

Aboriginal life and death in Australian settler nationhood

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Hannah Arendt identifies the onset of genocide under the Nazi regime with the declaration that 'the German people not only were unwilling to have any Jews in Germany, but wished to make the entire Jewish people disappear from the face of the earth.'¹ Arendt famously, and unpopularity, contended that the crime was a crime against humanity, perpetrated upon the body of the Jewish people.² Eichmann's evidence concerning his lack of moral awareness led Arendt to speak, again famously and unpopularity, of the banality of his evil. She defended her use of the term banal on the grounds that Eichmann never really seemed to grasp the human enormity of his actions. He was, for the most part, a modest civil servant, dutiful, unimaginative, committed to the process of expediting the work to which he was assigned.³ Banality was located in the quality of Eichmann's understanding which in utterly ordinary ways deflected any sense of moral agency or accountability.

In this paper I take up these three themes: disappearance, subjugated bodies, and banality. Colin Tatz makes the argument that genocide should be addressed within the context of the UN Convention on the Prevention and Punishment of the Crime of Genocide (1948). His reasoning is that this is the only settled and binding definition that we have.⁴ I believe his point is well taken, and I address some aspects of the Convention in this paper. However, I also believe that Arendt's three themes offer engagements with issues that may lie outside the specifics of the UN Convention, but that nevertheless plunge us into the moral depths that lie at the core of the contemporary genocide concept.

My purpose is to read back and forth across time in order to map a terrain of moral inquiry that connects violence and the naturalisation, or reduction into the commonplace, of violence. Reductionism is a social process that I take to be the production of banality. The analysis builds on work in an earlier paper on myths of national origin in which I argued that one of the founding events of Australian nationhood is a moment of death and transition: death of Aborigines, transition to white settlers.⁵ As a

1. Arendt 1979: 268.

2. Arendt 1979: 269.

3. Arendt 1979: 287.

4. Tatz 1999: 5.

founding event, its symbolic value is sustained through repetition, and national rituals may thus call Aboriginal people into a morbid dance in which both death and continuity are required. In Thomas's excellent words, settlers engage Indigenous people in a 'national grotesque combination of affirmation and rejection'.⁶ From this perspective, Aboriginal people are to the nation a social body which must continue to bleed because that blood in its various forms signifies settler conquest.

I will examine the paradoxical desire for death and continuity through a cross-section of time and place starting in the far north in 1883 and concluding in Melbourne in 1998. Concepts associated with both genocide and torture are necessary to my analysis. In his excellent discussion paper on 'Genocide in Australia', Tatz makes a good case that settler Australia engaged in practices that fall within the UN Convention on the Prevention and Punishment of the Crime of Genocide (1948). That is, settler Australia engaged in actions which were 'committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group', namely Aboriginal people. Australia was a key player within the U.N. in 1948 and worked for the implementation of this Convention.⁷

I will follow questions that make this definition ambiguous. I am not arguing for or against the idea that genocide is part of Australian history, but rather I will argue that the actual workings of death and desire were more complex than the definition suggests, and further that the complexity links torture with genocide.

Trophies of death

In his article 'Home décor and dance', Thomas contends that 'the business of simultaneously exhibiting and exterminating natives is consistent with the enduring invasive logic of a settler-colonial nation'.⁸ Reading this perspicacious insight back into the northern Australian frontier of the 1880s and 1890s, we find a frontier home décor of ghastly dimensions. Jack Watson was one of the most violent men on the northern frontier in the 1880s and 90s. He managed Lawn Hill in 1883, and Mrs Emily Creaghe, who was in the Lawn Hill region then, wrote in her diary that, 'Mr Watson has 40 prs of black's ears nailed round the walls [of the homestead], collected during raiding parties after the loss of many cattle speared by the blacks'.⁹

Watson had a wide reputation for being 'hard on the blacks', as they called it then. In 1895 he became manager of Victoria River Downs Station, remaining there until his death the next year. The infamous Constable Willshire was posted to Victoria River Downs between 1894-5, so his tenure overlapped with Watson's. They took an enormous dislike to each other, but were capable of collaboration.

