

Settler Modernity and the Quest for an Indigenous Tradition

Elizabeth A. Povinelli

INTRODUCING (THE THING)

In the 1880 introduction of the ethnology *Kamilaroi and Kunai*, the Reverend Lorimer Fison described a sensation he experienced studying the “intersexual arrangements” of indigenous Australians. He described feeling “ancient rules” underlying the Kamilaroi’s and Kunai’s present sexual practices, catching fleeting glimpses of an ancient “strata” cropping up from the horrific given conditions of colonial settlement, sensing some “something else,” “something more” Kamilaroi and Kunai than even the Kamilaroi and Kunai themselves, a some *thing* that offered him and other ethnologists a glimpse of an ancient order puncturing the present, often hybrid and degenerate, indigenous social horizon.¹ Fison pointed to this ancient order as the proper object of ethnological research and used the promised feelings this order produced to prod other ethnologists to turn its way. But Fison cautioned, even admonished, other researchers that in order to reach this order and to experience these feelings they had to be “continually on the watch” that “every last trace of white men’s effect on Aboriginal society” was “altogether cast out of the calculation.”² Only by stripping from their ethnological analysis the traumatic effect of settlement on indigenous social life could the researcher reach, touch, and begin to sketch the outline of that thing, which was not the present corrupted Aboriginal social body

1. Lorimer Fison, *Kamilaroi and Kunai* (Canberra: Australian Aboriginal Press, 1880). “[In] inter-sexual arrangements . . . as elsewhere, present usage is in advance of the ancient rules. But those rules underlie it, and are felt through it; and the underlying strata crop up in many places” (29).

2. Fison, *Kamilaroi and Kunai*, 29.

but an immutable form that predated and survived the ravage of civil society.

The emergent modern ethnological epistemology Fison promoted bordered on the paranoid. Every actual indigenous practice was suspect. All “present usages,” even those seemingly “developed by the natives themselves” and seemingly untouched by “contact with the white man,” might be mere mirages of the investigator’s own society. They might be like the “present usages” of the “Mount Gambier blacks,” the desperate social acts of men and women who had watched their society “reduced from 900 souls to 17” in thirty years and were “compelled to make matrimonial arrangements as [they could], whether they be according to ancient law or not.”³ But even “present usages” untouched by the ravages of British settlement were little more than mere chimera of the ancient thing Fison sought. They taunted him with glimpses of what he truly desired—a superseded but still signifying ancient society shimmering there just beyond him and them, settler time and emergent national history.⁴

The proper ethnological thing Fison sought would always just elude him, would always be somewhere he was not. Maybe this ancient order survived in the remote interior of the nation, but it was never where he was. Where he stood, the ancient rules were submerged in the horror of the colonial present and mediated by the faulty memory of a “few wretched survivors [who were] . . . obliged to take such mates as death has left them, whether they be of the right classes or not.”⁵ Or the ancient rules were heavily encrusted with the autochthonous cultural debris generated by the inexorable tectonic shifts called social evolution. Not surprisingly, a restlessness pervades Fison’s ethnology. Irritation and humiliation punctuate the rational veneer of his text as he is forced to encounter his own intellectual limits and to account for his own conceptual failures. Time after time, Fison is forced to admit that

3. Fison, *Kamilaroi and Kunai*, 42.

4. “By present usage, I mean that which has been developed by the natives themselves, not that which has resulted from their contact with the white men. This is a factor which must be altogether cast out of the calculation, and an investigator on this line of research needs to be continually on watch against it” (Fison, *Kamilaroi and Kunai*, 29).

5. Fison, *Kamilaroi and Kunai*, 30.

what he feels and desires cannot be accounted for by what he sees, reads, and hears.⁶

Whatever Fison was chasing, Australians still seemed in desperate pursuit of a little over a hundred years after *Kamilaroi and Kunai* was first published. At the turn of the twentieth century, most Australians had the distinct feeling that some decisive national drama pivoted on their felicitous recognition of an ancient indigenous law predating the nation and all living indigenous subjects. In two crucial, nationally publicized and debated decisions, *Eddie Mabo v. the State of Queensland* (1992) and *The Wik Peoples v. the State of Queensland* (1996), the Australian High Court ruled that the concept of native title was not inconsistent with the principles of the Australian common law (*Mabo*) and that the granting of a pastoral lease did not necessarily extinguish native title (*Wik*). As a result, native title still existed where the state had not explicitly extinguished it, where Aboriginal communities still maintained its foundation — namely, the “real acknowledgement of traditional law and real observance of traditional customs” — and where those real traditions did no violence to common law principles.⁷

In the fantasy space coordinated by these two legal decisions, traditional and modern laws coexist without conceptual violence or producing social antagonism. The legitimacy of native title is granted; its authority is rooted in the ancient rules, beliefs, and practices that predate the settler nation. The object of native title tribunals is merely to judge at the “level of primary fact” if native title has disappeared “by reason of the washing away by ‘the tide of history’ any real acknowledgment of traditional law and real observance of traditional customs” and to judge whether any of these real ancient customs violate contemporary common law values.⁸ This is why the *Wik* decision on pastoral property was so important: The vast hectares under pastoral lease were “the parts of Australia where [native] laws and traditions (important to sustain native title) are most likely to have survived.” These places were the spaces perceived as least touched by modern society.⁹

6. Fison, *Kamilaroi and Kunai*, 59–60.

7. *The Wik Peoples v. the State of Queensland* (1996), 146, 176.

8. *The Wik Peoples v. the State of Queensland*, 146. See also an editorial written by the Chief Minister of the Northern Territory, Marshall Perron, “Sacred Sites — A Costly Token to a Dead Culture,” *Northern Territory News*, 7 January 1989, 7.

9. *The Wik Peoples v. the State of Queensland*, 182.

The moral and legal obligation of the nation to its indigenous population was foregrounded in another well-publicized debate, namely, the moral and economic claim of “the Stolen Generation” on the Australian nation. The Stolen Generation refers to the 10 to 30 percent of Aboriginal children forcibly removed from their parents between 1910 and 1970 as part of the state’s policy of cultural assimilation. Members of the Stolen Generation filed a federal class-action suit against the state, arguing it had violated their human and constitutional rights. A special Royal Commission was established to investigate the intent and effect of these assimilation policies. It found that past state and territory governments had explicitly engaged in what could most accurately be called a form of social genocide, a cultural holocaust as defined by the 1951 Genocide Convention on Nazi Germany — an analogy made more compelling by the age of the Aboriginal applicants, many of whom had been taken in the early 1940s. Australians looked at themselves in a ghastly historical mirror and imagined their own Nuremberg. Would fascism be the final metaphor of Australian settler modernity? In 1997 the High Court ruled that the 1918 Northern Territory Ordinance allowing Aboriginal and “half-caste” children to be forcibly removed from their mothers was constitutionally valid and did not authorize genocide *de jure* although, in retrospect, it was misguided and morally questionable.

This Australian drama would not surprise most liberal theorists of the global travails of liberal forms of nationalism. The works of Charles Taylor, Richard Rorty, and Jürgen Habermas, among others, pivot on the question of whether and how a multitude of modern liberal nation-states should recognize the worth of their interior ethnic and indigenous cultural traditions. This essay turns away, however, from the question of whether and how the settler nation should recognize the worth of indigenous customary law. Instead, it asks more fundamental questions: *What* is the state and nation recognizing and finding worthy when it embraces the “ancient laws” of indigenous Australia? What is this thing “tradition” which produces sensations; desires; professional, personal, and national optimisms; and anxieties? What is this thing which is only ever obliquely glimpsed and which resists the bad faith of the liberal nation and at the same time does no violence to good civil values, indeed crystallizes the best form of community “we” could hope for? What is this glimmering object the public support of which can produce, as if by magical charm, the feelings necessary for social harmony in the multi-

cultural nation, for good trading relations with the Asian-Pacific, and for a new globally inspirational form of national cohesion?¹⁰ How is this thing socially produced and politically practiced? Why must Aboriginal persons identify with it to gain access to public sympathy and state resources?

