Speaking–Writing With
Speaking—Writing With: Aboriginal and Settler Interrelations

By

Fiona McAllan

CAMBRIDGE SCHOLARS
PUBLISHING
# Table of Contents

Foreword .................................................................................................................. vi

Introduction ............................................................................................................. 1

Chapter One ....................................................................................................... 9
  Searching, Locating, Situating Voice

Chapter Two ..................................................................................................... 30
  Who is Saying What?: Tuning Out the Disconnected Coloniser’s Noise

Chapter Three .................................................................................................... 79
  Learning to Speak With

Chapter Four ..................................................................................................... 106
  Tuning in the Inner Voice

Chapter Five ..................................................................................................... 139
  Speaking From

Chapter Six ....................................................................................................... 163
  Addressing Denial of the Inner Voice

Chapter Seven .................................................................................................. 187
  Allowing the Mother Tongue

Bibliography .................................................................................................... 203

Index ............................................................................................................... 214
FOREWORD

This book is the outcome of research for my PhD, which I undertook as a thesis by publication, ie, publishing my articles as I progressed through this research experience. Thus it was not the usual experience of polishing the overall PhD for its presentation, after a period of reflecting, drawing conclusions and writing up my research at the PhD’s completion. As I researched, my publications were prepared concurrently with my “in the field” research, which also resulted in the preparation of a teaching resource package that includes a DVD and teachers notes, available separately.

This different route has meant two things. Firstly, that I felt it was necessary to present the thesis as a book publication, so that there is access to a coherent theoretical arc of my research, particularly for academics who may be familiar with my articles.

Secondly, the work has been enriched with the immediacy of my theory/praxis experience, which highlights how this research is idiosyncratic, yet clearly interrelated with all the forces and influences experienced and explored along a research path.

This, I have learnt, follows an indigenous methodology, crucial to indigenous epistemologies.

As many researchers working in the field of Indigenous/non-Indigenous relations know, this academic terrain is fraught ground in Australia, for non-Indigenous researchers particularly, as in all countries with the “colonial” experience. I hope that through sharing my experience in this book I can assist a growing awareness of indigeneity, and a reconnecting and “learning to speak with the mother tongue” of non-Indigenous peoples everywhere.
INTRODUCTION

This book explores the continuing ideological and historic-political structures that suppress indigenous voice in the “Australian” situation, and reveals how these suppressions are resisted and exceeded. The theory offered is that “voice” is not argued as of itself achieving communication, as interpretative exchange is carried on beyond the limits of human interfacing—communication engages interrelated interentity participants and effects. Yet if the “interpretative devices” of a culture continue to be constituted by a dominant group, and particularly if the dominant group’s conscious engagement in interentity communication is myopic or opaque, this reduces “access to interpretations through which those on the outside can [engage with] their existence in their own terms” (Muecke 1992:125). It is argued that conditions that suppress indigenous voice are reproduced when colonising relations continue to construct the dominant perspectival paradigm. Even so, at the same time, it is argued that communication continues nevertheless.

The work is cross-disciplinary, engaging critical and cultural studies, poststructuralism, critical race and whiteness theory and indigenous relational ontology. “First Nations Australians” are identified as Indigenous in most discussions (while it is argued this collective is nevertheless a heterogeneous demography and all individuals are fundamentally indigenous according to a relational ontology). While discussion circulates in and through “indigenous” and “settler” interrelations, the focus is on the relations between these collective identities—on the formation of subjectivities and the ongoing construction of identity. The book theorises ways of speaking “with”, in place of “for”, Indigenous peoples, as a means of resisting and overwhelming the colonising frame. It is argued that different worldviews are in play, making sharing and negotiation of difference at the boundaries necessary. The imposition of colonial sovereignty is deconstructed and a co-sovereign existential relation is theorised, which is argued to be fundamental to reciprocal sociality.

The research includes six previously published journal articles. A DVD was also produced (available separately) as the outcome of a concurrent “in the field” research project conducted during the three years of my PhD, and it consists of five personal narratives with Indigenous co-participants and a connecting narrative from myself. This field work experience is included in
the book in order to particularly explore the theory–praxis relation central in my research methodology.

The articles appear chronologically in the connecting narrative following the Introduction. The articles, as previously published are:


7) “Speaking With the Darug and Kulin: Indigenous/Settler Interrelations and Identity” 70 min DVD with teachers notes, released in October 2010 for distribution as a secondary and tertiary teaching resource through *Video Education Australasia*, Bendigo, Victoria.

This book joins the bodies of critique of traditional western metaphysics and by extension the colonising relation. The idea of the “present” “I” has dominated in western metaphysical ontology, along with a presumed lost origin and persistent universalism. The “I” denies its interdependence with the other, thus the colonising relation denies intersubjective and interentity responsibilities. While poststructuralist critique may have its roots within the experience of “Europe” the critique itself is arguably outside Eurocentricism. This critique has constituted within forces of resistance to colonising relations (that continue this Eurocentricism).

Poststructuralist thinkers, for example Jacques Derrida and Jean Luc Nancy, deconstructively engage with the metaphysical tradition to negotiate a third space beyond the opposing fixed concepts that this tradition relies upon. Deconstruction concerns a dispersive perspective, which reveals the multiplicity of meanings, whereas the metaphysical tradition is always searching for a convergence of meaning. Deconstruction is focused on revealing the ongoing construction of meaning (Bennington in Bernstein 1999:549-557). Postcolonial thinkers, for example, Bhabha, Spivak and Fanon, question fixed identity within colonised countries and provide
subaltern perspectives. Most importantly this book draws together points of resonance in this poststructuralist/postcolonial thinking with indigenous epistemologies and methodologies.

What provides connections in these thinkers is how, ontologically, they consider interdependence at core, that is, relational ontology. Relational ontology engages a subjective disposition that acknowledges an ethos of "one by the other" rather than ontology of the "one" at the expense of the other. The Indigenous thinkers I refer to, for example, Watson, Tuwihai-Smith, Battiste, Martin, Moreton-Robinson and LittleBear, extend critique of western metaphysics through the provision of universe-referent perspectives, and decolonising and indigenous methodologies, expanding the limits of western knowledge through atemporal relations of place and allowing for cyclic, continuous and synergistic relations that exceed the linear narrative of western "progress".

