**Chapter One: Introduction**

**Introduction**

Storytelling is fundamental to Indigenous cultures. It is through stories that one generation teaches the next how to care for the Country that sustains us. Within our stories are the journeys of the ancestral beings that shaped the lands and waters, and left laws that govern relationships between all living things. Stories are also sources of theory and methods of research.[[1]](#footnote-1) One of the precepts of Indigenous research methodologies is that knowledge is situated. The researcher’s culture, life trajectory and ways of seeing the world all have an impact on the development of the story that becomes research.[[2]](#footnote-2) The nexus between self and story is understood by scholars who write themselves into their work, and thereby render themselves accountable for their own biases.[[3]](#footnote-3) The act of sharing stories also makes us vulnerable, and therefore, conscious of the need to treat the stories of others with sensitivity and respect.[[4]](#footnote-4) It is with these truths in mind that I will share my own story.

As an Aboriginal person from Queensland, I call myself a ‘Murri’. From my paternal grandfather, I inherited my connection to the Birri Gubba of the Bowen Basin. My paternal grandmother belonged to the Munanjali of Beaudesert.But long before I came into this world, they had created a life for themselves and their six children in the state’s capital, Brisbane. It was in Brisbane that their eldest son, Sam Watson would meet the love of his life, Catherine de Gunst. They would go on to have two children, Samuel Wagan and me.

The adults of our childhood were master storytellers. It was through their words and gestures that my brother and I were introduced to the stories of cherished grandparents, aunts and uncles. Our Elders survived family separations, removal from their Country and the callous indifference of those within Queensland’s Indigenous affairs bureaucracy. Even though some of the violence that they suffered continued to be inflicted upon their children, our Elders never lost hope.

It was through stories that my brother and I came to revere strong Black women such as my paternal grandmother, who we called ‘Nanna’. One of the stories that Nanna shared with us concerned her certificate of exemption. The certificate provided relief from the provisions of the dreaded protectionist legislation.[[5]](#footnote-5) Those subject to the legislation were vulnerable to removal to one of Queensland’s Reserves, where life was characterised by oppressive regulation, neglect and starvation. The certificate of exemption may have offered Nanna a path to relative freedom, but it almost certainly demanded a high price. Only those who could demonstrate an ability to assimilate were granted the invidious piece of paper.

I never did cast my eyes on her certificate of exemption, but I understand that Nanna held onto it throughout her life. Later, when I went to university, I met other Aboriginal students whose parents and grandparents had also been issued certificates of exemption. I was surprised to discover that, like Nanna, they too had kept those infamous pieces of paper. Some retained the certificates as proof of the indignities they had endured. But others had been so wounded by their experiences that they still expected to be woken in the middle of the night, to find a protector[[6]](#footnote-6) lurking in the doorway.

Like the other matriarchs in our community, Nanna was resilient. Poverty was never far from her young family, but Nanna kept them together. My father would often reminisce about having to accompany his mother early in the mornings, as they dug for the worms that they would sell for bait. It was a chore that he loathed, but one that helped to put food on the table. After her children left home, Nanna rose through the ranks of the Commonwealth Public Service. She served on the boards of community organisations and cared for her growing number of grandchildren.

More so than anyone else, it was Nanna who encouraged me to go to Law School, where I was introduced to legal storytelling. Although the writing style of some judges was unnecessarily verbose, I was intrigued by the precision with which others framed the questions to be determined and the clarity that they brought to complex, and at times conflicting principles of law. However, women like Nanna never emerged in legal storytelling. On the rare occasions that Black women featured in the judgments that we studied, their stories were missing.

 It was not until many years later, as a junior scholar, that I was empowered to challenge the absence of Aboriginal women’s stories from judgments through my exposure to critical race theory (‘CRT’). This revolutionary movement was founded by legal scholars in the closing decades of the twentieth century to develop new methods of challenging America’s racial hierarchy. One of the tenets of CRT is that racism is omnipresent.[[7]](#footnote-7) It resounds in overt acts, subtle gestures and institutional practices. Because racism is so entrenched in American society it has become normal,[[8]](#footnote-8) and those who sit at the apex of the hierarchy are often oblivious to their privileges. One of the tools championed by CRT scholars is storytelling. Through engaging with the narratives of outsiders, CRT scholars give voice to those who have been dehumanised by laws that are ostensibly neutral, and challenge the prevailing narrative that racism has become an aberration.[[9]](#footnote-9)