To understand what the nation is seeking to recognize, touch, feel, and foreground *through* its recognition of an ancient prenatal order, this essay tracks (across multiple state and public domains) the public debates over the worth of ancient Aboriginal law, legal mandates on the form a native title and land claim case must take, and mass-mediated portraits of traditional indigenous culture. As it tracks the transformations of the object “traditional indigenous law” across these public, state, and commercial domains, this essay maps the political cunning and calculus of cultural recognition in a settler modernity. Almost ten years ago, Kaja Silverman noted the “theoretical truism that hegemonic colonialism works by inspiring in the colonized subject the desire to assume the identity of his or her colonizers.”¹¹ Perhaps this is what fundamentally distinguishes the operation of power in colonial and (post)colonial multicultural societies. Hegemonic domination in the latter formation works primarily by inspiring in the indigenous subject a desire to identify with a lost indeterminable object — indeed, to be the melancholic subject of traditions.¹²

To understand this new form of liberal power, this essay examines how recognition is at once a formal acknowledgment of a subaltern group’s *being* and of its *being worthy* of national recognition and, at the same time, a formal moment of being inspected, examined, and investigated. I suggest this inspection always already constitutes indigenous persons as failures of indigenosity as such. And this is the point. In certain contexts of recognition, Aboriginal persons must produce a detailed account of the content of their traditions and the force with which they identify with them — discursive, practical, and affective states that necessarily have a “more or less” relationship to the imaginary of a “real

10. Lisa Kearns, “Armbands Sell Like Hot Cakes,” *Age*, Melbourne Online, 21 November 1997.

11. Kaja Silverman, “White Skin, Brown Masks: The Double Mimesis, or Lawrence in Arabia,” *differences* 1 (1989): 3.

12. Sigmund Freud, “Mourning and Melancholia,” in *Collected Papers, Vol. 4* (New York: Basic Books, 1959).

acknowledgment of traditional law and a real observance of traditional customs.” What are the social consequences of the noncorrespondence between the object of national allegiance, “ancient tradition,” and any particular Aboriginal person, group, practice, memory, or artifact?

I begin by reviewing the public debate over the state’s recognition of indigenous traditional (native) title to Australian lands.

QUESTION (THEM)!

In 1993, in response to the *Mabo* decision, public pressure, and its own political strategy, the Labor government passed the federal Native Title Act legislating the mechanisms by which indigenous groups could claim land. A year later a conservative Liberal-National coalition, which promised to protect the interests of (white) miners, farmers, and landowners from deleterious native title claims, defeated the Labor Party for the first time in nearly a quarter of a century. During the first session of the new Liberal parliament, Pauline Hanson, an independent minister from Queensland, vehemently attacked the basic tenets of the state’s twenty-year-old multicultural policy, especially two of its central tenets: self-determination for indigenous Australians and increased Asian immigration. She claimed multiculturalism was a guilt-based ideological program doing little more than partitioning the country into drug- and crime-ridden Asian and Aboriginal enclaves. In what would prove a national scandal, Hanson argued that self-determination was just another name for a massive and massively misconceived social welfare program, transferring through taxation national wealth generated by hardworking (white) Australians to socially irresponsible (black) Australians. It was time for white outrage. “Ordinary Australians” should reject “the Aboriginal industry’s” insistence that they feel guilty for past colonial policies they were not responsible for and, instead, proudly embrace what was for her the obvious fact that white Australians made the modern nation—no matter that present-day white Australians had as little to do with past economic policies as they did with past colonial policies. In hailing what she often referred to as “ordinary Australians” Hanson constituted a political space for all who desired to be such and to have such define the motor of Australian settler modernity.

Hanson went to the heart of the traditional thing. In a series of public addresses and interviews, she argued “ordinary” Australians should

ignore the romantic image of traditional Aboriginal society and instead examine what she believed were the real conditions of present-day indigenous social life: Third World health and housing conditions, dreadfully high infant mortality rates, rampant substance abuse, sexual disorder, and truncated life spans — namely, the horrific material conditions that, she claimed, indexed a tremendous “waste” of “our” tax dollars. What was this thing “Aboriginal tradition” which was never wherever anyone was? What did “self-determination” mean when so many Aboriginal communities and individuals would be destitute without massive governmental financial support? Indigenous social conditions had barely budged, she argued, in the thirty-odd years since Aboriginal men and women had been made citizens; been removed from ward rolls; and been given the rights to vote, receive social security benefits, and drink. Indeed, she and other conservative critics argued that indigenous social life had gotten worse since full citizenship had been extended to them. The availability of social security benefits increased drug and alcohol addiction and lessened the incentive for Aboriginal women and men to become working members of the national economy.

Most public and political spokespersons labeled Hanson and her followers “fringe” and “extreme,” their views dangerously antiquated. They wrung their hands and rang warning bells, cautioning the nation that a line of tolerance was being approached that, if crossed, would bring grave social and economic consequences. But while Hanson was politically marginalized and her views historicized, mainstream political officials were also recorded as publicly questioning the value of an ancient indigenous law for a modern technological society. Just days before Liberal Prime Minister John Howard appointed Liberal Senator Ross Lightfoot to the backbench committee on Aboriginal Affairs, he forced the senator to apologize to Parliament for claiming that “Aboriginal people in their native state are the lowest colour on the civilization spectrum.”¹³ The Liberal Party’s Aboriginal Affairs Minister, John Herron, nearly lost his portfolio after publicly supporting the assimilation policies of the 1950s, including the forced removal of indigenous children from their parents.¹⁴ Herron argued forced assimilation had had positive social effects: “Half-caste” children had been given an eco-

13. Matt Price, “Lightfoot on Black Policy Committee,” *Australian*, 11 June 1997, 4.

14. To lose one’s portfolio in the Australian parliamentary system is somewhat equivalent to losing cabinet responsibilities in the U.S. system.

conomic and social head start over their “full-blood” cousins who were handicapped in the race to civil society by their adherence to outmoded beliefs and practices.¹⁵

In 1997, claiming the *Wik* decision on pastoral property threatened to ruin the moral, social, and economic health of the commonwealth, the Liberal government introduced federal parliamentary legislation exempting pastoral lands from native title claims and restricting native title rights in other contexts. Many public spokespersons and groups swiftly responded, couching their criticisms in a rhetoric of principle and passion, finance and freedom, modernity and its moral incumbrances. Labor opposition leader Kim Beazley; two former prime ministers from opposing parties, Paul Keating (Labor) and Malcolm Fraser (Liberal); and church and business leaders urged the public to look beyond “simple property rights,” beyond their pocketbooks, and beyond the actual social conditions of Aboriginal social life. They should consider, instead, the question of national honor, national history, and national shame looming just beyond these economic and social struggles. Recognizing the value of ancient indigenous law would finally free the settler nation from its colonial frontier and confirm its contemporary reputation as a model modern multicultural nation. So suggested Beazley in a nationally televised address explaining the Labor Party’s support of existing native title legislation: “There’s more bound up in this than simply property rights. We face here a question of our history and our national honour. We have a diverse and vibrant community which we will be putting on show in three year’s time at the Sydney Olympics. We won that bid because nations around the globe believed rightly our better instincts lead us to co-exist effectively with each other in a way in which a torn world finds inspirational.”¹⁶

In giving over the self-image of the nation to the world’s aspirations,

15. See, for example, Patrick Lawnham, “Bush Reserves Judgment on Herron,” *Australian*, 3 July 1996, 2; and Colin Tatz, “We Fail Aborigines if We Prune the Past,” *Australian*, 3 July 1996, 13.

16. Kim Beazley, “Address to the Nation by the Leader of the Opposition, Kim Beazley,” *Age*, Melbourne Online, 2 December 1997. See also Claire Miller, “Just Society at Risk, says Fraser,” *Age*, Melbourne Online, 26 November 1997: “The former Liberal Prime Minister Mr. Malcolm Fraser yesterday added his voice to community pressure on the Federal Government over its handling of the *Wik* debate with a warning that a reputation of trying to build a fair and just society was at risk.”