Universe-referent perspectives are argued as perspectives that recognise lived experience takes place within a living universe (Posey 2001:5)—as an interconnected web of individual, family, community, society and universe. Traditional western metaphysics would consider the sun, for example, as a non-living inanimate entity. Universe-referent thinking moves away from a human-centric focus (one that prioritises the human in all communications, discourse, exchanges) to a universe-referent way of being (one that allows for the voices of the so called non-living entities) (Arabena 2008). This web of interdependence is a "never-ending source of wonder" … "not a description of reality but an understanding of the processes of ecological change and ever-changing insights about diverse patterns or styles of flux" (Battiste 2000:265).

Despite their differing cultural contexts and backgrounds, the theorists resonate together in their ongoing revealing of the liminality that exceeds the western tradition’s limits (or the colonising relation), wherever suppression/oppression/repression occurs. In language terms, there is only enunciation, as it is impossible to communicate all that needs saying at any given moment. Jean Luc Nancy states:

Bataille communicates to me the pain and pleasure that result from the impossibility of communicating anything at all without touching the limits where all meaning [sans] spills out of itself, like a simple ink stain on a word, on the word, meaning (Nancy 1992:319).

My research focuses on this impossibility. Another fundamental research focus is on how enunciation is forever embodied (Martin 2007, Moreton-Robinson 2004:12, Lingis 1994, Merleau-Ponty 1968, Grosz 1994). Grosz writes:
A knowledge that could acknowledge its genealogy in corporeality would also necessarily acknowledge its perspectivism, its incapacity to grasp all, or anything in its totality … there is nothing beyond the multiplicity of perspectives, positions, bodily forces; no anchor in the real (Grosz 1994:128).

Grosz argues embodiment through engaging Nietzsche’s complex notion of nature, which:

precludes associating instincts with their usual biologic and nonhistorical connotations. Nature is not the origin, source or designer of instincts; nature itself is a destination, product, or effect. In man, there is nothing natural, if by nature is understood what is inert, transhistorical, governed by law, conquerable (p.129).

Theorists of embodiment argue against this form of nature as self-identical, (thus abstract and disassociated) and argue against the moralising binaries that seek to establish “natural” as “primitive”, “exotic”, “native”. Focusing on embodiment fundamentally assists in understanding the subject’s engagement in relational ontology. The theorists I engage with comprehensively interrogate the persistence of the dualist ontological position of Cartesian thinking that prioritises mind over body and produces practices of objectification. Inherent to embodied thinking is also the necessity of understanding the materiality of energetics (largely overlooked in western thought). Some fields of western research are increasingly engaging in what has always been fundamental to relational ontology, for example, eco-phenomenology, and the work of Deleuzian theorists like Patton, Grosz, and Bennett. While all wrestle within the limits of language, the two particular research focuses in this book are therefore both the necessity to allow for embodied universe-referent perspectives, and the limited access to interpretative terms when public discourse remains in the control of those deriving economic and social benefit from the European colonisation of “Australia”. At the same time, interrogating voice suppression will continually reveal the deconstructive and affirming resistance that continues, within and beyond colonising relations.

It might appear that I am arguing for a specific form of indigenous identity in the book, at the same time as I am arguing against this. Yet if there is a central tenet of this thesis, it is that while our differences are materially specific, they are also contingent and relational to each context in which we present. In the paradoxical structure of lived experience, our incommensurable differences do not allow for fixed categories of one group or another, as we are always on the move, always in a state of flux, always different to each other, no matter what. In the realm of the social, our differences define us, not divide us. This, I argue, is the constitutive paradox that is fundamental to all lived
experience, that is, that while our differences define us, in the incommensurable difference that does this, these differences also join us. As individuals we share our incommensurable difference with each other. This paradoxical relation would therefore generate every interrelationship within humanity—and all further interrelationships within the biosphere and beyond. Individually we continue to straddle categories in their relational contexts. It is the context and how we speak of difference that is therefore crucial. Power relations of repression depend on dividing rather than defining, and so rely on particular contexts and particular ways of marking difference.

In the embedded articles, “Passages”, “Bound for More of the Same” and “Customary Appropriations” I argue that, as difference is constitutive, the idea that difference can be unproblematically assimilated to produce sameness is illusory. In relationships where difference is utilised to divide people, that is, marking them as “other” and then dealing with them subordinately, this becomes a power relationship entailing the repression of their difference.

Importantly, in this book it is argued that each individual is indigenous in the sense of their individual emplacement within lived experience. At the same time, conditions of European colonisation in Australia make it very necessary to define “indigenous” difference in relation to a “non-indigenous” difference and vice versa. For example, in the article/chapter “Laws of Place” I define people who are “from here” (Australia) and their descendents, and people who have “come here”, or descended from those that have “come here”. This definition therefore becomes a prevailing structural frame to define this particular difference, (that is, “from here” or “from there”), but the differences will nevertheless need to be understood in each specific case, even as I am forced to generalise. And within the first generation of relations between, such definitions are complicated. Nevertheless, the differences between those “from here” and those “from there” are retained, in all their increasingly complex specificities.

To position people in relation to one another is the only possible defining frame when considering ALL individuals as indigenous in the world in terms of originary relatedness. In this case, and for the purposes of this book, another structurally defining frame becomes necessary—that often those who “came here” or those who descended from those who “came here” became, or have become, largely disconnected from understanding themselves in terms of their indigenous individual emplacement in the world. But it also can be the case that those “from here” have become disconnected also from this relation of indigenous emplacement, as a result of intergenerational affects from the ravages of colonial occupation/oppression. This alerts us to the ever-present necessity to attempt to consider our subjectivity in each specific case, in its particular difference. I argue this in detail in the paper “Laws of Place”.

