The State of Shame: Australian Multiculturalism and the Crisis of Indigenous Citizenship

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> I know I have hurt you. But I want to make (it) up to you, repair the rupture, bridge the rift between us, heal the pain that I have caused. I want us to imagine a place where the possibility of our hurting each other does not exist. Where we can each be our different selves without shame, without fear, without alienation. True partners in peace. A world of brothers and sisters. A world of recognition and enhancement. This is the right thing to do: to heal, to move on, to found and enter a New Society.

1. The Tip of the Clitoris

In Western Europe and the United States, public anxieties about cultural diversity and national identity are often expressed at the tip of the clitoris. In the late 1990s, an economically depressed and politically terrorized France could not agree on the grounds for excluding from the nation the North African diaspora living there but could, at least initially, agree on

Research for this essay was supported by the National Science Foundation and the Wenner Gren Foundation. I would like to thank Lauren Berlant for her critical intellectual and editorial contribution to this essay, as well as Michel-Rolph Trouillot, Biddy Martin, Susan Edmunds, Jessica Klingender, Tony Young, Tom Keely, Deborah Bird Rose, and audiences in the Johns Hopkins University's Institute for Global Studies and the Chicago Humanities Institute's conference, "Dislocated States," where versions of this essay were presented. And of course, foremost and finally, I thank the men and women coming and going from Belyuen.

Critical Inquiry 24 (Winter 1998)

the necessity of outlawing the "'genital mutilations'" some in this community inflict on its young girls.[1] In 1996, the U.S. Congress outlawed clitoridectomies and directed U.S. representatives to the World Bank and other international financial institutions to withhold billions of dollars in aid to twenty-eight African countries if they did not sponsor education programs aimed at eradicating the practice.[2] A putatively pro-diversity President signed this bill in a national "post–civil rights" context in which "most Americans believe themselves and the nation to be opposed to racism and in favor of a multiracial, multiethnic pluralism."[3] In 1997 some members of the Illinois legislature proposed a bill that would stiffen this federal legislation in the state. The urgency they expressed, which suggested that the Midwest was in the grip of a clitoridectomy epidemic, was perhaps rather more motivated by their anxiety that urban areas like Chicago were haunted by the black Muslim movement.[4] In France and the United States, state officials and public figures struggled to maintain a utopian image of a national culture against the pressure of transnational migration and internal ethnic divisions by holding up this clipped bundle

1. Celia W. Dugger, "Tug of Taboos: African Genital Rite vs. U.S. Law," *New York Times*, 28 Dec. 1996, p. A1. The same article notes that France used already existing legislation prohibiting violence against children to outlaw the practice of clitoridectomy. The French state's discipline of a North African practice has an uncanny relationship to its past war in Algeria and to its present-day political relationship with Algeria. The *New York Times*, for example, noted, "The war has at times come to bear an uncanny resemblance to the war of Algeria's independence. Then, too, the guerrillas, Algeria's National Liberation Front, used methods of startling savagery—including disembowelment, decapitation and the mutilation of genitals—to shatter the middle ground in society. Then, too, the authorities, represented by the French Army, responded with torture and indiscriminate killing. Then, too, the war spilled over into France, dividing its society and destroying the Fourth Republic" (Roger Cohen, "Troubled Tie: France Hears Alarming Echoes of Colonial Past from Algeria," *New York Times*, 6 Dec. 1996, p. A12).

2. The legislation was sponsored by Representatives Pat Schroeder (D-Colorado) and Harry Reid (D-Nevada) as part of the Immigration Act. See Dugger, "Genital Mutilation Is Outlawed," *New York Times*, 12 Oct. 1996, p. A27, and Sharon Lerner, "Rite or Wrong?" *Village Voice*, 26 Mar.–1 Apr. 1997, pp. 44–46.

3. Christopher Newfield and Avery F. Gordon, "Multiculturalism's Unfinished Business," in *Mapping Multiculturalism*, ed. Gordon and Newfield (Minneapolis, 1996), p. 77.

4. A social geography of the practice is emerging in the mass media. The *New York Times*, for instance, educates the public on the regions where women are at the greatest risk thus: "New York and Newark are among the metropolitan areas where the largest number of these at-risk girls and women live" (Dugger, "Genital Mutilation Is Outlawed," p. A27).

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of nerves to public scrutiny as the limit of a "civilized" nation's tolerance of its internal cultural diversity.

State and public figures made the clitoris a commonsense limit of nationalism and thereby produced a "civil nation" around this limit not simply or primarily by referring to the universal principles that the practice violated but by evoking complex affective reactions. They did what Gramsci insisted was necessary to hegemonic projects: they cohered a national will through passionate dramas and experiences of intimate community, not for the most part through pedantic argument.[5] Whereas the trappings and dramas of religion were critical to the consolidation of a national will in Gramsci's time, now the putatively preideological truth of shame or, as Lauren Berlant has argued, the politics of sentimental feeling,[6] is critical to "the formation of a national-popular collective will" that the state can use to produce "a superior, total, form of modern civilization."[7] As if they deeply understood these thoughts, state and public figures trumpeted the national shame of allowing "such practices" of savagery and barbarism, of ignorance and superstition, to take place within its borders. The phrase "such practices" acts to expand the field of shame and cast a pall over unnamed subaltern practices across spaces in which no national-popular collective will would be possible and over entire continents where such practices are imagined to occur.[8]

For the moment this national fetish seems to allay the contradictions and ambivalences of liberal multiculturalism.[9] But when official spokes-

5. See Antonio Gramsci, "The Modern Prince," *Selections from the Prison Notebooks,* trans. and ed. Quintin Hoare and Geoffrey Nowell Smith (New York, 1971), esp. pp. 132–33.

6. See Lauren Berlant, "The Subject of True Feeling: Pain, Privacy, and Politics," in *Cultural Pluralism, Identity Politics, and the Law,* ed. Austin Sarat (Ann Arbor, Mich., 1997).

7. Gramsci, "The Modern Prince," p. 133.

8. The mass media often conflates a diverse set of non-Western cultural practices and represents these as "premodern" or "precivil." For instance, the *New York Times* writes, "a much broader struggle [is] taking place across Africa. Throughout much of the continent, from the ritual slavery of the Ewe to female genital mutilation to polygamy, ancient practices that strike both Westerners and many Africans as abhorrent coexist side by side with modernity" (Howard W. French, "Africa's Culture War: Old Customs, New Values," *New York Times,* 2 Feb. 1997, p. D1). Public culture is currently struggling over how to understand the (il)legitimacy of these practices when they occur among immigrants to the United States. How should U.S. law treat underage marriage, polygamy, and wife beating when they occur in immigrant communities? See Nina Schuyler, "When in Rome: Should Courts Make Allowances for Immigrant Culture at Women's Expense?" *In These Times,* 17 Feb.–2 Mar. 1997, pp. 27–29.

9. In the wake of the U.S. Congress's act to outlaw clitoridectomies, the left and center mass media reported divisions among communities affected by the law, as well as within the medical community. For instance, the *New York Times* reported that U.S. health care officials were split in their opinions on whether it was better to permit moderated and medically supervised clitoridectomies (giving a "ritual nick of the prepuce") or to condemn the practice to untrained persons who would perform the operation illegally (Dugger, "Tug of Taboos," p. A9). These divisions within the medical community and the community of practice are noted but underemphasized in Lerner, "Rite or Wrong?"

persons of national culture repudiate subaltern practices by evoking the nation's aversion to them, they encounter the difficulty of discursively grounding their moral claim within a multicultural discourse.[10] And they encounter the double-edged nature of using shame as a tool for building national collective wills. On the one hand, as the ban on clitoridectomies shows, certain subaltern practices can produce the experience of a *national* collective will, even in the midst of public debate, by producing as an experience of intimate communal aversion the barbaric, uneducated, and savage practices that *we* as a civilized nation cannot allow to occur within *our* borders. A particular body of belief is, at least temporarily, elevated to the status of a universal principle primarily through pageantries of corporeal shame and revulsion.[11] But, in this case as in others, liberal democratic societies are now haunted by the specter of mistaken intolerance. They now know that in time their deepest moral impulses may be exposed to be historically contingent, mere prejudices masquerading as universal principles. In particular, past colonial and civil rights abuses cast a shadow over present moments of national and individual intolerance. In the "historical mutation" of the modern liberal democratic society, not only is every "universal grounding . . . contemplated with deep suspicion" but every moment of moral judgment is potentially a moment of acute personal and national embarrassment.[12] Popular and critical thinkers suffer their (in)tolerance; they do not simply decide to be tolerant or intolerant. Liberal members of democratic societies stumble, lose their breath, panic, even if ever so slightly, when asked to say why, on what grounds, according to whom, a practice is a moral, national limit of tolerance. And, as they panic, they show how the logic of multicul-

10. Stanley Fish has outlined the contradictions and ambivalences in various models of multiculturalism. He and others distinguish weak and strong forms of multiculturalism by the degree to which *any* moral judgment is seen as based on universal grounds exterior to the particularities of cultural logics or *all* moral judgments are seen as excretions of cultural logics or historical discursive positions. Fish argues, however, that both models are incoherently formulated. According to Fish, even the most critical proponents of strong multiculturalism eventually stumble upon a case of cultural difference that they *feel* they should refuse to support or that they *do* refuse to support for reasons that sound universalizing, but now cannot be defended as such. This is famously evidenced in the Salman Rushdie and NAMBL (North American Man-Boy Love) cases. See Stanley Fish, "Boutique Multiculturalism, or Why Liberals Are Incapable of Thinking about Hate Speech," *Critical Inquiry* 23 (Winter 1997): 378–95. For a general discussion of the discursive impasse of multiculturalism in liberal democratic society, see Chicago Cultural Studies Group, "Critical Multiculturalism," *Critical Inquiry* 18 (Spring 1992): 530–55; David Theo Goldberg, "Multicultural Conditions," introduction to *Multiculturalism: A Critical Reader,* ed. Goldberg (Oxford, 1994), pp. 1–41; and Gordon and Newfield, introduction to *Mapping Multiculturalism,* pp. 1–16. For a critical discussion of the instability of both universalist and particularist grounds for moral claims, see Ernesto Laclau, "Universalism, Particularism, and the Question of Identity," in *Emancipation(s)* (London, 1996), pp. 20–35.

11. See Laclau, "Universalism, Particularism, and the Question of Identity," p. 35.

12. Laclau, introduction to *The Making of Political Identities,* ed. Laclau (London, 1994), p. 1.

turalism disorganizes the discursive and imaginary field that every limit to it coheres.

The lost certainty of its moral groundings wracks national hegemonic projects and helps explain the force of cultural censure in those moments when some national collective will can be found or forged. The nausea created by these shifting grounds becomes especially clear in public debates over particular national intolerances, in which the difficulty of grounding (in)tolerance in specific instances spreads and threatens the general notion of the nation itself, along with a nation-based identity and identification. These anxious national debates circulate through national and transnational mass media and intellectual publics, expanding into much broader crises of modernism, liberalism, humanism, and the democratic polity. After all this history, whose nation is any one nation, after all? Who, after all this history, owns modernity and its hallmarks, humanism and democracy? What groups do humanism, democracy, and the common law serve, protect, and maintain?

