The Sacred wound: A Legal and Spiritual Study of the Tasmanian Aborigines with Implications for Australia of Today

By

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PLEASE NOTE

The greatest amount of care has been taken while scanning this thesis,

and the best possible result has been obtained.
Dedication

The dedication is to all those in history who have chosen to walk
the unknown path, and Mannalargenna and his descendants in Tasmania today.
In memory also of Robert Fitzgerald, Solicitor, Western Aboriginal Legal Service, Dubbo,
NSW, killed in an accident July 1989.

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Statement of Authentication

The work presented in this thesis is, to the best of my knowledge and belief,
original except as acknowledged in the text. I hereby declare that I have not
submitted this material, either in whole or in part, for a degree at this
or any other institution. Originally submitted 14/03/02; resubmitted -

this day of 2003.

Michael John KIDD
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Abstract

This thesis looks at the reality of the situation of the Tasmanian Aborigines using the theme of the 19th century genocide of the Tasmanian Aborigines and the Sacred wound in the context of the law and spirituality. The methodology of the lived experience of the author is drawn upon for a legal and spiritual analysis of cases lived by the author, which provide a backdrop to the handing back of certain Aboriginal lands in Tasmania as well as reflecting on the intersection of Aboriginal lore and the legal system. The meaning of these cases goes beyond a rational legal analysis as the idea that genocide is still continuing is a difficult one for Australians to understand due to compartmentalisation between spirituality and the law in the context of modern Australia. The High Court case of Mabo poses a dilemma for Aborigines as it contains an opportunity to move beyond “terra nullius thinking”, but at the same time it limits claims in a way that continues dispossession and may in certain circumstances disallow aspects of Aboriginal self determination. Within this apparent standoff lies the possibility for a development of the law that can embrace or incorporate the Aboriginal spiritual attachment to the land, ancestors and artefacts. There is no word in the English language that can describe the multifaceted, inside and outside, perspectives required to carry out the required discussion that could bring the law more into tune with the people, the land and the original inhabitants. The spiritual direction of Australia, however, could be affected by a turning away from a material, logical rational perspective to the embracing of connection as a value in itself: to spiritual values and a personal sense of calling. The Sacred wound is the meditation around which the discussion of all these themes of lived experience, the law and spirituality moves and ultimately rests.
Preface

The gap you speak of- yes I find it so
The menopause of the mind, I think of it
As a little death, practising for the greater.¹

The "gap" was lived by the New Zealand poet James K Baxter and is his own statement of the need to live the Sacred wound. The knowledge of a gap or need in our psyche requires action, not intellectual contemplation, for resolution. Baxter, like me, went against what was the conventional at the time and had friendships and alliances with indigenous people before it became fashionable to do. He formed the bonds because the indigenous people, in this case, the Maori, had a broader and deeper perspective and were more accepting of difference.

This thesis weaves together two major themes and perspectives which are not usually found together, which I believe are fundamentally interconnected: a legal and cultural perspective on issues for Tasmanian Aborigines today, and a spiritual perspective which goes beyond the particular cases and issues, and beyond the limits of rational legal analysis to seek grounds for a new understanding of these issues.

The Sacred wound is the paramount theme of this thesis.

There are three Sacred wounds covered in this thesis: that of the Tasmanian Aborigines, that of the wider Australian society and my own. They are not necessarily connected in that their arising comes from different circumstances, but they overlap in several aspects. It could be said that the Sacred wound of the Tasmanian Aborigines was caused by the Sacred wound of western civilisation.

Firstly, it is a characteristic of a Sacred woundedness that connection with a higher agency is somehow denied for the victims. Secondly, connecting to the past - understanding why things arose and bringing out the hidden - is the key to dealing with the wound. Healing is the most important attribute. The third characteristic is the mysterious nature of the wound, and the time it takes to heal. For example, the Sacred wound of Philoctetes was a snake bite that did not heal for ten years and gave out a foul smell.² The fourth characteristic is that the Sacred wound prevents the victim from

¹ Baxter, James K (1966) Pig Island Letters, Oxford University Press Auckland NZ.
performing a necessary task or sacred duty, such as the sacrifice Philoctetes was attempting to perform during his sickness.\(^3\)

The three Sacred wounds are connected through my own Lived Experience.\(^4\)

Joseph Campbell, just before he died in 1987, when commenting on the loss of the buffalo to the Great Plains’ Indian in the 1880s, said:

Imagine what it would be like in the space of a few years to lose your lands, principal food supply (the buffalo) and religion (buffalo totemic)... your culture and race would be devastated and there would literally be no-where to manifest your spirituality.\(^5\)

This loss of lands and buffalo was a Sacred wound because it took the Indian tribes away from connection to God in the earth. In my view it is this aspect of the taking away from connection with a higher agency that distinguishes the Sacred wound from other wounds. The story of the Tasmanian Aborigines is much like the story of the Native Americans. The devastation of their culture and almost total loss of lands led to their spiritual isolation. This was caused by genocide. The Sacred wound of the Tasmanian Aborigines was the loss of the ability to honour their ancestors and the Ancestral Beings, and it was responsible for their inability to protect themselves against the genocide. It is related to their inability to practise their own form of religion after colonisation stripped away their lands.

My credentials to write the thesis are based on my own need to resolve my Sacred wound, which was a combination of the effects of sexual assault at a young age and of being born literally with a tied tongue and finding great difficulty in expression. To heal my wound I had to be prepared to sacrifice myself in many ways.

Because of its own Sacred wound and its own inability to carry out sacrifice, the dominant culture, the whiteman’s, was not amenable to hearing the true story of what happened to the Tasmanian Aborigines. Anglo Saxon culture still predominates in Australia, and the Australian settlers inherited their own Sacred wound from the decline of western culture into the material and secular away from the spiritual. Connection needs to be made with God through the spirit, and this was destroyed in western Christianity:

\(^3\) Ibid.


...this flowering (was) stopped (by) the Inquisition of the College of Cardinals...
the Grail romance was the God in your own heart.  

One of the messages of the New Testament that has been overlooked is that worship of the sacred should be through the spirit, outside of a religion excessively attached to formalised places of worship and not depending on a hierarchy of priests. This thesis is shifting into a new meaning-perception of revelation from a higher agency:

Revelation is the fire which proceeds from the divine world, which kindles our souls, reshapes our consciousness, and removes its limitations.  

This needs to be in connection with a principle of personal sacrifice as laid down in many cultures through time in which the very personage of higher agency is involved:

Sacrifice is repeated periodically because the rhythm of nature demands this regular recurrence...the god emerges alive from the test only to submit...to it afresh...an uninterrupted chain of sufferings and resurrections.

The Sacred wounds are complex and full of subtlety. My story illustrates that they are definitely related to the principle of sacrifice as:

It is a God already formed that both acts and suffers in the sacrifice.

The very great journey of the Hero is a sacrifice through the attempt to find the gold, rescue a woman or a civilisation, or right a wrong. During this process of the journey of uncovering the Sacred wound, the Hero's consciousness is changed through the realisation that he or she was really searching for the God in himself or herself.

In my view three conclusions arise from this journey: that the search is for the God in the self, not in the outside material; that it is a spiritual quest which involves a lot of hardship and sacrifice; and thirdly it must end with the realisation that higher agency is sovereign.