I continue to repeat throughout the book that the focus should remain on why particular difference needs to be defined, rather than focusing on assumedly fixed oppositional categories such as “indigenous” and “non-indigenous”. At the same time, it is never my intention to distort or dissipate the specificity of indigenous-specific experience and what this continues to mean in Australia. It is therefore crucially important to consider each context when I seek to mark the difference that defines people as one or the other. Difference needs to be traced in all its manifestations, (ethnicity, class, gender, etc), as these specifics are ever-distinct in the defining of our differences, within their relational contexts. If the focus is not on this relationality, specific power relations will produce generalising assumptions, which then provide opportunity for the violence of appropriation. The underlying theory of the book brings out how all individuals are emplaced in the wider relations of the interentity enlivened world. This should encourage individuals to better comprehend our responsibilities to place and to each other.

The methodological approach in the articles, the connecting narrative, and the DVD, is phenomenological/hermeneutic in a deconstructivist sense (Shank 2002, Creswell 1998) and also regarding historical/constructivist analysis, thus “analysing the past through multiple lenses and interpretations so past/present can be critically reappraised” (Carnegie & Napier as quoted in Burton & Steane 2004:165). I also interrogate the forces of social constructivism (Lincoln 1990, Denzin & Lincoln 2000), with an overall qualitative approach that incorporates my “direct engagement in intense, prolonged and direct exposure to the field amidst ‘live’ situations that form the everyday activities and processes of people, organisations and institutions” (Parker 2004, Lincoln 1990 as quoted in Burton & Steane 2004:160). My analysis is based on a personal exploration and self-discovery (while I argue this as impossible), by way of experiencing phenomena and encountering subjectivities, and my response to this, in light of my own subjective understandings. I argue that reflexivity is a project that is carried out at the limits of subjectivity, where boundaries are always undone, and meaning is constituted while always also exceeded (Minh-ha 1994). Nancy, in his work on embodied writing (meaning making) explains:

Bataille always played at being unable to finish, acted out the excess, stretched to the breaking point of writing … what simultaneously inscribes and exscribes … what is important is bearing witness to what strains against meaning making (intellection) but simultaneously makes it possible (Nancy 1992:334-336).

Yet, while meaning making and affective communication require such careful and relationally-sensitive orchestration and opportunity, conditions for such continue to decline in a “modern” world. International economies that
operate on a disconnecting relation between environment and people continue conditions that work against indigenous ways of being. Socio-political administration, supported through media systems, work to suppress the relational sociality necessary to symbiotic reciprocity. As colonising relations continue where indigenous sovereignty remains unaddressed, postcolonialism is not a term that can be accurately applied in national narratives. This is particularly so as the forces of globalism continue with an imperialist coda, while such premises as “multicultural tolerance” and “recognition of diversity” are championed (see critiques from Tuhiwai-Smith 1999, Nakata 2007, Battiste 2002). The ideologies of nationalism go hand in hand with indigenous voice suppression. Continuing colonial notions of both temporality and space manage to suppress all within the western schema, and dehumanize, objectify and invalidate indigenous peoples (eg, Tuhiwai-Smith 1999, Muecke 2005).

While the articles in the book explore the themes outlined here, the concurrent DVD project gradually emerged—serving as a theory/praxis outcome of the research journey. Here a chance encounter with an Aboriginal Protector’s diary from the 1840s sparked a research exploration that revealed the re-emergence indigenous voices. These voices provide a powerful witness to how suppressions surface, re-emerge and break free, as atemporality and liminality reveal themselves beyond the limits of the colonial narrative. Tuhiwai-Smith’s book on decolonising methodologies argues that decolonising and transformation are processes that connect, inform and clarify tensions that can be incorporated into methodology (Tuhiwai-Smith 1999:116 connecting individuals with each other and their environment (p.148). She writes: “To create something new through [the] process of sharing is to recreate the old, to reconnect relationships and to recreate our humanness” (p.105).

My journey to connect with the descendants of the families from the 1840s protectorate eventuated in these descendants having opportunity to speak back to the silencing of their forebears in profound ways. What is revealed is not only the survival, but the extraordinary reinvigoration of indigenous voice, emerging from this cultural suppression. Therefore, this documentary serves to further illustrate the theoretical arguments developed in the book, such as enunciation, trans-immanence and return of the repressed. The book therefore details this academic/experiential journey, with a connecting narrative that joins, while introducing its embedded academic journal articles and the concurrent project that involved the preparation of the DVD. By doing this I’ve hoped to demonstrate the ongoing development of my research analysis, at the level of how it was lived.
Notes

1 I generally capitalise Indigenous throughout the thesis when specifically referring to people who identify as Aboriginal, to comply with the proper noun convention of respect. This is not a firm convention in the book though. When not capitalising my intention is to denote direct emplacement of people in their land (signalling a particular relationship in Country). Often there may not be a large distinction between the two representations.

2 When terms appear in quotation marks I will generally be signalling their formation within constructivist forces.


4 For universe-referent perspectives see next paragraph.

5 See also Ghan in Contemporary Political Theory (2009) 8, 90–105. DOI:10.1057/CPT.2008.43

6 This will be argued in “Customary Appropriations” particularly.

7 As Barak Obama has stated, pointed out to me in personal correspondence with Professor Manulani J Meyer.

8 This is argued in “Passages”, “Bound for More of the Same” and “Contradiction” papers.

9 The article references are included at the end of each article, with all other references available in the bibliography at the end of the book.

10 An individual’s emplacement is constituted within a relational ontology, that is, an ontological structure that accepts no finite origin, the originary moment is always already relational, preceding and exceeding itself.

11 In this sense of originary relatedness, and considering universe-referent perspectives.
SEARCHING, LOCATING, SITUATING VOICE

The research journey: embodied research

I began my research journey by exploring the material effects of voice suppression arising from how subjectivity and sovereignty are interpreted in the Australian national imaginary. While reading up on poststructural theorists in the context of exploring sovereignty, law, land relations and how inequality for Indigenous peoples (as a collective group within the wider community) has been maintained, I also addressed the work of Indigenous decolonising theorists, (for example: Dodson, Watson, Moreton-Robinson, Tuhiiwai Smith, Rigney, Batisste), postcolonial (for example: Bhabha, Spivak, Said, Chambers) and political theorists (for example: Patton, Connolly, Maaka & Fleras, Simpson, Barchum) considering the geopolitical situation for Indigenous peoples of Australia. During this time I was able to apply this research in the preparation of a paper for a law conference at Melbourne University: *Passages, the medium of authority*. Research and paper preparation continued as an ongoing methodological practice—as I conducted my research. I chose to prepare and attempt to publish papers that would also allow me to research particular areas of my research question. This allowed for an organic and synergistic methodology to unfold, and enabled me to fully engage with current events in the Australian political and historical situation, as they transpired.

