project *Lawful Relations: From Encounter to Treaty* (2018-2021), analysing political relationships between settlers and Aboriginal people in colonial Victoria, which is likely to continue exploring the themes of this thesis beyond my scope of 1836.

Indigenous people in the face of government inaction (Birch 2018c), demanding that people living on Indigenous lands acknowledge the bloody history of frontier wars and 'pay rent' directly to local Aboriginal people or organisations (Watson 2000).[14] Thorpe's political work and articulation of Indigenous sovereignty draws on earlier Aboriginal activists such as Gary Foley, Kevin Gilbert and Denis Walker(Land 2015, 184-185; Pelizzon 2014). Gilbert (1988) agitated for treaty in the lead up to Australia's bicentenary while Walker (no date) developed a template for a 'private' treaty in which settlers would negotiate a financial or other material commitment to the Aboriginal people of groups whose land they occupied.[15]

'Paying the Rent' is an ethical and moral project that any settlers living on occupied Aboriginal country can readily engage with individually and informally according to their capacity and financial situation, but Walker's vision of formalised treaty relations has also been taken up in recent years (Land 2015, 183-188).[16] Examples of this include the Dabee people of present-day New South Wales, who in 2015 negotiated a formal land occupancy contract with a land 'owning' settler family. While the terms of the Dabee treaty were undisclosed it represents substantive and binding financial compensation for living on stolen Aboriginal land.[17] In 2017 the Wik people of Western Cape York announced that they had finalised an economic treaty with Chinese business interests, circumventing the Commonwealth and Queensland governments to make a direct trade deal to provide wood to a

[14] Paying the rent also responds to problematic legislation which is supposedly in place to offer Indigenous people avenues to compensation and land rights, such as the Commonwealth Native Title regime developed and amended in the 1990s. For more background on the inadequacies of Native Title see: Behrendt, Larissa & Watson, Nicole 2007, 'Shifting ground: Why land rights and native title have not delivered social justice', *Journal of Indigenous Policy*, no. 8, pp. 94-102; Foley, Gary 1997, 'Native Title is Not Land Rights', *Koori History*, <http://www.kooriweb.org/foley/essays/essay_2.html>; Moreton-Robinson, Aileen M 2001, 'A possessive investment in patriarchal Whiteness: nullifying Native Title', in *Left Directions: Is There a Third Way?*, University of Western Australia Press, pp. 162-77; Moreton-Robinson, Aileen M 2004, 'The possessive logic of patriarchal white sovereignty: The High Court and the Yorta Yorta decision', *Borderlands e-journal*, vol. 3, no. 2; Rowse, Tim 1993, 'How we got a Native Title Act', *The Australian Quarterly*, vol. 65, no. 4, pp. 110-32; Tehan, Maureen 2003, 'A Hope Disillusioned, an Opportunity Lost-Reflections on Common Law Native Title and Ten Years of the Native Title Act', *Melbourne University Law Review*, vol. 27, no. 2, pp. 523-71.

[15] This thesis draws no distinction between 'convicts', 'free early settlers', 'pioneers descendants', 'post-war migrants', 'ex-pats', or settlers not racialised as white such as refugees, temporary workers or migrants from former colonies. As non-Indigenous people living on stolen land without a treaty, permanently or temporarily, we have settled on Country without permission. It is true that most settlers in the 21st century will not be directly involved in land confiscation or dispossession of Aboriginal people, but we settlers all benefit (however not equally) from the structures of invasion, dispossession, exclusion and genocide that were established by colonists. I do acknowledge the history of institutionalised racism in the colonies and the Commonwealth's former White Australia Policy, which severely limited the migration of non-Europeans (and their rights if granted entry) to Aboriginal land.

[16] This thesis shows that compensation for use of Country is an ancient political imperative, however the modern articulation of Pay the Rent was developed and promoted by the National Aboriginal and Islander Health Organisation in the 1970s. Walker's Treaty template is included in Land, Appendix IV. See also this thesis' Conclusion chapter.

[17] Treaty is the term that the Dabee and the family agreed upon using, see Selvaratnam, Naomi 2015, "Whitefella' draws up own treaty for his land with traditional owners', *SBS News Online*, viewed 10/12/2016, <https://www.sbs.com.au/news/whitefella-draws-up-own-treaty-for-his-land-with-traditional-owners>.

foreign conglomerate.[18] While receiving little mainstream media coverage, these treaty-making initiatives were described as historic by the Aboriginal nations who negotiated them, and are indicative of the larger notion that underpins this thesis: modern Indigenous peoples already use alternative models of treaty-making which do not require the involvement of settler-colonial governments.

The proposition of treaties between Indigenous nations and the Australian public has been increasingly explored in recent years.[19] McMillan argues that despite the growing openness of Australian state Labor governments to consider modern treaty-making it is essential that political efforts move beyond engagement between Indigenous nations and governments (2016). For McMillan, renewing relations with governments is as (or perhaps less) important as fostering awareness of Indigenous sovereignty in the general (predominantly white) public, and developing a sentiment in which treaties are engaged with and owned by the settler-public without the imposition of legislation or litigation. While offering a vision for the future of Aboriginal treaties, McMillan also draws attention to the past; Indigenous nations made treaties with each other for thousands of generations according to their own legal and constitutional frameworks (Balint et al. 2020). Viewing treaty-making only through the promises and ambitions of settler-governments limits analysis of Indigenous politics since colonisation. Acknowledgement of the Indigenous political tradition of inter-nation treaty-making must underpin and inform all attempts of negotiations with modern settler governments; as McMillan puts it "there was something before, that still remains".[20]

Alternative treaty frameworks and McMillan's arguments broaden the analysis of modern treaties, such as the ongoing process in Victoria.[21] Historiography of treaties in Victoria invariably centres on the events of 1835, when privateer-colonist John Batman made a political deal with Aboriginal

[18] The Wik's exertion of their sovereignty in conducting foreign relations (a function claimed by Commonwealth as its exclusive right) is reflective of their political acumen and successful Native Title case in the High Court in 1996, see Welcome to Country 2017, *Wik people sign historic economic treaty with China*, <https://www.welcometocountry.org/wik-people-sign-historic-economic-treaty-with-china/>.
[19] In 2019 the theme of NAIDOC Week (the annual national week of celebration of Indigenous culture) was 'Voice, Truth, Treaty'. Many events were held to explore the interaction of these aspirations. The title of this thesis is drawn from a panel on Treaty hosted by Larissa Behrendt at the University of Technology Sydney and broadcast on her ABC Radio National show *Speaking Out*. Panellists were Aboriginal academics Mark McMillan, Darryl Rigney, Robynne Quiggin and Lindon Coombes.
[20] For a recording of McMillan's comments see Behrendt, Larissa (Producer) 2019, *NAIDOC 2019: Treaty Panel Part 2*, ABC Speaking Out, Sydney, 10/09/2019, <https://www.abc.net.au/radio/programs/speakingout/speaking-out/>. Ideas from McMillan and colleagues' ARC project *Lawful Relations: From Encounter to Treaty* (2018-2021) are explored in its first publication: Cruickshank, Joanna & McMillan, Mark 2020, 'Lawful conduct, Aboriginal protection and land in Victoria, 1859-1869', in S Furphy & A Nettelbeck (eds), *Aboriginal protection and its intermediaries in Britain's antipodean colonies*, Routledge, Abingdon-on-Thames, pp. 194-211.
[21] My research is concerned with Victorian history and the modern treaty process, however in recent years other jurisdictions in Australia have initiated treaty discussions, including South Australia (which were abandoned following the election of a Liberal government in 2018), the Northern Territory (which since appointed Michael Dodson as Treaty Commissioner in 2019 but has made few public announcements on its process), and Queensland (which has announced initial treaty consultations).

leaders who lived around modern-day Melbourne and Geelong[22]. This thesis is indebted to the archival research of the revisionist historians who have articulated and furthered the Kulin Agency thesis, which argues that the Kulin were informed and willing political agents in treaty-making with John Batman in 1835. Kulin Agency historians — including James Boyce, Bruce Pascoe, Diane Barwick, Robert Kenny, Fred Cahir, Lyndall Ryan, Ian D Clark, Bain Attwood and Helen Doyle — sifted through almost two centuries of scholarly and public debate over the legitimacy and legacy of Batman and his treaties to demonstrate the agency, adeptness, and pragmatism of Aboriginal leaders and peoples.[23]

While these revisionist historians imagined a new perspective of Batman and first colonial encounters, the treaties themselves are rarely discussed in terms of Kulin law and the tradition of inter-nation political peace-making that McMillan emphasises. This thesis explores 1835 through the lens of Kulin politics, which I term 'experiential treaty-making'. Furthermore, while introducing this experiential framework, I focus upon an element of 1835 which remains largely unexplored in historical scholarship: the political relations practised on Waddawurrung Country.

Bayside Waddawurrung had political relations with settlers, first with the refugee William Buckley and later with Batman's employees, which must be considered in terms of the laws and political customs that the Kulin had developed over generations. By exploring forms of treaty-making in this thesis, I show that the Waddawurrung's treaties with Buckley in 1803 and colonisers in 1835 represent a consolidation and continuation of Kulin political custom. In doing so, I argue that despite legitimate questions about the validity of John Batman's claims over Waddawurrung Country, it was the site of the first experiential treaty with settlers, which I call the Geelong Treaty. This history is important as it deepens understandings of Kulin and Waddawurrung political practice and highlights their agency both before and during 1835 and provides context for the contemporary Victorian Treaty process.

As advocate for the Victorian Treaty process Uncle Richard Frankland argues (2017), the tradition of treaties on this country goes back thousands of years, beyond and before Batman .[24] These treaties are explored in this thesis through the themes of: sovereign relations with Country and Waters, Aboriginal environmental and moral philosophy, the political importance of women, encounters with settlers,

[22] Geelong is 65 kilometers south-west of Melbourne and the second most populous town in Victoria. It developed largely in parallel with Melbourne but became an industrial rather than metropolitan city.
[23] Cahir teaches and is known academically as Fred, but occasionally publishes under his first name David. All mentions of Cahir in the reference list as David A, Fred (David), or Fred refer to the same scholar. Cahir and Clark are frequent collaborators and have made great contributions to the history of Aboriginal peoples in Victoria's west, which are referenced throughout this thesis.
[24] Anthropologist Ian McIntosh suggests that the peoples inhabiting the northern coasts (Yolngu and their neighbours) of Australia engaged in treaty-making with the Macassans, fishermen and traders from Indonesia, establishing ongoing reciprocal relations in the mid-1700s. See McIntosh, Ian S 2006, 'A treaty with the Macassans? Burrumarra and the Dholtji ideal', *The Asia Pacific Journal of Anthropology*, vol. 7, no. 2, pp. 153-72.

motivations for the Kulin to treaty with their guests, the performance of experiential treaties, innovations in treaty-making with settlers, and lawful inter-cultural relations outside the influence of the settler-state. My objective is to explore the continuity in Kulin treaty-making, showing that the moment of Victorian colonisation and, indeed, the modern Victorian Treaty process, cannot be understood without an appreciation of the political structures which have governed this country for thousands of generations.

Treaty in the mainstream

> *Treaty is a moment where we're actually starting to understand, there was something before, that still remains (Mark McMillan, 2019).*[25]

It is often cited that Australia is the only Commonwealth nation that occupies First Nations lands without a treaty — a fact that academic and advocate Michael Dodson (2003) calls the nation's "unfinished business" — and in recent decades scholars have explored what a treaty *is* or *could be* for modern Aboriginal and Torres Strait Islander peoples (Langton et al. 2004). However, conventional scholarship on treaties in the Australian context does not recognise examples of treaty-making that functioned under Indigenous law and preceded the founding of the settler state. This reflects what the term 'treaty' has come to mean.

Eualeyai and Kamilaroi legal scholar and broadcaster Larissa Behrendt (interview 2018) traces Aboriginal calls for treaty back to the activism of the early 20th century, with figures like William Cooper petitioning King George for increased rights and recognition of sovereign interests in land in the 1920s and 1930s.[26] Cooper's campaign for a renewed relationship between the Crown and Aboriginal people centred on return of land and recognition of sovereignty, core elements of modern treaties. Cooper did not explicitly use the term treaty, which would only emerge in the 1970s as a demand of Aboriginal political organisations (Land 2015, 42-48). Each time the notion of treaty is raised in the national political agenda — such as in 1979-81 with the Fraser government and the National Aboriginal Conference and Aboriginal Treaty Committee (Fenley 2011; Read 2006), in 1988 with the Hawke government and the Barunga Statement (Rowse 2006), or most recently with

[25] McMillan in Behrendt, Larissa (Producer) 2019, *NAIDOC 2019: Treaty Panel Part 2*, ABC Speaking Out, Sydney, 10/09/2019, <https://www.abc.net.au/radio/programs/speakingout/speaking-out/>.

[26] This thesis is principally a historical investigation into Aboriginal treaty-making traditions and thus heavily relies on both primary and secondary sources, however one qualitative interview was conducted. The Victoria University Ethics Committee formally approved my interview schedule and methodology (approval code HRE18-066). My interview with Larissa Behrendt (April 2018) is used in the Introductory Chapter, however I did not proceed with any further planned interviews due to the shift in focus of my research from contemporary treaty politics to the archives. I contacted the Wadawurrung Aboriginal Corporation seeking an interview with a cultural heritage advisor to supplement my archival findings, but a consultation could not be arranged. For more information on Cooper see: Attwood, Bain & Markus, Andrew 2004, *Thinking Black: William Cooper and the Australian Aborigines' League*, Aboriginal Studies Press, Canberra; and Broome, Richard 2015, *Fighting Hard: the Victorian Aborigines Advancement League*, Aboriginal Studies Press, Canberra.

ATSIC's demand for treaty from John Howard in the early 2000s (Brennan et al. 2005)— many Indigenous intellectuals respond and update the discourse on the possibilities and complexities of modern treaty-making (ATSIC 2003), which they stress must at its core deal with the fact that Australia is a settler-colony.[27]

This fact has informed the field of settler-colonial studies, an analytical area developed by First Nations scholars in Turtle Island (North America) (Kauanui 2016), and most prominently articulated by scholars Patrick Wolfe (1994; 2006) and Lorenzo Veracini (2010; 2017).[28] As the late Wolfe wrote of Australia (2006, 388): "colonisers come to stay – invasion is a structure not an event". Modern Australia is made up of a diverse racial population, but the presence of non-white migrants does not detract from them being settlers on Aboriginal land. The fact that Australian governments have identified treaty processes as part of a progressive agenda underscores the point settlers do not plan on leaving Aboriginal country (Maddison 2011, 50-53, 111-114). Rather, modern treaties may indicate that some individuals, leaders and communities concerned with Indigenous justice are seeking to obtain permission from traditional owners to continue their occupation (Maddison 2019).

For Aboriginal scholars Tony Birch and Mark McMillan (2016), the term 'treaty' is inadequate to describe the socio-political inter-personal and inter-nation relationships that Aboriginal peoples developed with each other.[29] Behrendt (interview 2018) is also uncomfortable with the ambivalence of an English word which has come to be associated with European contracts and international or Western law and, in the Australian context — until the Victorian process — political reticence. This ambivalence stems from the fact that political agreements made between Aboriginal peoples and governments (on any level) can be labelled as treaties by some and not by others, regardless of their content.[30] McMillan's, Birch's and Behrendt's arguments reveal the need for an alternative

[27] For early articulations of calls for an Australian treaty see: Harris, Stewart 1979, *It's Coming Yet: an Aboriginal Treaty within Australia Between Australians*, The Aboriginal Treaty Committee, Canberra; Wright, Judith 1985, *We Call For A Treaty*, Collins / Fontana Sydney.

[28] For more recent overviews of the field of settler-colonial studies see: Strakosch, Elizabeth & Macoun, Alissa 2017, 'Patrick Wolfe and the settler-colonial intervention', *Arena Magazine*, no. 148, pp. 35-7; Veracini, Lorenzo 2017, 'Decolonizing settler colonialism: Kill the settler in him and save the man', *American Indian Culture and Research Journal*, vol. 41, no. 1, pp. 1-18.

[29] Birch describes his ambivalence to modern treaty-making on a 2013 panel at the Wheeler Centre, *Intelligence Squared Debate: True Reconciliation Requires a Treaty*, The Wheeler Centre, viewed 11/03/2017, <https://www.wheelercentre.com/broadcasts/intelligence-squared-debate-true-reconciliation-requires-a-treaty>.

[30] For example two white legal scholars called the 2015 Noongar Deal, a Native Title settlement between the Western Australia government and the six Aboriginal Land Corporations encompassing Perth and the south-western tip of the continent, Australia's "First Treaty", see Hobbs, Harry & Williams, George 2018, 'The Noongar Settlement: Australia's First Treaty', *Sydney Law Review*, vol. 40, no. 1, pp. 1-38. The Noongar Deal has been disputed by several traditional owner parties on the basis of manufactured consent, who dismiss claims that the deal represents anything more than Indigenous Land Use Agreements (ILUA's) and a service provision agreement which do not afford nations a great level of political self-governance; see McGlade, Hannah 2017, 'The McGlade Case: A Noongar History of Land, Social Justice and Activism', *Australian Feminists Law Journal*, vol. 43, no. 2, pp. 185-210. The legal opposition to the Noongar deal triggered to the most recent Federal reform of the Native Title Act in 2017. As of February 2020, the dispute is ongoing as the deal has yet

conceptualisation of treaty. While Indigenous sovereignty was never ceded and still remains today, Birch shows that "sovereign right[s] to land and the interpretation of the past are inextricably linked" (2007, 110). If the conception of treaty (and its absence in modern Australia) invariably stems from colonisation, the history of Indigenous political agreement-making is limited to the past 250 years.

For this reason, in 1979 Indigenous thinkers sought an Aboriginal language term to describe a *modern* political process with the Australian government which does not involve bilateral inter-nation-state agreements (Fenley 2011). The Yolngu term *Makarrata* was chosen.[31] However, it is inappropriate for me to use this term to describe the Kulin tradition of treaty-making for two reasons: it is a Yolngu term from Arnhem Land (Northern Territory) with specific cultural and place-based meanings, and it has recently been associated with the Uluru Voice from the Heart and constitutional recognition movement.[32] With this in mind, and for want of a local term, I use the term 'treaty' to describe the Kulin tradition of inter-nation political agreement-making and other experiential forms of treaties explored in this thesis.

Given the entrenchment of the British parliamentary and legal system that was imposed by colonisation, treaties are considered by most scholars and politicians as agreements between the Commonwealth government — representing the sitting British monarch, referred to as the Crown — and a representative of an Indigenous polity. The broadest definition of modern treaties may be

to be finalised. Furthermore, academics highlight the state's motivation in seeking economic certainty about land claims as potentially undermining notions of entering into modern treaty processes in good faith, see Woolford, Andrew 2005, *Between justice and certainty: Treaty making in British Columbia*, University of British Columbia Press, Vancouver.

[31] Makarrata was controversial for many Aboriginal activists, who saw it as a political compromise on Indigenous sovereignty and capitulation to promote reconciliation with Australian settlers. One of Makarrata's translations is "ending a conflict", which presupposes that the political accord was negotiated between parties which were in hostile opposition. As this thesis shows, this was not the case in for the Kulin's treaties in 1835.

[32] The Uluru Statement was produced by Indigenous academics and policy experts in 2017, as the culmination of a seven-year government inquiry into mechanisms to recognise Indigenous people in Australia's Commonwealth constitution. Constitutional Recognition requires a national referendum, and thus public information campaigns and a clear question to be put to the vote, see Fleay, Jesse John & Judd, Barry 2019, 'The Uluru statement', *International Journal of Critical Indigenous Studies*, vol. 12, no. 1, pp. 1-14. The *Recognise* campaign was established in 2012 to raise awareness on the issue but was largely ineffective and unpopular in Aboriginal communities, see Liddle, Celeste 2014, 'I don't want your Recognise campaign – it's nothing but a sham', *Guardian Australia*, viewed 20/10/2014, <https://www.theguardian.com/commentisfree/2014/aug/18/i-dont-want-your-recognise-campaign-its-nothing-but-a-sham>; McGuire, Amy 2016, 'Without A Model Backed By Aboriginal Communities, What Are We Actually 'Recognising'?', *New Matilda*, viewed 10/08/2017, <https://newmatilda.com/2016/08/11/the-timing-of-a-recognise-referendum-is-not-what-matters/>. *Recognise* was disbanded in 2017. It was not until the Uluru Statement's release that clear demands were articulated by First Nations peoples as to how they wanted to be formally recognised, including a permanent Voice to Parliament. However the Statement's development has been criticised by some activists including many from the Victorian delegation. Furthermore, the Victorian Aboriginal community rejected notions of constitutional recognition in favour of a treaty in early 2016, leading to the current process. For more background on Uluru Statement's divisiveness in parts of the Aboriginal community see Anderson, Ghillar (Michael) 2017, 'Walkout Statement: Aboriginal Embassy Statement from the Sacred Fire ', *Sovereign Union*, viewed 10/10/2017, <http://nationalunitygovernment.org/content/walkout-statement-aboriginal-embassy-statement-sacred-fire>; Mansell, Michael 2017, 'Constitutionally entrenched advisory body, or treaty? ', *Aboriginal Provisional Government*, viewed 10/08/2017, <http://apg.org.au/constitutionally-entrenched-advisory-body-or-trea.php>. See also the *Indigenous Law Bulletin's* 2016 special edition on Constitutional Recognition, Volume 8 Issue 24.

"political agreements involving Indigenous peoples and governments that have binding legal effect" and carry mutual responsibilities, determined through negotiation (Brennan et al. 2005, 3).[33] Palawa legal scholar Michael Mansell expands upon this definition, arguing that a treaty requires an explicit acknowledgement that a political agreement is between two sovereign parties (2016, 99-102).[34] While these definitions are useful when considering modern treaties — such as the Victorian process — as formalised political agreements, they centre the settler-colonial state. In describing Aboriginal political traditions, I am using the language of 'treaty', an English word and European concept, because in contemporary use it best describes a political, peacemaking between two sovereigns and in this context, it reinforces Indigenous rights to self-determination and self-governance. To remove the primacy of the settler-state as an essential party to negotiations I introduce the concept of experiential treaties, but first it is necessary to understand how the concept of sovereignty relates to Aboriginal peoples and their political power.

On Sovereignty

> *There is a saying that the old people often say: 'No one can give you sovereignty, you have to exercise it' (Larissa Behrendt, interview 2018)*

The notion of sovereignty is central to many Indigenous scholars' and activists' articulation of political rights and identity. In the context of Australian Indigenous politics and modern treaty-making, the meaning of sovereignty can be elusive, especially for settlers (Maddison 2019). In terms of British and international law, sovereignty refers to the exclusive right of a political authority to exercise control over territory, which manifests power via the use or threat of violence though laws, courts, the police, and criminal punishment (Mansell 2016, 75). In Britain this conception of authority over territory came to be tied to the concept of private property, as the land-owning aristocrats forced society away from communalism and needed to clarify the extent of the Monarch's power and their relations to it.[35] From the 1780s the British military, representing the Crown, ignored the existence of established Aboriginal political governance and declared sovereignty over the Australian continent by claiming it was uninhabited *terra nullius* (Brennan et al. 2005, 3-6, 50-56; Robert 2016, 53-60).[36] For Mansell, *terra nullius* is Australia's foundational "legal fiction" (2016, 14).

[33] *Treaty* by Sean Brennan, Larissa Behrendt, Lisa Strelein and George Williams is a concise, comprehensive, accessible and modern overview of the concept of and challenges associated with modern treaty-making in the Australian context.
[34] Mansell has been theorising about treaty for decades. See Mansell, Michael 1989, 'Treaty proposal: Aboriginal sovereignty', *Aboriginal Law Bulletin 2*, vol. No. 37, pp. 5-6; Mansell, Michael 2003, 'Citizenship, assimilation and a treaty', in ATSIC (ed.), *Treaty- Let's Get it Right!*, AIATSIS, Canberra, pp. 5-17.
[35] Thomas Hobbes' writings during the English Civil War were instrumental in defining sovereignty, arguing that there could *only* be one sovereign power (be it despotic royalty, parliamentary, or otherwise). See Philpott, Daniel 2003, *Sovereignty*, Centre of Language and Information, Stanford, <https://plato.stanford.edu/>.
[36] Colonial land settlement was based upon willing contempt for and disregard of Indigenous occupation and custodianship of Country. In determining the *Mabo* case, the High Court of Australia determined that that *terra nullius* was false and Indigenous title existed prior to colonisation.

This supposedly unoccupied land could be legally 'settled' under the doctrine of international law established in the 17th and 18th centuries. If occupied, land could be legally settled if its previous inhabitants were defeated in military battle or negotiated the cessation and transfer of their rights (Belmessous 2014a). Legitimately assuming sovereignty via conquest or cessation required treaties. In the case of Australian colonisation, while the continent was clearly inhabited, treaties were never sought by British officials and military officers to transfer sovereignty from Indigenous nations to the Crown. Only once has the Crown considered a treaty with Aboriginal people, when John Batman's private company presented colonial authorities the deeds drawn up with the Kulin in 1835. The Crown promptly rejected this supposed treaty, arguing that private citizens had no rights to deal with land claimed by Britain. In the 1990s activists such as Robbie Thorpe (Watson 2000), Paul Coe, and Isobel Coe (Brennan et al. 2005, 77-80) challenged the legitimacy of the Commonwealth and settler-governance in the High Court of Australia, and while their cases were all dismissed they highlighted the reality of unextinguished Aboriginal sovereignty (Brennan, Gunn & Williams 2004). As this thesis argues, recalling McMillan: *there was sovereignty before colonisation that still remains*.

Legal definitions and litigation actions are crucial for modern treaty processes, as evidenced by the Victorian government's claimed inability to recognise Aboriginal sovereignty when passing its treaty-enabling legislation in 2018 (Amerena 2018b). But, to consider alternative forms of treaty-making we must delve into deeper, embodied meanings of sovereignty which, as Birch puts it, are "not reliant on either European law or occasional state paternalism" (2007, 107). For Birch and other Indigenous intellectuals such as Aileen Moreton-Robinson (2007; 2015), Larissa Behrendt (2003; 2013), Tracey Bunda (2007) and Irene Watson (2002; 2007; 2009; 2012), sovereignty is far more than a legal categorisation or determination. Moreton-Robinson states that sovereignty is a spirit "carried by the body" and tied to ancestral land (2007, 2). In this sense, Indigenous sovereignty is locational, experiential, ontological, epistemological, psychological and political (Birch 2007, 107). For Behrendt (interview 2018), the term sovereignty is inadequate in describing the complexity and embodiment of Aboriginal political existence, reflective of the "impoverishment of the English language" and its inability to represent many Indigenous philosophical concepts. Most importantly for this thesis, sovereignty must not be seen as only an abstract notion, but rather as in Greg Dening's terms, a *performance* (1996). In the words of Birch, sovereignty is "enacted in the daily struggles of Indigenous people" to live independently (2007, 107).

Modern performances of Indigenous sovereignty are most clearly observed in public actions: protests and demonstrations, such as the annual nation-wide Invasion Day movement, rallies and vigils which both mourn and demand justice for Indigenous peoples (and other people of colour) murdered by

police or state institutions, and resistance to racist news coverage (Amerena 2018c; McGuire 2017).[37] Beyond actions on the street, sovereignty is often expressed through art. Poets and scholars Evelyn Araluen (2017) and Alison Whittaker (in Araluen 2017) point out that Australian Indigenous women have a long and powerful history of asserting their matriarchal sovereignty through literature. Sovereignty has long been a theme for Indigenous visual artists, who represent their culture, desire and pain through creative formats including song, dance, film, photography, sculpture and many more (Balla 2020; Balla & Delany 2017). Sovereignty can be performed not just through individual, creative acts of resistance to neo-settler-colonialism but through acts of welcome and generosity to non-local Aboriginal people and other guests on-Country. Kulin Elder Uncle Jack Charles states that as an Aboriginal person claiming rights to Country, he has an ethical and metaphysical responsibility to care for vulnerable people which stems from the responsibilities for Elders in pre-colonial society (Birch 2018a). As we will see in coming chapters, for the Kulin peoples through their ceremonies of *Tanderrum* and *corroborees*, sovereignty was expressed as welcome before it was performed as resistance.

Domestically and internationally, Indigenous groups have been resisting neo-colonialism by refusing 'development' and exploitation of their lands (Birch 2018b). Rather than accepting settler media and politicians framing their actions as simply protests, Indigenous people assert that their political, custodial, cultural and spiritual responsibilities to Country and Waters makes actions *protection* movements. Indigenous scholars describe protection movements as part of a global First Nations political *resurgence* (Alfred & Corntassel 2005; Corntassel 2012; Coulthard 2014; Simpson, A 2017; Simpson, L, 2013; 2016; Simpson, L & Manitowabi 2013).[38] Resurgence underpins this thesis, as it describes a reorganisation of politics which turns away from the settler-state towards Indigenous institutions and philosophies (Maddison 2019, xxx-xxxiv), and is applicable to Aboriginal struggles for justice and expressions of sovereignty in the Australian settler colony (Birch 2016a; 2018b; Hinkson & Vincent 2018; ISRC 2019; Maddison 2020). Examples include Aboriginal groups are exercising sovereignty by reclaiming and occupying their lands at the Djab Wurrung Heritage Protection Embassy in Western Victoria (Amerena 2018b; Thorpe 2019a), and the refusal of the Wangan and Jagalingou peoples to leave their country following their unsuccessful court battle

[37] See IndigenousX's blog for coverage and analysis on these social movements and sovereign actions from Indigenous writers, such as Birch, Tony 2018, *A change of date will do nothing to shake Australia from its colonial-settler triumphalism*, IndigenousX, viewed 30/01/2018, <https://indigenousx.com.au/tony-birch-a-change-of-date-will-do-nothing-to-shake-australia-from-its-colonial-settler-triumphalism/>; Moore, Roxanne 2020, *We need justice to #ChangeTheNation*, IndigenousX, viewed 30/01/2020, <https://indigenousx.com.au/we-need-justice-to-changethenation/>; Rule, Latoya Ahora 2019, *The global movement toward dismantling colonisation*, IndigenousX, viewed 30/01/2019, <https://indigenousx.com.au/the-global-movement-toward-dismantling-colonisation/>.

[38] Resurgence was first articulated by Canadian First Nations academics Taiaiake Alfred and Jeff Corntassel, and has been further devolved by Glen Sean Coulthard, Leanne Betasamosake Simpson, Audra Simpson, and other native academics and activists.

against the Adani Mine in Queensland (Lyons & Brigg 2019).[39] Indigenous occupations of land earmarked for development or fossil fuel exploitation have made headlines across the world: in Standing Rock in Turtle Island/the US, Ihumātao in Aotearoa/New Zealand, Mauna Kea in Hawai'i, and protections against fracking and oil pipelines in British Columbia and the Yukon, as well as the ongoing actions of Indigenous peoples in South America such as the Mapuche in Chile or Amazon tribes in Brazil. These are all actions in which Indigenous peoples reject the claims of ownership of land by neoliberal settler-states, asserting their continuing duty to care for land and right to regulate who and what alters it, while still calling on settlers to support their protection movements.

The sovereignty asserted by Indigenous Protectors in Australia and elsewhere — bolstered by technologies including social media, crowd funding, and globalised news — is attracting significant solidarity and support from foreign Indigenous movements and settler-allies alike. This highlights a political relationship between occupiers and custodians of sovereign land which is independent and critical of modern settler-colonial states, which in many of the above cases are willing to violate existing treaties that supposedly guarantee rights to the native groups in question. Support and solidarity for sovereign-led protection of Indigenous land represents an alternative mode of political relations, which privileges First Nations law and jurisdiction over that of the settler-states. The movements mentioned above are under the self-determined direction of Indigenous peoples, and settlers can support their actions, but they cannot lead.

As ongoing and evolving protection movements, this resurgence of global Indigenous sovereignty has informed my thinking on modern Australian treaty processes and the history of Kulin treaty-making. There are clear continuities in Indigenous peoples' political relations to Country across the globe which are based upon local laws and environmental knowledge. Understanding the political forms of treaty-making explored in this thesis demonstrates the continuity and durability of First Nations' agency, contextualises modern treaty processes and activism, and decolonises history and political science by highlighting that treaties are not the exclusive domain of the settler-state.

Experiential treaties

Treaties are an exertion of sovereignty and my thesis builds upon decades of Indigenous scholarship and activism from the likes of Kevin Gilbert, Isabel and Paul Coe, Oodgeroo Noonuccal and her son Denis Walker, the Thorpe family, Aileen Moreton-Robinson, Mark McMillan, Larissa Behrendt,

[39] As of early 2020 the Wangan and Jagalingou people were still occupying their Country and resisting Adani's initial construction efforts, as well as continuing to mount an international campaign of boycotts and solidarity. See Wangan & Jagalingou Family Council 2019, *Adani court order makes First Nation landowners 'trespassers' on our own Country*, viewed 17/10/2019 <http://wanganjagalingou.com.au/mundine-reduces-aboriginal-land-rights-and-first-nations-treaties/>. For more background on the Adani struggle see Lyons, Kristen, Brigg, Morgan & Quiggin, John 2017, *Unfinished Business: Adani, the State, and the Indigenous Rights Struggle of the Wangan and Jagalingou Traditional Owners Council*, University of Queensland, Brisbane.

Tony Birch, Gary Foley, and Bruce Pascoe.[40] The concept of experiential treaties is developed throughout this thesis and builds on these thinkers' conceptualisation of Indigenous sovereignty as political independence, performance of foreign relations, and regulation of access to Country.[41]

Experiential treaties are not new. They have been practised in eastern Australia for thousands of years in many forms as political agreements by and between Aboriginal peoples. Aboriginal cultures were oral, visual and tactile, rather than written; and this is reflected in their political agreements and treaties (Attwood & Doyle 2009, 40).[42] Political relations under Aboriginal law are an experiential practise, performed in everyday interactions between sovereign peoples, the land and non-human world, and with human guests on their Country. The inclusion of responsibilities towards Country and the non-human world makes experiential treaties tripartite, grounded in a sustainable, iterative, reciprocal, and non-exploitative ethic in a way that treaties in the European tradition are not.

Experiential treaties describe the behavioural, political and economic expectations and moral promises that sovereign peoples — speaking on behalf of Country and its law — demand from visitors, and the responsibilities for their guests that they take on. As political arrangements, experiential treaties are characterised by:

- Respect for sovereignty and local authority arising from custodianship of Country (not from other sources of power such as military strength or material wealth) (Chapter 1)
- Reciprocity (Chapters 1 & 2)
- Iterative agreements requiring repeated re-negotiations over time (as parties move into territory which the original party has no rights to speak for) (Chapters 2, 4 and 5)
- The protection of guests (Chapters 2, 4, and 5)
- Legal negotiation and cultural obligation interpreted by Elders or Elders Councils (instead of legislative processes in the Western parliamentary sense) (Chapters 2, 3 and 4)

[40] Political mentorship has been central to the development of Aboriginal political thought and activism, especially in Victoria. For example, the late Dr Bruce McGuinness was mentor to a younger generation of Koori activists including Tony Birch and Gary Foley. Gunditjmara matriarch Alma Thorpe was also of great influence on Birch and Foley, alongside younger generations of activists in her own family including Marjorie, Robbie and Lidia Thorpe, and the Warriors of the Aboriginal Resistance. See Broome, Richard 2015, *Fighting Hard: the Victorian Aborigines Advancement League*, Aboriginal Studies Press, Canberra; Land, Clare 2012, 'The Politics of Solidarity with Indigenous Struggles in Southeast Australia', PhD thesis, Deakin University.

[41] McMillan and colleagues work on Indigenous jurisprudence and jurisdiction provides the theoretical basis for the concept of experiential treaties, articulated in detail in Chapter 2.

[42] Ironically, while 'treaty' in modern British and international legal systems denotes a static, documentary agreement. Latin etymology reveals performative roots approaching the concept of an experiential political act. Treaty derives from *tractātus* a participle form of *tractō*, translating to modern English as exercised, practised, transacted, or performed. As a performative custom, perhaps exploring experiential treaty-making can return modern settlers to pre-modern, pre-capitalist understandings of treaty, such as relations between a landholder and a tenant or a system of patronage before the formation of the modern nation state. See Lewis, Charlton Thomas, Freund, William & Short, Charles 1969, A Latin dictionary: founded on Andrews' edition of Freund's Latin dictionary, Clarendon Press, viewed 10/11/2019, <http://www.perseus.tufts.edu/hopper/>.

- Performance in everyday practise of inter-personal/clan/nation relationships (rather than defined static agreement), potentially cemented through rituals including *Tanderrum* and *corroboree* (Chapters 2 and 4)
- Politically evolving relations grounded in ongoing consent (rather than imposition of terms with no expiry) (Chapters 4 and 5)
- Flexibility to allow for minor disputes to be resolved without threatening the alliance (Chapter 2)
- The ability for treaties to be suspended and resumed (Chapters 4 and 5).

Indigenous sovereignty does not require recognition from the settler state to exist and be exerted, and in much the same way neither do experiential treaties. A key distinction with the European conception of treaty-making is that experiential treaties don't require both parties to be sovereigns; only the party on whose land negotiations were taking place is sovereign. Experiential treaties give political scientists and historians a framework to analyse political accords between a sovereign and non-sovereign: be they landless Aboriginal refugees as explored in the following chapter, non-Aboriginal refugees like convict William Buckley or modern asylum seekers, or private settlers like white families or private corporations.

Experiential treaty-making was and is practised politically in south-eastern Australia, and while it has been degraded and ignored by the settler public and governments over two centuries of colonisation and nationalism, my thesis charts its continuation. It does this in Part I by imagining thousands of years performance of Kulin treaties with Country, Waters, and people: showing their durability, flexibility, and continuity. Part II draws on these political traditions to explore Kulin experiential treaty-making with settlers in 1835. By naming and exploring examples of experiential treaties this thesis translates the principles of Aboriginal political agreement-making into a framework that contemporary historians, political scientists, activists and politicians alike can understand. However, while my audience is academic, I hope this thesis and the imaginative imperative within it can speak to settlers who have been raised on Indigenous lands and to deepen the historical knowledge of Aboriginal politics, especially for those of us who live around Narrm.

Naming my positioning

All my life I have lived and learned on occupied Indigenous lands. As a settler with European ancestry I have inherited settler-white supremacist socialisation and benefitted from the ongoing dispossession of Aboriginal and Native American peoples. I was born on, and presently live and work on, Boonwurrung and Woiwurrung country. As a child and teen, I lived on Potawatomi (Michigan, 'USA') and Waddawurrung land. I studied at universities on two continents without taking a class or reading a book about what happened to the people on whose Country I lived. I came to this research ignorant of Victorian history, but through engaging in Clare Land's *Decolonising Solidarity* project

my research aims were transformed.[43] My thesis seeks to fulfil Gary Foley's decolonial directive: to educate settlers (i.e. myself) on colonial and political history, and the story of survival of the Aboriginal custodians of the land where I live (Land 2015, 179-84).[44]

This thesis is part of a personal endeavour of decolonisation; my history and politics inform my writing. Following white settler-scholars Clare Land and Elizabeth Carlson I use the personal pronoun to reinforce my position as a guest on stolen Aboriginal land to acknowledge my moral and political motivations. My research is evidence-based but I must make my view of 'objectivity' clear: no work or writing is detached from its author's personal experience, morals and politics. For Birch settlers who research on Indigenous or colonial history must not "feign objectivity by claiming the conceited position of 'the empiricist'" (2007, 110).[45] Many 'expert' settler-scholars (particularly historians) write as if they have "no particular social or historical location at all", a privileged sense of detachment that historian Donna Haraway (in Carlson 2017, 510) labels the "God Trick". I acknowledge that Indigenous historians and scholars are rarely afforded this level of impartiality, and by naming and refuting the claim of 'historical objectivity' I hope to make clear that my research is informed by my social position and personal history (Smith 2012, 139).[46] I seek to contribute to the *political* project of progressive historiography (Birch 2006a, 21).[47]

While I am interested in colonial history and learning *from* (not just *about*) the experiences and politics of the Waddawurrung, it is not my ancestral history (Land 2015, 119-120).[48] My family

[43] Land (and collaborators) developed her landmark 2015 book *Decolonising Solidarity* (based on her 2012 PhD) into a semi-autonomous book club, of which I was an inaugural facilitator at Victoria University. The book club is a space for settlers to discuss their personal relationship to colonisation and engage with the decolonial work of leading Aboriginal activists such as Gary Foley, Chika Dixon, Robbie Thorpe and the Thorpe family, Tony Birch, and many more. See also the Epilogue to this thesis.

[44] For a more on Foley's directive see videos in the Resources section of decolonizingsolidarity.org

[45] Empiricism here refers to the failure to recognise theoretically positioned social constructs and political structures which underlie any body of knowledge. It is thus conceited to consider any one way of knowing history or politics — settler knowledge — as the 'true' or 'truest' version of events and knowledge, especially when a scholar does not have the lived experience of Indigenous people.

[46] Japanese historian Minoru Hokari provides insight into this dilemma, as a non-white non-Indigenous scholar who was immersed in Aboriginal history and community. Hokari encourages historians to consider Indigenous law and ways of being as equally truthful to colonial history, and challenges historians' assertion that empiricism is the only source of legitimate historical evidence.

[47] As Tony Birch points out regarding the 'History Wars' of the early 2000s, right wing attacks on scholarship which highlights the psychological damage caused by colonial violence and genocide of Indigenous people are not attempts to engage in scholarly debate, but are a "polemic to assist particular ideological positions". Detailed histories of colonisation and colonial encounters, including this thesis, are about more than "the sanctity of a footnote. It is a political struggle" with real-world implications in policy based on a narrow and selective appreciation of history. Examples include the failure to implement recommendations of the 1991 Royal Commission into Aboriginal Deaths in Custody, and the ongoing Northern Territory Intervention see Scott, Rosie & Heiss, Anita (eds) 2016, *The Intervention: an anthology*, 2nd edn, NewSouth, Sydney.

[48] Clare Land identifies this as a key distinction for settlers engaging in ethical and progressive research with Indigenous politics or on Indigenous history. Learning *about* refers to scholarship which only intenders to conduct a passive reading of history for the sake of adding ethnographic information to the academy, while learning *from* is an active provocation for settlers and historians to use lessons gained from Indigenous political and knowledge in contemporary social and political settings. This distinction will be further explored in Chapter 2 through the example of William Buckley.

migrated to Australia in the early 20th century from Europe. I can conduct research without the burden of intergenerational trauma; as Alutiiq scholar Leilani Sabzalian observed "it's easier for white academics to publish and make tenure writing about colonisation...the archives don't haunt them [us], the trauma doesn't live in their [my] bones, and they [I] don't have to put the books down to breathe..." (2018). To conduct research morally requires I accept the responsibility to use my education to push back against historical narratives which silence and erase Indigenous politics and agency or depict Aboriginal people as passive or gullible witnesses to their dispossession. This includes critically interrogating scholarship on Kulin history which omits or only fleetingly touches on the political role of women in Aboriginal governance and society, and highlighting their agency and importance in the narrative of Narrm and of later colonial encounters. The Kulin's experiential treaty-making practice around Narrm neither began nor ended in 1835, and this thesis highlights their political agency though utilising various decolonised research methodologies.

Decolonising Methodologies

My thesis is firmly grounded in and guided by Māori scholar Linda Tuhiwai Smith's theorising on academic decolonisation, which provides scholars with tools for resisting, challenging, and deconstructing colonial history and Western knowledge systems. Bundjalung academic and poet Evelyn Araluen (2017, 4) highlights that Smith's decolonial theory is crucial as it "pried Indigenous studies from the grasp of anthropology and created a space in which Indigenous ways of being, knowing and doing are more than mere curiosities or stylistic gestures". Accordingly, the field of post-colonial studies — which has made many important contributions analysing how imperial power functioned, and functions, especially over literacy and artistic discourses — implies that colonial structures are being dismantled (Carlson 2017, 500), is not applicable to my research. Countless Indigenous scholars (referring to Australia and other settler-colonies such as New Zealand or Canada) and activists highlight that settler governance is still imposed on First Nations Country and peoples; as Bruce Pascoe (in Heiss 2003, 46) puts it: "Colonial we aren't. Colonised we are."[49]

Smith's ground-breaking work *Decolonising Methodologies* (2012) explains and responds to the multitude of ways in which Western scholars harmed and exploited global Indigenous communities through harmful research practices. While Smith is clear that her vision of decolonised scholarship is a self-determined writing and research space — prioritising sovereign peoples voices, where before they were often appropriated, manipulated, marginalised or silenced — under certain conditions

[49] Wiradjuri scholar and author Anita Heiss (2003) interrogated the notion of a 'post-colonial Australia', interviewing other Indigenous intellectuals for her PhD thesis (adapted into the book *Dhuuluu Yala: To Talk Straight*). Heiss argues that post-colonial discourses serve to depoliticise issues of Aboriginal rights and sovereignty.

progressive non-Indigenous scholars can support the broad political and strategic goals of an Indigenous Research Agenda though 25 decolonial projects (2012, 144).[50]

Drawing largely on archival material and secondary history texts, the most pertinent decolonial research initiative for this thesis is Smith's *reading* projects.[51] *Reading* projects re-view imperialism's primary documents — official proclamations, letters, newspaper articles, personal journals, government gazettes, manifests, commercial documents, maps, surveys, drawings, portraits, and more — to "understand what has informed internal colonialism and new forms of colonisation" (Smith 2012, 150). *Reading* projects are not simply alternative histories and vignettes from the archives but have intrinsic political value (even if not explicitly stated); in them we can see the roots of contemporary public discourse. *Reading* projects — including the secondary-historical texts I listed earlier — are revisionist, and thus make a comment on the falsities and misrepresentations of Indigenous people that have been made in the (white) nationalist project. Pascoe's oeuvre is based on *reading*, which he describes as a means to view Australian history "without cataracts in the eyes" (2007, 209).[52]

While engaging with *reading* of Kulin Agency historians, I have re-viewed many of the primary documents of 1835 as Chapters 4 and 5 will make clear, arguing for increased recognition of Waddawurrung political agency at the You Yangs encounter and through the Geelong Treaty. A pitfall with *reading* is that settler-historians can only *attempt* to view the narratives of colonisation through the eyes and minds of the colonised; we must imagine colonial encounters as there are few primary sources produced by Aboriginal witnesses. As highlighted by Birch (2006b) and Pascoe (2007, 31-34), Wurundjeri Elder William Barak's recollections of the early years of Narrm's colonisation is a rare example, while other Aboriginal voices were collected by sympathetic white people such as James Dawson with their own subjective views on Indigeneity.

Of course, I too bring subjectivity to this research, which complicates my engagement with Smith's *indigenising* project. *Indigenising* seeks to raise "consciousness of landscapes, images, languages, themes, metaphors, and stories of the Indigenous world while disconnecting many of the cultural ties between settler society and its metropolitan homeland" (Smith 2012, 147).[53] For Smith *Indigenising*

[50] Indigenous scholars who theorise on decolonial research in the Australian context include Lester-Irabinna Rigney and Karen Martin. See Martin, Karen Lillian 2008, *Please knock before you enter: Aboriginal regulation of outsiders and the implications for researchers*, Post Pressed, Brisbane; Rigney, Lester-Irabinna 1999, 'Internationalization of an Indigenous Anticolonial Cultural Critique of Research Methodologies: A Guide to Indigenist Research Methodology and Its Principles', *Wicazo Sa Review*, vol. 14, no. 2, pp. 109-21.
[51] While I do not classify this thesis as post-colonial in nature, I do acknowledge that the development of *reading* projects was strongly influenced by and benefitted from decades of post-colonial critical and literary studies which 'read against the grain'.
[52] Pascoe's work is discussed throughout this thesis, and the recent attacks from the hard-right wing media over his landmark book *Dark Emu* and his indigeneity are explored further in the Conclusion to this thesis.
[53] *Indigenising* is one of the few projects which Smith identifies as able to be directly supported by non-Indigenous researchers.

researchers seek to inspire global Indigenous communities and readers to envision their societies, cultures, Country, and Waters before colonisation: an aspirational and almost constant imaginative exercise. However, for settlers living on occupied Indigenous country imagining the landscape and environment before we were here is a difficult and — for the majority of people — rarely attempted creative act. To this end I contribute a non-Indigenous effort to align with project of *indigenising* (Carson 2017, 502). Through figures like William Buckley, I challenge my readers, especially locals of greater Geelong and Melbourne, to imagine how the bay and lands of Narrm changed over thousands of years and how their current occupation is impacting Country and Waters.[54] Invasion and dispossession did not only devastate Aboriginal people, but also the land, waters, non-human world and ecosystem. I also engage in the *naming* project where possible, using Aboriginal language names for places, landmarks, and people due to the untranslatable place-specific information often encoded in indigenous names and terms (Smith 2012, 158).[55] Through *reading, indigenising* and *naming* projects this thesis engages with and is informed by the decolonial Indigenous Research Agenda but it is not of it and can only indirectly support it.

Clare Land (2011, 2015) and Elizabeth Carlson (2017), both settler-scholars who have long-term relationships with Indigenous activists, identify the need for academics engaging with First Nations material to not just be familiar with Smith's decolonial methodologies but to respond to them with reflexivity, complexity, and humility. Anti-colonial scholarship extends beyond the academic, taking an active stance towards dismantling settler-colonialism and supporting *resurgence* in "the recovery of Indigenous intellectual traditions, Indigenous control over Indigenous national territories, [and] the protection of Indigenous lands from environmental destruction" (Simpson, L 2004, 381). I have adopted Carlson's eight-point methodology, with particular regard to ensuring close supervision and mentorship by and accountability to senior Indigenous Elders and/or scholars to ensure "research will embrace a perpetual Indigenous presence and rationality" (Carlson 2017, 501, 505-506). Along with the Aboriginal members and directors of the Moondani Balluk Indigenous Academic Centre, Tony Birch has offered me political and ethical mentorship as a young, non-Indigenous historian beyond his role as a university appointed academic supervisor, for which I am humbled and grateful.[56] This thesis

[54] Carlson refers to this exercise for settlers as 'Land/Place-based Engagement and Accountability'.
[55] While Australian governments are sporadically engaging in re-naming or adopting dual Indigenous names for landmarks, it has been a fraught and slow process, see: Birch, Tony 1992, "Nothing has changed': The making and unmaking of Koori culture', *Meanjin*, vol. 52, no. 2, pp. 229-46; Latimore, Jack 2018, 'We must return all our landmarks to their Indigenous names', *Guardian Australia*, viewed 5/12/2019, <https://www.theguardian.com/commentisfree/2018/may/17/we-must-return-all-our-landmarks-to-their-indigenous-names>.
[56] Guided by Birch, I position my research as open for intellectual challenge from historians and scholars but also the Indigenous community, especially the Waddawurrung. For articulations of the pitfalls for (both progressive and conservative) white scholars writing on Aboriginal history see Birch, Tony 2006, "I could feel it in my body': War on a history war', *Transforming Cultures eJournal*, vol. 1, no. 1, pp. 22-3, and Birch, Tony 2007, 'The Invisible Fire: Indigenous sovereignty, history, and responsibility', in A Moreton-Robinson (ed.), *Sovereign Subjects Sovereign subjects: Indigenous sovereignty matters*, Allen & Unwin, Crows Nest, pp. 108-111.

is not *only* history, but it is a political statement that seeks to show the Narrm Kulin have been *continuous* protectors of Country and Waters through environmental upheaval and colonial apocalypse.[57]

Furthermore, anti-colonial research rejects the deficit discourses which have depicted Indigenous people, especially women, with "of helplessness and [a] lack of agency" (Fforde et al. 2013, 163) since invasion. Deficit discourses have been propagated by the settler-media and politicians, resulting in public stereotyping and racism while ignoring or downplaying the structural factors which underpin Indigenous disadvantage and disempowerment (Smith 2012, 154-155). In Aileen Moreton-Robinson's terms, deficit discourses are a form of disciplinary control which is perpetuated by colonial and neo-colonial patriarchal systems, and indeed, research (Angel 2018, 222-224).[58] In highlighting the agency of the Kulin, especially their women, this thesis provides a counter-history of Victorian colonisation and supports decolonial scholarship centred the strength, ambition and desire of Indigenous peoples (Tuck 2009; Tuck & Yang 2012).[59]

Imaginative history

To re-view colonial texts and to construct a counter-narrative of colonisation I draw on the late historian Greg Dening, who sought to empower his peers to approach their historical scholarship with imagination and resist the discipline's fear that imagining the past "loosens [its] grip on the reality that makes their history different from fiction" (1997, 421). As historian Ron Adams — a student and proponent of Dening's approach — notes, when analysing historical events with limited primary sources and variety of perspectives we must use our imaginations to pose questions about the emotional and visual impacts of colonial encounters. We may ask 'what would the Kulin have seen, how would they have felt?' or 'how did convicts feel arriving on Aboriginal at Narrm', but, as Adams notes "we do not — cannot — have the answers"; historians must use their empirical and archival knowledge to re-interpret the past (2016, 13). This thesis requires readers to enter into an imaginative

[57] The notion of an environmental/climate apocalypse as analogous to colonisation has been explored in the novels of Noongar writer Claire G Coleman and Waanyi author Alexis Wright. See Coleman, Claire G 2017, 'Apocalypses are more than the stuff of fiction — First Nations Australians survived one', *ABC Online*, viewed 1/1/2018, <https://www.abc.net.au/news/2017-12-08/first-nations-australians-survived-an-apocalypse-says-author/9224026>, and Gleeson-White, Jane Lee 2016, 'Country and climate change in Alexis Wright's' The Swan Book", *Australasian Journal of Ecocriticism and Cultural Ecology*, vol. 6, pp. 29-38.

[58] See Bond, Chelsea 2018, 'The irony of the Aboriginal academic', *IndigenousX*, viewed 22/06/2018, <https://indigenousx.com.au/chelsea-bond-the-irony-of-the-aboriginal-academic/>; Mukandi, Bryan & Bond, Chelsea 2019, ''Good in the Hood' or 'Burn It Down'? Reconciling Black Presence in the Academy', *Journal of Intercultural Studies*, vol. 40, no. 2, pp. 254-68; Latimore, Jack, Nolan, David, Simons, Margaret & Khan, Elyas 2017, 'Reassembling the Indigenous public sphere', *Australasian Journal of Information Systems*, vol. 21, pp. 1-15.

[59] The Conclusion of this thesis returns to the deficit discourse and explores how historical narratives contemporary relevance for the Victorian Treaty process and revisionist Indigenous scholarship including Bruce Pascoe's work.

conspiracy, to picture a world governed by laws and philosophies which still exist and remain in oral traditions, but to which few settlers have access to today.

First, readers must *imagine* Narrm's evolution driven by climatic change, in turn pushing and pulling Aboriginal clans. I do not intend for non-Indigenous readers to imagine themselves as Aboriginal people responding to the environmental and political upheaval described in the following chapters. I do ask readers, as Dening asked historians, to use imagination as "an act of solidarity in our humanness" (1997, 422); to see the depth of inter-personal and inter-nation relations practised by Kulin people as sophisticated and political. Non-Indigenous people do not have to temporarily assume an Aboriginal identity to appreciate the importance of sovereignty (Land 2015, 30-31). As guests on Country we can learn *from* the laws and cultural expectations of the local sovereigns, like Buckley did, which can result in decolonised perspectives of contemporary Australia.

Dening's methodology also applies to moments of Indigenous encounters with colonisers which he famously described as *performative* "occasions of theatre" (1992, 4): dramatic experiences charged with potential, ambivalence and conflict. Colonial encounters occurred in everyday interactions that reflected power relations, which when cumulated could explode with violence, but were not necessarily inherently characterised by hostility or submissiveness (Dening 2006). One party has little control over meaning that the other will take from their gestures, offerings, vocal tone, words, song, touch and dance; fine details which are seldom recorded in explorers' and other white witnesses' primary documents.[60] Historian Minoru Hokari also offers an interesting observation of Aboriginal history, arguing that his Gurindji teachers "practice history by remembering and performing" (2013, 93). Hokari's approach to 'radical oral history' will be explored throughout this thesis, but here it is important to note that the dual function of Indigenous storytelling — as both historical remembrance and performative reproduction of that history's politics and law — is and was often lost on settlers. Encounters between Indigenous peoples and settlers were (and are) characterised by possibility, potential, and inconclusiveness, which can be challenging to perceive due to the constraints that hindsight places on our interpretations of history.

Historians John Maynard and Victoria Haskins resist hindsight's influence in *Living with the Locals,* their examination of settlers, including William Buckley, who were allowed to live in various Aboriginal societies in the early colonial period. Maynard and Haskins look beyond the sensational treatment that 'lost' white people received from the settler media and politicians upon their return to colonial society and using ethnographic research to imagine the Indigenous perspective towards hosting settlers. In doing so they ensure the stories of these 'survivors' are not "told wholly from the

[60] Darumbal journalist Amy McGuire explores how modern settler's accounts of encounters with Indigenous life are afforded credibility by the mainstream media while stories of black pain and injustice are not, but her concept holds true for analysing historical primary documents. See McGuire, Amy 2019, 'National accounts: Black and white witness', *Meanjin*, vol. 78, no. 2, pp. 1-6.

white perspective" (2016, 1). To gain an Indigenous perspective towards guests and refugees on Narrm Country this thesis explores anthropological sources on Kulin law and culture, and to imagine encounters with settlers I combine these understandings of Kulin law and experiential treaties available written primary sources reveal "a glimpse of the possibilities of what might have been and what still can be" (Maynard & Haskins 2016, 216). It requires imagination to see the possibilities of an encounter when we know what happens next, especially when there is blood and misery coming. As Dening argues: "hindsight leaches out not all our uncertainties, but all the past's uncertainties" (1997, 423).

Uncertainty is also used by conservative forces to discredit Indigenous history; demanding precise dates or numbers — of Aboriginal populations, of numbers of victims in massacres — to cast doubt on frontier atrocities. As Birch puts it (in Coyle 2019, 80-1), settlers "don't say [traumatic events] didn't happen, they just muddy the waters enough so that people can actually forget about it, not have to confront it, not have to reflect on it." While the erasure and denialism of Aboriginal massacres and genocide is widespread Aboriginal political agency and strength can be similarly discredited with the demand for detail, even if explorers' journals lack it.[61] Through evidence-based imagining and acceptance of a level of uncertainty this thesis subverts nationalistic and foundational narratives of the founding of Djilong/Geelong, Birrarunga/ Melbourne, and 'Victoria' (Cahir 2001, 27-28; Clark & Heydon 2002, 67, 90; Dawson 1881, 75).[62]

The myopia of hindsight and inability to move beyond limited details is prevalent in the historiography of the encounters between Batman's settlers and the Narrm clans in late 1835. Chapter 3 explores how, until recently, the grievous exploitation and violence perpetrated against bayside Kulin coloured historians' views of Narrm Treaties. Similarly, until recently William Buckley was viewed as a historical novelty; his journey from living as a Waddawurrung clansman back to British colonial society seen as an inevitability, not a series of liminal decisions and encounters — with Kulin people as well as settlers — which could have diffused or aggravated political tensions. Rather than focusing on the *outcome* of the treaties, Kulin Agency scholars re-imagined the encounter between Batman and the Woiwurrung and Boonwurrung, arguing that it was a moment of inter-cultural diplomacy and understanding. As Dening puts it (1997, 423), "imagination [enables historians] to see the past as it actually was, to return the past its own present". I ask readers to imagine Narrm Country

[61] The attempted discrediting of Aboriginal strength and civilisation has been particularly prominent with the 'debate' over Bruce Pascoe's work, which is explored in this thesis' Conclusion.
[62] Djilong/Djilang/Djalang/Jilong is the Waddawurrung word for tongue and was their name for the bay. The locals referred to their land as Kohria, but colonisers named the bay Corio and the land Geelong in a mistaken reversal. This error likely stems back to Hume and Hovell's recording of their 1824 journey to Narrm. Birrarunga has recently been adopted as a more specific term than Narrm (the entire bay) to refer to modern Melbourne.

before the arrival of settlers and the imposition of British law and remain conscious of alternative political possibilities.

Thesis structure

Dening's call for imagination runs through this thesis as it explores the possibilities and performances of experiential treaties around Narrm over the past 14,000 years. It tells a story of political agency, survival and continuity in Kulin political customs and demonstrates how, despite the historical erasure that Aboriginal communities in Victoria — especially the Waddawurrung — suffered through colonial foundation-making, experiential treaty-making continues to be relevant to the present. The thesis comprises two parts. Part I (Chapters 1 and 2), covering the pre-colonial history of Narrm and bayside Kulin clans' sovereign relations with Country, each other, and the non-human world is vital background for Part II. Part II (Chapters 3, 4 and 5) explores how the Kulin applied their law and experiential treaty-making customs to settlers in 1835 and demonstrates the agency of the Waddawurrung through two case studies. Between the two Parts is a section of images, a visual interlude adapted from Dening's *Performances* (1996).

Specifically, Chapter 1 traces the environmental evolution of Narrm, using living Kulin memory to show that Narrm can be viewed as a political actor shaping local politics. The Kulin *listen* to Country and Waters, and through *imagining* their ancestors' responses to the dramatic shifts of the environment and its and non-human residents we perceive the fundamental elements of Kulin philosophy that underpin experiential treaty-making: sustainability, equity, reciprocal care for Country, and accommodation of displaced and vulnerable people.

Chapter 2 continues the description of experiential treaty-making in terms of inter-personal, everyday agreements between clans operating within the sovereign governance of Kulin society pre-invasion. The Kulin's complex alliance and kinship networks, leadership structures, the agency of women and the political nature of marriage, dispute resolution mechanisms and the diplomatic ceremony of *Tanderrum* are to be understood as mechanisms for regulating inter-personal relations between clans. The chapter further argues that the operation of experiential treaties explains why, for 32 years, the Waddawurrung offered sanctuary to William Buckley, a refugee from colonial society.

Chapter 3 explores the first decades of encounters between Kulin people and settlers, beginning with the pirates who terrorised coastal Aboriginal peoples and Narrm clans from the early 1800s. This background is important when considering the historiography of 1835 and the Kulin Agency thesis, showing that the Kulin were both wary of and experienced in confronting violent settlers. The chapter argues that, despite perceiving that the arrival of settlers in the 1830s was an existential threat, the

Kulin chose to pragmatically and diplomatically engage with John Batman's party in June 1835 – an example of Kulin agency at work.

Chapter 4 explains gaps in the Kulin Agency thesis stemming from historians' narrow definitions of treaty-making and calls for a new interpretation of political encounters and relations between the Kulin and settlers based on historical imagination rather than reliance solely on settler written records. Through a case study of the erasure of the Waddawurrung from the narrative of 1835 and the You Yangs encounter, I argue that the understandings of Kulin law developed in this thesis enables us to re-imagine the political role and authority of Kulin (especially Waddawurrung) women in 1835.