Willshire went about the work of killing people, capturing others, and generally 'performing his duty', as he called it. At the same time he collected local Indigenous vocabulary, some concepts of custom and kinship, and some designs, as he reports in his invaluable book *Land of the dawning: being facts gleaned from cannibals in the Australian*

5. Rose 1999.

6. Thomas 1997: 28.

7. Tatz 1999.

8. Thomas 1997: 28.

9. Creaghe, 8-2-1883.

Stone Age.¹⁰ Less publicly, he also collected body parts. I will quote from a letter of his, responding to a question about an Aboriginal man named Pompey:

In reference to your "memo" enquiring about one "Pompey" aboriginal: I have the honour to state that three natives by that name came to their death in my time in the far north. ... [He discusses the first two; the third is discussed in these words]: On the Victoria River Downs in February 1895 two civilized blackboys named 'Pompey' and Gordon Creek 'Jimmy' ran away from the cattle station with firearms and joined the wild natives 4 miles from my hut, in three days the wild niggers killed them both, I went out and got on the natives and recovered the firearms, some few months after when the bodies of Pompey and Jimmy had sufficiently dried I went out and brought both their skulls [sic] in and buried them in my garden at Gordon Creek, as the late Jack Watson ... stated that he wanted Pompeys skull for a spittoon.¹¹

I will label this vignette a 'trophy moment'. It is an overkill site, a trophy of nationhood, produced locally.¹² Death was the 'dance' of the frontier, and the trophies went to prove that evidence of these frontier relationships — that whites and blacks had occupied the same time and place, that one had died and one had conquered — could be produced, for contempt, or for science, or for history. There was, however, no official policy that promoted killing; officers like Willshire and frontiersmen like Watson acted unofficially when they went out killing. Today this type of unofficial murder is termed an 'extra-judicial execution'.¹³

Constable Willshire criticized Jack Watson because he was so harsh on the blacks. He framed the criticism around bad management, saying that 'since Watson came on the run the whole place has been in a state of fermentation, what blackboys and lubras Mr Crawford [the previous manager] left behind have all run away since. Watson has such a bad name amongst blacks that ... there will not be a single person left who knows the run'.¹⁴ Willshire's words reference the taken-for-granted knowledge of the day that the killing that went with settlement in the cattle country was intended to terrorise, demoralise, and ultimately to subdue. There was the clear desire for death, and the trophies are eloquent testimony to settler presence at the moment of death. But there was also a counter-desire: to refrain from killing, and put the survivors to work. White settlers needed Indigenous people's knowledge and skills, they needed their collaboration in food procurement, in exploration, in locating water, in managing cattle, and in warfare. The deaths were one side of colonization, and lives were another.

10. Willshire 1896.

11. Willshire 4-12-1896, South Australian Museum Archives AD43.

12. The trophy moment was not unconnected to the society of the day. Skulls, along with other bodily remains, artefacts, and snippets of information were objects of fascination and desire to the scientific community as well. And of course the story is not confined to natives, either. Ned Kelly was hanged in 1880; he was decapitated and his skull came into the possession of the police who used it as a paperweight (Molony 1980: 254).

13. Sheff 1987: 234.

14. GCPJ, 18-3-95, 8-7-95; Willshire 1896: 38.

Charlie, an Aboriginal man, holding a skull. A Winchester rifle is propped against the tree. (Charlie Schultz collection)

Charlie Schultz was a white cattle man whose memories of life on the frontier are offered in the book *Beyond the big run*.¹⁵ He came to the Victoria River District well after the time of Watson, Willshire, and others whose extra-judicial actions were so deadly. He did not go out killing, nor did he exactly condone killing, but he clearly understood it to have been a key fact of earlier settlement. This photo, taken by Schultz in about 1930 documents an elementary unit of the frontier: a dead Aboriginal, a living Aboriginal, a white man, a gun, and a camera. The white man's

presence frames and penetrates the whole photo — including the skull, which Charlie picked up near a massacre site. This photograph is another trophy: it captures life and death, white and black, extermination and display, all in one vividly provocative image that fixes those dynamic trajectories, and holds them in their tension, at the foot of a tree in the Victoria River District.