At the time I was preparing the paper “Rites of Passage?” for a law conference I was given a colonial diary written by the son of one of the “Protectors of Aborigines” in the state of Victoria. Albert Le Souef wrote this diary in 1901 and it reflected back on his early years after he came from England with his mother at 12 years of age, to join his father, William Le Souef, who was a “Protector” at Murchison, during the early 1840s. The diary was given to me by the great granddaughter of the diarist (an acquaintance of my mother). She had enquired about my research and thought that I would find it helpful. My encounter with this diary set up the concurrent research project that began my exploration into the historicity of Indigenous language groups mentioned in the diary, and their descendants today.

In previous research I had explored the denial of ethics in “Australian” sovereign law, considering land relations in “Native Title” cases. When it
comes to indigenous land relations, as embodied relationships immersed in reciprocal exchange, the exclusion of indigenous difference becomes evident when faced with the concept of land ownership. “Australian” sovereignty relies on a doctrine of tenure that legislatively positions “citizens” within a conceptual frame that originated with colonial occupancy. My paper, “Rites of Passage?”, continued this interrogation of the ongoing presumption of this form of sovereignty. Underlying all my discussion is the argument that all individuals are inherently subject, and responsible to, their fundamental structure of emplacement. This aporetic structure of emplacement (or the co-sovereign relation) will be argued for in this initial paper, but I signal it here as it is theoretically implicit in my following papers also. Throughout the book, when I attempt to align this structure of emplacement with an indigenous perspective I am meaning to align a universe-referent perspective, (as outlined in the Introduction). As mentioned, the focus is intended to remain on the ongoing construction of identity and the politicising and racialising discourses that continue to suppress indigenous voices in the “Australian” community, and how these discourses, (narratives, signs) directly impact on the lived experience of those who identify as Indigenous in these relations, and, how indigenous peoples resist these suppressions.

I argue the problem of the suppression of Indigenous/indigenous voice in the wider “Australian community” situates in epistemological structures that continue to form the “national” imaginary at the expense of cultural difference (specifically indigenous in the above sense). Bhabha has said that being obliged to forget is the identifying mark in nationhood (Bhabha 1994 [1]:160). This “forgetting” has largely been incorporated through political and historical constructs of race ideology. To follow Bhabha, the “nation” practices discriminatory authority (psychic and discursive) through particular ways of recognising difference as other, yet knowable and visible (Bhabha 1992). I see this forgetting as the denial of our existential interrelatedness. If we think of subjective identities in enunciative terms, that is, in the process of being constituted in a relation, I am interested in Bhabha’s notion of collective experience as contagion or inter-subjective affect (Bhabha 1994 [1]:187). This intersubjective affect, or contagion, Bhabha argues, is a way to grasp collective experience beyond an understanding based in universalising ideas. Rather, it is a shared experience of shared energy (a contingent borderline experience; a mysterious token; a shared experience of indeterminacy; liminality). As difference is iterative, contagion is always a place of disruption, with utterances linking to chains of related utterances. This is arguably a more
effective manner of thinking of the constitutive relation of difference—
difference as the constitutive structure of being.

Considering the historical circumstances of the forming of “Australia”
and unsettling questions of indigenous relatedness, the strong legacies of
assimilation that have been constitutive of the nation have been made
manifest largely through encounters with indigenous difference. A
national narrative has been shaped largely through an insistence on
continuing stories of “western progress” (stories that had long set aside
originary relatedness and ignored the material effects). My published
papers explore the colonial encounter in a land still occupied by peoples
engaged in universe-referent cultural practices, and the subsequent
positioning of “citizens” to participate in a nation constituted largely
within the “forgetting” of these practices.

The Australian national imaginary has continued to constitutively
recognise indigenous difference as one or more of the following: the
threatening other; primitive; exotic/romantic. Indigenous difference has
been engaged with either in binary opposition, or as “the same”. When
indigenous difference is appropriated as “the same” the attempt is made to
erase the political and historical positioning of people identifying as
“Indigenous”; and to erase continuing legacies of oppression facing them;
erasing their specific cultural needs. This misses the unequal relations of
privilege afforded to non-Indigenous peoples, and misses how non-
Indigenous privilege relies on Indigenous identity as subordinate other—
“Australian” firstly and thus considered “equal”, with specific difference
responded to with policies of assimilation, with the result that this
difference is engaged with only derivatively.

Here I am meaning to flag that “privilege” as mentioned becomes a
misperception in that privilege directly relates to a “forgetting” of inter-
subjectivity and subsequent construction of a binary opposition between
self and the other. Privilege is therefore illusory when considering
embedded relationships with others and responsibility to interentity
relatedness. The question of the suppression of Indigenous/indigenous
voice (speaking collectively) continues two methodological aspects in the
book: one is the interrogation of the suppression of the structure of
emplacement for all individuals. The other is the interrogation in terms of
the impact on the lived experience of people identifying, and identified as,
Indigenous peoples due to the problems of Indigenous representation and
how this is connected intimately with the “forgetting” of relations of
emplacement and Indigenous peoples’ relations in Country.
Introduction to article: “Rites of Passage”

As the problems of exclusion and oppression concerning Indigenous/indigenous voices point to difficulties related to recognition, the question of who takes the position of “recogniser” and who is positioned as “recognisee” immediately presents. My research found that most “recognition studies” remain entrenched in the liberal humanist frame, with debates circling around identity and rights and distributive justice from a fundamentally paternalist and predominantly Eurocentric base. This research included the liberal theories of Charles Taylor, Axel Honneth, and Nancy Fraser, and was also the case with liberal political theorists, including John Rawls, Will Kymlicka, and Iris Young. The “recogniser”, despite discussion that attempts to engage in subject—object interrelation, remains assumed as the imaged “state” (or nation) and theory remains enmeshed in ego-based individualist patterns of consumption, pre-determined political frames and market forces, along with *apriori* value definitions of equality, justice, liberty and good. In this paper I engage theoretical arguments of Kelly Oliver (along with other postcolonial and Indigenous thinkers), where recognition is better understood as a witnessing beyond recognition, allowing for the limits of recognition through understanding the interdependence of intersubjective communicatory processes.