Chapter 5 builds upon Chapter 4's demonstration of Waddawurrung political agency and acumen, with a case study of the experiential Geelong Treaty. This expands the Kulin Agency thesis and posits a new interpretation of political relations between the Waddawurrung and settlers at the Beangala/Indented Head camp. By considering the Geelong Treaty as the consolidation of hundreds of generations of Kulin political custom and pragmatism, the settler camp at Indented Head can be reinterpreted, not as ground-zero for impending colonisation and mass devastation, but as a liminal space of possibility and diplomatic potential which anticipates the Waddawurrung's expectations of later arriving settlers to show reciprocity and of pay rent for camping on-Country.

I tell this expansive story to demonstrate continuity in Kulin political practice and practise, and reinforce that despite the historical erasure that Aboriginal communities in Victoria — especially the Waddawurrung (Coyle 2019) — suffered through colonial foundation-making, they survived and their political agency and strength remains.[63] The experiential Narrm treaties of 1835 represented a continuation of not disruption to Kulin political traditions, and we must not view them only in light of the dispossession and attempted genocide that began from 1836. This thesis concludes that as the state of Victoria (and Australia more broadly) enter into modern treaty-making processes appreciation of the Kulin's political history and performance of experiential treaties is vital: Aboriginal traditions and forms of treaty-making have always existed independently of (and in resistance to) the colonial or modern settler-state.

Part I

Chapter 1: 'Our past is racing towards us from the future'

A young bay

To understand the nature of Kulin treaty-making, we must recognise that first political relationship that Aboriginal people have is with Country: lands, Waters, non-human residents. Relations with Country are not static but are renegotiated according to the present environmental reality, and Aboriginal peoples' historical relations to Country are held in their living memory. This chapter imagines the evolution of Narrm, later named by colonisers Port Phillip Bay through exploring Kulin stories. Many readers may be surprised that Narrm was once a dry plain, as recently as 1,000 years ago, but for local Aboriginal people the story of the bay is hundreds of generations old. Through a place-based history that unfolds over 14,000 years, this chapter shows that principles of Kulin treaties are underpinned by the continuity and durability of a political relationship with Country.

This expansive story was inspired by Canadian anthropologist Julie Cruikshank, who argues that understanding First Nations peoples' ancient and ongoing relationships to landscapes as sites of "memory, stability and change in human affairs" must occur before colonial encounters can be explored (2007, 11).[1] Cruikshank shows that Country is a political actor with "intangible connections to recent human history", expressing its will in periods of ecological climatic upheaval and loss of resources, and prompting re-negotiated relations with humans (2007, 3). Country as a political and historical agent was also central to the argument of the late historian Minoru Hokari who worked with Aboriginal Elders in central Australia. Hokari challenges readers and historians to expand our understandings of what 'history' is, who can authoritatively tell it, and to consider Indigenous stories as legitimate records of global history (2011, 46-48, 148-149).[2] Cruikshank and Hokari argue that academic siloing and secularism has prevented the wealth of anthropological knowledge on First Nations culture, spirituality and law to be considered as 'legitimate' environmental and geological history. Indigenous peoples' histories may be *different* from the linear and empirical records favoured by Western scientists and scholars, and this chapter demonstrates the conceited and colonising view that Aboriginal histories are *wrong* or less than scientific accounts. Perhaps a better indicator of the usefulness of history or knowledge is not its empirical legitimacy, but its *reliability*: Aboriginal peoples' intimate understanding of the limits of Country and Waters are increasingly pertinent and

[1] Cruikshank's *Do Glaciers Listen?* studied Canadian Aboriginal stories of and political relations with glaciers in the Yukon and has provided much theoretical background for this chapter. While there are clear cultural differences between the Tlingit and Athapaskan who live in the sub-arctic and the Kulin of temperate Victoria, their environments underwent epochal climatic shifts which produced similar social and political changes.
[2] Minoru Hokari was a Japanese historian who came to Australia to write his PhD on the Gurindji people of the Northern Territory. Hokari acknowledges that many professional academics, let alone the Australian (or Japanese) public, will have difficulty treating Indigenous story as *factual* history that would stand up as evidence in Court, but nevertheless he calls for recognition of Aboriginal story as a form of history.

sought after the mainstream, but their epistemology is not. By *listening to* Aboriginal peoples' stories and songs of creation and law we can see that they adapted their social and political structures to the environmental realities of their Country.

To imagine the Kulin's political relations with Country over 14,000 years we can look to cross-disciplinary decolonising scholars. I put the history and anthropology of Bruce Pascoe and Deborah Bird Rose in conversation with the research of geologist Patrick D Nunn, linguist Nicolas Reid, and neurologist Lynne Kelly. Interdisciplinary approaches to Indigenous history illuminate understandings of place and encourage a more accurate record occupation of Country by mediating between material empiricism and oral histories and knowledge (Hokari 2011). These scholars cross what Dene scholar Dwayne Donald terms colonial 'historic divides', which exacerbate the physical damages of colonialism by an "extended process of denying relationships" between modern (settlers and scholars) and Indigenous peoples (and their knowledges) (Donald in Birch 2018b, 12). These denied relationships are between colonised and coloniser, but also between humans and the non-human world. Donald's framing is used throughout this thesis, but while human-human treaties are important first we explore the Kulin's oldest and most fundamental political relationship: treaty with Country, Waters and the non-human world.

Aboriginal relations with Country are characterised by longevity and durability, and the social and political philosophy that guides and underpins it is imagined through environmental evolution of Narrm and the local climate. Aboriginal people have intimate knowledge of their Country and have been adapting to its limitations and shifts in resource availability for thousands of generations. Variability in resources and the loss of territory likely drove ancient Kulin politics, including responding to the forced migration of Aboriginal refugees from Bass Strait with experiential treaties. While experiential treaties are theoretically developed in the coming chapters, this example shows that they are not just used between Indigenous sovereigns and white settlers: the Kulin had treaties and reciprocal political relations with non-human entities, such as animals and Country through fire management.

While I take care to note the *likelihood* of an event or political process occurring, I write imaginatively, accepting the uncertainty which comes in the intersection between Western scientific approaches and Indigenous oral histories and ancient memories (Birch 2016b).[3] Rose (2013, 216) argues that it is important for contemporary settlers and scholars to imagine a vision of sustainability and ecological balance as we are in a climatic period when the health of the natural world must be seen as more important than individual human desires and human-human politics, because "our past is

[3] Historian Bain Attwood differentiates between 'Aboriginal history' (produced by scholars) and 'Aboriginal Histories' (based on traditional stories and knowledge). See Attwood, Bain 2011, Aboriginal history, minority histories and historical wounds: the postcolonial condition, historical knowledge and the public life of history in Australia', *Postcolonial Studies*, vol. 14, no. 2, pp. 171-86.

rushing towards us from the future". [4] Rose draws attention to the Indigenous peoples' ecological customs and political philosophy which treats Country and Waters politically, speaking to both Aboriginal traditions and contemporary environmental crises. By detailing social and political principles which guided people on this land before the European invasion this chapter contributes to a longitudinal perspective of Australian history, which resists the colonial mentality of viewing politics and environmental adaptation as arriving with — and being the domain of — white men. For the Kulin, Narrm and Country itself is political and has been at the centre of life for thousands of generations.

Sunken rivers

Most Indigenous people, including the Kulin, firmly state that their Ancestors have occupied and cared for the land now known as Australia since time immemorial (Pascoe 2007, 167-169). Western science confirms that Aboriginal people have occupied Country in Victoria for *at least* 1,600 generations, and Kulin Country *at least* 35,000 years (Broome 2005; Eidelson 1997; Presland 2010).[5] Understanding this is to accept that Aboriginal people have witnessed, survived through, and hold memory of staggering climatic and environmental changes affecting their Country and its resources (Nunn 2019). However, as scholars Gavin Pocock and David Jones (2013) point out, there has been almost no scholarly acknowledgement of the strategies and social policies the Kulin people used to adapt to climate change, nor how politics were driven by environmental change. To conceptualise these changes, we begin by looking back at the Narrm landscape, in the semi-tropical pre-Holocene Victorian climate (Boyce 2011, 3-8).[6] In doing so, we must recognise that change in Country was not just an environmental matter but a political one.

Boonwurrung, Waddawurrung and Woiwurrung storytellers recall a time in which their people could meet at the Birrarung (the Yarra River), which along with the Werribee River divided a vast plain (Massola 1968, 55-58; Nunn & Reid 2016, 18-19).[7] The plain was lightly wooded with trees and

[4] Rose uses "our" to refer to her place within the reality of ongoing settler occupation and governance in Australia, acknowledging that despite injustice and unresolved and unceded sovereignty Indigenous and *most* settler peoples share the same environmental future in a climate altered world.

[5] Gary Presland puts the accepted figure of human occupation on Kulin Country at 40,000 years, while Pascoe and others use a baseline of 60,000 years. This makes 1,600 generations of Kulin peoples a conservative estimate. Archaeologists claim to have found evidence of occupation up to 120,000 years ago at a site near Warrnambool in the Western District, see Sherwood, John E, Bowler, Jim M, Carey, Stephen P, Hellstrom, John, McNiven, Ian J, Murray-Wallace, Colin V, Prescott, John R, Questiaux, Daniele G, Spooner, Nigel A & Williams, Frances M 2018, 'The Moyjil site, south-west Victoria, Australia: chronology', *Proceedings of the Royal Society of Victoria*, vol. 130, no. 2, pp. 32-49.

[6] Boyce refers to the research of Tim Flannery, who envisions pre-invasion Melbourne as a "sort of temperate Kakadu" landscape. Colonisers would work rapidly to change the landscape and wetlands of the Yarra and its surroundings. See: Flannery, Tim 2010, *The birth of Melbourne*, Text Publishing, Sydney; Presland, Gary 2009, *The place for a village: how nature has shaped the city of Melbourne*, 2nd edn, Museum Victoria, Melbourne; Sornig, David 2018, *Blue Lake: finding Dudley Flats and the West Melbourne Swamp*, Scribe, Melbourne.

[7] Guy Holdgate, Barbara Wagstaff and Stephen Gallagher produced a map and other visual depictions of what the plain and rivers may have looked like, see Figure 2. For a computer-generated graphic model based on the

grasses; excellent grounds to hunt kangaroo. As with much of Kulin Country the soil was fertile and light, enabling the domestication of foods including the staple vegetable *murnong* (yam daisy) (Pascoe 2014, 35-41). Given the Kulin's system of responsibility for and rights over Country (explored in the following chapter), it is likely that *murnong* fields would have been politically managed by Central Kulin clans as a central food resource. After flowing through the plain the Birrarung and Werribee River passed through a steep gorge and flowed up to seven kilometres beyond the present-day heads of Narrm to disperse into the ocean.

To the east of Narrm is Boonwurrung Country, and beyond that the territory of the Gunnai-Kurnai people. While presently the Kurnai are partly a coastal people, during the last Ice Age they were landlocked with neighbouring nations to their south. Sea levels were 130 meters lower 14,000 years ago from present day Papua New Guinea to the southern tip of Tasmania land was contiguous (Williams 2015). Just as the great plain of the Birrarung was shared by Kulin people, the territory which connected the Australian mainland and Tasmania was occupied by an unknown number of Aboriginal nations, which I refer to as the Bass Strait peoples (Bowdler 2015).[8] It is important to point out that the land under Bass Strait was unlikely to have simply been a 'land bridge' connecting two discrete areas, as described by many scientists, but rather it was Country occupied by custodians.[9]

Beginning 12,000 years ago, 23% of the continent now known as Australia was lost to sea level rise, most of which was likely occupied by Aboriginal people (Nunn & Reid 2016, 41). Over 4,000 years rising sea levels encroached on the territories of the Bass Strait peoples.[10] This process was neither consistent nor constant but was unpredictable and at times intense (Nunn 2018, 66-67, 121-122).[11] At peak periods, coastal land could have been submerged at a rate of 13–24 horizontal meters annually; on Australia's south coast between 500-1000 meters of land was inundated in a generation of 15–25 years (Nunn & Reid 2016, 42; Williams et al. 2018, 151). Between 6,000-7,000 years ago marine water rushed into Kulin Country (Holdgate, Wagstaff & Gallagher 2011). The Birrarung that snaked through the great plain was swallowed by salty water as the basin flooded. But its course is not lost: it

Holdgate et al. paper see Steyne, Hannah 2009, 'Submerged Landscapes of Port Phillip Bay', *Maritime Archaeology Inc. Newsletter*, vol. 28, no. 3, viewed 28/02/2017, <https://www.academia.edu/33052916/Submerged_Landscapes_of_Port_Phillip_Bay>.

[8] Archaeologist Sandra Bowdler has conducted some speculative research on what she terms the 'Bassian Nation', but details are unknown on its population size, clans, and boundaries.

[9] Spatial archaeologists such as Alan Williams often use the term land-bridge, which serves to strip presently submerged Aboriginal Country of its cultural associations. There are Aboriginal populations on King and Flinders islands who may feel connection to the Country under Bass Strait as other Indigenous people to do their traditional lands.

[10] The Bass Strait territory contacted and expanded between the last Ice Ages, reaching the maximal dry area approximately 18,000 years ago. See Lambeck, Kurt & Chappell, John 2001, 'Sea level change through the last glacial cycle', *Science*, vol. 292, no. 5517, pp. 679-86.

[11] In some areas of the northern coast of Australia the rapidity of sea level rise was staggering, peaking at up to 14 meters a day.

still remains, flowing submerged. The Boonwurrung people had to create a new word for the bay: Narrm or Nairm (Briggs 2014).

A 'Time of Chaos'

Flooded with sea water Narrm's political nature was exerted, as it became a space which demanded continuous negotiation between generations of Southern Kulin peoples. Examining the cause of the dramatic sea level rise is an interesting starting point in exploring Kulin life as it demonstrates both the antiquity and durability of the laws which govern their society. Recalling her ancestral stories, Boonwurrung Elder *N'arweet* Caroline Briggs (2014, 38-41) recounts a 'Time of Chaos' in which the peoples of the plain were living decadent and unsustainable lives, often in conflict with each other.[12] This behaviour violated the laws of Bunjil, the Kulin's shared creator, who forbade wasting resources, damaging Country or injuring his human children. As punishment for breaking his law Bunjil began flooding the plain, causing panic among the humans. The people pleaded for the flooding to be stopped, and Bunjil agreed only if peace was restored and his laws were obeyed. When the people promised to not harm the lands or children created by Bunjil, he slammed his spear into the ground, creating the heads of the bay and halting the rise of water. The peoples of Narrm had to adapt to a diminished land and resource base, while their wider landscape was transformed. Rivers changed course and lakes were salinated. The "lush moist open temperate grassy woodlands and forests quickly changed to dry open forests and extensive grassland plains" (Powell, B et al. 2019, 48). By imagining a collective reaction to the formation of Narrm we can see the fundamental principles of Kulin society and politics.

The 'Time of Chaos' is "a story of climate change", containing not just important environmental information but also moral and philosophical lessons (Pocock & Jones, D 2013, 132).[13] Indigenous stories are pedagogical, teaching humans of their place in the world and instructing ethical relations non-human entities (Christie 1979, 21; Hokari 2011). In the case of the Boonwurrung story we see a direct link between hedonistic behaviour, human un-sustainability and environmental instability. As a resource-rich plain its loss was keenly felt by the Boonwurrung and Waddawurrung (Powell, B et al. 2019, 47-8). The 'Time of Chaos' teaches successive generations of Kulin to peacefully live within their Country's limitations. Another telling of the flood of Narrm is included in ethnographer Aldo Massola's collection of Victorian Aboriginal creation stories. In this Kulin story, small boys are left alone while their clan was away hunting and collecting yams on the great plain. While playing the boys knock over a magic *tarnuk* from which endless water poured, "rolling down engulfing the land

[12] It is important to note that Briggs has recently adopted the Boonwurrung specific prefix *N'arweet* to signify her Elder status, rather than Aunty which is widely recognised in Aboriginal communities as a marker of respect and authority.
[13] Briggs' story and explanation is also included in the City of Port Phillip's latest response to climate change '2018-2028 Act and Adapt' strategy, available at http://www.portphillip.vic.gov.au/sustainability.htm.

and threatening to drown the people" (Massola 1968, 47-8).[14] Bunjil observed the potential catastrophe and intervened, stemming the flow by placing several huge rocks which now form the bay's heads. We see that Bunjil is a benevolent and powerful figure and that children should be careful when unsupervised. Both of these stories involve the intervention of a divine being alongside measurable environmental change, but can they be considered as representations of *reality* and records of *history*?

The Waddawurrung peoples of the western shores of Narrm — the focus of later chapters — have stories of battles between sacred figures which created eruptions and the You Yangs mountain range near Narrm (Cahir 2019, 5; Lane 1993b; Powell, B et al. 2019, 46-47). Nunn and Reid use anthropologists Catherine and Ronald Berndt's classification of "sacred mythologies" (2016, 13) to describe stories which recount benevolent actions or punishments by divine, zoomorphic beings. Hokari dismisses the 'story as mythology' framing used by historians, scientists and anthropologists, as even if written about with respect, labelling a narrative myth implies it is fantasy or fiction. Instead, Hokari considers Indigenous creation stories and the voice of the earth as historical record (2011, 43-44, 47-48).[15] Hokari's framing considers Indigenous storytellers as *historians*, with Dreaming stories demonstrative of Country's agency and how it took its form before the arrival of settlers: sacred beings' footsteps altered waterways and raised mountains, their ire causing volcanic eruptions and rising seas.[16] These stories demonstrate that Kulin peoples have ancient, continuous, durable oral traditions: they are *history* which describes the geographic and geologic changes that modern scientists study.[17] While I reject Nunn and Reid's distinction between stories with mythological elements and ones classified as 'literal' (2016, 13-14), both are durable memory and oral history are important legitimate records of the history of environmental change of Country and Waters.

Decolonial methodologies require scholars to afford oral histories a level of literal — and political — interpretation. Viewing sacred stories as *history* can reveal the origins of principles underlying Aboriginal social and cultural laws. In Briggs' case a population is punished with environmental

[14] A *tarnuk* is wooden bowl or large container for carrying food or water, crafted from burls in trees and sealed with gum sap, see Figure 11. The symbolic importance of the *tarnuk* to Kulin people is further explored in Chapter 4.
[15] Hokari is critical of liberal, progressive historians' and anthropologists' tendency to make Aboriginal history and stories 'harmless'. When scholars write with phrases like 'Indigenous people believe….' or 'for this Aboriginal group the world is explained by' they can be subtly dismissing a story as having any factual basis.
[16] For a broader discussion of Aboriginal stories of volcanic eruptions see Nunn, Patrick D, Lancini, Loredana, Franks, Leigh, Compatangelo-Soussignan, Rita & McCallum, Adrian 2019, 'Maar Stories: How Oral Traditions Aid Understanding of Maar Volcanism and Associated Phenomena during Preliterate Times', *Annals of the American Association of Geographers*, vol. 109, no. 5, pp. 1618-31.
[17] In Western Victoria, recent research on the Gunditjmara geographic landscape shows that stories of volcanic activity likely represent a continuous memory of seismic activity that occurred up to 37,000 years ago, which is arguably evidence of the longest oral history ever. See Matchan, Erin L, Phillips, David, Jourdan, Fred & Oostingh, Korien 2020, 'Early human occupation of south-eastern Australia: New insights from 40Ar/39Ar dating of young volcanoes', *Geology*.

upheaval for their unsustainable lifestyle, while the *tarnuk* story in Massola demonstrates how humans can place their environmental surroundings at risk through carelessness. While clearly having a pedagogical function these Kulin stories are not fables; they are *history* describing the literal flooding of Narrm that occurred thousands of years ago. Furthermore, we must also consider the flooding of Narrm as an all-encompassing crisis affecting the central Kulin's moral, social, political, and economic relations, in much the same way that contemporary climate emergency challenges the fabric of 21st century globalised polity and local communities (Ludlam 2019).[18]

Re-viewing the 'Time of Chaos' and other Kulin stories which describe witnessing climate change demonstrates that not only do the they have continuity in political structures, but so does their Country. Modern settlers will soon see Narrm re-assert its political agency, a visceral reflection of climate change. Much of the bayside areas of Waddawurrung Country, such as Geelong, Indented Head and St Leonards (the focus of Chapters 4 and 5) are "highly exposed" to the coastal risks of climate-driven rising sea levels (Jones, D, Choy & Clarke 2016, 287).[19] So is Melbourne and all bayside area in between. With the assistance of scientific modelling the City of Port Phillip is preparing for the coming environmental crisis driven by climate change; projecting Narrm to rise by 80–120cm by 2050, receive 25-40% less rainfall, and see an 80–100% increase in storm intensity on the bay by 2100 (Pocock & Jones, D 2013, 141).[20] While higher waters and fiercer storms are likely to be predominantly seen in terms of property value and damage, Narrm's changing contours changing may instead drive social and political discussion on how we consume resources and what we as a community value and need to protect. Stories of Narrm's evolution offer philosophy which facilitates sustainability and encourages equitable existence; enshrining respect for Country and Bunjil over the will of humans by respecting its political will and presence. As the bay's level begins to rise again Narrm's *past is rushing towards us from the future*, and considering the Kulin's ancient responses to environmental upheaval shows the political nature of Country and Waters.

Refugees from a drowned world

Arguments over the existence of scientific evidence that 'proves' claims of Aboriginal occupation serve to distract from the reality described above; many presently coastal Indigenous peoples are living on the same land as their ancestors, but sea level rise has also created a "drowned world" (Nunn 2018, 66). Describing the submerged environmental history of Narrm presents a challenge to

[18] Former Greens Senator Scott Ludlam rightly points out that in the context of the global climate emergency, Country and the climate itself are the most powerful political actors in the 21st century. Through natural disasters, Country and climate seize the attention, empathy, and most importantly fear of settlers. Over the summer of 2019-2020 the bush, arid land and Waters of the Australian continent have demonstrated their political agency. Ludlam's argument on Country as a political actor will be further developed in his forthcoming book.

[19] Coastal areas of Waddawurrung Country are also highly exposed to sea level rise, with communities such as Barwon Heads and Ocean Grove under threat.

[20] Their projections use CSIRO data from 2010.

researchers. Scientific research papers which date Aboriginal occupation of Australia are often dry and sterile: reducing the oldest living culture in the world to a series of tools or middens which become carbon-dated data points in mapping projects, pinning occupation to *where* and *when*.[21] Such an approach can ignore the living descendants of peoples' who occupied this Country thousands, and tens of thousands of years ago, whose stories can enlighten the scientific records as to *how* and *why* Indigenous peoples survived and thrived through multiple climatic epochs. As historian Fred Cahir points out (2001, 17-19), in reference to the Kulin's Narrm stories: until recently colonial empiricism discredited Aboriginal oral stories as unprovable. This form of denialism was common in early anthropological research that sought to revise perceptions of native storytelling (Echo-Hawk 2000; Nunn & Reid 2016, 11) and continues in hard-right commentary as seen with the furore surrounding *Dark Emu*.

Decolonial research methodologies can be effective at merging Indigenous oral histories with the latest geological or archaeological *scientific* (read: Western) knowledge on global environmental changes (Hokari 2011; Nunn 2018; Smith 2012); in Donald's terms they cross the historic and colonial divide.[22] An interdisciplinary, comparative method was developed in the 1990s to bridge anthropology, archaeology, and earth sciences, and is adopted by scholars from differing disciplinary backgrounds (Echo-Hawk, 2000).[23] I explore this method through the work of Nunn and Reid, and Kelly, but these are just two examples of many interdisciplinary studies in the Australian context.[24]

Trained in geological sciences Nunn began his career studying climatic and ecological shifts in the post-glacial South Pacific (1999; 2007; 2009), and through fieldwork and community engagement learnt of traditional stories that 'explained' environmental changes within local cultural paradigms. More recently Nunn collaborated with Reid (2016) and applied this method to Indigenous Australia, showing that Aboriginal and Torres Strait Islander cultures maintain memory of post-glacial sea level

[21] Some papers concerning environmental science provide excellent historical and humanist content on Aboriginal customs and occupation alongside modern empirical research, for an example in the context of Narrm and the Waddawurrung see Thomas, M, McKinnis, D & Brown, S 2019, 'Progressing Reconciliation through Indigenous Partnerships within Australian Water Utilities', *Water e-Journal*, viewed 30/04/2019, <https://watersource.awa.asn.au/wp-content/uploads/2019/04/005-Thomas-Michael_v2.pdf>.
[22] Archaeologists and geographers seek hard evidence to test hypotheses, trained in the scientific method which arose in the Enlightenment and underpinned much of the global colonial project.
[23] Pawnee historian Roger C. Echo-Hawk provides an overview of an interdisciplinary methodological approach to Indigenous history, working towards 'proving' the validity of Indigenous peoples' story as memory. The first notable example of this method was geologists mapping a 7,630 year old volcanic eruption in Oregon, USA to local the Klamath people's stories of ancient beings changing the landscape and creating a crater**.** See Deur, Douglas 2002, 'A most sacred place: The significance of Crater Lake among the Indians of Southern Oregon', *Oregon Historical Quarterly*, vol. 103, no. 1, pp. 18-49.
[24] The concept of 'deep time' or 'deep history' is contested as it can cast Indigenous history and ancestral knowledge as distant from the present and unknowable to modern (settler) observers. Discussion of 'deep' histories must be grounded in the reality that Australian Indigenous peoples are the oldest *living* culture in the world.

rise through oral transmission.[25] Nunn and Reid located 21 Indigenous stories from around the continent which describe coastal inundation and aligned them with the geological record of post-glacial climate change established by the earth sciences. They effectively communicate to a scientific audience that Australian Indigenous cultures were and are so fundamentally tied to their Country, and care for it so deeply, that they have used stories about environmental changes to guide their social development and survival for thousands of generations. This method has been recently been adopted by Aboriginal nations and scholars, such as the Narrunga people of South Australia who seek scientific and historical recognition of their own stories (Roberts et al. 2019).

Kelly's recent work on 'deep-memory' functions in a similar way, using modern understandings of neuroscience and archaeology to demonstrate the durability and accuracy of ancient and modern Indigenous memory systems (2015, 2016). Australian Aboriginal peoples encode environmental information in non-written (oral and visual) cultural formats such as story, song and dance. As Kelly points out (2015, 17), Australian Aboriginal oral traditions are so robust because their "accuracy depends on political needs, not historical ones". Neither Nunn and Reid nor Kelly explicitly use the language of decolonisation, but their research crosses Donald's colonial and historical divide by arguing for the legitimation of Indigenous knowledge and story within supposed objectivity of Western science (Pocock & Jones, D 2013, 135). Kelly, and Nunn and Reid are aware of the limitations of their work, readily noting that it can never be *proven* that Aboriginal stories are describing a specific post-glacial coastal inundation or any physical phenomena which occurred thousands of years ago, but by the same measure they may indeed be "impossible to disprove" (Nunn & Reid 2016, 41). With this in mind, I acknowledge that elements of my argument concerning Kulin political responses to environmental change and colonisation could be characterised as informed speculation.

Nunn and Kelly's speculative work is significant for several reasons. First, their decolonial contributions to add depth to the *history* of Indigenous politics and story in fields of Western science — geology and neuroscience respectively — that are under-studied in the Australian context.[26] As Hokari argues, decolonial interdisciplinary work expands Western notions of what history is and who

[25] Nunn has also turned this methodology to analyse stories of giants in Ireland. See Nunn, Patrick D 2019, 'Go Tell It On The Mountain: Mythical Tales of Giants are Rooted in Geological Realities', *History Today*, vol. 69, no. 4, pp. 46-55.

[26] For example, Wurundjeri man and bio-geologist Michael-Shawn Fletcher is also conducting decolonial interdisciplinary research. Fletcher uses lake, billabong and river sediment to analyse ancient Aboriginal uses of land, water, and fire. Publications from his partnership with Wurundjeri traditional owners to chart Melbourne's pre-colonial waterways are forthcoming, but Fletcher's work on lakes in the Tasmanian high-Country is lauded in his field. See Fletcher, Michael-Shawn & Thomas, Ian 2010, 'The origin and temporal development of an ancient cultural landscape', *Journal of Biogeography*, vol. 37, no. 11, pp. 2183-96; Fletcher, Michael-Shawn & Thomas, Ian 2010, 'A Holocene record of sea level, vegetation, people and fire from western Tasmania, Australia', *The Holocene*, vol. 20, no. 3, pp. 351-61; Fletcher, Michael-Shawn, Wood, Sam W & Haberle, Simon G 2014, 'A fire-driven shift from forest to non-forest: evidence for alternative stable states?', *Ecology*, vol. 95, no. 9, pp. 2504-13.

is a historian. Nunn, Reid, Hokari and Kelly consider show that Aboriginal storytellers can be historians and their stories are supplementary to empirical history or scientific study (2011, 49-53, 148-149). Second, their arguments have profound implications for scientific views on oral histories and global Indigenous knowledge. Nunn and Reid demonstrate that there are multiple stories which describe geographic events that shaped and reshaped Narrm up to 10,000 years ago, enormously surpassing the 500–800 years maximum oral-history retention that anthropologists commonly accept (2016, 11). Kelly analyses the information within encoded stories, song, dance and place to arrive at a similar conclusion (2015, 16-20). There are still Kulin storytellers who hold this knowledge and history of Narrm's flood, but for their former southern neighbours we can only imagine how environmental change and sea level rise drove migration and politics.

Bass Strait Country

Bass Strait Country was likely a quite similar to the land under Narrm: a largely grassy plain with an east-west downward slope, with wooded mountains rising where present-day islands (such as Flinders Island and King Island) are (Bowdler 2015, 8). Beginning 15,000 years ago saltwater began to rise, with low-lying land in the west inundated first. Over the following 3,000 years the ocean rose, subsuming land eastwards and culminating in a narrow strip connecting present-day Flinders Island with the continent to the north and Tasmania to the south (Williams et al. 2018, 149). As the Bass Strait peoples' Country was swallowed by "slow inexorable sea-level rise", successive generations would have made regular, difficult, and political, stay-or-go decisions (Nunn & Reid 2016, 41).

The Bass Strait peoples became *refugees* in need of sanctuary, displaced by environmental conditions beyond their control and physically unable to remain on their traditional Country. They had to consider migrating to other Aboriginal peoples' Country: requiring political arrangements. This would have been a painful process. As scholar Tracey Banivanua Mar observes (2013), for Indigenous peoples of the Pacific Basin permanently leaving Country is an almost unthinkable prospect and would be considered only when traditional lands were literally disappearing due to climate change or a force compelled exile (as was often the case with colonialism).

As their territory disappeared, we can speculate as to where the Bass Strait peoples went. The people with Country in the west may have walked east uphill, but as the sea continued to follow them higher ground would have been in increasingly high demand. Some took refuge on the mountains which are now archipelagos such as the Furneaux Group, while others turned south to the Tasmanian mainland (Sim 1990; 1998). Once the Tasmanian and Bass Strait peoples were cut off from the mainland on

their islands, they experienced what archaeologist Sandra Bowdler labels "one of the most extreme cases of [societal] isolation known on the global scale" (2015, 1).[27]

For the Bass Strait peoples all options for migration would have involved approaching neighbouring Aboriginal peoples and seeking permission to either travel through Country or be accepted as refugees and remain as permanent guests.[28] To travel through or occupy Aboriginal Country in south-eastern Australia is a political process determined by local custodians of land, and it is highly likely that some Bass Strait peoples, especially the peoples living closer to the mainland, journeyed north to present-day Victoria (Sim 1990). However, before I explore accessing foreign Country with consent through diplomacy, the alternative should be suggested as it pertains to colonisation and treaty-making discussed in later chapters: conquest and warfare.[29]

Pacifica conquest

Nunn (2018) highlights the contrasting approaches of Australian Aboriginal and Pacific Islander Indigenous peoples in responding to human displacement and loss of resources. Pacifica peoples were on the whole historically peaceful, however climate change in the most recent millennia caused an abrupt loss of food sources which in turn created "famine, high mortality and profound social disarray" in many island societies (Orliac & Orliac 1998, 132). Around 700 years ago climatic shifts caused food scarcities for Indigenous peoples throughout the Pacific Basin and many groups, such as the Māori or Fijians, responded with militarism and conquest in order to guarantee their resource base (Nunn 2018, 110-111). Many Polynesian island societies with hierarchical social and political structures developed into semi-feudal regimes centred on hilltop fortifications which excluded segments of the population from accessing limited resources (Nunn et al. 2007). Some groups responded to this increase in social segregation with warfare, while others took to the oceans in search of new homelands to colonise such as Aotearoa/New Zealand (Nunn 2018, 110-112; Nunn et al. 2007).[30]

Conversely, Nunn found no indications in Aboriginal stories of peoples engaging in competition or warfare after their traditional territories were inundated with sea water, supporting assertions from Aboriginal Elders and intellectuals that Indigenous people did not go to war over land or resources (Lucashenko 2015; Pascoe 2007, 155-157; Poulter & Nicholson, B 2017, 4). Aboriginal peoples had

[27] Bowdler further argues that the Bass Strait Aboriginal peoples were revived, or re-created with the forced relocation of Tasmanian Aboriginal peoples to Flinders Island and later voluntary migration to other Bass Strait islands.
[28] As chapter speculates on human migration over 5,000 years ago, and there is no archival or contemporary evidence of Aboriginal people identifying with Bass Strait Country, it may have been that over thousands of generations these people assimilated into Kulin cultures.
[29] This theme is further explored in Chapter 2.
[30] The colonial inclination persisted in some groups of Māori , who dispossessed from their own land engaged in an invasion of the peaceful Moriori peoples in late 1835, see Brett, André 2015, ''The miserable remnant of this ill-used people': colonial genocide and the Moriori of New Zealand's Chatham Islands', *Journal of Genocide Research*, vol. 17, no. 2, pp. 133-52.

techniques to regulate their own population and resource use rather than turn to violence or competition. In support of this notion, historian Ian D Clark (1998) found no evidence of territorial conflicts in Western Victoria. Nor did historian Bill Gammage (2011, 150) see evidence of resource-driven conflict in Victorian nations, even during periods of extreme scarcity in recent millennia in south-eastern Australia.[31]

How the Kulin responded to the Bass Strait refugees is unknown, however I found no evidence or oral history to suggest that the displaced population set out to seize territory and resources through conquest or warfare or were met with aggression or subjugation at their northern destinations. While there are stories of battles between humans and sacred beings, there are no tales of conquering Kings or Queens, no epics describing the decimation and subjugation of other Aboriginal peoples (Massola 1968, xiii-xiv) as are common in many European, Asian Pacific traditions. Rather, Kulin social and political protocols teach sharing, accommodation, and empathy (Poulter & Nicholson, B 2017), and we can imagine that this was shown to the Bass Strait peoples.

Accommodating refugees

It may be a stretch to compare climatic events that flooded Bass Strait 12,000 years ago and the peak of inter-Polynesian conflict and migration 700-1000 years ago. But, considering the longevity and continuity of Aboriginal stories, culture and the stability of language groups it is not inconceivable to consider that a cultural proclivity to welcome vulnerable people (rather than see them as competition) has endured for multiple millennia. The Bass Strait peoples could only turn to their neighbours when displaced from their Country, and while we do not know when or where they migrated, there is little to suggest that they were turned away, enslaved, imprisoned or attacked. Regulating guests' access to Country is an expression of Aboriginal sovereignty as this and the following chapters show, thus the Bass Strait refugee crisis was undoubtedly political. We can imagine that the Kurnai and Southern Kulin conducted political negotiations with each other, and the Bass Strait refugees, demanding that the displaced people respect local sovereignty and cultural and political protocols in exchange for sanctuary.

We cannot know how the Bass Strait peoples were distributed among the Narrm Kulin: large groups could have been broken up and married into many clans across many languages groups to spread and share the additional drain on resources, or they may have been sent *en masse* to a location which could support them. Clark (1998) has researched Victorian Aboriginal peoples' protocols of land succession, enacted when groups assumed rights over their neighbours' Country in the event of clan genocide; but we know little about how the political process may have occurred in a situation involving the literal loss of land. Over hundreds of generations the Bass Strait peoples were probably

[31] Based on several historical and anthropological sources, Gammage considers the Warlpiri of the Central Australian desert and food-rich Wiradjuri of south-eastern New South Wales exceptions because they were nations which sought to expand their territories.

assimilated, and we have no indication of any continuing cultural distinctiveness, but, given what we know of Kulin philosophy and values it is likely that any arrangements made would have ensured all local peoples and their refugee guests were adequately supplied.

It is worth imagining the Bass Strait refugees, as the Narrm Kulin nations have practised treaties with displaced and landless peoples ever since. Under modern, Western conceptions of treaty both parties must be sovereign, but experiential treaties offer us a framework to analyse how the Kulin politically engaged with and absorbed the landless Bass Strait peoples. Under Kulin experiential treaties, guests on Country could be socially and politically accommodated if they respected local sovereignty and law. Experiential treaties are between and Aboriginal sovereign and their guests. The Bass Strait people could not offer their hosts reciprocal access to Country, as it was submerged, however they would have been able to offer an expanded kinship network through marriages.

Reciprocal access, resource rights and political marriages are key elements of Kulin experiential treaties and are fully explored in Chapter 2, as are adaptations to Kulin treaties with settlers and colonisers in later chapters. We can also see the continuity of accommodation of and treaty with refugees and persecuted peoples today, as modern Aboriginal people and activists often exhibit solidarity with asylum seekers and reject the bipartisan consensus on indefinite offshore detention of potential refugees (Cox 2015; Pugliese 2015).[32] The Bass Strait peoples may have been Kulin's first 'foreign' recipients of experiential treaties, but continuous upheaval in the climate and environment would necessitate many more in the following millennia.

The flood returns

Environmental migration, and environmentally driven politics, continued around Narrm after the Bass Strait peoples were settled. While seaside contours of almost all Victorian coastal Aboriginal peoples' lands have remained relatively stable for at least the last 5,000 years (such as the Kurnai or Gunditjmara clans), Narrm's water level continued to change until as recently as the last millennia (Williams et al. 2018, 151). Between 1,000-3,000 years ago Narrm partially dried out, returning some territory to bayside clans. The Werribee and Yarra Rivers continued to flow into the bay of Narrm, pushing sediment under the surface to the heads which likely built up to form a barrier and block the bay's heads (Holgate et al. 2011, 169). With Narrm cut off from the ocean its surface evaporated, and

[32] For instance, since 2012 Aboriginal Elders have held Passport Ceremonies (for example, Uncle Robbie Thorpe in Melbourne and the late Uncle Ray Jackson in Sydney), in which refugees are given symbolic travel documents and authorisation to occupy Indigenous Country in exchange for a pledge to respect and acknowledge Indigenous sovereignty. By accepting an Aboriginal Passport, refugees are entering into experiential treaties with the local Indigenous sovereigns. In recent years Narrm based RISE (Refugees Survivors and Ex-Detainees) have been regularly collaborating with activist group the Warriors of Aboriginal Resistance (WAR).

while the reclaimed territory would not have been a kangaroo flat any longer it offered other food and resources.

At the centre of this shifting landscape, in the deepest parts of the bay, was a lake, named by geologists Guy Holdgate, Barbara Wagstaff and Stephen Gallagher 'Lake Phillip' (2011, 172). As seen in Figures 3 and 4, the lake shrunk over a millennium, meaning "generation after generation [bayside Kulin clans] must have had to renegotiate land tenure arrangements with inland neighbours" (Nunn & Reid 2016, 41). Again, we must speculate on how the southern Kulin responded to newly available resources around Lake Phillip in an atmosphere far less temperate than before Narrm's first flooding. To do so we can again turn to the stories described earlier. Nunn and Reid acknowledge that the stories regarding Narrm are the most ambiguous of the data they analysed: contending that *both* the recent and ancient flooding events are described, as most of the Kulin stories can be interpreted to "echo or refer to an earlier and more enduring inundation event" (2016, 18).[33]

When stories including Briggs' 'Time of Chaos' refer to walking across Narrm or it being a vibrant kangaroo hunting ground we are likely seeing references to the great, dry plain of antiquity. Other stories mentioned by Nunn and Reid (2016, 18) refer to crossing Narrm by swimming, indicating a partial flood and the presence of a lake. If Briggs' story refers to the first flooding event, then we can see the following 2,000 years as a period of adaptation, characterised by negotiations over resource re-distribution in a full bay scenario driven by a desire for peace under Bunjil's directive. As the bay began to dry out, political re-negotiation over land distribution and rights must have been central also with new resources opening up. Finally, when Narrm flooded again it would have been submerged rapidly as the sediment barrier broke away, demanding emergency deliberations. Holdgate and colleagues argue that the present-day boundaries between the Waddawurrung and the Boonwurrung were "defined during a dry bay scenario then logically the extension of the Werribee River and Lake Phillip would form "bay floor boundaries" (2011, 173). If the present-day boundaries between Narrm nations have been continuous for well over 1,000 years, there must have been a robust political process in place to manage a rapid return to an inundated plain. Averse to colonisation or imperial ambition, it appears that the territory of Narrm clans has been stable since, finding a balance which accommodated all parties to live within the environmental constraints of their own Country. Shifting from a dry hunting and gathering plain, to an expansive bay, to wetlands and evaporative lake, and back to a bay, environmental realities drove politics and still flow through the hidden rivers and lake under Narrm.

[33] While I lack the space here to fully explore how Indigenous peoples' conception of time, as not strictly temporally bound, differs from European/Western (especially scientists) linearity, it is worth mentioning that it is entirely possible that the Kulin see (and saw) the Time of Chaos as applying to *both* historical instances of flooding and could comprehend both events as inextricably linked. For more see Nanni, Giordano 2011, 'Time, empire and resistance in settler-colonial Victoria', *Time & Society*, vol. 20, no. 1, pp. 5-33.

Sustainable and balanced ecological management

Aboriginal people in south-eastern Australia knew that as humans they had the greatest impact on the environment, and the Narrm Kulin were no different. Humans are the "creatures most likely to unbalance creation", so maintaining political relations with Country and Waters required Aboriginal people be vigilant in regulating their behaviour and consumption to live within the limitations of the natural world (Gammage 2011, 302). As the climate of southern Australia stabilised, flora and fauna grew abundant and the Kulin people (and incorporated Bass Strait peoples) flourished, with the pre-European contact population estimated at 60,000.[34] Life was defined by a sophisticated and "delicate balance" with nature (Christie 1979, 4-5).[35] While natural productivity was facilitated by humans "the economic foundations of traditional [Aboriginal] society were inseparable from the[ir] philosophic and religious beliefs" which upheld respect for the natural world (Pascoe 2014, 125-126). Cosmological, cultural, political, social and environmental beliefs were intertwined and transmitted down generations through story.[36] Stories were practical tools, teaching children and youth how to survive: often combining environmental information (such as the location of water or food), political information (such as the boundaries of territory) and social and moral instruction (such as lessons on sustainability or encouraging sharing) (Hokari 2011; Kelly 2015; Rose 1996b).

Aboriginal cultures developed a system of Songlines and storytelling , in which youth or foreigners were taught vital information about the land they travelled through via listening to local songs.[37] Through Songlines, physical and geological Country is conveyed through story, upon which moral and social values were inscribed (Bradley 2010).[38] For Aboriginal peoples Country is the sacred centre of the social and political life; without Country there would and could be no life, and life can only grow within the limits of the environment (Pascoe 2014).

[34] For an extended discussion of the pre-invasion Kulin population numbers see Chapter 3.
[35] Until recently, the complexities of Aboriginal peoples and cultures have been undermined by historians and anthropologists (even progressive ones) who labelled their patterns of living as 'nomadic' and 'hunter-gatherer'. This chapter will not engage with these simplistic terms but shows that Kulin peoples lived in sophisticated harmony with Country and moved through it in sustainable patterns.
[36] Many Aboriginal nations also added astrology to their cultural and cosmologic customs. An example pertinent to this thesis is a stone arrangement near the You Yangs on Waddawurrung Country, see Jones, David 2012, 'Wurdi Youang: re-thinking myths about landscape and Indigenous science', in *SAHANZ 2012: Fabulation: myth, nature, heritage. Proceedings of the 29th Society of Architectural Historians Australia & New Zealand Conference*, pp. 457-77.
[37] For modern Indigenous peoples, passing stories and Songlines down to younger generations is growing increasingly difficult due to language shift and extinction. For most if not all Aboriginal peoples, language is intimately tied to Country and Waters and contains fundamental information about local environments and sacred beings, which largely cannot be captured by translation into English or linguistic documentation. Some nations such as the Yanyuwa people of the Gulf of Carpentaria have innovated in methods to engage with their youth through moderns means such as 3D animation of stories and Songlines. See Bradley, John, Kearney, Amanda, Norman, Leonard & Friday, Graham 2011, "That's the choices we make': Animating Saltwater Country', *Screening the Past*, vol. 31, pp. 1-17.
[38] Songlines is far too an expansive concept to fully explore here. For an in-depth explanation of Songlines from the Yanyuwa people, see John Bradley's *Singing Saltwater Country*.

Reciprocating Country

Key to maintaining balance between a growing human population and healthy natural environment is fostering continuity of care and a sustainable, renewable economy. Aboriginal people viewed caring for Country and fostering its nourishment as an equitable exchange for receiving food and other natural resources (Gammage 2011, 302). Here I explore how this exchange is more than conservationist, it is political. As a reciprocal and symbiotic relationship, with defined rights and responsibilities, we can view the Indigenous-Country relationship as a form of experiential treaty: bound under local laws and practised in everyday interactions. Dependent on the resources offered by Country and Waters Aboriginal people constantly adapted their social rules and constrained their behaviour to live without exhausting the ecosystem. This would have undoubtedly occurred through the periods of Narrm flooding and re-flooding.

Most Aboriginal nations developed their own seasonal calendars based on local climatic conditions which determined the movement and habitation patterns of clans: winters at sheltered areas on higher ground, and summers by waterways and the coast (Cahir, Clark & Clarke 2018, 56-7, 268-73; Christie 1979, 8-10).[39] Resources were utilised depending on the season, and the bayside Kulin had a wide variety of foods to rotate between: migratory birds and other animals were hunted when abundant and plant foods supplemented diets when available (Powell, B et al. 2019, 66-70). Under a climate and coastline as we know today, seaside areas were habitable and sea food became a more prominent part of the Narrm and coastal peoples' diet (Williams et al. 2018, 149). Away from the coast, Aboriginal people throughout Victoria developed fishing techniques including complex traps in lakes and rivers, to sustainably feed their population (Pascoe 2014, 53-65).[40] These patterns of local migration and varied diets kept Kulin peoples strong and healthy — a quality commented on by several colonisers who arrived to Narrm in the early 19th century (Boyce 2011, 195, 215; Campbell 1987, 74-75, 82-83) — but so did the social expectation of sharing.

Demographic groups had specified roles in collecting resources, such as women harvesting vegetable crops or men kangaroos, but all food gathered was shared communally. As historian Michael Christie points out "mutual help reduced the uncertainty of daily living" (1979, 12), and sharing food ensured equality among clans people. Clans generally took only what would feed their people as over-

[39] For instance, the Kulin peoples had six seasons.

[40] The oldest of these is Budj Bim, a sustainable system of eel traps on Gunditjmara Country near Lake Condah in Victoria's Western District, recently confirmed by scientists to be over 6,000 years old. As mentioned in note 17, the area has been inhabited for at least 40,000 years. In July 2019 Budj Bim was recognised by the UN and given World Heritage status for its remarkable ingenuity and antiquity; the system is older than the pyramids at Gaza and is the only heritage site in Australia listed purely for its cultural heritage. See Bell, Damien & Johnston, Chris 2008, 'Budj Bim. Caring for the spirit and the people', in *16th ICOMOS General Assembly and International Symposium: 'Finding the spirit of place – between the tangible and the intangible'*, Quebec; Jones, David 2011, 'The water harvesting landscape of Budj Bim and Lake Condah: whither world heritage recognition', in *Proceedings of the 2011 International Conference of the Association of Architecture Schools of Australasia*, pp. 131-42.

exploiting a resource is unsustainable and against the general principles of Aboriginal law (Pascoe 2014, 127). However, if surplus food was collected the abundance would not go to waste: first it was ensured that every community member was fed, and then excess for could be used to attract neighbouring groups for feasts or ceremonies, such as during Bogong moth in the Victorian Highlands or eel harvests in Western Victoria (Powell, M & Hesline 2010; Rigby 2011).[41] Trade of resources was important but it took a distinct form compared to Western market economies; resources were rarely hoarded and resource poor clans were not exploited in a capitalist manner (Cahir, Clark & Clarke 2018; Christie 1979, 12, 23; Pascoe 2014, 126).

While this form of communalism and sustainability may seem attractive to contemporary readers, we must be careful not to romanticise traditional Aboriginal society nor argue that life was easy due to what may be considered in contemporary terms a 'socialised economy'. The economy of Aboriginal clans in south-eastern Australia was dependent on the environment, and as Christie points out when times were tough for plants and animals, they were hard for humans (1979, 23). Each member of the community contributed what they could and were expected to participate in an equitable exchange of labour. Children and the elderly were cared for out of respect, but also recognition that their labour capacity was low. Furthermore, it should be noted that while Aboriginal labour and land management resulted in abundance and healthy populations, this was precautionary.

The natural limits of Country were known so well that the demographics of a community was tailored not to the normal or average output of resources, but to its extremes. This ensured that when scarcity or drought struck, the entire community could still be looked after (Gammage 2011, 150-151). In times of severe drought, the survival of the environment and ecosystem took precedent over human population growth. In drought, animals and fish were safeguarded during mating seasons with breeding areas designated as sanctuaries in which killing of animals was forbidden (Christie 1979, 12-13; Gammage 2011, 284-286). In Australia's south-east Aboriginal peoples utilised techniques to save water such as covering their bodies with fat or moist soil to absorb and retain moisture (Cahir, Clark & Clarke 2018, 101). Plant-based contraceptives may have been used to control Aboriginal populations, but only in times of hardship.[42] Aboriginal peoples in south-eastern Australia were

[41] In recent years the Aboriginal communities of Victoria's Western District have revived their custom of *corroborees* and large-scale gatherings for eel harvests, such as the annual festival at Lake Bolac – a traditional site of ceremony and trade for the Gunditjmara and Kirrae Wurrung, marked by a pre-invasion eel-shaped stone arrangement. See Joseph, Dawn 2014, 'Community music-making in regional Australia: Creating, improvising and performing at a festival', International Journal of Community Music, vol. 7, no. 3, pp. 379-95; Tibbett, Kevin 2004, 'Risk and economic reciprocity: An analysis of three regional Aboriginal food-sharing systems in late Holocene Australia', Australian Archaeology, vol. 58, no. 1, pp. 7-10.

[42] Contraceptives in south-eastern Australia included Bush Apple leaves, see Gott, Beth 2018, ' The art of healing: five medicinal plants used by Aboriginal Australians', *The Conversation*, viewed 10/10/2018, <https://theconversation.com/the-art-of-healing-five-medicinal-plants-used-by-aboriginal-australians-97249>.

willing and able to manage their own population levels to preserve Country and its non-human residents, but they also had technology to manage and assist their environment to flourish.

Restoring Country with fire

When settlers arrived in Victoria Aboriginal peoples were thriving on their Country, enabled by the development of technological innovations; most prominently the system of 'fire-stick farming' (Jones, R 2012).[43] The Kulin cultivated vast and fertile grasslands for food production by strategically using controlled fires to rejuvenate plants and the soil (Keen 2004). Aboriginal fire management was a long-term project, conducted in a "mosaic pattern of low-grade burns" (Pascoe 2014, 116). Burning land in rotation over years encouraged proliferation of animals and plants: while burnt areas and soils regenerated, animals always had thriving wood and grasslands nearby allowing for continual hunting of well-fed kangaroo and wallaby (Pascoe 2014, 42-43). The use of fire allowed Aboriginal people to take care of the non-human world, as if an area was burned multiple times in short succession the local ecosystem and animal population could be at risk of collapse (Harris et al. 2018; Gammage 2018). Thus, plant fertility was "encouraged by careful husbandry of the soil" through burning, which enabled domesticated crop-harvesting of vegetables like the *murnong* (Pascoe 2014, 17, 22-24). Rotating burns also regularly cleared unnecessary undergrowth making it easier to travel and hunt while also reducing the risk of fires getting out of control. Generations of land clearing through fire resulted in sparsely vegetated open areas, provoking the early colonists to remark that Kulin Country resembled manicured English parklands (Gammage 2011, 15; 2018; Pascoe 2014, 117).[44]

Aboriginal people were the continent's first "landscape planners" and for the Waddawurrung and other bayside Kulin "firing was a cultural way of life" (Jones, D, Choy & Clarke 2016, 278). For the Kulin caring for Country was, and is, a political act which underpins all other political relations, be they human or non-human. In recent years traditional Aboriginal fire management techniques are being considered for mainstream adoption (Neale 2018), especially after the widespread fires of summer 2019-2020.[45] The Victorian state government has several trials underway with Kulin nations described by Dja Dja Wurrung collaborators as "decolonising experiments" (Neale et al. 2019, 344). These pilot programs seem to offer a promising avenue to reduce the occurrence and damage of out of control fires and foster a political relation with Country's limits and needs. Adopting Aboriginal

[43] 'Fire stick farming' was first coined by archaeologist Rhys Jones in 1969. Bill Gammage and Bruce Pascoe have been proponents of the term and theory, as fire stick farming is a major theme of their recent work.
[44] Gammage points out that a comparison to a park was a lot more striking in the 19th century than it is today: bushland in the Australian south-east was relatively easy for colonial explorers to traverse because it was so well managed. In Britain the open wooded 'parks' referred to by colonisers were lavish man-made domains of landed gentry. But, prejudice and racism in colonial imagination was unable to attribute the cultivated and functional landscape to the management of the Kulin.
[45] The recent 2020 fires are discussed further in the Epilogue to this thesis. See also Cahir, Fred, McMaster, Sarah, Clark, Ian D, Kerin, Rani & Wright, Wendy 2016, 'Winda lingo parugoneit or why set the bush [on] fire? Fire and Victorian Aboriginal people on the colonial frontier', *Australian Historical Studies*, vol. 47, no. 2, pp. 225-40.

techniques of fire management is relatively straight forward for modern authorities (VTOCFKG 2019) but envisioning political relations with animals will likely prove more challenging for many settlers.

Treaties with animals

Like many global Indigenous populations, Australian Aboriginal peoples maintain comprehensive and complex ethical relations with almost every aspect of their Country, including with non-human entities such as animals (Nadasdy 2003, 2015; Rose 1996b, 2011).[46] These relations are not just environmental or to use contemporary phrasing 'conservationist'; they are historical and political. As most Aboriginal peoples have Dreamings that include stories of all animals in their locality, each being has a social location and often kinship relation with the human world (Hokari 2011; Rose 1992).[47] For one example Waddawurrung Elder Uncle Byron Powell states (el al. 2019, 52) that "dingoes were not our pets, and we were not masters to them. Rather they co-existed with us mutually respectfully as partners in the landscape."[48] In this relationship both humans and dingoes could benefit from assisting each other in hunting and herding prey. The hunting of animals takes on a new meaning when animals are viewed within the hunter's social and cosmological network and are seen equal partner rather than just a resource. Animals are beneficiaries of the environment and ecosystem carefully managed by human custodians. It is likely that the Kulin had relations with all animals on their Country the Aboriginal totemic system defines inter-species relationships with many animals, each with their own historical teachings and political status. Seen in this light, we can view humans'

[46] Kluane First Nations scholar Paul Nadasdy's articulation of human-non-human relationships fits within my framework of exponential treaties, as he describes his people as having political compacts with animals. The Kluane view hunting as a reciprocal exchange between human and animals, not a process of pursuit and violent death. Under Yukon First Nations law animals and non-human ecosystems have rights and are accorded political status, and Nadasdy advocates for animals inclusion as parties to modern treaty processes with the Canadian and Provincial governments. See Nadasdy, Paul 2012, 'Boundaries among kin: Sovereignty, the modern treaty process, and the rise of ethno-territorial nationalism among Yukon First Nations', *Comparative Studies in Society and History*, vol. 54, no. 3, pp. 499-532; Nadasdy, Paul 2017, 'Imposing Territoriality: First Nation Land Claims and the Transformation of Human-Environment Relations in the Yukon', in S Bocking & B Martin (eds), *Ice Blink: Navigating Northern Environmental History*, University of Calgary Press, Calgary, pp. 333-76.

[47] The Dreaming is an Aboriginal expansive concept of the origins of existence, law place and beings. Hokari points out that the Dreaming is living, not a historical period; it provides stories to maintain the Aboriginal world for the past, present and future. Hokari and Rose both conducted their fieldwork with Aboriginal communities living on-Country in the Northern Territory. I do not claim the stories or relations described their work is generalisable to Victorian Aboriginal nations, as Dreaming and Songlines are place-bound and thus localised. However, as Dreaming and Songlines span the continent, the principles are similar. This footnote does not do the Dreaming justice, but numerous anthropologists have written on the Dreaming for settler audiences. See Berndt, Ronald M & Berndt, Catherine H 1988, *The World of the First Australians: Aboriginal Traditional Life : Past and Present*, Aboriginal Studies Press, Canberra; Charlesworth, Max, Morphy, Howard, Bell, Diane & Maddock, Kenneth (eds) 1984, *Religion in Aboriginal Australia: an anthology*, University of Queensland Press, St. Lucia; Stanner, WEH 1979, *White man got no dreaming: essays 1938-1973*, ANU Press, Canberra.

[48] While often engaged with as hunting partners, dingoes were also occasionally consumed a food resource by the Waddawurrung. Uncle Byron Powell expressed disappointment in John Batman's murder of a dingo as one of his first actions on Waddawurrung Country, as he failed to eat it or "re-use its carcass properties" for making clothes or tools.

political relations with animals as experiential treaties; managed and practised in everyday, reciprocal interactions.

Through imagining the history of Narrm, this chapter has shown that the Kulin's custom of experiential treaties is grounded in political relations with Country and the non-human world. Simply, there is no more fundamental relationship a human can have than that with the earth that feeds, shelters, and sustains them. Throughout periods of immense environmental change, the Kulin achieved balance and reciprocity with Country and beings that live on it, under Bunjil's law. The stories of Narrm's creation and evolution demonstrate the longevity and responsiveness of Aboriginal storytelling. These stories also show the continuity and iterative nature of Kulin treaty-making, as the changing environment demanded human residents engage in ongoing negotiation and renegotiation with each other. Regardless of readers' believing Indigenous 'mythologies', the stories of Narrm (and other Victorian Country), while having limitations like any historical source, should be taken as legitimate historical record of environmental and climatic change that cross historical and colonial divides.

The stories and history of rising Narrm and accommodation of refugees explored in this chapter have contemporary relevance, showing that *the past is rushing towards us from the future* in climate change. Climate change is a key concern for many Aboriginal communities including the Waddawurrung and other bayside Kulin who are seeking greater participation in planning and adaptive policies to protect their Country (Jones, D, Choy & Clarke 2016). While Kulin Country is not as threatened by sea level rise as communities in the Torres Strait (again raising the question of what happens to sovereignty over a drowned world), it is nonetheless a major concern. As Kulin pedagogy stories like the 'Time of Chaos' — when apocalyptic environmental change was seen as punishment for violating law and leading unsustainable lifestyles (Briggs 2014) — allow us to imagine a set of *localised* political responses to modern anthropomorphic climate change in which resources are redistributed equally and the most vulnerable people are cared for as Narrm will rise again (Pocock & Jones, D 2013, 132).[49] Thousands of generations Kulin environmental customs and adaptation to climatic change are characterised by philosophical continuity and durability; just as the Birrarung continues to flow under Narrm and exert a political presence, *there was something before,*

[49] For Gavin Pocock and David Jones, the 'Time of Chaos' is a story of "place, connectedness and … a call for future action" for residents of Narrm to prepare for future climate change. For historian and Melbourne local Tony Birch, stories of *place* are a valuable tool for non-Indigenous societies act ethically towards their local Country and protect it from the worst of climate change. See Birch, Tony 2018, 'Recovering a narrative of place: Stories in the time of climate change', *Griffith Review*, no. 60, pp. 208.

that still remains.[50] Without this environmental history, a nuanced understanding of the inter-personal negotiation and renegotiation intrinsic in Kulin human-human experiential treaties is difficult.

[50] In 2017 the Victorian government has recognised the Birrarung as culturally significant. But, as it flows into and under Narrm the Birrarung is also a *political* power at the centre of Kulin Country. The Yarra River Protection (Wilip-gin Birrarung murron) Act 2017 grants Aboriginal custodianship over the Birrarung and was hailed for its use of Woiwurrung language in its title and preamble. However, the Act does not offer strong legal protections to the river and the political decision-making capacities of traditional owners over river management are relatively weak, see O'Bryan, Katie 2019, 'The changing face of river management in Victoria: The Yarra River protection (Wilip-gin Birrarung murron) Act 2017 (Vic)', *Water International*, vol. 44, no. 6-7, pp. 769-85.

Chapter 2: ‘An organisation of Aboriginal sovereignties’

Understanding the philosophical and environmental tenets of traditional Kulin societies explored in Chapter 1 — ancient and intimate place-based environmental knowledge, Country and Waters as political entities, welcome and acceptance of refugees, and technologies of land management — is vital to appreciate the nuances and structures of Kulin-human political relationships. For Victorian Aboriginal peoples, sovereignty and custodianship of Country was organised at the clan level, and this chapter expands on an under-studied but essential element of Kulin history: details of Victorian Aboriginal inter-nation diplomacy and the Kulin political alliance.

As legal scholar Mark McMillan states, inter-nation treaties represent an “organisation of [Aboriginal] sovereignties” (2019).[51] To explore the Kulin alliance this chapter continues to explore and define experiential treaty-making, taking a new approach in analysing and imagining everyday, interpersonal political relationships. The framing of experiential treaties describes the mechanism that regulated much of Kulin political life and networks: through the expansion and maintenance of kinship networks and the role of women in arranged marriages, governance and leadership, processes of dispute resolution and limited conflict between allied groups, and protocols and ceremonies of diplomacy such as *Tanderrum*. Experiential treaties also enable a new understanding of the generosity of the Waddawurrung to William Buckley, the settler-refugee who was provided sanctuary for 32 years. All of these processes and protocols were defined in Kulin law, and as Chapter 1 explored how the Kulin related to Country, now we will see and imagine how they politically related to each other as neighbours.