“Australia” would be reaffirmed, strengthened, and deepened by the very multicultural forces that Hanson thought threatened, weakened, and undermined it. Mourning a shared shameful past would do no more, and no less, than propel the nation into a new cleansed national form. Besides, Beazley reassured, native title was materially minor if not outright meaningless: “Native title will only ever be able to be claimed by a small minority of Aboriginal and Torres Strait Islander Australians — those who can evidence some form of ongoing traditional association with the land in question.”¹⁷ And “Native title itself will very often mean not much more than the right to access for hunting, fishing and traditional ceremonial purposes: only in a small minority of cases will it ever involve anything like rights of exclusive possession.”¹⁸

Indeed, rather than subtracting from the nation’s wealth, the primary purpose of native title legislation was to provide the symbolic and affective conditions necessary to garner financial investment in the new global conditions of late modern capital. In the global reorganization of finance, commerce, and trade, cultural intolerance was a market matter. The world, especially Asian and Southeast Asian financial and tourism industries, was listening into the national conversation about Asian immigration and Aboriginal human and native title rights. Moreover, Aboriginal traditions were a vibrant sector of the economy marking the Australian difference to national and international cultural consumers. Major regional newspapers presented a daily tally of the political and financial stakes of Hansonesque rhetoric — lost trade, lost financial investment, lost international political influence and tourism, and lost jobs, all due to uncivil, intolerant talk.¹⁹ These financial matters became more pronounced as regional financial markets began to collapse in the first half of 1998.

National spokespersons did not simply point to juridical principles of common law, abstract notions of national honor, or the public’s pocketbooks. They also spoke of the pleasures produced by concentrating on the vibrant ancient laws found not only in isolated remote in-

17. Beazley, “Address to the Nation.”

18. Beazley, “Address to the Nation.”

19. Among these numerous reports, see Michael Millet, “Race Row: Tourists Cancel Trips,” *Sydney Morning Herald*, 1 November, 1996, A1; and Peter Switzer, “Hansonism Feeds on Economy’s Failings,” *Weekend Australian*, 21–22 June 1997, 54.

terior indigenous communities but also on cable channels; in concert halls and art galleries; and in the glossy magazines leafed through on airplanes, couches, and toilets. An ancient law was now thoroughly intercalated in public, intimate, even scatological spaces of the nation. If the good Australian people could look past the current bad material conditions of much of Aboriginal Australia, if they could strip away the encrustations of two hundred years of engineered and laissez-faire social neglect and abuse, they would catch a glimpse of the traditional values that remained, persisted, and survived state and civil society. Shimmering off this traditional mirage, they would catch a glimpse of their own best selves.

In 1998 a coalition of Labor and Democratic senators refused to pass the Howard government's new native title legislation. As a result, Howard threatened to dissolve both houses of Parliament and call a new election. If he did so, the Australian government would be decided in large part on the basis of its citizens' belief about the extant value to the modern nation of an enduring ancient prenational tradition. What did the public and its politicians think they were recognizing or rejecting?

ENJOY (THEM)!

We can begin to answer this question by examining the difference between the traditions to which a cacophony of public voices pledge their allegiance and the indigenous people who are the alleged sociological referent of these traditions. Simply put, what does "indigenous tradition" refer to and predicate? What does the nation celebrate? Answering this question entails examining the relationship between indigenous tradition, identity, and subjectivity and their discursive, affective, and material entailments. Let me begin with a set of commonplaces—in other words, with the hegemonic status of "indigenous traditions" in Australia.

Most people would probably not spontaneously describe indigenous subjectivity, or other social subjectivities, as a passionate attachment to a point in a formally coordinated system or the regimentation of ongoing semiotic practices—as people, consciously or unconsciously, articulating gaps and differences in an unfolding relational network itself part of the "historical reality of the intertextual, multimedia and multi-

mediated modern public sphere.”²⁰ But most Australians would have a strong sense that indigenous subjects are more or less like other social subjects as a result of shared or differing beliefs, characteristics, and practices (often experienced as characterological essentialisms) and that the loss of certain qualities and qualifiers would narrow the difference between contemporary social groups. For instance, they might not be able to say why, but they would “feel” ethnic and indigenous identities share the common qualifiers “race” and “tradition-culture.” And they would feel these qualifiers somehow differentiate their social location from the other social positions, or identities, crowding the symbolic space of the nation—say, whites, homosexuals, women, and the disabled. But an indigenous identity would not be considered the same as an ethnic identity because traditional indigenous culture has a different relationship to nation time and space.²¹

Indigenous modifies “customary law,” “ancient tradition,” and “traditional culture,” among others, by referring to a social practice and space that predates the settler state. Commonsensically, *indigenous people* denotes a social group descended from a set of people who lived in the full presence of traditions. I would hazard that in contrast to *unicorn* most Australians believe that to which *tradition* refers existed at some point in time and believe some residual part of this undifferentiated whole remains in the now fragmentary bodies, desires, and practices of Aboriginal persons if in a modified form. And I would also hazard most non-Aboriginal Australians think indigenous people are distinguished not only by their genealogical relation to the nation-state but also by their affective, ideational, and practical attachment to their prior customs. To be truly Aboriginal, Aboriginal persons must not just occupy a place in a semiotically determined social space; they must also identify with, desire to communicate (convey in words, practices, and feelings), and, to some satisfactory degree, lament the loss of the ancient customs that define(d) their difference.

I mean the awkward “that to which” and the seemingly vague “experienced” to evoke the strategic nonspecificity of the discursive and affective space of “indigenous tradition” in the contemporary Australian

20. Benjamin Lee, “Textuality, Mediation and Public Discourse,” in *Habermas and the Public Sphere*, ed. Craig Calhoun (Cambridge, Mass.: MIT Press, 1993), 414–15.

21. See, for instance, William Kymlicka, *Multicultural Citizenship* (New York: Oxford University Press, 1995).

nation, a point I will elaborate later. And I mean my constant conditioning—“to some satisfactory degree,” “some . . . part,” “if in a modified form”—to mimic the juridical, public, and political conditioning of an authentic Aboriginal subjectivity. And, finally, I intend these mimetic provisos to suggest how the very discourses that constitute indigenous subjects *as such* constitute them as failures *of such*—of the very identity that identifies them (differentiates their social locality from other social localities) and to which they are urged to establish an identification (affectively attach).

In their discursive passage into being, then, indigenous people are scarred by temporal and social differences. These scars are the difference between any actual indigenous subject and the full presence promised by the phrase “indigenous tradition” and thus the identity “indigenous.” At its simplest, no indigenous subject can inhabit the temporal or spatial location to which indigenous identity refers—the geographical and social space and time of authentic Ab-Originality. And no indigenous subject can derive her being outside her relation to other social identities and values currently proliferating in the nation-state. Because the category of indigenousness came into being in relation to the imperial state and the social identities residing in it and continues to draw its discursive value in relation to the state (and other states) and to other emergent national subjects (and other transnational subjects), to be indigenous requires passing through, and, in the passage, being scarred by the geography of the state and topography of other social identities. Producing a present-tense indigenousness in which some failure is not a qualifying condition is discursively and materially impossible. These scars are what Aborigines are, what they have. They are their true difference; the “active edge” where the national promise of remedial action is negotiated.²² Legal and popular questions coagulate there: Is the scar small or large, ancient or recent, bleeding or healed, bred out or passed on? What institutional suturing was and is necessary to keep this lacerated body functional? For whom? For what?

The gap existing between the promise of a traditional presence and the actual presence of Aboriginal persons is not simply discursive. It also produces and organizes subaltern and dominant feelings, expectations,

22. Jacques Lacan, “Agency of the Letter in the Unconscious or Reason since Freud,” in *Écrits*, trans. Alan Sheridan (New York: Norton, 1977), 146–78.

desires, disappointments, and frustrations—sometimes directed at a particular person or group, sometimes producing a more diffuse feeling. For instance, as early as 1951, while advocating the forced assimilation of “half-castes”—to make them “white” by forcibly removing them from their Aboriginal mothers—the conservative Liberal Party leader Paul Hasluck counseled the nation to tolerate but, better, to take full “enjoyment” of the traditions of its indigenous “full-bloods.”²³ Likewise, mid-century liberal educational films like *Art of the Hunter* promoted traditional Aboriginal “culture” as a critical contribution to the production of a unique, distinct Australian nationalism and, thus, to the global relevance of the nation—its “artistic and social contribution to the history of mankind.”²⁴

By the 1990s the nation seemed to have fully incorporated Hasluck’s suggestion. In certain commercial and cultural domains the Australian public took pleasure from representations of brightly smiling Aboriginal persons forgetting the trauma of three decades of Aboriginal activism. Businesses took advantage of this shift in public attitudes, regularly using images of traditional Aborigines to establish an identification between consumers and commodities. Citations of nonabrasive indigenous “traditional culture” saturated the mass-mediated public sphere. In Coke, Telecom, and Qantas commercials, Hasluck’s command, “enjoy their traditions” was translated: Enjoy our product *like* you enjoy their traditions. And as the public consumed indigenous traditions in the form of art, music, and cultural tourism, the national economy came to rely increasingly on the popularity of the simulacra of indigenous culture to fuel its internal combustion.