For the “Australian community” to be able to restructure within a frame that no longer inheres within colonising principles that suppress Indigenous/indigenous voice, there remains the fundamental problem of acknowledging pre-existent and continuing Indigenous/indigenous sovereignty. Yet the concept of “Australian sovereignty” is highly contested and this requires careful elaboration regarding processes of identity formation and relations in land. Sovereignty in the west has been formulated within the histories of the nation-building that constituted in the colonialist occupation of the pre-existing Indigenous peoples’ lands. Such sovereignty remains conceptually dependent on the hierarchical structuration of liberal humanist principles of assimilation, i.e. utilitarian notions of the greater good and regulatory ideals concerning equilibrium and aggregation of individual interests. These utilitarian interests continue to rely on economic theory reaching from Adam Smith to Milton Friedman, entrenched positivism from Comte to Stuart Mill, and resistant idealist analytical philosophy, all incorporated into theories dependent on rationalist science and narratives of progress.
This is not to say that interventions into this conceptual stronghold are not continually being made. Socio-legal theory in the Australian situation has been increasingly engaging with poststructural, postcolonial and Indigenous theorists who question the legal foundations of Australia’s colonially founded claim to sovereignty. Engaging with such theorists: Terry Threadgold, Peter Fitzpatrick, Stewart Motha, Irene Watson, Trish Luker, Aileen Moreton-Robinson, Judith Grbich, Alex Thomson, Wendy Brown as well as other poststructural, postcolonial and Indigenous writers, my paper, “Rites of Passage” argues for sovereignty as a shared existential relation, engaged substantively within a realm of interentity exchange.

The paper is theoretical/philosophical, writing distinctly to the tradition of the western academy of law, yet I am arguing that the notion of sovereignty of state, developed within the western schema, needs a radical rethink. The paper argues for recognition of the pre- and continuing existence of indigenous land relations grounded in indigenous ontologies and epistemologies, and thus with renewed emphasis on processes of life, systems that engage responsive interrelations with land, systems that move away from a static sense of nationhood to recognise multiple lineages and constitutive circumstances, situated historicity and ongoing power relations and the need to locate specificity in its ongoing trajectories. A sovereign relation to land therefore is a relational disposition that considers the aporetic space of the inner witness, beyond recognition (Oliver 2001) and the dangers of universalising.

Rites of Passage?

Abstract

The concept of Australian democracy encompasses an assumed cultural unity where every sovereign subject possesses equal rights. Yet an assumed unity covers over a pre-existent indigeneity in order to ground this homogenous conception. As a continuing threat to the democratic foundations of Australian sovereignty, Indigenous people continue to find themselves on the fringe of a politically contingent space, where they lose the material structures that are privileged through common law. Sovereign legislations continue to uphold a fixed notion of community that relies on a binarism that prioritises identity over difference, which denies the ongoing constitutive relations of shifting subjectivity entailing intersubjective responsibilities.

Difference, as in indigeneity, is foreclosed legislatively, in order to define and maintain the nation’s homogenous identity and its British Commonwealth roots. With a focus on the appearance of representative bodies, while hiding the power relations that materially construct systems of denial and oppression, claims for recognition, in contemporary debates regarding human rights, can reinforce an essentialised concept of an oppressed Indigenous “other”. Specificity regarding rights becomes compromised and oppositions emerge when tied to a base of equivalence.

Key words: tradition, passage, border, transgression

Assumed foundations

As legal discourse and legislation in Australia remains solidly weighted with representations of Indigenous subordination, I want to look closely at how the binary of recogniser/recognissee continues to operate using homogenous notions of national sovereignty and indigeneity.

The assumption of a fixed foundation for the nation of Australia was grounded with sovereign legislation, ensuring its continuance with British law. As Stewart Motha argues in “The Sovereign Event in a Nation’s Law” (Motha 2003), the doctrine of tenure operates in the form of a “skeletal principle” that enables the sovereign body to extend its expanding laws over a differing topography in order to preserve its sovereignty. Motha argues that the sovereign event is not unitary but split
from the outset. This irruption is due to an originary relation of ethos that precedes and exceeds all relations.

Following poststructural ethics and indigenous ontology, this originary relation is constitutively iterative, that is, structured through a relation of “différance” (Derrida). This ongoing originary relation is irreducible. This means that each individual’s relation with law is constitutionally different and is therefore fundamentally incommensurable. Jean Luc Nancy sketched this relation with law as “partage”, meaning both a partition and a partaking. The structure of iteration implies both identity and difference. A community is constitutionally founded in its fundamental divisions. Collectively, this engenders responsibility to allow for the fundamental differences that paradoxically divide and join individuals. It is through the relational differences that lives are shared meaningfully. Meaning is a sharing of limits, where sense opens iteratively.

From Australia’s colonial foundation, a claim of “equality for all” determines that rights can only be recognised as the “same” under one overarching sovereign law. The particularity of Indigenous difference threatens this conception and so reinforces the binary of dominant recogniser to subordinate recognisee. While the landmark Mabo case revealed the indeterminacy of the colonial sovereign foundation, with the recognition that the Indigenous peoples had their own relation to law prior to settlement, cases on Native Title have nonetheless continued to determine Indigenous law as subordinate in relation to Australian common law.