Banality as 'history'

Scholars are in significant agreement that torture in the twentieth century (and continuing in the twenty-first century) differs from classical torture in several important ways. What they have in common is the infliction of extreme pain for a social purpose, and with the intent that the victim not die. Where they differ, as Edward Peter states so very clearly, is in this: 'It is not primarily the victim's information, but the victim, that torture needs to win — or to reduce to powerlessness.'¹⁶ Darius Rejali, in his study of torture in

¹⁵ Lewis and Schultz 1995.

¹⁶ Peters 1985: 164.

Iran similarly contends that twentieth century torture aims to produce certain kinds of subjects — dependent, apolitical, asocial individuals.¹⁷ My analysis goes to torture's doubled intention — an intention both to destroy the person and to prevent their death. As the literature on torture assumes an individual victim, I will attempt to read contemporary analysis of torture back into action directed toward groups rather than individuals. In doing so I link the power structures of torture with the power structures of conquest in settler societies.

Charlie Schultz's photo suggests that over both the living and the dead there hung a shadow of death. Its vision was ultimate destruction, its name was history. Many settlers believed that Aborigines were doomed to disappear in the encounter with civilisation; Willshire, as ever, is pithy and instructive. Of the Victoria River natives, he wrote: 'I do not object to them; they are the pure aborigines, who are gradually going to extinction'.¹⁸ Settlers were secure in the idea that they did not have to kill all the people in order to eradicate them. Time was on the side of the settlers, as death was an event that was overtaking Aboriginal people no matter what they did.

The social Darwinism of the late nineteenth and twentieth century posited the telos of human civilisation moving or evolving toward greater complexity and greater inclusiveness. Survival of the fittest, in social life, meant not only brute power as the measure of success, but the eradication of competition so that the end of history would be marked by a human monoculture. Settlers' sense of destiny allowed them to imagine themselves working with the inevitable (natural) tide of history. The deaths they inflicted were not necessarily intended to destroy whole groups, and many of them believed that what they did not complete, nature or history would complete for them. It was a win-win outcome for death.¹⁹

Aboriginal people of the Victoria River District understand these relationships very well. They say today that the stations are built on the blood and bones of their ancestors, and while they use the expression rhetorically, they mean it entirely factually.²⁰ In the cattle country of the Victoria River District there was no hint of soothing the pillow of the dying race. Quite the opposite, Aboriginal people were incarcerated on cattle stations, and were subjected to extreme brutality, including starvation, and physical and sexual abuse. Not all stations were equally abusive by any means, but as I have suggested in *Hidden histories*,²¹ the laws that gave pastoralists almost unlimited power over Aboriginal people ensured that people had few, if any, forms of redress.²²

17. Rejali 1994: 176.

18. Willshire 1896: 35.

19. There were people who were more kindly disposed towards Aborigines who found this to be a tragedy. A few queried the proposition that Aborigines were destined to die out, seeing in place of destiny a set of practices of dispossession, starvation, neglect, and other forms of cruelty. For example, see Woods, J. 1880, 'The Natives in the Far North', *Sydney Morning Herald*, 22 July: 2.

20. Rose 1991: 35.

21. Rose 1991: 149.

22. My analysis remains situated primarily on VRD and Wave Hill stations because Aboriginal people's understandings of their history vary, and across the north people tell the stories of their lives in the pastoral world differently — see, for example, McGrath 1986.

On many of the enormous cattle stations in the Victoria River District of the NT, Aboriginal blood was let fall in direct killings, and then was allowed to bleed out during a long period in which settlers effectively worked people to death. Keeping the dying alive long enough to make good use of their labour was actually not a goal on many stations, as there was also a belief that there existed in the bush a continuing reservoir of Aboriginal people who could be brought in and forced to work their lives away.²³ The continuity of the labour force was imagined as a stream of people coming from bush to station, rather than as the reproduction of generations of people within the stations.