Clans are sovereignty

Aboriginal language groups or ‘nations’ historically were never political monoliths, but rather complexly connected groupings of smaller sovereign units (Blackburn 2002; Powel, M & Hesline 2010).[52] The basic unit of Aboriginal societies in south-eastern Australia, including the Kulin peoples, is the clan. A clan is a grouping of several families who had common geological, historical, cultural, and religious identity (Barwick 1984; Clark 1990).[53] Kulin clans were typically 20-60 people, but up

[51] McMillan quote from Behrendt, Larissa (Producer) 2019, *NAIDOC 2019: Treaty Panel Part 2*, ABC Speaking Out, Sydney, 10/09/2019, <https://www.abc.net.au/radio/programs/speakingout/speaking-out/>. See also Behrendt, Larissa 2013, 'Aboriginal Sovereignty: A Practical Roadmap', in J Evans, A Genovese, A Reilly & P Wolfe (eds), *Sovereignty: frontiers of possibility*, University of Hawai'i Press, Honolulu, pp. 163-81.
[52] The use of the term ‘nation’ to describe many linked clans has an interesting and at times contentious etymological history, see: Blackburn, Kevin 2002, 'Mapping Aboriginal nations: the 'nation' concept of late 19th century anthropologists in Australia', *Aboriginal History*, vol. 26, pp. 131-58; Edelman, David 2009, 'Broader native title settlements and the meaning of the term ‘traditional owners’', paper presented to National Native Title Conference, Melbourne.
[53] Diane Barwick and Ian D Clark each produced an extensive ‘Atlas’ of clans and their inter-connections through Central and Western Victoria, which when read together given a near comprehensive picture of pre-invasion Aboriginal social structure and inter-connections.

to hundreds in some cases, consisting of groups of blood-related men, their wives and children (Christie 1979, 8; Presland 2010, 18-20). As historian Ian D Clark points out (1998, 6), for many Victorian Aboriginal peoples, and especially the Kulin, "most people of the known world were kin". A form of this relational enquiry continues to be common for contemporary Indigenous peoples, who, upon meeting a new person often ask about their kin and Country; however, many traditional clan structures were disrupted by the attempted genocide brought by Australian colonisation.[54]

Responsibility or 'possession'?

Each clan had duty of care for defined territory. Boundaries were well known by neighbours, and authority over land and rights to its resources, including access to fresh water, were distributed between groups. Drawing analogy to the English system of land tenure, clan territories have described by settler-historians including Bill Gammage (2011) and James Boyce (2011) as 'estates'. As resource bases clan estates were politically managed and included land and water bodies, with boundaries extending deep into rivers, lakes, bays and the ocean to govern fishing and seafood rights (Rose 1998). In exchange for use of the land's wealth, clans had an inherited moral and spiritual responsibility to care for their Country with the "land-renewing and land-sustaining" customs described in the previous chapter (Clark 1990, 4). In accordance with the principles of sustainability and equitable exchange with the land, strict rules on birth and marriage were in place to limit family and clan sizes, so as to not over-stretch the capacity of Country and its resources (Gammage 2011, 150).

A common way to ease the strains put on Country from human habitation was to regularly move within one's territory between "transitory seasonal resource-harvesting encampments" (Powell, B et al. 2019, 48). This pattern of local migration enabled natural resource cycles to be continually replenished. Borders between clans were commonly determined by physical land and water features such as hills and valleys or rivers and lakes, allowing them to be integrated into the over-arching 'story' of the land – communicated through Songlines (Bradley 2010). Despite the destruction of Country and Waters which has occurred to 'develop' urban areas such as Melbourne, Songlines persist and are still sung through Country around Narrm (Poulter & Nicholson, B 2018). The extent of clan territory was also determined politically to ensure that a base population could possess an independent economic base of naturally available resources, such as viable food plants and seasonal migration or harvest patterns of animals (Gammage 2011, 283-285). Rarely if ever were straight lines — prominent and arbitrary features of colonial cartography — used to divide clans (Pocock & Jones, D 2013, 142).

[54] See Taylor, Louise 2003, 'Who's Your Mob?' - The Politics of Aboriginal Identity and the Implications for a Treaty', in *Treaty- Let's Get it Right!*, AIATSIS, Canberra.

Opposed to ownership *over* land in the European sense, Aboriginal people occupy Country on the basis of their responsibility for its ecological wellbeing. Clan-members *temporarily* inhabited Country and being intimately aware of its limits were bound to manage and care for it for following generations to inherit. As they did not *own* Country, clans could not buy, sell or trade land; but they could control who entered and used it (Christie 1979, 20-22). Gammage writes (2011, 140) that the "decisive expression of legitimate possession" for Aboriginal people was the ability to grant or deny land access, to neighbouring clans or members of other language groups. For settler-scholars, the notion of responsibility for Country grinds up against the British common law notion of 'possession' – as it fundamentally relates to Aboriginal peoples' *dis*possession (Attwood & Doyle 2009, 2-3).[55] When dispossessed from their custodial Country, Aboriginal people could no longer fulfil their obligation to protect it from ecological damage nor regulate human presence on it. This power to allow foreigners access to land fundamentally pertains to consenting to occupation, which is important to remember when conceptualising experiential treaties and when analysing the Kulin Treaties in Chapters 3, 4 and 5.

With sovereign rights came responsibilities of equitable exchange, based on mutual respect for Country and local laws (Lucashenko 2015, 10). For Aboriginal clans "possession was a duty"; people who benefitted from the bounty of Country were obliged to care for it (Gammage 2011, 140). Kelly uses the Yolngu people of Arnhem Land as a case study, arguing that in the shared Aboriginal oral traditions such as Songlines, territory was delineated so effectively that clans themselves "effectively act as 'title deeds' to specific areas of land, thus becoming symbols of political power" (2015, 143). In this sense, the duty of possession is a personal birth right, and caring for Country is a personal political act. Today, most Aboriginal peoples maintain that they possess and retain sovereignty over Country, as treaties of cessation were never negotiated with the state.[56] Sovereignty is expressed as the right to speak for Country, as while most Indigenous people consider their Country to be a political entity with its own rights it requires humans to be its voice and exert its will.

While sovereignty refers to rights to occupy, care for and control entry to land, Kulin peoples were not just intimately connected to land and water but had relationships and responsibilities to non-human entities through totemic systems. For the Kulin peoples the population was divided into two *moieties* (spiritual symbols from the local natural environment), with half identifying with Bunjil, who travelled in the form of an eagle, and half identifying with Waa, who travelled in the form of a crow (Briggs 2014; Dempster 2007). Waa and Bunjil are creator-spirits and with their own dreaming

[55] Bain Attwood and Helen Doyle's 2009 book *Possession* explores the competing understandings of how and why land was possessed in 1835. Attwood and Doyle also point out that the eminent Australian anthropologist W.E.H. Stanner pointed towards the encounters between John Batman and the Kulin as a unique moment of British acknowledgement of Indigenous possession (ownership) of Australian Country. Indeed, the Association's treaty deeds included the phrase 'with written possession' land was purchased.
[56] See Introductory Chapter for more background on articulations of modern sovereignty.

stories, which teach how the lands, peoples, and animals were formed. As sacred beings, eagles and crows were and *are*, forbidden to be killed, preserving their function in the ecosystem. *Moiety* are physical manifestations of the Kulin's religion, as kin from different clans with shared moieties held common ceremonies and initiations based on totemic affiliation which entrench strong cultural bonds (Christie 1979, 15-21; Presland 2010, 34).[57]

Kulin *moiety* affiliation was inherited through the patrilineal line and was set for life, governing both kinship and marriages (Lane 1990). The totemic system ensured that there were no orphans or elderly who would go without care, because in complex kinship systems care-giving obligations are distributed among an entire clan as kin could be found regardless of blood relation (Christie 1979, 23). Marriage was forbidden between clan members or outsiders of the same moiety, ensuring that partners had no traceable genealogical connection (Barwick 1984, 105). Thus, finding appropriate partners required establishing connections with neighbouring clans often from the same language group, or other language groups in the Kulin area and beyond. As marriages were determined by clearly set limitations, unions formed a regional "matrix of relationships [that] were [in a] sense not voluntary" (Poulter & Nicholson, B 2017, 4). This appears to have made finding appropriate marriages one of the most important political duties for Kulin Elders, who had to approve of every marriage, as without ongoing and expanding marriage networks clans would invariably shrink (Dawson 1881, 28).

Both essential to the continuity of Kulin clans and one of the main connections between close and disparate nations, arranging marriages was a diplomatic process; finding suitable partners was easiest through negotiating with a friendly or allied nation. Clans were linked through marriage and any children which resulted represented a long-term and ongoing political bond, with far more stability than trade ties. There was also an economic element to marriage, as clans with greater connections could be more prosperous: men gained access to the Country of their wives and its resources under the principle of reciprocity (Gammage 2011, 140). Furthermore, as a diplomatic connection marriage decreased the likelihood of prolonged and destructive warfare and thus meant clans' economic output was stable and not reduced through casualties. Kulin society allowed polyamory for Chiefs, and thus men with more wives (and more children to marry off) had greater regional connections and thus political influence (Barwick 1984, 108; Dawson 1881, 25-27).[58]

It is worth noting here that compared to the political status of men little is known about the traditional role and agency of matriarchs in Kulin society, due to the historical dominance of males in the

[57] Christie also explores Victorian and Kulin customs of initiation and childrearing.
[58] In Barwick's reading marriage seems to have operated similarly to Feudal Europe with unions arranged to sure up political alliances, albeit less incestuously.

discipline of Australian anthropology (Pettman 1992, 123; Rose 1996a).[59] Female historians like Diane Barwick and Louis Lane have devoted work to illuminate aspects of life for Kulin women, however they had limited sources available in their lifetimes. While many sources — such as William Buckley and James Dawson— describe marriages as arranged, we do not know to what extent Kulin women were voluntary participants in the political process of marriage and what unique benefits they gained from inter-clan relations.

As a series of interconnected societies Kulin clans travelled for pleasure rather than economic necessity, paying regular social or ceremonial visits to kin in other clans or nations, however it is clear that there was also substantial trade between Victorian clans (Gammage 2011, 153). Trade networks were commonly established between clans possessing abundances of certain resources, such as fish, eels, game, or stone. The Kulin traded resources which travelled great distances across Victoria, but would also be exchanged or shared at large ceremonies or *corroborees* (Gammage 2011, 300-301; Pascoe 2014).[60] Trade and information networks were facilitated by designated messengers — known in Victoria as *wayegaries*, *waekerr*, or *wirrigiri* — who travelled Country and communicated news to clans, such as deaths, marriages, fights, or plans for *corroborees* (Clark 1998, 5-6). The messengers were granted diplomatic immunity, as their information was generally seen as a public good for all clans, such as current information about the activities and spread of white men in the interior of the continent. Dhungala (Murray River) tribes were sent messages from Kulin peoples (Clark & Heydon 2002, 159), and according to Waddawurrung Elder Uncle Byron Powell regularly attended gatherings on Narrm Country (Powell, B et al. 2019, 56).

The cultural, social, and economic structures of Aboriginal societies, including Victorian nations, is described by Wurundjeri Elder Uncle Bill Nicholson as a "cohesive multi-group society that contained sophisticated checks and balances" (Poulter & Nicholson, B 2017, 4). Similarly based on the respect for Country and mutual sovereignty described in this chapter, Goorie writer Melissa Lukashenko characterises the pre-invasion Aboriginal world as culturally, spiritually, and economically stable to the point of "homeostasis" (2015, 10). However, while Kulin cultural and

[59] Until recently Australian anthropologists primarily based their research on male Aboriginal informants. Many contemporary anthropologists and historians such as Mary Tomsic, Joanna Cruikshank, Julie Evans and Patricia Grimshaw have brought a feminist lens to Victorian Aboriginal history highlighting the importance of women in resisting colonial systems such as Protectionism and incarceration on reserves. See: Cruickshank, Joanna & Grimshaw, Patricia 2015, 'Women, authority and power on Ramahyuck Mission, Victoria, 1880–1910', in L Boucher & L Russell (eds), *Settler Colonial Governance in Nineteenth-Century Victoria*, ANU Press, Aboriginal History Inc., Canberra.; Nelson, Elizabeth, Smith, Sandra & Grimshaw, Patricia (eds) 2002, *Letters from Aboriginal Women of Victoria, 1867–1926*, University of Melbourne History Department, Melbourne; Tomsic, Mary 2002, 'Disparate Voices? Framlingham as a site of resistance', in TB Mar & J Evans (eds), *Writing Colonial Histories: Comparative Perspectives*, History Department, University of Melbourne, Melbourne.

[60] There is some evidence that there were permanent villages which severed as trade hubs especially in the Western District, such as remains of the complex eel traps, stone huts and fire-pits at Budj Bim. See Builth, Heather 2009, 'Intangible heritage of indigenous Australians: A Victorian example', *Historic Environment*, vol. 22, no. 3, pp. 24-31.

philosophical systems may have remained relatively static, their responses to external political events was interpreted through their law and spirituality.

Just prior to the arrival of John Batman and other settlers in 1835 there was great unrest across the Kulin peoples, with spiritual leaders warning of an impending disaster. We know that agitation was widespread around Narrm clans from William Buckley's biography (Morgan 2002 (1856), 58), with coastal and bayside peoples dealing with incursions of violent sealers and whalers for decades. Historian Robert Kenny highlights (2018) that while Northern Kulin clans did not suffer maritime piracy, their concern about the presence of white men arose through *wayegarie* messengers, encounters with and surveillance of exploring settlers and their bullock.[61] News of the violence of settlers and land wars also travelled to Kulin Country, such as the massacre at Convincing Ground on Gunditjmara Country, the terrorism of the Henty brothers' men in the south-west, and the resistance of Wiradjuri warriors and other Riverina peoples from the north. Given that word of violent outsiders was seemingly converging on Narrm, it makes sense that Kulin spiritual leaders would predict that their world was under existential threat and that the sky was close to collapsing (Christie 1979, 5-7).[62]

Kulin diplomacy

It is widely acknowledged that Aboriginal clans had relations with their close and distant neighbours, however, rarely in historical or anthropological literature are these arrangements described as political, let alone as 'inter-national' relations.[63] This may be due to contemporary interpretations of the English term 'political' which can imply unequal relations or a struggle for power. As the previous chapter and sections have shown, equality and respect for neighbouring sovereignty and Country was at the core of Aboriginal social culture. Aboriginal clans and nations regularly conducted diplomacy with foreign sovereigns and negotiated treaties, but the form and substance of political or peace-making arrangements is unclear and under-studied. Historians commonly describe the Kulin as a 'regional cultural bloc', a 'federation', or a 'loose confederation', based upon a common belief system and related languages; however, there is generally little detail offered on the political machinations which maintained the grouping.

[61] Kenny shows that the Dja Dja Wurrung and Taungurung were not affected by colonisation and the encroachment of settlers for years after their allies around Narrm's Country had been occupied.
[62] Philosopher Jonathan Lear's *Radical Hope* studies the existential crises of cultural collapse that American Native peoples faced following brutal colonisation and incarceration on reserves, and provides insights into human psychological survival through political and social upheaval. See Lear, Jonathan 2008, *Radical Hope: Ethics in the Face of Cultural Devastation*, Harvard University Press, Cambridge.
[63] In the 1980s archaeologist Harry Lourandos spurred debate among historians with his 'intensification' thesis which claims that Aboriginal economies and societies developed rapidly, only around 4,000 years ago, demonstrated by increasingly complex internal and external political networks. See Brian, Deborah 2006, 'Harry Lourandos, the 'great intensification debate', and the representation of Indigenous pasts', in B David, B Barker & IJ McNiven (eds), *The Social Archaeology of Australian Indigenous Societies*, Aboriginal Studies Press, Canberra, pp. 107-23.

Barwick readily acknowledges the political implications of the Kulin social structures (1984, 101, 108) and while her analysis was influential and underpinned the Kulin agency thesis described in coming chapters, it is limited to individual leaders rather than the confederation as a whole. For scholar Jessica Weir (2007, 96), in the Aboriginal context the term 'confederation' emphasises that a grouping is more than a cultural special interest association, but rather an "alliance of political entities" based on mutual recognition of sovereignty. Cultural and spiritual similarities like related languages and Bunjil's laws were preconditions for kinship relations, however mutual respect of clan sovereignty set the conditions for diplomatic foreign relations with the potential for a powerful and enduring political bond. The Kulin political alliance was aimed at ensuring the sustainable balance described in the previous chapter through political conciliation.

Wurundjeri (Woiwurrung) Elder Uncle Bill Nicholson writes that it was "treaty and diplomatic relations" between clans which maintained widespread peace and stability (Poulter & Nicholson, B 2017, 5). According to Bill Nicholson and historian Jim Poulter, confederated, treaty-bound groupings of Aboriginal peoples were not unique to the Kulin; across the continent there were approximately 1,500 clans across 350 language groups, some of whom joined to form around 60 federations. This system roughly maps on to Australia's governmental structure with clans akin to local councils, language groups as states, and federations as federal governments. However, Aboriginal sovereignty is held at the grassroots clan level; federations or political alliances were not supranational and did not assume member's sovereign entitlements.

Experiential treaty-making

Political arrangements likely negotiated between Kulin clans over thousands of years were of an entirely different substance to the formally negotiated European tradition of treaty-making which developed in the 17th century. There is no 'hard evidence' to prove the Kulin's political alliances. Perhaps at one time there was recorded evidence of Aboriginal political arrangements, but Australian colonisation sought to destroy all structures of Indigenous governance and sovereignty. Regardless, there is clear memory of the Kulin alliance: anthropologists like Norman Tindale and AW Howitt, and Protectors like William Thomas and GA Robinson interviewed survivors of dispossession who spoke of their place in a greater Kulin nation (Barwick 1984; Clark 1990). Today, paying respect to the Kulin nations is a common part of acknowledgements of Country, and members of Kulin nations often identify their clan or language group within it (Dempster 2007). Every year members of the five Kulin nations assemble and perform *Tanderrum* as the opening of the Melbourne Festival, invoking the continuity of their ancient alliance and kinship networks (Abascal et al. 2019; Nicholson, M & Jones, D 2018).[64] We may have few details about the Kulin alliance's formation but as historian

[64] For more background see Figures 18 and 19.

Minoru Hokari points out, every time 'Kulin' is invoked or an Aboriginal person identifies with it, history is manifested (2011, 58-60). Aboriginal peoples developed a robust, intergenerational oral and story-telling tradition, while European peoples developed a written system of recording facts and histories (Hokari 2011, 133-334).[65] As memory and history of the Kulin people and alliance still exists, historians can explore it through oral traditions and imaginative methodologies.

Indigenous nations in Australia had, and have, well-established and independent constitutions which, as legal scholar Shaun McVeigh writes exist in "terms of parallel cosmologies, laws, and jurisdictions" (2014, 475). Indigenous constitutions were not erased by colonisation and hold as much legal and social legitimacy and influence as the constitutions of European powers (Balint et al 2020); both perform the same functions of establishing the core legal principles, rights, and responsibilities of a society (Dziedzic & McMillan 2016, 340-341). Wiradjuri legal scholar Mark McMillan and his collaborator Anna Dziedzic consider Indigenous constitutionality as existing in the oral tradition, arguing that scholars must analyse its "function rather than form" (2016, 341). Scholar Jennifer Balint agrees with McMillan, arguing that just because Indigenous laws were never recorded on paper does not preclude their existence, nor diminish comparisons to European laws.

For Dziedzic and McMillan this difference does not determine a culture's constitutionality; both had frameworks which contained the "rules, institutions and systems of that structure and regulate the exercise of public power … including to make and enforce laws and resolve disputes" (2016, 341). Western oral and written legal traditions are not, however, entirely independent. As Dziedzic and McMillan point out (2016, 340-341), modern scholars accept "that [a social] constitution is not completely and exclusively contained in a single written document but is supplemented by principles, values and institutions that are not formally expressed in the written document but rather emerge from interpretation and *practise.*"[66] I apply Dziedzic and McMillan's frame of the practise of Indigenous *law* to treaties and treaty-making.

Indigenous knowledge of politics and governance is transmitted inter-generationally, "retained within nations and communicated through practice, storytelling and ceremony" (Dziedzic & McMillan 2016, 343). Furthermore, existing as oral traditions and being based on customary practice make Indigenous constitutions fluid, "chang[ing] over time and in particular in response to events such as natural disasters, internal conflict and external engagement" (Dziedzic & McMillan 2016, 342). While each Indigenous nation had their own constitution and set of laws which derived from it, when groups

[65] Hokari provides additional context to the distinction between Aboriginal and European definitions of laws and agreements; however, we must be careful to not generalise Indigenous belief systems across nations or indeed the continent. Writing in the context of the Gurindji people of Central Australia, Hokari notes that British laws are viewed as immoral partly because they are recorded and written on *paper* and are thus temporary and subject to ongoing revision. In contrast, Gurindji law has been fixed since the Dreaming and is unchanging.
[66] Emphasis mine. Throughout this thesis I follow Australian English conventions, with practice as a noun and practise as a verb.

shared cultural and kinship ties laws also became shared to an extent as a political consensus on how clans and nations interacted emerged, such as the overlap amongst the Kulin nations.

The philosophical principles and cosmological narratives embedded in Country that governed Aboriginal societies, which Dziedzic and McMillan consider constitutional laws, were "known to the people through practice—that is, by living the law—and through story, song, and other media of Indigenous law" (2016, 349). Across the continent these laws held the common denominator of the Dreaming and Songlines, but locally they varied according to environmental conditions and set group behavioural expectations (Hokari 2011). I extrapolate McMillan's argument by turning attention to Aboriginal peoples' external — human-Country, human-non-human, inter-personal, inter-nation — relations. Chapter 1 explored how the Kulin had political relations with their Country and Waters, and their animal neighbours. As with global politics today there were many differing styles of 'inter-national' relations in ancient Aboriginal societies. Earlier I explained how it is unlikely that there were any imperialist nations in the traditional Indigenous world, but there are examples of peoples who chose to live in isolation from their neighbours, such as the Gunnai-Kurnai of Eastern Victoria (Fison & Howitt 1880). The previous chapter explored experiential treaties as a framework for analysing political accords between a sovereign Aboriginal nation and a non-sovereign party, and below I explain how this form of treaty-making functioned between two sovereigns. Many groups of nations with common cultures, such as the Kulin, formed political blocs, and I argue that this was through a process of Aboriginal treaty-making.

We do not know which Kulin nations first formed alliances, but we can recall the 'Time of Chaos' story which showed that before the bay's flood the Narrm peoples were living against Bunjil's laws and in constant conflict (Briggs 2014). As explored in Chapter 1 the story has clear philosophical and pedagogical intentions, however the story is also *history* of sea level rise, and evidence of the longevity of Aboriginal memory. It can be interpreted literally. The flooding and drying of Narrm was likely the most significant environmental change in Kulin territory in the past 6,000 years, and as an event may have been a political catalyst for the forming of the Kulin alliances. Considering the ongoing evolution of Narrm and the extent of its inundation we may presume that the Waddawurrung, Boonwurrung, and Woiwurrung entered negotiations to manage the shared resource concordantly. The Dja Dja Wurrung and Taungurung nations to the north of Narrm may have had pre-existing relations with each other and with the bayside peoples or entered into the alliance at latter stages. In establishing and revising territorial boundaries it is clear that respect for the sovereignty and custodianship of Kulin clans was paramount to the political arrangements, which sought to find a new balance and social cohesion for clans around the bay.

For the Kulin peoples, treaties were iterative; they were not created in a single instance nor were the political arrangements reached static. The Kulin *practised* diplomacy and foreign affairs — treaty-

making — in their regular interactions with neighbouring clans or visiting groups from further away. The tenor of a political interaction depended upon whose Country a party was visiting, and what kinship connections they had there; while travelling across Country iterative consent was required to be gained or be renewed through treaty protocol as a group entered a new clan's sovereign territory. Inter-nation treaties facilitated peace and a lasting balance, which could provide a greater level of social and economic stability in the changing environment. These treaties were conducted according to the oral tradition of Aboriginal law and life and transmitted across generations and clans through story-telling and everyday performance. As McMillian argues (in reference to contemporary and historical diplomacy) treaties are "an organisation of our [Indigenous] sovereignties"; regulating access to one's Country and conducting inter-nation relations are the hallmarks of a politically independent people (2019).[67] In this sense, the Kulin's treaties were *experiential*, practised by individuals as a core element of cultural and political knowledge, as will be elaborated on in the following sections and chapters.

Experiential treaties are mutually beneficial political arrangements with the main tenets of (but not limited to):

- Respect for sovereignty and local authority arising from custodianship of Country (not from other sources of power such as military strength or material wealth)
- Reciprocity
- Iterative agreements requiring repeated re-negotiations over time and as parties move into territory which the original party has no rights to speak for
- The protection of guests
- Legal negotiation and cultural obligation interpreted by Elders or Elders Councils (instead of legislative processes in the Western parliamentary sense)
- Performance in everyday practise of inter-personal/clan/nation relationships (rather than defined static agreement), with potential cementing through rituals
- Politically evolving relations grounded in ongoing consent (rather than imposition of terms with no expiry)
- Flexibility to allow for minor disputes to be resolved without threatening the alliance
- The ability for treaties to be suspended and resumed.

Lynne Kelly (2015, 17-18) acknowledges that accurate political chronologies for Aboriginal cultures may not be possible for more than a few hundred years, but she also argues that it is clear Australian Indigenous politico-geographic cultures have been transmitted continuously for thousands of years. During the period of social, cultural, and legal transition driven by Narrm's environmental evolution

[67] McMillan in Behrendt, Larissa (Producer) 2019, *NAIDOC 2019: Treaty Panel Part 2*, ABC Speaking Out, Sydney, 10/09/2019, <https://www.abc.net.au/radio/programs/speakingout/speaking-out/>.

the five language groups, encompassing up to 70 sovereign clans, established ongoing, peaceful relations with clear mutual benefits.[68] While we may not have much empirical data on the formation of the Kulin alliance, Hokari advocates for substituting 'experientialism' for 'empiricism' in order to open new imaginative avenues for historians (2011, 59). With this inability to be precise in mind, I will now explore some forms of experiential treaty-making that were developed between the Kulin peoples under Bunjil's law.

Leadership and authority

The authority of Elders and matriarchs was instrumental in the enforcement of law and practise of experiential treaties. The heads of most Kulin clans were called *Ngurungaeta,* while the Boonwurrung and coastal Waddawurrung called their leaders *Arweet*.[69] The title of Elder was not hereditary nor age-based but bestowed according to wisdom and experience. Leaders were selected by the clan and ordained by Elders to best represent their interests internally but also in relations with other groups (Lukashenko 2015; Pascoe 2007). Kulin Elders, including matriarchs (Behrendt & Kelly 2008, 94-95), were largely responsible for interpreting ancestral law in "all the processes of delivering justice, protecting the peace, management of social roles [and] division of the land's wealth" (Pascoe 2014, 131). Day-to-day decisions on clan welfare were made by consensus, but Elders councils presided over interpretation of law locally and distributed punishments for infractions (Christie 1979, 14; Ellender & Christiansen 2001, 100).[70]

Beyond their immediate clan, through diplomacy Elders had a key role in maintaining external peace with treaty allies. For issues which affected entire language groups or indeed the Kulin nations, Elders deliberated collectively at political gatherings which were often tied to a seasonal resource or culturally significant location, a custom which continued through the early colonial period (Christie 1979, 17-20). For instance, inter-nation cooperation occurred when necessary; when spiritual matters required resources from different clans and countries the Kulin were mobilised with a common goal, such as the mission to gather axes to stop the sky falling, recounted in Chapter 3. At these political gatherings, all elements of the Kulin bonds were accentuated: respect for sovereignty and Country, access to Country via kinship or consent, intimate knowledge of sustainability and ecology, cohesion of cultural protocol, and Bunjil's law.

Beyond leaders like Billibellary and Derrimut (explored in Chapter 5), information is scant on the majority of Kulin *Arweet* or *Ngurungaeta* as most were killed soon after their lands were occupied. As

[68] In preparing for the Victorian Treaty process, the Victorian Traditional Owner Land Justice Group used the research of Diane Barwick, Ian D Clark and others to list the known clans of Victorian nations. See VTOLJG 2016, *Sovereign First Nations Treaty Commission: The Treaty Negotiator and Representative Body*, Victorian Traditional Owners Land Justice Group.
[69] Many Aboriginal intellectuals highlight that the clan leadership is akin to a meritocracy and is in stark contrast to European hereditary title system.
[70] Christie points out that Elder status was a designation based on experience, expertise, maturity, and community recognition not necessarily age.

we will see in coming chapters, we know little more than the names of the Waddawurrung leaders who navigated colonisation in 1835. While individual Kulin *Ngurungaeta* and *Arweet* were seen by colonial administrators as superior to their kin — especially Aboriginal women — they never held sovereignty over their land individually, as the entire clan were the custodians and the collective voice of their Country.[71] It is important to highlight again that sovereignty was — and evidenced in debates surrounding the Victorian Treaty process, some Aboriginal groups led by Lidia Thorpe (Gregorie 2017; Thorpe 2018) and the Victorian Traditional Owner Land Justice Group (2016), claim still is — held at the grassroots clan level.

Tanderrum: ceremony of treaty

Kulin clans practised experiential treaties through performing *Tanderrum*. *Tanderrum* is the Kulin "ceremony or ritual of diplomacy or hospitality" which granted guests permission to enter and temporarily occupy a clan's Country (Dempster 2007, 9). While I do not doubt the existence of *Tanderrum* as a ceremony, historians do not know what components of a performance defined the ritual. Thus, *Tanderrum* is best conceived of as a performance in Greg Dening's terms: significant political and social information (often overlooked or misunderstood by settler witnesses) was encoded in a recital, yet we can derive the potential meaning through analysis of relations that followed.

As will be explored in following chapters, *Tanderrum* is well known today because it was probably performed for John Batman, who recorded a ceremony involving passing of water and soil in his diary. Batman's description of *Tanderrum* is of a ceremony that could not have lasted longer than an afternoon, whereas Protector of Aborigines William Thomas (in Bride 1898, 97-8) describes a lavish performance stretching over days and involving the entire. Common to both Batman's and Thomas' descriptions are the sharing of water and boughs of trees. These gestures symbolised generosity to guests and consent for them access the wealth of the land, demonstrating Kulin hospitality, good faith and non-violent intent. *Tanderrum* communicated to guests that they will be protected by their hosts; water and food are safe to consume, and in some cases, weapons were broken before the newcomers to symbolise physical safety. While coming chapters will discuss other less formal ceremonies which functioned in a similar manner of approving settlers' access to land, here I will explore the concept of *Tanderrum* generally as an expression of experiential treaty-making.

Tanderrum, and the welcome and protection it offers guests on Country, is an exertion of sovereignty. It is not clear how often *Tanderrum* was performed or under what conditions, but it appears to have functioned as a form of welcome and vetting ceremony when foreign clans or visitors were found on Country without permission or a reciprocal kinship travel arrangement (Ryan 2017, 5-6). When accepting the ceremony, guests on Kulin Country promised that they would obey Bunjil's laws to not

[71] It can be a difficult reality to accept, but many Indigenous leaders personally and materially gained great benefits from treaties with colonisers, especially in having their existing political power and status entrenched through recognition from colonial authorities and militaries.

harm people or the land. The requirement of promising to obey Bunjil's laws may have been inspired by the flood of Narrm and following environmental upheaval, recounted by Briggs and fully described in Chapter 1. Briggs describes how bayside clans were violating Bunjil's laws and living unsustainably, and the reiterative nature of *Tanderrum* may reflect the desire to continue honouring the pledges made during the 'Time of Chaos'.

It appears that *Tanderrum* only granted *temporary* permission to travel through and use the resources of Country, implying that this form of transient occupation was conditional, or at least would expire (Attwood & Doyle 2009; Clark 1998). Under the Kulin's experiential treaties permission to occupy Country was provisional. If laws were broken or harm was done, it was a host's right to withdraw their consent for the presence of visiting guests. *Tanderrum* was a welcome and a performance of sovereignty and articulation of consent, and by extension an act of treaty: allowing guests to travel on Country, guaranteeing safe passage, and granting temporary access to resources. Consent was iteratively obtained, needing to be regularly renewed through daily interactions in the performance of experiential treaties. As we will see in the following chapter, Kulin clans were voluntary and informed participants in experiential treaty-making with settlers around Narrm, but consent for white occupation was clearly withdrawn when it was apparent that Bunjil's laws were being flagrantly violated. We do not know if or how many times *Tanderrum* was performed to William Buckley, but his example demonstrates that outsiders, be they settler or Aboriginal refugees, can live under Kulin law, respect local clan sovereignty, and practise experiential treaties for decades.

Conflict and dispute

Buckley's account of his 32 years with the Waddawurrung indicates that inter-clan and inter-national life was regularly marked by dispute and at times violent conflict. While experiential treaties were deliberated at Kulin meetings, and if an individual or a clan's violation of sovereignty or shared laws was egregious enough Elders could arrange judgement through a trial or approve of limited violent reprisal to satisfy the aggrieved party (Christie 1979, 18-19; Dawson 1881, 76). The prevalence of Aboriginal warfare is a sensitive issue in historical debates, as instances of inter-clan violence were often used by colonial historians and authorities to dehumanise Indigenous peoples (Maynard & Haskins 2017).

Conflict between Kulin clans and nations certainly existed over breaches of law. Amateur ethnographer Aldo Massola writes (1968, xiii) that Victorian Aboriginal conflicts "could hardly be classified as wars, as they were [generally] rather personal disagreements", but this focus on the inter-personal minimises the political impact of disputes. Violence between Kulin clans was often negotiated between and organised by Elders, making conflicts and punishment of a political nature (Dawson 1881, 77-78). William Buckley and other settlers who lived with Aboriginal peoples witnessed violent conflict among their hosts, but there is no evidence that battles were conducted with

objective of conquering the opposition or eliminating a rival group through attempted genocide.[72] Even in times of scarcity subjugation of other peoples was not evident and despotism was contrary to Aboriginal law (Poulter & Nicholson, B 2017, 4; Lucashenko 2015).[73]

Aboriginal historian Bruce Pascoe (2007, 154) attributes the reluctance of Aboriginal peoples to engage in large-scale warfare to sustainability; for groups with low populations, death and incapacitation of valuable warrior-hunters or potential mothers from uncontrolled and prolonged fighting would have had enormous social and economic impact. According to Pascoe and Buckley, women often participated and were injured in battle. Experiential treaties between allied Kulin clans explain the willingness of groups to engage in small-scale, limited conflict; retributive violence was permitted under the flexible terms of their treaty, which would not disrupt overall diplomatic or political structures such as marriage or trade.

When Kulin warriors did engage in violence with their treaty-partners, it was in a highly organised fashion. Intractable personal disputes or egregious grievances that breached clan sovereignty, were dealt with by Elders through sanctioned, organised violence which was exercised in a highly ritualistic, retributive, and symbolic performance. For instance, if a warrior was killed by another clan the perpetrators were sought out and engaged in battle, which would promptly end once the a member of the offending *party* had suffered a casualty (Maynard & Haskins 2017, 48-59, 219-221).[74] Having limited organised violence available as a dispute resolution mechanism allowed the Kulin alliance partners *flexibility* in their relations, which is characteristic of experiential treaty-making. If an infringement on sovereignty or a political affront was made between clans, the matter could be resolved relatively easily and quickly without affecting the over-arching nature of an alliance between nations. Ultimately, the role of clan leaders appears to have been crucial in managing the use of violence within the alliance, which will be evident in the following chapters with the intervention of leaders in preventing attacks on settlers.

The strength of the Kulin alliance is demonstrated through the long-standing rivalry and violent feud between the Boonwurrung, and the Gunnai-Kurnai. The Kurnai were not affiliated with the Kulin and known to be culturally isolated and lacked the spiritual bonds the Boonwurrung shared with other Kulin nations (Fison & Howitt 1880). There are few details available on the nature of the rivalry

[72] Maynard and Haskins analysed the accounts of many settlers who spend protracted times with Aboriginal peoples across the Australian continent in the first few decades of colonisation. Their account of inter-nation conflict is fascinating, which at times is likened to a competitive sport for clans, see Maynard, John & Haskins, Victoria Katharine 2016, *Living with the Locals: Early Europeans' Experience of Indigenous Life*, National Library of Australia, Canberra, pp. 219.
[73] See Chapter 1, note 31.
[74] Maynard and Haskins list multiple examples of this form of limited retributive combat, based on the accounts of William Buckley and later occurrences of inter-nation disputes after colonisation. Retribution was determined to have been achieved when the offending clan suffered *any* casualty, not necessarily the perpetrator of the original crime.

(Ellender & Christiansen 2001, 70), and while it is thought to have been many generations old by the time settlers arrived at Narrm the conflict may stem as far back as flooding events or other environmental factors. Skirmishes between Boonwurrung and Kurnai people consisted of raids into each other's territory and while reciprocal were typically unrestrained, resulting in major casualties and the kidnapping of women. Historian Michael Christie (1979, 20) lists the Boonwurrung-Kurnai feud as "an element of fear and anxiety in an otherwise peaceful existence" for the Kulin peoples, however presumably he means only those with territory near Gippsland. We don't know what strategies may have been used to mediate the feud, but it is clear that the Kulin had political structures in place to prevent that level of wanton and unpredictable violence within their alliance.

Historian Marie Fels uses incidents of violence from after the settler invasion to launch her exploration of the conflict and does not examine the make-up of the Kulin treaties, however she does note that the Boonwurrung's alliance with the Woiwurrung and Waddawurrung allowed them to direct their defensive and offensive energy to the east as they did not have to worry about their other neighbours (2010, 280). There is no evidence to suggest that the Kulin alliance had capacity to raise a joint-military force, and it appears that the Boonwurrung were alone in their battles with the Kurnai. Speculating on the origins of the feud is beyond the scope of this research, but Fels explores various theories which attempt to explain the origins of the rivalry which continued into the 1940s (2010, 275-290): such as resource competition, the ongoing harassment and kidnapping of women or a long-standing territorial dispute (which, interestingly, she relates to the flooding of Narrm and the presence of earthquakes). While the Kurnai's cultural isolation alone is unlikely to account for why the Boonwurrung continued to direct violence only to their eastern neighbours, experiential treaties can help to explain how they kept ongoing political relations with other clans around Narrm.

There is much unknown about the rivalry between the Boonwurrung and the Kurnai, but their tense and ongoing hostility is an interesting counter-point to the Kulin alliance which, while preserving peace between neighbours, allowed for a limited level of bloodshed.[75] The enmity between the Waddawurrung and Woiwurrung in 1835 is often mentioned by early colonial accounts (Clark 1990, 331-332; 1998, 10-11), however this rivalry seems comparatively limited to a sense of mistrust due to no mentions of blood-feuds or violent long-term rivalry.[76] There is also evidence of a feud between Kulin neighbours the Dja Dja Wurrung and Taungurung which predated colonisation, however as Clark (1998, 16-17) argues it was very likely to have been exacerbated by the spread of settlers north

[75] Violence in many Aboriginal clans functioned this way, however it is not clear if this was the case for external disputes. See Behrendt, Larissa & Kelly, Loretta 2008, *Resolving Indigenous Disputes: land, conflict and beyond*, Federation Press, Sydney, pp. 95-6.

[76] William Buckley, as an adoptive Waddawurrung man, raised concerns that the Wurundjeri may be suspicious of him when working as a translator for colonisers at the Yarra camp. At no point in his account does he mention physical threats to him or the many Waddawurrung people camping at the Yarra arising from the inter-nation dispute. While his horse was hamstrung in late 1936, it is likely that this was done by Waddawurrung men tired of Buckley's complicity with the invaders.

from Narrm, creating resource competition on a scale previously unknown to the Kulin and a situation where dispossessed peoples were turning to neighbours who were already stretched to capacity. Importantly, these minor conflicts were not over land tenure or rights, but most likely arose from and by political disputes over breaches of cultural law or at times political marriage (women were not simply lusted after). This suggests that through experiential treaties the allied nations maintained high respect for the sovereignty of individual clans, who were free to engage their own foreign policy while enabling the attacking of external nations or limited conflict with Kulin clans without challenging established territorial boundaries.

Marriage as treaty

Experiential treaties both provided temporary protection from violence and avenues of limited armed conflict to resolve disputes, but the Kulin's system of kinship provided a more sustainable and diplomatic means to bond clans in long-term alliances: marriage. As established earlier totemic designation under Kulin law is hereditary and clans needed to seek marriage partners from unrelated groups, making arranging marriages an inherently political and mutually beneficial process. The lens of experiential treaties emphasises the political nature of marriage, as when brides moved to their husband's Country and clan group Kulin law would be drawn upon to guide the interpersonal, everyday interactions between a woman and her new hosts. Marriage ties facilitated peaceful relations between neighbouring clans and access to kin's Country, resulting resource trading and greater economic prospects. As Clark notes (1998, 6), the "Aboriginal cosmos was spatially limited; most people in the known world were kin", meaning tracing kinship through marriage networks was a means to socially locate someone. Furthermore, when people were unknown, such as settlers like William Buckley or foreign Aboriginal people from Bass Straight (described in Chapter 1) or New South Wales (as will be explored in Chapters 4 and 5), offers of marriage enabled an outsider to be brought into local kinship and law.

Kulin men from distant clans occasionally saw each other at ceremonies and large-scale gatherings, but their clans remained connected and likely allied through the ongoing custom of arranged marriages. Historian Louis Lane highlights the importance of *corroboree* gatherings as meetings to arrange marriages, which were predominantly "made for political reasons" to cement relations between clans (1990, 5). Kulin women were the front line of inter-clan and inter-nation treaties; they maintained the alliance's diplomacy (Lane 1988, 5). When viewed as experiential treaty-practitioners Kulin women retain substantially more political agency than historians and anthropologists often afford them. A childless woman could divorce her husband with his consent and return to her clan and Country, and if she was treated with excessive violence cruelty by her husband or his family she could go to an Elder for protection and seek a new husband (Dawson 1881, 35). We know from Buckley's account that Waddawurrung women had some agency in courtship but there could also be violent

consequences for non-arranged marriages which would "lead to a quarrel between the families and their respective tribes", potential severing political connections (Morgan 2002 (1852), 64-65).

It is important to note while the political nature of Kulin customary marriage and the possibility of women's agency has been under-explored by historians, subverting the patriarchal marriage system was hard. Kulin women were promised to men as teens, or younger, and husbands were permitted to dominate their wives with a level of physical abuse, as Buckley (Morgan 2002, (1852), 114-116) and amateur anthropologist James Dawson note (1881, 33-36). Interviewing survivors of the Victorian genocide Dawson found many violent consequences for Aboriginal women subverting their clan's marriage systems; for example, incest was punishable by death for the mother and child and eloping usually resulted in harsh beatings (Dawson 1881, 28, 33-34). Historians often attribute the source of inter-nation conflict as inter-personal disputes between women and spurned husbands or lovers. However, as marriage affected the prosperity of entire clans, women's agency in leaving marriage must be seen as a suspension or revocation of an experiential treaty, with serious political consequences for entire groups, not just the parties involved. Marriages were arranged and disputed regularly at large meetings, and under the model of experiential treaties Kulin customary marriage should be considered as an everyday instance of political negotiation and diplomacy.

It is of further importance here to highlight the political distinction between marriage and sex. Anthropological sources do not elaborate on the cultural acceptance of consensual sex outside of marriage, but it is known that rape was forbidden, and men were punished for it. As we will see in Chapter 5, by 1835 arranged marriage was used as a tool not only for the Kulin but was offered to outsiders to attempt to entrench the political relationship in the Geelong Treaty. White settlers were not offered arranged marriages, but their Aboriginal employees were, and while cross-cultural sex — consensual and not — occurred in the early colonial period, white men sleeping with Aboriginal women did not have the same political implications as marriages arranged by Elders. The earliest example of cross-cultural marriage for the Kulin was almost definitely William Buckley, who's presence looms over this thesis.

William Buckley, imperial refugee

Of the few colonial settlers who lived with Aboriginal or Torres Strait Islander peoples across the Australian continent for substantial periods, William Buckley is the most remarkable and misunderstood.[77] For 32 years Buckley was *permitted* to live amongst the Waddawurrung, the south-western Kulin nation whose territory includes *Beangala* (the Bellarine Peninsula), parts of the Surf Coast, and a corridor from Narrm into the Western District, including present-day Geelong, Colac,

[77] In *Living with the Locals* Maynard and Haskins collected the stories of settlers who were permitted to stay with Aboriginal clans in the early colonial period.

and Ballarat.[78] Buckley has been mythologised in Australia frontier folk-lore, which will be further in later chapters, but here I focus on his time with the Waddawurrung as it pertains to experiential treaty-making. In doing so I view Buckley through the lens of Kulin agency and generosity, opening new interpretations of not only his story but the politics of the Kulin, allowing him to be seen as a refugee from British colonialism. Recalling Chapter 1's exploration of landless and vulnerable refugees around Narrm, Buckley's acceptance by the Waddawurrung represents a continuation of the bayside Kulin's openness to accepting and integrating new polities into their system of kinship and Country. As a long-term guest on Country, Buckley's ongoing relations with his Waddawurrung hosts, their law, and jurisdiction demonstrate that the Kulin performed their tradition of experiential treaty-making with outsiders successfully for decades prior to the arrival of Batman's crew in 1835.

The early facts of Buckley's life are relatively unremarkable in terms of the backstories of convicts.[79] He was born poor in Cheshire, in England's rural north. After a brief apprenticeship Buckley joined the King's Army and was sent to war in Holland. Following his return to England he was caught with some stolen cloth, and rather than life on London's disease infested prison hulks or the death penalty, in mid-1802 Buckley was sentenced to transportation to *Terra Australis*, later known as Australia (Linnell 2019). Instead of arriving in the penal colonies of New South Wales, in October 1802 Buckley and roughly 300 other convicts were sent to Boonwurrung Country to establish a penal colony in the recently surveyed bay of Narrm.[80] The colony at Sullivan Bay, near present-day Sorrento, was an abject failure. Environmental challenges and the lack of fresh water were exacerbated by interference from the local Boonwurrung clan. The colony was planned to be located near a freshwater stream but sailing into Narrm the British ship almost ran aground on a sand bank (see Figures 3 and 4) and had to land at the far end of the Mornington Peninsula. Narrm had acted politically in deterring the establishment of a permanent settlement. The camp lasted less than a year. On Christmas Eve 1802, Buckley and three other convicts escaped (Campbell 1987, 119). One was killed by gunshot, one turned back to surrender, and Buckley separated from the other escapee to wander the coastline of the bay alone. Buckley was just 23 years old when he fled the brutal and arbitrary British penal system.

After weeks of wandering Buckley was approached by a small group of Aboriginal men — it is unclear if Buckley's first contact was on Boonwurrung or Waddawurrung Country — who likely saw a gaunt and despairing white man. The Aboriginal group responded to the stranger's desperation by

[78] See Figure 6.
[79] Buckley's story was told in biographies by his contemporaries John Morgan and James Bonwick, and he has since become the object of scholarly and creative attention: inspiring a fictional re-telling, see Robertson, Craig 1980, *Buckley's Hope: The Real Life Story of Australia's Robinson Crusoe*, Scribe, Fitzroy; a collection of poetry, see Hill, Barry 1993, *Ghosting William Buckley*, William Heineman, Port Melbourne; and a 2009 television renactment/documentary *The Extraordinary Tale of William Buckley* produced by Screen Australia.
[80] Garry Linnell's *Buckley's Chance* offers an excellent portrayal of the bleakness of the British Countryside and repressive society in which Buckley was raised.

sharing a "feast of crayfish", sheltering him in their huts, and leaving him with a basket of berries as a parting gift (Maynard & Haskins 2016, 30). While Buckley was fearful for his life given the hostilities that occurred with the local clan at the prison colony, the men who fed him showed no aggression and did not need to incorporate him into their spiritual beliefs to demonstrate pity. Buckley's first interaction with Aboriginal men was of the same generosity and care which would define the next decades of his life.

For the Waddawurrung (and other Kulin), a warrior can be resurrected and reborn as a *ngammadjidj:* a pale person returned from the dead with few memories of their past life (Clark 1998, 7). Being six foot six inches in height, Buckley happened to have a similar physical stature to a recently killed warrior, from who's grave he happened to steal a spear to use as a walking prop. After months of wandering the bush alone, when Buckley encountered a small group of Waddawurrung he was immediately taken for the warrior's returned soul and dubbed Murrangurk (Maynard & Haskins 2016, 30-32). Taken to their main camp, the vulnerable Buckley was fed, clothed, sheltered, and returned to the care of the brother of the killed warrior and his family, with whom he would live with and learn from. In the winter of 1803 Buckley was rescued and adopted by the Waddawurrung, spending the next 32 years under their protection and jurisdiction.

The clans of the Waddawurrung allowed Buckley to live amongst them and use their resources, granting him access to their culture and lives (Clark 1998, 10).[81] We do not know if or how regularly Buckley received or participated in *Tanderrum* ceremonies to formally consent to his occupation of Country, however it is clear from his detailed knowledge of Kulin language names for places along the central Victorian coast and bays that he was welcome on many Waddawurrung clans' territories and travelled to lands other Kulin nations (Morgan 2002 (1852), 108, 71, 74-76).[82] That the white stranger was welcomed and accepted at all is remarkable, given that the first *recorded* murder of an Aboriginal person in Victoria by a coloniser was a Waddawurrung man at Kooriaoo (Corio Bay), shot in October 1803 by a British officer who supervised Buckley at the Sullivan Bay colony (Clark 1995, 173).

For the Waddawurrung Buckley was a gigantic infant, ignorant of the Country and culture; his British background, military training, carpentry skills and battlefield experience in European wars had little to offer their society. Pascoe (2007, 22-3) describes him as a "largely incompetent, but apparently harmless, white man", whose only achievement was (barely) surviving a few months on the Narrm

[81] Clark argues that many Aboriginal groups in Victoria processed the coming of white men through their belief in resurrection, but the violence and ill-intent of settlers was often obvious and rapid, leading to rationalisation and reconsideration of the behaviour and expansive spread of colonisers. According to Clark when settlers where viewed as resurrected clansmen 'jumping up whitefellow', it may have been an attempt to "obligate Europeans to share their goods and possessions" with host communities.

[82] Buckley's favourite place to camp was Kaaraf, the creek leading to modern-day Breamlea, but he details travelling to *corroborees* throughout Waddawurrung Country and beyond. See Figure 12.

foreshore and inland bush. It is unlikely that by the 1830s the Waddawurrung continued to believe that Buckley was a resurrected warrior, so we must explore why the Waddawurrung welcomed Murrangurk and allowed him to tentatively enter their community. A critical reading of Buckley's biographies suggests that his humble nature enabled his integration through experiential treaty-making and to learn from, and contribute to, Waddawurrung society.

"Violence and great hardship"

A useful way to conceptualise why the Waddawurrung accepted Buckley is to consider him a refugee in the contemporary sense. Historian Tony Birch argues that Buckley's escape and later refusal to return to the Sullivan Bay penal colony should be interpreted as a search for political asylum from European imperialism.[83] Buckley grew up in the harsh social reality of industrialising England, defined by rigid class hierarchy and a hyper-active, violently repressive penal system. Even after fighting the Dutch for the Crown, as an uneducated, lower-class man Buckley was subjected to the British cross-continental imperial prison network and arbitrarily transported to the other side of the world (Morgan 2002 (1852), 13).[84]

Historians John Maynard and Victoria Haskins see Buckley and other settlers who lived with Indigenous peoples as akin to a refugees, emphasising their vulnerability and the fact that were offered (at least initially) unconditional welcome (2016, 2). However, while the settlers analysed by Maynard and Haskins shared similar circumstances when rescued by Aboriginal people, the cause of estrangement from colonial society is not highlighted. Most of Maynard and Haskin's case-studies are castaways, unwillingly stranded, while convicts including Buckley, James Davis and David Bracefell, and ex-convict John 'Bunboe' Wilson were voluntarily in exile; their absconding from British penalism made them political asylum seekers (Maynard & Haskins 2016, 83).[85] Scholar Joanna Peacock (2013, 65) observes that Buckley's escape and search for asylum was a fundamental rejection of the politics and fabric of colonial life. After months in English prisons, a harrowing journey over the Atlantic and then than three months in a prison colony, Buckley preferred risking death in the unknown to continue living repressed and persecuted by relentless carceral mentality. Ultimately, the Waddawurrung offered sanctuary from a system which sought to break people like Buckley. They offered him an experiential treaty.

[83] Birch first discussed Buckley on the ABC radio *Hindsight* program. See Gallacher, Lyn 2004, *Hindsight: William Buckley*, AM Radio, 26/12/2004. Distributed by ABC Radio National. See also Vincent, Eve & Land, Clare 2003, 'Silenced Voices', *Arena Magazine*, no. 67, pp. 19-21

[84] In Morgan's biography, Buckley claims that he was unaware of the "the precise character, or extent" of his sentence until arriving in Narrm.

[85] For instance, Davis' story is similar to Buckley's in many respects. In 1829 Davis escaped from a brutal penal colony near modern Brisbane and spent years with the Aboriginal peoples of south-eastern Queensland. He was also thought to be a resurrected warrior, was adopted by a local chief and given the language-name Duramboi. In experiential treaty terms, for 12 years Duramboi was able to respect custom and sovereignty to gain ongoing consent to occupy and travel extensively over many clans' Country.

Pascoe (2007, 23) is not surprised that Buckley came to prefer the equality of clan life over the "violence and great hardship" he suffered in imperial England and its prisons. Buckley was undoubtedly initially vulnerable and in need of assistance, but he was able to find an ongoing position in the community by demonstrating humbleness, respect, and reciprocity. The following quotes from Buckley's biographies demonstrate that he approached life within his host community with respect and deference: "I lived as they lived and was careful not to give them offense in the smallest thing – yielding to [the Waddawurrung] at all times" (Langhorne in Morgan 2002 (1856), 193). As a refugee (like the Bass Strait peoples) he could not participate in the conventional model of Kulin experiential treaty-making: he had no Country to offer his hosts reciprocal access to, and as an outsider and bachelor he could not extend political opportunities for expanded kinship networks through marriage of daughters and sons. He had to perform reciprocity elsewhere. Hoping to demonstrate his economic value Buckley immediately began repaying the community for their generosity and adopted the policy of collecting and sharing resources: "finding myself now tolerably at home, I evinced a desire to make myself useful, by fetching water, carrying wood and so forth" and "sharing with them whatever I took fishing or in the chase" (Morgan 2002 (1856), 44).

While adopting a deferential and reciprocal approach may be reflective of self-interest in survival alongside genuine humbleness and gratitude, it was Buckley's curiosity in learning from his hosts that is most notable. After gaining proficient language skills Buckley sought to respectfully understand the complexities of the Kulin world and the Waddawurrung's "connections with the different Tribes" (Langhorne in Morgan 2002 (1856), 194-195). However, he consciously avoided discussions of religion or spirituality. Buckley's reluctance to question the Waddawurrung's customs and spiritual beliefs is significant given the how indelibly Christian missionary logic was tied to the philosophy of European colonialism and British culture from which he had fled. Biographer Garry Linnell points out that Buckley's upbringing in rural England would have made him suspicious and fearful of Aboriginal spirits and monsters (2019, 14, 129-131), and thus somewhat fearful or suspicious of the Waddawurrung. However, Maynard and Haskins take a different view, arguing that Buckley showed loyalty to his hosts by intentionally withholding sensitive cultural information on spiritual customs from the colonisers who sought to sensationalise his story (2016, 28).

Buckley's early biographers John Morgan and George Langhorne do not pay much attention to his respectful inclinations, but here we may gain insight into why his relationship with the Waddawurrung was so long-term and fruitful, especially given that the other convict Buckley escaped with was adopted by another bayside clan but eventually murdered for disrespecting protocols around Aboriginal women (Maynard & Haskins 2016, 48). Buckley's approach to integrating with his

Aboriginal hosts is a successful instance of experiential treaty-making.[86] Buckley perceived that the demands his hosts placed on him centred on his respect for Country and law and in his precarious position behaved accordingly.

Buckley was perhaps the only white person to experience life under absolute Kulin jurisdiction, and while initially driven by survival, his accounts and the observations of settlers he travelled with indicate that he developed genuine friendships and connections with the Waddawurrung (Campbell 1987, 125, 148).[87] As a result he was authorised to experience southern Kulin culture and civilisation, much of which was erased from the Victorian social imagination through genocidal policies (Birch 1996, 1999; Wolfe 2006).[88] Buckley slept in stone and reed huts in semi-sedentary villages (Pascoe 2007, 2014), he saw sophisticated fish traps, participated in land and game management through controlled fires, and witnessed the profound and intimate custodial relationship which Aboriginal clans had with their land (Maynard & Haskins 2016, 52-58).

He was taught to reap the bounty of the land, becoming a skilled hunter and fisher, yet despite the fact that his attributes made him physically powerful they did not automatically allow him access to all of the cultural expectations of men (Maynard & Haskins 2016, 56). Buckley was *protected* from armed conflict and not allowed to participate in battle or skirmishes with other Aboriginal groups (Maynard & Haskins 2016, 48-50). Unlike European warfare, Kulin battle was not an exclusive male domain with women often participating, but Buckley was consistently relegated to the sidelines. This may have been due to a cultural belief forbidding someone who has already died to enter into life-threatening battle again, but it may have also reflected an acknowledgement that despite an experiential treaty he was in some respects an outsider. However, as Maynard and Haskins argue Buckley's outsider status came to be seen as useful to the Waddawurrung, as he often played a dispute mediation role on minor disagreements (2016, 50).

Beyond battle and disputes, Buckley clearly had recognised status in the community and understood the roles and responsibilities of clan life. As Peacock highlights (2013, 55), in being reunited with the family of the killed warrior and gaining their acceptance as Murrangurk, Buckley was integrated into the complex kinship structures of the Waddawurrung, including some knowledge of ceremonies and epistemology. This included duty to look after his relations and orphaned children, including a blind

[86] Buckley's approach to living under Kulin law is reflected in the principles of modern decolonial activism, such as: respecting Indigenous authority structures, knowing enough, learning from not about, non-disclosure of secret customs and material, and deference to take directions. See Land, Clare 2012, 'The Politics of Solidarity with Indigenous Struggles in Southeast Australia', PhD thesis, Deakin University.

[87] Campbell reproduces the accounts of Joseph Tice Gellibrand and John Helder Wedge who were guided by Buckley in 1385 and 1836 and witnessed his long-term friendship with Waddawurrung families. See more in Chapter 5.

[88] Victorian (and Australian) colonists sought to erase instances of Aboriginal culture and technology, first through destruction of artefacts and dwellings on the frontier and later by the implementation of genocidal protectionist and assimilationist policies. See also Carey, Jane & McLisky, Claire (eds) 2009, *Creating White Australia*, Sydney University Press, Sydney.

boy to which Buckley became particularly attached (Morgan 2002 (1852), 126-127). Perhaps the clearest evidence that Buckley was *partially* integrated into Waddawurrung (and wider Kulin) clan society was that he had at least one wife, and had at least one child (Morgan 2002 (1852), 128-129; Pascoe 2007, 21).[89] Buckley acknowledged that being offered a wife was a recognition of his social status, stating that marriages were arranged for the "most skilful and useful to the general community…. [those held in] the greatest esteem" (Maynard & Haskins 2016, 58). Buckley's marriage was also likely to a political gesture which would have integrated him beyond Waddawurrung clans into the wider Kulin kinship system, making him knowable and socially locatable not only to his immediate neighbours but to Kulin peoples of the extended alliance (Maynard & Haskins 2016, 58).[90] Buckley had to accept his arranged marriage to a young widow, however it soon became clear that many community members were upset that an outsider was offered this form of political recognition (Maynard & Haskins 2016, 33; Morgan 2002 (1852), 108).[91]

It is unclear how long the Waddawurrung woman lived with Buckley, but when clansmen arrived to bring her back to their Country she went willingly and to avoid violence Buckley did "not make a very great fuss about [his] loss" (Morgan 2002 (1858), 119).[92] It appears that extending marriage to a white man was too much for some (Langhorne in Morgan 2002 (1858), 193), who perhaps recognised that he was not Murrangurk but a foreign refugee. Nevertheless, based on Buckley's testimony and secondary accounts, historians accept that he had at least one child with Waddawurrung women (Flannery in Morgan 2002 (1852), xxvii). Buckley still occupied a liminal space in British and Kulin law. As we will see in Chapter 5, the Beangala Waddawurrung demonstrated the political nature of arranging marriages when the Aboriginal men from Sydney (their Country far removed from the Kulin's kinship network) were invited into marriage with local wives. Despite their Indigeneity, the Sydney men's complicity in colonisation was likely recognised, but marriage was arranged in an effort to cement the diplomatic ties developed during the initial weeks of the Geelong Treaty in 1835 (Todd 1989, 36). We can imagine that for the Waddawurrung, Buckley and the Sydney men

[89] Sometime after (it is unclear how long) his arranged marriage was disbanded Buckley lived with a young woman for "many months". However, Buckley does not describe her as his wife. She appears to have been an outcast from her clan and during this period they had little contact with other Waddawurrung people. We do not know if they had sexual relations or if any children resulted from the partnership, but she eventually returned to her clan.

[90] Buckley clearly had kin within the Waddawurrung given his frequent descriptions of spending time with Murrangurk's brother's family (Buckley's 'in-laws'), so we can assume that he had some level of kinship relationality and a moiety.

[91] Buckley remarked that he "was not in any way consulted" when his marriage was arranged, and to refuse it would have been of great offence to his hosts.

[92] Amateur ethnographer James Dawson heard a story of a woman named Purranmurnin Tallarwurnin from a Waddawurrung clan near Ballarat who was married to Buckley, however provides no detail if she was the widow Buckley mentioned to Morgan. It is possible that he had several brief marriages in his three decades with the Waddawurrung. See Chapter 5.

represented politically expedient potential allies and cross-cultural facilitators with colonisers and later the burgeoning colony of Port Phillip.

Murrangurk's reveal

The Waddawurrung society which Buckley witnessed and, in many respects participated in, was in many ways antithetical to the British imperialism he fled and the colonial society established around Narrm from 1836. Buckley built the trust of his Aboriginal hosts over decades, and as an outsider he observed the Kulin philosophical and social structures discussed in this thesis. Once comfortable in Waddawurrung society and having gained competence in language — perhaps after years or decades, Buckley's biographies are devoid of dates — Buckley grew comfortable enough to expose elements of his background. There is no mention of Buckley explicitly revealing that he was not the resurrected Murrangurk, but he did "frequently entertain [his hosts] when sitting around the camp fires with accounts of the English People Houses, Ships – great Guns etc." and demonstrated practical knowledge of settlers and their technology, and its dangerous potential (Langhorne in Morgan 2002 (1852), 195). Buckley also indicated the origins of his time around Narrm in frequently seeking information about the companions with whom he fled colonialism (Morgan 2002 (1852), 67).

The Waddawurrung were not ignorant or naïve. They may have continued to treat Buckley as a resurrected warrior who possessed useful knowledge about the alien white culture and had great capacity for learning. They may have acknowledged that Buckley was white, an outsider from the same world as the sailors increasingly landing on their Country and the pirates they had fought off for decades, but due to his deferential attitude they permitted him to stay in liminality (Morgan 2002 (1852), 137, 142).[93] Regardless of if his hosts recognised his background, Buckley understood the expectations placed upon him as a guest and participated in an experiential treaty with the *Wadda Wurrung Balug* and *Bengalat Balug* clans. Buckley practised a Kulin experiential treaty for 32 years and during this time and his travels around Kulin Country he may well have been considered a Waddawurrung man. However as with the Bass Strait peoples explored in Chapter 1 and the settlers explored in coming chapters, Buckley possessed no sovereignty over Country and had no choice but to respect the laws of his generous hosts.