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7 John: 4:23 All Biblical references New Revised Standard Version
10 Ibid, p88.
(what) God has established mankind can not annul.\textsuperscript{11}

The story of the Tasmanian Aborigines has been written in sand, much like a native American sand drawing where the initiate enters a journey of self discovery,\textsuperscript{12} or a Tibetan mandala to be brushed aside once a few had been privy to the secrets. Sometimes the spiritual power is so great that it has to be written in the sand and brushed away to protect the unready.\textsuperscript{13}

Aboriginal elder, Ida West,\textsuperscript{14} told me that the real story of the genocide of the Tasmanian Aborigines had been historically suppressed due to a form of censorship both past and Present. This in my view, resulted from the inability of the wider society to comprehend. Hence the story was written in the sand for a select number of European people who could understand the deeper secrets,\textsuperscript{15} then to be cast aside lest the secrets destroy the wider Australian myth of the "lucky country".\textsuperscript{16}

The real story of Australia has yet to be told.\textsuperscript{17}

A sense of personal preparedness to come into realisation and awareness of the Sacred wound is an important attribute to resolving this wound. It was certainly an important part of carrying out the research, as the individual needs to be emotionally and psychically equipped. I carried out this research in several field trips, which became part of my own personal journey of discovery and understanding. I also worked as a lawyer for the Tasmanian Aborigines for an intensive 22 months, from early 1994 to late 1995, during which time I realised that to be an effective lawyer I had to understand two things:

\begin{quote}
what really had happened to the Tasmanian Aborigines and what had really happened to me?
\end{quote}


\textsuperscript{12} Campbell, Joseph (1986) The Inner Reaches of Outer Space: metaphor as Myth and as Religion, Alfred Van der March, NY, p94.


\textsuperscript{14} Interview (10/2/1998).

\textsuperscript{15} Campbell The Inner Reaches of Outer Space: Metaphor as Myth and as Religion, at p94: the Navaho Indian of America initiated new warriors by showing tales drawn in coloured sand which was then wiped clean.

\textsuperscript{16} Eric Willmot (1987) Australia the Last Experiment, Australian Broadcasting Commission 1986 Boyer Lectures, p 36. ref Donald Horne said "Australia is a lucky country run by second rate people who share it's luck".

\textsuperscript{17} Ibid, p38.
There was something holding me back during this period, as I felt continually anxious, which kept me from a full enjoyment of life. At one point, which I describe, I realised I was hiding a deep woundedness.

Whilst this thesis is an academic exercise, it really is a personal journey or inquiry and comes from the requirement to solve a personal conundrum of the Sacred wound and to exorcise my own demons so as to know the true meaning of spirituality. I utilized a combination of practical, first-hand experience and my own evolving principle of spirituality, which had its genesis in the personal growth movement of the 1970s, eastern mystical spirituality and Aboriginal spirituality, and I found my path leading back to an identification with a sense of sacredness through the Christian God of the Old and New Testaments.

The methodology, which was adopted somewhat in retrospect, is that of "Lived Experience," and is examined in chapter one. Suffice to say it has applications in understanding the interaction of one system, in this case the legal system, with other components in life and academic analysis such as sociology, archaeology and religious studies; and involves several levels, such as ascertaining my own spiritual path and direction, and having been directly or indirectly involved in several legal events concerning relations between the Tasmanian Aborigines and the broader Tasmanian community in 1994 and 1995. These later events are detailed in this thesis.

They were cases that redefined the relationship between the Tasmanian government and Aborigines, which culminated in the handing back of lands. My specific task was to work as a criminal lawyer representing Aborigines from Flinders Island to Burnie in the west and as far south as Campbell Town. My task was essentially to keep Aborigines out of jail and I am happy to report that not one of the nineteen Aborigines that had been through Risdon jail in 1995 was a client of mine.

I was a witness to these cases I write of that concerned custodianship of human remains believed to be thousands of years old, the return of artefacts, genealogy, access to a sacred site and the handing back of lands. I was more directly involved in the case concerning Everett’s sacred walk to reclaim custodianship of the Tarkine lands. In this work I explore the cases’ representation of the deeper meanings for our Australian culture, which at this stage I shall leave, as it will be a matter of the readers’ interpretations based on their own cultural conditioning.

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18 Hillman, James (1996) The Soul’s Code In search of Character and Calling. Random House, Australia—generally his thesis is that we must deal with the past before we can achieve our calling or special sense of mission in life.

They involve certain aspects that defy conventional legal analysis. Consequently, I develop several themes using a triangulation method\textsuperscript{20} with poems and historical, personal and legal narratives. As Rankin has said a formal literature review can often be an empty exercise, as the "hollow conventions of the literature review are overdue for change."\textsuperscript{21} I have included thorough background reading in the appropriate places and where relevant, previous literature will be discussed. A chapter has been set aside specially for the methodology.

The voices of the Aborigines were suppressed because their spiritual attachment to a creator principle simply did not fit into the legal analysis. It is a question of reception. The ability to express concepts or ideas is equally dependent on being heard: true exchange takes place in the space in between.\textsuperscript{22} At the end of chapter one this is clearly demonstrated in the exchange between Aboriginal activist Isabel Coe and two High Court Judges in the Nulyarimma case concerning cultural genocide.\textsuperscript{23} Coe was not heard on the issue because the Judges did not recognise cultural genocide due to a previous decision of the Court.\textsuperscript{24} The Court has yet to be persuaded that genocide against the Aborigines is a continuum that did not simply cease at a certain point. Lying within this non-comprehension is Australia’s inability to come to terms with its own Sacred wound; in relation to the Aborigines this means that the genocide is continuing.

The Nulyarimma case\textsuperscript{25} is one in which I had initial involvement as a research consultant in 1998, and it confirmed what I had always suspected: just how hard it is for the broader community to take responsibility for continuing Aboriginal cultural deprivation. The cultural concepts between the two communities are so different. In fact, they are in different worlds.

Generally in the thesis I refer to the Europeans as the “whiteman” and there are several reasons for this approach. The whitemen were seen as ghosts by the first Aborigines because the “whiteness” is the way the spirits of the dead were seen\textsuperscript{26} and in a sense that is the way the whiteman is painted in this thesis, as dead spiritually in comparison to the Aborigine. In another sense, observers at the time, saw “white” as superior to “black”.\textsuperscript{27} In the nineteenth century, a social Darwinism was in existence well before the works of

\textsuperscript{22} Buber, M dialogue with Carl Rogers (1957) in Buber, M (1965) The Knowledge of Man.
\textsuperscript{23} Nulyarimma & Ors v Thompson C18/1999 High Court of Australia (4/8/2000).
\textsuperscript{24} Kruger & Ors v Commonwealth of Australia (1997) 2 AILR 371.
\textsuperscript{25} Nulyarimma, Wadjukarrinja & others v Howard & others (Writ of Mandamus directed to Thompson Registrar) Australian Capital Territory Supreme Court SC 457 of 1998 (18/12/98) [1998] ACTSC 136.
\textsuperscript{26} Howitt, A W (1904) “Burial Practices of the Native Tribes of South-East Australia” in Charlesworth et al.(1984) Religion in Aboriginal Australia - an Anthology, University of Queensland Press, St Lucia, Australia, at p227.
Darwin became fashionable. It saw the black man around the world as an inferior species doomed to extinction. Finally, “the whiteman”, to me, is a culture that lives in a very black and white world of its own, where there is not a lot of scope for dualism and associated concepts to allow different peoples to live alongside each other in apparent paradox.

Ancestor (with a capital “A”) in Aboriginal dreamtime has a particular meaning, being the Ancestor Spirits who embodied the earth with its spiritual characteristics, but which were not deities and did not actually create the earth.28 I also use the expression “ancestors” (lower case) and this has the usual meaning of a pre-deceased relative or antecedent person in a tribal sense.

At some stages I refer to the Blackman as opposed to the usual European expression Tasmanian Aborigines, as this is an honouring of the particular individual/s discussed. The Aboriginal word for the Tasmanian Aborigine was the Palawa(h), but until this expression becomes commonplace I have used the usual expression.

The Religious Society of Friends, of which I am member, has a religious process of following one’s "leaning", which is a particular concern motivated by the spirit of God. One of the resources to which I had reference for the thesis was an account by fellow Quaker Oates' account of James Backhouse, a Quaker who visited the Tasmanian Aborigines in the early 1830s.29 Together with another companion, Backhouse visited the captured Aborigines at Flinders Island and also travelled extensively through Tasmania. The concerns or leanings of Backhouse and his companion were justice, land rights and the welfare of the Aborigines in the face of colonisation. Despite the two men’s concerns, which were reported to the British Government via Governor Arthur in October 1832 little was done to act on these concerns The matters of concern involved Aborigines’ lack of land rights and the location of, and supply of essentials at Wybaleena.30

My concern, as a result, is to look at the cultural reasons for this blindness. It is also more existential and personal in nature. I would phrase my leaning slightly differently and note that I was aware of the existential gap between the seen and the unseen, between meaning and communication.