In 1944 and 1945 Ronald and Catherine Berndt were employed by Vestey's pastoral firm to assist them with their labour problem: The work force was dwindling, Aborigines were no longer coming in from the bush, and Vestey's wanted the Berndts to recruit.²⁴ The Berndts reported on a set of conditions on the stations that were so severe that it was simply impossible for Aboriginal people to thrive. In light of the UN Convention on Genocide, which came into effect only a few years after the Berndts' study, conditions on the cattle stations that the Berndts surveyed, and undoubtedly on others as well, were situated very ambiguously in respect to point three: 'deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part' (Article II, c, United Nations Convention on the Prevention and Punishment of the Crime of Genocide [1948]). I do not find evidence to suggest that cattle station personnel sought deliberately to inflict on Aborigines conditions calculated to bring about physical destruction. On my reading of the evidence, destruction occurred as a matter of indifference, negligence, and casual cruelty. It was attributed to the agency of history rather than to settlers' own agency.

Jack Watson put the evidence of bloodshed on display and announced death as a colonial project. Charlie Schultz formalised death as the past and placed it in a composed tableau that suggests a trajectory or tide of history. Aboriginal people's lives were treated with a careless negligence that was also a form of complicity. If the tide of history doomed Aboriginal people, complicit whitefellows hastened that history along.

Living trophies

The near total control that whites exercised over blacks on cattle stations included white men's demands for sex with Aboriginal women. While men 'paid' women for sexual labour, the exchange itself was coercive on stations such as Wave Hill and Victoria River Downs because the necessities of life were consistently undersupplied. A woman's sexual relationships with white men could make the difference between life and death for herself and her dependents. Not only women, but also girls were brought into this economy of sex.²⁵ The Berndts report the case of a man demanding sexual access to a seven year old girl.²⁶ In addition, rape and gang rape were always possibilities, and here again, opportunities for redress were almost non-existent.

²³. Rose 1991: 151.

²⁴. Berndt and Berndt 1987: 221-222.

²⁵. Rose 1991: 179-188; see also Rose 1992.

²⁶. Berndt and Berndt 1948: 48.

Not all sexual relationships were exploitative, or without kindness and regard, nor were Aboriginal women only and always the victims in these relationships, as McGrath has shown.²⁷ The social facts that run through these relations are the facts of incarceration, coercion and lack of redress. In Australia rape and other forms of coercive sex were not officially sanctioned, but unofficially they were well-established aspects of the pastoral regime. One might consider 'extra-judicial sexual violence' as an adjunct to extra-judicial killings. Importantly, locally practices were condoned that would have attracted official condemnation if they had been required to be officially acknowledged.

Only recently has systematic sexual abuse come to be included within the UN definitions of crimes against humanity. The issue first arose in international law in the case of Jean-Paul Akayesu who was tried for crimes against humanity by the International Criminal Tribunal for Rwanda (ICTR; September 1998). The three judges in this case note that issues of sexual violence were being monitored by NGOs, and that there was growing public concern 'over the historical exclusion of rape and other forms of sexual violence from the investigation and prosecution of war crimes'.²⁸ The judges note that there was at that time no commonly accepted definition of rape in international law, and they proceeded to offer a definition: 'a physical invasion of a sexual nature, committed on a person under circumstances which are coercive'. In order for rape to be considered a crime against humanity, it must be part of 'a systematic attack ... on a civilian population ... on national, ethnic, political, racial, or religious grounds'.²⁹ Thus in order for rape to count as a crime against humanity, it has to be part of an intentional and systematic attempt to destroy a group.

The connection between rape and destruction rests primarily in the disposition of children. The fourth point in the Convention on Genocide reads: 'imposing measures intended to prevent births within the group' (Article II, d). The ICTR judges took a broad view of this definition, noting that where group membership is determined by parentage, then rape may be used to force women to give birth to children who will not belong to their group. The judges imagined a case of patriliney such that the children would be rejected by their mother's group. They also note that these criminal practices might have the effect of discouraging women from procreation. Both aspects are pertinent in the pastoral world of Australia.

As in Rwanda, Aboriginal women were discouraged from bearing children. Evidence for this proposition is provided by the Berndts who reported that many of the Aboriginal women they met with were disheartened, and appeared to believe that it was futile to bear children under the circumstances of their lives.³⁰

More importantly, perhaps, in Australia children were not rejected by their mothers' groups, but rather were claimed and taken by the state. As is well known, in the Northern Territory the Commonwealth Government assumed the right to remove children from their families and communities and incarcerate them in institutions specifically for the purpose of raising 'half-caste' children. These are matters of extreme significance in their own right, but go beyond the scope of my analysis here.³¹ My point

27. McGrath 1986.

28. ICTR para. 417: 94

29. ICTR, para. 598: 130.

30. Berndt and Berndt 1987: 90-91.

Photo: Kahlin Compound in Darwin, 1930s. (AIATSIS Pictorial Archive)

is that the common practice of sexual abuse on cattle stations can be assessed as part of a set of measures intended to prevent births within the group that would increase group membership.