This is the nerve ending this essay seeks to understand: how the state uses a multicultural imaginary to solve the problems that capital, (post)-colonialism, and human diasporas pose to national identity in the late twentieth century. And, more specifically, it seeks to understand how these state multicultural discourses, apparatuses, and imaginaries defuse struggles for liberation waged against the modern liberal state and recuperate these struggles as moments in which the future of the nation and its core institutions and values are ensured rather than shaken.

The essay's argument unfolds primarily through an analysis of a 1992 Australian High Court ruling on the native title rights of indigenous Australians, *Mabo and Others* v. *The State of Queensland,* and of a 1989 land rights case heard in the Northern Territory of Australia, the *Kenbi Land Claim.* I argue that the High Court and those state and public officials who supported their decision understood *Mabo* to be the fulfillment of the promise of the common law and the national civilization for which it stands. In their eyes, *Mabo* rejected past (pre)judicial racial and cultural intolerance and now recognized native title to be a legitimate part of a newly reconstituted multicultural nation.[13] In the first part of the essay, I show instead how native title acts as a fetish around which law, state, and public organize and displace their anxieties about the nation's political, cultural, and economic worth and identity. And I show how the court and state construct native title as a legitimate part of state multiculturalism only to plough it into the ground of a new, transcendental, monocultural nation.

At this switch point, when multiculturalism becomes the grounds for

13. Native title is a form of beneficial title colonial subjects hold based on their traditional laws and customs. The state holds radical title, a form of title that gives the sovereign paramount power to create interests in land by grant of tenure. For a discussion of native title and state sovereignty in the context of *Mabo,* see, for example, *Sydney Law Review* 15

a new form of national monoculturalism, the state's struggle for hegemony depends on representing its practices and intentions in two very different registers. On the one hand, the court and state deploy an abstract language of law, citizenship, and rights—a principled, universalizing, pedantic language. On the other hand, they deploy a language of love and shame, of haunted dreams, of traumatic and reparative memory, of sensuality and desire. State functionaries engage dominant and subordinate social groups in an intimate drama of global discourse and capital, of national identity, of history and consciousness. As they do so, the court and state make shame and reconciliation—a public, collective purging of the past—an index and requirement of a new abstracted national membership. But the law and state do not require all citizens to undergo the same type of public, corporeal cleansing, the same type of psychic and historical reformation. In the final sections of the essay, I detail the contradictory demands the law places on indigenous subjects, namely, that indigenous persons at once orient their sensual, emotional, and corporeal identities towards the nation's ideal image of itself as worthy of love and reconciliation and at the same time ghost this *being for* the nation.[14] Indigenous persons must desire and identify in a way that just so happens, in an uncanny convergence of interests, to fit the national imaginary. With the help of lawyers and anthropologists like myself, they must make the incommensurate discourses, desires, and imaginaries of the nation and its subalterns arrive at a felicitous, although unmotivated, endpoint. If indigenous persons slip, if they seem to be being opportunistic, to be speaking to the law too much or not enough or in a cultural framework the court recognizes as its own, they risk losing the few judicial and material resources the state has made available to them. To weigh the political stakes of these national hegemonic projects, our analyses must be as mobile as the projects themselves; must engage, as they do, the discursive and the global, the microdiscursive, the imaginary, and the corporeal currents through which new relations of social dominance are currently being articulated.

The Australian juridical, state, and public commitment to multiculturalism provides an especially interesting example of the role a multicul-

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(June 1993). For a more general discussion, see *State Sovereignty as Social Construct,* ed. Thomas J. Biersteker and Cynthia Weber (Cambridge, 1996).

14. See Slavoj Žižek's discussion of the critical ideological role played by images in which the nation and its citizens appear likable to themselves and worthy of love in *The Sublime Object of Ideology* (London, 1989), p. 105. See also Etienne Balibar's provocative reading of Althusser on ideology: "Just as the accumulation of capital is made of 'living labor' (according to Marx), so the oppressive apparatuses of the State, Churches, and other dominant institutions function with the popular religious, moral, legal and aesthetic imaginary of the masses as their specific fuel" (Etienne Balibar, "The Non-Contemporaneity of Althusser," in *The Althusserian Legacy,* ed. E. Ann Kaplan and Michael Sprinker [New York, 1993], p. 13).

tural discourse and fantasy play in cohering national identities and allegiances and in defusing and diverting liberation struggles in late modern liberal democracies. In response to very different social, historical, and geopolitical conditions than the United States experienced, Australian nationalism came to mean something other than descent from the convict, ruling, or immigrant classes who arrived from Britain and western Europe. And more firmly and publicly than the United States, the Australian state claims to have renounced the ideal of "a unitary culture and tradition" and instead now "recognise[s]" the value and worth of "cultural diversity within, . . . as the basis of . . . a more differentiated mode of national cohesion."[15] Australian state officials represent themselves and the nation as subjects shamed by past imperial, colonial, and racist attitudes that are now understood as having, in their words, constituted "the darkest aspect" of the nation's history and impaired its social and economic future.[16] Multiculturalism is represented as the externalized political testament both to the nation's aversion to its past misdeeds, and to its recovered good intentions.

Rather than just some general acknowledgment of shameful past wrongdoings and some limited tolerance of present cultural differences, Australia has putatively sought a more radical basis of national unity. In state and public discourse, the multicultural Australian nation aspires to be "truly multicultural." What is meant by this? In contemporary Australia, official spokespersons claim that multiculturalism is an assemblage of the diverse and proliferating social identities and communities now composing the nation's internal population with no one social position's or group's views serving as an oppressive grounding discourse. Cleansed by a collective moment of shame and reconciliation, the nation will not only be liberated into good feelings and institutions but will also acquire the economic and social productivity necessary to regain its political and economic hegemony in the Asia-Pacific—or at least to keep the nation from falling further and further behind its northern neighbors.

But this new national formation remains a utopian fantasy at best, an experience possible only through the suppression of countervailing tendencies. In the first place, Australian multiculturalism is exemplary of late modern liberal understandings and institutionalizations of difference. In this liberal imagination the state apparatuses, as well as its law, principles of governance, and national attitudes, need merely be *adjusted* to accommodate others; they do not need to experience the fundamental alterity of, in this case, indigenous discourses, desires, and practices or their potentially radical challenge to the nation and its core institutions and values such as "democracy" and the "common law." Likewise, the

15. John Frow and Meaghan Morris, introduction to *Australian Cultural Studies: A Reader,* ed. Frow and Morris (Urbana, Ill., 1993), p. ix.

16. *Mabo and Others* v. *The State of Queensland,* in *The Mabo Decision,* ed. Richard H. Bartlett (Sydney, 1993), p. 82; hereafter abbreviated *M.*

state and its normative publics imagine that their experience of radically other cultures and practices can be unhinged from horror and abjection. Alterity is not seen as a threat or challenge to self- and national coherence but is seen, instead, as compatible with an incorporative project, an "invitation to absorption."[17] In short, in this liberal imaginary, the now recognized subaltern subjects would slough off their traumatic histories, ambivalences, incoherencies, and angst like so much outgrown skin rather than remain for themselves or for others the wounded testament to the nation's past bad faith.[18] The nation would then be able to come out from under the pall of its failed history, betrayed best intentions, and discursive impasses. And normative citizens would be freed to pursue their profits and enjoy their families without guilty glances over their shoulders into history or at the slum across the block.

Second, these new models of the multicultural nation and its citizenry have not displaced classic liberal models of the state and citizenship, nor do many state and public spokespersons intend them to. These older models of citizenship continue to inform state function, public discourse, and individual feelings about what it is right and wrong to demand from the state and its normative publics. On the one hand, the Australian state has always had and continues to reserve the power to discriminate—and to discriminate against—those social and cultural differences considered harmful to individual citizens or the nation's so-called core values. Clitoridectomies are a case in point of this state process, as are the U.S. laws against polygamy and homosexual sodomy. Rather than displacing this classic disciplinary power, Australian multiculturalism has added a new dimension to its function. The state now has both the right to sanction "harmful" social practices and identities—that is, to sanction cultural difference—and the right to discern when a social or cultural difference has ceased to function as a difference as such. The state, in other words, has expanded its discriminatory powers, not restricted them. It is now empowered to prohibit and to (de)certify cultural difference as a rights- and resource-bearing identity. Yet, Australian state apparatuses and public discourses continue to ground citizenship in abstract juridical identities supposedly neutral in relation to social identities, identifications, and practices. Once the state decertifies an individual or community, once it no longer recognizes the form of cultural difference they possess, these persons and communities are "liberated" back into the community of abstract citizenship.

The Australian state and law are not, however, simply acting in bad faith, and Australian multiculturalism is ideological not only in the sense

17. Wendy Brown, "Injury, Identity, Politics," in *Mapping Multiculturalism*, p. 150.

18. Several essays on identity, difference, and democracy have critically attended to the politics of "wounded" subjects in late modern liberal societies. See, for instance, Brown, "Injury, Identity, Politics"; Berlant, "The Subject of True Feeling"; and Fish, "Boutique Multiculturalism."

of masking a dominant class interest. Instead, Australian multiculturalism is a deeply optimistic liberal engagement with the democratic form under conditions of extreme torsion as social and cultural differences proliferate and as capital formations change. This engagement is generating "'utopian' narratives of possible" if, in the end, "failed alternative histories," which, nevertheless, "point towards the system's antagonistic character" and thereby "'estrange'" the nation from "the self-evidence of its established identity."[19] The real optimism of Australian multiculturalism is what this essay troubles and is troubled by. These hopes and optimisms and the individual and national telos they describe seduce critical thinking away from an analysis of how dominant social relations of power rely on a multicultural imaginary and discourse in order to adjust core state institutions and narratives to new discursive, capital, and state conditions, not to transform them.

2. *The Shame of Legal Discrimination*

In *Mabo,*[20] the nation-state's highest juridical body considered a case from a representative of "a people" in whose vicious colonization the common law was implicated and whose continuing structural impoverishment was widely discussed in national and transnational public spheres.[21] On behalf of a Torres Strait Islander group, Eddie Mabo claimed that his native title had never been extinguished and, therefore, that he and his group retained proprietary rights over their land. Up until this case, court after Australian court had refused to recognize that

19. Žižek, "The Spectre of Ideology," introduction to *Mapping Ideology,* ed. Žižek (London, 1994), p. 7.

20. The volumes written discussing the impact and meaning of *Mabo* on property and sovereignty are too numerous for me to give a full bibliography here. The following legal collections were useful to the preparation of this essay: *Sydney Law Review* 15 (June 1993) and *University of New South Wales Law Journal* 16 (Jan. 1993). Also useful were these collected volumes: *After Mabo: Interpreting Indigenous Traditions,* ed. Tim Rowse (Carlton, 1993); *In the Age of Mabo: History, Aborigines, and Australia,* ed. Bain Attwood (Sydney, 1996); and *Make a Better Offer: The Politics of Mabo,* ed. Murray Goot and Rowse (Leichhardt, 1994). In an insightful reading of the *Mabo* decision that critiques liberal theories of society and justice, Paul Patton highlights how critical thinking fell for the seduction of legal recognitions of difference as a path towards a differential concept of society rather than as an inhibitor. See his two related essays, "*Mabo,* Freedom, and the Politics of Difference," *Australian Journal of Political Science* 30 (Mar. 1995): 108–19 and "Sovereignty, Law and Difference Australia—After the *Mabo* Case," *Alternatives—Social Transformations and Humane Governance* 21 (Apr.–June 1995): 149–70.