One day after I had completed much of the research I made a sudden connection between my own Sacred wound and that of the Tasmanian Aborigines. I saw the mandala. From

that moment I saw the historical record differently. In April 1998, I noted my revelations and recorded my oral presentation about the Sacred wound and the Tasmanian Aborigines to a university postgraduate class.\textsuperscript{31}

The Sacred wound for Tasmanian Aborigines is represented by their loss of lands and culture, but this of itself does not encompass the Sacred wound fully. As I will try to show, the true extent of this wound is denial of custodianship of lands. The means I shall use is the discussion of various cases or underlying "voices",\textsuperscript{32} which are the invisible social forces of this denial arising from the clash of values between the whiteman and Tasmanian Aborigine.

The legal system needs to reflect that genocide is also a killing of the spirit and the thesis argues for a change of perspective based on acceptance of the Aboriginal attachment to land, ancestors and ceremony through spirit. Through personal self-analysis and re-evaluation as a society, we can come into greater connection with the spirit and therefore greater acceptance of "the other."\textsuperscript{33} A true sense of the sacred is connection with God in the earth. The fall from connection with this sense of the sacredness is essentially the Sacred woundedness of mankind, which has implications for a contemporary Australia disconnected from senses of belonging, knowledge of the self and communion with the sacredness in the land.

This is the story of Michael Kidd, and the Tasmanian Aboriginal story tellers I consulted. It is like the weaving of a cloth: a rethinking of the law, which in the early nineteenth century was an instrument for a cataclysmic assault on an indigenous people amounting to genocide. Also woven into the story are some strands of hope and realisation that the whiteman's law is capable of reaching deeper than it has before into mankind's psyche. It is a story perhaps only I can tell, because of my unique background as a lawyer and advocate for indigenous people, and the fact that I "lived" the legal cases discussed. Perhaps very few people can see the connection between the law, historical narratives, spirituality and knowledge of the initiated Aboriginal elders.

I can state that I consider, in my lived experience, I received some form of guidance from higher agency, or what is termed revelation:

\begin{quote}
The inner spiritual man maintains his activity and his primitive freedom… the action of divine grace presupposes the action of human freedom.\textsuperscript{34}
\end{quote}

\textsuperscript{34} Berdyaev, Freedom and the Spirit, p106.
Nor do I intend to impose any particular belief or viewpoint in this thesis, but to tell my story in conjunction with those stories I have heard from others. In any understanding of the Aboriginal dreamtime, it must be realised that it is an unfolding with several levels of access which

even initiated elders or clevermen don’t fully understand.\textsuperscript{35}

Chapter One

Methodology

Initiation and death are linked together in an intimate way... death ends the initiation process. But this ending must be accomplished by the living in the form of an energy released through ritual grief. The loss of initiation in the traditional culture opens a psychic spiritual hole that is rapidly destroying the soul of my people. It shows that when the modern and the traditional collide something happens that inevitably sets the deterioration of the traditional into motion...trap(ing) the person in a meaningless and wayward life pattern.1

This is the prototype statement defining the Sacred wound at the level of the society and individual. The point is how to bring together the contradictory matters therein contained-life and death, community and the individual’s walking of the path of death and initiation. On a broader level, law and spirituality, economic rationalism and aboriginality are usually posited as extremes, and in this thesis are treated as a continuum. After all considerations one but comes back to a basic source- ‘all is vanity.’2

There is a need to deconstruct as an act of understanding as opposed to an analytical tool remote from the object. Nietzsche propelled himself into self willed euphoria and eventual madness because to him there was no organising principal other than knowledge being a process of the ego in a state of becoming where values were historically determined and not the result of a divinity of existence.3

Community

Community means that we do not abstract but get involved. Through living the experiences of others we come to a greater, deeper, more plausible appreciation of ourselves-in-commune-with others. Marcel, an existentialist- also a theist, held a reverential belief in God and involvement with the object of study, for him abstraction was the great sin of modernity.4 Truth was

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2 Mankind arises out of loss of meaning and it is his struggle that defines being: Marcel in Keen p10.
Marcel uses the wisdom literature of the Old Testament positing the futility of human endeavour without connection to God in Ecclesiastes 2:26.
4 Kenn, Sam (1966) Gabriel Marcel London Carey Kingsgate, p13
something that demanded a response. To acknowledge God is the first step, that is the Foundation on which relationship is built; and this foundation of acknowledging God’s presence is something God can manage only to a point. He hides his face from us because to see The Whole would frighten or kill us. There are varying shades between total atheism and what someone like Moses had when he saw the burning bush and found he was in the bodily presence of God.

‘Lived Experience’ as a Singular Principle

Van Manen drew upon a hermeneutic, epistemological tradition deriving from the German nineteenth century theorist, W. Dilthey, and in the era closet to our time Heidegger and Garfinkel— with some influence from Buber.

As “phenomenology ... addresses human experience... (as) a universal intersubjective character... (thereby) retrieving or recalling... (through) reconstruction ... a way of life...to become) more truly who we are.”

With regard to terminology, outside of which we actually study I use the word “objects,” also bearing in mind, that intersubjectivity was described by Buber as when the “I”, as the subject, stands in relation to the “thou”, the object- which also becomes part of our experience. It is a “seeing,” not only from a desire to make psychological sense, but more as an ontology of being which will be explained below. Therefore seeing requires an effort as opposed to merely experiencing and reflecting.

Van Manen’s methodology is summarized below but he owes a debt to the existentialism espoused by Heidegger and Buber. He posited several concerns of exploration- methodology, pedagogy and epistemology, but the theme in this thesis is primarily epistemological in nature. The theme or inquiry revolves around and involves the physic (Sacred) wounds of a polity- our society, and the remnants of the process of genocide- a people the Tasmanian Aborigines, and my own lived experience. It is a woundiness rather than a fixed wound so ‘the becoming’ is important- ongoing processes extending back from the present, and into the future. It also requires to be brought out into the open.

Garfinkel was a foremost exponent of social inquiry using deeper process to undercover and understand why people, or groups of people, behave in certain ways:

---

7 Van Manen, pp 58 & 59.
8 Van Manen, p79
seeing through" appearances to an underlying reality, (may) consist in coming to terms with... factual knowledge of social structures.\textsuperscript{10}

It is illustrative to look at some applications of Garfinkel’s diverse research-

deciding the make up of opinion polls, how entry level questionnaires are formulated and the subsequent design of forms, how jurors think and decide on the innocence or guilt of a defendant.\textsuperscript{11}

The common research thread of these diverse activities, and the methodology of this thesis, is that of bringing out in to the open ‘the hidden’ in a way that is fully authentic:

lay as well as professional knowledge of the nature of rule governed action
and the consequences of breaching the rule, is prominently based ...on avoided tests.\textsuperscript{12}

In other words, the more important the social rule governing certain behaviour, the more likely people are going to avoid giving the real reasons for acting the way they do. They become inauthentic in the process.

Dilthey’s Three Fold Criteria for Lived Experience

Dilthey put forward a three-fold process to undercover and appreciate the hidden: experience leading to expression, and then understanding. The experience is primarily historical, but is aided by modern methods of reproduction such as the video and sound recordings- but with sufficient fluidity to encompass the present and the future. The interpretation always happens in our present context leading to understanding, or “transposition.” This is achieved through living the experience, expressing and understanding: in which interpretation of the inner process together with contextualization leads to self understanding.\textsuperscript{13} This is a description that could lead to social analysis in an abstract sense- but for several vital elements: it must be based on concrete experience rather than speculation, and take a phenomenological approach based on several epistemological sources. These sources are highly varied and aided by the fact that I participated in much of what consists of the object of this thesis.