The listening public probably needed little urging to imagine the ancient traditions of Aboriginal people as a powerful, pleasurable, persisting force that predated the nation and defined its historically specific difference in modernity’s global diaspora. A generation of popular books, musical groups (Midnight Oil, Yothu Yindi), and film (*Walkabout* [1971], *Picnic at Hanging Rock* [1975], *The Last Wave* [1977], *The*

23. Geoffrey Partington, *Hasluck versus Coombs: White Politics and Australia’s Aborigines* (Sydney: Quaker Hill Press, 1996).

24. *Art of the Hunter: A Film on the Australian Aborigines*, produced and directed by John Endean, with the assistance of A. P. Elkin (Canberra: Australian Institute of Aboriginal Studies, ca. 1950).

Adventures of Priscilla, Queen of the Desert [1993]) refigured Australian modernity through an archetypal ancient law, sensual and perduring, lying under the physical and social space of the nation and gestating in the bodies and practices of Aboriginal people living in remote bush, in fringe communities, and in urban centers. Traditions were a level, a layer, a strata, existing before, but now thoroughly intercalated in the present symbolic and material conditions of the multicultural nation. EcoFeminism, EcoTourism, and New-Agism, along with mass popular books like *Mutant Message Down Under* (1994), *Crystal Woman* (1987), and *The Songlines* (1987), elaborated and plowed into the national consciousness a commonsense feeling that this ancient order made Australia a special country.

But if for non-Aboriginal Australian subjects indigenous tradition is a nostalgic memory-trace of all that once was and now is only partially, for Aboriginal subjects ancient law is also a demand: You, Aborigine, establish an identification with a lost object. Strive after what cannot be recovered. Want it badly. We do. See us celebrating it. Embracing its shameful frontier history would allow the nation to begin bit by bit to unbind itself from the memories and hopes once associated with that history; would allow the nation to get on with its business as it finds new ideals and images to identify with. But something very different happens with the indigenous subject. For not only are indigenous people scarred by loss in their discursive passage into being, the historical and material pressures on them to identify with the name of this passage (tradition) affectively constitutes them as melancholic subjects,²⁵ and the more an Aboriginal person identifies as a traditional person, the more he or she believes public incitements that the nation is embracing them. This melancholia acts as a communicative vehicle for distributing, and confusing, the relationship between an identity, ideas, and *feelings* about who is responsible for present-day social maladies—for the state's failure to curb the excess of capital and to provide equitable health, housing, and education. Non-Aboriginal Australians enjoy ancient traditions while suspecting the authenticity of the Aboriginal subject. Aboriginal Australians enjoy their traditions while suspecting the authenticity of themselves.

25. Freud, "Mourning and Melancholia."

RESIST (THEM)!

Given this public commotion and commercial promotion, it might surprise us to learn most Australians know very little about the actual social conditions of indigenous Australia. Many Australians acquire a sketchy outline of Aboriginal “culture” in school and from mass and multimediated images—glimpses of traditional culture garnered from popular books, movies, television talk shows, commercials, audiotapes, and compact disks. But while many Australians have heard Peter Garrett of the rock band Midnight Oil sing the lyrics from “The Dead Heart” (“we carry in our heart the true country and that cannot be stolen, / we follow in the steps of our ancestry and that cannot be broken”) few know to what these musically moving evocations of “ancestry” refer.²⁶ Likewise, after the *Wik* decision, the Body Shop stores in Melbourne began selling armbands bearing the message “Coexistence, Justice, Reconciliation.” Most Australians knew the colors of the armband (red, black, and yellow) referred to the Aboriginal flag. But few Australians knew much about what the nation was reconciling itself to, nor knew how specific legislative, juridical, or constitutional principles had already figured “tradition” as a rights-bearing sign in a series of federal, state, and territory land rights, social welfare, and cultural heritage acts.²⁷ Still fewer had any sense of the local, national, and transnational political and social struggles entextualized in law and legislation.²⁸

Most people did not know, for instance, that the federal Aboriginal Land Rights (Northern Territory) Act of 1976 defined “Aboriginal traditions” as “the body of traditions, observances, customs and beliefs of Aboriginals or of a community or group of Aboriginals, and includes those traditions, observances, customs, and beliefs as applied in relation to particular persons, sites, areas of land, things or relationships.”²⁹ Or

26. Peter Garrett, *Diesel and Dust* (New York: Columbia Records, 1988).

27. The first land rights statute was passed in 1966 in South Australia—The Aboriginal Land Trusts Act 1966 (SA). Since then there have been a series of statutes: Pitjantjatjara Land Rights Act 1981 (SA), Maralinga Tjarutja Land Rights Act (SA), Aboriginal Land Rights Act 1983 (NSW), Local Government (Aboriginal Lands) Act 1978 (Qld), Land Act (Aboriginal and Islander Land Grants) Amendment Act 1982 (Qld).

28. Elizabeth A. Povinelli, “The State of Shame: Australian Multiculturalism and the Crisis of Indigenous Citizenship,” *Critical Inquiry* 24 (1998): 575–610.

29. Aboriginal Land Rights (Northern Territory) Act 1976 (Canberra: Government Printer).

that this definition became the blueprint for most major legislative references to “Aboriginal traditions.” Nor would most people know that if they are to be successful claimants, Aboriginal persons must provide evidence not only of the enduring nature of their customary law but also of their “degree of attachment” to these ancient laws and lands. Likewise, while they might know the federal Native Title Act of 1993 stipulates that an Aboriginal group must continue to observe “traditional laws” and “traditional customs,” most Australians would not know that the content of these traditional laws and customs are left undefined even as others are altogether excluded from legal recognition. Still fewer Australians have had the chance to appreciate the breathtaking rhetorical skill with which the High Court in *Mabo* and *Wik* simultaneously castigated previous courts for their historically and morally laden refusal to recognize the value of Aboriginal beliefs and customs and, nevertheless, reconfirmed the function of dominant morality in deciding issues of cultural recognition: “The incidents of particular native title relating to inheritance, the transmission or acquisition of rights and interests in land and the grouping of persons to possess rights and interests in land are matters to be determined by the laws and customs of the indigenous inhabitants, provided those laws and customs are not so repugnant to natural justice, equity and good conscience that juridical sanctions under the new regime must be withheld.”³⁰

Never defining the content of “the repugnant” or “the good,” the court nevertheless relied on the commonsense notion that they were formally distinct and discernible states in order to establish a limit to internal national cultural alterity. The repugnant and the good are “to be debated” in the open forum of the public sphere. What cannot be debated is where the repugnant lies in relation to the common law. Moral codes change, but the repugnant, whatever it is, is always a stranger to the real being of the common law. Thus, in any given moment of history, if an indigenous law is felt to be “repugnant” the repugnancy is seen to emanate from it — no matter if the court itself cites the vast historical trail of its own mistaken bigotry and malice or that in its hands the common law becomes little more than a reminder of a constant process of continual self exile. *Still* natural justice remains the common law’s private property.

30. *Eddie Mabo v. the State of Queensland*, 107 ALR 44.

Why, then, should we be surprised to learn that Pauline Hanson knew little more about indigenous traditions than the average non-Aboriginal Australian when she urged the public to avert their eyes from the mesmerizing image of indigenous tradition and to wake up from the spell cast by a materially motivated “Aboriginal industry”? (Neither Howard’s ministers, who questioned the value of Aboriginal traditions, nor Beazley, who supported them, knew much more.) Hanson should make us pause—but not, however, for the usual suspects lurking in her rhetoric: spectres of racism, intolerance, and bigotry. We should pause because unlike Fison, Fraser, Keating, and Beazley, Hanson insists “ordinary Australians” look at the real conditions of Aboriginal social life.