The removal policies also contravened the fifth type of action named in the Convention: 'forcibly transferring children of the group to another group'. It is clear that many Aboriginal women were subjected to extra-judicial rape, and then to the loss of their own children. Agency in this case was linked to the tide of history, but also was naturalised as the inevitable working out of human sexuality. Within the pastoralist world of white masculinity, these relations were held to be 'only natural'. Constable Willshire stated the case with a few choice words: 'Men would not remain so many years in a country like this if there were no women, and perhaps the Almighty meant them for use as He has placed them wherever the pioneers go ... What I am speaking about is only natural, especially for men who are isolated away in the bush at out-stations where women of all ages and sizes are running at large.'³² The Almighty soon dropped out of North Australian lingo. In 1945 Bill Harney, a patrol officer for the Native Affairs Branch (NT), wrote that on stations in the Victoria River District, 'young women are regarded as part of the wages paid to keep [European] men on the stations'.³³ Tom Cole, a stockman who later published volumes of reminiscences, recalls

³¹. Report of the National Inquiry Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (Australia) 1997.

³². Willshire 1896: 18.

that he recruited a cook to a station with the inducement that 'the lubras [Aboriginal women] are the sweetest little girls in the Territory ...'³⁴ Cole's remarks naturalise men's desire for Aboriginal women: 'its the same old story wherever you are.'³⁵

The banality of 'blood'

Jack Watson's trophies — the ears nailed to the wall, and the spittoon made from the skull of a man with whom he had once worked — identify a moment in which Aboriginal people were consigned irrevocably to the past. The deaths that he displayed, and the stations in which people were forced to work while white society waited for them to die out, were sites at which segments of the social world were being shifted out of the present and into the past.

The Welfare Department's trophy, in the form of stolen children, was directed toward the future. It deprived the families of their future generations and deprived the children of the possible future they would have had as members of their natal families and communities. Aboriginal blood was no longer a substance soaking the soils of conquered lands as it had been in Willshire's time. It became increasingly attached to the symbolics of racial eugenics — full-bloods, half-castes and other terms of blood quanta were compartmentalised into different historical trajectories. Death was for the full-bloods, and gradual whitening was for the half-castes. Aboriginal people would bleed out across their own future generations as the people taken from them were disappeared into an assimilated dream of monocultural Australia.

Michel Foucault famously contends that: 'If genocide is indeed the dream of modern powers, this is not because of a recent return to the ancient right to kill; it is because power is situated and exercised at the level of life, the species, the race, and the large-scale phenomena of population'.³⁶ Every scholar I have encountered who writes about these matters disagrees with Foucault, contending that his words offer the seduction of thinking that we have left behind us the 'ancient right to kill'. The Nazi death camps stand as the overwhelming modern event that contradicts Foucault's analysis. Nazi death culture linked blood to the symbolics of race and to the power to exterminate.³⁷

In Australia, by the mid-twentieth century, the relationships between nationhood and Aboriginal people had shifted from dead bodies to living ones, and the living were being made to disappear. White Australian fantasies and symbolics of Aboriginal bodies depend on the binary of contrast with white bodies. Elizabeth Grosz offers a profoundly realised vision of the white, implicitly male, embodied subject of modernity: His body is solid and thus opaque; its boundaries are impermeable, and it is under the control of the will. The inner fluidity of the body, such as it is, is wholly contained either by the will or by the physical boundaries of the body.³⁸ Grosz is interested, of course, in how women's bodies fail to attain the ideal of corporeal subjectivity, primarily because of menstruation, but I want to take the analysis into the domain of settler

^{33.} Harney 1945.

^{34.} Cole 1990: 119.

^{35.} Cole 1990: 26.

^{36.} Quoted in Rosengarten 1996: 23.