\textsuperscript{10} Garfinkel, p96
\textsuperscript{11} See generally Garfinkel above
\textsuperscript{12} Garkinkel, p70
Van Manen’s Approach: The Kind of Knowledge

The question asked by Van Manen’s methodology is what kind of knowledge and understanding is appropriate to interpreting humans? The problem is not so much metaphysical but epistemological. Transposition consists in the use of inner and outer phenomenology so as to transcend reductionism. We are less concerned with factual accuracy than with plausibility of accounts;[14] and we are interested in testing insights against those which belong to the tradition of study or discipline,[15] thus setting up a conversation whereby our insights are compared to others. This conversation is not obvious at times, because, my work is unique and has its own personal signature.[16]

Heidegger, in my view, influenced Van Manen in the aspects of why, and how, individual things, persons and groups exist in their own reality.[17] Heidegger revolutionized the study of objects precisely because of his conviction that “the entire intellectual development of western philosophy…has masked rather than revealed Sein (being).”[18] The difference being that the concept of time is the nexus- and in this thesis we travel back into time looking at the various historical voices, and then travel to the present and vice versa:

We cannot step outside of time, but we can understand how the way in which are situated within time comes to be reflected in the ways in which we think and conceptualise the world around us.[19]

Heidegger posited the vital connection between our concept of time- and our ‘being’ as humans. One informs the other:

“…human life…(is) the specificity of Being…time is thus an unfurling whose stages stand in relation in a relation of earlier and later…”[20]

The Ontological Dimension

The Sacred wound is part of the ontological implication of Being-in-the-world, or Dasein, meaning dealing with the world in a way that implies transcendence. The most important way to effect Being in the word is through expression of language in speaking out, with and about our concerns. Dasein self interprets, using a process, or methodology, of:

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14 Van Manen, p65
15 Van Manen, p76
16 Van Manen, p76
17 Collins, Paul: God’s Earth, Harper Collins Melbourne, Australia, p186
18 Collins, p186ff
As such, it is not an everyday activity of simply reflecting on (or with) the ego but is directed towards the ontological self and dealing with the Being in a certain way. We practice self-nurturing and care for others because we are part of them and them of us. Ultimately it is directed towards an authenticity of Being—but in realization that with death Being as we might know it might be at an end.

Staying Centered in Being

For Van Manen, generally, it is important to remain centered in ourselves so that we really can experience “the thou” which is “the all” that is outside of ourselves. If we are centered in our love we offer the same aspect to those we happen to love or hate, but the process involves interaction with the outside experience, in this way:

Through the Thou a man becomes I. That which confronts him comes and disappears, relational events condense, then are scattered, and in the change consciousness of the unchanging partner, of the I, grows clear, and each time stronger.

If it is not possible to see the wood for the trees then our choices and observations of phenomena outside of us become suspect, because the rational-technical-abstraction aspect of seeing can take on a life of its own. The way to avoid this trap is to participate, or look at an experience from the viewpoint of a participant. Marcel frames it in terms of “the man who would think as a whole person must also think as an actor.”

Van Manen sets out processes for the application of literature to lived experience (and vice versa), and whilst relevant here it is the processing of unwinding that is more important in such a difficult thesis. “Understanding... moves in the reverse order to the sequence of events”27 - thus recreating and reliving as a precondition rests on a special personal talent. A concern that enhances the sense of personal and insightful empathy.

21 Heidegger, p8E
22 Heidegger, p11E
24 Van Manen, p79
26 Van Manen, p 70 & 71 and 73,74 & 75: to paraphrase - he looks at stories, diaries as ways to evoke other possible worlds as vividly as possible, that we would not normally experience to help us dialogue with material that concerns us, to see & transcend our own limits.
In the bibliography a special section is devoted to multimedia such as videos and radio which were used as investigative of underlying concerns in literature, as well as interpretative tools.

**Michael Kidd’s Application to Van Manen**

‘Lived experience,’ as a method to chronicle and understand theme/s in a particular life or lives, is to understand the object of the study as it merges into our own lives.

My experiences in this study occurred on various levels with the following objects:

a) the absorption of core background information, and day to day relating whilst a lawyer for the Tasmanian Aboriginal Centre for some 22 months up to October 1995;

b) intensive research of a field work nature over the subsequent 18 months;

c) conversations with various individuals whilst carrying this filed work (including subsequent trips to Tasmania) principally Ida West, Jim Everett and various Flinders Island resident either on the mainland of Tasmania or on the Islands themselves;

d) the influences of books and publications by several authors, research symposiums inside and outside the university. The bibliography is divided into written as well and visual and audio media. Thinkers such as Joseph Campbell, Colin Wilson, James Hillman, Elaine Pagels, and Henry Reynolds; together Charlesworth, O’Donohue, Bass and Bly, at times, inspired me and galvanized me to action.

Jim Everett\(^ {29} \) told me at the outset of this research, "Why don't you white people go and study yourselves". On reflection, although Jim said not to take it personally that is precisely what I needed to go and do: to study myself. If I had not gone through my abortion experience (that I recount later), and the opening through the wounding of child abuse, both which were a form of personal betrayal, I would not have come to know its meaning. I would not be able to understand the loss of Mannalargenna and his people, the betrayal involved in being lied to, used and discarded. I would not have had to confront myself. So the Angel in a painful poem I wrote (discussed later), as well as a harbouring of divine import, was also the Angel of understanding.\(^ {30} \)

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\(^{29}\) Conversation (2/2/96)

\(^{30}\) See poem in chapter two *This Angel from Beyond*
Application of ‘Lived Experience’

The methodology of lived experience therefore can be characterized as an Angel of understanding and I draw upon the particular summary (following) by Van Manen\(^\text{31}\) not because it is exclusive, or particularly descriptive, but because it gives the sense of where we have been in this thesis. In a real sense I am the methodology.

a) Turning to a phenomenon that seriously interests us and commits us to the world.

I am interested in why mankind is so inhuman to others and in general I feel this is part of a deeper woundedness inherent in mankind’s fall from connection with the divine.

There are various levels where this lack of connectedness in the present manifests:

- denial of the other (and the self) as representative of the divine;
- loss of the sovereign rights of Aborigines to their own lands and to practise their own laws.

The general inquiry herein is to examine the social and legal reasons why British settlers drove the Tasmanian Aborigines to the point of extinction, from the perspective of the Tasmanian Aborigines.

The personal aspect of the work helps inform this task. By examining my own mechanism of emotional withdrawal from life that characterised my response to trauma, came the realisation that self-expression had become risky due to the acquired pattern of abuse- so that withdrawal became safer.\(^\text{32}\) In my case, to have expressed myself at the time of the abuse would have been to express self-loathing as a sort of self-mutilation. A therapist told me I had the classic symptoms. Bass and Davis describe part of the way suppression of memories happens:

> When you were a child you had to hide your vulnerability. Being asked to remember it now can be very threatening. It means remembering your shame and terror. It means remembering a time when you did not have the power to protect yourself. One survivor believed she had made up the abuse as an adult. She couldn’t remember being a child at all. Finally her therapist asked her to bring in childhood pictures. Looking at the pictures she began to realise that she actually was that child who had been abused.\(^\text{33}\)

\(^{31}\) A) to F) Van Manen, Researching Lived Experience, p30.


\(^{33}\) Bass & Davis Beginning to Heal, p43.
Tasmanian Aborigines had their heart ripped by the loss of cultural attachment to lands. They were promised a new start at Wybaleena, but had to contend with the death of their children, instead. They suppressed their memories as a people as a result.

By placing myself in the space in-between, and reconnecting both the emotional and legal areas, is instituted the dangerous walk "on a narrow, rocky ridge between the gulfs (of meaning)." The only certainty is meeting what remains undisclosed.

b) Investigating experience as we live it rather than as we conceptualise it.