What if we were to do the unthinkable and agree with Hanson that there is something fishy about the nation’s enjoyment of ancient Aboriginal traditions? About the national celebration of a social law preceding the messiness of national history? About the tacit silences surrounding the content of Aboriginal traditions? About legislation written to support an ancient law predating anything present-day non-Aboriginal Australians are responsible for and anything present-day Aboriginal Australians could know about? To appreciate Hanson’s uncanny insight while refusing her political or social analysis necessitates taking seriously the claims of many public spokespersons and ordinary Australians that they are honestly celebrating the survival of indigenous traditional culture. When they think about it, many Australians are truly deeply moved by the miraculous persistence of an Aboriginal law in the face of centuries of traumatic civil onslaught. There in the distance, although never wherever an actual Aboriginal subject stands and speaks, the public senses a miracle of modern times: an impossible to define but truly felt sublime material, an immutable and indestructible thing, predating and surviving civil society’s social and corporeal alterations. *The Last Wave*, *Picnic at Hanging Rock*, and numerous other mass media films and mass-marketed books strive to evoke this affective state. The nation truly celebrates this actually good, whole, intact, and somewhat terrifying *something* lying just beyond the torn flesh of present national social life. And it is toward this good object that they stretch their hands. What is the object of their devotion?

In part, this object is the easily recognized wounded subject of the

modern liberal state.³¹ The political drama of an ancient law's battle for recognition is refigured as a series of personal traumas suffered by innocent citizens. In the Australian edition of *Time Magazine*, a psychiatrist rather than a politician or constitutional lawyer explained the social meaning and import of the Stolen Generation's moral claim to the nation: "The grief echoes through generations. With no experience of family life themselves, many find parenthood difficult—one woman told how she had to be taught how to hug her children."³² This individualized traumatic subject is then elevated to archetype, the holocaust survivor. Not surprisingly, given the ages of the plaintiffs, in its investigation of the forcible removal of Aboriginal children from their parents, the Royal Commission likened the Australian liberal state's final plan for Aborigines, cultural assimilation, to the German fascist state's final plan for European Jews, physical annihilation. The Royal Commission and many Aboriginal men and women noted the irony that as Australians were fighting fascism abroad they were perpetuating it at home.

The Royal Commission was not alone in raising the specter of a creeping fascism secreted in the heart of Australian nationalism. It was widely feared that popular support for Hanson's xenophobic political party, One Nation, signaled a potentially apocalyptic failure of historical consciousness and memory of the social costs of the infamous mid-century white immigration policy. While commenting on the need for federal recognition of indigenous native title, former Labor Prime Minister Keating explicitly figured opposition to native title in the common-sense formula of antifascism: First they came for the . . . , finally they came for me: "If we start wiping out indigenous common law rights, when do we start wiping out non-indigenous common law rights? This is what this game is about."³³

This *is* what the game is really about or, at least, is *also* about—the rightness and authority of "our" common law, its defense, and in its de-

31. See Wendy Brown, "Wounded Attachments," in *States of Injury: Power and Freedom in Late Modernity* (Princeton, NJ: Princeton University Press, 1995). Also Lauren Berlant, "The Subject of True Feeling," in *Cultural Pluralism, Identity Politics, and the Law*, ed. Austin Sarat (Ann Arbor: University of Michigan Press, 1997).

32. Lisa Clausen, "The Cruelty of Kindness," *Time*, 9 June 1997, 46.

33. Laura Tingle, "Keating Attacks Wik Plan as Racist," *Age*, Melbourne Online, 12 November 1997.

fense the defense of the liberal subject of rights. Another wounded subject stands behind the scarred indigenous body: the liberal subject who wielded the frontier blade and near fatally wounded itself in the process. Explicit ongoing intolerance of the indigenous population threatened to reopen the wound. Mitigating the ongoing failures of the liberal common law through acts of public contrition and atonement simply provides a means of building a newer, deeper form of national self-regard and pride, a form freed from its tragic siblings, imperialism, totalitarianism, fascism. Beazley, Keating's successor in the Labor Party, put it succinctly:

I love our history. It is one of greatness, of struggle and survival. Like all nations, it contains elements for which we must atone and disagreements for which we must reconcile.

But the issue here is not our history. The High Court settled that. The fact is that we are making history—this Parliament, those of us in political life, and you working hard to understand and contribute to this debate. As we write history in the coming days, the question is this—will it be one for which our grandchildren and great-grandchildren will have to atone, or will it be one in which we make them proud of this generation?³⁴

In short, national subjects are not pretending to celebrate the survival of indigenous traditions while secretly celebrating their necessary discursive and affective failures, returning again and again to wound and worship the wound. Liberal supporters of indigenous traditions really want them to have survived. They want to worship a traditional order stripped of every last trace of bad settlement history. This real desire makes it even more difficult for Aboriginal men and women not to see the failure of cultural identity as their own personal failure rather than a structure of failure to which they are urged to identify. Aboriginal persons often turn their critical faculty on themselves or become trapped between two unanswerable questions: Were my traditions taken from me? and Did I, my parents, or my children abandon them?

An ancient law wiped clean of the savage history of modernity simul-

34. Beazley, "Address to the Nation." Tasmanian Green Party Senator Bob Brown said, "It would embarrass Australia internationally at the Olympics in Sydney, besides the Aboriginal people would not accept it, nor should they." Paul Daley, "Wik Poll Gives Liberals a Shock," *Age*, Melbourne Online, 7 December 1997.

taneously purifies the liberal subject. First, the survival of good indigenous traditions transforms liberalism's bad side into a weak, inconsequential historical force. The very social weakness of Aboriginal people reinforces this fantasy. If even *they* could survive liberalism's bad side, this bad side must be weak indeed. Second, when good traditions appear before the nation, liberalism's good side also appears as a strong supporting force. The trauma of imperial history is revealed to have been an unfortunate transition on the long road to a new triumphant national: "We cannot really celebrate the triumphs of our history if we're not also prepared to acknowledge the shame of our history."³⁵ Of course, much depends on Aboriginal persons censoring "those laws and customs . . . repugnant to natural justice, equity and good conscience" so that the nation does not have to experience its own continuing intolerance, its own failures to achieve a truly multicultural national formation without recourse to discipline and repression. Third, resilient Aboriginal traditional law provides a fantasy space for non-Aboriginal subjects to imagine their own resilience in the face of the brutal conditions of liberal capital and to hope things will get better without the painful process of social transformation. Fourth and finally, the survival of some Aboriginal traditions confuses the question of who or what is responsible for the loss of other traditions. If some Aborigines were able to resist the "tides of history," why weren't most? Responsibility for the continuity of native title is shifted from the state to the "activities and will of the indigenous people themselves."³⁶ The social conditions in which Aboriginal subjects must maintain their law is materially extraneous to law and nation.

As the nation stretches out its hands to an ancient Aboriginal law in order to embrace its own ideal body, indigenous subjects are called on to perform a complex set of sign functions in exchange for the good feelings of the nation and the reparative legislation of the state. Indigenous subjects must transport to the present ancient prenatal meanings and practices in *whatever* language and moral framework prevails *at the time of enunciation*. For these rights and resources are really intended for the indigenous subject — that imaginary prenatal subject haunting the actions of every actual Aboriginal person. If this were not

35. Lisa Clausen, "Cruelty of Kindness."

36. *Wik People v. the State of Queensland* (1996) 176.

an arduous enough semiotic odyssey, Aboriginal men and women are also called on to give national subjects an experience of being transported from the present to the past, including transportation past the nation's failed promise to the very persons carrying them along. The demand for this dual transportation is captured in the most banal of public queries, "Tell us what was it like before us."

Aboriginal subjects should, in short, construct a sensorium in which the rest of the nation can experience the sensations Fison described. They should model a national noumenal fantasy. But every determinate content of Aboriginal culture forecloses the imaginary fullness of ancient law. No matter how strongly Aboriginal persons identify with these now lost but once fully present customary practices, all Aboriginal subjects are always being threatened by the categorical accusation, "You are becoming (just) another ethnic group" or "You are becoming a type of ethnic group whose defining difference is the failure to have maintained the traditions that define your difference." They are always falling away from their identity because their identity is the temporal unfurling of an indeterminable ideal of national good.

So?

What I am saying is hardly news, nor do I mean it to be. In their nature as socially produced and negotiated abstractions, all identities fail to correspond fully with any particular social subject or group and are propped up or undermined by their relation to other social identities and institutions. But all failures of identity are not the same; they are not related to state and capital institutional structures in the same way, and they do not produce the same discursive and affective results. Each one arises from and is situated in a particular set of social practices and relations; constitutes a particular set of social problems; and organizes a particular set of social desires, horrors, and hopes.