Buckley's accounts offer historians a unique glimpse into Waddawurrung society and political culture pre-invasion, which is useful to imagine the organisation of Kulin sovereignties through their social structures and internal political processes explored in this chapter. In conclusion the tenets of the Kulin alliance and their experiential treaties clearly differentiated between those with authority over Country and their guests. Buckley's inter-personal participation in Kulin experiential treaty-making is

[93] Due to his knowledge of and experience with white men, on several occasions Buckley recounts Waddawurrung clansmen approaching him for advice when sailors had beached or anchored around Narrm. Buckley wanted to avoid engaging with settlers, and was alarmed that Waddawurrung had unsuccessfully tried to communicate to some sailors that a white man like them was living close by.

indicative of what we as historians may never be able to know about the structure and durability of the Kulin alliance pre-invasion. As Buckley was excluded from many of the cultural customs and political processes described in this chapter, such as marriage, conflict, and being recognised as a political leader, we must use our imagination to extend anthropological understandings of pre-invasion Kulin. Nevertheless, it is clear that the Kulin's political protocols of arranged marriage, dispute resolution, democratic leadership, and protocols of diplomacy fostered peace around Narrm, which was flexible and durable enough to provide clans and nations avenues for retribution and resolution without affecting long-term overall kinship and political connections.

Part I Conclusion: A history of place

Part I of this thesis demonstrated the longevity and durability of Kulin political practice, a flexible and adaptive system based on experiential treaties which appears to have fostered peace and stability around Narrm for hundreds of generations. This system pragmatically evolved in response to environmental upheaval, the necessity to redistribute resources, and the arrival of vulnerable foreigners; yet ecological and political philosophies underlying Kulin society and values are continuous. By exploring the evolution of Narrm, we have seen that it lies at the centre of the Kulin's political system; first as living Country with its own agency and rights, and second as the site of human-human relations. As a historian I have been able to provide readers with few specific dates in Part I, asking that they take the anthropological understandings discussed and utilise their imagination.

I've asked readers to *imagine* Narrm and the political situation of the peoples who lived around it thousands of years ago. Chapter 1 explored stories of Narrm's creation and evolution, to avoid the tendency of some historians to only write in terms of criticism of European representations of Indigenous history, while not considering or including the world views of local Aboriginal people – historians in their own right (McGrath 1995, 389). Considering story as history rather than allegory or 'myth' resists reproducing scholarly neo-colonialism and Western empiricism as the *only* theoretical mode of constructing the past.

In imagining the ancient Kulin world and their political relations, we have explored the many forms of experiential treaty-making which occurred *before* the arrival of colonisers to Narrm and the violent imposition of British law. We imagined the Kulin's relations with Country and the Waters as treaties, showing that the responsibility to nourish the land and its non-human residents guided life around Narrm for thousands of generations. Chapter 2 expanded upon these ecological responsibilities and examined experiential human-human politics. The Kulin's law, set by creator Bunjil, sees that all human relations were grounded in respect for Country and its limitations, and duty to prevent its degradation.

Chapters 1 and 2 analysed Kulin human relations — in encounters with neighbouring clans, visiting guests on Country from allied or foreign nations, displaced Aboriginal neighbours seeking sanctuary, and later responses to British refugees — and it is important to recall their aversion to subjugate other humans and lack of desire for conquest and the seizure of land and resources, even in times of environmental upheaval. Guided by the core principles of sustainability and sharing guests on Kulin Country were politically accommodated as long as they maintained respect for local sovereignty and customs, a key requirement of experiential treaties.

Through the lens of experiential treaties Part I challenged several colonial perceptions of Kulin politics. Narrm's ancestral and evolutionary history exists in its peoples' *living* memory: they have been continuously living around, negotiating with and adapting to the bay's changes for thousands of generations. Women likely had an important political role and agency in inter-clan alliances and in the system of arranged marriages. Kulin life was undoubtedly patriarchal; however, Kulin women should be recognised as key to the expansion and maintenance of the alliance through arranged marriage to partners throughout the regional kinship network. When marriage is viewed as a process which both socially and politically locates clans and individuals, it is a key form of everyday experiential treaty; which Kulin women had a degree of agency to abandon or suspend. The custom of marriage as part of treaty-making, as well as the agency and authority of Kulin women is rarely commented on by historians and will be highlighted further in Part II.

Marriage as treaty also deepens our view William Buckley. I challenged readers to view Buckley not *only* as a survivor who lived with the Waddawurrung for 32 years, but as a refugee *from* colonialism. Buckley's humility was likely a large factor in the Waddawurrung's offer of an experiential treaty: *allowing* him to live on Country and access their culture. By consistently demonstrating modesty and docility, Buckley mirrored the practises of respectful modern allies to Indigenous struggles and came to be accepted as a liminal outsider who learnt *from*, not *about* his adoptive Aboriginal community (Land 2015; Martin 2008).[94] Historians rarely mention Buckley's respectful and deferential attitude towards living under Kulin law and jurisdiction, but it is clear that he was not permitted to access all aspects of his hosts' political experience. Buckley was offered an arranged marriage, however some Waddawurrung clans protested and it was revoked: experiential treaties had limits, even for participants who had consent to live on Country for so long.

Aboriginal people had dozens (if not hundreds) of generations to prepare political responses to the gradual losses caused by environmental changes explored in Chapter 1. But, whilst sheltering Buckley the Kulin would have just one generation to prepare for and respond to the unpredictable and disproportionate violence which accompanied large-scale colonisation. Perhaps more than any other historical figure, Buckley and the experiential treaty that the Waddawurrung offered him fulfils Dwayne Donald's vision of "decolonisation [which] can only occur when [colonised people and settlers] face each other across these historic divides" (in Birch 2018b, 12). The experiential treaty the Waddawurrung practised with Buckley likely demonstrated to the Narrm Kulin that treaty-making within their political tradition could be possible with other settlers. Understanding the complexity of

[94] Buckley's relationship with his hosts was not exploitive in the way almost all settler-Indigenous relations were under colonial paradigms. This is a key distinction identified in Aboriginal scholar Karen Martin's decolonial methodological framework for settler scholars seeking to support Indigenous people and struggles through research. Settler scholar Clare Land discusses the approaches of Martin and other Aboriginal activists and scholars such as Gary Foley, presenting a guide to decolonising scholarship and activism. See Chapter 2, note 87.

the Kulin political system and the custom and performance of experiential treaty-making decolonises the narrative of the founding of Victoria; Aboriginal nations drew on thousands of generations of ancestral knowledge and diplomatic experience when they encountered white people.

Images

Figure 1: Is this the closest modern visitors can come to experiencing the pre-colonial landscape of Beangala? How different was the creek where Bengalat Balug *and their guests camped, fished, and hunted? Today, we can only imagine.*

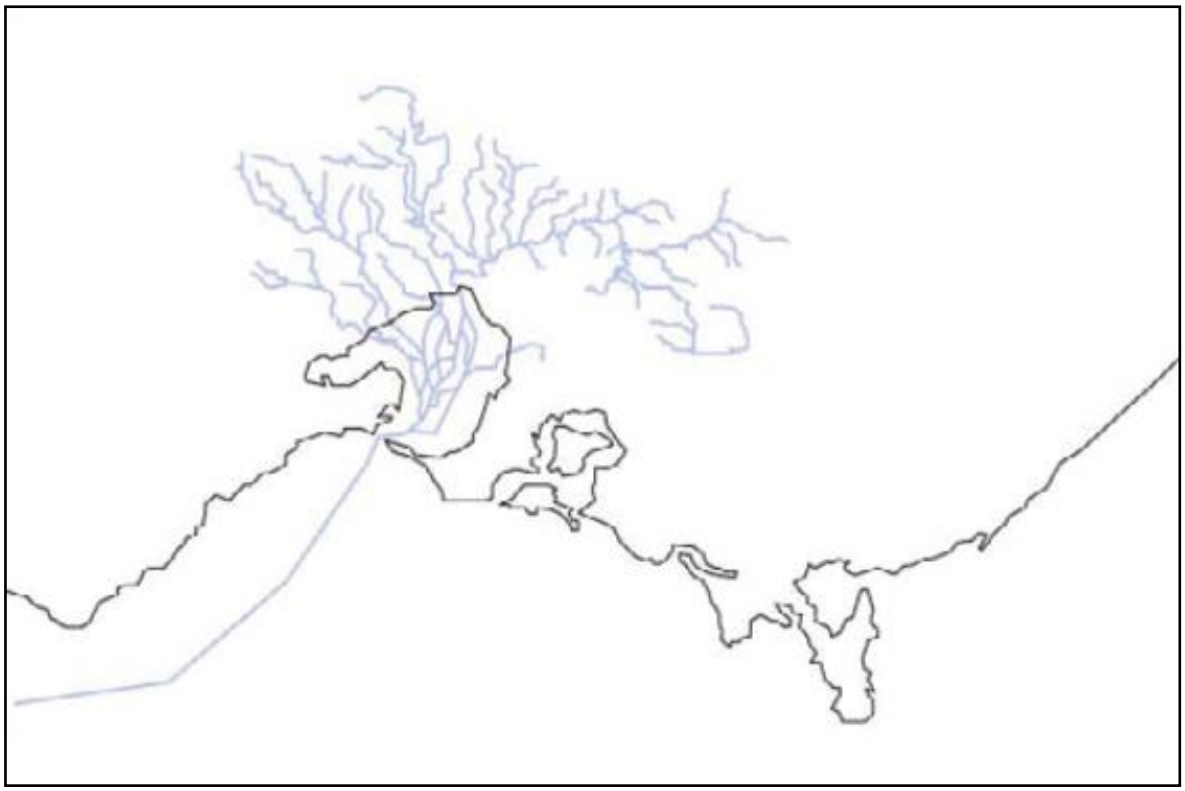

Figure 2: When and where is a river lost? 10,000 years ago, the Birrarung and other river systems drained through and divided Narrm. They still flow, submerged, and are ever deepened as dredging follows their course so larger ships can the northern shores of Narrm.

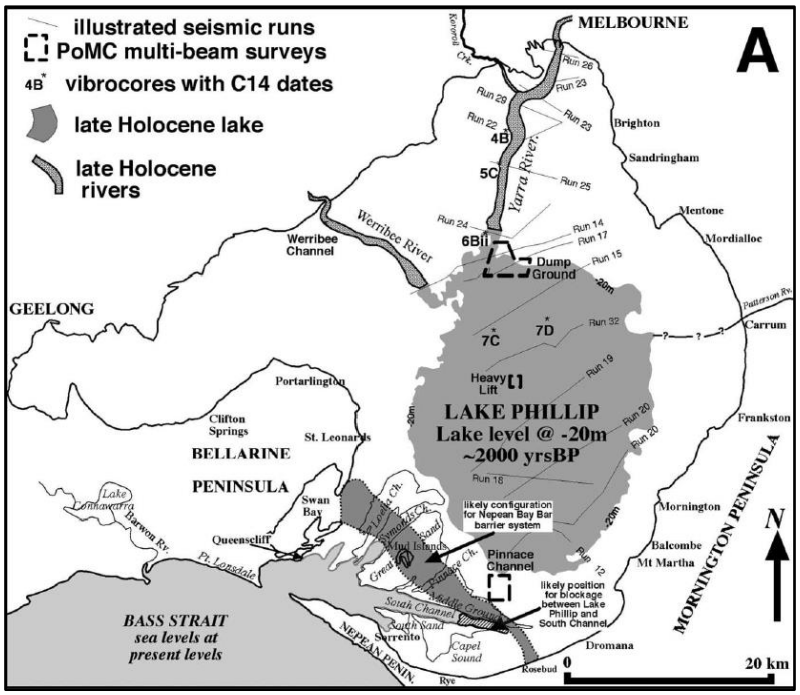

Figure 3: Having been inundated for around 2,000 years, the flood subsided. While Narrm was no longer a bay it was transformed as salt seeped into the great plain. A lake and wetlands represented new economic resources and political renegotiation of clan boundaries.

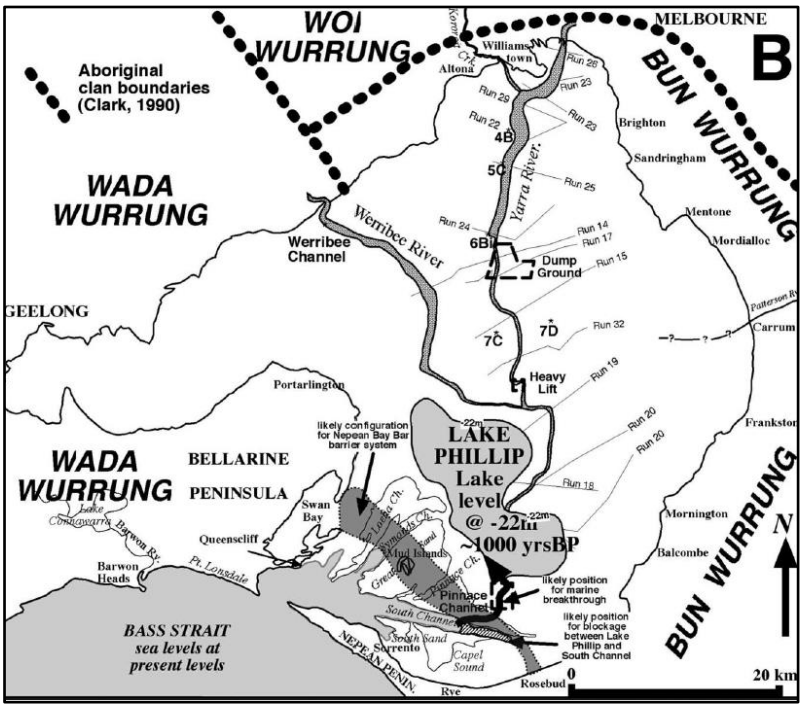

Figure 4: For 1,000 years, the Birrarung and Werribee Rivers reclaimed their status as dividers of Waddawurrung and Boonwurrung territory. When the sediment barrier blocking the flow of sea water broke down after generations of the Lake's constant retreat, the inundation of the bay would have been rapid.

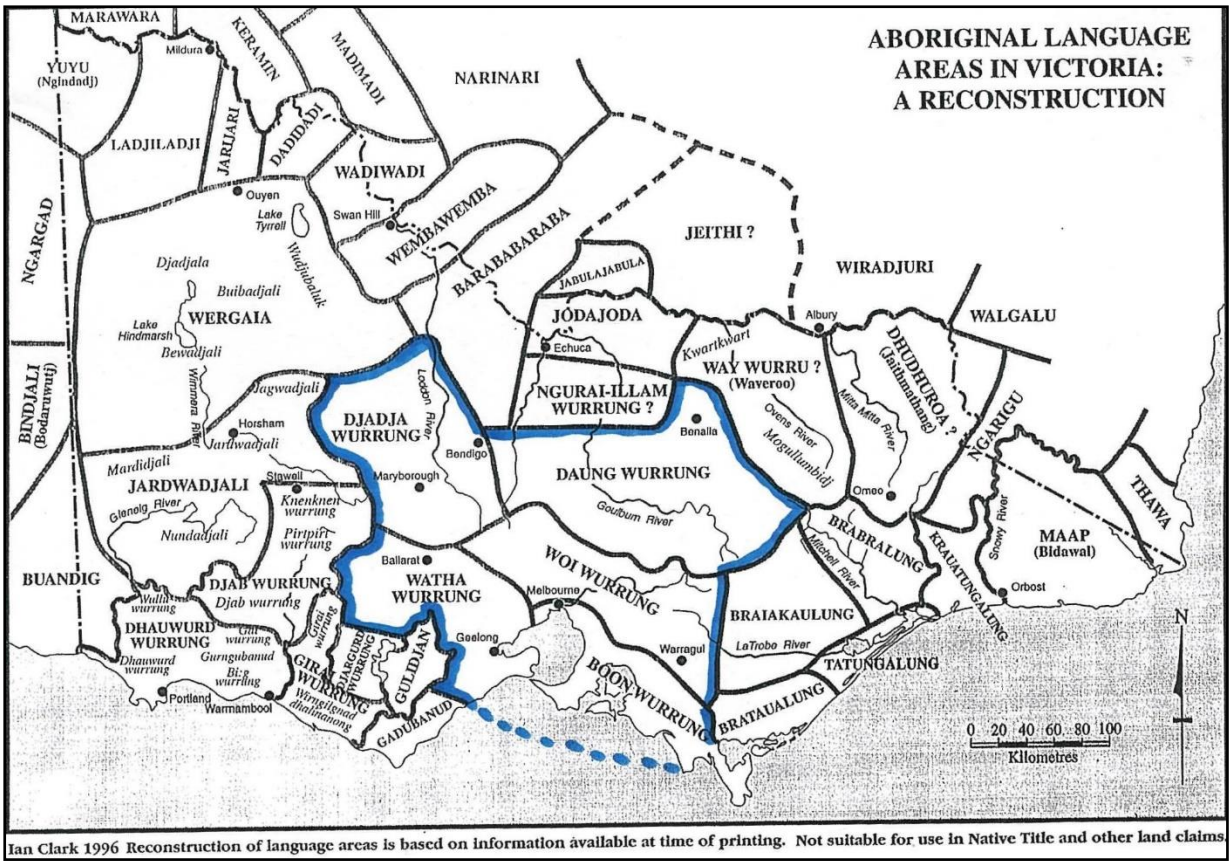

Figure 5: Kulin Country takes up what is today central Victoria (highlighted in blue), with Narrm at its base. Linguistically, speakers of Kulin dialects almost reach to the borders of New South Wales and South Australia (Clark 1996). The Ngurai-Illam Wurrung are included in the Eastern Kulin grouping (Clark 1990, 376-377), and the Jardwadjali and Djab Wurrung, and Mallee-Murray languages included in the Western Kulin grouping (Blake 2011; Bowe, Reid & Lynch 2010, 315-316). This expansive language continuum would have enabled news of colonisation and the dangers of white men to easily travel from the areas first colonised around Sydney, to the Baaka-Dhungala (Murray-Darling) Riverina, down to Narrm and through the Western Districts.

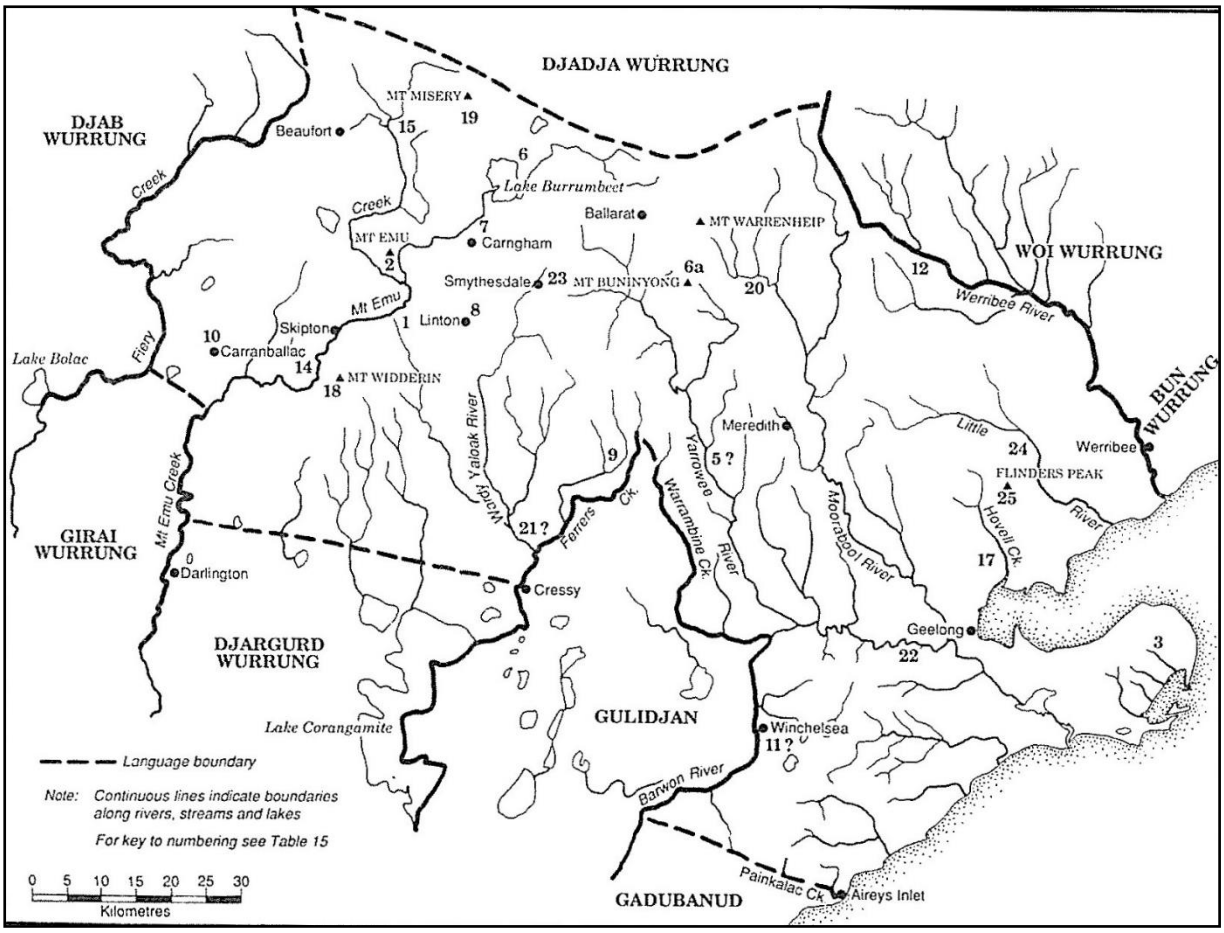

Figure 6: There are 25-27 Waddawurrung clans, spreading inland west from Narrm. Their pre-colonial population is estimated to be between 1,620-3,240 (Clark 1990, 307). Most Waddawurrung clans were dispossessed and murdered so rapidly that scholars had to re-construct their territorial allocation from the records of Protectors of Aborigines and amateur anthropologists (Clark 1990, 277). Historian Ian D Clark produced this map, but the genocide of many clans meant that he could not be certain of the limits of their territories or precise locations. Following this genocide custodianship of some clan's estates was inherited by surviving, neighbouring clans through kinship and marriage networks (Clark 1998).

While Waddawurrung Country is vast — and the history of interior Waddawurrung clans is under-researched — this thesis explores in detail sites and politics around Narrm. The You Yangs are represented in Clark's map with its previous name Flinders Peak. The Waddawurrung name for the range was Wurdi–Yawang or Darooit meaning large hill, reflecting that the mountain is at the centre of Yawangi Balug territory (Clark & Heydon 2002, 86, 260). The mistake of explorers Hume and Hovell, who visited Narrm in 1824, is also made clear in this map. The name Geelong derives from the Waddawurrung name Djilong or Djilang, meaning tongue, which referred to the bay or inlet from Narrm. Hume and Hovell recorded the name for the land as Corio, deriving from Kohria meaning sand/salt or land (Clark & Heydon 2002, 67). Today we know the town (land) as Geelong and the bay as Corio, however this should be reversed (Pascoe & Krishna-Pillay 2008)

No.	Clan Name	Approximate Location
1	Barere barere balug	'Colac' and 'Mt Bute' stations
2	Beerekwart balug	Mt Emu
3	Bengalut balug	Indented Head
4	Berrejin balug	Unknown
5	Borogundidj	Yarrowee River
6	Burrumbeet balug	Lakes Burrumbeet and Learmonth
6a	Keyeet balug	Mt Buninyong
7	Carringum balug	Carngham
8	Carninje balug	'Emu Hill' station, Linton's Creek
9	Corac balug	'Commeralghip' station, and Kuruc-a-ruc Creek
10	Corrin corrinjer balug	Carranballac
11	Gerarlture	West of Lake Modewarre
12	Marpeang balug	Blackwood, Myrniong and Bacchus Marsh
13	Mear balug	Unknown
14	Moijerre balug	Mt. Emu Creek
15	Moner balug	'Trawalla' station, Mount Emu Creek
16	Monmart	Unknown
17	Neerer balug	Between Geelong and the You Yangs
18	Pakeheneek balug	Mt Widderin
19	Peerickelmoon balug	Near Mt Misery
20	Tooloora balug	Mt Warrenheip, Lal Lal Creek, Moorabool R.
21	Woodealloke balug	Wardy Yalloak River
22	Wada wurrung balug	Barrabool Hills
23	Wongerrer balug	Head of Wardy Yalloak River
24	Worinyaloke balug	West side of Little River
25	Yaawangi	You Yang Hills

Table 1: Most of these Waddawurrung clans do not have living descendants today. For example, by 1838 the Caringum Balug clan had been reduced to one member, a male named Narnemoon. When Narnemoon was arrested and accused of murder in April 1838, his Djab Wurrung neighbours occupied and cared for his Country (Clark 1998, 12). After escaping prison, he fled to Gulidjan Country in the Otway forests. It is not known if he had children in exile. By 1841 George Augustus Robinson described Corac Balug, Moner Balug, and Worinyaloke Balug (Little River clan) as "defunct", but we do not know what became of their estates beyond that they were occupied by sheep and settlers (Clark 1998, 14).

Figure 7: John Batman proclaimed himself the "the Greatest Land Owner in the World" when he returned to Launceston with his Deeds in early June 1835 (Billot 1979, xii). This map was produced by Port Phillip Association surveyor John Helder Wedge to depict the 600,000 acres Batman claimed he had purchased through the Narrm treaties. As Bain Attwood and Helen Doyle put it, "the audacity of the Port Phillip Association owed something to a growing acquaintance with maps" (2009, 48).

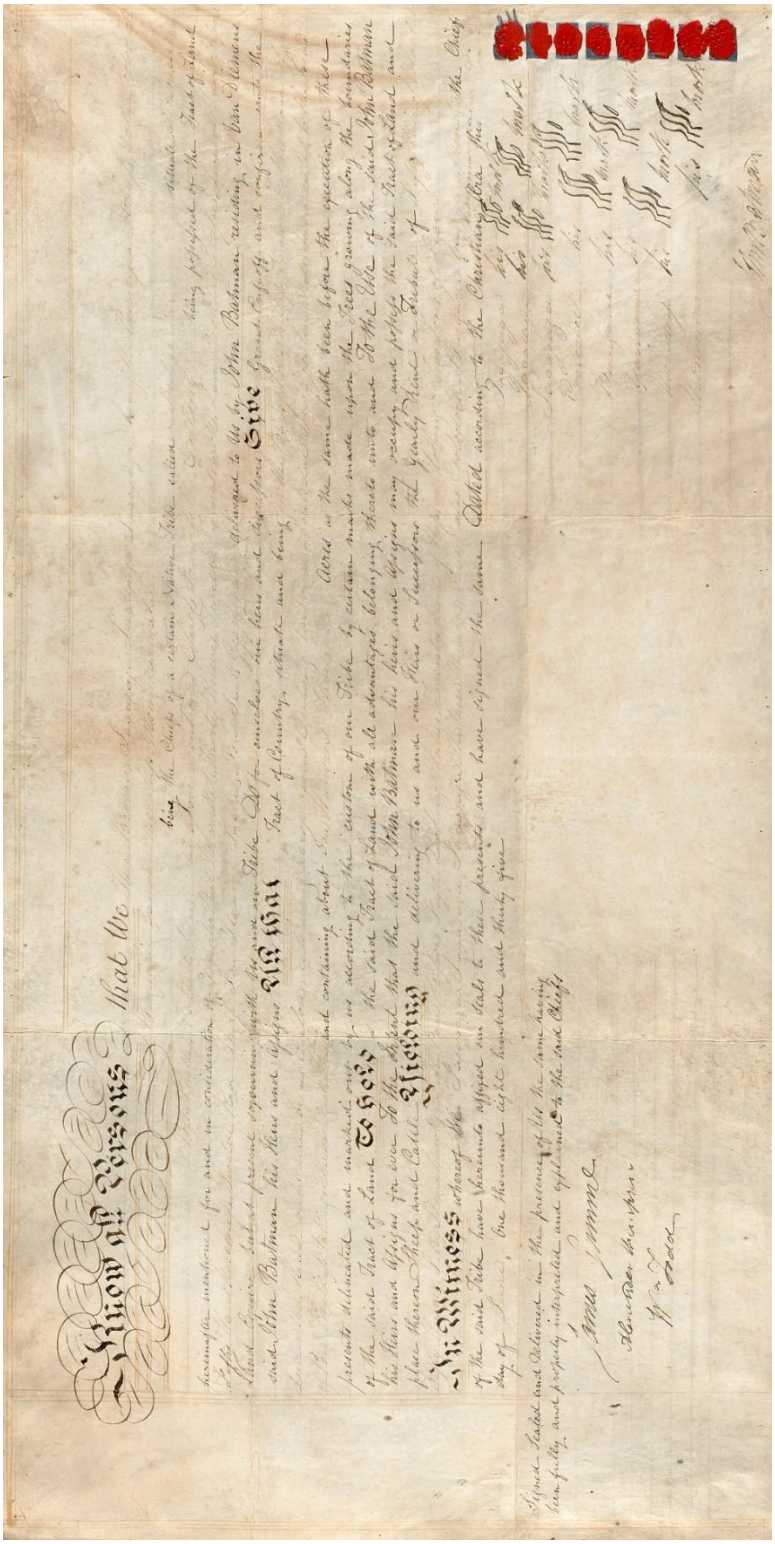

Figure 8: The Djilong Deed that Port Phillip Association lawyer Joseph Tice Gellibrand prepared was a legal template for Batman to take to Narrm. It is likely that the Dutigala Deed which covered Woiwurrung and Boonwurrung Country, and the Djilong Deed, were left with the details blank so could Batman fill in the names of the Kulin chiefs, and the acreage he claimed under the Narrm treaties.

Figure 9: Beangala, today known as the Bellarine Peninsula, was the site of the first recorded *encounter between Kulin people and* settler-colonisers*. British explorer Matthew Flinders climbed Arthur's Seat on the eastern side of Narrm and looked across the bay at Beangala, which he named Indented Head (probably due to the indent of Swan Bay). Flinders sailed to Beangala in April 1802 and spent two nights alongside local Waddawurrung clans (2001 (1814), 108-109). He also climbed the You Yangs (referred to above as Mt Cottrell), which along with Beangala was the other significant site of the Waddawurrung's encounters with settlers in 1803 and 1835.*

In 1803 Lt. J.T Tuckey murdered at least one Waddawurrung man and wounded several others near the You Yangs (Clarke 1998). The You Yangs were also the site of the Kulin's first colonial encounter with John Batman and his crew on 31 May 1835. Historians give more importance to the Tuckey encounter as it resulted in murder, however as Chapter 4 shows, the encounter with Waddawurrung women was politically significant and demonstrated their authority and agency.

The tip of Beangala was an effective surveillance post for William Todd's Camp. By late 1836, little more than a year after the anniversary of the Geelong Treaty sheep runs covered Bengalat Balug *and* Wadda Wurrung Balug *Country in a 40-kilometre radius surrounding Corio Bay, prompting Waddawurrung clans' resistance (Clark 1990, 281). According to Wedge's map, the Association claimed land extending from Beangala down to modern Torquay and potentially further. As Narrm continues to be scholars' focus there is little historical research on the early settlement of the Surf Coast and the coastal hinterland; history from the Local Council indicates that the Torquay area was not frequented by settlers until the 1860s, as were other Surf Coast towns like Anglesea and Barwon Heads. Future research may investigate how the Waddawurrung used the coast as reprieves from the spread of settlers and their sheep.*

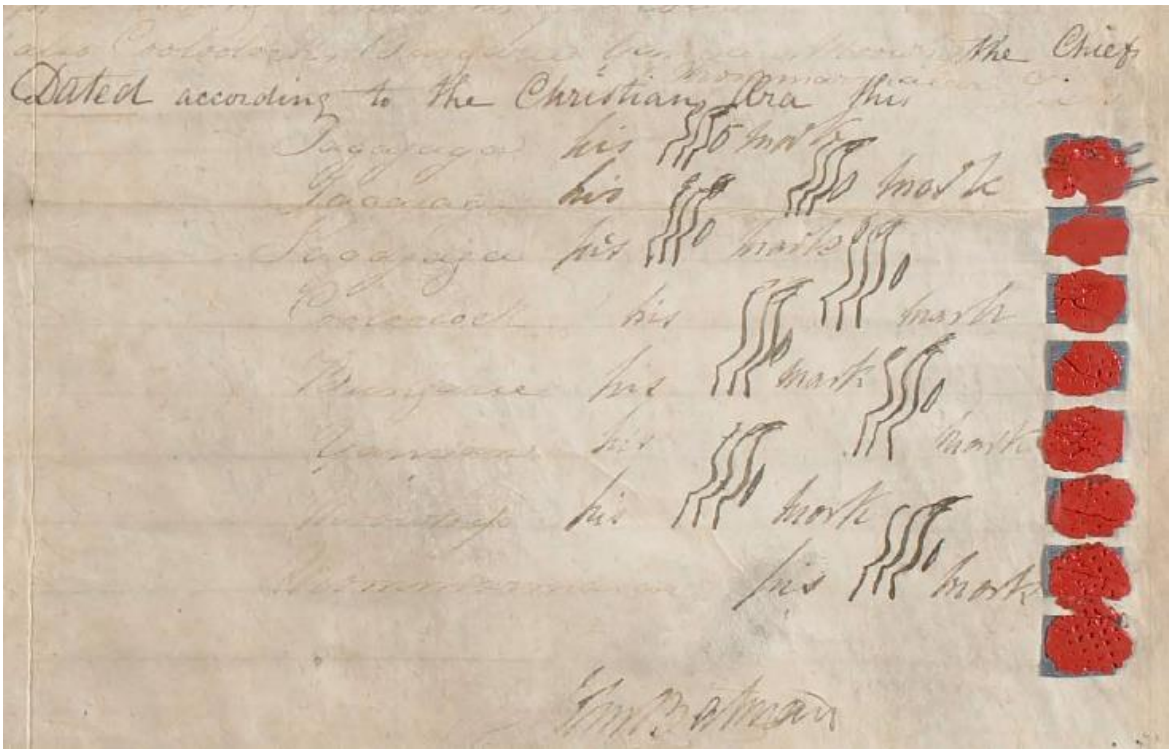
the Chief
Dated according to the Christian Era this
his mark
his mark
his mark
his mark
his mark
his mark
his mark
his mark
Jno Batman

Figure 10: These are the marks that Batman would claim granted him permission to enter and occupy Waddawurrung Country. While Woiwurrung and Boonwurrung headmen may have signed the Djilong Deed, on-the-ground at Beangala this written document was meaningless: it is not the Geelong Treaty.

Figure 11: This tarnuk *came from Mortlake, on Girai Wurrung Country in Victoria's west.* Tarnuks *were essential items for survival as clans travelled through Country and needed portable fresh water, which was collected at waterholes. They are made by removing and hollowing out burls from trees and are thus carved from a single piece of wood. According to Museum Victoria they often had lids of light stringy bark to prevent spillage and evaporation.* Tarnuks *were not just economically important but had cultural and political significance for the Kulin. As related in Chapter 1, in one story Narrm was created when a magic* tarnuk *was knocked over, flooding the bay. Waddawurrung matriarchs gave a* tarnuk *to John Batman at the You Yangs encounter on 31 May 1835; demonstrating to their guest the value and symbolism of gift-giving as welcome. It may have even been part of* Tanderrum.

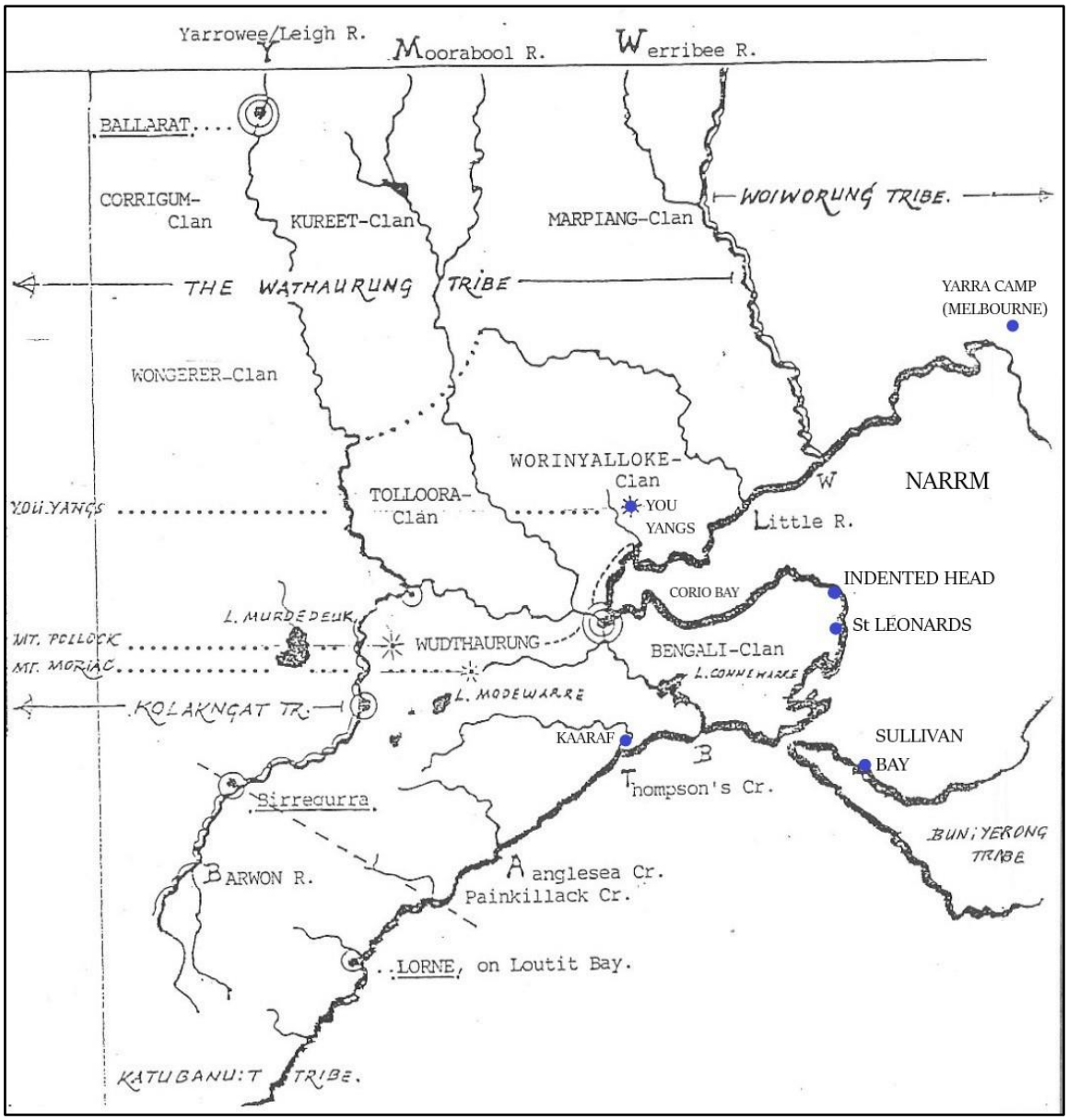

Figure 12: Librarian and amateur historian Louis N Lane's collection of papers and diagrams on Waddawurrung history is complementary to the research of Ian D Clark and Diane Barwick. Lane's map (Lane 1993b) does not differentiate Waddawurrung clans to the extent of Clark's map (Figure 6), however it provides a useful depiction of the key sites discussed in this thesis. For example, Lane's Worinyalloke clan encompasses the Worinyaloke Balug, Yawangi Balug and Neerer Balug clans (Clark 1990, 334-335). Furthermore, here we can see with greater clarity how many clans' territories were encroached upon when settlers surveyed the Narrm region and travelled from the Yarra the Beangala on foot.

Notable locations added in blue to Lane's map are: The You Yangs mountains (site of the 31 May encounter) and the Werribee River (the border between Waddawurrung, Woiwurrung and Boonwurrung territory). Kaaraf was William Buckley's favourite camp on Bream/Thomson's Creek, thought to be near the modern hamlet of Breamlea. Buckley escaped from the abortive colony at Bullanatoolong on Boonwurrung Country (Sullivan Bay) and walked around Narrm to Waddawurrung Country in 1802/1803 (Clark & Heydon 2002, 197). William Todd's and the Port Phillip Association's 1835 camp on Beangala is thought to be near or in between the present-day townships of Indented Head and St Leonards, however the precise location is unknown (Munster 2008). The Yarra Camp is now the CBD of Victoria's capital city Melbourne.

Figure 13: Geelong Western Public Cemetery, final resting place of Italians, Poles, Croats, Bengalat Balug and Wadda Wurrung Balug. The Waddawurrung Tomb is maintained, as Geelong residents continue to honour the memory of the Aboriginal leaders who navigated the arrival of settlers and made treaties at Beangala. Also buried here is descendant of Woolmudgin (Curacoine) Willem Ba-Nip, later known as 'King Billy'.

By 1853 there were just 17 Waddawurrung living in the Geelong area: nine women, seven men, and one child (Munster 2008, 5). Eight years later there was only seven adults and no children. Willem led the few remaining Barrabool Waddawurrung survivors in the 1860s and refused to be confined to a one-acre Reserve at Mount Duneed. Willem freely walked on his Country and visited the neighbouring Beangala, returning each summer to fish at St Leonards, where the dispossession of his people began (Lane 1992). He died in 1885 and was buried in the present-day suburb Hamlyn Heights, in this tomb with his wife and Countrymen (Munster 2008, 4-6).

Today the Waddawurrung trace their ancestry to only one apical ancestor, Mary Robinson (Robertson), also known as 'Queen Mary of Ballarat', and her son John Robinson. Mary was moved off Country and incarcerated at Coranderrk, then Framlingham.

Figure 14: Dan Dan Nook was a Bengalat Balug *man. As a child he was brought to the settler's camp at Indented Head to receive the first payments of the Geelong Treaty. John Helder Wedge counted 27 of his* Bengalat Balug *clan (Todd 1989, 59-63). Over the coming months Dan Dan Nook would regularly visit the camp, and once it was abandoned, he was raised on Country on the Bellarine. He grew up to assume leadership of his people and become a local personality in the township of Geelong (Lane 1993a).*

In 1842 Dan Dan Nook saved a settler, artist Samuel Mossman, from drowning off the coast of Beangala. Only 11 or 12 of his clan's people were still alive (Munster 2008, 4-6). Later he was known as 'King Jerry' and dubbed the 'Fastest man in Geelong' for winning local footraces.

Dan Dan Nook protested against the prohibition of Aboriginal people entering Geelong after sunrise in the 1850s. His wife 'Queen Eliza' died and was buried on Country at Port Arlington. This tomb misidentifies him as of the Wadda Wurrung Balug, the Barrabool people. He died in 1870 and was buried in the Geelong Western Public Cemetery.

Figure 15: Batman, Taylor, Anderson, Bengalat, Karrong. Campers and seasonal residents come to the Bellarine foreshore each summer to enjoy the panoramic view of Narrm and camp in these Reserves. John Batman landed somewhere near present-day Indented Head on 29 May 1835. According to Bayside Coastal Management which administers the campgrounds, Taylor and Anderson Reserves refer to "gentlemen who lived in the area some time ago" (personal communication, 16/12/2019). The two latter Reserves were renamed from Reserve A3 and A4 in 2015 or 2016, to recognise the local Bengalat Balug *clan, while* karrong *is the Waddawurrung word for hut or house (Blake 1998, 13).*

Modern settlers on Waddawurrung Country (and throughout Victoria's Western District) typically resist naming landmarks in language (Birch 1992; 1996), or when they do it is rarely without controversy. In 2014 the Ballarat City Council succumbed to public pressure and declined to name a new suburb after 'King Billy' Mullahwallah, a relative of 'Queen' Mary Robinson (Newton 2016). In 2016 the Victorian government announced that a new wing to the Marngoneet Correctional Centre (a prison in Lara) would be named the Karreenga Annex, meaning 'to grow' in Waddawurrung. In 2017 a new housing development at Armstrong Creek, an area of cultural significance to the Waddawurrung chose to name much of their planned neighbourhood after Game of Thrones characters, many of them incestual, filicidal, and fratricidal (Powell, B et al. 2019).

Figure 16: This cairn on the Indented Head foreshore was erected in 1935, on the centenary of John Batman's arrival in Narrm. It pays tribute to Batman and Matthew Flinders who landed on Beangala in 1802. The Waddawurrung leaders who met them are not mentioned. A re-enacted landing was planned for 29 May 1935, but the performance had to be abandoned due to rough seas preventing Batman's impersonator landing (Attwood & Doyle 2009, 218). An onshore ceremony included a brass band, short speeches and the distribution of memorial medallions to the gathered attendees and school children.

As Tony Birch writes: "Where gaps exist within historical narratives, monuments act as filler, attempting to produce an unquestioned and singular view of the past. As with other sites of colonial occupation throughout Australia, the signature of a confident and authoritative colonial history articulated through the monument has been the commonest answer to the absence of continuity" (1999, 63).

1985 marked the 150th anniversary Narrm's colonisation. The local community organised a Re-enactment Committee and secured funding from the local Council and State government for a new plaque and lights to be installed at the cairn. It is not known if Waddawurrung people were involved in the sesquicentenary celebrations.

Figure 17: 19 years after the sesquicentenary of Batman's landing the Bellarine community saw fit to honour another local hero. Agitation within the Geelong Historical Society over the 'true' location of Todd's camp caused the memorial commemorating William Buckley's bicentenary of arriving at Beangala to be located at St Leonards (Munster 2004, 38-39; 2008, 17-18). In 2004 the 'Friends of William Buckley' secured $9,000 of Commonwealth funding for a Labyrinth, billed as "place for contemplation" of Buckley's journey and contribution to 'reconciliation'. The memorial represents Buckley's time with his Waddawurrung hosts as a maze: imagining a white man lost in a confusing and foreign world. In Greg Dening's terms, visitors to the Labyrinth participate in the dramaturgy of Buckley's life. There was no need for reconciliation in 1803, colonisers had not yet decimated Waddawurrung Country and culture; Buckley was a refugee seeking sanctuary. But Buckley lost far more when he left his Aboriginal family, as Kulin principles of sharing, equality and sustainability were supplanted by wages, fences, and sheep.

Figure 18: Since 2013 the Ilbijerri Theatre Company has curated a contemporary performance of Tanderrum, in which dancers and artists from all five Kulin nations hold a ceremony at Federation Square in Melbourne. While we are unlikely to know what Tanderrum consisted of in pre-colonial times, it seems to have greater political meaning and various forms as a ceremony than often acknowledged by historians. Kulin people continued to gather at the burgeoning settlement of Melbourne following the termination of the Narrm Treaties, performing corroborees and settling disputes until displays of culture were prohibited. In October 1840 the colonial military violently dispersed a Kulin corroboree on the outskirts of Melbourne and arresting many men. What is known today as the Lettsom Raid virtually ended the Narrm Kulin's ability to communally gather with guest clans on-Country (Standfield 2012).

How will the landing of Batman and the journey of Buckley be memorialised in 2023, another 19 years after the public recognition at St Leonards? And in 2035? Buckley dominates public displays of information about Aboriginal heritage around Geelong and the Surf Coast, while the clans who took him in are often relegated to footnotes.

In what way will Waddawurrung agency in encounters with settlers be part of the story of The Camp at Beangala? It is conceivable that in three years' time the Victorian government and the Wathaurung Aboriginal Corporation (the Registered Aboriginal Party) will have progressed into negotiating a modern treaty. It is also possible that the experiential treaty the Bengalat Balug and Wadda Wurrung Balug negotiated and performed with settlers on the Bellarine will be recognised as a significant political agreement, and avenue for contemporary recognition of local Aboriginal sovereignty.

Figure 19: In 2019 Tanderrum is a key event on Victoria's artistic calendar. Tanderrum opens the annual Melbourne Festival with Kulin Elders, children and dancers occupying Federation Square, one of Melbourne's most iconic and architecturally controversial public spaces (Abascal et al. 2019; Nicholson, M & Jones, D 2018). Federation Square is arguably Melbourne's cultural hub with galleries, bars and public events overlooking the Yarra River. Geographically the Square is also at the city's centre, at the intersection of main thoroughfares Swanston Street and Flinders Street and across the road from Young and Jackson's Hotel, on one of John Batman's original lots (Campbell 1987, 220). Visitors may not notice 'Nearamnew', scholar Paul Carter's "anti-foundational" artwork which paves the Square's floor with inscriptions imagining 1835 as the beginning of a stunted cross-cultural relationship (Attwood & Doyle 2009, 314). Sand is spread over Carter's inscriptions for the ceremony as the Kulin dancers re-claim the cultural centre of the city; a temporary Indigenous erasure of a settler landscape. Political performances of sovereignty to un-settle urban space continues today, with occupations of Melbourne's parklands (Birch 2018c), annual Invasion Day rallies and other mass protests in Melbourne's CBD (Amerena 2018c), and calls for a permanent 'Treaty House' to be built as a self-determined political centre for Victorian Aboriginal peoples (Pieris & Murray 2018). While in 2020 the annual Tanderrum ceremony may not appear as overtly political and un-settling as examples listed above, it represents a continuation of Kulin treaty-making.

Given the upheaval caused by COVID-19, will the Kulin be able to perform Tanderrum in October 2020?

There is always something before, that still remains.

Part II

Chapter 3: ‘Pretending to compensate the natives’

With the notable exception of William Buckley, the colonial refugee introduced in Chapter 2, Kulin contact with settlers from 1800-1835 was anything but positive. So, it must be asked *why* Aboriginal leaders approached John Batman’s party with diplomacy rather than violence. To address this question Part II explores and expands the Kulin Agency thesis, which was first articulated in 2008 by historian Robert Kenny — building on the research of Diane Barwick from the 1980s — and has since been developed by James Boyce, Bain Attwood and Helen Doyle. Rejecting scholarship which “simplifies and patronises” the Kulin’s leadership and their political responses, Kenny’s thesis has had a profound impact upon modern historiography; contributing to the revision of the founding of Victoria and Melbourne which includes and centres Aboriginal perspectives over the heroics of settlers (2008, 38.8). Centring Aboriginal agency, strength, and pragmatism, Chapter 3 will outline Kenny’s, Boyce’s, and Attwood and Doyle’s archival research, analysis which decolonise the discourse of Victoria’s ‘founding’. However, when reading the accounts of cross-cultural encounters and interpersonal political relations in the coming chapters, I ask readers to fight the urge apply their knowledge of Victorian history and the patterns of modern settlement. Yes, Melbourne and Geelong were rapidly colonised and the Narrm Kulin were dispossessed following 1836. But, I ask readers to resist looking at this liminal period with hindsight and try to see the last six months of 1835 as imbued with political potential that came from cross-cultural political connection and understanding.

The Kulin Agency thesis demonstrates that the Narrm peoples were effective political agents in colonial encounters, and that connection, comprehension, and reciprocity was possible with colonists; in Dwayne Donald’s terms, crossing cultural, political, colonial, and historical divides. While the Kulin were clearly wary of the threat of colonisers, the treaties they negotiated in 1835 were a continuation of, not a disruption to, Kulin politics. Colonists and historians viewed the 1835 treaties as cynical tools that justified or legitimised colonisation: Port Phillip Association member and lobbyist to the British government Thomas Bannister considered the treaties legal instruments that “pretend[ed] to compensate the natives” (Robert 2016, 98). But, in this chapter I show that when viewed in light of Aboriginal agency and intelligence, the Narrm Treaties were political agreements coherent with Kulin law that established peaceful experiential relations with settler-guests.

Scholarship on 1835 and Victorian colonisation does not recognise that the Narrm Treaties qualitatively fit into Kulin law, and in Chapters 3, 4 and 5 I show a new understanding is needed: the concept of treaty-making was not imported to Narrm by John Batman. If we are to garner a more balanced view of what the Treaties meant for those who were involved in its creation, then we must decentre Batman’s political strategy. Despite Batman proclaiming himself as “Monarch” over Narrm, the Treaties negotiated on 6 June 1835 did little to disrupt or undermine Kulin jurisdiction over Narrm and surrounding regions (Pascoe 2007, 17). For these reasons, the Treaties will not be described as

‘Batman’s’. Kulin Agency scholars use the term Kulin Treaties; however, a more specific and useful phrasing is available. The June 1835 treaties were instigated by the Woiwurrung, Boonwurrung, and Waddawurrung: The Southern Kulin nations with Country around Narrm. The Northern Kulin nations, Dja Dja Wurrung and Taungurung, were not involved in the Treaties and probably rebelled against their creation (Clark 2005). They were not included in the land-access arrangement negotiated as northern Victorian Country would not be incurred upon by organised settlers for several years (Kenny 2018).[1] For this reason, I will refer to the 1835 treaties collectively as the Narrm Treaties, or separately the Melbourne Treaty and Geelong Treaty.

Oral treaties and written deeds

To describe the political relations that the bayside Kulin practised with Batman and his employees in the latter half of 1835, I must make some distinctions between experiential, oral treaties and written deeds. Part I explored many forms of experiential treaty, including one with a settler (William Buckley), none of which involved a written component: they were practised in everyday, interpersonal moral and political actions. This chapter is primarily concerned with the Melbourne Treaty, as it is the primary focus of Kulin Agency scholars. I define the Melbourne Treaty as the experiential treaty relationship, negotiated on 6 June 1835 between Woiwurrung and Boonwurrung Elders and John Batman’s party. The Melbourne Treaty was *only* practised at the Yarra camp and surroundings, from when settlers arrived in August 1835 for at least a year.[2] Going into the details of the Melbourne Treaty post-1835 is beyond the scope of this thesis, however Boyce (2011) and Campbell (1987) cover the first years of the Yarra camp extensively. When referring to the Melbourne (or Geelong Treaty) I must emphasise that I am using the term to highlight an experiential nature, existing as a relationship *between* humans, not a written contract.[3]

The inter-personal, experiential Narrm Treaties are contrasted by the physical, written Deeds that Batman and the Port Phillip Association produced as ‘evidence’ to legitimise their claim to Kulin land. The most well-known of these is the Dutigala Deed which claimed 500,000 acres of land on Woiwurrung and Boonwurrung Country.[4] The Djilong Deed, pictured in Figure 8, claimed an

[1] Kenny notes that the Northern Kulin were not involved in the 1835 treaties; their lands were not encroached upon until the 1837 and prior to this encounters with settlers were generally characterised by friendliness or indifference. On several occasions Kulin clansmen travelled to the Yarra camp with the intention of attacking or disrupting the settlement but were dissuaded by local authorities including Boonwurrung *Arweet* Derrimut. It uncertain where these Kulin were from, but John Pascoe Fawkner described them as ‘up Country’, which Ian D Clark interprets as Goulbourn or Loddon tribes, the Taungurung and Dja Dja Wurrung.
[2] Chapters 4 and 5 delve into the Geelong Treaty, the experiential relationship between Waddawurrung clans and settlers on the Beangala Peninsula.
[3] See the Experiential treaty section in the Introduction for more information on the European etymological origins of ‘treaty’, especially note 42.
[4] Figure 7 depicts the entire claim of both the Djilong and Dutigala Deeds. The Dutigala Deed is generally thought to cover land north of modern Geelong. Physically the Dutigala Deed was near identical to the Djilong Deed, which is pictured in Figure 8.

additional 100,000 acres of Waddawurrung territory, and has received far less attention from historians than its counterpart.[5] These two Deeds were drawn up by Association lawyer Joseph Tice Gellibrand and were virtually identical. The Deeds were intended to function as legal contract for land title, and the Deed's legitimacy has been an area of much debate for historians. Chapter 4 explores issues with the written Deeds in depth, but it is important to keep them conceptually distant from the experiential Narrm Treaties.

These distinctions are informed by the late anthropologist Diane Barwick who recognised the fundamental differences between the Kulin's "oral and visual treaty" and the Port Phillip Association's "written treaty", the two Deeds (1998, 24-25). The Narrm Treaties' oral nature is clear when we analyse cross-cultural encounters and interactions where a written component was not a factor. While politically linked, the relationships between oral and written treaties are almost diametrically opposed: the former is defined by fluid and evolving interpersonal relationships, governed by ongoing iterations of consent based on reciprocal and respectful behaviour, while the latter has clear (and arbitrary) boundaries that were drawn on a map by surveyor John Helder Wedge and governed by hierarchical authorities (Batman's 'Monarchy'). Canadian scholar Eva Mackey also recognises the experiential nature of many Indigenous treaties, writing that "'treaty' should be seen as a verb rather than a noun" (2016, 141). Mackey shows that the disparity between written and oral conceptions of treaty is common in other colonial settings, understanding that for many (Canadian) First Nations peoples, political agreements with settlers were experiential and were very rarely interpreted as final settlements of the kind British colonisers envisaged. Oral treaties, such as the Melbourne Treaty and Geelong Treaty are experiential.

Setting the scene

To understand analysis of cross-cultural politics and experiential, oral treaty-making which occurred at Narrm in 1835, a summary of historical events is required. [6] Part II of this thesis is indebted to the archival research of historians Michael Christie, Henry Reynolds, Fred Cahir, Alistair Campbell, and Ian D Clark, as well as Agency scholars Boyce, Attwood and Doyle who have read the documents and letters that give us this history.[7] The following section provides context underpinning the arguments presented in the coming chapters and establishes the key events of contact and political tensions between Europeans and Kulin peoples. While the full-scale assault of British settler-colonialism did not reach the Kulin for almost 50 years after the invasion of Eora nations around modern Sydney, the peoples of Narrm experienced sporadic violent incursions from Europeans from the early 19th century. Christie (1979, 5) writes that the Kulin's first sighting of Europeans was likely in 1798 when George Bass sailed past Boonwurrung Waters and into Westernport Bay, or when the first ship entered Narrm

[5] The land claimed by the Djilong Deed is depicted in Figure 9.
[6] See Appendix 1 for a timeline of the events discussed in this chapter.
[7] Cahir teaches and is known academically as Fred, but occasionally publishes his under first name David. All mentions of Cahir in the reference list as David A, Fred (David), or Fred refer to the same person.

in 1801 (Clark 1998, 2). Cahir notes that the first *recorded* physical contact with white men was in April 1802 when British explorer Captain Matthew Flinders' party landed near the modern township of Indented Head on Waddawurrung Country (2019, 30).[8] Flinders encountered several local Waddawurrung camped on their Country without incident, recording a curious and amicable exchange with the locals. Flinders then travelled to the highest point in the area, sailing north across Corio Bay to climb the You Yangs (Clark 1998, 2). Over the following two years, British surveyors entered Narrm and conducted treks up bayside peaks on Waddawurrung and Boonwurrung Country. On one such journey in October 1803 Lt. J.H. Tuckey fired upon a group of Waddawurrung people, killing at least one and wounding several others (Christie 1979, 5; Clark 1995, 9, 173). Tuckey was dispatched from the penal colony established under the command of Lt. Col. David Collins at Sullivan Bay — William Buckley's former prison camp — on Boonwurrung Country. Collin's soldiers murdered at least one local Boonwurrung man before abandoning the colony in January 1804 (Cahir 2019, 31-32).

Boyce demonstrates that the coastal Kulin were attacked violently and frequently by European pirates, who established seasonal sealing and whaling bases along the Bass Strait coast (2011, 9-15). From the early 1800s Boonwurrung women around Westernport were kidnapped, raped, and enslaved by the marauding white sailors (Clark 1998, 2-3). Coastal Waddawurrung often had violent contact with sealers and Cahir (2019, 28) argues that it is highly likely that both white men and local Kulin were murdered. We know from biographies of William Buckley that several parties of white sailors were killed around Narrm pre-1835 (Maynard & Haskins 2016, 37).[9] The sealers and whalers pillaged without threat of punishment for decades, operating far outside of British military reach which was focussed on Aboriginal resistance to the expanding New South Wales colony. Colonial troops were almost constantly occupied until the mid-1820s, in land wars with Aboriginal nations inland of Sydney. Meanwhile, as Boyce details (2008), colonisers were invading Aboriginal Country across Bass Strait and meeting strong resistance in Van Diemen's Land. British explorers Hamilton Hume and William Hovell crossed upper-Kulin Country to reach Narrm in 1824 and had a tense but non-violent encounter with Waddawurrung people (Cahir 2019). The British would attempt to establish a permanent presence on Kulin Country again in 1826, when a penal colony was set up near present-day Corinella on Westernport Bay (Boyce 2011, 65). It too was abandoned in less than a year.[10]

As Boyce (2008) and Reynolds show (1995), by the 1830s Aboriginal peoples of Van Diemen's Land were almost entirely dispossessed from their Country through brutal warfare. For settlers however the

[8] For a detailed account of Flinders' journeys in Narrm see Flinders, Matthew 2001, *Terra Australis: Matthew Flinders' Great Adventures in the Circumnavigation of Australia*, Text Publishing, Melbourne.
[9] Buckley recounts several occasions when settlers had been murdered for trespassing on land around Narrm over his 32 years, but his recollections are undated.
[10] For a more detailed exploration of the attempted settlements at Sullivan Bay and Westernport, see Shaw, AGL 2003, *A history of the Port Phillip district: Victoria before Separation*, Melbourne University Publishing, Melbourne.

island was a "thriving centre for investors and speculators" who traded on the booming markets of land to run sheep on, and the merino wool they produced (Boyce 2011, 16-17).[11] Boyce shows (2011, 18-20) that on a per-capita basis Van Diemen's Land's economy was larger than New South Wales, but there was little space available for further expansion. So, the wealthy land-occupying settler class began to look north for new pasturage. Campbell (1987) charts and details the life and journey of wealthy Van Diemen's Land property 'owner' John Batman and his associates. In 1827 Batman and his lawyer Joseph Tice Gellibrand petitioned the New South Wales government for land in Port Phillip or Westernport (Campbell 1987, 23). They proposed to establish a settlement with 2000 sheep, apparently unconcerned that both prior attempts at colonies in the area had failed (Boyce 2011, 49-50). Batman and Gellibrand were rejected, but inspired by official reports from Flinders, and Hume and Hovell stating that Narrm was suitable for colonisation their dream of colonising over Bass Strait began to take form (Campbell 1987, 66). Van Diemen's Land Lieutenant-Governor George Arthur was aware of increasing demands from influential settlers for more land and in 1833 proposed to the colonial authorities in London a new settlement be established at Narrm under his jurisdiction, but was rebuffed (Boyce 2011, 20). In mid-1834 brothers Edward and Francis Henty requested permission from Arthur to occupy land on Victoria's south-west coast but without waiting for approval established the settlement at Portland, a bay already frequented by whalers (Boyce 2011, 12-14). Aware of the Henty's illegal settlement and Arthur's applications, a group of Van Diemen's Land's most influential and wealthy men came together in a mission to privately colonise the open lands across Bass Strait.

John Batman assembled a group of respectable and wealthy men from Hobart and Launceston society to finance a journey to Narrm with the intention of settling on land around Narrm to expand their pastural operations (Boyce 2011, 51-52, 56).[12] The Association wanted *exclusive* access to Narrm and surrounding Country, evidenced by the insistence that other colonisers must take up land outside of their claim (Kenny 2008, 38.6). The loose group consisted of twelve members and it is unclear how they referred to themselves before Batman's expedition in May 1835. After Batman's return, they named their grouping the Geelong and Dutigala Association, based upon Kulin words Batman recalled (Carter 1992, 9).[13] Later the group was re-named the Port Phillip Association. Batman was

[11] Driven by the merino wool market, in 1835 Van Diemen's Land had the greatest per-capita economy out of any colony in the British Empire.