I want to sketch now these common law legislations as illustrations of Hegelian dialectical resolutions, which continue to recognise the Indigenous as subordinated “other” in the presumption of an Australian sovereignty. The consolidation of Hegelian sovereignty relies on binarised difference, which is either denied, and covered over, or recognised as subordinately “other”. My aim in sketching these sovereign/slave binaries within “Australian” sovereign legislation is not to normalise the theory of oppressed Indigenous object versus active sovereign subject, and so reinforce this Hegelian economy of recognition, but to draw attention to how these assumptions of fixed and binarised identities, be they national or individual, continue to have purchase regarding material effects and lived consequences through Australian law.

In Writing and Difference (1998) Derrida describes the Hegelian sovereign’s determinations as caught in a closed circularity of self-reference. Meaning and value circulates in a restricted economy as “the naïve consciousness”, so in the passage of one self-referential
determination to the next, the Hegelian sovereign remains a prisoner of this consciousness. Mastery, for Hegel, is the structural repression and mediation of other, perceived as a threat to self. Following Derrida, this mastery remains a servile dissymmetry. He writes:

For history—that is meaning—to form a continuous chain, to be woven, the master must experience his truth … and when servility becomes lordship, it keeps within it a trace of its repressed origin, being consciousness within itself … it will enter into itself and change around into real and true independence (Derrida 1998:251-77).

In repressing the other, the sovereign privileges itself to “master” independence, a privileging, or self-exception, that is, a dissymmetry. This dissymmetry is a guise that assumes equivalence in relations that remain asymmetric and incommensurable. What becomes repressed is the trace of the other that fissures all relations. It is the paradoxical and constituting movement of difference that radically differentiates and yet communicatively joins all inter-subjective relations.

Yet in Hegelian resolutions, at the very moment of facing finitude, at the very moment the sovereign has opportunity to discern its inter-subjective relation with the other, the sovereign mediates this relation, thinking to conserve its negation, in what Derrida, after Hegel, calls a ruse of Reason (Derrida 1998:107). Hegel sees this epistemic limit and the opportunity to see beyond the self arises, yet he utilises a form of power to counter the perceived threat of otherness. In Hegel’s words:

Man’s individuality has also its beyond within it, can go beyond itself and destroy itself. To counter this, Reason is for him a useful instrument for keeping excess within bounds, or rather for preserving himself when he oversteps his limit; for this is the power of consciousness (Hegel, 1964:342).

So, through a “power of consciousness”, the sovereign continues to repress any threat to this idea of consolidated identity. This repression is what Derrida, after Bataille, refers to as Hegel’s blind spot. It is this blind spot, I argue, that appears to repeatedly operate in the self-referential legislations that shore up a homogenous “Australian sovereignty” against the presumed threat of indigenous difference. The rite of passage ensured through Hegelian self-referential privilege, is a power relation of dominance that represses difference and overlooks inter-subjective relations. Australian legislation, with its liberal claim of “equality for all”, assumes a unified body of “Australians” within one overarching sovereign law, yet, in its generalised application, paradoxically produces a
homogenous identity of subordinate indigeneity, that is perpetually “other” to this unity.

In *Writing and Difference* Derrida sketches the figure of Bataille’s “sovereign of nothing” that brings Hegel’s sovereign of self-conscious mastery into question. In the place of the “blind spot” of Hegelian self-conscious determinations, he offers Bataille’s image of the “excoriated eye” that deconstructs the inner perception of the disembodied and enlightened sovereign. Instead of the egoistic eye that seeks to know and only sees its own illuminations while blocking the rest, Bataille’s eye has spat out its contents to uncover the absence at its core, in the hollow where every vision originates. It is a revealing of the irreducibility of meaning, and the irreducibility of vision at this fissure. The fixed self transgresses its borders, rupturing the naïve and closed circularity of self-consciousness. At this aporetic structure this *seeing* does not disconnect from dialectics but relates the restricted self to its ruptured borders beyond sense. This relating is a movement intolerant of the distinction between sovereign/slave, self/other. Bataille’s “sovereign of nothing” transgresses determined meaning in this way, causing a disjunction in the logic of the restricted passage of the same.

**Assured legislations**

Motha’s sketch of the skeletal body of law reveals the logic of Australian legislations. The doctrine of tenure can be understood as a dissymmetrical circulation of assumed legislations, which, through the “power of consciousness”, mediates any threat to its sovereign unified body, thereby grounding and controlling a widening topology. Using a binarised system of sovereign nation versus indigenous other, the doctrine of tenure continues to operate legislatively with subordinating assumptions. These assumptions began at the foundation of Australian sovereignty.

The Mabo judges found that “Australian” sovereignty was acquired through occupation and settlement, as the land was presumed to consist of “a tract of territory *practically unoccupied*, without settled inhabitants or settled law at the time when it was peacefully annexed to the British dominions” (Mabo vs QLD:34-38). Colonial legislation was influenced by the assumption in international law that nomadic people, through their assumed failure to productively cultivate land, demonstrated an incivility that justified European settlement by occupancy (Castles 1982:Ch 1). In keeping with contemporary international standards for the adequate...
accommodation of human rights, the Mabo case rejected these assumptions and legally acknowledged the Indigenous peoples’ pre-existing laws and relationship with the land. The recognition of their pre-existing tenancy at the foundation of sovereignty opened up the possibility for responsible relations. In using “tenancy” here I mean to connote a holding rather than a possessing.

Yet Maaka and Fleras (Ivison, Patton & Sanders 2000) argue that, legislatively, Indigenous Australians have still not been afforded proper accommodation of their own relations with law, and their relations with the land remain derivative to colonialism. While the Mabo case recognised the pre-existence of Indigenous laws at the founding event, which revealed the indeterminacy of the fixed foundation of “Australian” sovereign law, there has not been subsequent unbinarised negotiations acknowledging responsible and co-existent relations with Indigenous peoples. Rather, they have continued to be binarised as subordinate recognisee in Mabo and subsequent Native Title cases with classic dialectical mediation.

As Motha points out in the Mabo case regarding Indigenous title of the Murray Islands, it was the separation of juridical and legislative power—that is, beneficial and radical title—into things-in-themselves, that enabled the prerogative power of the Crown to take the outside of law, in a mastering of otherness, without being checked by common law. With the revealed indeterminacy at the foundation of sovereign law the common law placed the unjustifiable sovereign event outside law.