My ultimate interest is not in these discursive and affective aspects of indigenous subjectivity. The goal of understanding the necessary failure of indigenous identity is to understand what national work is being done through its recognition and to understand better how power operates and is configured in multicultural settler nations like Australia. The abstraction "indigenous tradition" is a critical relay point through which immanent critiques of dominant social formations, institutions, values, and authorities are transformed into identifications with these

same forms, institutions, values, and hierarchies. This socially practiced *idea* translates national failures to provide even basic economic and social justice into local failures of culture and identity. It organizes commonsense notions of who (or what) is responsible for the social inequalities characteristic of the late liberal Australian nation.

And so, in this last section, I examine an all too clear calculus, coordinating the material stakes of an Aboriginal person's or group's claim to be traditional and the determinate content and passionate attachment that they must produce to support their claim. When capital resources are only indirectly at stake, the content of the "ancient order" often remains vaguely defined. But when the material stakes increase, particular indigenous persons and groups are called on to provide precise accounts of local social structures and cultural beliefs that necessarily have a "more or less" relationship to the ideal referent of "traditional customs and laws" and to anything actually occurring in their day-to-day lives. At some "to be announced" boundary, the "less" becomes "too little" and the special rights granted to indigenous persons give way to the equal rights granted all groups in the multicultural nation.

SPECIFY (THEM)!

Managing this discursive gap is clearly the semiotic challenge and dilemma of urban Aborigines. How does an urban Aboriginal person become a convincing indigenous subject and thus secure the social, discursive, and affective resources available through this convincing performance? We find a clue in an ordinary article published in the *Sydney Morning Herald* on 7 August 1997, ironically, citing Hanson's One Nation Party. The story featured Lydia Miller, "a very modern manifestation of Aboriginality . . . a city power broker . . . in charge of nine staff and an annual \$3 million budget." Miller is described as an Aboriginal activist from "one of Australia's best-known indigenous families," a family composed of lawyers, activists, artists, and actresses. What makes Miller's Aboriginality compelling is not, or not simply, her biological heritage but that heritage plus her identification with the "diplomatic protocol of ancient Australia." She becomes authentically Aboriginal only at the moment she willingly alienates her discourse and identity to the fantastic claim that she is able to transport an ancient practice from the past:

Lydia Miller, until recently the head honcho of indigenous arts funding in Australia, and current Olympic events organiser, has a particularly Aboriginal view of the political geography of this nation. “I think of it as something like 301 nations—300 indigenous nations and one nation called Australia.” This view of the world makes life infinitely more complex for Miller than for your common or garden variety bureaucrat. For example, during her two and a half years as director of the Australia Council’s indigenous arts board and now, as a project head with the Olympic Festival of the Dreaming, she has meticulously followed the diplomatic protocol of ancient Australia.³⁷

Some readers probably passed over the strange passage, “she has meticulously followed the diplomatic protocol of ancient Australia,” without much thought. Others might have imagined sun-drenched, clay-painted *black* bodies dancing a sacred corroboree or sacred ritual objects passing from *black* hand to *black* hand. If they did, they imagined bodies and hands whose color coding is otherwise than Miller’s own. Still other readers might have smirked, believing the entire article to be a product of public relations machinery. If she said anything like what was quoted, Miller might have thought she was donning an “ideological mask” for a variety of political reasons.³⁸ In any case, the *Sydney Morning Herald* does not elaborate what “the diplomatic protocol of ancient Australia” refers to.

This referential nonspecificity is not the result of a lack of knowledge or a failure to report it. Rather “ancient protocol” is experienced as maximally symbolic at exactly the moment when it is minimally determinate. This semiotic hinge allows readers to fantasize a maximal variety of images of the deserving indigenous subject at the very moment the description of the content of the social geography approaches zero. Nineteenth-century social models of a male-dominated family and clan walk side by side with twentieth-century models featuring crystal woman, and ad infinitum. This proliferation of possible protocols of ancient Australia fits neatly in the consumer-driven logic of

37. Debra Jopson, “One Nation or 301 Nations?” *Sydney Morning Herald*, 9 August 1997, 15s.

38. Peter Sloterdijk, *Critique of Cynical Reason* (Minneapolis: University of Minnesota Press, 1987) and Slavoj Žižek, “How Did Marx Invent the Symptom?” in *The Sublime Object of Ideology* (New York: Verso, 1992), 28–33.

late capital and, especially, the modern protocols of global tourism (of which we can now understand the Olympics to be a part).

Of course, the seemingly simple statement, “the diplomatic protocol of ancient Australia,” projects national and state forms and practices into this empty geography (diplomatic, protocol, an ancient *Australia*). A landscape actually emptied of all meanings derived from settlement history is the real, unimaginable, unrepresentable ground of “indigenous.” All *representations* of this ground must pass through whatever narratives of national history exist at the time. But it is this fantastic, unrepresentational, felt social ground where the truly deserving Aboriginal subject(s) stand(s)—the social state against which the legal apparatus and the jury of public opinion measure whether contemporary Aboriginal persons are deserving of national sympathy and special state amelioratory legislation. Every actual Aboriginal subject produces personal and national optimisms and antagonisms because they *stand in the way of* this unrepresentable good object in the dual sense of being merely metonyms of and material barriers to them.

When material resources are directly at stake, the distance between unknowable prenatal social geographies and present social, linguistic, and cultural practices are more closely scrutinized in the press and are more precisely measured in law. In these instances, nation and law demand Aboriginal subjects produce maximally concrete cultural referents, diminishing the symbolic range and potency of every particular contemporary practice. For example, in the midst of the Kenbi Land Claim in the Northern Territory, Rupert Murdoch’s *Northern Territory News* featured an interview titled “Topsy Secretary—Last of the Larrakia.” This interview came amid a stream of editorials detailing the large cost of the Kenbi Land Claim (to white Australians) and the amount of land that would be taken out of the (white) “Territory’s future.” A breezy setting piece, the article pivots on a series of racial, cultural, and ideological differences between the ancient Aboriginal past and the unfolding Aboriginal present. The interview begins by describing Topsy Secretary as “the last full-blooded Larrakia.” Other Larrakia exist, but they are “fair-skinned descendents.”

Although the article describes Topsy Secretary as a “pure” Larrakia in a racial sense, it suggests she is not a pure Larrakia in her material and cultural desires. Her desires mark her as just another hybrid cultural subject, undermining the political cause she is cast as a symbol of.

The article is able to undermine the Kenbi Land Claim by suggesting that this last real Larrakia is *really* not different from the average Australian citizen. Topsy Secretary only retains “knowledge about traditional foods,” an enthusiasm shared by many white Australians. Her other pastime pleasures are on par with many middle-brow “white” pleasures — sitting on her veranda and watching *Days of Our Lives* and *The Young and the Restless*. The hallmark of Aboriginal high culture, men’s ceremonies, are now “‘All forgotten,’ she said. ‘No old men — they’re gone — no-one to teach.’” Finally her political views, the very fact she has political views, differentiate her from her own parents: “Topsy said her father never worried about land rights. He accepted the Europeans as friends and never wished them to go away. But Topsy had lived to see her country shrink with the passing of generations. She wanted to see freehold title over the Kulaluk land and was hopeful the Larrakia would be successful in the long-awaited Kenbi land claim.”³⁹

A knot of speculative enjoyment is captured in this interview, inciting questions about the *deserving* Aboriginal subject: Who should receive the benefits of reparative legislation? How do we measure the line between the polluted and diluted present and the pure ancient past? What line demarcates an Aboriginal subject from a national ethnic subject? The article does not answer these questions; it simply raises the stakes of any particular decision a land commissioner might make regarding what will constitute legally felicitous cultural difference.