The epistemology of investigating "experience as we live it" is that a priori and empirical theorising is put in a proper perspective, to ensure a positive freeing away from social control and one-dimensional thinking, which "produce(s) a pattern of mind and behaviour which justified and absolved even the most destructive and oppressive features".

c) Reflecting on the essential themes which characterise the phenomena

When mankind becomes attached to the self as opposed to seeing “the other”, injustice flows. This must be so because of the inability to be in connection with the divine, of which “the other” is an aspect. Attachment to the self is a narrow existence, from which the escape path is redemption through personal sacrifice.

d) Describing the phenomena through the art of writing and rewriting.

I did not keep written journal accounts as such, but the background research for this thesis was carried out whilst I was a full-time employee of the Aboriginal Legal Service in Tasmania in 1994 and 1995. Subsequent intensive research was performed by interviews from March 1996 to the end of 1999. I undertook two formal field trips at the end of 1997, and 1999 to re-interview various persons, and wrote up the comments for their input and correction. I dictated on a portable tape recorder extensive contemporary notes, and consulted and interviewed various people, with their consent. Some extracts from tape-recorded comments appear at various points in this work and are acknowledged as either "field recollection" or “personal” with the date.

e) Maintaining a strong and oriented pedagogical relation to the phenomena.

In the Deloraine area of Tasmania, in early 1997, I organised an experiential workshop for transformation in men. It was essentially a suicide prevention workshop as young men in Tasmania have one of the highest suicide rates in Australia. It was a direct result

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34 Buber, M (dialogue with Carl Rogers) The Knowledge of Man, transcript of debate page ref unavailable.
of my own personal experience I detail in chapter two. The workshop explored the woundedness of men on both a personal and collective level. In the subsequent paper, which was published on an internet site for men. I discussed these aspects through the transformative power of story telling (the German story of "Iron John" formed part of the workshop which was exclusively for men). The Iron John fable is "a sacred story or Zen Koan by which the contemplation of or doing reveals the answer to a riddle or problem." In 1998, I made an oral presentation to the University of Western Sydney Social Ecology Research Symposium on the "Sacred wound", which was tape-recorded. This thesis has been named after the ideas developed in that presentation.

f) Balancing the research context by considering parts and whole.

This balancing of parts and the whole in the research context assisted my personal development. As I went on to say in the internet paper on male suicide, to have its transformative effect, the Iron John story needed to be acted out. Intellectualism, on the other hand, tends to analyse in a destructive way, depending on the use of words and ideas rather on living the experience.

The spiritual admonition that appears in several religions from my experience of having been brought up a catholic, and studying eastern religions in India for six months spread over several years, is to be in the world but not of it. Lived experience is very similar because we do not find ourselves if we are caught up in the day to day concerns. That is why this thesis took over ten years to research and write.

The ultimate concern for me in writing the thesis was to find God, and Buber sums up this process in the context of his particular version of lived experience:

Men do not find God if they stay in the world...do not find Him if they leave.
He who goes out with his whole being to meet his thou...finds Him who can not be sought.

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38 Kidd "Suicide and Gender Issues in Young Men".
39 Kidd "The Sacred Wound".
40 Kidd "Suicide and Gender Issues in Young Men", p2.
42 Buber, I and Thou, p79.
Chapter Two

Construction of an Activist Approach to Research

In November 1995, some six weeks after I left my job at the Aboriginal Legal Service in Tasmania, I attempted suicide by placing a vacuum cleaner hose through the rear part of my car which was parked in a secluded part of the bush outside Deloraine, Tasmania. Then a voice, it seemed to me at the time, came out of the surrounding bush:

Turn off the ignition, stupid, before you get brain damaged.... Your work has not yet begun!

To this day, I believe this was the voice of God, or, as I understood it at the time, the universal consciousness. At the time I did not believe in God, but I do now, due to some of the experiences recounted herein. The work involved in writing this thesis has been a guided work in more than one sense, as I have had the uncanny experience that God has guided me through the experience of writing and re-writing.

At the beginning of the work for this thesis, I could not have told the reader what my life's work was. I believe now that my life's work is clearer, namely to tell the story, whether it is my particular story, or a commentary on other matters, or the story of God. The storyteller must be clear in one's self: one must first confront one's own psyche, having removed and dealt with any wounds, the major defining wound being the Sacred wound.

The Sacred wound is hard to describe. In my case, it was recovering from childhood abuse and going on to realise that these wounds were merely preparation to open my consciousness to God. In that sense my wounds were Sacred. The Sacred wound for the Aborigines, to my view, was the genocide that destroyed their sacred connection to their lands, which was their god.

For me the element of transformation was overcoming my own myth about the abuse and other events that shaped my early life and going beyond being a victim:

The mythical element in life stories is the pre-established frame work within which individuals explain their personal history.¹

There is a tendency to self-mythologise and make the difficulties greater than they were and to minimalise the help other people gave us along the way. It is important to distinguish between imagination and observation when we examine our own myths.²

I discovered that transformation takes place in conjunction with the helping hand of God, but attitude is very important:

² Ibid, p 42.
...purposive consciousness depends on attitude of mind rather than definite goals... (as it is) boredom or despair (which) leads to mental illness.\(^3\)

This arises in a different world view to the western view which presents (self) control and having definitive objectives as a philosophy of being. Innate to mankind, in the modern age, is a lack of personal connectedness both to the self and to the surrounding environment. This was not always so. We in the western society have killed a sense of sacredness in many ways, both in a personal sense of not having time to be with family and also admire a beautiful sunset, and in a societal sense by disregarding of the presence of God in the world and people around us.\(^4\) A sense of wonder is missing.

May you live in the neighbourhoud of wonder
May you belong to love with the wildness of dance
May you know you are ever embraced in the kind circle of God.\(^5\)

Thomas Berry sums up the overall human situation as:

the human is less a being on the earth or in the universe than a dimension of the earth and indeed of the universe itself.\(^6\)

We have lost this sense of dimension or connectedness to our own and the human family around. Instead of having a place created for personal connectedness with those that are different from us, such as children, there is a sense of general alienation. Parenting has suffered in many senses. For instance there is mounting evidence that the failure of parents to devote the time and love required to raise children may be a causative factor in rising suicide rates in Australia.\(^7\) One observer has noted the general tendency for today’s society to treat people as disposable objects.\(^8\)

This lack of connectedness gives rise to a general sense of woundedness. However one particular defining event in a person’s life may be described as the Sacred wound. I first came across this expression "Sacred wound" in experiential workshops I attended in Tasmania during the winter of 1996,\(^9\) where I first confronted my own inability to connect my spiritual being to a sense of presence. I thought at the time it was to connect to this earthly plane, but I later realised that what I was missing was the grace of God.

\(^7\) Centre for Human Transformation, 228 Greenwood Lane, Steels Creek, 3775. See also the oral presentation Kidd (18.4.98) "Sacred wound".
The basis of the Sacred wound appears in various traditions of mythology around the world, and has an acceptance at a basic level of myth. Campbell describes the function of myth as three-fold:

the first function...is to reconcile waking consciousness (to the mysteriousness of existence);
the second aspect is to interpret existence or hold the mirror up to nature; the third aspect
is the shaping of the individual to the requirements of his geographically and
historically conditioned social group. 10

The Sacred wound appears in Greek mythology, for instance Sophocles’ telling of the
myth of Philoctetes and his foot that would not heal until he secured his destiny:

...the snake that bit (him) was an agent of the Gods”...calling to be true to his own nature. 11

Edmund Wilson also studied the Sacred wound of Rudyard Kipling, who in many ways
was the embodiment of the nineteenth century British view that the blackman was
somehow inferior. Because Kipling could not come to terms with the abuse he suffered
in his childhood he projected his anger and angst through his writings, which according
to Wilson lacked deeper substance as a result. 12 Kipling’s famous poem “The Whiteman’s
Burden” will be examined in the concluding chapter which looks at Genocide.