The unified and settled territory of “Australia” was re-assumed in a future anterior movement ensuring continuance with British colonial sovereignty was re-established as juridical foundation, with common law recognising Indigenous title only where it wasn’t extinguished by the doctrine of tenure. The prerogative power of the Crown—resonating with the Hegelian sovereign’s “power of consciousness”—was able to counter the threat of Indigenous title, in a resilient and teleologically progressive legislation that enabled the skeletal form of the sovereign body of law to stay intact.

Despite the elaborate denunciatory lengths Michael Connor has gone to in his attempt to display the term *terra nullius* as a modern legal contrivance, it seems clear his concern is this indeterminacy at the foundation of “Australian” sovereignty. Whether the Mabo judges decided that it was *terra nullius* or annexation that was to be overturned, what appears to remain unacceptable to Conner at base is any recognition of Indigenous systems as evidence of pre-existing law relations and pre-existing tenure. It would appear he argues for a continuation of a colonial ruling that will maintain this assumption of a settled and unified
“Australia” and only allow Indigenous peoples subordinate recognition at best (see Connor 2005:202-207).

In the Wik case, as Native Title was in existence where common law had not extinguished it, the threat Native Title presented to pastoral leases and the productive future of “Australian” sovereignty, was again dealt with through Hegelian mediation. A new legislative binary was established that opposed “real” traditional lands to those that were “washed away by the tide of history” (Wik v QLD).⁶

Povinelli notes the High Court was once again “at pains to clarify the legal foundation of the modern settler nation in the emergent doctrine between common law and Native Title” (Povinelli 1998:18). Ensuring the passage through one self-referential legislation to the next, the court once again agreed that when the common law and traditional law collided, the British law “took seed in colonial soil, adapted to new material and social conditions” and became “Australian” law (Povinelli 1998:19). The court in Wik found:

[it] was not that the Native Title of Indigenous Australians was enforceable of its own power or by legal techniques akin to recognition of foreign law. It was that such title was enforceable in Australian courts because the common law in Australia “said so” (Wik ibid).

This “said so” power, paradigmatic for Hegel’s “power of consciousness”, was utilised to mediate the threat of Indigenous title to the pastoral territories of “Australian” sovereignty.

Again the separation of legislative and juridical law animated this “said so” power to take both the inside and outside of the law in order to determine the acceptable histories of authentic traditions from those that sovereignty considered repugnant or dying out. In the Mabo case it was determined:

When the tide of history has washed away any real acknowledgement of traditional law … the foundation of Native Title has disappeared. A Native Title which has ceased … cannot be revived for contemporary recognition’ (Mabo v QLD).

So where the common law presumes resilience to any teleological threat to its existence, Indigenous traditional law is deemed extinguishable. Not only does this ruling cover over the power mechanisms within “Australian” sovereignty that effected the dispossession of the Indigenous from their traditional lands in the first place, the legislations represent the Indigenous as self-evidently inferior
and dying out. This representation of Indigenous peoples becomes bound with museum-like ossification within the passage of the progressive narrative of sovereign history. Yet this denies the co-existent and ongoing constitutive relations between the Indigenous peoples and the rest of the population. The ongoing lived experience of the Indigenous peoples cannot be represented as one ancient and congealed nation, as they have multiple lineages with different constituting circumstances, just as the non-Indigenous do not constitute as one perpetually occidental nation. Constituting circumstances of all individuals requires vigilant reflection in order to discern situated historicity and ongoing power relations that are negotiated inter-subjectively. The immense disaffection from colonial interpenetration cannot be dismissed regarding their present constitutive circumstances. Neither should the privilege and power of those enabled through dynamics of access be overlooked, along with consideration of the institutions that consolidate and ensure political and economic influence in the Australian situation.

I have argued that a homogenous identity of the “sovereign nation” consolidates through a closed circle of self-privileging determinations, while at the same time binding a congealed subordinate Indigenous identity as sublated “other” in these determinations. Bound as visible markers of cultural difference, rendered subordinately other, Indigenous difference is contradictorily profited from and required in legislations that consolidate the “same” of sovereignty. The naivety of this self-referentially produced narrative is its blindness to the silencing it renders the objectified Indigenous peoples.

In the practices of objectification, where this “power of consciousness” animates, recognition is contrived as primary cognition—the spontaneous effect of the evidence of the visible (Bhabha 1994). Yet visual perception can be a narrow and reductive cognisance that harnesses instrumental reason in the attempt to assume a form of preservation from alienating threats to the self. Kelly Oliver writes:

The phrase seeing is believing takes on new meaning if what we see is influenced by what we believe. And experiencing what is eye-opening is not necessarily a result of opening or closing our eyelids. What we recognise and what we see are the result of much more than opening our eyes and looking (Oliver 2001:147).
Seeing the difference

In *Border Dialogues* (1990) Chambers writes of the revealed limits of meaning in the post-colonial frame. If we look behind the repressive masks of colonialism, we may see the arbitrariness of what can be expressed at any one time, and how representation always blocks the excess of its meaning. Language is the ever-present matrix from which we draw out meanings to engage with, not objectively, as it is impossible to fully comprehend the world, and impossible to fully comprehend our subject-to-subject relations. Our social relations involve not a goal but a conversation, not a closure but a trace in an endless passage. In engaging of our differences and mobile relations we are drawing a limit across the diverse possibilities of the world. The lack of a fixed referent or stable foundation is what produces meaning. Our interpretations attempt to confer sense, not to discover it.

For Oliver, this aporetic passage that opens the dialogic space for meaning is sketched in the intersubjective relation of witnessing. The sharing of meaning is produced in the space of tension between the doubled relation of the positioning of the subject as eyewitness, and the inter-subjective relation that bears witness to what cannot be seen. The aporia becomes the third space of the inner witness, breaking the binary between recogniser and recognisee. Oliver finds that psychic survival depends on an addressable other, the inner witness. “If one’s subject position is the socio-historical position in which one finds oneself, and one’s subjectivity is the structure of witnessing as infinite responsibility, then the inner witness is where subject position and subjectivity meet” (Oliver 2000:87). The inner witness makes it possible to internalise meanings, as our sense of meaning comes through our relationships with others, beyond and within. The inner witness is produced and sustained by dialogic and non-linguistic communication with others. It must be in place for a sense of agency, and makes experience meaningful as a sharing of unique differences and related meaning, constituted through encounters with otherness. So subjects are formed and sustained by address-ability and response-ability.