21. Between 1992 and 1995 several Australian Commonwealth commissions were established to investigate both the large number of Aboriginal deaths in custody and the poor quality of health in Aboriginal communities. In addition, Amnesty International investigated the high rate of incarceration of Aboriginal men as a possible violation of their human rights.

indigenous Australians had had sufficient social organization and the proper cultural beliefs to have evolved property interests (native title) in Australian lands at the moment of colonial contact.

In a defining moment on 3 June 1992, the court broke with tradition in a six to one decision. It overturned the doctrine that Australia was *terra nullius* (a land belonging to no one) at the point of settlement and decided, instead, that Aboriginal Australians had and retained native title interests in the land. Where the Australian state had not explicitly extinguished native title, Aboriginal Australians had and still held that title if they maintained the traditional customs, beliefs, and practices that created the substance of their difference. The judicial majority argued that it was no longer tolerable to make sovereignty contingent upon representing native peoples as "'so low in the scale of social organisation'" that it was "'idle to impute to such people some shadow of the rights known to our law'" (*M*, p. 27).

The justices could have limited their decision to the case at hand: did these particular people (Mabo and this group of Torres Strait Islanders) have native title interests in this particular land or not? For the court to do so, however, a majority of justices would have had to sign, name by name, onto the savage conditions to which most Australian indigenous people were historically and are still subjected, conditions broadcast globally by multinational and transnational organizations like the United Nations, Amnesty International, and various nongovernmental indigenous organizations, and mass cultural figures like Sting. And it would have had to sign away the relevance of the nation's highest court to the social welfare of its most discriminated-against people, leaving their fate to state largesse or their own political acumen.

In 1992, six High Court justices would not cast their names into a current of legal history now widely understood to be propelled by racial and cultural intolerance. Writing that the common law was shamed by its racist history and the gaze of the international community, the justices took the occasion to alter fundamentally the grounds of Australian sovereignty. They chose to sign their names under the signifier *Social Justice* and to differentiate this new version of justice from an older version to which the same common law had subscribed in colonial times. In other words, in these justices' hands, the common law was represented as the fertile inner kernel of justice that a selective reading of precedent could release from the inert husks of racial prejudice. The justices relied on the great optimism and utopianism of the common law, which holds that good judgment will in theory always emerge from the archive of precedent. This belief licensed these justices to use the very tools that had legislated and institutionalized racial and cultural prejudice to free national institutions from that prejudice without performing an ideological critique of the institutions themselves. And here the High Court marked its deep commitment to liberalism, implicitly declaring that good inten-

tions and good precedents are sufficient to make institutions good versions of themselves.

But neither the High Court justices nor those who supported their decision relied simply on the supposedly universal principles of justice embodied in the common law. They also relied on national passions and affects organized around the imaginary of a shamed and redeemed nation. The High Court argued not only that the common law could not tolerate the racial foundations of *terra nullius* but also that law and liberal democratic states were shamed by their continued adherence to what the court called the "'barbarian' theory underpinning the colonial reception of the common law of England" (*M,* p. 26). The justices and the Labor Party, which supported the ruling, argued that "the fiction of *terra nullius*" was a racist, humiliating betrayal of the Good that the common law and liberal democratic state was, sought to be, and represented to the nation, as well as of the expectations and values to which the Australian people aspired.[22] Past uses of cultural discrimination were held up as shameful, though excisable, cancers on the root good of the common law. In short, the precedent of the common law's shame or virtue came to figure national history, critical national aspirations and diversions, and national morality. And hegemonic national history and consciousness came to be figured as the archive of precedent. Even at the moment of this inclusion into the liberal multicultural state imaginary, specific indigenous histories, memories, and practices were irrelevant. Instead, these diverse, sometimes fragmentary elements had to be reformulated to fit the common law and statutory law, along with whatever native title legislation resulted from the decision.

The court was engaging in and helping to define public debates over the proper affective response of the nation to its settler past. It was not alone in this project. For instance, an editorial in *The Australian* asked readers to consider whether shame or guilt was the proper and most nationally productive emotional response towards Australia's indigenous groups. In so asking, the editorial reiterated and fixed the social location of the normative citizen as Anglo-Celtic. The addressee of the editorial, the community of anxiety that it engaged, remained a loosely defined "Anglo-Celtic," *like* the writer, forced to (re)think its "whiteness" against colonial history and, as we will see, contemporary regional realignments of states and capital in the Asia-Pacific. The editorial begins by quoting the High Court majority decision:

> With justices William Deane and Mary Gaudron, the matter was put as clearly and truly as it could be. The dispossession of the Aborigines was 'the darkest aspect' in the history of Australia. It had bequeathed

22. P. J. Keating, "Australian Update: Statement by the Prime Minister, The Hon. P. J. Keating Commonwealth Response to High Court *Mabo* Judgment, Canberra, 18 October 1993," *Aboriginal Law Bulletin* 3 (Oct. 1993): 18; hereafter abbreviated "AU."

> us a legacy of 'unutterable shame.' While this legacy remained unacknowledged and unrepaired in law, the spirit of our nation was diminished.[23]

According to this editorial, to be Australian necessitated not a "collective guilt over the dispossession of the Aborigines" but an "embeddedness" and "implication" in the nation's history, "in a way outsiders or visitors cannot be." Pride in national achievements, such as that felt by the nation for the soldiers who fell at Gallipoli, is no better suited for the task of nation building than shame at national wrongdoings.[24] What is crucial is that the state, law, and public collectively engage in the pride *and* shame occasioned by historically specific and nationally differentiated colonial and civil rights struggles. An embeddedness, implication, and engagement in the nation's historic brutality towards its colonial subjects is rewritten as the necessary condition of nation making in late modern liberal democratic societies. It is the crucial affective element in the definition of its borders, interiors, discourses, imaginaries, and identities.

But the High Court decision and public statements supporting it leaned not only on images of the shamed national subject but also on images of a national subjectivity now fully conscious of its past mistakes. Their statements continually referred to a repaired social body, to an equitable society, and to a nonracist white subject, made possible through the passage of *Mabo* and the Native Title Act that was a legislative response to it. Court judgment and legislative act would be the political testament to the good intentions of the state and its normative publics. Repairing the law and national attitudes would break the nation's legacy of racial and cultural intolerances. These repairs, however, were primarily to the torn images and institutions of Anglo-Celtic Australians—the real addressees of the court. That is, the High Court and its supporters constructed their legal act as a journey to a promised land in which the possi-

23. Robert Manne, "Forget the Guilt, Remember the Shame," *The Australian,* 8 July 1996, p. 11.

24.

> Talk of sharing in a collective guilt over the dispossession of the Aborigines is one thing; however, talk of sharing in a legacy of historical shame is altogether another. This distinction is most easily explained by analogy.
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> Conservatives . . . would have no difficulty in feeling admiration and a kind of pride in, say, the resourcefulness shown by the pioneers or the courage shown by the soldiers at Gallipoli. I am sure, too, that they would hope that other Australians would share in their admiration and their pride. Yet if it is possible and just to feel pride in the achievements of forebears, it surely cannot be regarded as impossible or unjust to feel shame about past wrongs.
>
> The case I am making can be put simply. To be an Australian is to be embedded or implicated in this country's history in a way outsiders or visitors cannot be. To be implicated in this history opens—as conservatives easily acknowledge—the possibility of reasonable pride. But to be open to the possibility of pride in achievement is also necessarily to be open to the possibility in shame in wrongdoing. [Manne, "Forget the Guilt, Remember the Shame," p. 11]

bility of social discrimination would cease because good attitudes and good legislation would repair the unnatural deformations of the law's good intentions and, thereby, those of the state and its normative citizens. The potential radical alterity of indigenous beliefs, practices, and social organization was not addressed. Instead the court decision and the public discourse surrounding it urged dominant society on a journey to its own redemption, leaning heavily on the unarguable rightness of striving for the Good and for a national reparation and reconciliation.

3. Tides of History

The court's invitation to the nation to enter history anew, in a refreshed and cleansed version of a persisting, unchanged ideal image of itself, was not extended to the indigenous subjects around whom it organized its shame. I noted above that the court found that Aboriginal Australians retained their native title interests in land *if* they retained the traditional customs, beliefs, and practices that created the substance of their difference. This "if" curtailed the history-bearing capacity of indigenous tradition, making the legal standing of Aboriginal traditional customs, beliefs, and practices more limited than might be suggested by the language of the court. On the one hand, in this particular decision, the court stated that Aboriginal traditions could change and adapt to new circumstances but that they still had to embody and perform the ideal of "tradition" and "locality."[25] The High Court held that "when the tide of history has washed away any real acknowledgment of traditional law and any real observance of traditional customs," the foundation of native title disappeared (*M,* p. 43).[26] As if merely substituting culture for an older version of race, the court argued that if Aboriginal culture interbred with another "heritage" to some underdefined degree, it forfeited these rights. On the other hand, some traditions, some features and some practices of customary law were and remained prohibited under statutory and common law. Clitoridectomies, ritual group sex, murder, and certain marriage practices, for instance, shamed the common law and the nation's

25. "Where a clan or group has continued to acknowledge the law and (so far as practicable) to observe the customs based on the traditions of that clan or group, whereby that traditional connection with the land has been substantially maintained, the traditional community title of that clan or group can be said to remain in existence" (*M,* p. 2).

26. In 1993, during a televised address to the nation presenting and defending his decision to enact legislation based on the *Mabo* ruling, Prime Minister Paul J. Keating summarized the conditions the court imposed on the legal productivity of Aboriginal traditions: "The Court accepted that native title existed where two fundamental conditions were met: that their connection with the land had been maintained, unbroken down through the years, and that this title had not been overturned by any action of a government to use the land or to give it to somebody else" (P. J. Keating, "Prime Minister's Address to the Nation," in *Make a Better Offer,* p. 236).

core values. These Aboriginal traditions had no legal standing; they were allowed to exist only as nostalgic traces of a past, fully authentic Aboriginal tradition. As traces, neither fully forgotten by law or public nor ever fully present to them, these prohibited practices continue to haunt all contemporary representations of Aboriginal tradition, casting an aura of inauthenticity over present-day Aboriginal performances of their culture. In other words, although the court may engage history, Aboriginal Australians express at their own risk their engagement with the democratic form of capital and governance within which they live; the memorial forms of their own histories; and their ambivalences towards these traditions, identities, and identifications.

The court confined its ruling to a legal recognition of only those traditions not already prohibited by common and statutory law, a limitation that seems in no way to have cast a penumbra of doubt around the common law's claim that in the *Mabo* decision it recognized the value of Aboriginal law in recognizing native title.[27] But it was still faced with the difficult job of separating the common law and Aboriginal law at the historical moment when cultural interchange defines the global system; when anxieties about national identity, status, and power dominate public discussion; and when an older means of distinguishing cultural types is widely held to be racially intolerant. If a group's culture is to be the object of juridical inquiry, then laws, cultures of law, and cultures that have produced systems of law have to be theoretically separable and the act of separation must signify a (post)racist practice. Gone, the court claims, are the days when the other's law could be univocally deemed "barbarian" and discarded as legally irrelevant. For the state to base contemporary social policy and law on such colonial frameworks exposes it to international charges of racial and cultural intolerance.