^{37.} Rosengarten 1996 and Linke 1999 make this argument persuasively.

^{38.} Grosz 1994.

racial desire.³⁹ In Australia, as elsewhere, white fantasies of Aboriginal bodies depend on a set of imagined transgressions against the white ideal.

One imagined transgression is that the interior of Aboriginal bodies is visible. Racial conventions and a vocabulary of blood quanta assume that it is possible visually to assess with probable accuracy the actual 'blood mixture'. A bureaucracy wants documents, while patrol officers and policemen, as well as many Australians in their daily lives, made visual assessments that were based on the assumption that they could read off the quanta of inner substance from the external features. This leads to a sense of transparent skin, as if white people could look right inside the bodies of racialised others. From a white perspective, reading the surface is a natural act that acquires its exactitude only because bodies are themselves conceived as natural. The white eye merely reads what the natural skin displays, and the skin only displays what the interior 'blood' consists of. In contrast, Aboriginal people report experiencing this racial gaze as extreme aggression. Fanon articulates the pain of the 'genocidal gaze'; it penetrates the body of the black person in a colonial context, causing pain like knives opening within.⁴⁰ Under regimes of colonising violence, a person's body and form become a site of injury, and part of that injury derives from the presumption of interior visibility. Mitchell articulates this suffering as the place of shared remembrance in reconstituting Aboriginal moral communities. There is a powerful story here that is articulated through Aboriginal agency, but this, too, goes beyond my purpose here.⁴¹

Another imagined transgression is that inner substance is said to be not under control of the will. Aboriginal blood is imagined to have its own agency that the person can barely or rarely resist. We know this set of concepts best from novels and films — the Boney mystery novels offer superb examples — but it also informs official documents. Bleakley, the Queensland Protector of Aborigines, recommended in his 1928 report that half-caste children be segregated. His reasoning was that they needed to be isolated where they could 'avoid the dangers of the blood call.'⁴² The idea that blood will call out, and that people will be unable, because of their own blood, to resist that call, depends on a concept of extreme lack of control of the mind over the body, and an overwhelming agency within the body.

A third imagined transgression is permeability. The idea that Aborigines are all being washed away on the tide of history suggests that their bodies are uncontrollably permeable, and that they are on a trajectory of loss. Rather than their inner substance being contained by the skin and by the will, white Australia imagines an on-going process of lost blood, against which it defines its own emergent and fragile conquest. Permeability underwrites the long ritual of nationhood in which Aboriginal people dwindle beneath the shadow of death, and history, and their own permeability.

³⁹. I am reliant on both Rosengarten 1996 and Linke 1999 in helping me to conceptualise this section.

⁴⁰. Discussed in Mitchell 1996: 266.

⁴¹. Mitchell 1996: 266.

⁴². Cited in Tatz 1999: 26.

Transparent trophies

The Yorta Yorta Aboriginal Community's application for recognition of their native title concerned the public lands and waters in a large area of northern Victoria and southern NSW along a section of the Murray and Goulburn Rivers; it was registered in 1994. After mediation, it was referred to the Federal Court in May 1995. This was the first case to come to trial under the *Native Title Act*; it was heard over the course of several years, with the main body of evidence and arguments being heard in 1997–8.⁴³

The judge (Olney J) found against the Yorta Yorta people. The essence of the judge's decision on Yorta Yorta Native Title can be quickly summarised:

The facts in this case lead inevitably to the conclusion that before the end of the 19th century the ancestors through whom the claimants claim title had ceased to occupy their traditional lands in accordance with their traditional laws and customs. The tide of history has indeed washed away any real acknowledgment of their traditional laws and any real observance of their traditional customs.⁴⁴

One of several remarkable aspects of the judge's decision was the quality of its sentiment. Yorta Yorta people were criticised as witnesses, the anthropologists working with them were criticised, and their lawyers certainly got no praise. The media picked up on many of the judge's negative comments, particularly his comment that, 'in one instance two senior members of the claimant group were caught out telling deliberate lies, albeit about a relatively minor matter...'⁴⁵ The assertion of a lie is debatable on sociolinguistic grounds, but the judge formed his view according to his own grounds, and he expressed it. So did almost every newspaper and radio station in the country; years later it is still repeated from time to time.