[12] Batman began planning his mission to Narrm in late 1834, but as Boyce points out, for the first half of 1835 there was no clear organisational structure in the Port Phillip Association. Beyond a shared intent for travelling to Narrm and possessing land to run sheep on, it took Batman and his fellow investors months formulate a plan which might result in colonial authorities legitimising their illegal invasion. By February 1835, the Association's constitution was drawn up and it had been agreed that land was to be occupied via an agreement with local Aboriginal peoples, and that the settlement would be free of convicts.

[13] Paul Carter points out that adopting Aboriginal names was a key part of the Association's strategy, allowing Batman to identify himself and his political project with the "interests of the indigenous (sic) inhabitants". Using the monikers of Geelong and Dutigala was part of the Port Phillip Association's performance of benevolent

the group's figurehead but its other founders played key practical roles in Narrm's colonisation including: lawyer and former Attorney General Joseph Tice Gellibrand, surveyor John Helder Wedge, and chief financier and member of Colonial Parliament Charles Swanston (Boyce 2011, 52-55).[14] While all of the group's members were well connected politically, some, such as Thomas Bannister, were invited to invest in the mission due to their inter-continental influence (Boyce 2011, 55; Robert 2016, 98-99).[15] Furthermore, many of the early investors like Wedge and Gellibrand were intimate with Van Diemen Land's government, and historians (Boyce 2011, 58-61; Robert 2016, 108) suspect that the colony's Lt.-Gov. Arthur may have been a silent investor.[16] Christie notes that according to the Association's constitution, their ultimate goal was to occupy the land around Narrm and "depasture (sic) stock as profitably as possible" (1979, 25-26). However, under colonial law settling on territory outside of the bounds of established British jurisdiction was illegal. Creativity was required to convince the colonial authorities to approve of an illegal settlement (Boyce 2011, 58).[17] In early 1835 the Port Phillip Association decided that treaties with the local Aboriginal peoples would be a novel and potentially successful method of private colonisation which could harness the political power of humanitarian politicians in London (Campbell 1987, 66).[18]

Batman sailed into Narrm on 29 May 1835, with a crew of three settlers and seven or eight Aboriginal men he employed from Sydney. Batman's party explored the western shores of Narrm and encountered some Aboriginal women near the You Yangs, which will be fully explored in the following chapter. On 1 June his crew landed close to Melbourne to explore inland, and while they

colonisation to the authorities in Hobart, Sydney and London. See also Cahir, Fred (David) 2014, 'Why did squatters in colonial Victoria use Indigenous placenames for their sheep stations?', in ID Clark, L Hercus & L Kostanski (eds), *Indigenous and Minority Placenames: Australian and International Perspectives*, ANU Press, Canberra, pp. 225-38.

[14] The Association's other founding members were almost all both landowners and Van Diemen's Land government officials with great political influence. They were: notary landowner William Sams, Customs Officer Henry Arthur, Commissioner of the Land Board James Simpson, Postmaster General James Collicott, Superintendent of Convicts John Sinclair, and Superintendent of Roads and Bridges Anthony Cottrell.

[15] Thomas Bannister's bother Saxe was one of the key anti-slavery evangelical politicians in London who supported the 'humane' colonisation of Indigenous peoples, but advocated for a conciliatory approach and some fundamental recognition of 'native' rights. Saxe's support gave the Association's claim of 'peaceful' and 'just' colonisation credibility.

[16] Wedge resigned from his posting as a government Surveyor to join Batman. Arthur had made several public statements lamenting his failure to treat with Tasmanian Aboriginal peoples (but not their genocide) in the years preceding 1835. Arthur's nephew Henry was a founding Association member, and speculation on the Lt-Governor's tacit investment his speculation is based on his based on his connections to core members, his sympathetic attitude to the project and refusal to condemn it.

[17] As Boyce points out, the idea of colonisation by treaty was only novel in the Australian context due to the fact that all colonies prior to (and since) 1835 were established without local Aboriginal consent. This was not the case in other British colonies.

[18] Campbell identifies lawyer Gellibrand as the main proponent of treaties, seeing their utility as both rhetorical and political tools. The humanitarians were an informal, evangelical civil society group in London that advocated for the abolition of slavery and other injustices in the colonies including compensation for colonisation (but were unable or unwilling to address social issues in Britain). See: Follett, Richard R 2008, 'After emancipation: Thomas Fowell Buxton and Evangelical politics in the 1830s', *Parliamentary History*, vol. 27, no. 1, pp. 119-29; Lester, Alan 2002, 'Obtaining the 'due observance of justice': the geographies of colonial humanitarianism', *Environment and Planning D: Society and Space*, vol. 20, no. 3, pp. 277-93.

saw signs of occupation and Indigenous technology including dams it was five days before the party met local Aboriginal men. Batman met with Woiwurrung *Ngurungaeta* and Boonwurrung *Arweet* on 6 June at a waterway within modern Melbourne, where he claimed they 'signed' two Deeds.[19] Batman and the Port Phillip Association would describe these documents as treaties. Historians have explored these encounters in detail to demonstrate that the Kulin had agency and understanding when they treatied with Batman, despite obvious language and philosophical barriers.

Following the 6 June meeting, a ceremony and song and dance performance was held by the gathered Woiwurrung and Boonwurrung (Batman 1856, 20). Batman and his crew stayed another few days and were presented with gifts upon setting sail from the northern shores of Narrm. Before returning to Van Diemen's Land Batman dropped a small crew across Narrm on Waddawurrung Country to establish at camp at Indented Head and await the Port Phillip Association's return. In late August a ship commissioned by Launceston publican John Pascoe Fawkner entered Narrm, and its crew established a camp at the Yarra. It would be two months before the Port Phillip Association returned to Narrm.[20]

Primary sources of colonial history

When working to present a historical narrative of Victorian colonisation — or almost any colonial invasion of Indigenous lands — the limited sources scholars have to draw on are almost entirely from colonist's perspectives. Māori scholar Linda Tuhiwai Smith points out that as many Indigenous cultures were primarily or entirely oral traditions, analysis of early contact or conflict with Europeans can only be done through settler's accounts (Smith 2012, 34-35). Smith provides a framework for considering Indigenous perspectives within settler's primary sources with the intention of presenting a critical study of the policies, people and practices of early colonisation, describing works which critically engage with settler primary sources and subvert narratives of colonisation as decolonial *reading* projects (2012, 150). Tony Birch (2003; 2006b; 2017a) and Evelyn Araluen Corr (2018) — both Aboriginal scholars and poets — note, once the structures of imperial rule were established in Australian colonies primary sources are plentiful enabling *reading projects*; missionaries, Protectors, accountants, and bureaucrats and other setters were often prolific and meticulous record keepers and archivists.[21]

[19] Historians disagree on the provenance of the marks that were drawn on Batman's Deeds, which are explored fully in Chapter 4.
[20] The return of the Association and their supplies, as well as other settlers arriving into Narrm are explored in Chapter 5.
[21] Birch's *Archive Box* series depicts Victorian Aboriginal history through the records of colonial bureaucrats, see the most recent iteration in Birch, Tony 2019, 'Sin', *Cultural Studies Review*, vol. 25, no. 2, pp. 305-6. Another notable example of meticulous record keeping having great political impact for Aboriginal people imprisoned on Reserves was the Coranderrk Inquiry in 1881, transcripts of which are the verbatim script for Ilbijerri Theatre Company's powerful re-enactment. See Nanni, Giordano & James, Andrea 2013, *Coranderrk: We will show the country*, Aboriginal Studies Press, Canberra; Van Toorn, Penny 1999, 'Authors, scribes and owners: The sociology of nineteenth-century aboriginal writing on Coranderrk and Lake Condah reserves', *Continuum: Journal of Media & Cultural Studies*, vol. 13, no. 3, pp. 333-43; Standfield, Rachel 2018, 'Archives

However, then turning to periods of early cross-cultural encounters or expanding colonisation, which historians such as Henry Reynolds (2006) refer to as the Frontier, records of settlers' relations with Indigenous people are less numerous, and often less credible.[22] In the case of Victoria, and within the scope of this thesis, primary sources available are varied. Clark notes that very little is known about the Kulin's contact with sealers and whalers in the first few decades of the 19th century, as while Aboriginal people kept oral histories of brutality from the white pirates there are virtually no written records of encounters, let alone tallies of casualties (1998, 2).[23] The settlers who came to Narrm in 1835 saw themselves as neither marauders nor soldiers, and the records they kept of their time on Kulin Country are constructed to portray inter-cultural relations as peaceful and productive.

There are few primary sources to draw upon for the events of 1835, and they must be viewed cautiously and within their contemporary political context.[24] As historian and writer Bruce Pascoe points out (2007, 14), scholars (and the Australian public) should not accept the accounts of early settlers "simply *because* they were written". This is particularly evident with scholars' weariness of John Batman's accounts.[25] Batman provides the only primary account of his sojourn around Narrm from 29 May to 9 June (Campbell 1987, 84-85), recorded in: his private journal, and a report that the Port Phillip Association sent to Lt. -Gov. Arthur on 25 June.[26] The journal was not published until Batman's death in 1856, making the report the sole public documentation of the Narrm Treaties for 20 years. As Campbell points out, uncertainty on Batman's accounts stem from the fact that the journal and report differ in narrative and timeline of events, which has caused many modern historians to devote their research to re-constructing Batman's journey and attempting to locate key sites of encounters with bayside Kulin.[27] I accept that discrepancies in Batman's journal on distances he walked make him an unreliable witness, however this thesis is not concerned with the specific

of Protection: Language, Dispossession, and Resistance in 1840s Port Phillip District and New Zealand', *Pacific Historical Review*, vol. 87, no. 1, pp. 54-78.

[22] Reynold's landmark book was first published in 1981, but more recently scholars have critiqued the concept of 'the Frontier' and its place in the Australian settler imagination. See Rose, Deborah Bird & Davis, Richard 2006, *Dislocating the frontier: Essaying the mystique of the outback*, ANU E Press, Canberra.

[23] British military officers like Flinders, Collins and Tuckey, and explorers like Hume and Hovell were required to file reports to their imperial superiors giving historians episodic glimpses of Narrm and Kulin people and Country before invasion.

[24] Most of the primary sources utilised in Part II of this thesis have been transcribed and published. The State Library of Victoria holds originals of many of the primary documents discussed below, most of which are digitised and available freely on their website.

[25] Emphasis Pascoe's.

[26] Batman's diary was published in the *Journal of Australasia* in 1856. It is unclear when or where the report was published, but Campbell notes that "it was the sole public account" available until 1856, so it must have been distributed at least in part. Both are republished in full in Billot, C. P. 1979, *John Batman: The Story of John Batman and the Founding of Melbourne*, Hyland House, Melbourne.

[27] Alistair Campbell, Jim Poulter, John Daniels and other historians have dedicated much energy to trace Batman's journey around Narrm and are unable to reach any conclusive route or location of the 6 June treaty meeting. See Daniels, John 2014, 'Batman's route revisited: His exact steps to a new treaty site', *Victorian Historical Journal*, vol. 85, no. 1, pp. 141-62; Poulter, Jim 2016, *Batman's 'Treaty': The True Story*, Red Hen Enterprises, Templestowe.

locations, geography and distances that Batman or any other coloniser recorded.[28] Similarly, I am not concerned with the validity of the written Deeds that he produced.[29] What is important is the quality of the political relationship that developed between the Kulin and settlers in 1835, which I argue were the experiential Narrm Treaties.

However, to gain insight on the political relations with the Kulin from Batman's accounts historians rightly maintain circumspection. As Campbell notes (1987, 84-5), both Batman's diary and report appear "carefully worded with an intent to impress the reader" in manner that military and exploration records generally are not.[30] Boyce goes further (2011, 57), arguing that Batman was "not writing a personal diary but a government submission" intended to inspire colonial authorities to legitimise the Association's land claim Deeds. Batman sought to depict all encounters with Aboriginal people as positive exchanges, where the locals understood his benevolence and generosity, and thus would happily deal with him in land. While Batman should be considered an unreliable witness due to the propagandistic nature of his accounts, they can be read with a decolonised lens to assess the events and customs he describes with the knowledge of local Aboriginal philosophies, law, and social and political protocols established in the Chapters 1 and 2. Imagination is required to consider new possibilities in colonial encounters in 1835, which should be seen as the consolidation of generations of political relations and experiential treaty-making around Narrm. In Smith's terms this chapter and the following one are conducing my own decolonial *reading* project, while entering dialogue with Boyce, Cahir, Christie, Kenny, and Clark's histories, to centre Kulin's political agency and re-imagine the Narrm Treaties.

We can be almost certain that a meeting took place on 6 June 1835 between Batman and his crew and a delegation of Woiwurrung *Ngurungaeta*. The group included *Wurundjeri Willam* heads Billibellary, Boronuptune and Bebejan, three brothers who were all incorrectly listed on the Deeds as Jagga Jagga (Barwick 1984, 121-124). The other leaders at the meeting were listed on the Deeds as Cooloolock, Bungarie, Yan Yan, Moowhip, and Mommarmalar (Campbell 1987, 100,103).[31] According to

[28] Campbell and other historians such as Jim Poulter (see previous note) have analysed Batman's diary and concluding that the distances he claimed he walked were all but impossible to cover in the time he had; Batman was either greatly exaggerating or writing pure fiction. For example, Batman claimed that following the treaty ceremony he accompanied clansmen to mark out trees on the boundaries of the Deeds (which would have involved hundreds of miles walking, and they did not have horses) in a single day, 7 June. Furthermore, other details in Batman's journal have been rightly questioned, such as the ability of his crew to haul a large number of gifts on a three-day trek before 6 June or the fact that the Deeds were signed or marked almost identically, including by three separate men named 'Jaga Jaga'. These issues will be further explored in coming chapters.
[29] Chapter 4 explored the 'validly' of the Djilong Deed.
[30] Campbell argues that the Association's lawyer Gellibrand, who drew up the Narrm Deeds, probably edited and polished Batman's diaries to prepare a report which would "provide a more impressive record for official purposes".
[31] I do not doubt these Kulin leaders' presence at the meeting, however as Campbell and others have pointed out their names are almost certainly misspelt, making it difficult to ascertain which clans' heads were there. See Figure 8 for an image of the Djilong Deed, and Appendix 2 for the text of it. Nothing is known about the latter four, whose names are likely misspelled on the Deeds.

historian Marie Fels (2011, 108-110) Cooloolock was Kollorlock, a Boonwurrung *Arweet* from Westernport. Clark (1990, 384) identified Bungarie as Woiwurrung *Marin Balug* head Baungarim, from the Sunbury area. At least one other Boonwurrung head may have been present in Mooderrogar or Metterrandanuk aka Budgery Tom (Fels 2011, 48-50) from the upper Mornington Peninsula, whose name may have been misspelled as one of the latter four. This made the treaty a joint diplomatic agreement between the northern Narrm clans whose territory had been encroached on by settlers.[32] Batman's minimal description of the event is corroborated by future Woiwurrung leader William Barak, son of *Wurundjeri Willam* clan head Bebejan, who was present at the meeting as a child (Barwick 1984, 122-124).[33] The precise location of the meeting is irrelevant; historians attempts to locate a site of the Melbourne Treaty meeting invariably re-trace Batman's journey around Narrm and thus centre him, taking away the agency of the Woiwurrung leaders who determined almost all aspects of the meeting.

Chapters 3, 4 and 5 put the written records of the events of 1835 in conversation with understandings of the cultural and political culture of the bayside Kulin from Chapter 1 and 2 to imagine colonial encounters from an Aboriginal perspective. Beyond the bare-bones details recorded by Batman, analysing the Narrm Treaties requires a speculative argument —or as Kenny puts it an "imaginative gambit" (2007, 70) — which can envision the Kulin's complex political motivations and intentions during their first contacts with settlers. Historical certainty aside, as discussed in previous chapters it is important to imagine Kulin treaty-making as an alternative model to European legal and political frameworks. As the next section explains the key tenants of the Kulin Agency thesis, I emphasise that at every stage of the initial contact with colonisers the peoples of Narrm willingly exercised sovereignty, cultural protocols, diplomacy, and ultimately their form of experiential treaty-making.

Expanding the Kulin Agency thesis

In revising the legacy and influence of John Batman, scholars have made a vital contribution to Victorian history in developing the Kulin Agency thesis. Until recently, the narrative of Victorian colonisation demonised John Batman and the Port Phillip Association's endeavour to treaty with the Kulin, depicting it as thoroughly exploitative and fraudulent (Cruickshank 2013; Robert 2016, 115-118). Condemning Batman, and the Narrm Treaties he proclaimed, as nonsense and fraud implies that Aboriginal participants were gullible, precluding the possibility that they entered political negotiations willing and informed. 20th century historians implicitly (and at times explicitly) portrayed the Kulin as

[32] It is notable that only Fels is certain that the Boonwurrung were party to the 6 June meeting, however the strength of Fel's biography of Kollorlock leaves little doubt that he was a Westernport man and thus not Woiwurrung. Lyndall Ryan states that Boonwurrung presence was possible.
[33] Barwick drew on anthropologist and naturalist AW Howitt's interview with William Barak, conducted in the Wurundjeri *Ngurungaeta's* final years. Barak died at Coranderrk in 1903, aged around 85.

naïve, child-like, unable to politically engage with the colonisers, or easily bought off with trinkets.[34] These racist and paternalistic stereotypes continue to be perpetuated in modern media and political representations (Robert 2016, 113-119).[35] Historiography that dismissed the Kulin's capacity to engage in politics is the origins of the modern media's deficit discourse, a racialised mode of thinking which portrays Indigenous peoples in a narrative of deficiency, damage, negativity, and failure (Latimore et al. 2017).[36]

The Kulin Agency thesis pushes back against histories that "filter out Aboriginal presence and ownership…. [and] rendered Aboriginal people invisible, marginal, or passive" (Robert 2016, 121). Agency scholars show that the Kulin peoples were adapt diplomatic agents who were in control of the political destiny in 1835, rejecting the treaty-by-fraud narrative. Recognition of the Kulin's agency is enabled through understanding of the anthropological tenets explored in the opening chapters of this thesis. As Kenny argues "it is not Batman's chicanery that matters but the understanding that the Kulin themselves might have had" about the Narrm Treaties (2008, 38.2), and now I will explore some of the motivations and possibilities of the Kulin perspective.

Perception of existential threat

By the 1830s the Kulin were weary of settlers and feeling that their society was under threat (Boyce 2011, 65). The threat of British technology and violence was demonstrated as early as 1803 (Clark 1998, 2), and the decades of marauding sealers, whalers, and British officers violating and murdering coastal and bayside Aboriginal people would have compounded a perception of threat. Kulin women were especially targeted with assault and abduction, as would be the pattern in future frontier violence, bearing the brunt of settler's sexual terrorism (Wolfe 1994). Extensive overland trade networks were prevalent throughout south-eastern Australia (Kenny 2008, 38.7), and news of colonisation and settler violence travelled far as resources were exchanged between nations (Clark 1998; Powell, M & Hesline 2010). Cahir argues that Kulin people may have been informed about east coast colonisation as early as 1797 (2019, 53). By the 1830s Wiradjuri Country in central New South Wales had been invaded, a nation with more direct links to the Kulin through nations along the Dhungala (Murray River) (Clark & Heydon 2002, 159). William Buckley met men from the Dhungala who had travelled to Narrm (Morgan 2002 (1852), 130), but as his biography has no specific dates it is unclear if this was prior to the Riverina wars of the 1820s. It is highly likely that the progress of

[34] An example is Alistair Campbell's 1987 biography of John Batman. While highlighting the injustice of colonisation Campbell trivialises the 1835 treaties and unintentionally undermines the agency and political acumen of the Kulin.
[35] Hannah Robert refers to narratives which diminish Aboriginal agency and strength while highlighting settler heroics and survival as Australia's 'Foundation Histories'.
[36] Colonial literature commonly described the dispossession and subsequent attempted genocide of Aboriginal peoples with euphemisms for invasion such as 'fallen' and 'usurped'. Deficit discourses were originally conceptualised in terms of representation in the modern mainstream but are applicable to history and other fields of public discussion, see the Introductory chapter for more background.

colonial expansion and exploration was being monitored by the Narrm Kulin with news travelling south from the Dhungala through Eastern Kulin language speaking nations: the Ngurai-illam Wurrung, Taungurung and Dja Dja Wurrung.[37] Gunditjmara clans on Victoria's south-west coast experienced similar piracy from sealers and whalers to the coastal Kulin, but the Henty's 1834 colonisation would have been significant news for all Victorian nations as it brought two firsts to the soon-to-be colony: the first organised massacre of Aboriginal people at Convincing Ground (Clark 1995, 17-22), and the first importation of sheep (Kenny 2007, 2018).[38]

Settlers infiltrated Aboriginal trade and news networks with a powerful, yet slow and indirect weapon: disease. It is likely that in the late 1820s an epidemic of smallpox spread through Victoria, introduced through a decade of contact with sealers and whalers. Scholars disagree on the extent and impact of the epidemic, but most acknowledge that following an epidemic in 1828-1830 the Victorian Aboriginal population (Critchett 1990, 79-82; Pascoe 2007, 44-45), including the Kulin was significantly reduced from pre-contact levels (Gammage 2011, 153, 311).[39] Historians estimate that the total Kulin population in the early 19th century was around 60,000 (Broome 2005, 9). After two waves of epidemics from diseases imported by European sailors, the population was reduced to 15,000-20,000 (Powell, B et al. 2019, 61; Presland 2010, 90). It is likely that the coastal Kulin, more vulnerable due to frequent contact with settlers and a disease weakened polity, were anticipating an invasion and permanent settlement of some kind. Disease may have had a further political impact as according to historian Bill Gammage it affected the very young and old (2011, 153). If the Narrm Kulin had been significantly impacted by disease in the late 1820s, killing the most senior leaders, a new generation of Elders who had recently come into leadership roles may have taken innovative approaches to their encounters Batman and his crew.

For some Kulin the threat of invasion was not just about territorial sovereignty and traditional law, but the arrival of settlers put metaphysical and spiritual realms at risk. In the 1830s lawmen spread word across central Victorian nations, including all Kulin clans and some Murray river nations, instructing peoples to collect steel implements and other building tools (Brumm 2010, 191-192). Axes and tools were to be sent to a mystic in the Australian Alps who would use to them to craft new wooden props

[37] Colonial expeditions through the Victorian interior include Hume and Hovell in 1824 and Major Thomas Mitchell in 1836. As mentioned in the Introductory Chapter, the Ngurai-illam Wurrung are generally not considered a modern Kulin nation, but as they were part of the Eastern Kulin languages, they were likely conduits of news from the Riverina.

[38] Convincing Ground became a key contest in the History Wars, as historians are unable to determine several key facts including: the number of casualties, the cause of the massacre, and if it occurred in 1833 or 1834. For information see Clark, Ian D 2011, 'The Convincing Ground Aboriginal massacre at Portland bay, Victoria: Fact or fiction?', *Aboriginal History*, vol. 35, pp. 79-109.

[39] It seems impossible to estimate what proportion of Aboriginal people had been infected or killed by introduced diseases like smallpox, measles, flu, and others killed by 1835. Gammage writes that the disease had a devastating impact on the east coast of Australia, disproportionally affecting the young and elderly with a kill rate of 50%. Others such as Pascoe and Critchett argue the casualty rate was far lower.

which kept the sky supported, as he feared it would soon collapse under the pressures of invasion (Fison & Howitt 1880, 55). A great many axes were collected, many stolen from pirate camps at Westernport while other salvaged items were used to craft cutting instruments (Boyce 2011, 15). This was not a stockpiling of weapons for war with foreigners, but rather a cosmological response to an unprecedented threat that fit within the Kulin's legal, philosophical and spiritual tradition (Brumm 2010, 188-189). The event had such weight that it was recalled by William Barak, who was a child when these preparations were occurring (Maynard & Haskins 2016, 59). The search for steel to craft new sky-props was also recounted by William Buckley, such was the sense of threat in the Kulin world (Langhorne in Morgan 2002 (1852), 198-199). In preparing for impending contact with settlers, the Kulin's main question was what form of invasion would come to Narrm: limited and industry-led like the Henty's in Portland or expansive and military-led like the colonisation of New South Wales. The private colonisation to the Kulin's west and the military colonisation to the north of Narrm resulted in massacre and attempted genocide, but, the experiential treaty-making that the Kulin engaged in with the Port Phillip Association shows that their diplomacy was an attempt to avoid slaughter.

The coincidences and historical peculiarities which brought the coastal Kulin and Batman's Port Phillip Association into contact and led to political agreement, arise from both party's anxiety and insecurity. Amidst heightened concerns over increasing violations of sovereignty by settlers and a diseased weakened society, the coastal Kulin were likely to have accepted that whites were intent on visiting Narrm and their Country. While news of colonisation in neighbouring regions likely reached Narrm though the Kulin's communication networks, knowledge of the threat of colonisers was supplemented through the stories of William Buckley. Over 32 years Buckley warned his hosts of the danger of white technology and the violent punitive society he fled, telling his hosts stories of British "Ships and Great Guns etc." (Langhorne in Morgan 2002 (1852), 195) and openly employing salvaged British goods (Dawson 1881, 111).[40] Given that Buckley was part of one of the previous two failed colonisations of Narrm and likely aware that the bay had been partially surveyed by British officers and explorers, he probably believed that the colonial military would return for another attempt at invasion.

If the bayside Kulin accepted that colonisation was approaching, their options were to resist or attempt to influence it. Clark points out (1998, 5-6) that it was the prerogative of Aboriginal clans to invite, tolerate, or reject the presence of foreign guests on their Country. When parties of settlers travelled through Aboriginal Country, they experienced encounters with a combination of tactics: surveillance, avoidance, curiosity, contact, diplomacy or attack (Clark 1990, 92). It is doubtful the Kulin could ever conceive of abandoning their Country upon invasion, as historian Tracey Banivanua

[40] Dawson exhibits his paternalism when he claims that Buckley "taught" the Waddawurrung how to use items like axes or blankets, however this indicates that he was open with his knowledge of foreign technology.

Mar points out (2013), Indigenous cultures' ancestral ties and duty to land is too strong. Buckley knew that there was a key cultural difference between his hosts and the British penal regime he fled: unlike the Kulin's exacting and proportional rules of conflict, the colonisers made little effort to limit their violence against natives. To avoid prolonged and unlimited bloodshed, given the opportunity it would have seemed wise to seek a peace with colonisers by establishing diplomatic relations.

Gomeroi poet and scholar Alison Whittaker rightly reminds us to consider the level of duress that Indigenous people were under when signing treaties that would 'legitimise' their own colonisation (2019). By 1835, forcing Indigenous peoples to sign trade deals at the threat of military invasion was a common practice for European powers (Belmessous 2014a), whose soldiers and Company's used cannons and ships to take kingdoms and markets throughout Southern Africa and Asia.[41] Many scholars have opined on why the British colonisers who came to Australia ignored their orders to obtain native consent (Langton et al. 2004), and thus made little effort to engage diplomatically with the locals, but what is important here is that there was no strategic competition between European powers as there was in other settler-colonies in Africa, North America and New Zealand.[42] The extent to which Canada's Numbered Treaties (McKee 2013) or Aotearoa/New Zealand's Treaty of Waitangi (Mar 2013) were entered into voluntarily must be questioned when these Indigenous peoples faced pressure from technologically advanced militaries and navies; but were Australian Aboriginal experiences similar? Henry Reynolds (cited in Mansell 2016, 105) argues that the first treaty with settlers was between the remnants of the Tasmanian nations and George Augustus Robinson in 1830, who arranged for their exile and incarceration on Flinders Island. The Tasmanian people were survivors of an ongoing attempted genocide, but their guerrilla war was failing against a merciless squatter paramilitary. Under existential duress the Tasmanian peoples had little option but to pragmatically surrender, but in 1835 invasion had not begun, and the settlers' proposition was qualitatively different to Robinsons; the Narrm clans held the power of intimidation.

The Kulin were certainly concerned about invasion and the destructive capability of settler technology, however when Batman landed on their Country the locals retained an overwhelming military superiority. Batman must have had awareness from his experience in Van Diemen's Land that when he entered Narrm his trespass was two-fold: first, he had no permission from Aboriginal clans, and second, under colonial law the Port Phillip Association's (and other settlers like the Henty's, sealers or whalers) presence on Victorian land was illegal. This reality created several

[41] For an in-depth exploration of these tactics and the British evolution of colonisation in India, which informed their invading tactics for future colonies, see Dalrymple, William 2019, *The Anarchy: The Relentless Rise of the East India Company*, Bloomsbury, London.

[42] I do not have the space to elaborate on the politics which led to these treaties, but for more detail see Langton, Marcia 2001, 'Dominion and dishonour: a treaty between our nations?', *Postcolonial Studies: Culture, Politics, Economy*, vol. 4, no. 1, pp. 13-26; Renwick, William (ed.) 1991, *Sovereignty & indigenous rights : the Treaty of Waitangi in international contexts*, Victoria University Press, Wellington.

practical problems for the would-be colonisers, who had the bloody and prolonged guerrilla warfare which defined the Aboriginal experience of Van Diemen's Land on their mind (Kenny 2008, 38.5). Colonisers from Van Diemen's Land knew that security was increasingly compromised the further they travelled from bases of British power (Boyce 2008). For Batman's expedition, the nearest military support was weeks if not months away, and it was not guaranteed that the authorities would assist trespassers in conflict with Aboriginal peoples. Aboriginal warriors had numerical superiority and intimate, strategic knowledge of their Country. The whites were vulnerable to attack at any time. Also, the Port Phillip Association sought to have their purchase of Aboriginal land validated by the colonial authorities, and given the influence of the anti-slavery Christian movement in 1835 they needed to demonstrate goodwill towards the local peoples; violence and murder would undermine a claim of benevolent colonisation (Robert 2016).[43] Third, diplomacy was needed for *ongoing* peace and security to protect the establishment of pastoral runs and other infrastructure. If the Port Phillip Association's gambit succeeded, shepherds and livestock sent to the plains around Narrm needed to be protected from local Aboriginal warriors. Both sides sought to maximise their security and accommodate each other, which required communication and understanding. Conscious of the military threat from settlers, the Narrm Kulin voluntarily approached and treatied with Batman's party.

Possibility of communication

Settlers rarely had permission for their sojourning on Aboriginal land and often desecrated or travelled near scared sites: thus, some form of confrontation was common for early colonial explorers (Clark 1998, 2003). Batman and the Port Phillip Association anticipated that their landing parties would be vulnerable on foreign Aboriginal land and prepared to seek a peaceful arrangement with local Aboriginal people. Boyce (2011, 63, 98-69) and Kenny (2008 38.5) highlight that Batman's selection of crew for the mission to Narrm was careful and effective, only bringing individuals with experience navigating cross-cultural relationships. Despite involvement in the Black Line — a spectacularly failed and genocidal military operation in which settlers sought to wipe out Aboriginal warriors and their families from Van Diemen's Land in 1830 — and direct participation in massacres, Batman himself had a reputation as a frontier mediator (Boyce 2011, 76). [44] Batman's complicity in

[43] Robert provides an excellent exploration of the humanitarian discourse which was propagated by London Evangelicals (who sought to craft a paradoxical policy of 'just colonisation'), including analysis of Thomas Fowell Buxton's 1835-36 Select Committee on Aborigines in the British Colonies, and the aftermath of adopting the Committee's principles in the regime of Protectionism in Victoria.

[44] Batman was proud that after he participated in the massacre of a Tasmanian Aboriginal clan near his estate at Ben Lomond in September 1829, he 'adopted' a survivor named Lurnerminner. Boyce describes the surviving boy as a "child refugee from the Black War" but does not remark on the fact that before his eyes Batman executed the two surviving adult clan members who could have taken care of him. Batman gave Lurnerminner the British name John Allen. In the following years Lurnerminner lived at Batman's estate at Ben Lomond and worked as a domestic farmhand, along with another stolen child Rolepana (christened along with Batman's other children and named 'Ben Lomond'). As a teen Lurnerminner came to Narrm to assist the Association's

attempted genocide and murder of resisting Aboriginal people apparently did little to offset his confidence in communicating with Indigenous people. Most important to starting political relations with the locals without misunderstanding or aggression, were the seven or eight Aboriginal men Batman employed from Sydney (Boyce 2011, 65).[45]

Boyce rightly highlights that the Sydney men had gained some skill in communicating with foreign Aboriginal peoples through their years employed by Batman (2011, 64-66). However, given that they participated in the Black Line and other massacres of Tasmanian clans (Campbell 1987, 44-54; Linnell 163-176) Boyce's description of the Sydney men as 'conciliators' downplays their complicity in attempted genocide.[46] Nevertheless, the Sydney men were able to communicate with the bayside Kulin, and their remit was decidedly less aggressive than in previous missions with Batman. Batman used his Aboriginal employees as point-men, travelling ahead to communicate with locals before they saw the white party (Campbell 1987, 88).[47] This demonstrates an appreciation of cultural sensitivity — seeking avoid surprises that often result in violence on the frontier — a tactic also used by Waddawurrung leaders at Beangala described in Chapter 5. While Boyce notes that some of the Sydney men were not from the Sydney area but from the southern coast of New South Wales (2011, 49, 63), this may have been beneficial for their communication skills.[48] Kenny (2008, 38.5), expanding on Barwick's research (1984, 107), argues that as some of the Sydney men were "only a few language groups away from Port Phillip" they would have been aware of the legal protocol of obtaining consent from appropriate authorities before venturing out into foreign Country.

Historians debate to what extent the Sydney men could communicate with the Kulin. Campbell argues only basic communication was possible through gestures used to convey broad intentions (1987, 101-104). More recent Agency scholars argue that while language may have presented a formidable barrier meaningful communication was possible and occurred at the 6 June meeting, emphasising that

mission, sailing with Henry Batman in August 1835. For more background on these stolen Aboriginal boys see Edmonds, Penelope & Berry, Michelle 2018, 'Eliza Batman's house: unhomely frontiers and intimate Overstraiters in Van Diemen's Land and Port Phillip', in P Edmonds & A Nettelbeck (eds), *Intimacies of Violence in the Settler Colony*, Palgrave Macmillan, London, pp. 115-37.

[45] For years in the 1820s and 1830s Warrora (John Pigeon) led bush parties for Batman and George Augustus Robinson in Van Diemen's Land, and was highly experienced in navigating communication with foreign Aboriginal peoples. Johninbia or Yunbai (Tommy or John Crook) and John Stewart were also Batman's long-term employees but did not arrive to Narrm until August 1835. We know little of the background of the other Sydney men: Joe the Marine, Old Bull, Bungett, Bullet, and Jacky.

[46] Campbell and Linnell detail the Van Diemen's Land massacres Batman and his employees were involved in. John Stewart, Bullet, and Joe the Marine would go on to participate in the first massacre of Narrm peoples, in reprisal for the murder of Charles Franks in July 1836. Pigeon and Tommy were also employed by George Augustus Robinson to 'negotiate' the relocation of Tasmanian Aboriginal survivors to Flinders Island. For more background see Taylor, Rebe 2017, 'The Wedge Collection and the Conundrum of Humane Colonisation', *Meanjin*, vol. 77, no. 4, pp. 34-55.

[47] As will be further explored in Chapter 4, when Batman first saw Aboriginal people in Narrm he had the Sydney men strip naked and walk ahead of the main party to approach them.

[48] Batman used his contacts in Parramatta to bring Aboriginal men down to Launceston: Warrora was from Shoalhaven and Johninbia from near Wollongong. The origins of the other men are unknown.

the performance of ceremony, song, and dance demonstrates a form of agreement. Boyce rejects the notion that an "impenetrable cultural gulf" prevented political communication between the Kulin and settlers (2011, 65), agreeing with Kenny (2008, 38.7) that it is more likely the two sides' mutual interest and interpretation by the Sydney Aboriginal men resulted in an understanding and commitment to non-aggression at minimum. Furthermore, the communication skills of the Sydney men were adaptable, as they were able to open discourse with at least two different language groups: the Waddawurrung at the You Yangs encounter and at The Camp (Todd 1989, 26-27), and the Woiwurrung and Boonwurrung at the Yarra.[49] As I will argue in the following chapter, a significant indicator that the Kulin conducted political negotiations and communicated with Batman's party was the giving of high-valued gifts. Or perhaps, that the Narrm encounters did not result in violence is the best evidence that an understanding was reached; as Kenny points out what ever took place on 6 June 1835, "the Kulin were not signing their death warrants" (2008, 38.9).

While we must rely on Batman's account (in which he would likely not record any aggression by either party) the lack of hostility speaks volumes. The Sydney Aboriginal men were instrumental in maximising the immediate chances of the settler's on-the-ground survival at Narrm but for long-term peace abiding by the Treaties would provide the greatest level of security for the Port Phillip Association, and Kulin law required experiential treaties to manage any ongoing relations with guests on Country. Of course, as Boyce points out (2011, 67-68) and will be fully explored in Chapter 5, the key issue of misunderstanding was to what extent the settlers were granted access to Kulin Country. The local Kulin sovereigns, unable to conceive of selling their land in the manner Batman presumed, were issuing permits for the settlers to travel around Narrm. Batman on the other hand believed he had purchased exclusive title to land around Narrm (Kenny 2008, 38.5). Was his belief wilfully ignorant? If we accept that the Sydney men were able to facilitate meaningful cross-cultural political communication, surely they would have realised that the Kulin would not, and under local law could not sell their Country. Perhaps they were unwilling to inform their employer he was wrong, perhaps they saw Batman's treaties as the best chance to reduce slaughter for the Kulin, or perhaps their participation in violence against foreign Aboriginal groups had left them with little empathy for the yet-to-be colonised. What is clear, is that despite a mutual interest between Batman and the Kulin in avoiding war and retribution, without the Sydney men acting as cross-cultural interpreters and translators there would have been little prospect "diplomacy on the frontier" (Kenny 2008, 38.7).

[49] The You Yangs encounter is fully explored in Chapter 4. While the Waddawurrung and Woiwurrung are neighbours and culturally Kulin nations, linguists have classed their dialects as markedly different. The Waddawurrung language is independent of Eastern Kulin languages. William Todd, the settler who recorded relations between the Waddawurrung and his crew at Indented Head remarked that the local language was "quite different" to that he overheard at earlier meetings at the Yarra. See Chapter 1 and Blake, Barry J. (ed.) 1998, *Wathawurrung and the Colac language of southern Victoria*, Pacific Linguistics, Canberra.

Protocols of diplomacy

Negotiations for the Narrm Treaties incorporated diplomatic protocols from both British and Kulin legal traditions. After contact and peaceful intent was established by the Sydney Aboriginal men, gift giving was an important way to honour Country, and Batman knew that offering presents to any locals he met would increase the likelihood of gaining access to the clan heads (whom he assumed had authority to sell land). As Boyce points out (2011, 70), gifting was a common tactic used by settlers to win over Aboriginal people on colonial frontiers in Van Diemen's Land and New South Wales. Batman's gift-giving was successful in buying the attention of locals; however, he could have easily given away all his supplies without achieving a lasting experiential treaty-settlement.

The bayside Kulin had established protocols to deal with the newcomers to Country and exhibited caution when Batman's ships entered Narrm (Attwood & Doyle 2009, 56). Batman's first encounter with Aboriginal people around Narrm was on Waddawurrung Country and is explored in Chapter 4, but following this his party spent several days walking around modern Melbourne searching for chiefs. While they did not encounter anyone until 6 June, we may imagine that his loud and aimless party was watched by local scouts. According to Lyndall Ryan, Billibellary head of the Woiwurrung had clans-people observing Batman's party for several days (2017, 4). Having assembled a delegation of local leaders Billibellary *chose* when to reveal themselves to the settlers.[50] Batman's party met an Aboriginal family on the morning of 6 June who guided them to an unknown location (or perhaps they were just walking until the time was right) when an armed party of chiefs appeared *behind* the settlers, surprising Batman (1856, 19). According to Barwick (1984, 122), the family included a Woiwurrung matriarch named Doot-ty Galla, who spread "news of the intrusion [and] no doubt prompted the assembly of Woiwurrung leaders" who would approach Batman: the chiefs were prepared to deal with foreigners.[51] Once Batman's party had been brought to the right spot the Melbourne Treaty meeting took place on Woiwurrung territory, Billibellary and his brothers' Country, at a time and location of their choosing. The content and duration of the negotiation between Batman's party, the Woiwurrung and Boonwurrung clan heads will never be known, but we know that the settlers gave items to the local Kulin, and while Batman's gifts lacked symbolic value it is worth exploring them as many were retained by the locals.

The economic understanding and relationship which resulted from the Melbourne Treaty meeting was qualitatively different from any frontier diplomacy (or present political negotiation) between settlers and Indigenous people (Boyce 2011, 70). The items Batman items offered to the Kulin — knives, scissors, tomahawks, blankets, European clothing, looking glasses (mirrors), beads, and flour

[50] Emphasis mine.
[51] Barwick is the only historian who includes the agency and authority of Kulin women in the narrative of June 1835. She draws on the records of George Augustus Robinson and argues that Dutigala, the name given to one of Batman's title Deeds derives from this Woiwurrung matriarch's name.

(Campbell 1987, 101-102) — were more than gifts: they were payments.[52] Detractors of the Narrm Treaties argue that these items were trivial at best and are emblematic of fundamental exploitation inherent in the exchange (Robert 2016, 116-118). This may be true for the beads, suits of clothes and mirrors (which would have represented a particular novelty), but Kenny argues that the supplies presented to the Kulin represented objects of value, with steel items especially coveted technology (2007, 69-70; 2008, 38.6-38.7).[53] Steel tomahawks would greatly assist in hunting and food preparation, while flour offered a food resource which did not drain the local natural economy. Batman made an initial tribute and claimed that his promise for an annual payment was understood, and the Kulin leadership decided that these goods were apt compensation for settlers' land access.

While I agree with Kenny (2008, 38.6-38.8) that some of the supplies provided by Batman had practical value and were overall not trinkets, the economic aspect to the treaties is more important than previously acknowledged. Gift-giving and material symbolism was necessary to fulfil the Kulin's political requirement of reciprocity. Upon leaving the northern shore of Narrm Batman's party was presented with several high-value items by the Woiwurrung and Boonwurrung they had just treatied with. Experiential treaties under Kulin law did not involve large-scale exchange of material goods but were rather reciprocal arrangements of inter-personal access to Country and natural resources. Permission was based on social location within kinship networks. It would have been abundantly clear to the Kulin that Batman and his crew did not have the resources to engage in standard experiential treaties; they had no Country they were sovereign over nor could they reciprocate in arranging marriages and extending kinship networks as Batman's crew included no women.[54] Presented with a potential treaty partner possessing resources outside of their traditional framework, the Kulin pragmatically adapted their political tradition to satisfy the requirement of reciprocity entirely with material items. In this way, the European custom of exchanging material goods for services or political outcomes was adapted by the Kulin to conform to requirements of their legal traditions, which could then be formalised through ceremony.

Tanderrum for Batman

Barwick first argued that the ceremony performed by the Woiwurrung for Batman's party was *Tanderrum,* the Kulin's formal ritual of welcome and consent for strangers to access and traverse Country. Barwick (1998, 23-24) argues that Batman witnessed *Tanderrum* and confused it with an antiquated British ceremony of feoffment, in which a seller of land would pass the purchaser a symbol

[52] See Appendix 2 for the quantity of the annual items to be paid to the Waddawurrung, listed on the Djilong Deed.
[53] Recall from Chapter 1 the Kulin's familiarity with European tools in their drive to collect axe-heads in the immediate lead up to 1835.
[54] Here I am imagining an adaptation to experiential treaty-making based on the Kulin's reaction to foreigners explored in earlier chapters. Even if Batman's party had women it is unlikely that marriage would be a consideration given the fact that even after 32 years William Buckley was denied a wife by Kulin clansmen, indicating that white men, even if initiated into the nation, were not culturally acceptable spouses.

such as soil, grass or leaves. We know from the accounts of Protector of Aboriginal people in the Melbourne area William Thomas that the *Tanderrum* he witnessed involved hosts exchanging leaves, water, and soil with their guests before a performance of song and dance (Thomas in Bride 1898, 439). While we do not have evidence that a version of *Tanderrum* as elaborate as that described by Thomas was performed for Batman's party, Attwood points out we are not certain that it was in fact performed at all (Attwood & Doyle 58-59; Kenny 2008, 38.5) and Kulin Agency scholars agree that this misunderstanding was probably central to the establishment of peaceful political relations: the experiential Melbourne Treaty governing relations on the northern shores of Narrm.

As I previously argued *Tanderrum* is a performance of sovereignty and part of experiential treaty-making that regulates foreign presence on Country while clearly stating the responsibilities and obligations for both host and guest: the former guaranteeing protection from aggression and the latter committing to not harming Bunjil's lands or people.[55] Kenny (2008) and Boyce (2011, 65-68) argue that the probable performance of *Tanderrum* is key evidence that a mutual political understanding was reached at the meeting with Batman, but more so that consent for access to Country was offered voluntarily; the Woiwurrung leaders were informed, pragmatic, and willing agents who attempted to curb colonisation on their Country. *Tanderrum* likely formalised the cross-cultural non-aggression pact which as we will see was followed by both sides at the Yarra camp from late 1835. As Attwood and Doyle point out the protocols of diplomacy followed at the Yarra provided "sense that the meaning of this treaty closely resembled that of the treaties [the Kulin] had customarily made with other peoples" (Attwood & Doyle 2009, 59-60).

We should reflect here on the imaginations of these critical historians, whose reading of Batman's diary — the only primary document concerning the 6 June meeting — was so radically different from scholars who came before them. In Greg Dening's terms *Tanderrum* was a robust performance of sovereignty and power, however it was rendered inconsequential entertainment when misinterpreted by Batman and generations of subsequent historians. Kenny argues that regardless of any confusion surrounding the meaning of *Tanderrum*, the meeting of 6 June was clearly mutually understood as diplomacy to "facilitate agreement in the field", granting settlers land access and establishing a reciprocal relationship based on the expectation of compensation (2007, 69). As we will see in the next chapter, a reimagining of *corroborees* performed to settlers at Indented Head is also required, as they were a similar performance of sovereignty and consent for guests.

[55] Most treaty historians argue that Batman interpreted (or willingly misinterpreted) this ceremony as feoffment, a feudal land sale and tenancy ritual which he claimed further legitimised his purchase of Kulin Country. For brevity I will not explore this debate. I take the position that it is a remarkable coincidence that the ceremonies share some qualities, however it is absurd to claim that the Aboriginal clan heads interpreted the exchange as a land sale.

Limiting colonisation

While apparently consenting to the Port Phillip Association's temporary access to Country in exchange for material payment, is unlikely that the Woiwurrung and Boonwurrung were permitting unlimited access to the white newcomers. It is probable, as Kenny argues (2008, 38.7), that in treaty-making the Kulin sought to "curtail the destruction which they heard had occurred to their north" and west coast, aiming to negotiate for the most minimal white presence possible. Limiting the presence of settlers was a central priority for the Port Phillip Association also, as the fundamental element of its treaty strategy was excluding non-Association setters from making land claims around Narrm (Boyce 2011, 68). It is unlikely that the Port Phillip Association envisioned a settlement free of colonial government presence, but they still hoped to monopolise any pastoral enterprise by the bay.

We can't know how or to what extent Batman made promises of limiting settlement, but it soon became clear that the Port Phillip Association had no ability to fulfil its ambition. Kenny points out that Port Phillip Association surveyor John Wedge was dismayed and affronted with the "intrusion" of John Pascoe Fawkner's men on to "Association land" in August 1835 (2008, 38.6). However, for the Kulin it is likely that there was little if any distinction between Association employees and other settlers as neither party wore uniforms nor employed convicts; experiential treaties were defined by inter-personal relationships. Much to the chagrin of the Association, Boonwurrung *Arweet* Derrimut — head of the *Yalukit Willam* clan of the Boonwurrung, whose territory was included in the Dutigala Deed in the strip of land between Narrm and the Yarra (Barwick 1984, 119) — extended Fawkner the same welcome and protection that the Batman's employees were afforded. Derrimut had close kinship relations with his northerly neighbouring clan head Billibellary through his mother (Clark 2005, 120), While historians do not agree if Derrimut was present at or immediately after the 6 June negotiations, he should be seen as a key party to the Melbourne Treaty as settlers travelled on his Country bordering Narrm (Barwick 1984, 119).

The Melbourne Treaty was in effect in October 1835 when a coalition of other bayside clan heads, including Derrimut (who is often given sole credit), Billibellary of the Woiwurrung and Baitbanger of the Boonwurrung, used their political influence to call off a planned attack on the settlers camped at the Yarra (Clark 2005; Fels 2011, 204-206). This incident was preceded by a large gathering of 400-500 Kulin from all five language groups near the Yarra, which clearly resulted in disagreement on how to deal with the settlers and the increasing arrivals of ships to Narrm (Boyce 2011, 79-80). While there was clearly danger to the settlers, the local clan heads authority was enacted to protect them, just as occurred at Beangala on Waddawurrung Country as we will see in coming chapters. Derrimut's close relationship with Fawkner (and not an Association member) may reflect the inclusiveness of Kulin protocols of accommodation and reciprocity explored in the previous chapters. However, Clark questions Fawkner's ability to pay rent to the Kulin (Clark 2005, 110). Fawkner was able to

contribute some compensation by organising regular cooperative hunting expeditions which were a substantive economic resource for the Kulin, however he also recorded several confrontations with Aboriginal people in his early weeks at the Yarra (Boyce 2011, 79-80, 94). Ultimately, Derrimut's friendly treatment of Fawkner indicates that he (and other Kulin Elders) retained authority to authorise settler occupation after the Melbourne Treaty's establishment, whereas Batman naïvely presumed that he had purchased a license to occupy land and deny others access to it. The motivations behind the Kulin's willingness to engage with Batman's party through their experiential treaties are clear: they wanted to limit colonisation, maximise security, minimise harm and casualties, and do so under their law. I have only briefly touched upon the experiential Melbourne Treaty established at the Yarra camp here, but Boyce's and Campbell's books explore the first few years of the settlement in their histories of 1835. We can imagine how threatening Batman's party appeared to the Narrm Kulin, but we have seen examples of their male and female Elders acting diplomatically and in protection of their Country and people from colonisers. These Kulin Elders drew on generations of experiential treaty-making and innovated the political process of negotiating with a new kind of guest. These treaties were made under Kulin law, but now I will analyse how British law responded to them.

Analysing Agency

Batman arrived back in Launceston on 13 June 1835, but before he took his treaties to the authorities, he drummed up sensation in the local media (Boyce 2011, 68-69; Linnell 2019, 158-159). Batman's story of the meeting the natives and purchasing land through a treaty was published in the Cornwall Chronicle, and by the time that Lt. -Gov. Arthur was sent the Deeds over a week later several of Van Diemen's Land's elite were keen to invest in the Port Phillip Association's supposed claim of land at Narrm (Campbell 1987, 107). Batman's group expanded to 17 members and was rebranded the Port Phillip Association.[56] The Port Phillip Association then began its cross-continental lobbying effort to have the treaties recognised, with its members exploiting political connections in Hobart, Sydney and London. Historian Hannah Robert's *Paved with Good Intentions* is an excellent analysis of their lobbying efforts and political discourse, but here it is enough to say that the Port Phillip Association argued to colonial administrators that its treaties would avoid bloody conflict like the Black War in Van Diemen's Land, and that it could bring morality and civilisation to the Narrm Kulin. Arthur, a recent and half-hearted advocate of political compacts with Aboriginal people, deferred any decision on the treaties to New South Wales Governor Richard Bourke as the entire Australian mainland was under his 'jurisdiction' (Boyce 2011, 113).

Bourke officially rejected the treaties as legally invalid on 26 August 1835, but deferred condemnation of the illegal settlements at Narrm to his superiors in London (Kenny 2018, 220-221'

[56] This shift in language represents an erasure of Aboriginal place by centring whiteness and honouring of British figures over Indigenous language and people.

Robert 2016).[57] Following Bourke's proclamation, over the next year the Narrm region was flooded with non-Port Phillip Association affiliated squatters and their livestock, including Fawkner's party who made camp at the Yarra. John Batman did not return to Narrm until November 1835, but in the intervening months the Port Phillip Association had also established itself at the Yarra (Campbell 1987, 129-142). In January 1836 British Secretary of State for the Colonies Lord Glenelg entirely rejected the treaties as legal instruments, but in April he officially condoned the settlements at Narrm as legal (Boyce 2011, 127-132). Port Phillip rapidly developed into an official colonial base and the Association disbanded, but its key members purchased claims over Kulin land at discounted prices from the New South Wales government (Boyce 2011, 142-151). John Batman would die of syphilis in 1839 and the treaties he produced became synonymous with fraud; he was seen by his contemporaries and later commentators as a disgrace who cheated Aboriginal people out of their land (Campbell 1987, 222-225). I will not engage in debates over John Batman's 'anti-heroic' legacy, as he has been the subject of considerable historical attention and public debate in recent years with his name being stripped from several Melbourne landmarks (Attwood & Doyle 2009, 288-253).[58] I will however address the gaps that Kulin Agency scholars have in dealing with the legacy of the Narrm Treaties, namely that even when platforming Aboriginal pragmatism and independence, consideration of what the treaties *meant* is grounded in European, not Aboriginal legal traditions.

Positioning the Narrm Treaties as property deeds to be processed under colonial law is understandable, as this was the express intention of the Port Phillip Association and all treaty historians are non-Indigenous.[59] The copies of the Deeds and map given to Arthur describe "a tract of country *ceded* by the Native Chiefs of Southern Australia to John Batman" in exchange for a manifest

[57] Hannah Robert offers an extensive and dedicated examination of the Crown's logic and interests in responding to the illegal Port Phillip colony and the reasons why the Port Phillip Association's treaty lobbying in London and Sydney failed. Robert, and historian Robert Kenny argue that Bourke's voiding of the treaty was the first articulation of *terra nullius*, which made the continent of Australia an uninhabited space under British and later Australian law.

[58] In 1991, before a crowd of hundreds Gunnai activist Robbie Thorpe ceremoniously put John Batman's statue — erected on Australia Day 1979 in Melbourne's CBD — on trial for trespass, theft, rape and genocide. Batman was found guilty on all counts. After the trial the settlers present committed to Pay the Rent and signed their own treaties with Thorpe. In 2017 Batman's memorial statue was removed from public display, and his has been name stripped from a Federal electorate (in favour of honouring Aboriginal activist William Cooper), a high school House, and several parks and locations in the Northcote area. For recent articles on how revisionist scholarship described in this chapter has influenced public perceptions of Batman in Melbourne see: Clements, Nicholas 2016, 'The truth about John Batman: Melbourne's founder and 'murderer of the blacks'', *The Conversation*, viewed 15/03/2018, <https://theconversation.com/the-truth-about-john-batman-melbournes-founder-and-murderer-of-the-blacks-1025>; Daley, Paul 2017, 'What's in a name? A lot when we're admiring murders and murderers', *Guardian Australia Post-Colonial Blog*, viewed 12/03/2017, <https://www.theguardian.com/commentisfree/2017/mar/12/whats-in-a-name-a-lot-when-were-admiring-murders-and-murderers>.

[59] Bruce Pascoe discusses the Narrm Treaties in his 2007 book *Convincing Ground*, but only in its first chapter and without detailed analysis. Thus, I do not regard him as a treaty historian.

of items to be annually paid (Campbell 1987, 97).[60] Batman and the Port Phillip Association saw the Deeds as legal instruments to extinguish Aboriginal title over land, which would be developed into the European conception of land as property, defined by agrarian labour, enclosure or cultivation (Belmessous 2014b, 189). The Port Phillip Association planned to subdivide its 'purchase' into 17 lots, valued in terms of economic potential. This was (and in many respects still is for settler Australia) incredibly controversial as prior to 1835 (and up until the 1992 *Mabo* decision) colonisers refused to recognise that Aboriginal people had any title or legal rights over Country based on their custodianship and occupation (Behrendt & Watson 2007; Foley 2007). Recalling the structures of sovereignty and responsibility for Country explained earlier, Indigenous peoples would not view their relationship Country in terms of title, let alone as alienable property. Nevertheless, the Deeds Batman produced forced the legal question of Aboriginal title to be considered at the highest levels. The Colonial Office in London took at least six months to void the Deeds as legal instruments, but as the Port Phillip Association lobbied Sydney and London to accept the argument that it had assumed sovereignty over Narrm land it was the experiential Melbourne Treaty which governed Kulin-settler relations at the Yarra.

Much has been written about the Narrm Treaties, as historians and contemporary political commentators struggle to grapple with the fact that the Crown's colonies and later the Australian state made no concerted effort to treaty with First Nations until the Victorian Andrew's government announcement in 2016. Viewed in this totalising absence, conventional history depicts 1835 as a glaring disruption to the narrative of Australian colonisation; the *one* moment in which land could have been *settled* (read: stolen) with the Kulin's permission. Many scholars have pondered if Australian colonists were crueller than their contemporaries in Africa, North America or Aotearoa where treaties were employed to achieve peace and alliance with Indigenous peoples. Arthur Phillip, commander of the First Fleet to invade Australia, had express instructions from King George III to obtain Aboriginal people's consent to establish a colony at modern-day Sydney. This did not occur. Historian Saliha Belmessous argues that Arthur's disregard for orders was pragmatic (2014a); in the absence of competing colonial powers vying for Australian land, Arthur assessed the military situation and judged that his forces would easily conquer Aboriginal people if attacked. Viewed in this context, Batman knew he had no military support in Narrm, and his initiative to make treaties with the Kulin was about security as much as it was a humanitarian rouse.

Batman proclaimed himself to be the "Monarch of all I survey" (1856, 20), and as such believing himself to have assumed the power to regulate the entry of settlers into Narrm. As Bruce Pascoe states (2007, 17), practically, the grandiosity of this claim was delusional. Batman's assertion of sovereignty

[60] The map was drawn up but Port Phillip Association surveyor John Helder Wedge in the days following Batman's return to Launceston and based on the latter's journal entries. Emphasis mine. See Figure 7 for the map and Figure 8 for the Djilong Deed.

was almost immediately challenged with the arrival of Fawkner's employees, who steadfastly refused Association surveyor John Helder Wedge's demand they leave (Boyce 2011, 78-79). In October Batman argued that the local Kulin at the Yarra camp should be co-opted to violently evict Fawkner and his crew from the Port Phillip Association's land claim (Boyce 2011, 78-79). Batman backed down on his plan after protest from other Port Phillip Association members including Wedge, but if he proceeded with his idea the disconnect of where sovereignty lay in late 1835 would have been obvious. The Association had no ability to regulate entry to Narrm or occupation of surrounding Country, as this right was the local Kulin clans'.

Boonwurrung *Arweet* Derrimut rapidly developed a friendship with Fawkner and clearly approved of his crew's presence at the Yarra camp, and famously intervened at least twice on supposed plans of outer-Kulin actors to attack the Yarra camp. Clark (2005) highlights Derrimut's key role in the founding of Melbourne and its progression from camp to a structured settlement, but he does not connect the *Arweet's* authority and actions to the maintenance of his people's sovereignty. Establishing a bond with Fawkner and his party demonstrated that the right to regulate access to Country was preserved by clan Elders; for the Narrm Kulin the Narrm Treaties had done nothing to cede or undermine their ancestral custodianship. Fully examining Fawkner's relationship with Derrimut and other local clan's people is beyond the scope of this thesis, however it appears that a case can be made that another experiential treaty was formed in parallel or incorporated within the Association's Melbourne Treaty.

Conventional scholarship dealing with the Narrm Treaties does not recognise that they qualitatively fit within Kulin law, and their tradition of experiential political agreement-making. Boyce (2011, 72-73) considers the treaties as foundational for not just the Victorian colony but the modern state of Australia, however most of his contemporaries tend to arrest detailed analysis of treaty-making due to the Crown's formal rejection and the approval of the settlement. Indeed, the language which Kulin Agency scholars use to describe the treaties is important; the 'legal status' of the relationship is frequently cited but is always implicitly referring to British common and colonial law. Attwood and Doyle (2009, 54) challenge us to move beyond this approach, writing that historians of 1835 are constrained by a "tyranny of interpretation" that predetermines treaties be regarded as documentary expressions of British law. The Narrm Treaties are (in)famous because they are a form recognition of Aboriginal sovereignty which colonial officials and the Crown never sought to make. By paying Kulin clans for access to their Country, Batman, and later the Port Phillip Association which maintained the payments, honoured Aboriginal sovereignty despite London and Sydney's explicit voiding of the Treaties. This was a reciprocal relationship that recognised Kulin sovereignty; an experiential treaty. The Port Phillip Association was motivated to appear generous to appeal to humanitarian politicians in London, however they maintained an experiential treaty for over a year before the colonial government was formally represented in Narrm.

Boyce states that if the Narrm Treaties (and the Port Phillip Association's proposed Deeds) were accepted by the British authorities (under British law) that Batman and his peaceful colonial endeavour would "now be celebrated as an act of political genius" (2011, 68). But, if we invert Boyce's claim we see a different political landscape that does not centre the settler-state and the pastoral-agricultural development underpinned it. What if Kulin connection to Country was recognised and they were justly compensated for the presence of the British military and authorities on their land, to the terms set by the Narrm Treaties? If the Melbourne Treaty that was negotiated by the Woiwurrung and Boonwurrung, and practised by all Kulin at the Yarra was successful in limiting the amount of settlers on their Country while increasing security and material benefit, their pragmatism may have been celebrated throughout Victorian Aboriginal nations and the practice of making experiential treaties with settlers might have spread.

If we analyse the Narrm treaties as Kulin law practised experientially, it is clear that they were honoured long after the Port Phillip Association's land claims, represented by the Dutigala and Djilong Deeds, were officially rejected by colonial authorities on 26 August 1835. Ryan (2017) argues as such, presenting substantive evidence — such as instances of Derrimut and Billibellary joining policing missions, and the founding of the Native Police — that the Kulin who congregated at the Yarra Camp was were committed to the Melbourne Treaty, protecting their guests and using their authority to avoid violence until 1837. Ryan does not mention Derrimut's intervention to save Fawkner, but his actions further show that experiential treaties were established not just with Batman's employees, but with non-Association settlers at the Yarra. For the bayside Kulin it is likely that the Narrm Treaties fell entirely within their political tradition and law; as ongoing, evolving, and most importantly direct political relationships with individual settlers, independent of the colonial government's policy or British law.