Witnessing becomes a powerful alternative to recognition, as subjectivity can be reconceived as infinitely open to a system of responding. It is also a matter of understanding the limits of recognition, as it is impossible to fully recognise the truth of other, as well as the truth for oneself. The aporetic relation of ethos offers the recognition that we are responsible for the other, while also a responsibility of the other. Prising open the blind spot of Hegelian denial, Bataille’s excoriated eye exposes
the limits of determined meaning, along with (in)finite responsibility in our relations with others.

**Pseudo-transgression**

Considering the relations of address-ability and response-ability in the ongoing production of meaning, sovereign practices of objectification continue to utilise representations of subordinate “other” and deny negotiating relations with Indigenous peoples. This dominating structuration compromises ongoing address-ability and response-ability. Crucial to this argument, though I do not have space to elaborate on this here, is the impact colonialism has had on the ensured vitality and access to Indigenous people’s own languages. Aside from being cut off from their own culturally invigorating languages, the opportunity for the Stolen Generations to give testimonies was clearly a painful process of witnessing to what was impossible to articulate—to suffering that is beyond any adequate expression. The truth of suffering cannot be reduced to historical facts. Explaining anguish is impossible. It cannot be described. It must be experienced. Oliver alerts us to the fact that subject positions and subjectivity emerge in our responsive relations with each other and we need to take this into account when we relate to subjects considering their situated historicity and political positioning.

I want to distinguish this impossibility for fully recognising suffering from an “unrecognition” that emerges with the repression of denial, as in the “blind spot” of “Australian” legislation. Trish Luker, in an insightful paper on collective amnesia in “postcolonial Australia” writes of a “willed” forgetting at the level of national selfhood that emerges with the denial of facing collective responsibility to the Stolen Generations. She states “the trauma which has characterised the response to the testimonies of the Stolen Generations eclipses the pain of the Indigenous other, appropriating the discourse of trauma and inducing the comfort of selective amnesia” (Luker 2005:76).

So Hegelian sovereignty in Australian common law continues to turn against responsibility, through what can be termed pseudo-transgression. In the Hegelian passage, legislations stay in a closed circle of self-reference, where the responsibility to the other is denied. Bhabha calls this a “dangerous reduction of the spiral of différance”. Racial and cultural otherness does not complete the circle, but circulates and proliferates in the world in this spiral of différance (Bhabha 1994). To be irresponsible is what Levinas describes as a defacing of the other “like any other plastic
form, eliminating the signification of the responsibility with which its strangeness encumbers me” (Levinas 2001:48-49).

Remaining paternalistic and constraining Indigenous communities into a bound and inferior identity sustains the naïve and servile passage of self-referential determinations, harnessing relations through instrumental Reason.

The Bridge

If modelled within a binary of subordinate recognissee to dominant recogniser, acknowledging Indigenous difference will remain derivative at best, perpetually congealed in hierarchies and oppositions. To retain stereotyped images of subordinate, welfare-dependent Indigenous peoples, based on prior norms of primitive other, with legislations that maintain this oppression, is a dismissing, not an opportunity to recognise the impossibility of fully recognising difference. It does not allow for negotiative relations with cultural difference in the shared creation of meaning.

Dodson writes:

When we talk about an Aboriginality based on the past of our peoples, we are not talking about fabricating an identity based on a past we have rediscovered or dug up; rather, we, the Aboriginal peoples, are already retelling our past. Our memories are not chemicals in our heads, but our flesh and our voices and our ways of seeing … we re-create Aboriginality in the context of all our experiences, including our pre-colonial practices, our oppression and our political struggles. It is only a narrowness of vision, or a misconception of culture as a frozen state, which leads people to limit expressions of essential Aboriginality to the stereotyped (Dodson 2003:40).

Responsiveness to each other and our differences requires a dispersal of the logic of otherness as merely counterpoint to homogenous identity. It is where poststructuralists propose to deconstruct the subject/object dichotomy. The third space of intervention in this binary is the enunciative emergence of translation, where a sharing of meaning takes place. The “disruptive temporality of enunciation displaces the narrative” of entrenched colonialism (Bhabha 1994:37).

Sovereign determinations have been made within an appropriative subject/object binary that renders Indigenous peoples as perpetually “other”. Yet the sovereign is not one. As Motha argues, iterating with
Nancy, in the “Failure in Postcolonial Sovereignty in Australia” (Mota 2005:113-119), the impossibility of an individual being alone does not result in the impossibility of a singular being; rather, singularity implies the plurality of singular beings. As finite subjects the “I” cannot reveal its own finitude, it cannot say “I am finite”. “Being with” is the community that experiences the finitude of its members, alongside one another, sharing the recognition that there is nothing recognisable. “Being with” is neither the assertion of a limit between communities nor an absolute community. In sharing the knowledge of the limit, finitude can only take place as community. Being finite is always already being in common. To follow Nancy, the full articulation of the co-appearance of community is the unrepresentable “par excellence”. This calls into question the assumed fixity of identity and sovereignty.

Heidegger’s irreducible concept of “coming into the clearing” is the movement through meaning as it precedes and exceeds us. Dialogically, at the enunciative borders, where the ensured relation to Reason becomes disrupted beyond sense, the inter-subjective relation of ethos emerges. I hope to finish iteratively with Bhabha, who iterates with Heidegger:

It is in this sense that the boundary becomes the place from which something begins its presencing in a movement not dissimilar to ambivalent articulation of the beyond … : Always and ever differently the bridge escorts the lingering and hastening ways of men [and women] to and fro, so that they may get to other banks … The bridge that gathers as a passage that crosses (Bhabha 1994:5).