Another remarkable aspect of the case was the displacement of agency that I have noted earlier: all the events leading to the loss of title had been caused by history. Newspapers and radio blared out the news that the tide of history had washed away Yorta Yorta people's native title. Additionally, in this case agency was displaced by the idea that the facts took the lead in drawing the judge to his conclusions. I now turn briefly to some of these facts, which led him so inexorably.

The decision relied in the first instance on the work of Edward Curr. Curr was a squatter in Yorta Yorta people's country. His father bought a sheep station there in 1841, and Edward took charge of the property. Over the years he became interested in the gentlemanly pursuit of compiling a natural history of Aboriginal people, and in 1883, forty-two years after he took up residence in the region, he published his *Recollections of squatting in Victoria, then called the Port Phillip District (from 1841 to 1851)*.⁴⁶ The book has a great deal in common with Constable Willshire's *Land of the dawning*. Both authors

43. The Yorta Yorta people's application was opposed by the governments of Victoria, NSW, and SA, as well as by the Murray Darling Basin Commission, Telstra, the recreational users of the river (including fishermen and others), by groups whose interests were as varied as grazing, timber, and tourism, by the Murray Irrigation authority, and by numerous local governments. There were some 16 barristers and QC's ranged against the Yorta Yorta, who had the services of one barrister and one QC. Rod Hagen and I were anthropologists for the Yorta Yorta.

44. The Members of the Yorta Yorta Community, para. 129.

45. The Members of the Yorta Yorta Community, para. 21.

46. Curr 1968 [1883].

were on the frontier dispossessing people, and at the same time collecting and exhibiting fragments of information in the form of texts promoting the reputation of the author. The books were published within a few years of each other and each purported to draw on extensive first-hand insight in describing the customs and world view of savages.

One example of how the judge's argument was constructed will enable the analysis to proceed.⁴⁷ Curr worked with a set of colonial tropes that distinguish the gentleman from the natives. One such trope is the wasteful native: unlike the gentleman, the wastrel is not a good steward of the land and resources at his disposal. Curr writes: '...food was plentiful, and they were very wasteful of it. I have often seen them, as an instance, land large quantities of fish with their nets and leave all the small ones to die within a yard of the water.'⁴⁸

The judge used this passage as one measure of the lack of continuity in Yorta Yorta custom:

Another contemporary practice that is said to be part of the Yorta Yorta tradition is the conservation of food resources. ... It is said by a number of witnesses that consistent with traditional laws and customs it is their practice to take from the land and waters only such food as is necessary for immediate consumption. This practice, commendable as it is, is not one which, according to Curr's observations, was adopted by the Aboriginal people with whom he came into contact and cannot be regarded as the continuation of a traditional custom.⁴⁹

As an anthropologist, it is perfectly clear that Curr observed people who were obtaining surpluses, as people did and do all over the country. Perhaps they were being wasteful, but it is far more likely either that he did not stay to observe how the food was distributed and/or preserved, or that he frightened people away so that they were unable to distribute and/or preserve the surplus. His fragment of information is almost certainly incomplete; he offered it as a benchmark of savagery. Under the judge's analysis, it became a benchmark of native title. Much of the evidence went like this: Curr's propositions were held as benchmarks, and Yorta Yorta people of today were found wanting.

This is a trophy moment, another overkill event that instantiates nationhood. What are the parallels between the different trophy moments? How do they position white people, the state, and the lives and bodies of Aboriginal people? One hundred years ago, ears and skulls were material items that absolutely grab the attention. In mid twentieth century the children were being grabbed, institutionalised, and sent out into white society. Their lives were bent to the will of an erratic dream in which people marked as transgressively different could become agents of their own disappearance. The Yorta Yorta trophy moment is different, and yet it seems to be part of this long continuum.