This and coming chapters attempt to explore the meeting (and clashing) of these two systems of law, which was brought to a head in 1835 but had been occurring since the first encounters between the Kulin and settlers on Country in the early 19th century. Chapter 3 explored the Kulin Agency thesis, which shows the logical and pragmatic motivations the Narrm peoples had to be diplomatic with Batman and re-imagines 6 June 1835. Kulin Agency scholarship removed the blinkers of colonial history — highlighting cross-cultural communication, ceremonial diplomacy and *Tanderrum,* and the desire to head off an existential threat by limiting colonisation — however, we must not *only* consider the Narrm Treaties' impact and legacy in terms of legitimacy and validity under British law. Concentrating on the decisions of Lieutenant-Governor Arthur and Governor Bourke, and British Secretary of State for War and the Colonies Baron Glenelg, positions the colonising state as the *sole* authority which can validate or invalidate an expression of Aboriginal political power or an inter-cultural treaty. In modern Australia this positioning is perpetuated through legislative regimes which have the authority to 'recognise' or 'legitimise' certain Aboriginal groups or organisations, thus

validating the political claims of some and dismissing others.[61] Politics of 'recognition' are paternalistic and ignore Indigenous law (Birch 2016a; 2016b; Coulthard 2014; Dziedzic & McMillan 2016), so we must highlight the thousands of generations of Aboriginal agency, strength and pragmatism, and continuous legal models as the locus of authority on (stolen) Country in both current and historic treaty-making.

In conclusion, while Kulin Agency scholarship has been vital in reframing and expanding perceptions of the Narrm Treaties, it is important that we recognise the difference between the written (European) and experiential (Kulin) conception of treaties. This chapter has explored the Dutigala Deed and when reading the following chapters' exploration and historians' valid criticisms of the Djilong Deed we must remember that these documents meant little for Kulin practising experiential treaties on-the-ground. Analysing to what extent the treaties' terms, and thus the existence of the treaties themselves conformed to Kulin law gives us a new perspective on 1835. Once we understand the Narrm Treaties as experiential in nature, we can judge the "subsequent actions of both parties" to assess to what extent their terms and obligations were met (Boyce 2011, 68).

Fels (2010, 21) acknowledges the experiential nature of the Melbourne Treaty, which in the first year of settler's camping around Narrm was practised "on the ground, in face to face relationships" that were dependent on sharing of resources, a key element of Kulin political philosophy. As we will see in the following chapters, when settlers were unwilling to share their food and pay the rent, relations with Aboriginal clans rapidly deteriorated. In Chapter 3 we have explored the historiography that has revised perceptions of 6 June 1835 and the potential for understanding and treaty, but Chapters 4 and 5 will address the substantial gap in research of Kenny, Boyce and other Agency scholars; the political relations practised on the opposite side of Narrm to the Yarra. Batman returned to Launceston with the Djilong Deed claiming 100,000 acres of land on the south-western shore of Narrm, and in the following chapter I examine why historians have had difficulty analysing this written document due to uncertainty over if the presence of settlers was approved by Waddawurrung Elders. While I accept historian's criticism of the Djilong Deed, I propose that *prior* to the 6 June meeting Batman's party were welcomed to Waddawurrung Country, by women.

[61] As the Concluding Chapter explores, the assertion that colonial authorities held the right to treaty has had lasting and damaging impacts on Indigenous politics, as modern treaties are *only* conceived of as involving the settler-state. Examples of the toxic power of state recognition include the Native Title regime which can pit families and extended kinship groups against each other with one party being granted permanent status, or the Victorian Registered Aboriginal Party (RAP) system which gives permanent funding and decision-making powers to organisations claim to represent certain nations, which are often contested.

Chapter 4: Just 'another hoax of the white *man*'?

Chapter 3 leaves little doubt that the Woiwurrung and Boonwurrung were willing and informed participants in the 6 June 1835 treaty meeting, but this encounter alone was not the basis of the Narrm Treaties, or the 'founding' of Victoria. Settlers would not return to the Yarra for several months after that meeting: 6 June was only the foundation for the Melbourne Treaty. Building upon and critically interrogating Kulin Agency scholarship this chapter, and Chapter 5, analyse the political agency of the Waddawurrung, the bayside Kulin nation that is often omitted from analysis of the Narrm Treaties. As we turn to focus on the Waddawurrung, readers must imagine cross-cultural encounters, but again I ask them to do so without the benefit of hindsight. In analysing the Waddawurrung's experiences of the Port Phillip Association I seek to 'return the past its own present'.

The Waddawurrung have custodianship over the western shores of Narrm, including the Corio Bay and the Beangala (Bellarine) Peninsula, and Country extending inland westward. There were 25 Waddawurrung clans pre-colonisation (see Figure 6 and Table 1), and Chapters 4 and 5 focus on those with bayside territory. First, the *Bengalat Balug* of the Bellarine Peninsula (referred to as Beangala by the Waddawurrung and Indented Head by initial colonisers). Second, the *Wadda Wurrung Balug* whose Country extended from modern-day Geelong west over the Barrabool Hills, then the *Neerer Balug* between Geelong and the You Yang hills. Finally, the *Yawangi Balug* of the You Yangs. Batman and his crew's journey through these bayside clans' Country, described in primary sources, is important scene-setting for the case studies contained in this and the following chapter, explaining why historians so often leave the Waddawurrung out of the narrative of 1835.[62]

This chapter explores this silence and erasure, focusing on how the Djilong Deed limits historians. The Djilong Deed was a physical document almost identical to the Dutigala Deed, which, as explored in Chapter 3, was produced by Batman at the 6 June Melbourne Treaty meeting. The Djilong Deed purported to cover 100,000 acres of land on the western shore of Narrm, including the entire Beangala (Bellarine) Peninsula.[63] This chapter's title is a quote attributed to William Buckley in his 1852 biography, describing his reaction to settler's claims that access to Waddawurrung Country had been granted by the Djilong Deed, even though no Waddawurrung people had signed it. Scholars universally regard the Djilong Deed as a meaningless colonial fraud, and while this interpretation is valid, it can lead to a false conclusion that there was no genuine political agreement between the Waddawurrung and settlers they allowed on their Country.

To demonstrate the agency of the Waddawurrung, including women, in this chapter I explore the You Yangs encounter of 31 May 1835. By viewing this encounter with a decolonising lens, I argue that

[62] For reference a detailed timeline is included in Appendix 1.
[63] See Figure 9.

historians have failed to recognise the political importance of Batman's first meeting with Kulin people because they were Aboriginal *women*. By examining the timeline of Batman's journey on Waddawurrung Country and the agency of bayside clans I argue that the experiential nature of — and political potential in — the cross-cultural relations at the You Yangs and later at Beangala, was far more than, as colonial refugee and Waddawurrung man William Buckley stated, just "another hoax of the white man" (Morgan 2002 (1852), 147).

Setting the scene at Beangala

As historian Peter Munster points out (2004, 2008) it is rarely commented upon that Batman's first landfall in Narrm was on *Bengalat Balug* Country on 29 May 1835. According to Elder Uncle Bryon Powell, some modern Waddawurrung people refer to 29 May as their Invasion Day (Powell B. et al. 2019, 52). From Batman's journal we can imagine his first experience of Kulin Country, on Waddawurrung Country.

Winter was about to begin on Beangala.[64] Days were short and winds howled off Narrm when Batman's ship, *Rebecca* anchored off what he referred to as Indented Head.[65] According to Munster (2008, 8-9) and Louis Lane (1994, 2) the *Bengalat Balug* people camped in sheltered areas of the Bellarine Hills away from the winter winds, so it is not surprising that Batman did not encounter any Aboriginal people on his brief half-day exploration of the eastern shores.[66] Some of Batman's crew camped the night on Beangala and the next day walked to Point Henry on the outskirts of modern Geelong's Harbour but met no Aboriginal people (Campbell 1897, 87). Without local people to attempt communion with, Batman's attention was fixated on the economic potential of the *Bengalat Balug's* carefully managed estates. He was so enthused by the openness, fertility, and "fine, rich, oily, decomposed" soils when exploring the area around Geelong that he identified an estate of 100,000 acres he desired to purchase (Batman 1856, 12). While "nothing could be more satisfactory" than the Waddawurrung's Country (1856, 12), Batman was disappointed that he had not met any locals so he sailed north across Corio Bay and anchored off *Neerer Balug* or *Yawangi Balug* Country.

[64] William Buckley referred to the Bellarine Peninsula as Beangala. As we are unsure of precisely where the events described in coming chapters took place, Beangala refers to the Peninsula rather than a specific location.
[65] Matthew Flinders named the entire Peninsula 'Indented Head' in 1802. Indented Head is used interchangeably with Beangala to refer to the eastern bay-side of the Peninsula, not the modern township.
[66] Lane was a librarian from Geelong, whose work is often dismissed as 'amateur' anthropology. While she had no academic training in anthropology, her research and archival skills were robust and she had ongoing connections to the Waddawurrung community. Lane produced a substantive amount of ethnography and local history and provides us with the valuable written records of what happened to the *Wadda Wurrung Balug* and *Bengalat Balug* people after colonisation. Lane's manuscripts are held at Deakin University Geelong Waterfront's Alfred Deakin Prime Ministerial library. Her work is also explored in Jennifer Dearnaley's forthcoming 2020 PhD on Waddawurrung ethno-botany.

Batman's first contact with Kulin people was with Waddawurrung women, at the You Yangs encounter on 31 May (Campbell 1987, 88-89).[67] The You Yangs encounter is not recognised as being politically significant by modern historians, nor was it by Batman himself, but the Waddawurrung women he met performed their sovereignty and authority in welcoming the strange settlers to Narrm. Batman returned to Waddawurrung Country after the Melbourne Treaty meeting, leaving some of his crew behind to establish a presence on Country he believed he had purchased.[68] On 9 June three settlers, William (Andrew) Todd, James Gumm, and Alex Thomson, along with five of the Sydney Aboriginal men, were dropped on the shore of Beangala with three months of supplies and the written Djilong Deed (Campbell 1987, 116).

A dishonourable Deed?

As discussed in Chapter 3, the Port Phillip Association's original organisational title was the "Geelong and Dutigala Association", reflecting their submission to Governors Arthur and Bourke of two separate, but linked, land titles and political agreements (Attwood & Doyle 2009, 47). The Dutigala Deed claimed 500,000 acres of land on Boonwurrung and Woiwurrung Country extending north and slightly east of modern Melbourne.[69] Batman also claimed, in a separate document the Djilong Deed, to have purchased land on and around Beangala to the south-west of the Yarra, which was Waddawurrung Territory. Most modern historians are rightly sceptical of the Djilong Deed, which is rooted in the scrutiny of Batman's contemporary and rival to the claim of 'founder of Melbourne', John Pascoe Fawkner.

Fawkner arrived to Narrm in October 1835, but his employees had established a camp at the Yarra in late August. Fawkner's path to Narrm is worth explaining as it is revealing of an ideological transition between British colonialism and 'native' expansionism (concepts of 'Australia' and 'Australian' were yet to be named) (Attwood & Doyle 2009, 180).[70] Born in London, as a young boy Fawkner took passage on the *Calcutta* to New South Wales with his mother and recently convicted father, who was incarcerated alongside William Buckley. While his father worked to establish the failed penal colony at Sullivan Bay, as a boy, Fawkner took in the landscape of pre-invasion Narrm.

After Sullivan Bay was abandoned Fawkner worked hard labour to support his family in Hobart, while colonial refugee Buckley was finding his feet with the Waddawurrung (Linnell 2019, 190-192). As an adult Fawkner moved to Launceston, married a convict and opened a hotel, but the hardship of

[67] As the You Yangs are around 20 kilometres south of the Werribee River on Waddawurrung Country, the women Batman encountered were highly likely Waddawurrung.
[68] For an in-depth exploration of Batman's journey around Narrm see Chapter 3 and the timeline in Appendix 1.
[69] See Figure 7.
[70] For instance, it was the Australian Natives' Association (an organisation only for white men born in the colony) that came up with the idea of Australia Day on 26 January to celebrate settlers born on the continent. See Blackton, Charles S 1958, 'Australian Nationality and Nativism: The Australian Natives' Association, 1885-1901', *The Journal of Modern History*, vol. 30, no. 1, pp. 37-46.

his early years left a lasting impression and disdain for the 'native' born gentry like John Batman (Campbell 1987, 1-3). While also a convict's son, Batman was born in the Sydney and had benefitted from colonisation of Aboriginal land his entire life: he received an education funded by the profits of his father's timber company which felled trees from Country to the south of Sydney. He then moved to Van Diemen's Land as it was being invaded and gained work in grazing cattle on stolen land and earning enough money to 'buy' a large swathe of land, which he later was employed by the government to evict Aboriginal people from (Campbell 1987, 11, 15-16). These two men and their legacies were tied together in June 1835: Batman, experienced with Aboriginal people, dispossession, and politicians played to the political zeitgeist in London and sought permission to enter Kulin Country, while according to biographer Garry Linnell (2019, 166) Fawkner was chasing an opportunity "wipe away the stains of his past".

As Boyce (2011, 80) and Linnell point out (2019, 188-193), Fawkner's presence in Narrm was in direct competition with the Port Phillip Association and his reminiscences should be viewed with a strong bias to undermine the legal validity of Batman's land claims. Fawkner sought to debunk the Association's claim that they had *exclusive* access to and power of eviction over land around Narrm, while also bolstering his own personal claim as the founder of Melbourne. Known in the Yarra camp as a polemic figure Fawkner's writings and criticism of Batman significantly influenced the historiography of Victorian colonisation (Linnell 2019, 165-166).

Referring specifically to the Kulin, Fawkner echoed the view of New South Wales colonists in that Aboriginal people were not politically sophisticated enough to engage in treaty-making (Belmessous 2014b). Kulin Agency scholars' research is dedicated to dismantling this racist assumption, but Fawkner's critique of Batman's written Deeds continues to inhibit many historians' consideration of the potential for inter-cultural politics at the Indented Head camp and the possibility of a treaty between Batman's employees and the Waddawurrung on whose land they camped. This dissonance arises from Fawkner's acceptance of Batman's account of 6 June 1835 and the Dutigala Deed that covered the Melbourne area, but not the Djilong Deed which covered the Bellarine and Geelong region. Campbell notes (1987, 105) that it is strange that Fawkner accepts the Deed which covered the land he was squatting on, but regardless Fawkner's reminiscences of 1862, and likely his commentary at the time, pointed out the glaring issue with the Djilong Deed:

> *"Messrs. Batman and party did not go into Geelong Harbour, nor make any bargain with the Black Aborigines there. Yet some days after his return to Launceston he produced a second deed; claiming thereby to have bought the whole of Indented Head. But foolishly he put most of the names of those blacks he had met with at the Merri Creek, and who never travel to the Geelong district, but by special agreement, the Tribes being separate Tribes and frequently at War*"
> (Fawkner 1969 (1862), 48)

Fawkner observed that Batman did not meet with any Waddawurrung *chiefs,* however he does accept Batman's account of his journey: first landing at Indented Head and later spending a day with Aboriginal women before travelling to the Yarra (he does not regard this encounter as political or significant). Batman's journal claims that he instructed Gumm and Todd to get local Waddawurrung chiefs to sign a copy of the Djilong Deed, but even if this occurred it is redundant: as Campbell points out (1987, 106), within a week both original Deeds from 6 June would be presented to Lt.-Gov. George Arthur. Even if Todd did get signatures of the Waddawurrung as his diary claims (1989, 26), they were never seen by the colonial authorities (Campbell 1987, 117).[71] We do not know how Todd and his crew 'informed' the Waddawurrung at Beangala of the Melbourne Treaty: the Waddawurrung would have dismissed the notion that their allies across Narrm had granted them access to Country or that a piece of paper could represent their consent. But, it is clear that by the time Buckley revealed himself to settlers on 6 July a political understanding was in place — which I explore in Chapter 5 and call the Geelong Treaty —which permitted the settlers' presence on Beangala regardless if the local Elders had seen or signed the Djilong Deed, written in English script that could not have been read by the Waddawurrung or William Buckley.

This thesis is not concerned with the validity of Batman's written Deeds and treaties under British law, but rather the possibility of meaningful politics and experiential treaties which existed outside of colonial structures. Modern historians who make reference to the Djilong Deed are quick to point out its suspicious similarities to its Dutigala counterpart, being physically identical in almost every detail. The 'signatures', pictured in Figure 10, on the Djilong Deed are exactly the same for each participant and are duplicates of those on the Dutigala Deed. Batman claimed that the Yarra leaders signed both documents, implying that they had the authority to deal with land on all sides of Narrm (Campbell 1987, 104-105). Whilst the question of authority will be fully explored shortly, it is interesting to note that by acknowledging that local clans are needed to deal with local land Fawkner demonstrates a more nuanced view of Aboriginal political structures than the Port Phillip Association. Nevertheless,

[71] Campbell also notes that the marks Todd obtained from an unnamed Waddawurrung man took up half a sheet of paper, which was clearly not the Deed he brought from the Yarra. Furthermore, the Deeds were written in English script, which would have meant nothing to the Waddawurrung nor, probably, the Sydney men. If the Waddawurrung were informed of the Deed's content, it would have been a third-hand interpretation: first Todd, Gumm or Alexander to the Sydney men, then the Sydney men translating to the Waddawurrung.

while Fawkner hoped that both of the Association's Deeds would be deemed illegitimate by colonial authorities, his accusations against the Djilong Deed were particularly salient for modern historians. Based on Fawkner's reminisces, historian Alistair Campbell (1987, 103-104) questions if the Djilong Deed was even part of the 6 June negotiation, arguing that it was probably an "afterthought" and additional land-grab prepared on Batman's return to Launceston.

Neither of the two most essential and decolonial histories of Victorian invasion — Michael Christie's *Aborigines in Colonial Victoria 1835-1888* and James Boyce's *1835* — mention either the Djilong Deed or consider the politics of treaty on Waddawurrung Country. Both of Boyce's (2011) and Christie's (1979) works are excellent studies of the brutality and governmentality of colonisation, and are admirably cognisant of an Aboriginal perspective. I believe they should be mandatory reading for all Victorians. However, written almost 30 years apart they also demonstrate the persistence of the historical gap surrounding the Geelong Treaty. Robert Kenny's ground-breaking paper (2008) on revising perceptions of Aboriginal political strength in 1835 only mentions the Geelong Treaty in footnotes, as does Hannah Robert's (2016) examination of the Crown's treaty politics. Attwood and Doyle do acknowledge the difference between the Djilong and Dutigala Deeds and distinguish them both as near-meaningless written statements for the Kulin compared with the political meaning of oral treaties (2009, 44-49), but they do not explore the distinctiveness of the Waddawurrung-settler relations at Beangala. It may seem surprising that the above works dedicated to revising conceptions of John Batman's legacy and the Narrm Treaties focus exclusively on the Melbourne Treaty to the expense of the Geelong component of Batman's claim, however the origins of this singularity can be traced back to John Helder Wedge: Port Phillip Association surveyor and one of the Association's first members to return to Narrm in August 1835.

Following his initial survey of the land around Narrm in August-September 1835, Wedge recommended that the Port Phillip Association combine the territories covered by the Djilong and Dutigala Deeds, 100,000 acres and 500,000 acres respectively. The Association's treaty territories had to be split evenly between its 17 members, and Wedge argued that the colonial government would have greater difficulty in rejecting a coherent claim of 600,000 acres than a fragmented one (Campbell 1987, 123). Of course, Wedge was referring to coherence in terms of neatly parcelled land packages as close as possible to equivalent in terms of acreage, with little concern for traditional boundaries of Kulin clans nor the impact that erecting fences through cultural landscapes would have. Having unsuccessfully attempted to evict Fawkner from the Yarra camp (Boyce 2011, 78-80), Wedge also may have been cognizant that the Association's primary rival would be searching for ways to undermine the Treaties. The Port Phillip Association made the pragmatic decision to accept Wedge's proposal, and from 1836 lobbyists make few if any mentions of the two differentiated Deeds as they sought their land claims to be at least partially recognised by the colonial government.

Citing the above issues, the Djilong Deed is widely dismissed by historians as a cynical fraud (Cahir 2019, 60). Ian D Clark writes that the Deed is "obviously a fabrication" (1990, 280), Robert Kenny an "opportunist fiction" (2007, 67), and Bruce Pascoe labels it as a "callous attempt to defraud" both Aboriginal people and the colonial government (2007, 17). As a Boonwurrung man and historian, Pascoe knows that Yarra clans had no legal rights under Kulin law to disregard their ally's sovereignty and grant foreigners access to Waddawurrung Country.[72] Pascoe is justified in concluding that the Djilong Deed legally amounts to "blatant lies", when analysed in terms of either British contact law or Kulin cultural law. While joining other historians in rejecting the legitimacy of the Djilong Deed under British law, historian Fred Cahir is alone in recognising that a meaningful and unprecedented socio-political relationship was developed between the Waddawurrung and settlers at Beangala in late 1835.[73]

The above scholarship, especially Cahir's recent research on the Waddawurrung's political requirement of reciprocity (2019), has informed my analysis and exploration of the political potential of experiential treaties that existed beyond the physical written Deeds. To do so I addressed a series of questions not yet posed by historians of 1835: Why did Batman leave his employees on Waddawurrung Country rather than at the Yarra, where the local leaders had approved of settler's presence? Why did the Waddawurrung permit the settlers access to their land around Narrm throughout 1835? For Waddawurrung clans, what meaning did Todd's claim that his party had been granted access to Country by Kulin Elders on the other side of Narrm have? And most importantly, what led to the acceptance and performance of an experiential treaty at Beangala, one that historians argue was never formally negotiated, and never really existed?

Matriarchal authority at the You Yangs

I will pause here to offer a possibility that historians have not yet considered, and which alters the meaning of the Djilong Deed: Batman and his crew had already been welcomed to Country by

[72] Pascoe also has long-term connections with the Waddawurrung, spending several years of residency in Aboriginal community organisations in and around Geelong where he worked on local history, education, and Waddawurrung language materials. See: Pascoe, Bruce (ed.) 1997, *Wathaurong, Too Bloody Strong*, Pascoe Publishing Pty Ltd, Apollo Bay; Pascoe, Bruce 2004, *Wathaurong: The People Who Said No*, Wathaurong Aboriginal Co-operative, Geelong; Pascoe, Bruce & Krishna-Pillay, Sharnthi H. 2008, *Wathawoorroong Dictionary*, Wathaurong Aboriginal Co-operative, Geelong.

[73] Like myself and his frequent collaborator Ian D Clark, Fred Cahir has lived on Waddawurrung Country for decades and has used his archival research to create rich and critical local history of Geelong and the Gold Fields areas. See: Cahir, Fred 2012, *Black gold: Aboriginal people on the goldfields of Victoria, 1850-1870*, Aboriginal History Monographs, ANU Press, Canberra; Clark, Ian D & Cahir, David A 2003, 'Aboriginal people, gold, and tourism: the benefits of inclusiveness for goldfields tourism in regional Victoria', *Tourism Culture & Communication*, vol. 4, no. 3, pp. 123-36; Clark, Ian D & Cahir, David A (Fred) 2004, *Tanderrum 'Freedom of the Bush': The Djadjawurrung Presence on the Goldfields of Central Victoria*, Friends of Mount Alexander Diggings, Castlemaine; Clark, Ian D 2016, *'We are all of one blood" - A History of the Djabwurrung Aboriginal People of Western Victoria, 1836-1901*, Self-Published; Donovan, Paul Michael F, Clark, Ian D & Cahir, Fred 2016, "The remarkable disappearance of Messrs. Gellibrand and Hesse'. What really happened in 1837?: A Re-examination of the historical evidence', *Victorian Historical Journal*, vol. 87, no. 2, pp. 278-297.

Waddawurrung matriarchs on 31 May 1835 at a meeting I refer to as the You Yangs encounter, *before* the Melbourne Treaty and their return to Beangala. Wurdi-Yawang, known as the You Yangs are a range of mountains roughly 20 kilometres inland from Narrm, near present-day Lara, almost half way between Geelong and Melbourne (Campbell, 1987, 89-90; Clark & Heydon 2002, 86).[74] By imagining this encounter, I seek to demonstrate the agency of Kulin, and especially Waddawurrung women. While primary sources like Batman and Fawkner, as well as modern historians, have downplayed or erased the presence of Kulin women beyond being objects of colonial desire or targets of violence, they had influence in dealing with settlers on their Country. Before political relations were made at the Yarra or on Beangala, it was Waddawurrung women who initiated the first political contact with Batman's group at the You Yangs encounter. As with the 6 June meeting discussed in the previous chapter, the only primary source we have of the You Yangs encounter is Batman's journal, and thus I use anthropological understandings of the Waddawurrung to imagine a new, political, interpretation.

On their first two days on Waddawurrung Country Batman's party may have been avoided by the locals, but it was with "joy and delight" that a crew member spotted smoke from the *Rebecca* while anchored off the north shore of Corio Bay, identified by Campbell as around modern Point Wilson (1987, 88), on 30 May. Batman's party landed at dawn to find the source of the fire but found the camp abandoned, so the Sydney men tracked the locals for what Batman claims was 10 miles north-west towards the You Yangs hills (1856, 31). When close to the group, Batman instructed two of the Sydney men to strip naked and approach a female Elder who was walking alone, a mile behind a party of around 20 women and 24 children. There is a significant gap in Batman's journal as to how the initial encounter between his employees and the Elder proceeded, but it appears that she approved of the Sydney men and agreed for her party to meet with Batman. Batman wrote that he advanced upon the locals with two Sydney men but we don't know if he met only with the Elder or the entire group, and after the locals performed song and dance he was able to persuade them to return to the shore so he could give them gifts (Campbell 1987, 88-89). At some point on the way a gun was fired causing the group distress and Batman writes that when they sighted his ship some women were apprehensive; probably with fear of being abducted reflecting the trauma inflicted by British explorers, sealers and whalers (Batman 1856, 14-15). Batman's crew distributed their standard assortment of gifts including blankets, handkerchiefs and beads, to which the settlers were given gifts in return.[75] We do not know

[74] The You Yangs is a modern name for three peaks which are referred to by the Waddawurrung as Wurdi-Yawang, meaning big hill. The highest of the three was called Darooit, but named in English by Matthew Flinders 'Station Peak' when he climbed them in 1803. On his visit on 31 May 1835 Batman dubbed the peaks Mt Collicott, Mt Cottrell and Mt Connolly to honour members of the Port Phillip Association. They were later referred to as Villamanta to reflect the records of explorers Hamilton Hume and William Hovell, and in the early 20th century re-named Flinders Peak.

[75] The items that Batman paid in compensation to the Kulin are explored in Chapter 3 and 5. See also Appendix 2 for text of the Djilong Deed which stipulated the items to be annually tribute to the Kulin.

how the encounter ended, but the next day Batman's group continued exploring on foot and did not encounter any more locals until the 6 June meeting.

I make special note of Batman's initial encounter with Narrm Kulin because, as historian and author Tony Birch points out (2017b, 22), to most historians it is unremarkable. Biographies of Batman by CP Billot (1979) and James Bonwick (1867, 23) treat the encounter as trivial.[76] Boyce, and Attwood and Doyle mention the encounter but get the details wrong: the former misattributes the occasion of the Sydney men stripping off to approach the locals to the 6 June encounter (2011, 64), while the latter writes that the encounter occurred at Indented Head (2009, 54). In their analysis of Batman's journey in Narrm neither John Daniels (2014) nor Robert Kenny (2008) mention the You Yangs encounter. Clark's expansive atlas of Victorian clans briefly recounts the incident (1990, 280), identifying the Waddawurrung women as likely belonging to the *Yawangi Balug* clan, the people of the You Yangs, but does not mention that Batman was given gifts by the women. It is unclear why Clark identified the *Yawangi Balug* and not the *Neerer Balug*, whose Country was between modern Geelong and the You Yangs including the northern shore of Corio Bay. As we are unsure exactly where Batman landed and how far inland his party travelled on 31 May, the women he met at the You Yangs encounter could have been from *Neerer Balug*, *Yawangi Balug*, both clans, and others, but we can be confident that they were Waddawurrung.

Campbell, a medical doctor and amateur historian explores the encounter in some detail in his 1987 biography of Batman (1987, 88-90). Writing well before the Kulin Agency thesis, Campbell is sceptical of Batman's honesty and intentions. Campbell's pessimism is well-researched, as he points out discrepancies in the distances Batman's journal records and how unlikely it would have been for explorers encumbered with supplies to travel the 20-plus miles (32 kilometres) daily which Batman claimed, not to mention Batman's physically weakened state from syphilis which would soon debilitate him (Boyce 2011, 51).[77] Campbell (1987, 90-98) shows that Batman's distance claims are exaggerated regarding his journey around the Melbourne area, but in the case of the You Yangs encounter Batman's claims are plausible.[78] The landscape between Narrm and the You Yangs is quite flat, and Batman's crew exchanged gifts at the shoreline, appearing to carry minimal supplies with them inland. As the only historical research which explores the encounter in detail Campbell's work is valuable, however, his unwillingness to accept that communication was possible between Batman's

[76] Billot includes the entire text of Batman's Journal and report in his history but does not analyse the encounter. Bonwick describes the encounter as a humorous "ramble".

[77] John Batman was unable to return to Narrm until November 1835, prevented by a crippling illness which Boyce and others have identified as cerebral syphilis. By late 1835 Batman suffered partial paralysis and was severely incapacitated by November 1837, see Campbell, Alastair H 1987, *John Batman and the Aborigines*, Kibble Books, Melbourne, pp. 195. Batman died in May 1839 and made his last public appearances in a "makeshift perambulator" driven by the Sydney men, see Linnell, Garry 2019, *Buckley's Chance*, Penguin Michael Joseph, Sydney, pp. 234.

[78] Batman's party could have walked around 10 miles between dawn and 1pm and made it back to their ship by nightfall but there would not have been much time for delays, as the sun sets before 6pm in Victorian winters.

Sydney employees and the Kulin precludes our consideration that the event was political. As Attwood and Doyle point out (2009, 56), the Sydney men were most likely at least somewhat familiar with land access ceremonies. Furthermore, the ability of foreign Aboriginal peoples to communicate through sign language is well understood today. Batman described the signing his Sydney employees used as a form of "freemasonry" (1856, 14), but today we would understand it as mimed communication. Concluding that elements of the You Yangs encounter were "evidently fabricated to impress the British Government" Campbell positions the encounter as little more than an interesting prologue to the 6 June meeting (1987, 88), but, as this chapter and the Kulin Agency scholars show meaningful cross-cultural communication was not only possible but likely in 1835.

Accepting that cross-cultural political communication, with Aboriginal women *and* men, occurred around Narrm gives us several new perspectives on the You Yangs encounter. First, it demonstrates the awareness and protectiveness of matriarchal Elders, willing to confront the threat of settlers alone. The Waddawurrung women and children went willingly back to the shore with Batman, a walk of potentially up to 10 miles. After decades of experiences of violence from white men this journey would have been stressful for the Waddawurrung women, but the instruction of an authoritative matriarch may have calmed their nerves. Second, it shows that female Kulin Elders had authority to deal with foreigners despite Batman (and Campbell's) disregard for their ability to politically engage with guests. Third, we have clear evidence that the Narrm Kulin were well aware of the violent threat of colonisers, and despite the Waddawurrung women being armed with spears they displayed a willingness to use diplomacy and welcome guests. Finally, in the You Yangs encounter we see the Kulin value of reciprocity performed through gift-giving and the political nature of performing *corroborees* (Batman 1856, 14), which are fully explored in the following chapter.

Birch recognises the political significance of the You Yangs encounter, writing that rather than being a footnote in Batman's journey the episode should be recognised as one in which strong and savvy Aboriginal women "would have none of Batman's "sleight-of-hand" (2017b, 22). While accepting Batman's "usual array of trinkets" the Waddawurrung women presented their guest with items of far greater cultural and economic value (Birch 2017b, 22), including spears, three baskets, and what Batman described as an ugly "native bucket" (Batman 1856, 14). While in the previous chapter I explored how the items Batman gave the Kulin would have had some practical value, Birch highlights the Kulin's genuineness in welcoming their guests and their adherence to cultural protocols of reciprocity.[79] In Kulin cultures, gift-giving between bonded individuals was a custom central to kinship networks (Brumm 2010). The symbolic value of gifts was far more important than economic value; because as new items could be relatively easily crafted, in gift-giving Aboriginal peoples "placed a higher value [symbolic] on fulfilling kinship obligations" (Broome 1994, 16-17).

[79] The Kulin's philosophies and principles of reciprocity and sharing are described in Chapters 1 and 2.

Here we can turn to Greg Dening's conceptualisation of colonial encounters as *performances* (1996). We can imagine an elated Batman, grinning and gesticulating at the gathered Aboriginal women and children, later writing that he went to great efforts to "explain [his] friendly disposition" to the Waddawurrung matriarch (Campbell 1987, 88-89).[80] Imagine Batman's crew, weary after a long days march, laying out bundles of handkerchiefs and untangling 18 sets of beads, gifts for the natives. Imagine the Sydney men clothed in British explorers' outfits, signing and making broken, ginger conversation with the Waddawurrung women. Were they rolling their eyes at Batman's charades? Imagine Kulin children tasting European apples for the first time, peering wide-eyed through a looking glass. And the Waddawurrung women, also tired from the walk but preparing ceremony to welcome their strange guests to Country. They started a song and dance, and the Sydney men joined in. They gave their guests what items they had to perform their duty as Kulin hosts, as Birch puts it (2017b, 23): the Waddawurrung women were "indicating their sovereign authority to an alien traveller".

These items were not just the tools of Kulin survival, freely given to strangers, but they carried great symbolic significance and may have been included in a performance of *Tanderrum:* the Kulin's political ceremony to welcome guests to Country introduced in Chapters 2 and 3. Seen in this light, the gifts Batman received on 6 June at the Yarra and the next day on the northern shore of Narrm — including two possum skin cloaks (denoting authority), stone axes (a valuable trade commodity) and weapons including woomeras and boomerangs (Batman 1856, 21) — were of great economic *and* symbolic value, and were likely part of the political welcome to Country (Campbell 1987, 102; Ellender & Christiansen 2001, 18-23).[81] Historian Lyndall Ryan (2017, 4-5) notes that the latter gifting ceremony may have been presided over by Derrimut, the *Yalukit Willam* clan *Arweet,* off who's Country the *Rebecca* was moored. While we do have descriptions of a *version* of *Tanderrum* from Protector of Aborigines in the Port Phillip and Westernport District William Thomas' accounts, and historians believe that it was performed for Batman on 6 June, scholars are not certain of what the ceremony consisted of.

According to Thomas (in Bride 1898), and anthropologist Diane Barwick (1998, 23-25), the key elements of *Tanderrum* are hosts passing their guests symbols of Country to demonstrate welcome and good faith. This includes: fresh water to demonstrate that there is no poison, a variety of local food representing the Country's resources, soil and leaves symbolising "welcome to every tree in the forest" and breaking of spears to demonstrate a commitment to non-aggression (Thomas in Bride 1898, 439). Barwick (1984, 107) and later Kulin Agency scholars such as Kenny (2008, 38.5-38.7)

[80] Campbell provides a full list of the items Batman offered the Waddawurrung women.
[81] For background on the cultural significance of possum skin cloaks as signifiers of authority see: Riley, Lynette 2016, 'Reclaiming tradition and re-affirming cultural identity through creating Kangaroo Skin Cloaks and Possum Skin Cloaks', *Journal of Indigenous Wellbeing*, vol. 1, no. 1, pp. 5-22; Cahir, Fred 2005, 'Dallong-Possum skin rugs: A study of an inter-cultural trade item in Victoria', *Provenance*, no. 4, pp. 6-15.

and Boyce (2011, 66-67) have identified these factors at the 6 June meeting and argue that Batman received formal *Tanderrum* despite a description of little more than passing of leaves in his diary. Apply this criterion to the You Yangs encounter, we can see that perhaps Batman's party had been formally welcomed to Waddawurrung Country through a performance of *Tanderrum* but was blind to its political significance as it did not involve men.

Birch identifies the "bucket" Batman received as a *tarnuk*, a wooden vessel crafted from a gnarl in a tree to carry water (2017b, 22). For the Kulin, *tarnuks* had great practical utility and cultural significance: recalling Chapter 1, playful boys knocking over a magic *tarnuk* caused the flooding of Narrm (Massola 1968, 47-48). Batman was also given three "very handsome baskets", which were hand woven and used to carry food and other items (1856, 14). Were they full of any produce? Finally, Batman was given some spears. Were these the only weapons the women had, effectively disarming themselves to their guests? By giving the settler party a *tarnuk* full of water, bags of food, and spears the Waddawurrung women may have been performing an improvised *Tanderrum.*[82]

Who gave these items also indicates authority and symbolism. The baskets were given to Batman by young women, while the older ones offered him the spears and *tarnuk* (Batman 1856, 14). These unnamed Waddawurrung women may have performed the first welcome to Country and initiated the first experiential treaty with colonisers around Narrm. Perhaps the Djilong Deed had more legitimacy than Batman's contemporaries and modern historians accept; while the 'signatures' on the physical document were undoubtedly meaningless Batman may have already been granted access to Waddawurrung Country. If this was the case, perhaps his decision to send his men to Beangala to establish a camp was more informed than often thought.

Why Beangala?

While few historians have considered the meaning of the You Yangs encounter, none have interrogated Batman's decision to establish a camp across Narrm, at Beangala on Waddawurrung Country, rather than leaving a crew with the friendly Aboriginal clans of the Yarra. Our primary source detailing Beangala is the diary of William Todd, from which we gain unique insight into the camp at Indented Head. Todd's journal begins on 9 June, immediately after disembarking from the *Rebecca*, and includes regular entries until his return to Launceston in December 1835. Todd does not comment on why his crew was sent to Indented Head so we must speculate on the motivation behind Batman's choice. While Batman's diary makes no mention of being previously welcomed by Waddawurrung women, there are also no indications that his crew felt pressure to leave Woiwurrung and Boonwurrung Country after 6 June. Despite his happiness over a 'successful' treaty negotiation, we can imagine Batman's commercial paranoia superseding complacent celebrations. Conscious of

[82] Batman wrote that the water in the *tarnuk* was "very bad" (brackish).

rivals replicating his journey, it is most likely that Batman recognised the strategic value of Indented Head's location as a surveillance station. As seen in Figure 9, a camp on the eastern shore of Beangala has a panoramic view of Narrm: on a calm day Corio Bay, the You Yangs, the city of Melbourne, Frankston, and Arthur's Seat are clearly visible, and any ship entering the bay's heads and would have been obvious to lookouts.[83] If the settler's camp was set near the Yarra, such as at Williamstown, observers would be too far north to spot ships entering Narrm and landing on Indented Head or the eastern or western shores of the bay. If a station was positioned to be able to sight Narrm's heads, for example at places like present-day Queenscliff, entering ships would soon be obscured by the St Leonard's bluff. A station on the eastern side of the bay was likely ruled out given the difficulty navigating ships through sandbanks that plagued the 1802 settlement (Linnell 2019, 62). Munster also proposes that the camp at Beangala would have functioned as a good "lookout for approaching ships" (2004, 37), and we can be confident that this was one of its main purposes because Todd diligently recorded passing ships in his diary (1989, 32, 53-54, 56).

Batman's gave Gumm, Todd and their men "written authority to put off any person or persons that may trespass on the Land [he] purchased", ordering his employees to exclude rival colonisers from Narrm (local Aboriginal peoples were presumably exempted) (1856, 23). However, Todd's party had little capacity to exclude anyone from the bay. When a ship entering the bay in mid-August (which turned out to be in Fawkner's employ) was confronted by the Sydney Aboriginal men, they returned drunk, evidently unable to convince the would-be colonisers to find another place to settle (Boyce 2011, 75-78; Campbell 1987, 123-124).[84] While using their land as an ineffective checkpoint into Narrm, it is unclear if Batman and his crew had any awareness of the Waddawurrung as a distinct cultural and political entity prior to their first contact at Beangala.

It seems uncharacteristically brash and risky for Batman, a meticulous planner (Boyce 2011, 47-56; Campbell 1987, 65-66; Linnell 2019, 148), to have left his crew (including most of his valuable Aboriginal translators) on Country where they had no prior contact with the local custodians.[85] Batman saw recently inhabited Aboriginal camps on the 28-29 May survey of the Bellarine: he knew people frequented the area (Campbell 1987, 86). He must have been confident that his men, as the

[83] I have added the modern townships of Indented Head and St Leonards to Louis Lane's map. Historians are uncertain, but The Camp was likely in between the two. Today holiday makers camp on the foreshores of Indented Head and St Leonards, in reserves such as the one pictured in Figure 15.
[84] Boyce notes that Fawkner was not on the *Enterprize*, which made the first journey to the Yarra in August 1835, but his employees established the camp on his behalf. Non-Port Phillip Association settlers were keenly aware of the legal precarity of the Association's treaty claim and refused to respect notions of exclusive occupation of Narrm, demonstrated by Fawkner's outright rejection of Wedge's orders to leave the Yarra in August and September 1835.
[85] While Batman's contemporary image and portrayal in 1830s media coverage was of a young and swashbuckling gentleman, historians highlight the extensive, decade long planning which went into the expedition to Narrm. Batman's preparations included getting access to the maps of the region Hamilton Hume made from his exploration in 1824.

frontline of the Treaties, would be safe while completely isolated for up to three months. Perhaps, he genuinely believed — with "puppyish eagerness" as Barwick puts it (1984, 107) — that his treaty negotiations had secured access to Country all around Narrm. It is more likely that Batman's choice of Beangala — upon landing he "pointed out the spot where Gumm [and crew were] to commence a Garden and Hut" (1856, 23) — and confidence in his crews' safety demonstrated arrogance and ignorance rather than chicanery. If we do not accept the You Yangs encounter as meaningful and the possibility that Batman was granted provisional access to Waddawurrung Country, Barwick offers another explanation.

Barwick was a lauded anthropologist of Kulin peoples, and she acknowledges the difficultly to construct an accurate schema of pre-1835 authority — especially concerning the Waddawurrung — due to the attempted genocide which followed colonisation (1984, 108). To explain the Djilong Deed and the subsequent occupation of Waddawurrung Country, Barwick suggests that the marriage connections of the Yarra Elders were important. According to Barwick, Billibellary of the Woiwurrung and Derrimut of the Boonwurrung were the Southern Kulin's preeminent clan heads, and both had extensive marriage networks around Narrm (1998, 24-25).[86] Attwood and Doyle used this argument to explain why Batman's written Deeds covered Country on all sides of Narrm, suggesting that the Yarra leaders' marriage connections to the Geelong region permitted them to speak for Waddawurrung Country (2009, 57). Attwood and Doyle (2009, 54) are correct in saying that the political agreements *Ngurungaeta* made were "akin to treaties in the real sense of the term", that is experientially. But Billibellary and Derrimut were "custodians of the law [with] the authority to represent *their* group affairs with other peoples" (Attwood & Doyle 2009, 54), and even given their wide-reaching authority in the Narrm region were they able to speak for their wives Country?[87] Furthermore, is this a more realistic explanation than recognising the political authority of Waddawurrung matriarchs? In Chapter 2 I explored how marriage functioned politically between clans, and how establishing familial connections would have been socially beneficial for both clans involved, however this does not appear to over-ride the sovereign right to grant or deny access to one's Country. The Waddawurrung themselves regulated the presence of settlers on their land prior to and during 1835.

Given the Kulin's political structures explored in this thesis, if Batman was granted permission to travel through Waddawurrung Country by Billibellary and Derrimut or the matriarchs at the You Yangs, it is probable that access would have been temporary, requiring repeated and iterative local authorisations and consent when contacts were made. Permission to travel through Country was given orally, and as this and the previous chapter have shown the Deeds which Batman produced had little if any meaning for the local Kulin sovereigns on-the-ground. As Attwood and Doyle put it (2009, 58),

[86] For more discussion of Barwick's work on Kulin political structures see Chapters 1 and 2.
[87] Emphasis mine.

“a piece of paper [that the Waddawurrung *Arweet*] never saw, let alone signed” explains little about 1835; focusing on flaws in the Djilong Deed and its claims obscures the following experiential treaty-making that occurred around Narrm. As permission must be granted orally, we must examine the first cross-cultural encounters at Beangala.

This chapter argued that moving beyond analysis of the 6 June meeting (and the Deeds which supposedly recorded it) and examining other encounters between John Batman, his crew, and the bayside Kulin reveals the depth of the political symbolism that Aboriginal people offered to their guests on Country. In Chapter 4 we begun to see how the Waddawurrung have been excluded from the narrative of 1835 and analysis in Kulin Agency scholarship. To show this I imagined the You Yangs encounter of 31 May 1835 and in doing so offered a new interpretation which has escaped historians’ gazes. I highlight the agency and authority of Waddawurrung women: historians cannot discount the ability of matriarchs to interact politically with settlers on their Country. Batman likely sent his men to Waddawurrung Country on 9 June to watch for ships entering Narrm, but his decision may have been informed by the welcome he received at the You Yangs and his Sydney employees’ communication with the Waddawurrung women.

In conclusion, more historical attention needs to be paid to the Waddawurrung’s first encounters with colonisation, and considering the You Yangs encounter should cause us to question William Buckley’s assertion that the settlers having permission to camp at Beangala was “another hoax of the white *man*” (Morgan 2002 (1852), 147). This chapter showed that the Djilong Deed has little validity but focussing only on it as fraudulent documentary evidence downplays the Waddawurrung’s agency in interacting with colonisers. As we will see in Chapter 5, through imagining and exploring cross-cultural encounters at Beangala and the experiential Geelong Treaty, we can see that the Waddawurrung consented to settlers camping on Country and that Buckley’s political knowledge and authority has been overstated.

Chapter 5: 'Beyond the compass'

What iterative factors contributed to the Waddawurrung's decision to permit setters to camp on their land from 9 June 1835 until the end of that year? As explored in the previous chapter, it is possible that nine days earlier the settlers had already been welcomed to Waddawurrung Country by women at the You Yangs encounter. Building on my imagining of the You Yangs encounter as an improvised or matriarchal version of *Tanderrum*, this chapter seeks to revise another element of the narrative of 1835: relations and treaty with settlers camped at Beangala/Indented Head. Most Kulin Agency historians omit the cross-cultural relations at Beangala from their analysis of 1835, which unintentionally silences the Waddawurrung's political agency. This chapter explores the performance of the Geelong Treaty under Kulin law: as an oral, experiential political agreement that the Waddawurrung negotiated and practised with the settlers camped on Country in the latter half of 1835. The Geelong Treaty — the consolidation of generations of Kulin experiential treaty-making and informed by the Waddawurrung's treaty with William Buckley — emphasised inter-personal reciprocity, and was more influential in governing the Waddawurrung-settler relationship than the written Djilong Deed, which as explored in the previous chapter claimed to lease the Beangala Peninsula under British law.

This chapter presents the Geelong Treaty as a case study of cross-cultural political dynamism: expanding understandings of *Tanderrum* and *corroboree* as performance of treaty, showing that the Geelong Treaty at Beangala expanded and contacted, and proposing that Buckley had less influence over Waddawurrung politics than is commonly thought. The Geelong Treaty was not just a trivial prelude to the 'real' cross-cultural contact and politicking that occurred at embryonic Melbourne, it established groundwork for experiential treaties at the Yarra.

One of the injustices of Victorian colonisation — and the subsequent focus of historians on Buckley, the Dutigala Deed and Melbourne Treaty — is how little we know about the party of Waddawurrung *Arweet* who negotiated with the settlers at Beangala: Woolmudgin, Gulgoing, Pulmadaring, Dryberry and Moimboring (Campbell 1987, 117; Todd 1989, 26). Ian D Clark's (1990) extensive, yet incomplete, reconstruction of Western Victorian Aboriginal clans provides an insight into who these men were.[88] Woolmudgin (aka Curacoine) was *Arweet* of the *Wadda Wurrung Balug*, and commanded a band of fierce warriors from the Barrabool Hills to the east of modern Geelong who would later disrupt colonial operations on their Country (Clark 1990, 332-333).[89] Nullamboin, *Arweet* of the *Bengalat Balug* of the Beangala Peninsula, was not present at the initial encounter, however it

[88] Clark notes that most Waddawurrung clans were effectively eliminated within two decades of colonisation, however information on their demise is limited. See Figure 6 and Table 1.
[89] The *Wadda Wurrung Balug* are often referred to by historians and anthropologists as the Barrabool clan. To avoid confusion, I will follow this convention.

is highly likely one of Gulgoing, Pulmadaring and Dryberry represented the local Bellarine Country (Clark 1990, 316). Clark identifies Moimboring as the *Arweet* of the *Mear Balug,* a small group which he believes also belonged to the Bellarine Peninsula (Clark 1990, 316, 324).[90] If Clark is correct, the party was a coalition of bayside Waddawurrung leaders, whose territories are depicted in Figures 6 and 12. Any number of the five leaders may have had an unbounded guardian relationship with the eastern shore of Beangala, as was common in many Aboriginal societies (Bradley 2010). To protect their Country and people Waddawurrung leaders likely addressed the same strategic questions that their neighbours around Narrm did. Waddawurrung sovereignty, agency and treaty-making deserve to be acknowledged as equal to the pragmatism of the Woiwurrung and Boonwurrung leaders who met with John Batman on 6 June.

The Waddawurrung did not create the Geelong Treaty with John Batman or the members of the Port Phillip Association, but rather their employees: William Todd, James Gumm, Alex Thomson, and Aboriginal men from Sydney, Pigeon, Tommy, Bullet, Bungett, Old Bull, and Joe 'the Marine' (Boyce 2011, 68). There was no 'moment' of treaty-making at Beangala as John Batman believed had occurred at the Yarra; from this first encounter, the Geelong Treaty was unfolding and experiential.[91] The written Djilong Deed has nothing to do with the performative experiential treaty that was practised at Beangala. Indeed, as Attwood and Doyle put it (2009, 53), the true meaning of the Narrm Treaties "lies beyond the compass of the written record". Waddawurrung sovereignty was performed and enacted by welcoming settlers, by deciding to accommodate not resist. The Camp at Beangala, entirely outside the influence of the colonial state, should be recognised as the first site of Aboriginal-European reciprocal treaty-making on an inter-group level in Australia.

From 1835 the colonial settlements around Narrm depended on the frontier diplomacy of Kulin people largely absent from the foundation narratives of Melbourne. While Woolmudgin and his allies are seldom mentioned in histories of Victoria and always in passing, the Aboriginal matriarchs and women prepared to confront settlers and fight for their Country are erased entirely. Boyce recognises that the front-line settlers are also under-recognised as the other instrumental party to maintaining peace, and in my terms creating experiential treaties. Boyce argues (2011, 88) that the "bush wise emancipists" (ex-convicts) Todd, Gumm, Thomson and the Sydney Aboriginal men were the "real founding fathers of Melbourne", playing essential roles of mediation and conciliation between the Kulin and the influx of settlers entering Narrm. But at least we know their names and parts of their stories. While Boyce is correct in highlighting that these men navigated relations with the locals largely independently of their employers who were sporadically visiting the camps at Indented Head

[90] Moimboring would later gain local notoriety for escaping captivity after being arrested and charged with the murder of a white solider. While being transported across Narrm, Moimboring feigned illness and at the Yarra jumped ship and swam to shore.
[91] John Batman's full name will be repeated throughout this chapter, to avoid confusion with his brother Henry who arrived to co-manage The Camp at Indented Head in August 1835.

and later the Yarra, his analysis is limited. By focusing *only* on the development of Melbourne Boyce fails to see how the Port Phillip Association employees were informed by months of on-the-ground treaty-making practise and experience of living under Kulin law at Beangala/Indented Head. If Todd and his crew, completely isolated, had not engaged in the Waddawurrung's protocols of compensation and reciprocity at Beangala and practised their first experiential treaty, the Victorian foundation narrative would likely be very different.

The Camp

It is not surprising that much recent historical attention has been focussed on settler-Kulin relations at the Yarra camp (Attwood & Doyle 2009; Boyce 2011; Broome 2005; Clark 2005; Flannery 2010; Presland 2010; Ryan 2017). John Batman and rival colonist John Pascoe Fawkner proclaimed the Yarra as the 'place for a village' and within six months of the 6 June Melbourne Treaty meeting it was established as a budding settlement (Boyce 2011, 74-75).[92] Within a year colonial officials and police were uneasily presiding over the village: grappling with the complexity of the Melbourne Treaty that established uneasy three-way diplomatic relations between the Boonwurrung and Woiwurrung clans, entitled employees of the Port Phillip Association and increasing numbers of non-affiliated, opportunistic squatters. Historians have analysed the first weeks, months and years of Melbourne in detail. Boyce writes that the Yarra was Narrm's "first settlement" (2011, 74), entirely overlooking the Association's original camp. Few historians have devoted energy to studying the station on Beangala occupied by settlers between 9 June and late November 1835. The Waddawurrung called this area *Nearnenenullock*, or *Unwillock* (Campbell 1987, 116). Today they are known as the hamlets of Indented Head and St Leonards.[93] From here I will refer to this place as The Camp.

The perception of existential threat that the Waddawurrung shared with their allies around Narrm was likely heightened by the stories from Buckley, the colonial refugee and adoptive Waddawurrung man.[94] The Waddawurrung could afford to be cautious and considered in their approach: Todd and his crew had chosen to camp off the beach at the end of a Peninsula, where they were easy to keep under watch. The settlers did not venture far from camp, and when they did it was to (attempt to) hunt kangaroo or waterfowl. Gunshots would have carried far in the Bellarine Hills, and some surveillance would have shown the settlers to be well supplied, noisy, armed, but isolated. The *Bengalat Balug* people observed the settlers for two weeks, and likely consulted with their *Yawangi Balug* clan neighbours who met John Batman on 31 May (and possibly also other Kulin allies from the Yarra)

[92] While not relevant to my thesis, Boyce provides a summary of Batman's and Fawkner's competing claims of over who 'founded' Melbourne.
[93] These place names were recorded by William Todd as the local names for the places he camped and explored in late 1835. Historians disagree on where exactly the camp was around the townships of St Leonards or Indented Head, and it is unknown what or where the Waddawurrung placenames Todd recorded correspond to.
[94] The Kulin's probable motivations to make a treaty with settlers were discussed in full in Chapter 3.

before they decided that the potential benefits of approaching the foreigners outweighed the risks. On 23 June Woolmudgin led a small party of clansmen and approached Bullet while he was collecting water (Todd 1989, 26). Woolmudgin exhibited acumen and agency in choosing when and where to approach the clearly foreign and strangely clothed Aboriginal man, minimising the chances of hostility arising from surprised (and frightened) white men just as Billibellary did at the Yarra.

Woolmudgin's party were brought to the settler's camp, and saw their Country being transformed. Possessed. Controlled. Under detailed directive from John Batman, Todd's crew's purpose at Beangala was to stake the Association's claim: erect the Union Jack, clear land, fence it off, sow vegetables, dig a well, fell trees, and build a hut (Linnell 2019, 147-148). According to historian Saliha Belmessous (2014b, 189), for the British land could *only* be 'property' if it was developed by agrarian labour, enclosure or cultivation. Colonisers needed acts of development to claim ownership of land, by naming it and creating physical boundaries. Houses and gardens were "the most important symbols of possession" (Attwood & Doyle 2009, 47). Straight lines. Walls. Gates. And fences. Attwood and Doyle argue that the written Djilong and Dutigala Deeds "functioned in such a way as to make possession of the land at Port Phillip possible" under British property law (2009, 42). We do not know how the party of Waddawurrung *Arweet* viewed these changes, how so much digging and construction fitted into Kulin notions of responsibility to Country. We do know, however, that they approved of the settlers camping on their Country.

Within days many local Waddawurrung families came into The Camp to receive food and payment from the settlers (Campbell 1987, 117). We cannot know to what extent the Sydney men promised food, nor when or how they attempted to tell the Waddawurrung that the settlers believed that Woiwurrung and Boonwurrung chiefs had granted them access to Country. It is possible that the settlers had already been welcomed to Waddawurrung Country at the You Yangs encounter. Alternatively, it is conceivable that as the Waddawurrung's welcome was proceeding positively the issue was left until after the Geelong Treaty has been established, and possibly even until Buckley's arrival on 6 July. It would be a further 33 days until the Port Phillip Association returned on 6 or 7 August 1835 (Campbell 1987, 120-121).[95] The Camp expanded to house Association surveyor John Helder Wedge, Henry Batman (John's younger brother) and several more settlers, but they would only stay a month before relocating to the Yarra on 13-14 September (Campbell1987, 128). For the spring of 1835 The Camp was manned by a skeleton crew, and in November it was completely abandoned. For these five months, the Waddawurrung's Geelong Treaty governed the settler residents of The Camp, entirely independent of the British Crown or colonial law.

The Camp was a liminal and impermanent space, imbued with patience, generosity, and the political potential of experiential treaty-making outside of colonial governmentality and oppression. Six

[95] As Campbell notes, the dates in Todd's diary are inconsistent. This is fully explored later in this chapter.

months after its establishment the only remnant of British settlement was the decaying kitchen garden and an orchard of apple and orange trees which I imagined in the Prologue to this thesis. As opposed to the aborted colony at Sullivan Bay, Beangala is the site of Narrm's first colonial occupation that occurred with the local sovereign's consent. For this reason, The Camp would not have been forgotten by the Waddawurrung and their descendants, nor likely the settlers who lived under their jurisdiction. But most modern historians barely mention The Camp. Many books have been written about the cross-cultural politics of the Melbourne Treaty at the Yarra camp, but here I show that the Waddawurrung made colonisers obey Kulin law at Beangala first. Waddawurrung agency and the political innovation exhibited in the You Yangs encounter and the Geelong Treaty deserves to be more than a footnote and a prelude to the founding of Melbourne.

On primary sources

Historians constructing an argument centred on the events and relations at The Camp in 1835 must be conscious of the limitations and biases of the available primary sources. John Batman instructed William (Andrew) Todd to record daily events at The Camp, beginning on 9 June and ending with his dismissal as a Port Phillip Association employee on 12 November.[96] Todd's objective was to support the Association's legal claim to Kulin land, so it is expected that his journals would depict scenes of appeasement and cross-cultural understanding. Todd's diary entries are initially good-humoured, but he is also forthcoming about his anxieties over The Camp's security, recording his violent threats towards Waddawurrung people on many occasions. The "growing alarm and exacerbation" in Todd's diary should be taken as an indicator of its authenticity as a source (Linnell 2019, 148-149); his diary was clearly not constructed for newspaper editors and government officials to prove a successful cross-cultural political union like John Batman's journal and report was. In Todd's first and last two months at The Camp he was vulnerable and on edge, effectively abandoned by the Port Phillip Association, and his diary could have been his final testament or used as evidence to justify murder of Aboriginal people.

We gain further insight on political relations at The Camp from the correspondence of John Helder Wedge, who arrived with Henry Batman on 6 or 7 August. Wedge's letters are constructed to directly support the Associations claim by portraying a peaceful camp with amicable locals consenting to colonisation. As Campbell notes (1987, 245), the dates of Todd's diary, Wedge's letters and other primary documents such as shipping records are out of alignment by one day, but this is not a substantive reason to question their content. Todd's diary is also quite critical of his employers and their under-supplying of The Camp, and his open animosity towards Henry Batman (and his drunken brashness) was likely the cause of his dismissal in November (Linnell 2019, 177). For these reasons we can view Todd's account of his five months on at The Camp as accurate, however his diary has a

[96] Todd is referred to as William in Batman's journal and report, but when Todd's journal was published in 1989 editor Phillip L Brown refers to him as Andrew.

glaring omission. Todd barely mentions the presence or influence of Aboriginal women which, as we will fully explore later, is the root of a significant gap in treaty history.

William Buckley's accounts of The Camp, while important in offering the perspective of an adoptive Waddawurrung clansman, demand heightened scholarly scrutiny especially concerning matters of Aboriginal cultural practice (Maynard & Haskins 2016, 27-28, 50-51).[97] Buckley's life story was recorded only twice through direct interviews: first in 1837 by missionary George Langhorne (which was not published until 1911), and later in an ongoing collaboration throughout the 1840s with Hobart journalist John Morgan who, under the "burden of financial penury", published an editorially embellished biography in 1852 (Flannery in Morgan 2002 (1852), xxiii).[98] Buckley died in 1856 and his tale was taken up posthumously by colonial historians, most prominently James Bonwick who published his own interpretation of the tale in 1867. Buckley became a symbol, his story transformed by colonial writers into a best-selling apocryphal account of Aboriginal life for colonial markets. Many historians and cultural critics acknowledge that all biographies of Buckley are problematic; his story was malleable and likely exaggerated due to the subject's illiteracy and old age (Linnell 2019, 102; Flannery in Morgan 2002 (1852) xii-xiii; Peacock 2013; Scott 2009, 150-155). For this reason, historian Tony Birch (in Scott 2009, 153-154) points out that historians must be sceptical using Buckley, mediated through a colonial author, as an ethnographic source. Thus, Buckley's accounts of Waddawurrung cultural and society must be supplemented with additional anthropological research as demonstrated in Chapter 2. In this chapter I focus on the political role of Buckley at The Camp, a part of his story that his biographers give relatively little attention to. When combining Buckley's biographies with Todd and Wedge's accounts we can make confident inferences on the political nature of the cross-cultural political exchange at The Camp and construct a new image of the Geelong Treaty.

The Geelong Treaty

Reciprocity established

Following John Batman's instructions and example, and aware of their isolation, Todd and his crew immediately gave the Waddawurrung leaders gifts to demonstrate their non-threatening good faith (Campbell 1987, 117).[99] While historians do comment on the peace that these gifts brought, I will explore some incidents that have not received much attention through the lens of experiential treaty. Rather than being interpreted as gifts, the items Woolmudgin's group received were down-payments

[97] Maynard and Haskins discuss how Buckley's testimony was likely warped by his biographers, who were keen to exploit colonial fantasies of Indigenous culture through depictions of creatures like the Bunyip and customs like cannibalism.
[98] While Morgan's accounts were first serialised in 1852, and published in full soon after, I refer to the 2002 compiled edition of the *Life and Adventures of William Buckley* which includes Langhorne's account in full and was introduced and edited by scientist and historian Tim Flannery.
[99] Each Waddawurrung leader was given a cotton shirt, two handkerchiefs, a knife, a pair of scissors, and a blanket, along with three tomahawks between them.

for access to land on the Bellarine. While we cannot know the content of any discussions between the Waddawurrung and the Sydney men, over the two days they spent together it is clear that settlers convinced the locals that they had more material items to give in tribute. Furthermore as historian Peter Munster observes, it was a complement to the settlers that the Waddawurrung chiefs determined them safe (enough) to bring women and children to The Camp (2008, 3).

On 26 June over 60 Waddawurrung arrived at The Camp expecting payment, including some (nameless) women wearing the beads that John Batman gave them at the You Yangs encounter on 31 May (Todd 1989, 27). Furthermore, we know from Todd's and Wedge's records (Linnell 2019, 180; Todd 1989, 29) that Murridanuck, *Arweet* of the *Yawangi Balug* clan, arrived at The Camp in this group. Todd referred to Murridanuck as "The King" (1989, 29, 59). According to Clark he was "closely associated" with Woolmudgin (1990, 335). Murridanuck had four wives named Coramabuccana, Corajindo, Coranarncorn and Corrabungadarnook, and while we know little about them, their status and continual presence at The Camp was likely important given their husband's great influence, and that the Waddawurrung men came and left regularly (Todd 1989, 59-60). [100] This indicates that the bayside Waddawurrung clans had communicated with each other — and maybe with their northern Kulin allies too — about the arrival of settlers to Narrm, and opens up the possibility that the *Yawangi Balug* matriarchs at the You Yangs encounter did grant the settlers' provisional access to Waddawurrung Country, as raised in the previous chapter. As the settlers established The Camp for two weeks prior to being approached by the Waddawurrung, it is likely that bayside clan heads discussed what approach to take to the newcomers at Beangala.