The techniques of cultural discrimination the court established have a fairly straightforward structure. First, they separate and make relative Aboriginal and non-Aboriginal cultural systems even while establishing a formal relationship of value among types of Aboriginal cultural performance. Next, they differentiate the site from which European and Aboriginal legal systems obtain their value and seek their telos. And, finally, they bind the attainment of native title rights to the successful judicial performance of this fantastic separation, origination, and destiny.

The court's achievement of a commonsense, (post)racist separation is in part an effect of the recursivity of pronominal reference. By referring to the shame of "our" law and "our" nation and the good of recognizing "their" laws, "their" culture, and "their" traditions, the court is able

27. For a discussion of the potential of *Mabo* for expanding recognition of Aboriginal customary law, see Rob McLaughlin, "Some Problems and Issues in the Recognition of Indigenous Customary Law," *Aboriginal Law Bulletin* 3 (July 1996): 4–9. For a fuller discussion, see The Law Reform Commission, *The Recognition of Aboriginal Customary Laws* (Canberra, 1986).

to cite and entrench an understanding of the nation as confronting its own discriminatory practices and facing up to and eliminating a dark stain on its history even as it iteratively reproduces the nation as Anglo-Celtic and "ours." Labor Prime Minister Paul Keating's public statements supporting the implementation of the *Mabo* ruling mirrored the court in critical ways. In a speech commemorating the Australian launch of the International Year for the World's Indigenous People, Keating trumpeted the "historical . . . reconciliation" between Aboriginal and non-Aboriginal Australians and announced his government's intention to use *Mabo* to establish "a prosperous and remarkably harmonious multicultural society."[28] According to Keating, this "socially just" new multicultural society could be painlessly achieved with no serious costs or losses for "Australians"—that is, "we" non-Aboriginal Australians.[29] Moreover, it would not challenge, threaten, or set into crisis the basic values of Australians (including "our" right "to enjoy beaches and other recreation areas, including national parks") ("AU," p. 18). Reconciliation and the socially just new multicultural society to which it would be a testament simply meant "acknowledging" and "appreciating" Aboriginal Australians and providing a "*measure* of justice" for them ("AU," p. 18; my emphasis).[30] Thus, like the High Court and the mass media, in his public addresses and policy papers, Keating framed the legal dilemma of *Mabo* as a symbol of the moral dilemma multiculturalism posed to Anglo-Celtic Australians: the "plight of Aboriginal Australians continues to be *our* failure" and the common law and the social and judicial values under threat are "ours," as is the cultural system into which Aboriginal Law (their law) is being accommodated ("SH," p. 4).[31]

The deictical field the court cites and iterates ("ours" and "theirs") to separate Australian and Aboriginal laws and cultural practices makes it possible, even expected, to differentiate the sites from which these "legal systems" obtain their value and seek their telos and to represent this differentiation, this cultural discrimination, as a nondiscriminatory project. For instance, the court confidently states that native title obtains its value

28. Keating, "Speech by the Honourable Prime Minister, P. J. Keating MP Australian Launch of the International Year for the World's Indigenous People, Redfern, 10 December 1992," *Aboriginal Law Bulletin* 3 (Apr. 1993): 4–5; hereafter abbreviated "SH."

29. "The message [of Mabo] should be that there is nothing to fear or to lose in the recognition of historical truth, or the extension of social justice, or the deepening of Australian social democracy to include indigenous Australians" ("SH," p. 5). See also "AU," p. 18.

30. Keating is referring to the Council for Aboriginal Reconciliation (CAR). He stated that the mission of this council was "to forge a new partnership built on justice and equity and an appreciation of the heritage of Australia's indigenous people" ("SH," p. 4). For a critical account of the CAR, see also Daniel Lavery, "The Council for Aboriginal Reconciliation: When the CAR Stops on Reconciliation Day Will Indigenous Australians Have Gone Anywhere?" *Aboriginal Law Bulletin* 2 (Oct. 1992): 7–8.

31. See M. J. Detmold, "Law and Difference: Reflections on Mabo's Case," *Sydney Law Review* 15 (June 1993): 159–67.

from its ability to signify fixity, stasis, and resistance to a historical dialectic: "native title has its origin in and is given its content by the traditional laws acknowledged by and the traditional customs observed by the indigenous inhabitants of a territory" (*M,* p. 42). In contrast to native title, common law's value arises not from a fixed, locatable territory but from its historical dialogue with elite international institutions. As opposed to the origin and telos it assigns native title, the court locates the preeminent value of common-law doctrine in its ability to "reflect" a historically progressive dialectic of nationality and internationality and, in reflecting this dialectic, to embody truth and justice. It is in this purified air that the history, culture, and social worth of Australia (and Western humanism more generally) is said to originate and proceed; however, its own history threatened the legitimacy of its present and its future: "If it were permissible in past centuries to keep the common law in step with international law, it is imperative in today's world that the common law should neither be nor be seen to be frozen in an age of racial discrimination" (*M,* p. 28).

These discursive moves dictate that every time an Aboriginal group performs its local traditions in order to substantiate a native title or land claim it is drawn into playing out the conditions and limits of multicultural law in late modern democracies. First, multicultural law demands that a discriminatable cultural difference be presented to it in a prepackaged form. In this case, indigenous performances of cultural difference must conform generally to the imaginary of Aboriginal traditions and more specifically to the legal definition of "traditional Aboriginal owner."

But this demand for a preformed cultural difference generates second-order demands—in main, a demand for the law to be cautious and suspicious of the indigenous traditions presented to it. This suspicion is inscribed in the heart of the law's form and purpose: "The nature and incidents of native title must be ascertained as a matter of fact by reference to those laws and customs" (*M,* p. 42). To ascertain cultural difference, the law demands that the Aboriginal suppliant face and speak to it. And the court looks at these suppliants speaking to it, not speaking among themselves where their "true" beliefs and feelings are imagined to be expressed. In a juridical setting, indigenous people are not a representative of objective cultural difference, but rather a membrane of cultural difference, a membrane that could be hiding a fullness of difference or an absence thereof—hiding a blackface, a whiteface, or a face whose color and/or culture cannot be discerned and totalized.[32] The already abandoned or hidden artifacts of a previously disciplined indigenous practice haunt every performance of cultural difference. Genital operations, retribution killers, and ritual group sex always draw the law's eye towards a nostalgic but disciplined past, making it just ever so suspicious of the

32. See Emmanuel Levinas, *Totality and Infinity: An Essay on Exteriority,* trans. Alphonso Lingis (The Hague, 1979).

authenticity of present traditions. No Aboriginal subject and performance before the law escapes this suspicion. All irritate it because all mark law's limit: the impossibility of achieving what it imagines is possible but is not, a form of legal cultural performance not oriented to power, not already an alterity whose internal composition is the hybridized history of colonial identifications, prohibitions, and incitements. Even if such a form of pure cultural difference untouched by and not oriented to state colonial history did exist, the law itself negates the affective productivity of its legal agency. For the law must be able to comprehend the cultural narrative presented before it, be able to encompass it in its understanding even as it experiences this narrative as *other than* cultural narratives it commonsensically understands as its own (or, our) cultural narratives. This is the aporia of the cultural difference the court iterates and faces: resist being (Australian) for me/do not resist me; to discriminate against you is not to discriminate socially/to discriminate against you is to discriminate socially; to understand you is to suspect you are me (Australian, engaged in history)/not to understand you is to suspect you are not (Australian). As if using post-Fanonean theory as a handbook, legal practitioners in actual land claim cases produce not quite black/not quite white subjects before the law.[33]

Finally, every native title or land rights case must bear the burden of national anxieties it cannot solve. The law is not simply scrutinizing local traditions, their genealogy and trajectory, but the meaning of recognizing every particular traditional performance in terms of national aspirations. In seemingly remote land claim hearings, national fantasies, frustrations, and anxieties flood legal interpretations; unfix critical reading; catch the actor up in an imaginary of national redemption and national shame, national tolerance and national intolerance; and lead the eye to a sublime object.[34] In so doing, they distract national critical consciousness from the law's actual aim: the resubordination of the Aboriginal society vis-à-vis European law and society.

I always pause here. Publics and politicians were moved by the High Court's breathless moral confidence. The justices wrote as if they were paramount circus performers, able to walk suspended in analytical air, cutting the ropes to cultural discrimination while confidently walking along them. The court marked all previous discriminations as ideological—in a sense similar to that proposed by Terry Eagleton, who has defined ideology as the points at which our cultural practices are interwoven with political power—without casting doubt on their own eschatological evocations of the Good Society towards which their discriminatory prac-

33. See Frantz Fanon, *Black Skin, White Masks*, trans. Charles Lam Markmann (New York, 1967), and Homi K. Bhabha, "The Other Question: Stereotype, Discrimination, and the Discourse of Colonialism," *The Location of Culture* (New York, 1994), pp. 66–84.

34. See Žižek, *The Sublime Object of Ideology*.

tices aim.[35] It is as though they truly believed their discriminations would resist history, that their acts represented the lifting of necessity and the allowance of freedom. The present can be good, even if the past is bad. Their good intentions, unlike those of the justices who sat before them, would resist the relentless unfurling of discourse. And it is as if the repetitive failure of past eschatological images never decreases the power these images hold over the present: the New Deal, the New Society, the New Left, the New Right, the New Covenant. All seem to fix critical thinking, on the left and on the right, on the abjected and civilized and redeemed. What about this moment in national time allows the law to incite national and subaltern memory on behalf of a new collective self-understanding in a way that makes the rewriting of history seem a recognition of and accounting for that history; that allows the (re)entrenchment of cultural discrimination as a technology of state power; and, as if these were not enough, that makes this new technology of state power seem like a means to liberate subalterns from the state?

To begin answering some of these questions, we can return to the court's claim that the common law was shamed by its racist history and the gaze of the international community. We might ask: to which racist histories and to which international and transnational communities and conditions is the court referring?

4. Banana Republics

On 14 May 1986, Keating, then treasurer in the Hawke government, described Australia to Australians as a "Fledgling Banana Republic."[36] Although an economist and not a Deleuzian by training, Keating nevertheless acted as if he sought to bend "the outside" inward "through a series of practical exercises"—speech acts, economic policies, and labor practices—in order to reformulate Australian subjectivity along a rationalized spatial economy.[37] He saw this realignment of national identity as a prerequisite to the nation's economic productivity, and thus to its social

35. See Terry Eagleton, introduction to *Ideology: An Introduction* (New York, 1994), p. 11.

36. Quoted in Richard Higgott, "Australia: Economic Crises and the Politics of Regional Economic Adjustment," in *Southeast Asia in the 1980s: The Politics of Economic Crisis,* ed. Richard Robison, Kevin Hewison, and Higgott (Sydney, 1987), p. 178. Meaghan Morris also notes this as a significant moment of national time: "By 1986, as the Treasurer began to warn of our 'banana republic' tendencies and burgeoning foreign debt, viewers were in the words of one angry critic, 'treated nightly to the spectacle of *economic* commentators pronouncing on the government's *political* performance. . . . It was as though foreign traders, rather than Australian voters, had become the arbiters of political taste in this country" (Morris, "Future Fear," in *Mapping the Futures: Local Cultures, Global Changes,* ed. Jon Bird et al. [New York, 1993], p. 33).