Edmund Wilson also earlier looked at the Axel story which is an Anglo Saxon myth
similar to the story of Iron John. Axel’s Sacred wound was the killing of his father, the
count, by a relative trying to find the location of some hidden treasure, in this case gold.
The boy avenged his father and found the real gold (self-awakening) whilst receiving a
wound at the hands of a woman whom he later embraced and married. 13

Celtic mythology recognises the existence of the Sacred wound:

Diamand steals Grainne, the wife of Fion, and has to chase the sacred boar, is mortally
wounded. The only person who can save him is Fion, who has the power of healing. Fion
does not heal Diamand, or rather very reluctantly goes to get the healing waters in his
cupped hands, rather than a proper container, like his helmet. Diamand dies as a result,
and Grainne rejects Fion. 14

This particular tale of a Sacred woundedness has significance for present day Ireland.
Two parts of the island of Ireland have fought for many generations over the land of
Ulster, and the only way out is for each to give up their respective claims and work
together. Group cohesiveness of a people, according to Campbell, is a product of the
cogency of their particular mythology in being able to withstand and interpret change. 15

12 Wilson The Wound and the Bow, chapter entitled: “The Rudyard Kipling that No One Read,” p113: “the
later Kipling consolidated & codified his snobberies instead of progressively eliminating them”.
It can therefore be said that the way to destroy a civilisation or people is by disallowing their mythology.

Within the Sacred wound lies the solution; in order for healing to occur a sacrifice has to happen, and the wound itself provides the means to move beyond the paralysing or disabling aspect that is inherent in any wound. It is a koan:

There are many right answers to a koan, and there are also none. The koan itself is the answer... its intent is to help you break the shell of a limited mind and perceive not what is thought but what is.\(^{16}\)

The Sacred wound of Christ was the crucifixion, which according to the Christian Bible was the saving act for mankind. It is not a question of acceptance or denial of that Christian statement. It is a koan and also a restatement of a very old myth concerning the fall and rise of mankind, and any larger than life historical figure, through coming to terms with a wound:

For God so loved the world that he gave his only Son, So that everyone who believes in Him may have eternal life.\(^{17}\)

This theme occurs in the Bible before this event of the death and resurrection of Jesus in what could be termed various prophecies relating to the Jesus myth, or alternatively as the continued theme of the Sacred wound myth:

because he poured out himself to death, and was numbered with the transgressors; yet he bore the sin of many, and made intercession for the transgressors.\(^{18}\)

Salvation according to this Jewish tradition\(^{19}\) would come by someone through the intercession of God, making a personal sacrifice, but this myth of sacrifice crosses cultures. In the Aboriginal Dreamtime myth the creation story of Angamunggi has him being killed by his own son Tjinimin:

Due to sexual jealousy Tjinimin treacherously speared his father while he was sitting surrounded by his children, enjoying a festive moment. In agony and about to die, Angamunggi, "the father", lingered on and where his blood fell water pools and also tracks were created where he walked before he died. These are now sacred and these springs and water holes remain to this day.\(^{20}\)

The mortal wound was life giving and is somehow typical of the human condition. End and beginning are here "at one... (this) myth depicts men as they (are) ... bad, cowardly and

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\(^{17}\) John 3:16
\(^{18}\) Isaiah 53:12
\(^{19}\) According to Isaiah 12:3: “With joy you will draw water from the wells of salvation”. This latter word in Hebrew is Yeshua or Jesus, see John 7:37 where Jesus said before the Temple “Let anyone who is thirsty come to me...”.
brave, open and deceitful, filial and unfilial", but the father here is sacrificed to create life.\textsuperscript{21} Sacrifice can fulfill a number of concurrent functions with a unitary theme:

This procedure consists in establishing a means of communication between the sacred and the profane worlds through the mediation of a victim, that is, of a thing that in the course of the ceremony is destroyed.\textsuperscript{22}

The similarity of Angamunggi’s story to the Christian tradition of resurrection from the Fall due to a sacrifice is compelling. Biblical tradition is a universal truth that encompasses much human experience and truths across a broad spectrum:

it teaches us that the past is important and we should learn from it.\textsuperscript{23}

Adam lost his birthright due to an act of treason in trying to be equal to God. The Godly person of Christ recreates a new life with his own death (and later resurrection) on the cross to create redemption for mankind in terms of this Christian myth.

However, we now come to the essential problem that needs to be resolved, what Fritz Perls terms a gestalt:

If more than one gestalt emerges, a split, a dichotomy, an inner conflict might develop, weakening the potential that has to be invested to complete the unfinished situation.... if more than one gestalt emerges, the human being begins to “decide,” ...(if it ) is left alone, then there will be no decisions, but preferences. ...such a process means order instead of conflict.\textsuperscript{24}

The gestalt is the point at which there appears a difference that needs resolving. The idea of achieving change through sacrifice is not a rational perspective, hence the clash of ideas. Our current western view, legal positivism, which to many, our legal system is supposedly based upon,\textsuperscript{25} is inherited from a rationalist system of thinking that does not readily recognise sacrifice as a means for achieving change.

Thomas Paine was instrumental in establishing the concept of the "human rights" of mankind. Yet he attacked religion at the same time and termed belief in a divine being-with-control as a superstition asserting that “a set of artful men pretended through the medium of oracles to hold intercourse with the Deity".\textsuperscript{26} He confused the corrupt practices of the existing church with sacredness, and therefore in his view, it was necessary to deny the existence of an active God having some influence over the affairs of humanity. In order to establish his argument mankind, in his argument, became almost self-perpetuating as "natural rights.... (came from the) ...common interest of society".\textsuperscript{27}

\textsuperscript{22} Hubert et al Sacrifice: It’s Nature and Function, p89.
\textsuperscript{23} Ochs, Carol (1986) An Ascent To Joy, University of Notre Dame Press, Indiana, USA, p110.
\textsuperscript{27} Ibid, p35.
By the end of the eighteenth century, the Enlightenment was primarily concerned with utility, of which human rights were but one aspect. But ultimately this philosophical approach became more concerned with exploitation of environmental resources, whether they were material goods or slaves.\textsuperscript{28} The thinking that mankind is a utilitarian, godless, rational being can lead to certain results, one of them being crimes of genocide due to the denial of the god in "the other". Even though Churches have had their fair share of killing, Marxism, Darwinism and the philosophy of Frederick Nietzsche all have in common\textsuperscript{29} this aspect of rebelling against religious institutions because of the abuses of the past.\textsuperscript{30} These philosophies, according to an Australian social commentator\textsuperscript{31} influenced much of the nineteenth and twentieth centuries and were natural developments of this Age of Enlightenment. The common element of all these philosophies or ideologies is the denial of the influence of a God figure in the lives of men.