In the Yorta Yorta judgement we see both an assertion of complete conquest on the part of white people, and a corresponding assertion of complete transparency of Abo-

47. See also Rose forthcoming.

48. Curr 1968: 263.

49. The Members of the Yorta Yorta Community, para. 123.

iginal people. Thus, to my list of three mid-century bodily transgressions, I now add a fourth that seems to speak to the 21st century: that of total transparency. The judge seemed to look right through the Aboriginal witnesses, and find a truth that was located elsewhere. Their own words, lives, bodies, and vivid living evidence, were set aside in favour of a locus of truth that takes us back to the time of Jack Watson, Constable Willshire and Edward Curr. The transparency of the applicants on the one hand appears as an absence — their words carried no weight, their presence offered no firm index of their connection with their own history. But on the other hand the applicants' absence could be said to have a certain shape, like a lens that one looks right through, but which by its shape bends the light that goes through it. The Yorta Yorta people's transparency was a lens that in the legal context focussed attention on a moment of truth that was held to be far in the past, and was documented by a white settler, not by Aboriginal people themselves.

This brings me back to torture.⁵⁰ Classical and Medieval torture sought to extract the truth from its hidden places within the body. It depended on the idea that intellect could conceal the truth, but that the body would yield it under duress. The Enlightenment era radically shifted this view: torture became re-imagined as irrational, and the truth, although still hidden, could be exposed through the application of reason.⁵¹ Page duBois, in her excellent book on torture and truth, considers that contemporary concepts of truth show continuity with antiquity, especially around the idea that truth must be forced into the open.⁵² In contemporary legal settings, the method of cross-examination is designed to force the truth out of its hiding places.

I believe that the Yorta Yorta decision can be seen to suggest that the transparent bodies of the applicants no longer contained a truth to be forced out into the open. Their court room presence as three-dimensional beings with names, documents, citizenship and rights, was undermined by this more compelling absence: they were construed as people with no truth in them, and thus with no testimony that could fruitfully be brought into the open. The judge's insistence on 'lies' seems to hammer home the idea of a missing truth. But there is a Cretan paradox here: the one truth located in the witnesses was that there was no truth. One can thus imagine people as lenses that refract truthfully: one could see the past, and in that refracted seeing one could know that it was, with certainty, the past. Reading into the decision this way, people, through their transparent presence, testified (truthfully) to their own demise.

To return to Foucault's point about the ancient right to kill, I think it is most plausible to contend that we have ambiguated but by no means abandoned the 'right to kill'. Have we not naturalised it, decentralised it, and to some degree concealed it? Unlike

^{50.} Scholars caution against using terms like torture or genocide metaphorically, on the grounds that to weaken them is to deprive us of the power of our ability to represent the subject of our concern. If the word torture comes to mean almost everything, then it also means almost nothing. I agree with the logic of this proposition; my contention is that torture, defined as the infliction of pain in order to produce powerlessness, is a continuing process. It would be equally wrong, I think, to imagine that torture only occurs in the secret spaces of prisons and camps. If torture takes place out in the open under state policy, we would miss the significance if we refrain from naming it.

^{51.} Ruthven 1978: 11; Beccaria 1995: 39–44

^{52.} du Bois 1991.

genocide and torture, which are imagined as episodic crisis events, have we institution-alised that right to kill, and spread it out across time, labelled it history, and made a nation in dialogue with trophy moments? What alternatives are there to the form of nationhood that calls Aboriginal people into a continuing dance of death?

Postscript

This paper arises out of my commitment to processes of decolonisation. It assumes that many of us New World settler descended people seek to encounter ways by which we may inscribe a moral presence for ourselves in our societies. I do not pass contemporary judgements on the past, per se, but rather I draw on contemporary moral sensibilities to enable us to understand connections between past and present, and thus to understand more clearly the quality of damage in the moral terrains of our lives today. The reason for doing this is to gain an appreciation of the damage toward which we would direct our reparative action in the world.

None of the trophy events I have discussed can be truly said to have found social resolution. In the Victoria River District Aboriginal people continue to struggle to make lives of decency and productivity within the national and global economies whilst yet remaining in proximity with the blood and bones of their ancestors. The reverberations of the removal policies have spread through families and communities for generations, and are now inspiring a national movement of reconciliation. The Yorta Yorta case was appealed to the full federal court. Two junior judges (Branson & Katz JJ) upheld the view that native title was extinct, while the senior judge (Black CJ) took the view that the legal reasoning behind the extinction view was faulty. The matter is now under appeal to the High Court.

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