All major pieces of cultural heritage and land legislation in some way mandate such felicitous cultural differences and promote to some degree the paranoid epistemology of Fison’s modern ethnology. Most land legislation restricts claims to (or produce the necessity to produce) “traditional Aboriginal owners.” And they demand that these owner-claimants demonstrate a genealogical connection between their present and past customary beliefs and practices (the more specifically the better) and, further, that they identify with those customs (the more passionately the better). Those few pieces of legislation based on history, or a combination of tradition and history, reaffirm as “unchallengeable” the commonsense notion that tradition provides the true economic and cultural value of Aboriginal society to Aborigines and to the nation. In

39. Genny O’Loughlin, “Topsy Secretary—Last of the Larrakia,” *Northern Territory News*, 10 December 1989, 16.

New South Wales, for instance, land rights legislation is not restricted to traditional owners. It allows Aboriginal groups to claim land on the basis of their historical attachment. But the goal of the legislation is the “regeneration of Aboriginal culture and dignity, and at the same time laying the basis for a self-reliant and more secure economic future for our continent’s Aboriginal custodians.”⁴⁰

When Aboriginal persons disrupt the fantasy of traditional identity by rejecting it as the authentic and valuable difference of their person and group or insisting on its alterity to common law values, they not only risk the material and symbolic values available to them through this *idea* but also jeopardize the ability of future generations to stake a claim based on its semiotic remainders. The following few interlocutions between lawyers and their Aboriginal clients drawn from the Kenbi Land Claim suggest the microdiscursive nature of these subjective struggles. The first example is taken from a proofing session held right before the claim was first heard in 1989; the second is from a videotape I made with two younger claimants during a lull in a young men’s ceremony; the third comes from public testimony given during the second hearing in 1995–96. In the second sequence, Raelene Singh, Jason Singh, Nathan Bilbil, and I tease each other about the basis of the Belyuen claim: conception relationships (*maruy*) with the Belyuen waterhole and by extension a spiritual tie to other sacred sites in the claim area, a physical relationship to each other and the claim area by the fact of a shared substance (sweat or *ngunbudj*), and a familial relationship with the spirits and graves of deceased ancestors (*nguidj*) throughout the claim area.

KENBI LAWYER: What was it like before the white man?

TOM BARRADJAP: I don’t know mate, I never been there.

KL: Yeh, right, ha, ha, ha. But what was the traditional law for this place? We need to know: What was the traditional law for this place?

BETH POVINELLI: Hn, what you? Are you for this country?

RAELENE SINGH: He taping for pretend report.

BP: Ngambin (cousin’s daughter), you for this country?

RS: Yes. This is my country. It’s like my life.

40. Linda Pearson, “Aboriginal Land Rights Legislation in New South Wales,” *Environmental and Planning Law Journal* 10 (1993): 398–422, esp. 399 and 400.



BP: Oh, it's like your life from the Dreamtime ancestors?
RS: Yeh, and I come out of that Belyuen waterhole.
BP: Oh, you been born from there now?
RS: Yeh, that's the dam. That old man Belyuen gave this mob kid here now—us here now—like today where we walk around.
BP: Yeh, walk around.
RS: It's like a gift from God.
BP: From which one? From on top way?
RS: Yeh, well, we got our own; we got our own thing—gift. Ah, we got our own father, see.
BP: We got him from here now?
RS: From Belyuen, from our ancestors.
BP: And do you believe that?
RS: Yes.
BP: Oh, you do?
RS: Yes. That is true.
BP: And are you teaching your kids?
RS: Yes.
BP: Oh, which ones?
RS: I am teaching my niece, there, Chantelle.
BP: You call her daughter, isn't it?
RS: Yeh, my daughter from my little sister.
JASON SINGH: I'm from Daly River.
BP: Wait now, I'm shifting from sun. Daly River?
JS: Yeh.
BP: I don't know, you look like Belyuen. You got the same Belyuen nose.
JS: Nah, but you look here. I staying at Peppi.
BP: Let me look. Ah, you been live there.
NATHAN BILBIL: I always come here for just once in a while.
JS: Keep going.
BP: Ah, yeh? You smell like a Belyuen again.
JS: Oooh, ha ha ha.
ROBERT BLOWES: Right. And when you were talking to Mr. Howie here, you said that's the native way to call him brother?
TOPSY SECRETARY: Yes.
RB: Yes. Was that really brother?

TS: Well, in your way it's cousin brother, but my way we call him brother, and sister.

RB: So he had a different father and different mother?

TS: Yes, but it's still, we call him brother and sister.

RB: And he's still Larrakia?

TS: Yes.

RB: And he's still the same country?

TS: Yes.

RB: Okay. And what about your father and Tommy Lyons? Is that the same way, then? Your father Frank . . .

TS: Yes, it's the same way.

RB: So he's not really "brother."

TS: Well, they all brothers.

RB: That native way.

TS: Real brothers.⁴¹

In this case, as in other land claim cases, lawyers and the anthropologists who help them practice the law as if knowing that their asking an Aboriginal witness to embody an imaginary and discursive impossibility were irrelevant to the very organization and operation of power they intend to be challenging. Keeping with *local* speech practices, Barradjap uses humor to jolt the Kenbi lawyer back into "reality" — to think about what he is asking. But speaking the "truth" to fantasy (such as Barradjap tries to do) or creating an ironic hypertext about law and identity (as Raelene, Jason, and I do) does not upset the practice of primarily valuing Aboriginal subjects in relation to their ability to afford for national subjects a language and experience of "before all this." It only shifts the register — only sets into motion a string of signs whose object is to forestall the collapse of the fantasy: OK, right, but what about "before the white man," about "traditional law," about the "real Aboriginal way"?

The Kenbi lawyer is no fool. It is not a lack of knowledge that prompts his query. He knows he is asking the impossible of Tommy Barradjap. He and I laughed about these types of questions. Yet he asks anyway. The lawyer desires, *if only for a moment*, for reality to be torn, for what he knows is true not to impede what he wishes for *nevertheless*, for the

41. Kenbi Transcripts (Indooroopilly, 1995), 2990–2991.

social consequences of violent settler history to be suspended *even if only for this private moment*, especially in this *intimate interpersonal moment*. And in this movement from knowledge to its refusal, we see the contours of the desires and suspicions constantly circulating around Aboriginal men and women, an affective topology in which they are formed and to which they must respond. These personal and national needs, desires, and demands disturb every Aboriginal enunciation. In the logic of fantasy, Barradjap's insistence that the Kenbi lawyer "get real" is reinterpretable as Barradjap withholding from the lawyer the *real* truth, a form of truth existing somewhere beyond this fragmented and corrupted social reality. In the linguistic fragment "yeh, right, ha, ha, ha. But," the lawyer marks the unresolvable tension between a barred desire (his desire to refuse knowledge and gain entry to a traditional land) and a barring agent (Barradjap's refusal to act as a discursive passage to that land).

Like the Kenbi lawyer, Robert Blowes is very knowledgeable about Aboriginal social relations. Among numerous land claim cases, he was counsel assisting in the presentation of *Wik* before the High Court. Yet, again, something intrudes and interrupts this knowledge. If the Kenbi lawyer desired for history not to bar his access to the prehistorical, Blowes wanted his support of difference not to bar his desire for a form of difference that remains skin deep, just a matter of words. Although Topsy Secretary refuses to orient her understanding of family to Blowes, Blowes's micromanagement of the truth value of various kinship systems is an example, and just an example, of the historical and still pervasive microdiscursive disciplines that produced in Raelene, Topsy Secretary's brother's granddaughter, the (mis)recognition of her daughter as her niece. Moreover, the evidence of Topsy Secretary suggests how any determinate content of local traditions upsets the fantasy of "ancient law" as a form of otherness that is deeply recognizable and that does not violate core subjective or social values. Jason, Raelene, Nathan, and I may pun the micromanagement of discourse necessary to maintain the core fantasy of land and native title claims, but our discursive play also marks the migration of this fantasy. My own reminder to Raelene to describe Chantelle as "daughter" rather than "niece" provides further evidence of the microdisciplinary tactics constantly operating within an Aboriginal social field.

The desires and suspicions circulating around Aboriginal women and men are not confined to formal legal hearings. In now numerous commercial venues commodifying Aboriginal traditional culture, national and international consumers approach indigenous men and women expectant, optimistic, and cynical. They hope *this time* traditional culture will appear before them (which it always does, *more or less*) and that *this time* they are buying sight unseen the real thing (which they always are, *more or less*). But before they have even purchased their ticket, every consumer of culture is already disappointed by what they know: What they are about to see is a commercial product. They, like Fison, leave the scene of cultural performance frustrated. Why aren't traditions wherever I am? Who is withholding them from me? I bet there are none here. Who is to blame for their disappearance?