37. Gilles Deleuze, *Foucault,* trans. Seán Hand (Minneapolis, 1986), p. 100.

well-being, in the conditions of late capital. Keating was, however, simply eloquently and passionately engaged in Labor's more general campaign to make the Australian public literate in economic rationalism: how "culture(s) and identity (or, better, the processes through which they are formed)" are a "resisting 'environment' of the economic system that has to be made more economically 'rational' and 'productive.'"[38]

Nearly ten years later, now as prime minister, Keating proclaimed on national television, "I am Asian," replacing the banana republic image with a new mapping of Australia in the world to shake what he saw as the national fantasies and complacencies that affected economic growth. Keating's cartographical imaginary aimed to provoke Australians to consider the profits available to them if they would understand their identities and identifications to be flexible and strategic and dislodge questions of ontology from essentialized corporeal and historical grounds. But in reiterating Australian ethnic identity while locating it in Asia, Keating repeated the very assumptions his metaphor was suppose to be shaking. The addressee of Keating's comments remained a loosely defined Anglo-Celtic, *like* Keating, forced to think of his or her "whiteness" at a double economic margin—at the margin of Europe and the United States and at the margin of the Asia-Pacific. Social and political-economic conditions in these margins have undergone significant transformations since the emergence of the East Asian so-called miracle economies in the 1960s and 1970s. Because of these transformations, Keating had good reason to be passionate about the nation and its citizens' futures. He spoke at a moment when Australians were already experiencing a crisis of identity, if not yet a "'crisis of authority'" due to significant global, state, and capital realignments.[39]

For the first sixty-odd years of Australian federation, the nation had "the highest living standards and the most equal distribution of income in all the 'developed' nations," primarily as the result of the Labour Accord (the state's direct control over wages, industrial relations, and tariffs).[40] But this economic stability was also a result of Australia's long-standing trading partnership with England, in which Australia provided the primary materials for British industry and imported from Britain manufactured and consumer goods and received capital investment. Most Anglo-Celtic Australians, indeed, were living the good life, beachside and basking in the glow of a well-functioning state and economy. Citizens could, for a while, imagine themselves living in a "lucky country" if they forgot about the indigenous people interned in disease-stricken detention camps in the far north and west of the nation.[41] The

38. Michael Pusey, *Economic Rationalism in Canberra: A Nation-Building State Changes Its Mind* (Melbourne, 1991), p. 225.

39. Gramsci, "State and Civil Society," *Selections from the Prison Notebooks*, p. 210.

40. Pusey, *Economic Rationalism in Canberra*, p. 213.

41. Donald Horne, *The Lucky Country: Australia Today* (Ringwood, 1964).

everyday conditions of these unlucky others did not often puncture public representations in which Australians felt good about themselves, their future, and their national self-understanding as a white nation advancing Western humanism in the Asia-Pacific.[42]

The Australian standard of living began to change significantly in the early 1970s when England, after a period of economic instability, joined the EEC, leaving Australia bereft of its major historical trading partner. Battered by a number of global economic crises, the Australian state and capital expanded long-standing trading patterns with the miracle economies of the Asia-Pacific, and most importantly with Japan.[43] But even as it changed economic partners, Australia's economic profile remained remarkably stable. Japan was in need of industrial raw materials and Australia remained in need of capital investment, and manufactured and durable consumer goods.

Yet, Australian businessmen discovered that the global conditions of capital had changed by the time they refigured their trading partners. The Asia-Pacific was not simply a new site of capital accumulation but an innovator in forms of capital organization. Japanese capital, in particular, developed novel production techniques, as firms "rationalized" their manufacturing operations by establishing multilayered subcontracting systems and by relocating production facilities to geographical areas unaccustomed to Fordist wage and consumption standards.[44] Subcontracting firms and production facilities increasingly transgressed national borders, leading not only to Japanese economic dominance in the region but to the formation, if not of an integrated, then of an interdependent Asia-Pacific political economy—the creation of dense linkages among the organization of modes and sites of productions, consumer patterns, and material extraction and manufacturing. And while Japan's South East Asian trading partners nursed lingering suspicions about the possible emergence of a new Japanese imperialism in the area, a regional bloc nevertheless began to congeal and harden by the middle of the 1970s.

As a result of these changing capital formations, Australia began to face "mounting economic challenges due to falling commodity prices, rising debt burden, and inefficient and uncompetitive industries."[45] The na-

42. See Brian Murphy, *The Other Australia: Experiences of Migration* (Cambridge, 1993).

43. After periods of sustained growth from 1960 to 1974, the Australian economy suffered a stagflationary recession in 1974. Unemployment peaked at 9.9 percent in 1982 but stayed above 7 percent from 1982 to 1988. At the same time Australia's gross external debt rose sharply from under $10 billion to just under $140 billion. See Barrie Dyster and David Meredith, *Australia in the International Economy, in the Twentieth Century* (New York, 1990), esp. p. 269. See also Ken Buckley and Ted Wheelwright, *No Paradise for Workers: Capitalism and the Common People in Australia 1788–1914* (Melbourne, 1988), p. 247.

44. See Alvin Y. So and Stephen W. K. Chiu, *East Asia and the World Economy* (London, 1995).

45. Steve Chan and Cal Clark, "The Rise of the East Asian NICs: Confucian Capitalism, Status Mobility, and Developmental Legacy," in *The Evolving Pacific Basin in the Global*

tion was becoming "Latin Americanized."[46] In every financial quarter it seemed, the national economy shrunk relative to the emerging so-called flying geese of the Asia-Pacific. Jobs were harder to find, although the Labour Accord kept the minimum wage high. Whole generations of Anglo-Celtics, "our kids," were on the dole or on the dole roller coaster. In the midst of these economic horrors, the mass media ran story after story of Asian capitalists buying up choice Australian real estate, of the lifestyles of the Asian new millionaires, and of the "Asian" social and cultural values putatively at the basis of the miracle economies.[47] Still, the mass media rarely discussed the underside of capital transformations, although it did cover the occasional collapsed building in Malaysia and Indonesia.

What the Australian mainstream media did discuss were the cultural differences separating Australian and Asian societies, typically the former state's commitment to a notion of universal human rights, rights that appeared to be threatened by these new forms of the economic good. Western humanism's fragility and defensiveness at the double margin of Asia-Pacific and Euro-American hegemony is suggested by the newspaper headlines I read when I arrived in Sydney on 18 September 1996. In front-page stories, both the *Sydney Morning Herald* and *The Australian* reported that in a speech in Jakarta, the Liberal prime minister, John Howard, had defended the Europeanness of Australian nationalism: "We are immensely proud of our distinctive culture, our distinctive history, and our distinctive traditions, and we yield to nobody in asserting their great quality and enduring value."[48] The mainstream media weighed these cultural issues against the economic, social, and political profits that might accrue to Australians if they thought of themselves spatially, from a bird's eye perspective, as a point on the globe, rather than primarily historically, as descended and therefore essentially *being* from another point on the globe. While Australia may have needed the strong economies of Asia, did the identification with or as them cross the discursively thin line preserving European culture and its political and social institutions at the nation's core? At what cost would Australians maintain or erase these social and cultural differences and traditions? And, finally, no matter the political-economic sense that his statement might have made, did statements like Keating's "I am Asian" constitute a form of race betrayal for

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Political Economy: Domestic and International Linkages, ed. Clark and Chan (Boulder, Colo., 1992), p. 37.

46. See Dilip K. Das, *The Asia-Pacific Economy* (London, 1996), p. 17.

47. Depending upon their theoretical orientation, economists explain the cause of this realignment of capital accumulation by free-market forces, cultural attitudes (Confucianism), state policy, and relations of dependency. For a good overview, see So and Chiu, *East Asia and the World Economy.*

48. Patrick Walters and Michael Gordon, "We're a Culture Apart, PM Tells Asia," *The Australian,* 18 Sept. 1996, p. A1. See also Michael Millet and Louise Williams, "PM Defends Soft Line on Indonesia," *Sydney Morning Herald,* 18 Sept. 1996, p. A1.

those in the nation who still worried whether they would be swamped both by Asian immigration and economic power?

During this period from the 1970s through the early 1990s, the state also began to shift financial and social resources into Aboriginal communities in response to a transnational indigenous liberation movement that highlighted the disjunction between the state's ideal image of itself as a postimperial exemplar of Western humanism in the Asia-Pacific and the state's actual laissez-faire brutality towards its own internal colonial subjects. By the mid 1980s indigenous culture and politics had gained a public luminosity, political legitimacy, and economic base unparalleled in Australian history. Almost ten years had passed since the first Commonwealth land rights legislation had been enacted with the Aboriginal Land Rights (Northern Territory) Act of 1976 (ALR), spawning similar, if less effective, copies in most Australian states and giving indigenous communities, activists, and publics access to capital, bureaucratic, and public institutional bases. Moreover, Aboriginal culture had been successfully marketed nationally and internationally primarily through the medium of art and music. "Good Aboriginal art" (paintings, sculptures, and artifacts) went on tour, so to speak, and was exhibited in international galleries to critical acclaim.[49] Aboriginal activist-artists, such as members of the band Yothu Yindi, and popular figures, such as Sting and the rock band Midnight Oil, popularized indigenous land rights struggles globally. "Bad Aboriginal art" was sold in tourist stalls across Australia and beyond.[50] But both high and low cultural forms contributed to a new global traffic in commodified indigenous culture. Particular indigenous knowledges were generalized into a natural commercial product. And they contributed to a global resignification of the "indigenous" in relation to social struggle. Indigenousness was unhinged and "liberated" from the specificity of actual indigenous struggles, from their differing social agendas and visions of a reformed social world, and from the specific challenges they posed to contemporary nation-based governmentality and capital.

Freed from specific struggles, the signifier *indigenousness* began to function as an aura, naturalizing any struggle or commodity desire to which it was attached. For instance, when the head of the Australian Children's Television Foundation accused U.S. broadcasters of a "sinister new form" of cultural colonialism, she troped a national counterinsurgency as indigenous and countercolonial.[51] She did this at the cost of effacing the struggles of actually existing indigenous groups against ongoing state co-

49. See Fred Myers, "Representing Culture: The Production of Discourse(s) for Aboriginal Acrylic Painting," *Cultural Anthropology* 6 (Feb. 1991): 26–62.

50. See Eric Michaels, *Bad Aboriginal Art: Tradition, Media, and Technological Horizons* (Minneapolis, 1994).

51. "Ms Edgar said [one] way to destroy a people was to detribalize them by taking away their stories and their dreams, replacing them with imported ones" (Robert Wilson, "Children's TV Head Blasts 'Sinister' U.S.," *The Australian,* 3 July 1996, p. 3).

lonialism, struggles themselves drawing on transnational discourses and institutions including North and South American indigenous movements. But, in doing so, she also demonstrated the elasticity of the notion of indigenousness and its function in naturalizing even those social struggles that are potentially detrimental to actually existing Aboriginal people.