The remainder of the settler's goods were distributed to the locals as compensation for two weeks camping at Beangala. In this material, economic exchange the settlers *bought* permission to continue camping on Waddawurrung Country.[101] It then quickly became clear that there were significant expectations placed on guests who used the land's resources. As with the Melbourne Treaty the Waddawurrung knew that the settlers could not offer land access or engage in arranged marriages to expand political kinship networks, so they adapted their political demands to extract other benefits from the foreigners in a "reciprocal obligation [that] worked much like a rental agreement" (Fels 2010, 21).

[100] Murridanuck's reputation was well known among the Waddawurrung; he had the most wives and children of any man at The Camp, denoting great authority (see Chapter 2). According to Buckley, Murridanuck was the most fearsome of all Waddawurrung clan heads and capable of brutal violence. He brought seven of his children to The Camp, named: Mittanrum, Darraill, Narnworn, Mabuccana, Jeandon, Bungadarnook and Joebudging. Unusually for his contemporaries John Helder Wedge recorded both the names of the Waddawurrung women and children at The Camp. Murridanuck was murdered in 1839 by a party of offended Woiwurrung.
[101] As explored in Chapter 4, the functional value of these items paid to the Waddawurrung is of less importance than the moral and political relationship established by the tribute.

Fred Cahir is one of the few historians who regards the political relations at The Camp as a significant aspect of the 1835 narrative. Examining Indented Head, Cahir argues (2019, 126) that without the Sydney men's knowledge of Aboriginal customs and protocols Todd and his crew were highly likely to have missed many of the socio-political cues which obliged them to *perform* reciprocity proportionally, and in real-time. The first reciprocal requirement the settlers had to engage in was sharing their food. After distributing the initial treaty-payments Todd and his men made damper and shared it with the gathered community, which conformed to the Kulin philosophical tenet that food is a communal good to be equally shared. Following their first shared meal, Todd's crew begrudgingly cooked the Waddawurrung damper on several other occasions as the Sydney men understood that they were expected to be forthcoming with their food to "avoid ill feeling" (Campbell 1987, 117-118). The settlers' food stores, which were intended to last for three months, rapidly depleted and Todd grew increasingly hostile and paranoid towards the Waddawurrung gathered at his camp. However, the Sydney men's hunting efforts delayed the situation from deteriorating.

Hunting features prominently in Todd's diary. Immediately after the Geelong Treaty was established hunting became a key vehicle for the settlers to perform reciprocity, joining with local hunters in lieu of sharing their flour and other European food. Cahir (2019, 61) concludes that daily collaborative hunting parties were moments of cross-cultural connection at Indented Head and rare examples of Europeans using their technology to contribute to Aboriginal society.[102] The Sydney men appreciated that their presence on Country was a drain on local resources which would grow to be burdensome to their hosts (especially when their white colleagues were unwilling to share bread), and supplying hunted meat was a simple way to provide compensation. Hunted game was shared among all at The Camp (Cahir 2019, 61).[103]

Not knowing the Bellarine's country and game the settlers struggled to hunt before joining the Waddawurrung but combining their rifles and 'kangaroo dogs' with local knowledge they formed a highly effective team (Boyce 2011, 87-88). Several dogs were given to Waddawurrung hunters, but avenues of reciprocity beyond hunted meat had to be found as the settlers began again refusing their hosts bread and hospitality (Boyce 2011, 69). The Sydney men prevented a cultural misunderstanding escalating when Gumm refused a request from Murridanuck to look after his son (Todd 1989, 30).

[102] Cooperative hunting parties would also be an important site of cross-cultural exchange at the Yarra camp, with Fawkner's group joining with and at times employing Boonwurrung and Woiwurrung men to lead expeditions for kangaroos. Sometimes settlers lent Kulin men firearms to hunt alone. See Chapter 3.
[103] Boyce argues that the colonisers of Narrm were informed by their earlier experiences of on the frontier. The introduction of hunting dogs marked a turning point in the colonisation of Van Diemen's Land, enabling poorer settlers to easily hunt game and eat fresh meat. English hunting dogs were naturally adept at chasing down and immobilising kangaroo. Boyce argues that dogs had a greater impact on game-hunts than rifles, which were too inaccurate to fire at moving targets. See Boyce, James 2006, 'Canine revolution: the social and environmental impact of the introduction of the dog to Tasmania', *Environmental History*, vol. 11, no. 1, pp. 102-29; and Cahir, Fred & Clark, Ian D 2013, 'The historic importance of the dingo in Aboriginal society in Victoria (Australia): a reconsideration of the archival record', *Anthrozoös*, vol. 26, no. 2, pp. 185-98.

This incident is telling. First, it demonstrates that the Geelong Treaty was acknowledged by several bayside Waddawurrung clans. There were three Waddawurrung clans in between *Yawangi Balug* Country and The Camp yet Murridanuck was a frequent at Beangala (Clark 1990, 334-335), likely informed about the intentions and gifts of the settlers by his clanswomen who met John Batman on 31 May. Second, we see a moment of inter-cultural misunderstanding. Where Gumm likely saw an invitation to 'babysit' a child as demeaning, for the Waddawurrung spending time with a senior Elder's son would have been seen as a privilege, which was recognised by the Sydney men who advised against causing political offence (Campbell 1987, 117). Todd (1989, 33) writes that Murridanuck's boy stayed at the camp for weeks without his father, indicating that the offense was resolved, and the settlers gained a level of trust from the Waddawurrung.

While undoubtedly facilitating peace, the Sydney men were also impediments to relations at The Camp. Their actions threatened to break the increasingly fragile peace, causing an uproar when local clan heads withdrew planned arranged marriages with local Waddawurrung women (Boyce 2011, 69). It appears that one of the Sydney men Bull attempted to aggressively capture a woman promised to him before marriage ceremonies were performed, leading to a confrontation with local Waddawurrung men (Todd 1989, 36). This incident is also telling, as it testifies to the Waddawurrung's commitment to their Geelong Treaty and its congruence with Kulin traditions of political alliance-making. As the marriages were intended for the foreign Aboriginal men, we can see that they were indeed centrally important figures at Beangala and the offer likely represented an attempt to entrench political commitment to the Geelong Treaty — and wider Kulin alliance — through deepened connections into local kinship structures and thus loyalty (which was presumably hoped to be an outcome). It is further notable that the offer was not made to the settlers, indicating that the Waddawurrung were not prepared to accommodate white men into their culture and kinship networks. Todd's diary makes no mention of sexual relations — consensual or forced — between himself, Gumm or Thompson, or indeed later white men who arrived at Beangala, and Waddawurrung women. Recalling some clan's objections to Buckley's marriage discussed in Chapter 2, an adoptive Waddawurrung, perhaps inter-cultural marriage with white settlers was beyond Kulin law.[104]

Given the precarity and isolation of the settlers at Beangala it is not surprising that they made no effort to instigate sexual relations with Waddawurrung women, but were cross-cultural sexual exchanges part of the treaty relations at the Yarra camp? While a full exploration of this is beyond the scope of this thesis, it does not appear that bayside Kulin women engaged much with settlers. Historians note many instances of Kulin men developing a sense of attachment to the white men they lived alongside, as part of a complex labour exchange (Boyce 2011, 100-102; Clark 2005). Boyce seldom mentions Kulin women in his detailed analysis of 1835, but he does note that on several

[104] James Dawson heard a story of Buckley's wife, but he did not meet her and we do not know how long for they were married. See Chapter 5 note 114 and 116, and Conclusion note 33.

occasions the Association was approached by Buckley seeking justice for Kulin women who settlers had attempted to rape, resulting in the offenders return to Van Diemen's Land. This likely reflects the acknowledgement by the Association and Fawkner that their crews were in similarly precarious positions to Todd's in 1835 and 1836, and thus sexual violence was unacceptable provocation (at least until more military force was present in the new colony). As neither Boyce nor other sources mention consensual sexual relations between settlers and Kulin women around Port Phillip, marriage, not sex, appear to be a means of cementing experiential treaties.

The first weeks of experiential treaty and inter-cultural politics at Beangala were charged with potential and tension, and these incidents demonstrate how fragile the exchange of reciprocity was. As Waddawurrung Elder Uncle Byron Powell puts it (et al. 2019, 54) when meeting with Todd's crew his people "offered a 'Welcome' to the visitors, an opportunity for discussion and mutual understanding". It is worth also asking if other formal and ceremonial means were employed by the Waddawurrung to welcome their guests.

Performance of welcome

As introduced in Chapter 3, Kulin Agency historians draw on Diane Barwick's research to argue that the diplomatic ceremony of *Tanderrum* was performed as a formal welcome to John Batman at the Yarra and was the basis of a political understanding that settlers were authorised to access Kulin Country. If the Geelong Treaty is to be taken as seriously as its Melbourne counterpart, is it necessary for *Tanderrum* to have been performed by the Waddawurrung? While in the previous chapter I presented evidence that a form of *Tanderrum* was performed by Waddawurrung women at the You Yangs, here I explore political performances at The Camp.

Few historians consider the question of *Tanderrum* at Beangala. Alistair Campbell argues (1987, 103-104) that without an exchange of Waddawurrung soil, replicating the symbolic handing of country from buyer to seller performed in an enfeoffment ritual there could be no treaty at Indented Head. This view is unimaginative and does not acknowledge that scholars are not certain which specific acts make up a performance of *Tanderrum*, nor how prescriptively they had to be carried out. As I argued in Chapter 4 regarding the You Yangs encounter, we must invoke Greg Dening's theory of performance when imagining ceremonies of frontier diplomacy. *Tanderrum* was an enactment and display of sovereignty, through which the Kulin took responsibility for the settlers on their land. So, too, were the Waddawurrung's *corroboree* performances.

Corroborees were performed at every stage of Aboriginal presence at The Camp: first in intimate dances by the five Waddawurrung leaders and later in mass ceremonies by over 100 clans' people

(Todd 1989, 26-27, 29-30).[105] Furthermore, at the most significant moments of encounter such as when new locals came into Camp, *corroborees* were performed almost nightly. While Todd regarded the performances purely as entertainment (Munster 2008, 3), for the Waddawurrung as Kulin people, *corroborees* were surely imbued with more political meaning than the white settlers realised. Anthropologists and historians have established that Aboriginal peoples across the continent encoded complex cultural and political knowledge in their songs and dances (Cahir & Clark 2010; Hokari 2011), including explaining to guests which clans and individuals had rights to certain Country (Bradley 2010).[106] Cahir examined the *corroborees* at Beangala, arguing that they functioned as a "political introduction to the [camp's] newcomers who included Aboriginal and non-Aboriginal people" (2019, 96). Repeat political introductions were necessary as the demographics at The Camp were often shifting.

We know that over the first few weeks of the Geelong Treaty, Waddawurrung came into The Camp from clans beyond the immediate area, as shown by the presence of *Yawangi Balug* head Murridanuck from the You Yangs around 60 kilometres away.[107] The *corroborees* at Beangala may have communicated to Waddawurrung with Country away from Beangala, and the Sydney Aboriginal men, the authority of the local clan and the political reality of the new Geelong Treaty while simultaneously providing iterative welcome to the white settlers. This explains the renewed performances of *corroborees* when Wedge, Henry Batman and his family arrived two months after the Todd's crew (Boyce 2011, 69).

As Boyce notes (2011, 68), Todd "poorly understood and generally did not participate" in *corroborees* or any cross-cultural activity, so it is possible that *Tanderrum* was performed at The Camp which involved passing of symbolic items. Bruce Pascoe writes that *Tanderrum* "was a word frequently used by the Wathaurong in those early conversations with Todd" (2007, 14).While Todd could not speak Waddawurrung and I found no mention of the word in his diary, Pascoe recognises that ceremonies at Beangala represented more than a simple dance. Robert Kenny writes that the 6 June performance of *Tanderrum* was "misconstrued in the sense conveyed, and thus a *generosity* abused", in that John Batman perceived it as a successful purchase of land (2018, 232).[108] Kenny's argument is also true of *corroborees* at Beangala. As such, historians' concept of *Tanderrum* is too

[105] *Corroborees* were performed for Todd's party, first by the five Waddawurrung leaders on 23 and 23 June, then by the larger group of men, women and children on 25 and 26 June. Todd notes *corroborees* at many other points in his six months at Beangala, including performances for Wedge and Henry Batman, and his new crew after The Camp had been relocated to the Yarra on 24 September 1835.
[106] John Bradley's collaboration with families of the Yanyuwa clan, *Singing Saltwater Country: Journey to the Songlines of Carpentaria*, is an in-depth examination of the political meanings of song in Aboriginal clans and nations around the Gulf of Carpentaria. In the Kulin context, Cahir and Clark explore the meaning and function of *corroborees* before and after colonisation, when the ceremony functioned to establish friendly relations between Kulin survivors and settlers from different communities and classes, especially on the gold fields.
[107] See Figure 12.
[108] Emphasis Kenny's.

prescriptive and focussed on obvious (enough to be recorded by ignorant settlers) symbolic acts: the political meaning of Kulin performances to settlers needs to be analysed alongside cultural factors.

Todd's journal does not mention any symbolic acts such as breaking weapons, handing over of leaves, water, or soil. Kulin political *corroborees* would have been audio-visually overwhelming, and Todd may have simply missed these symbolic gestures and or did not ascribe them any significance. Cahir (2019, 96) argues that the settlers welcome to Waddawurrung Country was "cemented by ceremonies" which included *corroborees*, so the performances at Beangala appear, at the least, politically related to the forms of *Tanderrum* given to John Batman at the You Yangs and the Yarra. But, permission for guests to camp on and travel through Country was not granted indefinitely through welcome ceremonies.

Suspending and expanding the Geelong Treaty

Key features of Kulin experiential treaties are dynamism and flexibility, which allows consent for accessing Country to be conditional on guests meeting their obligations. The Geelong Treaty was in flux over its first six months, with the Waddawurrung suspending it twice while the settlers sought to expand it. When reciprocity was not performed, and rent was not paid, experiential treaties were paused.

The Waddawurrung first suspended the Geelong Treaty in reaction to their settler guests' hostility and refusal to provide compensation for their unsustainable drain on local resources. While hunted meat was readily shared among the Aboriginal people at The Camp, the perception of the settlers as a burden would have been proportional to their ability to feed themselves. The less the settlers had flour and vegetables the more they hunted, pushing consumption beyond the area's natural capacity. Furthermore, as stocks depleted Todd's crew become guarded and paranoid. Todd wrote of deterring the Waddawurrung from asking for supplies with increasing levels of aggression. With the settlers offering the Waddawurrung little but belligerence, why tolerate them? On 3 July the Geelong Treaty seemed over, with Todd writing that several men had left to Beangala to gather reinforcements to break up The Camp and dispatch the settlers. Hearing of this plan William Buckley decided to intervene, moving to The Camp on 6 July and informing Todd that an attack was imminent.

During Buckley's first month at Beangala the Geelong Treaty was provisionally reinstated with the Waddawurrung exhibiting patience with and tolerance for the settlers, who remained on edge and able to offer little in rent payment. The Waddawurrung took compensation where they could, continuing to utilise the settlers' hunting technology, taking unattended items from The Camp and attempting to lure the settlers away from their stores (Todd 1989, 34).[109] The Waddawurrung's patience was not endless however; as the settlers grew increasingly burdensome, talk of eliminating them gained

[109] Todd records a list of items he believed stolen by the locals and claims that he had to restrain his men from repossessing the goods due to Batman's orders of non-violence.

traction. On at least three occasions Buckley warned Todd of a planned attack (Todd 1989, 31-33, 35). The last of Buckley's warnings came on 1 August, at the height of the settler's vulnerability and dependence on their hosts. On 30 July they ran out of flour, and on 3 August their stocks of meat were empty: they had to entirely rely on the local diet of root vegetable *murnong* and hunted game (Todd 1987, 35-36). The decision not to murder the settlers while the treaty was suspended was likely pragmatic; if the settlers had not egregiously violated Kulin law and Buckley assured that there was more supplies arriving soon, there was more to gain materially in waiting to attack (Morgan 2002 (1852), 146-147).

The Waddawurrung's pragmatism was vindicated with Port Phillip Association's return to Narrm on 7 August, and the Geelong Treaty was fully reinstated when Henry Batman and Wedge resupplied The Camp. Dismayed to find his employees had "subsisted primarily upon roots, with now and then a kangaroo", Wedge ordered that the 46 Waddawurrung at The Camp receive immediate payment of goods and food, and tensions at Beangala rapidly dissipated (Attwood & Doyle 2009, 64; Campbell 1987, 120). When payment resumed and increased to daily rationing the settlers were permitted expanded access to Country, which likely extended to the You Yangs and Barrabool Hills given the range of Waddawurrung clans who congregated at The Camp. Wedge's role was to survey the lands claimed under the Djilong Deed and despite the Geelong Treaty operating at The Camp under the approval of various clan heads, and it appears that some inland Waddawurrung remained cautious of settlers. Historian Lou Lane's map (1993b) of clans and features surrounding Beangala (Figure 12) and shows that many clan's Country was entered by Wedge and his team. When Buckley took Wedge to his favourite spots such as Woorongo (which Wedge named 'Buckley's Falls' in honour of his guide) and his old hut at Kaaraf, both at least 40 kilometres from The Camp, they encountered local clans who were on good terms with Buckley (Morgan 2002 (1852), 150-151), however this generosity was not extended to the settlers accompanying him.[110] Wedge wrote on 23 August 1835 that the locals he encountered — including Nullamboin, an *Arweet* not present at the for the Geelong Treaty's founding — were scared of his rifle and "anxious to know where [Wedge] had been [taken by Buckley] and were curious to know why [he] was walking about the country" (Campbell 1987, 125). It is clear that inland Waddawurrung were anxious about encroachment without compensation. To assuage the Waddawurrung's fears, Wedge promised any Aboriginal people he met payment if they came into The Camp (Linnell 2019, 180). While Wedge may have thought his invitation was expanding the Association's influence, from the Waddawurrung perspective new clans or groups attending The Camp for payment — thus having regular and inter-personal contact with settlers and their goods — effectively expanded the experiential Geelong Treaty's scope.

[110] Kaaraf was named by settlers Thompson Creek. As Buckley's camp was noted for its proximity to abundant fishing and bird life it was likely to have been in the wetlands be around the modern hamlet of Breamlea.

The Treaty narrowed when Wedge and Henry Batman moved most of their crew and supplies to the Yarra in September. Todd, Thomson, Bungett and Lurnerminner (also known as John Allan, John Batman's 'adopted' Aboriginal son) were left at The Camp with one month's supplies, and once again had to navigate the established treaty relationship and rent payments with limited supplies (Campbell 1987, 58-59, 128).[111] Clans from beyond the Bellarine and Barrabool territories began attending The Camp, expecting to be compensated for an increase of settler traffic on their Country. On 23 October an Aboriginal group Todd had not yet encountered arrived demanding payment. They were determined to stay until a ship came to resupply The Camp, so they could be paid on the Geelong Treaty's terms (Todd 1989, 55). When Todd refused the clan threatened to spear his party, to which the settler replied that he would ensure that if harmed, all men, women and children would be murdered by whites. Incredibly, this face-off did not result in violence, likely due again to Aboriginal pragmatism; at least in the short-term Todd's threat was hollow and killing him would produce little material gain and trigger reprisals from the large settler presence at the Yarra. Indeed, less than three weeks later Todd's crew were out of supplies and his party was totally dependent on the few families of Waddawurrung who still frequented the Beangala camp. In November 1835 (his first visit to The Camp since May) John Batman was astounded that over almost six months there had been no instances of violence or murder (Cahir 2019, 61), which is particularly surprising given that his employees had again come be seen as a threat and burden.

We have no records of The Camp following Todd's dismissal and the recalling of the other Port Phillip Association employees to the Yarra. At some point in November, The Camp was abandoned to the Waddawurrung. With settlers no longer permanently present on the Bellarine Peninsula we can view the Geelong Treaty as again suspended. As an experiential agreement, if Waddawurrung Country and resources were not being accessed was there reason for them to demand compensation from the Port Phillip Association base at the Yarra? The consistent restraint and generosity demonstrated by the Waddawurrung, even when the Geelong Treaty was suspended, must be recognised as political pragmatism and acumen. While they retained the agency to permit settlers camping on their land, the trepidatious relations at Beangala were undoubtedly influenced by William Buckley.

Buckley's Treaty?

While Buckley's life with the Waddawurrung and the complexity of his intermediary political status at the Yarra have been examined at length by scholars, his two months at Beangala are yet to be explored in depth. Buckley's role in diplomacy of the Geelong Treaty and his degree of influence over the Waddawurrung clans has been difficult to assess; he simultaneously had great knowledge of Kulin political culture but, apparently, limited access to Waddawurrung decision-making. By the 1830s he

[111] For more on Lurnerminner see Chapter 3 note 44.

appears to have been mostly living in isolation at Kaaraf (Morgan 2002 (1852), 126-140).[112] Buckley understood Kulin kinship networks and alliances, yet, excluded from the political customs of marriage and battle he appears to have never left the liminal space between laws and cultures.[113] Given that only the most senior Elders were given access to the full extent of local clan and Kulin lore (Barwick 1984, 108), it is unlikely that Buckley ever fully understood the spiritual nature of the world he was permitted to live in. Conventional scholarship and popular (at least in Geelong) mythology often inflates and individualises Buckley in the context of white settlement, but was he a remarkable and influential figure for the Waddawurrung?

Historians do not agree on the level of authority that Buckley was awarded by Elders and his host community over his three decades with the Waddawurrung. Historian Tim Flannery and biographer Garry Linnell write that by 1835 Buckley attained the status of *Arweet*, based on an interview between amateur anthropologist James Dawson's and a well-known Western Victorian Aboriginal Elder and knowledge-holder in the 1850s.[114] This is plausible, however Linnell and Flannery extrapolate from Dawson's informant who stated that Murrangurk (Buckley) was a *"*chief who had died and 'jumped up whitefellow'" (1881, 75). Buckley was "treated with marked consideration and respect" as a *ngammadjidj* (resurrected Kulin person), however is unknown if Kulin law stipulated that pre-death political status was retained after resurrection, or if it had to be earnt again.[115] Furthermore, Dawson's treatment of Buckley is contradictory. Dawson later recounts a story he heard (second hand) of a Waddawurrung woman Purranmurnin Tallarwurnin, who was one of Buckley's wives. She said that Buckley was "recognised as one of the tribe" but mentions nothing about his political authority or decision-making capacity beyond that he was feared as a ghost (1881, 110-111).[116]

[112] While there are no dates in Buckley's account to Morgan, it seems very likely that his period of isolation from Waddawurrung clan units was in the late 1820s and almost certainly in the years immediately preceding 1835, because he speaks of an increase in shipwrecks and settlers entering Narrm.
[113] See Chapter 2 for more background on the cultural limits placed on Buckley.
[114] Dawson was a squatter in the Western Districts with a great interest in Aboriginal culture and history. In 1844 he purchased land near Port Fairy and later moved to Camperdown where invited the local Aboriginal people to camp on his 'property'. Dawson and his daughter learnt the local Kirrae Wurrung language, and he published lengthy ethnographic volumes in 1881 and 1900 based on interviews with displaced Aboriginal people. His informant on Buckley was Weeratt Kuyutt, chief of the 'Spring Creek tribe', a learned Elder and warrior. Weeratt could freely travel "unmolested all over the country between the Grampian ranges and the sea" and the Leigh (feeding the Barwon near Geelong) and Wannon Rivers (approaching the South Australian border); meaning he had status to walk on Gunditjmara Country north to Djab Wurrung territory and east to the inland Waddawurrung. Travelling this expanse of Country, he likely would have met Buckley. For more background on Dawson, see Howitt, Alfred William 1904, *The native tribes of south-east Australia*, Macmillan & Co, London.
[115] See Chapter 2.
[116] Dawson heard of Buckley's wife through Mr. Goodall, the Superintendent of the Framlingham Reserve, where Aboriginal peoples of the Western District were incarcerated from the 1860s. Purranmurnin Tallarwurnin was from the "Buninyong tribe", a name for the *Keyeet Balug* Waddawurrung clan from near Ballarat. Her marriage to Buckley makes sense as she was from an inland clan, which would cement his social location within the Waddawurrung.

Flannery presents no evidence for his claim that Buckley's "voice was influential in deciding matters of peace and war", however he does acknowledge the respect Buckley was afforded by his community due to the "virtue of peaceful ways" (in Morgan 2002 (1852), xli). On the other hand, we must remember, as explained in Chapter 2, that Buckley had admitted his foreign origins to his adoptive people and had been denied at least one arranged marriage. Bruce Pascoe acknowledges that Buckley was an accepted Waddawurrung community member but argues that he remained a cultural outsider and he would have had next to no political authority (2007, 21-22). It is perhaps telling of Buckley's humility (Maynard & Haskins 2016, 28), but he is not described as a Waddawurrung political leader in Morgan's biography.[117] As with much of Buckley's life with the Waddawurrung, his level of political authority remains a mystery as there are very few sources from the Kulin perspective. However, we can get a clearer picture of who directed the operation of the Geelong Treaty through closely reading accounts of The Camp.

The timing of Buckley's appearance at Beangala may be indicative of his capacity as a political advisor; he was not called upon by his Waddawurrung hosts for advice on the settlers. Buckley travelled to The Camp alone and uninvited. Woolmudgin and the other *Arweet* took up to two weeks to prepare their approach to the settler camp, and a further two weeks establishing an experiential treaty without consulting Buckley. Buckley only heard of The Camp when it had been determined that the settlers would be attacked, but the nature of his intervention to prevent this needs to be questioned by historians. Todd's diary states that Buckley was a "complete terror to the natives" (1989, 32), acting in defence of the settlers almost immediately by offering to shoot any violent Waddawurrung who interfered with the white men's food stocks. This seems unrealistic, as Buckley took time to regain his English language: communicating this level of threat to Todd would have been difficult at least initially. Furthermore, after 32 years Buckley's time in the military and the complex operation of a flintlock musket would have been a distant memory. Todd knew how vulnerable his party was to attack and his first month at Beangala was clearly coloured by anxiety, so Buckley's protective overtures would have been a well-received comfort. Linnell (2019, 151-152) and Campbell (1987, 120) take Todd's interpretation of Buckley's threats seriously, but would a person who has respectfully lived so long under Aboriginal jurisdiction so quickly and easily risk his life and status to a set of strangers who he believed were representatives of the brutal system he had fled? Colonial biographers John Morgan (1852) and James Bonwick (1856) were adamant that Buckley was desperate to return to British civilisation, seemingly balking at the idea that a white man would *prefer* to live with Aboriginal people (Peacock 2013), but was his desire to 're-civilise' strong enough to take

[117] Maynard and Haskins argue that Buckley's reluctance to discuss Aboriginal political life in detail demonstrates his loyalty to his adoptive people due to knowledge that this information was not suitable for outsiders. They also show that most castaways and refugees who spend significant time with Aboriginal clans held similar reservations.

such a big risk? Furthermore, was Buckley in any position to make credible threats against clan warriors?

Pascoe (2007, 14) interprets Buckley as a giant infant, not a warrior, arguing that despite his imposing physical presence he was relatively harmless and not permitted to participate in conflict or combat. Todd had no insight into the content or cultural context of Buckley's 'threats'. The forceful tone and gestures that Todd interpreted as white solidarity could have been grandstanding, an attempt to mime safety to the settlers which may have been ignored or humoured by the Waddawurrung. If the Waddawurrung Elders at Beangala decided to evict the settlers from their Country it is difficult to imagine Buckley, even given his immense stature, having been able (or perhaps even wanting) to stop them without provoking panic and a massacre on both sides.

Nevertheless, Buckley was not the only Waddawurrung actor prepared to protect the settlers. Todd recorded that on the night Buckley entered camp that it was a group of Aboriginal men who informed him of an imminent attack (1989, 31).[118] This alone should be cause to revise Buckley's role at Beangala: if he had not travelled to The Camp on 6 July 1835, it appears that Todd would have been warned anyway. While at no point does it seem that most of the local population at The Camp was against the settlers, opinion remained divided on tolerating the guests. Talk of eliminating the settlers did not dissipate after Buckley's appearance: there were three other occasions in which he warned Todd's party of agitation or attacks (Linnell 2019, 150-3). Yet, something prevented the increasingly frustrated Waddawurrung people from eliminating their guests. An attack that broke an experiential treaty would need authorisation from a top political figure, and while he may have played a part it is doubtful that Buckley had earnt the authority to direct military actions given his consistent exclusion from clan warfare.[119]

This is not to say that Buckley had no utility to his hosts after he intervened in July 1835, as Cahir points out (2001, 62). His skills as a mediator of inter-personal disputes between Waddawurrung clans and other Kulin were widely recognised (Maynard & Haskins 2016, 50), which was clearly of value in avoiding misunderstandings with the white men. Buckley's greatest contribution to Waddawurrung strategy likely was his insider knowledge of the behavioural tendencies of white men, coloured by his experiences of the military and colonial brutality. Buckley presumed that Todd's crew were soldiers of the Crown, and it is likely that he predicted that the coming colonisation would be along the lines of the penal settlement he escaped from back in 1802. Because of this he was justifiably afraid of being arrested and re-incarcerated by the settlers at The Camp, so for around two weeks Buckley lied and portrayed himself as a marooned whaler rather than refugee from British penalism (Morgan 2002

[118] Todd wrote that "all the natives came running to our fire, told us there was a mob of blacks coming to kill both us and them".
[119] Buckley being restricted from participating in inter-clan and inter-nation violent conflict and battle is described in Chapter 2.

(1852), 149). As Linnell points out Buckley took a significant risk in presenting himself to the settlers; he had successfully escaped colonialism and turned his "back on a life of captivity" (2019, 144).

Even after Buckley learned that the settler crew were representatives of a private enterprise, not the colonial military, and revealed his true background he was keenly aware of their violent potential (Linnell 2019, 150-151). Listening to Todd's description of the Port Phillip Association's endeavour it would have been clear that more armed settlers would be entering Narrm soon, intending to stay (Campbell 1987, 120). If Todd's camp was found murdered and plundered, the next wave of Association employees would be looking for blood despite the supposed mission of peace. While the Geelong Treaty was suspended towards the end of July from the Waddawurrung's point of view, Buckley's greatest contribution to the politics at Beangala was probably instilling his people with fear that if the Todd's party was eliminated there was no telling how far their employer's reprisals could go.

Buckley should be recognised alongside the Sydney Aboriginal men as instrumental in mediating the "confusion, misunderstandings and conflict" between settlers and Narrm peoples (Boyce 2011, 98), but his greatest asset to his hosts was his experience of the brutality and violent potential of the British. The Waddawurrung maintained their right to consent to foreigners — including Buckley — on Country, and the agency to tolerate and accommodate, or reject, threaten, and eliminate white men. Ultimately, the Geelong Treaty was established without Buckley, just as The Camp and the expectation of reciprocity from settlers continued without him. As Buckley relocated to the Yarra in September and the Melbourne Treaty developed, he spent more time with Association members like surveyor John Helder Wedge and lawyer Joseph Tice Gellibrand and his complicity with colonisation of Narrm grew. The Geelong Treaty was presided over by Waddawurrung clan heads like Woolmudgin and Murridanuck. It is unlikely that the Waddawurrung regarded Buckley as a major political player or that his interventions were as dramatic as has been portrayed by historians and biographers such as Linnell (2019, 177), even after he left The Camp.[120]

Abandonment of The Camp

The gradual desertion of The Camp is another aspect of the Narrm Treaties understudied by historians. Henry Batman and John Helder Wedge decided in late August that the Port Phillip Association's purposes - to establish supremacy and exclusivity as occupants of Aboriginal land around Narrm - would be better served by moving their men and resources to the Yarra (Campbell 1987, 128). While I established in the previous chapter that Indented Head may have been selected as a surveillance station and was able to spot non-Association ships arriving into Narrm, the resources

[120] It is worth noting that Linnell, a Walkley Award winning journalist whose career includes several moments of controversy, continues Morgan's legacy and penchant for dramatic moments with his recent biography of Buckley.

committed at Indented Head were needed to oppose Fawkner's rival camp at the Yarra. Furthermore, Wedge's work was done. Heaving thoroughly surveyed Beangala and the Barrabool Hills, Wedge proposed that the entire Bellarine Peninsula (assessed as of low economic potential as pastoral land) be excised from the Association's treaty claim to form an Aboriginal reserve (Campbell 1987, 122).

Under Wedge's proposal Waddawurrung people (at least the *Bengalit Balug*) would retain exclusive title over their sovereign Country under *both* the Geelong Treaty and the Djilong Deed. Other Port Phillip Association members dismissed Wedge's idea and with the strategic competition presented by Fawkner at the Yarra it was quickly forgotten, but, it is interesting to consider how such an excision would have fit into the experiential nature of the Geelong Treaty. Through August the Waddawurrung were happily receiving daily rations as compensation for the increased presence of settlers on their Country, but if their Country was effectively excised from the settler's ambitions and avoided by settlers on the Port Phillip Association's instructions in what form would the Treaty have continued? Without settlers disturbing Country's balance and ecosystem, the Waddawurrung would be free of demanding reciprocal compensation or the obligations of protected coexistence; however, abuses to other Kulin allies and the regional ecosystem are another matter. As well as armed resistance, Cahir's (2001, 2019) research demonstrates that the Waddawurrung were engaged in productive employment and trading relationships with settlers from 1837. It is unclear if Wedge envisioned requesting other Aboriginal peoples move to the Bellarine to expedite the Association's pastoralism, but the settlers were in no position to exclude non-Association squatters nor coerce Aboriginal people until well after the Geelong Treaty's first anniversary. Without regular experiential contact, it is unlikely that a Waddawurrung reserve on the Bellarine would have remained independent for long. While Wedge and Henry Batman were planning the next steps for the Port Phillip Association's presence around Narrm, the Waddawurrung also continued deliberating whether to continue the Geelong Treaty or adopt a new course of action.

On 5 September, just a few days before the settlers uprooted The Camp, Todd (1989, 53-55) recorded the arrival of a new group of Aboriginal people, undoubtedly Kulin, who agitated the Waddawurrung to "gather with another mob in the interior of the Country". Todd's description of the newcomers and his interpretation of the meeting presents a challenge to historians, as while he explicitly mentions that the local *men* left The Camp on 12 September, presumably to attend the meeting, he omits the presence and actions of Waddawurrung women. Were Waddawurrung women excluded from this political matter or did Todd's patriarchal bias prevent him from recognising their participation and influence over clan affairs? Historian Marie Fels points out that the aversion to acknowledge Aboriginal women's agency is not limited to 'Bushmen' like Todd, but rather was prevalent among almost all colonists, even supposedly progressive ones like the Protector of Aborigines that would be instated around Victoria in 1839. In most records of Aboriginal society post-1835 women were referred to as their husband's "lubra", and as Fels observes "recovering females names will be a long-

term project" for researchers (2010, 6). This is not true for the Waddawurrung women at Beangala however, as Wedge was unusually thorough in his recording of local's names including many women who frequented The Camp (Todd 1989, 59-63).

Cahir (2001, 84) points out Waddawurrung women acted as hunting and surveying guides for Wedge, a role predominantly carried out by men in other regions. Anthropological work on Kulin culture shows that Aboriginal matriarchs had significant political roles in their communities, which Pascoe argues became more pronounced during the periods of armed resistance to colonisation (2007, 85, 113). Given the egalitarian and democratic nature of Kulin societies, the political potential of the You Yangs encounter explored in Chapter 4, and Buckley's evidence that Waddawurrung women participated in battle alongside their clansmen, it seems unlikely that women were excluded from all political decision-making.

The interior gathering may have been to discuss cultural and kinship matters, but it seems unlikely that a political discussion of the Waddawurrung's treaty permitting occupation would have been off the agenda given the strangers' interest in inspecting The Camp's settlers and Wedge's recent forays inland of Narrm. By this point, Fawkner's men had established a presence at the Yarra, so the spectre of colonisation was likely hanging over many Kulin clans. It still would have been relatively easy for the Narrm clans, assisted by warriors from the interior if needed, to coordinate an attack on The Camps at Beangala and the Yarra with relatively few casualties: in late 1835 there were less than forty whites around Narrm (and probably even less firearms). What if it was decided that Waddawurrung's Geelong Treaty would be revoked and Beangala was purged of settlers? With such low numbers perhaps the Port Phillip Association's initial focus and expansion would have focussed exclusively on the Yarra and avoided the western side of Narrm. However it is difficult to imagine that the Waddawurrung would have been free of colonialism for long. John Batman himself had identified the land around Geelong as having great economic potential, which was confirmed by Wedge's survey, and settlers had strong tendencies to avenge their murdered compatriots and employees (Pascoe 2007).[121] If The Camp was purged, when settlers eventually they would be armed, aggressive, and vengeful.

Todd gave us little detail on the interior meeting's purpose or its planned date, but if the clans who visited on 5 September were strangers, we can presume that they were not from the bayside Waddawurrung clans who had frequented The Camp. The meeting may have been held in the western territories of Waddawurrung Country, or conceivably by other allied Kulin who had yet to contact the

[121] For instance, most of the Port Phillip Association's members present at the Yarra and their employees participated in the massacre of over ten Waddawurrung in reprisal for the murder of squatter Charles Franks in July 1836 on the Werribee River.

settlers such as the northern Woiwurrung or southern Dja Dja Wurrung.[122] We also do not know if Buckley attended the meeting, but it is unlikely. Buckley was at The Camp to receive his pardon on 11 September, and he sailed to the Yarra with Henry Batman's family on the 15th (Todd 1989, 54). The meeting would have had to have been close to Indented Head for him to have been able to return on time to depart. This must again make us question the level of political influence Buckley had over his adoptive nation's treaty-making (and breaking) plans. As there was not an attempted ambush on settlers — at Beangala or the Yarra — until months later, the meeting seems to have concluded that continuing to demand payment from the settlers and to accommodate their occupation was the most pragmatic and beneficial policy for the bayside Kulin.

The September interior meeting was likely a significant moment of deliberation for many Kulin clans, but it did not result in a change of approach for the Waddawurrung. Realising that Todd had been left inadequate supplies to share, most locals left The Camp to live back on Country. But, with Todd's encouragement some Waddawurrung also made the journey along the bay to the Yarra camp (Campbell 1987, 128). At least four Waddawurrung men had also sailed to the Yarra with Buckley (Todd 1989, 54), meaning their presence on Woiwurrung and Boonwurrung territory was likely substantial in the spring of 1835. Several historians (Cahir 2001, 1; Clark 1990, 335; Linnell 2019, 248) note that the Waddawurrung and Woiwurrung (at least the bayside clans) were in a period of animosity during early colonisation — so much so that Buckley requested a posting away from the Yarra people during his later employment by the colonial police in 1837— however we do not know to what extent the tensions between the allied nations were precipitated or exacerbated by colonisation. This could have greatly increased the Port Phillip Association's chances of being accepted by Yarra leaders like Billibellary and Derrimut as a treaty partner, as they had not benefitted from or practised the political relationship they established with John Batman in over three months. The influx of Waddawurrung people to the Yarra may have been more consequential for the establishment and performance of the Melbourne Treaty than the presence of John Batman or the Sydney men. As allied Kulin they could attest to the character of Henry Batman and Wedge (neither of whom had been present in June), the settler's unwillingness to use violence, and the material benefits of regular treaty payments. Demonstrating a non-discriminatory willingness to permit settlers on Country Boonwurrung *Arweet* Derrimut had established a friendship with John Pascoe Fawkner prior to the Association's relocation to the Yarra, but the direct word of Waddawurrung clans' people who had benefitted from the Port Phillip Association should not be underestimated. While Fawkner was not a party to the Geelong Treaty as he remained at the Yarra, the Waddawurrung's presence there made them participants in the Melbourne Treaty (Cahir 2001, 94).

[122] See Figure 5 for a map of Kulin territory and Narrm clans' Waddawurrung Country relative to their northern allies.

The Waddawurrung remained committed to the Geelong Treaty as long as there were settlers occupying their Country. Todd's new crew was given a *corroboree* by their Waddawurrung hosts on 24 September, as a new configuration of locals and settlers needed to be politically acknowledged (Todd 1989, 55). When John Batman returned to The Camp to dismiss Todd in late November he was amazed to find that his employees were surviving on the Waddawurrung's traditional diet of kangaroo and "nutritious roots" donated by the locals (Todd 1989, 56).[123] The Waddawurrung were obliged to protect and care for the vulnerable settlers on their Country, who had for all intents and purposes been forgotten by their masters. This however was no excuse for not paying rent, as Todd was accosted by more men demanding bread on 30 September (1989, 55). Conflict was avoided as the locals realised how little Todd's crew had. The settlers were likely looked upon in pity — as Kulin culture would struggle to comprehend a leader abandoning their kin and hosts not sharing food with men — and despite their occasional aggressive bluster Todd's men had done the locals no physical harm over the duration of the Geelong Treaty. Soon after Todd was dismissed the remaining Association employees at The Camp packed their few belongings — as alluded to in the Prologue to this thesis — and moved to the Yarra camp (Cahir 2001, 94).

What was left behind at Beangala, besides the Waddawurrung families whose obligation and generosity fed and protected Todd and his colleagues? The hut constructed for Henry Batman's family was probably dismantled, the construction materials catalogued for use on a future *settlement* at the Yarra. Did they lower and carefully fold the Union Jack which proclaimed British possession of Country, or was it left as a reminder to the Waddawurrung of their treaty? Perhaps it was a parting gift to the clans who had fed them, but we know that the settlers did not touch their kitchen garden or orchard. On his final visit to Beangala John Batman commented on the speed the garden established itself, a feat he attributed to the remarkable quality of the soil (Flannery 2010, 56-58). Six months after being sown The Camp had fledgling apple and orange trees, potatoes, maize, carrots, lettuce, radish, and beans, which provided sustenance to those who maintained them (Campbell 1987, 116).

In July 1836, one year after the creation of the Geelong Treaty, John Batman sent men to The Camp to uproot the fruit trees for re-planting at the Yarra. The Prologue to this thesis imagined The Camp in early 1836, a summertime campground of the *Bengalat Balug*, and this chapter has explored it as liminal space where settlers lived as guests under the authority of by the Waddawurrung and its leaders. But, should we consider William Buckley as a Waddawurrung leader? Justifying Buckley's protection of settlers, Campbell states (1987, 120) that colonisation of Waddawurrung lands as "almost inevitable" and that Buckley was instrumental in The Camp's longevity. As this chapter has argued, Buckley's influence is often overstated. It is always a choice to use violence, and the Waddawurrung repeatedly rejected bloodshed in their approach towards the settlers on their Country.

[123] Todd is almost certainly referring to *murnong*. See Chapter 1.

Todd's crew may have been under instructions to restrain themselves and Buckley may have advised against attacks, but the power to permit or evict settlers from Beangala was always Waddawurrung clans' *Arweet*. We do not know if any single *Arweet* led the Geelong Treaty negotiations, but according to journalist/biographer Gary Linnell (2019, 180) and Fred Cahir (2001, 154) Woolmudgin was afforded authority by the bayside clans and was able to create the Geelong Treaty on their behalf. Given this, he should be recognised by historians as a key figure in 1835.

Picturing Buckley or Woolmudgin interacting with settlers at Beangala requires imagination. In these imaginings, I have asked readers to suspend their hindsight and view cross-cultural encounters for what they may have been at the time. For over six months after the settlers had left the fruit trees and kitchen garden were living, intact, 'unmolested' (Munster 2008, 4). John Batman saw the fruit trees as his to *re-possess*, but what of the treaty that his employees had upheld with the Waddawurrung? Unfortunately, it appears that after the Beangala orchard was uprooted, its status as the foundation of the settler-history of Geelong and the Bellarine slipped away…

Historians' absence at Indented Head

The cursory attention scholars of 1835 and early Victorian colonisation devoted to Beangala and the Geelong Treaty overlooks and underestimates the significance of The Camp as a crucial and formative site of cross-cultural politics, which in turn impacts public appreciation of local history. Like myself, Linnell grew up in Geelong and from a young age was taught about the mythical nature of William Buckley and his epic tale of survival with the Waddawurrung. We both visited his favourite haunts. And learnt of him at school. Linnell recently published a well-researched, accessible biography of Buckley, but the months between his reveal to Todd at Indented Head and his relocation to the Yarra are all but skirted over. The Camp at Indented Head was not just a stopgap in Buckley's return to whiteness, but had enormous potential to set the tone for the first prolonged cross-cultural political relations around Narrm: how different would 1835 have been if Todd's crew were evicted or killed by the Waddawurrung? If there had been no successful Geelong Treaty, perhaps relations at the Yarra would not have been so amicable.

Until writing this research I had no idea that Narrm's first treaty with settlers was practised at quiet, unassuming bayside hamlets 20 minutes from Geelong. It is surprising that in the volumes of thorough research on 1835 historians overlook the treaty and cross-cultural relations at Beangala. Boyce's *1835* (2011) primarily concerns the founding of Melbourne, but it is also an in-depth examination of treaty-making around Narrm. Boyce devotes little more than a page to Indented Head. He also calls the Narrm Treaties a "defining juncture in Australian history" (2011, 73), and thus the absence of a discussion of the Waddawurrung's political relations and treaty with Batman's employees for six months (and two months before the Yarra) is striking. Not exploring the Waddawurrung's agency and treaty-making cuts them out of a formative moment in the foundation of

the modern Victorian, and Australian settler-state. Attwood and Doyle's *Possession* (2009) is an excellent deconstruction of 1835 and the legacy of Batman for modern Melbourne. Their appreciation of written versus oral treaties assisted greatly me in conceptualising experiential treaties, but they too focus almost exclusively on the Yarra to the exclusion of Beangala.

Of the 99 days before The Camp was relocated to the Yarra, 59 were before the Port Phillip Association returned to Narrm: historians should recognise that this 'unsupervised' period of cross-cultural relations between Todd's crew and the Waddawurrung was characterised by immense significance and political potential. After Wedge, Batman and Buckley relocated The Camp was manned by Association employees for at least another month before being completely abandoned, and this period has been analysed even less by historians.

The late historian Peter Munster devoted his later years to researching the history of Indented Head, seeking greater historical recognition of the Bellarine as a significant site of shared Waddawurrung-settler history (2004, 2008). Munster, a Bellarine resident, argues that The Camp was located at St Leonard's, the township a few kilometres south of modern Indented Head; while historians and the general public overlook Beangala historical significance, the local community know their history. In 2004 the St Leonards' community raised money for the installation of a stone labyrinth: a maze for children to play in, but also a memorial to Buckley and a "place for contemplation" of his journey and Waddawurrung life (Munster 2008, 17). The implication is that foreigners — Buckley, Batman, Todd and crew — were perpetually lost on Waddawurrung Country, faced with a never-ending series of questions, problems, and threats: predicaments deserving of historians' attention.[124] The orchard that Todd's men planted was probably close to these memorials to white men.

In terms of experiential treaty-making, for the Waddawurrung the orchard would have been a lasting symbol of the Geelong Treaty; a vehicle for settlers to provide compensation for their presence on — and damage to — Country, even if they were not actually present. While colonisers isolated on Aboriginal Country were often fearful and few if any could grasp the complexities of Indigenous culture or society, the political relations at Todd's camp were relatively simple. Under the Geelong Treaty, facilitated by Buckley and the Sydney men, the Waddawurrung clearly laid out their expectations that would guarantee the settlers' security: pay compensation and do not harm the community. The Geelong Treaty between settlers and the Waddawurrung was experiential, existing outside of the colonial state and European law. The same principle guided the Melbourne Treaty at the Yarra camp, however despite the presence of many Waddawurrung who had practised their treaty for months the demand of reciprocity transitioned from frequent payment to annual tribute (Attwood & Doyle 2009, 57).

[124] See Figures 15, 16 and 17.

As the primary political locus shifted from the Bellarine to the Yarra and as the colonial state began to encroach on Kulin Country, the peace established by the Narrm Treaties grew "uneasy" (Boyce 2011, 81). The case study of The Camp and the Geelong Treaty presented in Chapter 5 add to Kulin Agency scholarship by detailing that the rich history of cross-cultural encounters and politics between the Waddawurrung and their settler guests. By mid-1836 things had begun to change for the Waddawurrung. After their orchard was re-possessed the Geelong Treaty and relations with the settlers on Country around Narrm rapidly deteriorated. But, in conclusion, Chapter 5 has shown that when settlers paid rent to camp on Narrm Country in 1835, they participated in the Kulin expectations of reciprocity and enabled the possibility of political agreement and experiential treaty.[125] We must remember that the Narrm treaties, and the peaceful cross-cultural beginnings of the Yarra camp and indeed modern Melbourne decidedly have their political roots under the orchard at The Camp at Beangala.

[125] By mid-1836 Barrabool clan head Woolmudgin would be murdered and 1000s of sheep were imported through Indented Head, leading to increased hostility between settlers and the Waddawurrung. See Appendix 1 for a timeline of events.

Part II Conclusion: Silenced Waddawurrung agency

Part II of this thesis asked readers to imagine the possibilities of cross-cultural political relations around Narrm in 1835. We use our imagination not to envision the Kulin's world on the brink on invasion, but to attempt to see it as it was when colonisers arrived: complex and interlinked societies, governed by laws and politics, and prepared to deal with a new and existential threat. Chapters 3, 4 and 5 expanded understandings of a place and period which has been given little attention by historians; The Camp at Beangala/Indented Head in the second half of 1835.

An investigation of Beangala would not be possible without the analytical foundation of the Kulin Agency thesis and the historians who revised the narrative of 1835. Chapter 3 described how the Kulin Agency thesis is a vital scholarly and decolonial contribution that demonstrates informed Aboriginal political pragmatism and acumen, which had been silenced in mainstream narratives of Australian history and the 'founding' of Victoria. The clans throughout the greater Kulin nations and beyond perceived an existential threat from settlers in the 1830s, which was crystalised in the dissemination of a warning from a mystic living in the Australian Alps. Despite the mission to collect axes to stop the sky from falling in, in June 1835 the bayside Kulin decided to offer experiential treaties to Batman and his employees. Kulin Agency historians compellingly argue that the Narrm peoples, informed by decades of violent encounters with settler pirates, were motivated to diplomatically engage with John Batman and his employees in an attempt to limit colonisation. Communication and understanding between the bayside Kulin and Batman's party was not only possible but likely, and it is undoubted that the Woiwurrung and Boonwurrung were informed and pragmatic political agents in dealing with colonisers on 6 June 1835. However, a close reading of the existing Kulin Agency scholarship illuminates a sad irony: its silencing and erasure of Waddawurrung agency in the story of 1835.

Chapter 4 explored the Kulin Agency thesis' limitations and the misunderstandings which have excluded the Waddawurrung from revisions of 1835's history. To do so we must be conscious of the ways historians have predominantly considered the concept of 'treaty' in the British sense: as a written, contractual agreement. Focussing on documentary records of treaty, Kulin Agency historians have rightly criticised the Dutigala and Djilong Deeds that Batman claimed gave him title over 600,000 acres of land around Narrm. In particular, the Djilong Deed was almost certainly fraudulent. However, historians must not stop their analysis there. Because of its fabricated nature the Djilong Deed is a useful platform for the exploration of experiential treaty-making in the total *absence* of colonisers 'legal' legitimacy. Kulin Agency historians' dismissal of the Djilong Deed's existence or validity — remembering that neither the Waddawurrung nor their advisor Buckley could read English script — precludes due consideration of a 'legitimate' political treaty between the Waddawurrung and settlers.

Historians can be both critical of the legal claims Batman made while accepting of Aboriginal efforts to adapt the realities of colonisation into their law: the Waddawurrung and their treaty-making diplomacy need to be afforded the same intellectual attention and flexibility that Batman's encounter and *Tanderrum* at the Yarra has received. Agency historians have all but ignored the You Yangs encounter, which writes the potential role of Waddawurrung women and their authority to politically deal with guests out of the narrative of 1835. So too, has Waddawurrung agency been downplayed by historians at The Camp.

Chapter 5's case study detailed the Geelong Treaty's elements and progression, exploring further encounters and exchanges that have escaped historians' gazes: such as the nature of *Tanderrum*, political *corroboree* ceremonies, generosity and the demand of material reciprocity, and requirement that guests' adhere to local law. After establishing the terms of their Geelong Treaty and a clear expectation of material compensation for occupation, the Waddawurrung demonstrated a concerted and protracted commitment to upholding their political obligations. Through 1835 they tolerated aggressive guests, periods of little or no payment, and surveyors sojourning without permission, and not once did they violently intervene or attempt to evict their treaty partners from Country. The Port Phillip Association did not have a monopoly on treaty-making in 1835. The impetus to politically negotiate was never solely in the hands of John Batman, John Pascoe Fawkner, the Sydney men, or any other settler who claims to have a stake in the founding of Melbourne, Geelong, or Indented Head.

Historians have neglected The Camp at Beangala/Indented Head as a significant site of cross-cultural politics and treaty-making in 1835, and by doing so diminished the Waddawurrung's role in the narrative of Victoria's 'founding'. Even when it is mentioned, little effort has been devoted to asking: why Beangala? Or imagining that women could have granted permission to Batman's party to return to Waddawurrung Country at the You Yangs encounter. Chapter 4 also showed that the Camp did not just appear, it was deliberately selected by Batman probably as a surveillance post. Despite Beangala being the first settler camp around Narrm and the Waddawurrung naming 29 May as their Invasion Day, if we resist viewing The Camp with the knowledge of hindsight we can see that Indented Head was not *only* ground zero of Narrm's colonisation, but was *also* a liminal space of political possibility and diplomatic potential.

Part II demonstrated that the seeds of the first treaty between Aboriginal peoples and British settlers in south-eastern Australia were propagated and cultivated at Beangala, and that The Camp and has expanded the Kulin Agency thesis to include the Waddawurrung. By not recognising the existence or validity of the experiential Geelong Treaty, Kulin Agency historians unintentionally replicate the erasure of Aboriginal political power and pragmatism they have sought to dismantle. Just as Chapter 4's imagining of the You Yangs encounter demonstrated that the agency and authority of

Waddawurrung women who have been erased from the story of John Batman's journey, we see on a broader scale Waddawurrung history and agency silenced by historians' overlooking the significance of political relations at Beangala/Indented Head.

While clans on the northern shores of Narrm received Batman's gifts first, white men lived under Waddawurrung jurisdiction on the Bellarine Peninsula for 99 days before they returned to the Yarra. The *Bengalat Balug* and *Wadda Wurrung Balug* negotiated, suspended and practised treaty under Kulin law, but their political agency is rarely recognised by the scholars who have done so much to change our view of 1835. Woolmudgin should be regarded as influential in the narrative of 1835 as Billibellary or Derrimut; he was part of the Geelong Treaty negotiations, but also commanded the maintenance of positive relations with settlers on-the-ground until his death. Woolmudgin did not live long enough to see his Treaty entirely dismantled by the settler government. In October 1836 he was the first *named* Kulin person to be executed by Narrm's colonisers (Campbell 1987, 197; Clark 1990, 331).[126] But Woolmudgin's murder had not occurred during the summer of 1835-1836, nor was it inevitable. While we know that violence and dispossession were coming, we must not let hindsight colour our imagining of Kulin law and politics of the Narrm Treaties at Geelong, the Yarra, or The Camp.

[126] Despite his friendly disposition to the settlers around Geelong and his assistance in searching for missing Port Phillip Association founder Joseph Gellibrand, Woolmudgin's murder went unpunished.

Conclusion: Kulin Treaties, the 'road not travelled'?

In *1835* James Boyce argues that 'Batman's treaty' was a landmark agreement and "defining juncture in Australian history" because it represented the "road not travelled" by *colonisers* (2011, 73). Boyce calls for historians to move past preoccupations with Batman's supposed colonial fraud and see 1835 for what it was: far more than a "mere quirky footnote to the Melbourne story" (2011, 72). Similarly, Bain Attwood and Helen Doyle argue that the Kulin's oral treaties were highly significant and are under-recognised in the narrative of 1835, but were quickly rendered effectively *meaningless* because colonial authorities rejected the written ones (2009, 60). These views, while drawing attention to the custom and performance of Aboriginal treaty-making, are accurate only if we view treaties as the exclusive domain of colonial governments. This thesis has argued that Boyce's position is of course right; however, to frame treaty-making *only* in terms of British law and colonial governments obscures experiential treaties before and after 1835. If we let hindsight dismiss the six months of cross-cultural politics at Beangala, we cannot use our imaginations to see a form of Aboriginal political practice that does not involve the settler state.

Conventional scholarship, clouded by 'benefit' of hindsight and knowledge of devastation, often views Victoria's colonisation as an inevitability. The rapidity of dispossession, especially of the Waddawurrung, can blind historians to the operation of cross-cultural politics and the Kulin's traditions of treaty-making. To fully understand 1835, scholars must take a more expansive view of treaty-making around Narrm. By exploring the Kulin's experiential practice, in this thesis I have argued for a redefinition of 'treaty', one that does not centre the colonial or modern settler-state. I have asked readers to join with me to question and decolonise our assumptions about the history of the Aboriginal peoples who have lived around Narrm for thousands of generations: to see the continuity and durability of Kulin culture, law, politics, and practice of experiential treaty-making during and beyond the invasion that came in 1836.

By exploring and imagining the environmental and political history of Narrm over 14,000 years, Part I demonstrated that the foundations of Kulin politics are a sustainable ecological philosophy and relations with the living, non-human world: Country, Waters, spirits, and other beings (such as animals) created by Bunjil. In telling the story of Narrm's evolution (and Bunjil's intervention) we saw that Country and Waters can be viewed as historical agents which direct the politics of humans. For example, in the way that Narrm's changing water level determines economies and forces humans to continually politically negotiate over resource allocation.[1] In Chapter 1 we imagined the immense upheaval caused by climatic change — the displacement of the Bass Strait peoples, the inundation of

[1] The sunken rivers beneath Narrm are the boundaries between bayside clans. Through ever deepening dredging, they continue to act economically and politically as increasingly large shipping containers and goods follow their course to Melbourne's port.

Narrm, its drying out and re-flooding — to demonstrate the Kulin's ancestral and recent experience of politically responding to crises caused by external actors.

Kulin stories show that environmental change demanded social and political adaption which conformed to ancestral law: Bunjil's flood during the 'Time of Chaos' instigated peace around Narrm; the increase of aggressive settlers sojourning on Kulin Country provoked an amassing of axes to prevent the sky from falling in; and later the 1838 drought likely motivated continued Waddawurrung resistance against settlers and sheep which were 'driving away' water (Clark 1990, 281). The Kulin make sense of external political events and the alliances between nations in terms of the fundamental social organisation and sovereign governance of clan life. Kulin treaties were inter-personal and everyday, regulating relations around Narrm: kinship networks, arranged marriages, conflict and dispute mechanisms, reciprocity, and *Tanderrum*. Part I showed that there was sovereignty and treaty-making *before* 1835.

Building on our legal, social and cultural understanding of the Kulin, my imagination-based approach to the historiography of 1835 offered a new perspective on the Narrm Treaties. The Narrm clans' experiential treaties with John Batman and his employees represented as a *continuation of,* not a *disruption to,* Kulin political customs. The bayside Kulin, especially the Waddawurrung — experienced in, and wary of, decades of settler violence — consolidated hundreds of generations worth of experiential treaties by engaging diplomatically with Batman and his crew. Through the case studies of the You Yangs encounter and Geelong Treaty, Part II argued that the most important aspects of the politics of 1835 were the intimate, cross-cultural experiences, not Port Phillip Association's written documents and maps. I challenged readers to imagine settlers' encounters around Narrm in the latter half of 1835 from this perspective, to return the historical 'present' to these moments and relations. In particular I argued for recognition of The Camp at Beangala/Indented Head in terms of its liminality, reciprocity, and political potential, with settlers living under Kulin law and compensating local custodians for their occupation. For six months the settlers were invited to participate in a Kulin experiential treaty, and Part II called for an expansion of the Kulin Agency thesis to include the Waddawurrung, and their experiential treaties practised in 1835. But do they still *remain* today?

Before we can answer that question, we need to acknowledge the 'elephant in the bay': the attempted Victorian genocide. While my thesis advocates imagining history without the 'benefit' of hindsight, I in no way seek to diminish or dismiss the cultural, spiritual and physical devastation executed upon Kulin peoples and Country, and indeed all Aboriginal nations in 'Victoria'. There can be no denying the carnage caused by settlers and their livestock in one of the most rapid and comprehensive colonial expansions in human history (Broome 2005, 54). For the Narrm Kulin, settler occupation came before depopulation: within five years of the 1835 treaties most, if not all, of Waddawurrung Country was

occupied by squatters and sheep (Clark 1990, 281-281).[2] The same can be said for the Boonwurrung (Fels 2010) and likely the Woiwurrung too, followed by northern Kulin who faced invasion in the 1840s (Kenny 2018). James Boyce is right in saying that settlers' respect for the Narrm Treaties was "limited and local" (2011, 70).[3] There are oral histories of massacres in almost every Victorian shire (Christie 1979, 79), though, as seen in studies of massacres of Victorian Aboriginal people, the Narrm Kulin were killed by gunshot to a far lesser extent than nations to their the east (Gippsland) and west (the Eumeralla Wars) (Clark 1995; Critchett 1990; Pascoe 2007; Ryan 2010).[4] With the male population disproportionally reduced through incarceration and shootings, Aboriginal women were terrorised by settler sexual violence (Ryan 2010, 127; Wolfe 1994, 94-95). Within two decades of Batman's arrival to Narrm over 8,000 Aboriginal people were estimated to have died, with *at least* 2,000 by gunshot (Christie 1979, 78). Others were killed through starvation due to sheep eliminating staple foods such as *murnong*, dispossession preventing access to hunting grounds, and the destruction of residences, all of which expedited the spread of disease (Pascoe 2007, 40-43, 125).[5] In 1886 there were just 806 surviving Aboriginal people in Victoria, incarcerated in Missions and Reserves, representing a settler-caused reduction of 93-95% of the pre-invasion population (Christie 1979, 206-207; Watts 2003).[6] After having taken control of Port Phillip and wider Victoria from 1836-37, the Victorian government's Protection regime and reserve system did little to constrain the slaughter of Aboriginal people by squatters (Robert 2016). But when legislators passed the 1886 Aborigines Protection Act the Victorian Parliament became global innovators in genocidal policymaking:

[2] It is beyond the scope of this thesis, but an argument could be made that the Narrm Treaties did limit massacres of Kulin peoples in the late 1830s.

[3] This is not surprising. Using the framework of Kulin experiential treaties, why would Northern Kulin nations and other groups within the Kulin language sphere that did not have direct, interpersonal contact with settlers conform to the Narrm nations' political agreements.