Nietzsche was more forthright\textsuperscript{32} and is famous for his statement through his work \textit{The Madman}:

\begin{quote}
We have killed (God) you and I.\textsuperscript{33}
\end{quote}

**God As An Idea**

Sacredness is the embodiment of God and as an actuality it benefits mankind in terms of according some mutuality to the affairs of mankind. From time to time the Bible will be looked at in terms of accessing western mankind's ideas of how this sacredness has been perceived and received, for according to the Old Testament it is through mankind this sacredness must work:

\begin{quote}
And I set my dwelling in your midst and I shall not abhor you.
And I will walk among you and will be your God, and you shall be my people.\textsuperscript{34}
\end{quote}

God is also within:

\begin{quote}
You may get in touch with an inner voice that, Quakers hold, is the voice of God responding to your questions..the inner voice...may be the God inside you.\textsuperscript{35}
\end{quote}

Part of the mystique of sacredness is that according to Buber, God is formless, nameless and indescribable, and essentially is an aspect of us all:

\textsuperscript{28} Pankhania, Josna (1994) \textit{Liberating the National History Curriculum}, Falmer Press, London
\textsuperscript{29} Zacharias, Ravi (1990) \textit{A Shattered Visage: The Real Face of Atheism}, Baker Books, Grand Rapids, MI, USA, p18.
\textsuperscript{30} Such abuses include: the Crusades, the Inquisition, burning witches, conquistadors in South America.
\textsuperscript{32} Marx said religion was the "opiate of the masses"... Darwin did not cover God directly in his work but was attacked by religions at the time for the implications of his work.
\textsuperscript{33} Cited in Zacharias \textit{A Shattered Visage: The Real Face of Atheism}, p20.
\textsuperscript{34} \textit{Leviticus} 26:11-12
\textsuperscript{35} Lewis & Streitfeld (1972) \textit{Growth Games}, p69.
You can make it into an object for yourself, to experience and to use; you must continually
do this - and as you do it you have no more present. Between you and it there is mutual
giving: you say Thou to it and give yourself to it, it says Thou to you and gives itself to you.
You cannot make yourself understood with others concerning it, you are alone with it.
But it teaches you to meet others, and to hold your ground when you meet them.
Through the graciousness of its comings and the solemn sadness of its going it leads you
away to the Thou in which the parallel lines of relations meet. It does not help to sustain
you in life, it only helps you to glimpse eternity.36

This is the true significance of the incident telling of the burning bush beheld by the Old
Testament figure Moses. Through the miracle of the bush that was not consumed, he
experienced the sacredness transcending the physical, material realm:

The Angel of the Lord appeared to him in a flame of fire in the midst of a bush: and
Moses looked at the bush which burned with fire and yet was not consumed.37

Moses then asked this sense of sacredness for His name and what he should tell the
people of Israel, and God said:

"I AM that I AM" and this is what you should tell the Israelites that I AM sent me.38

There is an inability to categorise such statements because they are clearly beyond the
rational. A nameless God appears through a burning bush which is not consumed? The
answer is that it is beyond the rational ability of humans to understand the mystery of the
concept of God. Nietzsche was blind to the mystery of God because he put everything in
terms of the Will; and so specifically said God was dead.39 The spiritual perspective in
such a statement meant he killed something inside himself, his own sacredness because
his sense of euphoria descended into madness.40 Martin Buber's concept of God is that of
a friend within, not a critic, who is there to help guide towards freedom, not self-slavery
through devotion to some false idol or ideology:

God is the God being there, the God freeing, leading, going
along, feeling with you, but at the same time also the unseizable,
the unavailable God of whom you cannot make an image.41

The principal outcomes since the Enlightenment have been several: gradually the idea of
God has been replaced with a "secular clergy of philosophers and scientists"42 and the
idea of community has been replaced by a concept of individual striving:

(Lucifer’s) desire to be God was to do with a do-it-yourself-divinity by the
force of his own nature alone..not willing to be a co-worker with God...
the fullest embodiment (of this thinking) that we rely on our own efforts

36 Martin Buber, I and Thou, Charles Scribner's Sons, NY, pp. 31-33.
37 Exodus 3:2
38 Exodus 3: 14
40 Blackham, Six Existentialist Thinkers, p31.
Martin Buber Homepage http://www.buber.de/en/
alone was communism.\textsuperscript{43}

The progression of thinking from the Age of Reason\textsuperscript{44} of Adam Smith, and others such as Hume\textsuperscript{45} who emphasized utility where the idea of God was rendered unimportant, also gave birth to economic theories that saw mankind as the subject of market forces.\textsuperscript{46} The philosophy of economic rationalism in its many historical guises does not recognise the ordering and interrelation of life through a continuing act of creation in the world. Exploitation proceeded as a destruction of something because it was inferior: it was this economic force that amongst other forces, ultimately ensured the destruction of the Aborigines in Tasmania.\textsuperscript{47}

The teaching of Jesus properly applied emphasizes daily forbearance and sacrifice, for example: "love thy neighbour as yourself...turn the other cheek to insult and injury".

Most of the settlers and members of government directly or indirectly involved in the genocide of the Tasmanian Aborigines were Christian, but it was not the teachings of Christ that were being applied in the shootings, dispersals from traditional lands, the taking of children and ultimate exile of the Aborigines to the prison camp at Wybalarra on Flinders Island.

Not giving way to one's baser instincts involves a sacrifice of sorts, but these settlers were not prepared for self sacrifice as it was easier for them to seek vengeance against Aborigines who killed their stockmen, than to ask for forgiveness for taking Aboriginal lands. There is some element of forbearance or sacrifice involved in any spiritual approach\textsuperscript{49} but these settlers did not embody these principles.

Man is violent and this violence feeds upon itself.\textsuperscript{50} This view appears in biblical literature from an early time with the killing of Abel by Cain, as also does the inherent corruptness of the human reasoning when it proceeds from its own understanding:

\begin{quote}
For it is from within the human heart that evil intentions come.\textsuperscript{51}
\end{quote}

The utilitarian view of sacrifice would depend on the aims and objectives of the participants. For example, Lenin reportedly said of the principles of revolution: "you can't

\begin{flushright}
\textsuperscript{44} This is another name for the Enlightenment.
\textsuperscript{46} Smith, Adam (1759/1974) The Wealth of Nations, Harmondsworth, Middlesex, UK.
\textsuperscript{48} Matthew 22:39 & 5:39
\textsuperscript{51} Mark 7:21
\end{flushright}
make an omelette without breaking the eggs" which is hardly a sacrifice for the egg breaker. The sacrifice principle goes beyond a simple utility and is the foundation for a personal or group spirituality. In the Tasmanian situation the removing of the Aborigines to Flinders Island involved some settler forbearance as the alternative was death and starvation for the Aborigines.\(^5\) This was not a real sacrifice for the settlers as they inflicted suffering on others and received the material benefit of the lands that they stole from the Aborigines. The real sacrifice was of the Aborigines in giving up their lands. But this was not in order to receive a Sacred wound. The real woundedness for the Aborigines was the destruction of their sacred places and spaces, having their religion, which is enlivened through the land, taken away. The Sacred wound of the Aborigines was marked by their deaths evidenced in the present day graveyard at Wybaleena on Flinders Island, Tasmania.

Taking both the Angamunggi myth and the sacrifice of Christ, the essential sacrifice is on the part of the wronged and those in the morally superior position. Angamunggi could have smote the son, but instead he chose to sacrifice himself and create something lasting and life giving at least, presumably, for his son’s children. In the Jewish/Christian\(^5\) story of the messiah, God offered a saviour to save mankind but mankind persecuted, or did not recognise the spiritual characteristics of this person. He died in very unfair circumstances, when he could easily have done something to stop the process and save himself: “save yourself and us if you are the Christ".\(^5\) The wound implies some form of sacrifice and its redeeming nature is forgiveness. The ultimate end point of the sacred wounding is the emergence of new life\(^5\) or spiritual rebirth. The Sacred wound was not a benefit as such, but the realisation, or understanding, of the sacredness of the wound is the path to expanded consciousness. It is a mystery.

The new living for the Tasmanian Aborigines is detailed in their efforts to find common coexistence with the whiteman’s culture in the contemporary modern sense, to successfully agitate for return of their most sacred lands and places of worship. The new living for the whiteman’s culture is to move into a better balance with nature and see the multifaceted nature of existence. The new living for myself was to achieve, or relearn, the ability for self-expression.

According to Campbell, eastern mythology emphasizes life coming from death, the journey involving many deaths of the self, a type of exploration. The source of life, for Hindu the river Ganges, is the Spirit\(^5\) facilitated by the journey into the inner life. To "find the fire in yourself" involves being twice born, the second birth through a spiritual death.\(^5\) The Bible has the same wisdom, which illustrates that this principle transcends the eastern and western religious divide. Jesus said, when asked "how can any one be

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52 See discussion of Lenin’s character his “ends justifying the means” philosophy in Wilson, Edmund (1940/72) To The Finland Station, Farrar Straus & Giroux Publishers, NY USA, p512ff.