The High Court's claim in *Mabo* that the common law was shamed by its own racist history and an international gaze should be placed within the context of these other contemporary national mortifications of state, capital, and public and counterpublic realignments and struggles. In particular, we should pay attention to the justices' concern that the Australian common law be brought "up to date" with other "civilized" First World Euro-American nation-states that had long ago recognized the mutual compatibility of native title and the state's radical title (*M,* p. 18).[52] At stake in *Mabo* is not simply a nation's shame at its past as a colonizer, but its shame at its potential future as an economically and culturally colonized nation. Will the historical significance of the Australian nation be that it bore an impotent Western humanism, a barren liberal democracy, the only "white" nation on earth to be colonized because it was unable to produce wealth and status—"the good life"—for its citizens?

When *Mabo* is placed in this context, native title appears as a fetish of national anxieties about the status, role, and future of the Australian nation and helps explain the widespread public debates resulting from the case. Native title condenses and stands in for Australian aspirations for First Worldness (symbolically white, Euro-American) on the margins of Euro-American and Asia-Pacific domination—the Aboriginal subject (indigenous blackness) standing as the material to be worked over for the nation to maintain its place in (Western) modernity. The court's use of the shamed Anglo-Celtic Australian fixed the ideal image of the nation as a white, First World, global player in the national imaginary.

Mabo's politics of shame is not, however, simply a nightmare about the nation's marginality. Instead shame allows the law to perform the adjustments necessary to recuperate its authority and values in a "postideological," (post)colonial moment. By *postideological* I do not mean to suggest that capital and state relations are now transparent. Rather I mean to point to a characteristic of the contemporary moment, in which a feeling, shame, displaces issues and evidences of power, hegemony, and contradiction. As Berlant argues, feeling politics is experienced as beyond ideology, mediation, and contestation. Shame's political pleasure, its sublime politics, lies in conjuring an experience "beyond ideology" in a moment saturated with ideological readjustments of state discrimination.

52. See Susan Burton Phillips, "A Note: Eddie Mabo v the State of Queensland," *Sydney Law Review* 15 (June 1993): 121–42.

When the court evoked a shamed nation whose redemption depended upon an acknowledgment of past wrongdoings, it accomplished what a mere change of law could not. It created a focal point beyond politics for both business and subaltern antagonists of the state and the law's multicultural project, the former who might see the project as too radical, the latter as too reformist. The fantasy of shame and reparation created an experience of intimacy—intimate holding, intimate understanding, intimate knowledge—between those who control the access to and those excluded from critical rights. Right-wing business leaders, who opposed the decision, had little recourse but to return the court's own rhetoric as a preideological barometer of national well-being. So, for example, a coalition of business interests emphasized the shame of a white nation forced into an unnatural structural adjustment by a nonwhite coalition of transnational and subaltern groups. Rather than manipulating other nations, as a true First World nation would, Australia was like those other nations in being controlled by international forces unknown.[53] Subordinate groups and the left, shocked by the public pseudo-recognition of their position, were seduced towards the headlights of the law. In other words, by deploying a weapon once effectively wielded by the weak (subalterns, colonial subjects, African American civil rights activists, feminists, gays and lesbians),[54] those who controlled access to resources and rights were able to bind oppressed groups more tightly to the state and to looking to state law as the site from which a nondiscriminatory politics could proceed, thereby cohering a national collective will in the face of serious public and business apprehension. They did so not by refusing to accept the shame, but by embracing, foregrounding, and using it as a source of identification for their political projects. They did not simply trumpet the good of state law, but lamented its villainy, as if the state were not a part of its own institutionality. And in doing so they showed how institutions are claimed to have feelings and how these feeling institutions translate liberation struggles against them into their own legitimation.[55]

53. Hugh Morgan of the Western Mining Corporation claimed that "the High Court had plunged property law into chaos and 'given substance' to the ambitions of Australian communists and the Bolshevik left" (quoted in Bartlett, "*Mabo:* Another Triumph for the Common Law," *Sydney Law Review* 15 [June 1993]: 178). For discussions of Aborigines and mining in Western Australia, see Bartlett, "Inequality before the Law in Western Australia: The Land (Title and Traditional Usage) Act," *Aboriginal Law Bulletin* 3 (Dec. 1993): 7–9, and *Aborigines and Diamond Mining: The Politics of Resource Development in the East Kimberley, Western Australia,* ed. R. A. Dixon and M. C. Dillon (Nedlands, 1990).

54. See James C. Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (New Haven, Conn., 1985).

55. While Drucilla Cornell's discussion of the normative grounding of juridical interpretation in implicit and explicit references to "the Good" has been helpful to this essay's understanding of the technology of discrimination, more attention needs to be paid to dominant hegemonic projects' traffic in legal shame (Drucilla Cornell, "From the Lighthouse: The Promise of Redemption and the Possibility of Legal Interpretation," *Cardozo Law Review* 11 [July–Aug. 1990]: 1688).

5. Telecommunicating Cultural Traditions

Meanwhile, indigenous people, their lawyers, and anthropologists were constructing the narratives requested of them by the state. In the same year *Mabo* was heard, in land rights cases throughout the Northern Territory of Australia, they were making practical decisions about how to run cases under the provisions of the ALR. Who should be put forward as traditional Aboriginal owners for a tract of land—what slice of a community, family, or language group, based on what amalgamation of local, anthropological, and legal dictates? How should history and cultural change be presented? What constitutes the retention of traditional customs, beliefs, and practices? What is culture, history, alienation? What is a group (can one person be a group)? What constitutes traditional land? Did pastoral leases alienate land? Did a Christian belief alienate an Aboriginal person from their traditional beliefs? The pursuit of ways to fit Aboriginal groups into the framework of the ALR ran alongside the intention of the land commissioner and the lawyers and anthropologists working on the behalf of Aboriginal groups to recognize and support cultural diversity as opposed to past state suppressions of it. Indeed, the ALR was intended to give a material basis (land) to Aboriginal cultural beliefs and practices.

These questions wracked the longest running land claim in Australia, the *Kenbi Land Claim,* where, in the final hearing, three Aboriginal groups were separately represented as the traditional Aboriginal owners of a peninsula and a chain of islands located on the west side of Darwin Harbour, the Cox Peninsula and Port Patterson Islands. Under claim since 1976, these areas are potentially worth millions in real estate and development.[56] This land is widely understood to be (or, to "have been") "Laragiya land," or the land of the Laragiya people. Laragiya refers to the language spoken by a variety of social groups who lived in the greater Darwin hinterland at the time of colonial contact.

Kenbi posed serious problems for a finding of traditional Aboriginal ownership under the terms of the ALR. The ALR stipulates that "traditional Aboriginal owners" be "a local descent group of Aborigines who—(a) have common spiritual affiliations to a site on the land, being affiliations that place the group under a primary responsibility for that site and for the land; and (b) are entitled by Aboriginal tradition to forage as of right over that land" (sacred sites are colloquially known as "Dreamings").[57]

By the time of the first hearing, a number of land commissioners had noted that it was the "religious bond with the world around [them] that

56. See Elizabeth A. Povinelli, *Labor's Lot: The Power, History, and Culture of Aboriginal Action* (Chicago, 1993).

57. *Aboriginal Land Rights (Northern Territory) Act, 1976* (Canberra, 1992), p. 5.

the Parliament has endeavored to recognize by its definition of traditional Aboriginal owner with its three elements: family ties to land; religious ties; and customary economic rights, i.e. to forage."[58] Since the first set of land claims was heard, land commissioners have consistently sought to understand the multiple paths to land ownership and to recognize local complexities of land tenure and Aboriginal identity.[59] What may count as the recruitment principles that establish a "local descent group" or "family ties" has been consistently linked to local understandings of kinship and descent. The meaning of "primary" has also been expanded to allow for local Aboriginal traditions of differing but complementary rights and duties that place one or more groups in a "primary" relation to claim lands. In most of these cases, land commissioners have tried to apply a benevolent and difference-recognizing intent of the ALR, but this occurs after the group the commissioner recognizes, or not, has been selected to fit the act's terms of reference.

Kenbi showed the court a kind of difference it had trouble recognizing. Two main Aboriginal social groups existed in relation to the land claim. The first were the Belyuen, a community of roughly two hundred people resident on the claim land who fulfilled the spirit of the ALR insofar as they had family, religious, and economic ties to the land. Their ancestors had been in the region living, conducting ceremony, and hunting since current residents could remember and since European records were kept (beginning with the founding of Darwin in 1869). Their religious ties to the claim region had the form and content many Anglo-Celtic Australians considered and colloquially referred to as "traditional blackfella business." They had common enough beliefs and practices and were the only Aboriginal group conducting funeral and initiation ceremonies on the claim land. Finally, their economic rights and practices were unassailable.[60]

The Belyuen, however, were widely viewed as a collection of densely intermarried migrant language and clan groups (eight language groups and twenty clan groups are represented in the community) whose traditional country was in the coastal Anson Bay region, south of the claim land. They had, in other words, serious problems establishing the recruitment principles that constituted them as a local descent group. They themselves were often reluctant to use the phrase "traditional Aboriginal owner" in relationship to themselves, preferring to say they were "stuck" on the land. Thus as a group the Belyuen appeared primarily to be a contingency of settler history, not a local descent group with Dreaming connections to a sacred site on the land. Their ancestors are thought to

58. Aboriginal Land Commissioner, *Timber Creek Land Claim* (Canberra, 1985), p. 15.

59. See Aboriginal Land Commissioner, *Daly River (Malak Malak) Land Claim* (Canberra, 1982), *Warlpiri Kukatja and Ngarti Land Claim* (Canberra, 1985), and *Timber Creek Land Claim.*

60. See Povinelli, *Labor's Lot.*

have been drawn to the region due to precolonial ("traditional") ceremonial and economic ties to the land, new economic resources available from the European settlement in Port Darwin, and the depopulation of Anson Bay from settler diseases and police massacres. The native affairs department forcibly interned their ancestors in an inland settlement, Delissaville, in 1941. In 1976, with the passage of the ALR, the community was renamed Belyuen after a sacred water hole located at the rear of the community.

A second group put forward as traditional Aboriginal owners were the Laragiya, descendants of the language group associated with the claim land but who, for the most part, had lived off the claim area for at least two generations. Few members of this group had any experiential knowledge about the land, especially when compared to the Belyuen. Moreover, as a group the Laragiya were sociologically and culturally diverse. Rather than having a common set of beliefs about the spiritual nature of the claim land, the Laragiya had differing beliefs and practices, all of which varied significantly from those of the Belyuen. They had, in other words, serious legal problems establishing the common spiritual affiliation that made them primarily responsible for Dreaming sites on the land.

The claim was heard once in 1989–90. No traditional Aboriginal owners were found. This ruling was, however, overturned by the Federal Court and sent back to be reheard.[61] When *Kenbi* was reheard in 1995–96, the second land commissioner, Mr. Justice Gray, was faced not only with deciding what were the recruitment principles deemed relevant by the claimants (what constituted a "local descent group" locally) but also with deciding now competing, often hostile, claims by groups with significantly different cultural performances and social practices.[62] Having worked with the Belyuen for ten years, I was asked to act as their anthropologist by them and the Northern Land Council.[63] The Northern Land Council was established under the ALR and charged with investigating and litigating Aboriginal land claims in the northern half of the Northern Territory. The Belyuen claim angered many within the Laragiya. These Laragiya believed the Belyuen were trying to steal their country, a country theirs by a Dreamtime mandate, or, as some put it, by a "blood right"—blood descent from a Laragiya ancestor gave them ownership rights to Laragiya land irrespective of the density of their economic or ceremonial practices in relationship to it. The Laragiya claim angered some Belyuen who believed many of the "town Laragiya" to be too genea-

61. Hill Northrop and J. J. O'Loughlin, "Northern Land Council and Others v Aboriginal Land Commissioner and Another," *ALR* 105 (1994): 539.