This is why the “real law man” and, to a lesser extent, the “real law woman” fix the attention of the nation—law and commerce, publican and politician. Law men and women are simultaneously what the nation viciously ghosted and where it hopes it can recover a previously unstained image. The nation looks not at but through contemporary Aboriginal faces, past where every Aboriginal and non-Aboriginal Australian meet, wanting the spirit of something promised there: “Tell us something we do not, cannot, know *from here*—what it was (you and we were) like before all this. What our best side looks like.” In the moment before any particular answer, ears and eyes are transfixed by the potential of indigenous knowledge—by what might be unveiled and by a more general possibility of experiencing the new, the ruptural, the truly transformative. This moment is filled with horror, anticipation, and excitement. Of course, no Aboriginal person can fulfill this desire, be truly positively alterior; nor if they could would they *make sense* to the institutional apparatus necessary to their livelihood. This “first speaker, the one who disturbs the eternal silence of the universe” would in fact be experienced as a stereotypical psychotic.⁴²

Legal practitioners may hope to disambiguate themselves from these other cultural markets, but economic and symbolic logics articulate them, as do the Aboriginal subjects who move between them. Aboriginal subjects field similar desire-laden questions from tourists, anthro-

42. Mikhail M. Bakhtin, “The Problem of Speech Genres,” in *Speech Genres and Other Late Essays* (Austin: University of Texas Press, 1990), 68.

pologists, and lawyers: Is this how it was done before white people? And they hear legal and commercial consumer reports — satisfied consumers grateful to be shown a part of real traditional culture; dissatisfied consumers grumbling that what they heard and saw didn't seem real *enough*. As did their ancestors, Tommy Barradjap, Topsy Secretary, and Jason and Raelene Singh must orient themselves to the multiple symbolic and capital economies of “traditional law” if they are to gain the personal and material values available through them — if they are to alleviate to some extent the social conditions Hanson alluded to. They navigate among mass- and multimediated fragments of public discourses — not only on the value of Aboriginal traditions but also on the limits of cultural alterity. What constitutes too much otherness? Aboriginal men and women like Topsy Secretary, Nathan Bilbil, and Jason and Raelene Singh are left to grapple with how to present a form of difference that is maximally other than dominant society and minimally abrasive to dominant values. The hot potato of nation-building in multicultural formations is dropped into their laps.

The ever-widening stretch of history never seems to soothe the desires or irritating suspicions of white subjects that somewhere out there in archives or within a withholding Aboriginal subject is the knowledge that would fill the fantasy space of “tradition.” At the time Fison wrote *Kamilaroi and Kunai*, one hundred years had passed since the settlement of Sydney. At the time Tom Barradjap spoke, over two hundred years had passed and Aboriginal traditions had long since become a politicized and commodified form of national identity. Raelene and Jason Singh had literally grown up under the shadow of the Kenbi Land Claim. For the entire span of their lives, Raelene and Jason had heard their grandfather, grandmother, and mother publicly valued primarily for their traditional knowledge and role. Now they and their sister must be that impossible thing of national desire. And if the Kenbi Land Claim were ever to end, other land claims, native title claims, and cultural heritage claims are ever over the southern horizon. The external suspicion that somewhere out there someone is withholding a valuable thing is transformed into an internal local anxiety: Which of “our” old people is withholding information from us? What will they say or not say? How will the lives of the next generation be altered on the basis of a speaking or withholding relative? What if someone reveals a “real tradition” repugnant to the common law?

As if conspirators in a political intrigue whose measure is yet to be determined, we huddled around my small tape recorder under the veranda of the Belyuen women's center: Marjorie Bilbil, Alice Djarug, Alice's daughter Patsy-Ann, Ruby Yarrowin, Ruby's daughter Linda, Ester Djarim, and myself. Betty Billawag was too sick to join us. Ruby, Ester, Marjorie, and Alice are the critical remainders of language and history in the community, their daughters trying to "pick it up" in the local colloquial creole. And I use "remainders" advisedly. What was once the nation's cultural debris is now the local's cultural mines. These women are the last fluent speakers of Emmiyenggal, Mentha, and Wadjigiyn, the languages of the region.

In the center of our loose circle lies a sound-tape of a funeral rite (*kapuk*, rag-burning) held at Belyuen in 1948 when the older women were young adults—my age, Patsy's age, Linda's age.⁴³ The 1948 *kapuk* was held for Mabalang, Ester Djarim's deceased husband's first wife. An ethnomusicologist found the recording in the archives of the Australian Institute of Aboriginal and Torres Strait Islander Studies in Canberra and informed lawyers at the Northern Land Council that, on it, the now-deceased Mosec, Mabalang's elder brother, sings a *Belyuen wangga* (a regional song genre). The ethnomusicologist thought that the *wangga* might prove useful to the Belyuen community's land claim if it and other *wangga* on the tape could be translated. The Belyuen community had just recently decided to put themselves forward as "traditional Aboriginal owners" for the Kenbi Land Claim even though doing so placed them in a potentially antagonistic relationship with other Aboriginal persons and groups who also claimed to be the traditional Aboriginal owners of the land. Ruby Yarrowin, Ester Djarim, Alice Djarug, and Marjorie Bilbil were eager to listen to the tape, as was I. They remembered Mosec as a *djewalabag*, a "cleverman," a man steeped in sacred law. They remembered national and international celebrities and media traveling to Belyuen to record his singing and dancing.⁴⁴

This is why the women and I had gathered: We were looking for tra-

43. *Australian Walkabout Show*, "Death Rite for Mabalang," 1948 Program, ABC Radio.

44. Collin Simpson (on tape) announces to the radio audience: "Mosec is dancing solo around the old man, and I don't know if I have ever seen finer dancing in my

ditional evidence that would link these women and their families to this land. I was the senior anthropologist for their claim. And so Northern Land Council lawyers told me about the tape, and I told the women. We were hoping we would find their tradition in this archived sound fragment. At least for the moment, they desperately desired to be the traditional thing immanent in this material thing, to be propped up by the traditional, to be its object, to become the archival. And these desires organized their talk about the living and the dead, the remembered, loved, and disappointing.

As we waited for tea to boil and for the tape to rewind, the women meditated on the consequences of failing in this discursive quest, of “being wrong,” of “not fitting the law,” of their parents and themselves having made “mistakes,” having lost their culture while busy living their lives. Marjorie Bilbil asked me whether, in the event that they failed to convince the judge that they were the traditional owners of the land, the entire community would be uprooted and sent to southern countries. From these women’s historical perspective, this seemingly fantastic communal apocalypse is not so far-fetched. Soon after the Japanese bombing of Darwin in 1942, the war government transported the community to war camps in Katherine. Closer to the present, these women have watched other communities displaced in the wake of lost or disputed land claims. The Wagait dispute, the Kamu and Malakmalak dispute, the Kungwarakang and Maranunggu dispute: These are the well-known names of current bitter intra-Aboriginal arguments over what constitutes a “traditional attachment” to country, arguments battled in courts and bush camps. I had no idea what to reply when Marjorie Bilbil asked me,

What if we are wrong?

life. He is comparable with a dancer like Le Shine — the art of a faun ballet. Really, but don’t take my word for it: Ask Ted Shaun, the American dancer who toured Australia and visited Delissaville and who said that Mosec would be a sensation in London or New York.” “Death Rite for Mabalang.”

Alternative Modernities

Edited by Dilip Parameshwar Gaonkar

DUKE UNIVERSITY PRESS • DURHAM & LONDON 2001

© 2001 Duke University Press All rights reserved

Printed in the United States of America on acid-free paper ⊗

Typeset in Adobe Minion by Tseng Information Systems, Inc.

Library of Congress Cataloging-in-Publication Data

appear on the last printed page of this book.

Contents

Acknowledgments ix

Dilip Parameshwar Gaonkar On Alternative Modernities 1

Elizabeth A. Povinelli Settler Modernity and the Quest for an
Indigenous Tradition 24

Andrew Wachtel Translation, Imperialism, and National
Self-Definition in Russia 58

Leo Ou-fan Lee Shanghai Modern: Reflections on Urban Culture
in China in the 1930s 86

Dipesh Chakrabarty *Adda*, Calcutta: Dwelling in Modernity 123

Robert McCarthy, editor Miniaturizing Modernity:
Shahzia Sikander in Conversation with Homi K. Bhabha 165

Charles Taylor Two Theories of Modernity 172

Thomas McCarthy On Reconciling Cosmopolitan Unity
and National Diversity 197

William Cunningham Bissell Camera Zanzibar 237

Tejaswini Niranjana “Left to the Imagination”:
Indian Nationalisms and Female Sexuality in Trinidad 248