This book draws upon storytelling and a paper written by the scholar, Monica J Evans, on Black women and outlaw culture. [[10]](#footnote-10) Evans argues that African American women are the pioneers of an outlaw culture that consists of empowering practices that have been created in response to the ongoing denial of the law’s protection. Among the champions of outlaw culture are individuals who broke the law, such as Harriet Tubman. On occasion, however, outlaw culture has also included practices of strict adherence to law. By way of example, the Black Clubwomen of the early twentieth century operated within the confines of law and focused on uplifting their communities through social welfare programs. The Clubwomen recognised that many Black mothers were compelled, by necessity, to work outside of the home. Consequently, they established kindergartens, schools and day nurseries.[[11]](#footnote-11)

It is the central premise of this book that generations of Indigenous women in Australia have similarly been at the helm of an outlaw culture, which consists of tactics, values and strategies that operate both within and outside of the law. Due to their invisibility, Indigenous women proponents of outlaw culture have been largely overlooked by scholars. This book will use the medium of storytelling to cast light on the narratives of those who have been at the cutting edge of this body of empowering practices.

Before discussing the chapters of this book, it is necessary to clarify two issues. The first concerns the use of language. In Australia there is a multiplicity of views regarding the appropriateness of terms such as ‘Aboriginal and Torres Strait Islander’, ‘Indigenous’ and ‘Black People’. Some scholars identify solely by reference to the Country and People to whom they belong. Without taking a position on what is a complicated and nuanced debate, I have used all terms throughout this book.

The second issue concerns the scope of the analysis. There are many commonalities between the historical experiences of Indigenous women in Australia and North America. All have suffered the lingering effects of dispossession, child removal policies and systemic discrimination in the criminal justice system. This book, however, is confined to the outlaw culture of Indigenous women in Australia. It is anticipated that later work will have a broader compass, so that it will be inclusive of the experiences of Indigenous women outside of Australia.

This book will be divided into three substantive parts. The first, in chapter two, will discuss the history and fundamental precepts of CRT and critical race feminism (‘CRF’). It is within the latter theory that women’s outlaw culture sits. This chapter will also identify parallels between the racial hierarchies in Australia and the United States of America, before considering the work of scholars who have adapted the principles of CRT to illuminate the omnipresence of racism in Australia.

Chapter three will begin by discussing the nexus between demeaning representations of Indigenous women and colonisation. It will go on to introduce Indigenous women’s outlaw culture. Narratives of outlaw women are recorded in memoirs, oral histories and testimony to inquiries. Finally, I will argue that judgments are potential sources of information about outlaw culture. The stories of Indigenous women are usually absent from the text of judgments. However, the experiences of Indigenous women who emerge in judgments can be contextualized by departmental records, historical analyses and oral stories within Indigenous communities. When such narratives are pieced together, it is possible to find instances of outlaw culture.

Finally, chapter four will provide an example of the application of the methodology discussed in chapter three. By drawing upon archival materials, historical accounts of the Queensland frontier and newspaper articles, I will imagine the story of the early outlaw woman, Eliza Woree. Eliza featured prominently in the backdrop to the decision of the Supreme Court of Queensland in *Dempsey v Rigg*. [[12]](#footnote-12) In December 1913, Isaac Rigg employed Eliza to perform washing and ironing. As Rigg had failed to obtain a permit to employ her, he was charged with the offence of unlawfully employing an Aboriginal under s. 14 of the *Aboriginals Protection and Restriction of the Sale of Opium Act 1897* (Qld).[[13]](#footnote-13)

Two months earlier Eliza had married Joe Andrews, who was a ‘Malay’ and a ‘native of Batavia’.[[14]](#footnote-14) Rigg argued that because Eliza married an ‘alien’ she had lost her Australian nationality. It followed that Eliza ceased to be an Aboriginal within the meaning of the *Aboriginals Protection and Restriction of the Sale of Opium Act 1897* (Qld). The Supreme Court of Queensland disagreed. Eliza continued to be subject to the Act, and therefore, Isaac Rigg was liable under s 14.

Although she was at the centre of the factual scenario, Eliza Woree’s story was absent from the judgments of the Supreme Court of Queensland. Her opinions and aspirations were utterly irrelevant to the men who wielded so much power over her life. This chapter will piece together her story. It will begin with Eliza’s childhood, which coincided with the invasion of the Bama of tropical north Queensland. This chapter will consider how the Act and the common law later impacted upon crucial aspects of Eliza’s life, namely, marriage, employment and her nationality.