62. As of the writing of this essay, he had not written his report on traditional Aboriginal ownership in the *Kenbi Land Claim*.

63. The ALR and the Native Title Act stipulate that every claim be accompanied by an anthropological report.

logically and socially removed from the country and its Aboriginal culture to be "for it" in a way superior to themselves.

The representational problems to which *Kenbi* exposed the ALR cannot be fully discussed here; the above simply suggests some of its structural difficulties. In the following, I want to suggest the problems the fantasies and architecture of new (post)racist multicultural discrimination pose to representing contemporary indigenous struggles. My first case begins with a fax I sent from Belyuen to my partner at the time, who was at the Lotan Kibbutz in Israel visiting her daughter.

The fax is dated 10 October 1995. I had returned to Belyuen for what was suppose to be the final hearing of *Kenbi.* I was charged to represent the interests of the Belyuen "migrants." In what way did they have rights to the claim land according to native traditions and how would they be advantaged or disadvantaged by a successful claim by the Laragiya group? At the outset of the hearing, the Belyuen were not presented as claimants due to what were seen as insurmountable problems fitting them into the framework of the ALR. In consultation with Belyuen men and women, I wrote a report that addressed the legal barriers the Belyuen faced by outlining "local" beliefs about the mutual constitution of people and land, and the cultural processes that transform dislocation (migration) to location (autochthonism).

Critical to this argument were the interpenetration of three concepts—*maroi* (conception), *ngunbudj* (sweat), and *nyuidj* (ancestral spirits)—their significance to the community's relationship to the Belyuen water hole, and the water hole's significance to the larger claim area. This report resulted in a reassessment of the possibility of a Belyuen claim. And in the middle of the second hearing, they were officially put forward as claimants. The following is an approximation of what I wrote about these concepts in my final report.

Maroi *is used to refer to conception Dreamings, to a shade or essence of a being human or otherwise, and to one's own personal Dreaming. All Belyuen say they have some* maroi *relationship to a water hole (Belyuen) found in the rear of the community. They were either born from Belyuen (a Dreaming personage living in the water hole) or were given their children by Belyuen. As a result, Belyuen is said to be "boss" for the Belyuen people and, because of underground passages* (kenbi) *from this water hole to other sacred sites in the claim area, he is said to be "boss" over the entire claim area.* Ngunbudj *refers to the sweat or smell emitted by every creature, and plays a complex role in land tenure and land management. Ritually applied sweat on hunting tools makes a locale productive to Belyuen people and dangerous for foreigners. Special formal and informal rites exist for using sweat to reform human bodies and hunting instruments so that claim land will recognize the user as "from the land." Sweat produced during ceremonial action (singing, clapping, didjeridoo, dancing) is believed to travel through underground* kenbi *passages from sacred site to sacred site, deepening the relationship between the Belyuen and the land claimed. The washing of initiates by ceremonial leaders in Belyuen and at nearby sacred sites*

infuses Belyuen sweat and blood into the land. Sweat "put into" freshwater Belyuen, for instance, travels via the kenbi *tunnels to the offshore islands, while sweat "put into" the saltwater sites travels counterclockwise around the entire claim region.* Nyuidj *are the spirits of deceased persons. In an earlier work, I described* nyuidj *as that part of "the self embodied at a site" after the death of a person—they are stuck in the places to which they were associated in life. These* nyuidj *often reappear to relatives as they pass by.*[64] *Hunting, camping, and living in a place for a long time attaches the essence of a person to a place. It is because of this that Belyuen say some dead relatives still reside in specific sites in the claim area. Rather than focusing on the immediate purpose of these* nyuidj *appearances,* ngunbudj *processes, and* maroi *attachments, Belyuen residents emphasize to each other and to researchers what such appearances signify for their attachment to the country, how they signify a mutual embodiment of people and place—spirits, bodies, and bodily products coming from and sinking into regional lands, regional lands emitting Belyuen spirits—over the long period they and their ancestors have lived in the region. These underlying local traditions lay at the basis of their claims about how and why they are "stuck" to the land under claim and how and why they believe they should have equal say in economic decisions made concerning the land.*

In the middle of the hearing I sent the following fax to the Lotan Kibbutz. In between the time I wrote my report and when I sent my fax, I had returned to the United States for a few weeks.

> Hello. I am here w/Theresa Singh and Gracie Binbin. I wake up and know where I am—what do you think that means?
>
> Miss you and hope the flight was OK. The Nazis bombed a train in Arizona.
>
> That's all I can say but you know the rest. xxx Beth

Theresa Singh, whom I call aunt, helped me to send the fax from the Belyuen Community Council office. As she did, she asked me, "What does this mean here, 'I wake up and know where I am'?" I told her that often when I returned to the United States after a stay at Belyuen, for weeks on end I would wake up throughout the night not knowing where I was. "This time," I said, "it was getting creepy."

> I would wake up at night and look at this old lady [my girlfriend at the time was fifty and more importantly had gray hair, or *berluberlu*] and I'd say to myself, "hey, who *is* this?"

Camping up my story a bit, I described how in the dark quiet of autumn nights in upstate New York, I would peer closely at her and think very hard, "Who is this? Maybe Josie" (another Belyuen aunt of mine, who also has short gray hair and has lighter skin than Theresa).

64. Povinelli, *Labor's Lot,* p. 162.

> Then I would think, "Oh, no! This isn't Josie, this is some white lady!" By this time, my partner would wake up, look at me looking at her, and ask, "Do you know who I am, Beth?" "Nope." "Do you know where you are, Beth?" "Nope." On and on, over and over, this same story, night after night.

Theresa Singh, Gracie Binbin, and Marjorie Bilbil, who had entered the office by then and overheard the conversation, shook their heads saying that this *piyawedjirr* (madness) was serious, Belyuen had gotten my spirit, my *maroi,* in a way that now seriously threatened my health. We all mused over Belyuen's ability to reach to the United States and tug at my emotions and mind. Surely, the women said, this says something about the power the site had on people who had lived there for a long time, who believed, and who had been through ritual.

But the fax occasioned another discussion of *piyawedjirr.* After my fax story, Theresa told us of a dream she had the night before. In her dream she was on the witness stand in the Federal Court House in Darwin facing the land commissioner. The "judge" turned to her and asked "straight out" (directly, rudely), "You say you are a traditional Aboriginal owner of the Cox Peninsula, but you are not Laragiya. You are a migrant. What do you have to say about that?" Theresa then described her dreamtime panic ("What can I say, I panicked properly") and her dreamtime courage ("I got brave now inside. 'If we are going to win this land I am going have to talk directly [rudely] to this whiteman. You're not going to be shamed'"). In her dream she turned to the land commissioner and said, "Yeah, I am not Laragiya. I have country in another place. But my spirit is here. All the Belyuen people have been born and died here, Belyuen. Belyuen is boss. Belyuen is like that telephone, fax. He calls you. He rings up these places. He can travel. He knows who his people are."

Theresa Singh's metaphorical reference to the telephone/fax is not unusual. To explain Belyuen to land commissioners, anthropologists, and themselves, older men and women often refer to the telephone system. They describe Belyuen as "like a telephone." Belyuen travels through underground "cables" "ringing up" other Dreaming sites in its reach, telling them, "Hey, these are my kids. You must not harm them; you must take care of them." Belyuen is the subject-force of the interlocutory moment, and the Belyuen community's social power is "measurable" in terms of the nodal reach of its lines, not only in terms of the homogenized space between them but also in the eruption of "Belyuen power" at a distance.

These short exchanges generate ethnographic and legal pleasure for the Belyuen claim insofar as they have a cultural specificity and directionality. The telephone and the fax machine are embedded in a specific tropic field through which I and Belyuen women and men think about the meaning, truth, and efficacy of their local beliefs and practices. Water holes are fax machines; *kenbi* tunnels are telephone lines. A Belyuen fam-

ily group is formed, transformed, transported, and extended by the action of local practices and local beliefs about the communicative embodiment of people and place. Western technology, its global reach, is a metaphor *for locality;* Belyuen draw on technology not for itself but for themselves—we do not push or question too hard whether Belyuen and *kenbi* are telephones and faxes. Not questioning the metaphorical status of the metaphor, we can use these examples as prima facie evidence of the resistance of local culture to the global and fit Belyuen into stereotypes embedded in the ALR and in the Native Title Act that borrowed much of its language from it, regarding local mythic thinking and its antihistoricism bent. We can represent Belyuen thinking as recontextualizing globalization by enfolding new technologies and transnational communication and communities into local cultural logics.

Rather than simply dwelling on the ethnographic pleasure and legal productivity of figuring local discursive power against new infotechnology, we might dwell on the strong temptation to do so when so much depends upon producing a locale at once local and national, that is, a Belyuen in keeping with the ALR. In the *Mabo*-reinterpreted world, the trajectory of the local I have just sketched—outward from the local to enclose nonlocal "foreign objects"—can reinforce the romance of native fixity and mythic thinking and the hegemonic bent of the law in rewarding local resistance to change. And it reinforces the law's injunction that Aboriginal Australians express at their own risk their engagement with the democratic form of capital and governance and their potential ambivalences about specific traditions and the identities and identifications necessary to maintain them. In this particular case, Theresa, myself, and the others engaged in this complicated conversation figure ourselves in a dislocated location, in a strange trajectory that has led all of us to have our self-identity and social relations most meaningfully expressed through that blue Belyuen water hole, itself now a point at the beginning or the end of transnational telephone cables. And all of us rely on culturally hybrid communicative technologies to mitigate the legal effects of this dislocated location. These communicative technologies include faxes, email, and telephones that coordinate strategies across continents and communities; their ability (and my ability) to find a legal language of persuasion; the Belyuen water hole's ability to communicate the sweat and spirit of local people into regional claim lands; and, finally, my own much commented-upon (in)ability to avoid the first person plural when referring to "the Belyuen" and thus produce myself as a distant, objective observer in a court of law.

The temptation to dwell on the discursive pleasure of our fax conversation also seems to me to be correlated to the desire not to focus on the profound anxiety and shame expressed by Theresa's and my stories. This anxiety and shame is essential to the production of new nation-based bodies, desires, and social hierarchies. In this case, Theresa and the other

women must find a way of making the incommensurability of local and state-mandated discursive and corporeal performance seem commensurate but not opportunistic. Belyuen understandings of *maroi, ngunbudj,* and *nyuidj* are a locally produced reaction to the historical contingencies and brutalities of the colonial period rearticulating people, places, and bodily inhabitations; desires, dreams, and aspirations. But, at the same time, they and I work to articulate these discourses and embodiments in response to the state demand that they both *be* in relation to specific laws, social policies, and state identities and, simultaneously, *erase* any suggestion that these cultural beliefs are an opportunistic *being for* these laws, policies, and identities—*and* erase, yet again, any local traditions sanctioned by statutory and common law.