[4] *Any* massacres of Aboriginal people were one-sided and genocidal. There are many dedicated works focussing on the killing times in the Western District and Gippsland, but here I focus on the Southern Kulin. There are three known massacres on Waddawurrung Country: 10-40 clans people were shot dead in the July 1836 reprisal raids for the murder of squatter Charles Franks, the killing of at least four Waddawurrung in the Barrabool Hills in 1837, and shooting of three Barrabools in 1840. There was a massacre of at least seven Boonwurrung people at Westernport in December 1845. There do not appear to be any recorded massacres on Woiwurrung Country, however these figures are clearly incomplete: for instance, the 1840 Battle of Yering's Wurundjeri casualties are unknown. These figures of course do not include unreported murders of Aboriginal people, or the massacres of Narrm Kulin that occurred in the early 1800s by explorers, sealers and whalers. Note that the international standard definition of massacre as deliberate murder of over three people has been adopted. For a visual depiction see the Koorie Heritage Trust's *Massacre Map 1836-1850* (1991) at https://cv.vic.gov.au/stories/aboriginal-culture/indigenous-stories-about-war-and-invasion/massacre-map/

[5] Pascoe notes sheep effectively caused a '*murnong* genocide', as wherever they spread the vegetable was "eliminated from most areas of Victoria in [only] one season". Since the release of *Dark Emu*, Pascoe has been working to revive the *murnong* and increase its use as a sustainable and nutritious culinary vegetable.

[6] This figure varies according to the baseline of the pre-colonisation Aboriginal population (scholars have used estimates between 10,000-15,000). 884 comes from the 1885 census, however Christie notes that this probably did not include small Aboriginal populations living in fringe camps on the Murray River.

legalising the Stolen Generations (Birch 2001; Ellinghaus 2001; Land 2006; McMillan & McRae 2015; Wolfe 2016).[7]

This is but a brief summary of the war crimes and legalised attempted genocide perpetrated against the Victorian Aboriginal population, and it could go on in far greater detail (VTOLGJ 2016; Watson 2000).[8] Today, Victorian Aboriginal peoples and nations hold title over staggeringly little of their Country.[9] This is, of course, vital context for any examination of cross-cultural relations and the potential for experiential treaties *after* the arrival of the burgeoning 'Australian' settler-colonial state to Narrm in 1836-1837, and its at best *laissez-faire* attitude to and at worst *active* perpetration of Indigenous extinction. However, to focus *only* on the evidence of genocide is historically and politically damaging in two ways. First, as I argued throughout this thesis, focussing on the genocide unleashed from 1836 through the lens of hindsight can cloud our assessment of the political potential of experiential treaties around Narrm. Additionally, and more importantly for contemporary politics, is the impact damage-centred history-making has on modern Indigenous communities (Fránquiz & Ortiz 2018). The cultural stereotype that modern First Nations peoples are defined by damage and loss continues to be perpetuated in modern settler societies through research and writing which makes Indigenous trauma the primary focus (Tuck 2009). As Ojibwe scholar David Treuer argues (2019), damage and deficit discourses work to frame modern Indigenous people as perpetually disadvantaged, and confines their culture and agency to the distant past.[10]

[7] The 1886 Act, known colloquially as the 'Half-Caste' Act, divided Aboriginal populations according to blood quotients. On this basis, the government and police kidnapped Aboriginal children from their parents who remained incarcerated on Reserves. This policy encouraged continued miscegenation and family separation and was readily adopted by other Australian jurisdictions to define the Assimilation Era of Aboriginal relations, which attempted to classify Indigenous people out of existence.

[8] The Victorian Traditional Owner Land Justice group often points out in contributions to the modern Victorian Treaty process that there are only around 100 of the 300 pre-invasion Aboriginal clans with living descendants in Victoria. Gunnai activist Robbie Thorpe (and many others) have long fought for recognition of the Victorian genocide by Australia courts in 1998. See Balint, Jennifer 2013, 'Stating genocide in law: the Aboriginal Embassy and the ACT Supreme Court', in G Foley, A Schaap & E Howell (eds), *The Aboriginal Tent Embassy*, Routledge, London, pp. 267-82; Balint, Jennifer 2018, 'Naming Genocide in Law', *law&history*, vol. 5, pp. 154-60.

[9] Due to the rapidity and expansiveness of Victorian colonisation and inbuilt flaws with the modern Native Title regime, land claims have been notoriously difficult to succeed in Victoria. As of 2020 there are only three nations have achieved Native Title determinations. An additional four nations have utilised the Victorian government's alternative to Native Title, the Traditional Owner Settlement Act. None of these cover major urban areas. See Buchan, Bruce 2002, 'Withstanding the tide of history: the Yorta Yorta case and indigenous sovereignty', *Borderlands*, vol. 1, no. 2; Moreton-Robinson, Aileen 2004, 'The possessive logic of patriarchal white sovereignty: The High Court and the Yorta Yorta decision', *Borderlands e-journal*, vol. 3, no. 2; Parker, Darren Peter & Guan, Saw Tiong 2011, 'The Traditional Owner Settlement Act 2012 (VIC): Because Sometimes Acronyms Have Two Meanings', *Lawasia Journal 2011*, pp. 15-24.

[10] Beyond negative mainstream media coverage, Aboriginal scholars — such as academic Chelsea Bond and journalist Jack Latimore — have identified pervasive deficit discourses that position Indigenous peoples or outcomes as 'problems to be solved' in streams such as education, public health, and even self-proclaimed 'progressive' academic spaces. For example see Askew, Deborah A, Brady, Karla, Mukandi, Bryan, Singh, David, Sinha, Tanya, Brough, Mark & Bond, Chelsea 2019, 'Closing the gap between rhetoric and practice in strengths-based approaches to Indigenous public health: A qualitative study', *Australian and New Zealand*

Writers and media producers can decolonise their practice by refusing to perpetuate deficit discourses (Tuck & Yang 2012, 2014), and a principal aim of this thesis has been to demonstrate the enduring strength and agency of the Narrm Kulin, especially the Waddawurrung. In summary, the trauma of genocide and ongoing dispossession does not *define* Victorian Aboriginal peoples' history or modern survival. This is especially true concerning Aboriginal women and matriarchs, who are so often neglected by historians and anthropologists, and rarely mentioned outside of the context of rape or child removal (Pascoe 2007, 117). In interrogating the portrayal of Kulin women, in general and in the narrative of 1835, my thesis has demonstrated the extent to which historians have failed to consider or recognise their agency and authority. First I offered a new view on women's central role in maintaining the Kulin alliance through marriage, and at various points in this thesis I explored how marriage was used to socially locate and politically regulate foreigners: refugees from Bass Strait marrying into the Kulin, imperial asylum seeker William Buckley's arranged marriage/s (with Purranmurnin Tallarwurnin), and the Aboriginal men from Sydney's withdrawn invitations to marry Waddawurrung women. The courage and agency of Waddawurrung matriarchs meeting Batman to protect their people was clearly demonstrated at the You Yangs encounter. In doing so, I hope to provoke more male historians to consider the erasure of Aboriginal women from historical and archival research, in line with the work of scholars who offer nuanced and strength-based portrayals of women as resistors to colonial oppression in Victoria, such as Joanna Cruickshank (2008, 2015b with Grimshaw), Patricia Grimshaw (2008, 2011), and Penny van Toorn (1999, 2006).

As I have argued in this thesis, experiential treaties were continually practised by the Kulin following invasion, and Kulin women often played key roles in resisting colonial management and oppression while fostering settler solidarity (Birch 2017a; Nelson, Smith & Grimshaw 2002).[11] Perhaps the clearest examples of experiential treaties post-1835 is *between* displaced Aboriginal peoples during their incarceration on missions and reserves. While the fabric of clan structure was stretched as Aboriginal survivors from diverse nations were forced to live together in concentrated locations, the traditional custodians of local Country were not forgotten (Pieris & Murray 2018, 562).[12] The Reserves at Framlingham and Coranderrk, established in the early 1860s on Kirrae Wurrung/Gunditjmara and Wurundjeri/Woiwurrung land respectively, were particularly known for a

Journal of Public Health; Latimore, Jack, Nolan, David, Simons, Margaret & Khan, Elyas 2017, 'Reassembling the Indigenous public sphere', *Australasian Journal of Information Systems*, vol. 21, pp. 1-15; Phillips, Gregory 2015, 'Dancing With Power: Aboriginal Health, Cultural Safety and Medical Education', PhD thesis, Monash University; Sarra, Chris 2014, *Strong and Smart–Towards a Pedagogy for Emancipation: Education for first peoples*, Routledge, London.

[11] For instance, Aboriginal women's use of letter-writing and petitioning to protest colonial injustice and family separation is well documented.

[12] Elder Gary Murray describes his ancestry as 'ambi-clanned', stemming from the fact that Aboriginal survivors from across Victoria formed relationships and had children at Reserves and Missions beginning in the 1850s. Under traditional alliance and marriage structures most of these relationships would not have been considered, which today results in many Victorian Aboriginal people having connections to several nations and genealogy through disparate clans.

strong collective sense of Aboriginal community and activism which respected the local Country and custodians' authority. From the outset, Framlingham's residents were concerned with reclaiming land rights in perpetuity (Critchett 1992; Tomsic 2002).[13] While Aboriginal peoples continued to practise experiential treaties with each other, scholars are beginning to understand how their laws and political traditions interacted with and informed British laws in early colonial encounters and relations (Balint et al. 2020).

Evidence that experiential treaties were practised at Coranderrk is even clearer, where the authority of the Wurundjeri *Ngurungaeta* Simon Wonga and William Barak was recognised by not just displaced Aboriginal people but also by the Reserve's settler manager John Green and his wife Mary (Balint et al. 2020, Broome 2006; Clark & Cahir 2014).[14] The Coranderrk residents' campaigns to resist the station's closure through the 1860s and 1870s (despite its demonstrable economic success) attracted solidarity from several influential settlers in Melbourne, and resulted in the historic 1881 Parliamentary Inquiry into demands for Aboriginal land justice (Barwick 1972, 1998; Balint et al. 2015; Cruickshank & Grimshaw 2015a; Nanni & James 2013; Wolfe 2016).[15] Notably, as pointed out by the Minutes of Evidence project, Kulin women delivered powerful and performative testimony to the Inquiry (Balint et al. 2020, 9-10).[16] As historian Julie Evans argues, the Coranderrk Inquiry and the modern theatrical adaptation of it "inform and challenge present and future generations" to engage

[13] Framlingham's residents and traditional custodians fought for their land title for well over a century. Julie Evans and Ann Genovese are researching the early Framlingham petitions as part of the *Lawful Relations: From Encounter to Treaty* ARC project (forthcoming). When Framlingham was threatened with closure in the 1860s, the residents (local custodians and Aboriginal guests) formed such strong bonds with the site that they continued to occupy it despite withdrawal of government provisioning and gradual sell-off of land to local farmers. From1916 community continued to live there unsupported for decades. A campaign of protest and local coalition building saw Framlingham handed back to the Aboriginal community in the 1970s, and the adjacent forest handed back in the 1980s.

[14] Many scholars have commented on the Green's progressive and respectful approach to working *with* the displaced Kulin at Coranderrk, but we must remember it was the prerogative of the Wurundjeri leaders to include him in their planning and *allow* him to participate. John Green, along with Protector William Thomas, recognised that they were on Wonga's Country and encouraged him to select and name a site to establish the community. Coranderrk was chosen after they were evicted from their first selection and is around 50 kilometres from modern Melbourne. For the following decades Green fought the Board for the Protection of Aborigines for greater independence of the Coranderrk community and their rights to land on traditional Country, at great cost to his career. Mary Green was also notable for her respectful relations with the Aboriginal women at Coranderrk.

[15] The political innovation of the Coranderrk movement has been recognised by historians and modern Indigenous activists, as armed Aboriginal resistance was abandoned in favour of direct, but peaceful action and attracting influential solidarity. The Coranderrk campaigns incorporated a mix of direct action (deputations into Melbourne, occupying parliamentary offices) and tactical use of the media and bureaucracy (having allies like Ann Bonn and MP John Dowd publish sympathetic newspaper articles, sending letters and filing petitions). As the late Patrick Wolfe notes, Coranderrk's activism was so transformative and successful that the Board had difficulty breaking up the community, ironically triggering the genocidal Victorian Protection Acts of 1869 and 1886.

[16] The Minutes of Evidence project is a collaboration between Indigenous and non-Indigenous scholars (including Mark McMillan, Nessam McMillan, Jennifer Balint and Julie Evans), creatives and educators to deepen public understandings of Coranderrk and the 1881 Inquiry. Just two examples of Kulin women's agency and voice include Dja Dja Wurrung woman Caroline Morgan and Taungurung woman Alice Grant.

with Aboriginal sovereignty and political agency (2016, 144).[17] The continuation of experiential treaties — centred on displaced peoples' respect for *continuing* local clans or nations' political authority in the context of forced cohabitation — at Framlingham and Coranderrk (but certainly not limited to these Reserves) in the late 19th century may have been a large part of the strength and cohesiveness of modern multi-nation Aboriginal communities.

Experiential treaties continued to be practised on Kulin Country throughout the 20th century, independently of — and in some cases, despite of — state oppression, especially after Victorian government policy, satisfied with its regime of Stolen Generations, shifted from meticulous control to benign neglect prior to World War II (Wolfe 2016). In the early 1940s a thriving community was established at Jackson's Track in the bush on Woiwurrung Country, with Aboriginal refugees from the Lake Tyres Mission partnering with the land's white 'owners' Darryl and Harry Tonkin (Tonkin & Landon 1999). While the main connection at Jackson's Track was between Darryl Tonkin and Stuart Hood, who was not a Woiwurrung but a Gunnai man — unfortunately the clan background of most of the residents of the Track are not known in detail — I would argue that the 20-year cross-cultural relationship resembles a modern evolution of experiential treaty-making, with settlers respecting Aboriginal political agency and rights. Darryl Landon saw the injustice of the dispossession and displacement of Aboriginal people and offered them near total independence in the bush and an alternative to living under Missionary control (Probyn-Rapsey 2008). The experiment at Jackson's Track was eventually shut down with the government's renewed interest in controlling Aboriginal people, many of whom were forced off Missions and rural fringe dwellings into inner-Melbourne suburbs like Fitzroy and Collingwood beginning in the 1950s (Birch 2002), where a new urban Aboriginal community developed based on shared history. In the 1970s Fitzroy and Collingwood became a centre of solidarity and self-determination as Koori women founded organisations to serve and protect their people (Land 2015; Pieris & Murray 2018).[18] More work is required to investigate how fully my articulation of experiential treaties may apply to the Aboriginal-Aboriginal and Aboriginal-settler relations during the self-determination era, especially given that this period was also marked by urban cultural and political development which incorporated historical

[17] The 1881 Inquiry was historic as it was the first government investigation to include testimony from Aboriginal people on their rights. In 2012 the Ilbijerri Theatre Company adapted the Inquiry's transcript, which is performed verbatim in the powerful, nationally touring production *Coranderrk: We Will Show The Country.*
[18] Koori (signifying Aboriginal from south-eastern Australia) activists in Victoria were influenced by political community movements in Redfern and the Aboriginal Tent Embassy in Canberra, and earlier Victorian organisations like the Aboriginal Advancement League. Service provision organisations founded in Fitzroy include the Victorian Aboriginal Health Service (VAHS), the Aboriginal Legal Service, and an Aboriginal Funeral Fund. Clare Land also explored the networks of solidarity the Fitzroy and Collingwood Kooris fostered in support of their self-determined organisations, which when using the framing of experiential treaties, demonstrates that there were some settlers respectful of Aboriginal sovereignty and authority. Most notable is Bill Roberts, a dentist who assisted in the founding of VAHS and was well known and respected in the Melbourne Aboriginal community for his deferential approach to community-controlled medical service delivery.

(clan-based) and more recent (Mission/Reserve based) kinship identities to form a modern, metropolitan relationality (Greenop & Memmott 2013).[19]

Future scholarly research on experiential treaties may give greater insight into 20th century solidarity and cross-cultural political relations in Victoria. But in 2020, within Melbourne's activist community the foundations of experiential treaties are actively *practised* by respecting Aboriginal sovereignty and entering reciprocal political relationships. Each year, tens of thousands of settlers turn out to support causes and demonstrations led by the local staunch Aboriginal-led activist movement, such as grassroots groups the Victorian Traditional Owner Land Justice Group, Warriors of the Aboriginal Resistance (WAR), and SEED Mob. The aggregate number of settler attendees to mass-rallies demonstrates a strong base-level of support for grassroots issues such as the annual Invasion Day rally, the recently inaugurated Invasion Day Dawn Service, and WAR's CBD occupations. Notably, much of the politics espoused by Aboriginal organisers is in opposition to, or at least critical of, the Victorian Treaty process (Amerena 2018a),[20] with two recent grassroots campaigns in particular attracting significant support from settlers to directly undermine a potential treaty for Victoria and Premier Daniel Andrews: the Djab Wurrung Embassy and the Pay The Rent Grassroots Collective (Amerena 2018c, Thorpe 2019b).[21] While supporters' substantial financial contributions to the Embassy and Pay The Rent have great practical utility to organisers, they also send a powerful message that progressive settlers are willing to acknowledge Indigenous sovereignty, support grassroots political movements, and compensate Indigenous people for our current and historical occupation when the state refuses to.[22] Settlers' acknowledgement of Indigenous laws and sovereignty

[19] However, with the imposition of the Native Title regime in 1993 (and many other modern state-Aboriginal policies such as Registered Aboriginal Parties in Victoria) genealogy and specific clan ancestry became enormously important again for Indigenous people, as the success of a claim is largely predicated on tracing detailed and unbroken lineages.

[20] CBD occupations are a protest tactic adopted by WAR (and more recently settler-led climate action groups) to draw attention to an issue or injustice through a sit-in a major intersection and halting public transport and traffic. Occupations are often combined with social media campaigns. Notable examples include WAR's occupations to protest the forced closure of Aboriginal communities in Western Australia (#SOSOBlakAustralia) in 2015, justice for the murder of teenager Elijah Doughty in 2016, the shooting and death in custody of Kumanjayi Walker by Northern Territory police (#JusticeforWalker) in 2019, and the Coronial Inquest into the death in custody of Yorta Yorta woman Aunty Tanya Day.

[21] The Djab Wurrung Embassy is a sovereign protection camp established in June 2018 to stop the Victorian government removing several scared trees and sites for the expansion of a highway in Western Victoria. It began as one tent and an Aboriginal flag but quickly became a salient political issue and rallying point for criticism of the Andrews government. The Embassy attracted solidarity from a diverse range of actors including unions, and Greens and independent politicians, and its continued reclamation of Country has protected their sacred sites.

[22] By March 2020, supporters had contributed over $300,000 to the Djab Wurrung Embassy, with at least a third of this being contributed in its first few months. The Pay The Rent Grassroots Collective was launched at Invasion Day 2020 in Melbourne, inspired by the activism of Robbie Thorpe and others from the 1970s (see Introductory chapter). On Invasion Day, supporters contributed almost $100,000. Rather than a one-off donation, the Collective asks settlers to contribute at least 1% of their annual income to provide the grassroots movement with a predictable income independent of government grants or conditionality. The money was allocated to sovereign-led initiatives including an Aboriginal funeral fund, Grandmothers Against Removals,

offers new possibilities of interrelation and cross-cultural political justice (Balint et al. 2020). As Māori scholar Rachel Buchanan points out, interpersonal and experiential solidarity movements are far more likely to reset and balance the social and political relationship between coloniser and colonised than any formal initiative, including modern treaties (2019).[23] For Buchanan, the value in modern treaties is not financial or quantifiable, but lies in the truthful histories that are revealed and the "relationships created or exposed" by the negotiating process (2019, 127). However, given the enormity of the attempted Victorian genocide, is it realistic that *all*, or even a 'significant' proportion of settlers could enter interpersonal political relationships with Aboriginal people?

Perhaps the *future* of experiential treaties is settlers taking responsibility for the fact that we live on Aboriginal land and directly compensating local grassroots groups for our occupation, instead of relying on governments to conduct imbalanced negotiations.[24] Perhaps Aboriginal peoples can develop localised historical and political education materials — so settlers can learn not just about but, more importantly, *from* local clans and nations' experiences with settlers and colonisation — for settings such as primary and high schools, or new, visible permanent and dedicated public spaces like museums (Pieris & Murray 2018).[25] The reality is that Aboriginal groups are already realising a new future of experiential treaties with each other. The Northern Basin Aboriginal Nations and the Bogong Treaty Group have been formalising inter-nation relationships by pooling sovereignty and resources to advocate for increased recognition of *a priori* rights and to better engage *with* governments on issues like water and park management (Hemming et al. 2017; Weir 2007, 2009).[26]

and a rolling fund. For more information see https://paytherent.net.au/ and https://www.invasionday.org/pay-the-rent-campaigns.

[23] While conscious that First Nations communities can and do financially benefit from modern treaty settlements, Buchanan argues from her experience on Aotearoa/New Zealand's Waitangi Tribunal that settlers concerned with Indigenous justice should retain a level of scepticism towards treaties or agreements that *only* deliver: services (that already should have been provided), economic and commercial development packages (which entrench and equate neo-liberal prosperity with community prosperity), handback of surplus (valueless) land, make symbolic apologies for oppression and vague gestures of reconciliation (without changing any structural issues which enable and ordain domination), and provide a legal framework for litigating against the state if (when) they (inevitably) violate treaty terms.

[24] An example of this form of direct compensation was mentioned in the Introductory chapter with the Dabee 'private' treaty.

[25] Increased opportunities for curriculum development and control of cultural representation and visibility appear to be likely outcomes of Victorian state Treaties if the process is successful. Educational programs may allow settlers to 'experience' some elements of local Aboriginal history while not burdening Indigenous people. Multi-clan Victorian Elder Gary Murray has proposed that Treaty House be established in Melbourne's CBD to act as a political, educational and cultural hub for Aboriginal people. Settlers would be able to visit public galleries and attend workshops, while Indigenous people would conduct Treaty and other cultural and political business behind closed doors.

[26] Examples of modern inter-nation Aboriginal treaty-making include, but are certainly not limited to, the Bogong and NBAN Water Treaties. In 2010 clans from the Dhudhuroa, Waywurru, and Yatmaithang nations of the Victorian highlands met at Falls Creek to negotiate the Bogong Treaty. The Treaty delineated a discursive process for Alpine Aboriginal nations and clans to negotiate shared issues such as territorial boundaries, parks and water management, and dispute resolution mechanisms. None of these Alpine clans are officially recognised by the Victorian government and are excluded from permanent representation in the Victorian Treaty process,

Is the future of Indigenous political engagement with the state on an ad hoc issue level, or will a holistic partnership be formed through modern treaties? As this thesis has argued, the Victorian Treaty process would be contextualised by, and benefit from, not only greater public appreciation of the Kulin's historical agency and contemporary political organisation, but also inclusion of the Waddawurrung and the role of Kulin women in the narrative of 1835. This thesis set out to make a political as well as a scholarly contribution to revising the narratives of 1835 and the political presence of the Kulin and Waddawurrung in early Victorian colonisation, a project which has been underway for generations through the work of Aboriginal historians — *published or not*.[27] Conservative commentators will push back against Aboriginal-produced histories of colonisation — seen most recently with the moral outrage over Bruce Pascoe's historical work confected by Andrew Bolt and online trolls (Morton 2019) — attempting to continue silencing Indigenous voices and discredit their indigeneity. While Pascoe (2014) and others have addressed the deficit discourse in public understandings of Aboriginal technological advancement and agriculture, and historians such as Lyndall Ryan demonstrate with sensitivity and nuance the extent of nationwide massacres though accessible online maps(Allam & Evershed 2019), public knowledge of Indigenous political structures and agency remains low. Pascoe's *Dark Emu* highlights "Europeans' assumptions [which] selectively filtered" evidence of sophisticated agriculture and aquaculture in Aboriginal Australia (2014, 13), and his book's success demonstrates why we need histories that revise perceptions of Indigenous political practice. As historian Rachel Standfield (2012) points out, "Australian imperial and colonial sources are often silent on Aboriginal *political* arrangements as British observers found them difficult to recognise".[28] Perhaps what settlers in early Melbourne and surroundings, and subsequent historians lacked, was the necessary imagination.

To envision the scene in the Prologue to this thesis readers were required to use their imaginations. There are no primary or published sources which describe the remnants of The Camp at Beangala, or the local Waddawurrung people who treatied with settlers there for six months. The purpose of the

but the Bogong Treaty enables pooling of political capital. A copy of the Bogong Treaty was shown to me by an Elder involved in the negotiations, and it is mentioned here with his permission. Elsewhere Aboriginal nations have been organising and confederating to pool sovereignty, ancestral knowledge and experience of modern drought management to combat crises in the Murray-Darling systems and exclusion from statutory river management bodies. Examples include the Murray Lower Darling Rivers Indigenous Nations (MLDRIN) and the Northern Basin Aboriginal Nations (NBAN). In 2017 NBAN formally signed Australia's first Water Treaty based on recognition of not just each nations' inherent sovereignty, but those of the Baaka (Darling) River and tributaries as living entities with its own story and rights. See NBAN 2017, *Union of Sovereign First Nations of the Northern Murray Darling Basin (A Treaty)*, Northern Basin Aboriginal Nations, Moree, viewed 01/09/2017, <http://nban.org.au/treaty/>.

[27] Bruce Pascoe appears to be the only Indigenous historian with published works that examine the period studied by this thesis in detail. Yamatji scholar Crystal McKinnon is researching Waddawurrung encounters with settlers in the late 1830s and onwards as part of *Lawful relations: from encounter to treaty* ARC project. By referring to unpublished Aboriginal historians I am accepting with Minoru Hokari's assertion that Aboriginal Elders and knowledge holders are legitimate historians and experts in their own epistemological tradition (not necessarily Western empirical academia).

[28] Emphasis mine.

Prologue was to open an imaginative dialogue with readers and invite them to suspend the desire for written evidence or empirical fact: to encourage them to imagine the environmental evolution of Narrm, the plight of the Bass Strait peoples, the Kulin's political alliances, the liminality of the refugee William Buckley, and the Narrm Kulin's encounters and political dealings with settlers in 1835. This was done in order to signal what was to come in the thesis, where I have dealt with how Kulin people practised treaties under *their* law: with Country, with each other, and with their guests. I have sought to dig below the surface of the history of 1835 to expose the erasure of Aboriginal agency, from both the patronising, conservative narratives of Victorian 'settlement' and from progressive historiography. The questions posed and addressed in this thesis will also be of interest to other Indigenous colonised peoples, whose political customs and agreements with settlers on Country have been similarly dismissed by historians. Central to all of this is imagining the Geelong Treaty as a legitimate, meaningful, and lawful diplomatic practice.

To do this requires going beyond hindsight. As Boyce observed, the Narrm Treaties were "made redundant by events" (2011, 72). In early 1836 Waddawurrung warriors murdered two shepherds who refused to pay rent, while a few months later settlers murdered Barrabool *Arweet* Woolmudgin (Robin 2017, 184). While the Port Phillip settlement began without any colonial government presence, by late 1836 the Crown's police and customs agents were asserting their authority over the settlers around Narrm: the arrival of the British military, if anything, was seemingly inevitable.[29] From late 1836 the Waddawurrung, and in particular the Barrabool people, utilised guerrilla resistance tactics against settlers and sheep spreading over their Country. William Buckley's role in post-1835 cross-cultural politics is interesting but beyond my scope: he became complicit in the colonial project when he was employed by both the Melbourne Police and government-appointed Missionary. While politically compromised by his employment, Buckley used these positions and his relationships with the leading figures of the settlement to advocate for the Narrm Kulin. With Police Magistrate Foster Fyans' arrival in 1837 the Geelong Treaty was terminated.[30] Soon the Waddawurrung would be brought before a Melbourne court, based on the argument that the British had jurisdiction over the Kulin (Cahir & Clark 2009). By 1840 their land was almost entirely occupied.[31]

Historians have laid out these key events and instances of Kulin and British law clashing. But what of the everyday, interpersonal, experiential encounters and relations that occurred? There may be more histories which can be written using the paradigms of experiential treaties and imaginative history, as

[29] This thesis does not engage in producing counter-histories in which the British police and state never came to Narrm: The Port Phillip Association were never proposing to carve out an independent state from the rest of New South Wales. This is why studying late 1835 to mid-1836 is important, as we imagine the cross-cultural politics in this brief period before the colonial state's fully impacted Kulin sovereignty and life.
[30] Fyans halted the distribution of rent to the Waddawurrung demanding instead they work for rations, causing Buckley to resign. For more see Appendix 1.
[31] See Figure 6, Table 1, and Appendix 1 for more detail.

there are so many gaps in our understandings of Aboriginal responses to colonisation in the first few years of occupation, especially on Waddawurrung Country and following the withdrawal of the Geelong Treaty. Until the 1850s-60s the archives concerning Beangala and the Waddawurrung coast in areas such as Queenscliff, Barwon Heads, and Torquay are silent, but we know that William Buckley and local clans camped in the area pre-1835 (Flannery in Morgan 2001 (1852), xviii). Were these richly resourced, sandy and wooded areas used by Aboriginal groups seeking reprieve from the sheep runs of the Bellarine following 1835? What happened to the *Bengalat Balug* and Barrabool people who founded and practised the Geelong Treaty? Where did their oral history go? Despite Geelong's Mayor erecting the Waddawurrung tomb in 1868 — see Figures 13 and 14 — I am reluctant to accept historians of the Geelong area Peter Munster's and Lou Lane's claim that the bayside Waddawurrung clans were victims of their own 'holocaust' by the 1860s and were *completely* 'eliminated' by the 1880s. We know that many Waddawurrung were sent to Framlingham Reserve, where they told stories of survival and pre-invasion life to James Dawson (1881, 110-112). So, perhaps using Minoru Hokari's 'radical oral history' and cross-disciplinary methodologies (2011) we may be able to gain more of the Waddawurrung's perspective on the Geelong Treaty and its dismantling.[32]

[32] As explored in Chapter 5, squatter and amateur ethnographer James Dawson heard the story of Ballarat clanswoman Purranmurnin Tallarwurnin, who was married to William Buckley. Dawson's interviews do not explore the Geelong Treaty or indeed post-invasion Aboriginal-settler relations, however the testimony of Purranmurnin reveals great insights into how the arrival of John Batman and the events of 1835 were viewed. She states that she was living with the Narrm Waddawurrung when Batman and "all the other big fellows" came to Indented Head. Here Dawson is worth quoting at length. After distributing gifts, "Batman and his companions were not long in getting Buckley thoroughly washed and shaved and in cutting his hair, which had grown to a prodigious length. When [Buckley] was taken away in the ship the natives were much distressed at losing him, and when, sometime after, they received a letter informing them of his marriage in Hobart Town, they lost all hope of his return to them, and grieved accordingly." The first observation of an academic historian is that this account is probably inaccurate: John Batman did not visit Indented Head until November, and while Henry Batman was at the camp between August-September he was not present when Buckley revealed himself (nor does Henry appear to have been an influential figure). She could have been referring to Henry Batman, but this is less likely. This could be used to discredit Purranmurnin's account, which is consistent with Buckley's biography in many ways, and even her claim to have been his wife; but using Hokari's method of *listening* to story as history that conveys deeper meaning we can see far more. Just as Hokari took seriously the Gurindji's stories of Captain Cook visiting the Central Desert (even though empirically this is not true), we can take Purranmurnin's story as Waddawurrung *history*. After 1835 John Batman promoted himself as colonisation *personified*, so him visiting Indented Head with "all the other big fellows" (could this also include major figures like Fawkner, Lonsdale or Bourke?) demonstrates the view that he personally brought invasion to Beangala and his men carried it out. Furthermore, Batman is held personally responsible for extracting Buckley from Waddawurrung culture and loyalty (again, even though the two would not meet until November at the Yarra). Buckley is often portrayed by historians such as Bruce Pascoe as a traitor to the Waddawurrung, but if we consider this oral history it appears that Buckley was perceived (at least by some close to him) to have had little agency. Buckley was shaved and "taken away", first to the Yarra then to Hobart; even if he was viewed as complicit with Batman, his loss was still grieved. Hokari demonstrates that listening to Aboriginal histories which conflict with empirical, academic histories reveals Indigenous perspectives on colonisation that were previously dismissed and excluded from the historical record. Dawson clearly had contact with Waddawurrung people at Framlingham, as he recorded some of their vocabulary. Future archival work and location of Waddawurrung oral history may further reveal new understandings of the Geelong Treaty and its aftermath.

More imaginative and archival work needs to be done on the post-invasion Waddawurrung experience and on the Geelong Treaty.[33] It may well be that there is no evidence of experiential treaties on Waddawurrung Country, because one of their fundamental tenets is guests respecting local sovereignty and providing compensation for land access. From Fred Cahir's work (2001, 2019) it does not appear that any settlers in the Geelong Region acknowledged inherent Aboriginal rights (even if they demonstrated some sympathies). Given the expansiveness and profitability of the pastoral project post-1835, there were few if any squatters who acknowledged Aboriginal rights to land (Pascoe 2007, 32-34, 104-105), until the arrival of John Green and other settler allies to Coranderrk.[34] Nevertheless, there are undoubtedly many more examples of experiential treaties between Aboriginal peoples (displaced or not) and settlers who recognised the injustices of colonisation and that Indigenous sovereignty had not been extinguished by the imposition of the British state and law. Further work could also assess the applicability of experiential treaties to describe Indigenous-settler political relations beyond central Victoria, and indeed to other settler-colonies beyond Australia. We just need to keep looking.

My hope is that in this thesis I have gone under the surface of Narrm and the soil of Kulin Country to shed light on the roots of experiential treaty-making, and its continuous performance outside of the settler state. The Narrm Treaties are the 'road not travelled' only if we conceptualise treaties as being between the colonial state and Aboriginal peoples. By imagining Kulin experiential treaty-making in 1835 and beyond, we get closer to finding the hidden roots of the Beangala orchard and the possibilities of cross-cultural politics they represent.

[33] One opportunity is revising sources used in previous histories. Fred Cahir's Master's thesis investigates Waddawurrung-settler interactions and cooperation in the 1840s and is conscious of the complexities of Aboriginal oral histories and their dismissal by empiricists. Nevertheless, Cahir's archival sources could be revisited using imaginative and decolonial methodologies. Additionally, Crystal McKinnon's research (forthcoming) on the Waddawurrung's post-colonisation experience as part of Mark McMillan's *Lawful Relations* ARC project may further shed some light on the Kulin perspective.

[34] Pascoe points out that despite his contributions to anthropology and being lauded by contemporary historians as a compassionate man and ally to the Western Districts Aboriginal people, apparently James Dawson did not see any issue with his 'purchase' of Kirrae Wurrung land. According to Pascoe, Dawson saw the situation as *allowing* and *encouraging* Aboriginal people to camp on *his* land.

Epilogue: ‘Finding an orchard’

April 2020 –

I am writing this reflection in my bedroom two weeks into self-isolation, as Australia — still experiencing collective grief over the summer bushfire catastrophe, like many Indigenous people grieve the loss of Country and culture every Invasion Day (Daley 2020; Hunter 2020) — is slowly coming to grips with the seriousness of the COVID-19 pandemic. As the nation’s public health system threatens to collapse, thousands lose employment, and upper and middle class white people are exposed to the ‘social management’ of expanded police powers and unemployment payments, many settlers face a new reality of the state surveillance, precarity, inequality and vulnerability that has long been the lived experience of Indigenous peoples, disabled communities, and other politically and economically marginalised groups (Mills 2020). While the immediate present and the coming months are increasingly defined by uncertainty and unpredictability, many activists are highlighting the transformative potential of the moment and using this time in (physical) isolation to imagine a post-virus, anti-capitalist, anti-colonial *future*.

This thesis asked readers to join with me in imagining a metaphorical orchard which represents the buried history of cross-cultural treaty-making and the potential for transformative political change. I hope I have shown that this orchard is still here, and that unearthing its roots can serve as an exercise in rejuvenation. My intention was not just to ‘return the past its own present’, but to demonstrate the power of imagination to ferry us across colonial and historical divides, and to encourage the imagining of an *experiential* present and future as well.

Two experiences have been transformative for me while writing this thesis. One was facilitating a ‘Decolonizing Solidarity’ Book Club, in which non-Indigenous people problematise our own status as non-consensual occupiers of Indigenous Country and consider our ethical practises in direct relationships with Indigenous people and causes.[35] Using Clare Land’s work (2015), it is a space to learn *from* the teachings of seasoned Indigenous activists and the practises of their long-term settler-allies without burdening “blak” leaders who are asked to educate successive generations of white students.[36] I encourage all Australian settlers to take up the ethical challenges the Book Club explores. Using these solidarity principles, I contributed my skills and resources (individually and, occasionally,

[35] The Book Club has been developed as an autonomous project, enabling groups to download the discussion guide and structure their own meetings without direction from Land and her collaborators. For the Book Club resources and other tips on starting a group see http://decolonizingsolidarity.org/book-club/.
[36] Indigenous youth, especially in the arts and activist circles, are increasingly identifying as blak (rather than black) to name the lived experience of urban Aboriginal and Torres Strait Islanders and signify their presence and sovereignty in a decolonial future. Blak was coined by KuKu and Torres Strait Islander artist Destiny Deacon in 1990. See Balla, Paola 2018, 'Walking in deadly blak women's footprints ', *Artlink*, vol. 38, no. 2, pp. 22-9, and The Blak Women's Brow Collective (eds) 2018, ‘Blak Brow’, *The Lifted Brow*, no. 40.

as part of the Allies Decolonising collective) to supporting Lidia Thorpe as a Greens MP and member of the Victorian Traditional Owner Land Justice Group in their clan-based critique of the Victorian Treaty process (Gregorie 2017, 2019). This has been my second transformative experience. The central criticisms of the Treaty process are the structural exclusion of Aboriginal Elders and the privileging of Aboriginal Corporations over grassroots groups and organising. While the future direction of the Treaty process is unclear and constrained by what can be achieved in a parliamentary term, it still holds great potential for political empowerment of Aboriginal people, especially if it is enacted at a grassroots level through local councils (Poulter & Nicholson 2018).

Self-reflexivity and ethical solidarity are fundamental aspects of modern experiential treaties enacted at a grassroots level. Collectives like Narrm's Allies Decolonising which fundraise for, coordinate, and logistically assist — but generally do not participate in — Aboriginal grassroots politics point to how experiential treaties are being practised today and might function in the future.[37] If anything, communities supporting each other and their most vulnerable through the concurrent crises of the bushfires and COVID-19 in lieu of government direction or assistance is demonstrating the immense benefit that grassroots organising and community care bring to society. Public trust in national political leadership appears to be waning as figures like fire chief Shane Fitzsimmons and radio broadcaster Dr Norman Swan are turned to for clear and decisive advice when society seems to be under existential threat. A future is possible in which settler communities can draw on their collective trauma and grief over injustice, death and environmental destruction — like Indigenous peoples have done since colonisation — to give strength and solidarity to vulnerable groups (Williamson, Weir & Cavanagh 2020). A future in which the settler-state respects Aboriginal sovereignty and compensates for its occupation is more than imaginable, if we recognise the authority and ancestral environmental knowledge of Indigenous Elders (Phillips 2018). Given the current health directives of 'social isolation', Dene scholar Dwayne Donald's statement (in Birch 2018b, 12) that colonialism is "an extended process of denying relationships" between Indigenous people and settlers is prescient. Just as this thesis has shown the possibility of imagining experiential political relationships in the past, so too do COVID-19 and modern solidarity show the possibility and necessity of achieving an experiential future.

[37] See Allies Decolonising's public page https://www.facebook.com/Allies-decolonising-887707704654558/.

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Appendix 1: Waddawurrung Country Timeline 1835-1838

This is a timeline of the key events of the colonisation of Narrm and Waddawurrung Country discussed in Chapters 3, 4 and 5 of this thesis. It is by no means exhaustive. For encounters occurring on Waddawurrung Country before and after 1838, see Ian D Clark's Waddawurrung history (1990, 277-307), and Bruce Pascoe's Jillong Timeline (2007, 265-274).

1835	
29 May	Sailing into Narrm on the *Rebecca*, John Batman and his crew land on the Bellarine near modern day St Leonards or Indented Head and briefly explore the shore. They see an unoccupied Aboriginal camp and kill a dingo on the beach. Several of Batman's Aboriginal employees from Sydney are left behind to camp overnight on Waddawurrung Country (Campbell 1987, 86-87).
30 May	The weather is too rough to pick up the crew from their camp on the shore, so they walk across the Beangala/Bellarine Peninsula to be picked up by the *Rebecca* at a more sheltered location. John Batman lands on Waddawurrung Country near Point Henry and explores land around Geelong, writing that "the soil was a fine, rich, oily, decomposed whinstone" (1856, 27). He identifies 100,000 acres of land to purchase through the Deeds drawn up prior by lawyer Joseph Tice Gellibrand. Batman's party do not meet any locals and return to the *Rebecca* to sail to the northern shore of Corio Bay. While anchored overnight Batman's crew spot fires of local Aboriginal people on the shore.
31 May	Batman's crew lands at dawn to locate the people who lit the fire, however the camp they spotted the previous night had been abandoned. Batman's Aboriginal employees from Sydney track the locals in-land, and after several hours walk, they meet with a female Waddawurrung Elder and later a group of women and children at the You Yangs encounter (see Chapter 4 for a full exploration). The Waddawurrung group accompanies Batman's party back to the shore and they exchange gifts.
1 June	The *Rebecca* remains at Point Wilson and John Batman's party continues to explore the area. They do not meet any more locals, but shot several animals and saw Waddawurrung fish traps (Campbell 1987, 89-90).
2 June	The *Rebecca* sails from Corio Bay to the mouth of the Yarra, landing near Williamstown.
3 June	Batman's crew leave the *Rebecca*, prepared for several days trek. They explore the Maribyrnong River area and Melbourne's inner-west (Campbell 1987, 90-93).
6 June	John Batman meets a local Aboriginal family and travels with them for some distance (Campbell 1987, 93-94). Woiwurrung and Boonwurrung Elders reveal themselves to Batman (Ryan 2017), who is taken to a river north of the Yarra to

	negotiate the Melbourne Treaty. The Kulin perform *Tanderrum* and present the settlers with highly valued gifts including possum cloaks (Batman 1836, 47-48; see also Chapter 3). Batman pays his hosts with European items and claims that they marked the Dutigala and Djilong Deeds.
7 June	Batman claims to walk to the boundaries of the land covered by the Dutigala Deeds, which was up to 120 miles (see map in Campbell 1987, 95). His crew left the site of the Melbourne Treaty meeting to return to the *Rebecca.*
8 June	The *Rebecca* is prevented from leaving Narrm due to strong winds, so it sails up the Yarra to the falls at present-day Queens Bridge, Melbourne CBD.
9 June	The *Rebecca* departs from the Yarra but before leaving Narrm John Batman drops a party at Beangala/Indented Head, instructing them to make a camp and monitor the bay (see Chapter 5). They are William Todd, James Gumm, Alex Thomson, and Aboriginal men from Sydney Pigeon, Tommy, Bullet, Bungett, Old Bull, and Joe the Marine (Campbell 1987, 116)
22 or 23 June	Waddawurrung *Arweet* Woolmudgin, Gulgoing, Pulmadaring, Dryberry and Moimboring approach Bullet while he was collecting water away from the camp. Bullet takes the Waddawurrung party to meet the settlers and after receiving gifts they held a *corroboree* for their guests. This encounter establishes the initial terms of the Geelong Treaty. They stay with the settlers for several nights, hunting, eating, dancing and singing with their guests.
25 or 26 June	60 to 70 Waddawurrung, including women (some who had met John Batman on 31 May), and children come to the settler's camp to receive treaty payment. The locals perform *corroborees* for the next few nights.
3 July	The settlers' supplies run low. Todd grows paranoid and aggressive, fearing the locals will attack because his party refuses to share food.
6 July	William Buckley, known to the Waddawurrung as Murrangurk, arrives at the camp and meets the settlers. Buckley knew of an impending attack on the settlers, and shares a warning with them and the gathered locals. With the addition of Buckley cross-cultural communication increases and the Sydney continue to men hunt and converse with their hosts.
13 July	Buckley gives his second warning to the Waddawurrung not to attack the settlers, who continue to drain local resources and refuse sharing food.
27 July	Todd records an inventory of items he believes stolen by the Waddawurrung, but says there is no recourse without disobeying Batman's orders and using violence.
1 August	Buckley's gives a third warning to Todd that an attack is impending. The Waddawurrung decide to hold off attacking until the settler's ship returns with more supplies.

3 August	The settlers run out of flour and meat, becoming completely dependent on hunting and food resources donated by the Waddawurrung.
6 or 7 August	Port Phillip Association members Henry Batman (John's younger brother) and John Helder Wedge return to Narrm in *Rebecca* and land at Beangala/Indented Head. They resupply and expand the camp to house more settlers, including: Aboriginal men from Sydney John Stewart and John Crook, Lurnerminner (aka. John Allan, a Tasmanian Aboriginal teenager that John Batman had 'adopted' following a massacre), and Henry Batman's family. The settlers distribute daily rations to the Waddawurrung at the camp, diffusing any tensions and maintaining the Geelong Treaty. The Waddawurrung perform *corroborees* for the newcomers.
11 August	Wedge enlists Buckley to assist his survey of the Bellarine and Geelong areas, and petitions the Port Phillip Association to lobby for Buckley's pardon.
16 August	John Pascoe Fawkner's employees (he was not present and would not arrive until October) sail into Narrm on the *Enterprize* and are confronted by Batman's Aboriginal employees off Indented Head. They row to the anchored ship and get drunk with Fawkner's crew (Campbell 1987, 124).
26 August	New South Wales Governor Richard Bourke's proclamation officially voids the Narrm Treaties (full text of the proclamation in Boyce 2011, 116).
28 August	After exploring Narrm's eastern shores, Fawkner's crew reaches the northern shore and establishes a camp up the Yarra.
2 September	Continuing to survey the Association's claim, Wedge travels to the Yarra and confronts Fawkner's employees. Fawkner's men ignore Wedge's written requests to vacate 'Association land'.
5 September	Inland Waddawurrung (and possibly other Kulin) clans arrive at the Beangala/Indented Head camp, inviting the *Bengalit Balug* and other clans to a meeting in the interior.
11 September	The *Mary Ann*, owned by the Henty brothers who invaded Portland in 1834, brings letters from Launceston to Indented Head informing Buckley that his pardon had been granted by Van Diemen's Land Lt-Governor George Arthur.
12 September	All but a few Waddawurrung leave the camp at Beangala.
13 September	Wedge and Henry Batman decide to relocate the camp to the Yarra, taking a ship of supplies across the bay.
15 September	William Buckley, the remaining Sydney Aboriginal men, and some Waddawurrung sail across Narrm, to join Henry Batman and Wedge at the Yarra. William Todd, Alex Thomson, Bungett (from Sydney) and Lurnerminner

	(aka. John Allan) are left at The Camp with one month of supplies (Campbell 1987, 128; Todd 1989, 54).
26 September	Unwilling and unable to continue payments under the Geelong Treaty, Todd tries to convince all remaining Waddawurrung to relocate to the Yarra. Few stay but most return to living on their Country.
23 October	A new Kulin clan arrives at the Beangala camp demanding payment under the Geelong Treaty and are determined to stay until a ship comes to resupply the camp. They threaten Todd with death if he is not forthcoming with material payment. The encounter is resolved peacefully.
9 November	John Batman returns to Narrm with 500 sheep and cattle, and a boatload of building supplies (Campbell 1987, 139-141). He visits the camp at Beangala/Indented Head before sailing for the Yarra.
10 or 11 November	John Batman instructs William Buckley to gather the Aboriginal people living around the Yarra to welcome his return. Batman gave a speech to the gathering of several hundred bayside Kulin, and following a vague threat orders food and supplies to be distributed (Boyce 2011, 80-81). The event was recalled by future Wurundjeri *Ngurungaeta* William Barak in his memoir *My Words* (Wiencke 1984).
12 November	With John and Henry Batman failing to resupply it, William Todd's camp is out of provisions again. The settlers are totally dependent on the Waddawurrung's traditional diet of hunted game and *murnong* (Boyce 2011, 95).
15 November	Before leaving Narrm John Batman stops at Beangala/Indented Head to dismiss William Todd from Port Phillip Association employment, citing a disagreement with Henry Batman. Alex Thomson and the others remain at the Indented Head Camp but receive no further supplies. They dismantle and abandon it shortly after (Campbell 1987, 142).
December	The first shiploads of 500-1000 sheep and accompanying shepherds arrive at Beangala/Indented Head, marking the beginning of the Port Phillip Association's "great sheep lift" (Robin 2017, 187).
	1836
January	Sheep continue to be unloaded at Beangala/Indented Head and Point Henry and run around Narrm to land surrounding the Yarra camp. The Yarra camp continues to expand with more settlers and supplies entering Narrm.
February	Buckley is employed by the Port Phillip Association as Super Intendant of the Native Tribes, with the purpose of protecting, civilising and interpreting for the Narrm Kulin (Campbell 1987, 147).
	Founding Port Phillip Association member and chief financier Captain Charles Swanston claims lots on the Bellarine Peninsula under the Djilong Deed, and

	send shepherds to establish a presence on *Bengalit Balug* Country. They build a hut near St Leonards and prepare to receive shipments of sheep.
	Waddawurrung, most likely *Bengalit Balug* people take advantage of Swanston's lack of supervision and drive 500 sheep from the Bellarine to Lake Connewarre where they were "destroyed" (Campbell 1987, 151).
March	Unwilling to compensate the locals for their occupation of Beangala or their increasing importing of sheep, two of Swanston's (unnamed) shepherds are murdered by Waddawurrung warriors on Beangala (Campbell 1987, 162; Robin 2017, 184). This is the first recorded killing of white men at Narrm after the instatement of the Geelong and Melbourne Treaties.
	Police Magistrate George Stewart is sent from Sydney to Port Phillip to investigate offenses against Aboriginal people by whalers at Westernport (not the murders on the Bellarine). Stewart estimates around 800 Kulin to be regulars at the Yarra camp (Ryan 2017, 10). He conducts a survey of the Yarra settlement recording: 177 settlers (24 non-Association affiliated), 3 weatherboard and 2 slate houses, 8 turf huts, 60 acres of cultivated land, 26,500 sheep, 57 horses, and 100 cattle spread over around 100 miles of land (Boyce 2011, 86; Campbell 1087, 167).
April	British Secretary of State for the Colonies Lord Glenelg reverses the Crown's position on the Port Phillip colony and condones New South Wales authorities to take control of the settlement and expand it (Boyce 2011, 127-129).
3 May	John Batman orders William Buckley to again gather the Kulin around the Yarra for the first anniversary of the Narrm Treaties. 50-100 Kulin receive food and material items, continuing the Port Phillip Association's obligation for annual rent payment under the Melbourne Treaty (Campbell 1987, 169-170).
18 May	The New South Wales government officially proclaims the Aboriginal peoples of Port Phillip under Governor Bourke's protection (Boyce 2011, 122-123).
May	Shipping into Narrm continues to intensify. By May 1836 eleven ships had transported almost 1,600 tons of cargo over 48 trips. John Pascoe Fawkner had established a public house and had been importing alcohol and tobacco against the Association's wishes, prompting Magistrate Stewart to advise Governor Bourke that a customs office be established (Campbell 1987, 167-168).
June	An infant boy dies of unknown causes at the Yarra, marking the first death of a settler within the main camp (Boyce 2011, 86).
	Buckley is promoted to the Port Phillip Association's official interpreter at a salary of 60 pounds (Campbell 1987, 169).
	Over the coming months many non-Port Phillip Association squatters enter Narrm. James Cowie, Dr Alexander Thompson, William Robert von Steiglitz,

	David Stead, and the Manifold brothers arrive on Waddawurrung Country and occupy land in and surrounding modern Geelong.
July	Non-Association squatter Charles Franks and his (unnamed) shepherd are found murdered near the Werribee River, the border between Waddawurrung, Woiwurrung and Boonwurrung Country. In reprisal settlers led by Henry Batman raid Aboriginal camps, killing at least 12-40 Waddawurrung (Pascoe 2007, 5-7).
September	Captain William Lonsdale, appointed by Governor Bourke as Chief Agent of Government, Police Magistrate and Commandant for the Port Phillip region (still considered part of New South Wales), arrives at the Yarra with a small military detachment, marking the beginning of colonial rule of Narrm (Boyce 2011, 89). Lonsdale investigates the reprisal raid, but believes the testimony of the settlers involved that no Aboriginal people were harmed. No Waddawurrung witnesses were called to give evidence.
	Buckley becomes one of Victoria's first public servants as Lonsdale's Police Interpreter, tasked with visiting local Narrm Kulin clans and explaining the schedule of payment and rights of Aboriginal people under the Melbourne and Geelong Treaties (Campbell 1987, 181).
	Lonsdale conducts a census of the Port Phillip region, recording: 224 settlers, 97 ¼ acres of cultivated land, 41,332 sheep, 75 horses, and 155 cattle (Boyce 2011, 89).[38] Given figures cited by Alistair Campbell, less than half of these sheep were owned by Port Phillip Association members (1987, 183).
1 October	The first bureaucrats and convicts arrive in Melbourne entrenching the colonial government's presence at the encampment. The officials include surveyors, customs agents, and soldiers, while their cargo consisted of building materials for more European residences and some supplies for Aboriginal people including King Plates (Campbell 1987, 188).[39]
17 October	*Wadda Wurrung Balug* (Barrabool) *Arweet* Woolmudgin (aka Curacoine), who welcomed settlers to his Country and negotiated the Geelong Treaty, is captured by mass murderer Frederick Taylor. Taylor accuses Woolmudgin of harassing settlers and ties him to a tree, where he is executed by John Whitehead. His body is then dumped in the Barwon River. Police Superintendent Lonsdale investigated the murder, but Taylor and other witnesses fled the colony to avoid testifying. Whitehead stands trial in Sydney but is acquitted due to lack of evidence (Clark 1990, 281; Pascoe 2007, 31-32).
October	Colonial government appointed Missionary George Langhorne establishes a 'tribal village' on the Yarra's south bank, and William Buckley is transferred from Lonsdale's office to be his assistant (Clark 1998, 11). Langhorne records a

[38] For the tally of livestock and acreage see Lonsdale's 1836 census in the Public Records Office Victoria, correspondence of the Police Magistrate for the Port Phillip District, William Lonsdale (VPRS 4).
[39] For background on the colonial practice of bestowing Aboriginal leaders Kings and Queens, see Troy, Jakelin 1993, *King Plates: A History of Aboriginal Gorgets*, Aboriginal Studies Press, Canberra.

	brief account of Buckley's time with the Waddawurrung. Buckley grows fearful that his presence at the Yarra and Langhorne's mission, predominantly attended by Woiwurrung people, is unwanted.
	Land in a 40-kilometre radius around Geelong is occupied with at least 3,800 sheep and dozens of shepherds, surpassing the Djilong Deed's purported boundaries (Clark 1990, 281).
	1837
February	Waddawurrung people are blamed for the disappearance of Port Phillip Association founder Joseph Tice Gellibrand his associate George Hess. Their bodies were never found. There is little evidence that they went missing on Waddawurrung Country or that Waddawurrung people were involved (or were indeed that the haphazard explorers were murdered) (Cahir 2001, 139-140).
4 March	New South Wales' Governor Bourke visits the Yarra and names the settlement Melbourne, in honour of British Prime Minister Lord Melbourne (Boyce 2011, 148). Bourke pledges to protect Aboriginal people from harm, distributes material payment to the 120 Kulin gathered for his welcome and awards King Plates to four *Ngurungaeta* including Billibellary and Derrimut (Ryan 2017, 13). By continuing to compensate the Narrm Kulin for settler occupation and offer retribution for violence against them Bourke, and his representative Lonsdale, assumed responsibility for the Melbourne Treaty from the Port Phillip Association (Ryan 2017, 2).
April	Through April-August Waddawurrung resistance to the spread of sheep runs on their Country is fierce, as squatters increasingly occupy land without compensating the local clans (Christie 1979, 60; Clark 1990, 281-282). Their tactics included spearing and driving livestock away from their pens, ransacking and burning shepherd's huts, and occasionally murdering settlers (Cahir 2001, 201-202; Campbell 1987, 202-203).
June	The several hundred settlers occupying the Geelong region petition Governor Bourke for a police presence to quell the black resistance to colonisation and disruption to pastoral operations. The Waddawurrung had not received Treaty payment for months.
2 or 3 October	Police Magistrate Foster Fyans — a colonial figure known for his brutality — and three constables establish a base in Geelong, with William Buckley appointed their interpreter (Linnell 2019, 243-246). Buckley assembled local Waddawurrung people for Fyans, who surveyed 275 men women and children. In the Geelong Treaty's final payment, Fyans distributes blankets, clothes, shoes, flour and tea, but not enough to be shared equally among the community. Rather than distribute the 24 tomahawks Governor Bourke had supplied, Fyans orders them thrown in the Barwon River (Campbell 1987, 203).

9 October	Buckley resigns from Fyans' employ after one week, citing halting of payments to the Waddawurrung, refusal to investigate the murder of Waddawurrung people, and acceptance of squatter Charles Swanston's policy of excluding Aboriginal people from the entire Beangala/Bellarine Peninsula (Campbell 1987, 203-204; Linnell 2019, 247-248). Fyans' policies terminate the Geelong Treaty.
October	The Native Police are formed at Narre Narre Warren on the outskirts of Melbourne. Woiwurrung *Ngurungaeta* Billibellary is active in recruiting Narrm Kulin men for the force (Ryan 2017).
November	Buckley returns to Melbourne, and is probably employed as an interpreter again (Campbell 187, 204).
28 December	Buckley departs Narrm on the *Yarra Yarra* and sails for Van Diemen's Land. He does not return and dies in Hobart in 1856.

1838

June	The Protectorate scheme is announced, with George Augustus Robinson dispatched from Van Diemen's Land as the Chief Protector of Aborigines. Robinson and four other Protectors arrive to Narrm in early 1839, but did not travel to their appointments until later that year (Christie 1979, 92-93). Ex-British Army officer Charles Sievwright is appointed to the Western District. Based in Geelong, Sievwright's Protectorate includes all of Waddawurrung Country and extends from Narrm to the South Australian border. William Thomas is appointed Protector of the remaining area of the Narrm Treaties, covering the Melbourne and Westernport areas.
October	Within three years of invasion, virtually all Waddawurrung Country is occupied by settlers and livestock (predominantly sheep). In 1838 Geelong is officially gazetted as a town, however squatters had already built a church, hotel, wool stores and many houses for the community of 545 settlers. Government land sales commence in 1839.
November	Lonsdale conducts the 1838 Port Phillip District census, recording at least: 3,511 settlers, 311,000 sheep, 13,272 cattle, and 524 horses (Campbell 1987, 211). The number of sheep doubled by 1840, and by 1842 doubled again to well over 1 million (Broome 2005, 20). By 1853 there were 77, 345 settlers and approximately 6 million sheep colony wide (Ryan 2010, 263).
1838	Waddawurrung warriors continue to disrupt the operations of squatters as they venture west of Geelong, despite the presence of Fyans' constables and the Native Police based in Melbourne. Livestock is driven away from runs and occasionally speared. The Western District, including all of Waddawurrung Country is in drought for 1838-1839. Local Waddawurrung people blamed Lake Burrumbeet (near

> Ballarat) being uncharacteristically shallow on white men and sheep, whose presence drove their water away (Clark 1990, 281).

Appendix 2: Text of the Djilong Deed

This transcript is taken from State Library of Victoria Digital Collection. Spelling and grammar have not been corrected, however light formatting and punctuation has been added for greater clarity. The original 'Geelong Treaty' document is held in the State Library Victoria Manuscripts Collection, F Box 4789/2. An image of the Djilong Deed is in this thesis' Images section, Figure 8 (detail in Figure 10).

Know all Persons that We Three Brothers Jagajaga, Jagajaga, Jagajaga, being the Principal Chiefs & also Cooloolock, Bungarie, Yanyan, Moowhip, Mommarmalar

being the Chiefs of a certain Native Tribe called Dutigallar situate at & near

Port Phillip Called by us - The above mentioned Chiefs Iramoo & Geelong being possessed of the Tract of Land

here in after mentioned for and in consideration of Twenty Pair Blankets, Thirty Knives, Twelve Tomahawks, Ten Looking Glasses, Twelve Pair Scissors

Fifty Handkerchiefs, Twelve Red Shirts, Four Flannel Jackets, Four Suits of Clothes and fifty Pound flour delivered to Us by John Batman residing in Van Diemen's

Land Esquire but at present sojourning with Us and our Tribe Do for ourselves our heirs and Successors Give Grant Enfeoff and confirm unto the

said John Batman his Heirs and Assigns All that Tract of Country situate and being in the Bay of Port Phillip Known by the name of

Indented Head, but called by us Geelong, extending across from Geelong Harbour, about due South for ten Miles more or less to the head

of Port Phillip taking in the whole Neck or Tract of Land and containing about One Hundred Thousand Acres as the same hath been before the execution of these

presents delineated and marked out by us according to the custom of our Tribe by certain marks made upon the Trees growing along the boundaries

of the said Tract of Land To hold the said Tract of Land with all advantages belonging thereto unto and To the Use of the said John Batman

his Heirs and Assigns for ever To the Intent that the said John Batman his heirs and Assigns may occupy and possess the said Tract of Land and

place thereon Sheep and Cattle Yielding and delivering to us and our Heirs or Successors the Yearly Rent or Tribute of

Fifty Pair of Blankets, Fifty Knives, Fifty Tomahawks, Fifty Pair Scissors, Fifty Looking Glasses, Twenty Suits of Slops or Clothing & Two Tons of Flour

In Witness whereof We Jagajaga Jagajaga Jagajaga, The three Principal Chiefs & also Cooloolock, Bungarie Yanyan, Moowhip & Mommarmalar the Chiefs

of the said Tribe have hereunto affixed our Seals to these presents and have signed the same Dated according to the Christian Aera this Sixth day of June One thousand eight hundred and thirty five

Signed Sealed and Delivered in the presence of Us the same having

been fully and properly interpreted and explained to the said Chiefs

James Gumme

Alexander Thompson

Wm Todd

Jagajaga his mark

Jagajaga his mark

Jagajaga his mark

Cooloolock his mark

Bungarie his mark

Yanyan his mark

Moowhip his mark

Mommarmalar his mark

John Batman

Be it Remembered That on the day and Year

within written possession and delivery of the Tract of

Land within mentioned was made by the within

named Jagajaga Jagajaga Jagajaga, Cooloolock

Bungarie Yanyan Moowhip Mommarmalar

Chiefs of the Tribe of Natives called Dutigallar

Geelong to the within named John Batman

by the said Chiefs taking up part of the Soil of the

said tract of Land and delivering the same to the said

John Batman in the name of the whole

In presents of

James Gumm

Alexander Thompson

Wm Todd

Jagajaga

Jagajaga

Jagajaga

Cooloolock

Bungarie

Yanyan

Moowhip

Mommarmalar