Finally, this chapter will imagine Eliza’s story after the Supreme Court’s decision. Although there is much still unknown about her life, we can be confident that Eliza was a determined and resourceful woman. At a time when all women were denied agency, Eliza achieved the remarkable feat of creating a life of her own. Within 6 years of the Supreme Court’s decision, Eliza had left her husband and was living in ‘Malaytown’, an informal settlement on the outskirts of Cairns. Tragically, her intelligence and fierce independence would be the very qualities that would attract the attention of the authorities, who condemned Eliza to spend the remainder of her life in the penal settlement of Palm Island.

This book will conclude by arguing that now more than ever, it is crucial that scholars and students unearth the stories of the Indigenous women who have been at the vanguard of outlaw culture. At a time when the world is finally beginning to grasp the message that Black lives matter, it is imperative that we pause to hear the voices of Indigenous women who created spaces of sanctuary from the violence of a world that deemed them unworthy of the law’s protection. Such stories matter because Indigenous women’s lives matter.

1. Margaret Kovach, *Indigenous Methodologies: Characteristics, Conversations and Contexts* (University of Toronto Press, 2009). [↑](#footnote-ref-1)
2. Elizabeth Fast and Margaret Kovach, ‘Community Relationships within Indigenous Methodologies’ in Sweeney Windchief and Timothy San Pedro (eds), *Applying Indigenous Research Methods: Storying with Peoples and Communities* (Routledge, 2019) 21, 25. [↑](#footnote-ref-2)
3. Ibid. [↑](#footnote-ref-3)
4. Ibid 26. [↑](#footnote-ref-4)
5. The first such Act passed in Queensland was the *Aboriginals Protection and Restriction of the Sale of Opium Act 1897* (Qld). It would be repealed and replaced by the *Aboriginals Preservation and Protection Act 1939* (Qld). [↑](#footnote-ref-5)
6. Protectors, who were invariably police officers, were responsible for the supervision of Indigenous wards, and oversaw matters such as the brokering of employment agreements. [↑](#footnote-ref-6)
7. André Douglas Pond Cummings, ‘A Furious Kinship: Critical Race Theory and the Hip-Hop Nation’ in Richard Delgado and Jean Stefancic (eds), *Critical Race Theory: The Cutting Edge* (Temple University Press, 3rd ed, 2013) 107, 108. [↑](#footnote-ref-7)
8. Ibid. [↑](#footnote-ref-8)
9. Richard Delgado, ‘Storytelling for Oppositionists and Others: A Plea for Narrative’ in Richard Delgado and Jean Stefancic (eds), *Critical Race Theory: The Cutting Edge* (Temple University Press, 3rd ed, 2013) 71. [↑](#footnote-ref-9)
10. Monica J. Evans, ‘Stealing Away: Black Women, Outlaw Culture and the Rhetoric of Rights’ (1993) 28(2) *Harvard Civil Rights – Civil Liberties Law Review* 263. [↑](#footnote-ref-10)
11. Eileen Boris, ‘The Power of Motherhood: Black and White Activist Women Redefine the “Political”’ (1989) 2(1) *Yale Journal of Law and Feminism* 25, 41. [↑](#footnote-ref-11)
12. *Dempsey v Rigg* [1914] St R Qd 245. [↑](#footnote-ref-12)
13. The relationship between ‘protection’ and the availability of opium was explained by Queensland’s Secretary of Agriculture in his Second Reading of the Aboriginals Protection and Restriction of the Sale of Opium Bill: ‘As a matter of fact, to deal with the aboriginals on the ordinary basis of dealing with our own people is not a wise or a just proceeding … In order to give them the protection they ought to have it is necessary to treat them very much as if they were children. This Bill proposes to prohibit the indiscriminate use of opium, which has hitherto operated to the extreme detriment of the aboriginals; it also embodies some of the clauses already contained in our licensing laws prohibiting the sale of liquor to aboriginals. The remaining portion of the Bill provides for the establishment of suitable reserves for the use of aboriginals, under the charge of officers appointed as protectors, and takes power to require aboriginals to reside on those reserves, so that they may be kept away as far as possible from the evil effects produced by going about near hotels and other places, where they may get liquor or opium. See Queensland, *Parliamentary Debates*, Legislative Council, 7 December 1897, 1887 (The Secretary for Agriculture). [↑](#footnote-ref-13)
14. *Dempsey v Rigg* [1914] St R Qd 245, 246. Batavia is now known as Jakarta. [↑](#footnote-ref-14)