I am suggesting, in sum, that the anxiety these women confront does not simply come from difficulties in deciding what to tell state authorities but from how deeply they must establish an abject relation to their traditions and identifications that are deemed legally and publicly abhorrent.[65] For example, the performance of secret-sacred male and female initiation ceremonies on the land under claim is considered a primary index of land ownership under the ALR in this case and others. But the content of these ceremonies might be illegal under existing Australian statutory laws and might be considered immoral to most non-Aboriginal and some Aboriginal Australians. In the context of land claims, indigenous women and men must, therefore, consider what aspects of ceremony to reveal to nonlocal, non-Aboriginal persons. Moreover, land claims powerfully incite indigenous women and men to consider, once again, the morality and legality of their ceremonial identities and identifications, bodily performances and sensualities. This corporeal anxiety and reflexivity is intensified by the material and psychic incitements of the land claim process—a desire to complete its puzzle without remainder and a shame at the idea of being beaten by it. The Belyuen and I stretch to reach the law's demands and to hide from it those traditions that might shame us in order to increase the chances we can be freed from it.

The difficulty of representing local culture becomes especially apparent when we compare the above case to how some Laragiya men and women figured the local in relation to transnational culture. Here again a discourse of shame framed Aboriginal rights. Shame was deployed as a political tactic of the subordinate ("you, the government, should feel shame and work towards a socially just reparation"). Inside and outside formal settings, many Laragiya persons talked about the shame of colonial and (post)colonial policies—the government's forcible removal of children from their Aboriginal parents; the intentional spread of disease

65. "Renouncing dominant corporeal schemas is impossible, as Fanon so dramatically says, without a total making raw of the body" (Berlant, "'68, or Something," *Critical Inquiry* 21 [Autumn 1994]: 148).

by settlers among the indigenous population; the police participation in or cover-ups of "minor" genocides; the continued high rate of Aboriginal deaths in custody and the continued low life expectancy of Aboriginal persons; and, finally, the shame of not being sure what is or was the content of their traditional practices or, given what they do know about some of them, whether they could reconcile these practices to their Christian beliefs.

Some of these issues were raised on a day of testimony in which an urban Laragiya family, the Fejos, tried to describe their spiritual relationship to the land under claim by referring to their family's Christian evangelicalism, ESP, and New Age spirituality. In the sweltering buildup, on the northern coast of the Cox Peninsula, with Darwin visible across the harbor, the sound of Qantas airplanes often thundering overhead, and a crowd of fifty Aboriginal and non-Aboriginal men and women surrounding him, Wally Fejo told the land commissioner of "Larrakia . . . spirituality" and how through this he learned about sacred sites in the claim area.[66] Wally Fejo was a spokesperson for the family and a well-known and respected minister, the head of Nanggalinya, a missionary training school in Darwin. During a long personal and family history, he described his changing Christian evangelical beliefs and practices and, among other metaphorical associations he employed, likened the Laragiya and Hebrew diasporas. At one point he described having "within my life span, a lot of mountaintop experiences, a lot of valleys, a lot of creeks, and a lot of hurt feelings" (*KT,* pp. 4190–91). One of the mountaintop experiences he described was of "telecommunicating" with now-deceased Belyuen and Laragiya (Telecom is the AT&T of the Australian Commonwealth).

> I don't want to talk for too long. I'd like to have others express their story as well but, might I go quickly yet slowly. I came over to Delissaville many times as a young person between the age of 18 and 25 for many reasons. And that was part of my search and putting down on paper as well as keeping it in my mind the kind of depth of spirituality Larrakia people's spirit have. I've been amazed, I've been amazed that what eventuated. I—some of the people who here today, who've met me more who've come to my place or we somehow, somehow even prior to that we've been thinking of each other. And that's the kind of relationship and telecommunications that we have. You know, we've—Telecom have come so far, technology, but we've had it years and years. [*KT,* p. 4191]

On cross-examination, a lawyer representing him and his family as part of the Laragiya group pressed Wally Fejo to be more site specific, a specificity inscribed in the ALR's definition of traditional Aboriginal own-

66. *Kenbi Transcripts* (Indooroopilly, 1995), p. 4190; hereafter abbreviated *KT.*

ers. He asked Wally Fejo whether now-deceased Laragiya men had told him about sacred sites in the claim area. Wally Fejo answered that they had not taught him "in a verbal way in which you and I are talking now." The deceased men didn't teach him the names of places or the mythic stories about the place: they "didn't point out and say, look, here's the demarcation, this is New South Wales, this is the Northern Territory. . . . No we had a better way of communication, as well as of teaching" (*KT,* p. 4195). These better ways were evangelical and telepathic.

His sister, Christine Fejo King, led the women's side of the evidence. She told the Land Commissioner her "special job," her "spiritual role," for the Fejo family was "record keeper." She then described sacred places she believed existed by referring now and again to a ledgerlike set of books she held in her lap. At one point, heard by all those in the background, Mirella Fejo urged her sister to tell the land commissioner about a seance they had held in which they called forth spirits of the dead. Telling Mirella she would have her turn to talk, Christine King continued her story. On cross-examination, Tony Young, an Anglo-Celtic lawyer hired by the Northern Land Council to represent the Belyuen, asked Christine King whether she thought that dangerous sacred sites existed on the Cox Peninsula, sacred sites past which or over which one could not travel. "Yes," she answered. In an attempt to establish the primariness of the Belyuen's responsibility for the land under claim, he then asked whether she knew where they were or how to treat them or whether she asked the Belyuen who did know.

> CHRISTINE KING: I was told but I can't tell you on a map. I don't know the names. But I was told that if I went there, I would feel that it was wrong.
>
> MR YOUNG: I see. So, do you believe that if you went to one of these dangerous places, you might be in danger, or other people might be in danger?
>
> CHRISTINE KING: You don't—you go there, and the back of your hair, neck on the back of your hair stands up. It's—, you know. [*KT,* p. 4259]

A ripple of laughter and snorts passed through some of the non-Laragiya audience after that last "you know." Christine King turned to Young and said that her feelings and beliefs were like his, like something he himself would know, like how we all "get a feeling." The intimacy of the mimetic knowing she and Young experience disassembles the scene of cultural difference. The court, lawyers, anthropologists, and some Aboriginal subjects cannot *feel* the specific membrane of alterity on which multicultural rights are now based. Instead, they feel themselves to be abject, to be what must be purged from this scene of law. The metaphoricity of all moments of translation dissolves too fundamentally, and the law is forced to see too clearly its own and the colonial handprint in the

scene. It is blackness telling whiteness we share the same feelings that makes whites uncomfortable. And this mimetic knowledge makes the scene a tense moment of cultural "difference": it is you seen in me who are making yourself uncomfortable.

During her turn to speak, Mirella Fejo took up the theme of ghosts and the speaking dead and deepened the abjection and shame of whiteness. She began by saying, "I just have one thing really of importance that I want to tell the Judge" (*KT,* p. 4279). This was that the Fejos had "a gift" on "the spiritual side." They can speak to the dead: "I really don't care what anybody says about seeing ghosts or talking to ghosts or spirits for whatever you want to call it, but I do" (*KT,* p. 4279). When pushed by her lawyer to be more site specific—to relate her powers to the land under claim—Mirella Fejo spoke of Aboriginal women's ceremony. She had earlier introduced a null relationship between this and her family's powers: "We have a gift in that we can speak to the dead. I talk with my uncles and my grandfather often. They come to visit. Now, I'm not a ceremony woman. I have never gone through any ceremonies, but they come and visit, not only me, they come to my sisters" (*KT,* p. 4279). In cross-examination, Mirella Fejo embedded her ceremonial beliefs in the language of the ALR ("spiritual affiliation"), invoking quasi-Jungian notions of "four elements."

> In regards to women's ceremony, as I said before, talking to the spirits of the ancestors, I've never gone through a ceremony but I am aware that, to have a proper women's ceremony, you have to have the artifact or whatever it is, to go ahead and have a proper woman ceremony. You just can't have a women's ceremony like that. That's certain—you've got to have the spiritual affiliation, you've got to have the medicine man there. There's certain things. There's four elements that have to be there in place for you to have a proper ceremony. Now, where it all is, I don't know. [*KT,* pp. 4280–81]

Finally, Jessica King, Christine King's daughter, took the microphone. Only a teenager, surrounded by her extended family, she said she wanted to describe to the land commissioner her special relationship to her guardian bird, the sea eagle.

> I have a special relationship with a creature in this country. It is a bird. And it is my guardian and I follow it because it'll take me to safe places. And wherever I go it will guard me. . . . And I also found that I can talk to the bird like I'm talking to you now. And I can understand what he says to me back. And if I concentrate I can hear everything he says in detail. [*KT,* p. 4295]

Mimicking the young girl, the lawyer for the government opposing the claim prodded her to say more about her strange abilities. As she did,

comments from non-Aborigines on the scene referred to "New Ageism," "earth mothers," and "crystal culture." Other moans and voices of censure stopped the cross-examination. This censure was not simply prompted by the horror and "shame" of witnessing a Northern Territory government lawyer bait a young Aboriginal woman, but by the evidence itself.

With Jessica King's evidence, we might say that the simulation and drift of signs of indigenousness have reached profound proportions. It is as likely that the cultural images and referents she relied on came from Santa Fe, from books like *Mutant Message Down Under*, and from films like *The Last Wave* as from the land under claim. As such, the "cultural obscenity" of the evidence, as one non-Aboriginal person put it, was its "posture" as local, as "Aboriginal," and, in the climate of competitive Aboriginal claims, as generating rights superior to those of the Belyuen. But at another level this reappropriation and redeployment of a cultural signifier, a hybridization of cultural hybridity, is a profound meditation on the meaning of urban Aboriginality's relation to its traditional localities, under the disciplinary surveillance of state governance. Like Belyuen telecommunications, Fejo telecommunications are profoundly local meditations on the conditions of the local in transnational times no matter what their inflection or origin in New Age and pop-psychological forms of spirituality.

Profound or banal, the question remains whether this land commissioner and other land commissioners and native title tribunals will recognize these forms of cultural difference as within the difference-recognizing intent of the law, or whether they will recognize a plurality of differences as possible in relation to the same material space. Are these the types of difference the state seeks to recognize and support with its legislation? Are these the kind of Aborigines the nation must reconcile itself to? Is this cultural difference you know when "you know" it? In any case, we see how deeply the law desires to saturate the everyday discursive and imaginary frameworks of the subaltern with its own shamed and utopian visions of a multiculturalism that would revalidate the parking sticker of the nation-state and its core institutions at a moment when the nation-state's parking space is no longer perfunctorily renewed. Constructing these national identities and states in the context of global realignments of capital and power and new circuits of social struggle demands a new level of discursive and psychic saturation of public and counterpublic spaces. The law and state care deeply about subaltern bodies, desires, rhetorics, and words, seek to demonstrate their concern, to mirror these corporealities, to beckon them towards their remedial institutions. But as this essay suggests, intimacy, in the remedial hands of the law, advances national hegemonic projects rather than subaltern standards or dreamings.