54 Isaiah 53:7
55 Luke 23:39
56 Serres, Michel, Atlas.
58 Ibid, p106.
born after having grown old?": "no one can enter the Kingdom of God without being born of water and spirit". The spiritual necessity is the death of the old by a sacrifice of our old lives, or in the Christian sense a repentance.

Campbell says for both the eastern and western traditions of symbolism, the message is the same; it is "always of the Spirit". The mythical stories passed to the new generations of people by wisemen and women of all cultures evoke symbolism, which is itself a religious experience. The Spirit leads to personal or group transformation.

**My Need to Connect**

My own lack of connectedness came about through some peculiar events.

i) I was born with a tied tongue so that for the first few years of my life I could not talk. After the operation that untied my tongue, I had to have speech therapy. People thought I was intellectually handicapped when I tried to talk. I remember once as a three-year-old walking into someone's house whilst visiting. The people asked what I was doing there, and I tried to tell them I was visiting next door. But they said: "We can't understand you". They didn't make fun of me but I felt the gap between what I was feeling and my ability to communicate. Consciousness of this gap has been with me my whole life. Getting lost in this way made me feel misunderstood and an outsider. I overcame my disability. I fought for the underdog as a lawyer and won prizes for public speaking. But the residual psychological effect was a constant feeling of being misunderstood and an outsider. I still feel that today, though spiritual work that I have done in the meantime has reduced the feeling greatly. Part of that spiritual journey involved going down to Tasmania at the end of 1993 to work for the Aboriginal Legal Service, and to participate in spiritual workshops run by the Centre for Human Transformation.

ii) I had a very bad relationship with my father and therefore missed out on the benefits of male support throughout my life. My father was a policeman who during my gestation in 1951 was participating in putting down the New Zealand waterfront strike of 1951. This involved the suspension of civil liberties and the beating by police of striking waterside workers, accompanied by the denial of the necessities of life to the wives and children of those workers. His participation in this extra-legal suppression of civil liberties extended into the family. The combination of this with his abuse of alcohol made my life a misery; as a child I never knew when I was going to be singled out for vindictive treatment. I remember having the sense of feeling constantly wounded by my father.

iii) I was sexually abused by a male relative of my mothers whilst I was five. My father had actually invited this monster of a person (from my vantage-point at the time) into the

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59 John 3:4 & 5
61 Centre for Human Transformation, Victoria, Australia,
house, a man who had a known propensity for sexual deviancy due to a brain tumour that subsequently caused his death.

He was mentally deranged and eventually was committed to the secure mental institute known as Oakley hospital in Auckland. He died about six months later choking on a sausage. I was glad and as a child looked on his incarceration and death as God's retribution. However the sexual assault compounded the isolation and outsider feeling I was experiencing as a result of the speech impediment. I couldn't make myself heard, and doubly as a result of the sexual assault I didn't feel there was anyone who would understand.63

The following poem, This Angel From Beyond, written at the end of my service with the Aboriginal Legal Service in Tasmania, was written out of my own personal sense of betrayal. It relates mainly to personal disconnectedness but also a feeling of non-appreciation from my then employers. Some six months earlier an unborn child that I had fathered was aborted by the mother in acrimonious circumstances that marked the beginning of the end of that particular relationship. It was like running into a brick wall. But this sense of betrayal, in both instances, brought a new beginning for me:

This Angel From Beyond

I couldn't help thinking of the baby
the other day as I sat and waited.
I bet it would have been a boy with red hair and
a fiery temperament like its father.

Or ruddy cheeks and round face like its mother.
Would have been two months old and making a nuisance of itself.
Born around the time I left work.

Clapping hands in glee, as soap bubbles wash down back,
splashing water all over the place, yelling and making demands at night.
So incoherent yet so real and special; smooth in sleep;
a plaything for the girls; a pet for the kitten; a figure of wonder for visitors; to be hugged and squeezed.

Conceived in a ring of stones and candles: druid-like wispy spiritual;
strong non-sexual love making,
on the Mersey near the highway to the Mountain.
The snake darting into the bushes, signified that
the nature just made way, and this Angel came from beyond.

Would have been two months old now,
beginning a life of sorrow and laughter grief and ecstasy.
Ending it in a ring of stones marked by a solitary rose,
known only to its procreators and the Great Spirit.

I do believe:
It gives and takes, to teach us.
Buddhists call the process a name.

I just call it a damned shame.64

63 Field note, MJ Kidd (27/12/99)
64 Poem, M.J. Kidd (1/11/95)
So the Angel in the poem is also the Angel of understanding. The Angel that brought the spirit of the baby in the circle of stones brought a being that I wanted but the mother did not as there was a difference in spiritual expectations between us. The understanding through the loss was used to father a healing of the Sacred wound between the two cultures of the whiteman and Aboriginal.

It felt as though the abortion had ripped my insides out. This poem also represents my own death wish and marked my last reliance on the eastern teachings of karma, and the Buddhist sense of renunciation. I was angry and the anger was turned in towards myself, which is a prescription for feelings of hopelessness. The abortion was the turning point from being a disciple of Bhagwan Shree Rajneesh, who taught me to look for the God within but did not offer any sense of the sacred, for the movement he inspired had a karmic element of "you get what you deserve". The spirits of that religion were very unforgiving of past mistakes. This is inherent in the philosophy of continuous rebirth under the law of karma; in western psychological terms, with which I was familiar at the time, "You created this situation...". This rang very hollow to me at the time and I felt doubly betrayed that my spiritual beliefs had let me down and not protected me. I now felt the challenge was to set aside the purely psychological aspect of examining one's childhood, to find truth and understanding. I had done plenty of that. The death of the child by the abortion was something that could not be accounted for, precipitating my own brush with death nine months later. My conscience was seared by the death of the child, which could and should have been avoided.

My trust for men was low due to childhood sexual abuse, though I now felt it was to men that I had to look for my spiritual enfoldment. However, I did receive mentoring from some women, particularly subsequent to the suicide attempt in late 1995.

After about a year I came across the story of Iron John in Bly's book of the same name. This story had a profound effect on me as it helped me conceptualise and get in touch with my Sacred wound. This complex set of circumstances had inflicted a wound that inextricably connected my woundedness from lack of a satisfactory relationship with a male figure with my struggle to overcome the effects of the sexual abuse when I was four years old. Having been born unable to speak compounded the effect of the wound in relation to the male, as I could not express my story to any body.

So the expression (and healing) of my Sacred wound was the reclaiming of my personal sovereignty in relation to male figures. I had to overcome my fear of men through understanding the reasons why men (or mankind) carried out human rights abuses in the first place.

Iron John said to the boy:

The key is under your mother's pillow; you can retrieve it.\(^6^6\)

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\(^{65}\) See the opening paragraph of this chapter.

I take this to mean that a hardening of the psyche that prevents the softer, feminine feelings of compassion and sadness, often covering up trauma in life. Denial is the superficial aspect of the inability to relate to the suffering of others, through avoiding ‘the in-between’ space.

The symbolism of the Iron John story is that in order to grow past youth, a young man must go into the deepest part of his psyche and by service (learning to do ordinary things with an extraordinary facility), find the true respect for the feminine. This involves stealing the key from under the mother’s pillow, which is symbolism for going beyond incestuous attachment to the mother.

‘Iron John’ is a wise man taking the place of a father who was unable to render advice and assistance. The boy eventually becomes a king-in-waiting through reliving his trauma—a story of transformation through trial or sacrifice. It could have been written for me. Iron John is the destiny of all men—‘the wild man’ is the outer manifestation of the inner, actually a king in disguise:

I am Iron John, who through an enchantment became turned into a “wild man” ...you have freed me from that enchantment by going on your spiritual journey. All the treasure that I own from now on belongs to you.67

In a sense, the spiritual journey to reconnect with “kingship” involves moving away from a position of moral relativism where identity is associated with ownership of various possessions and personal attributes associated with post-modern man,68 to the embracing of more ancient, primeval values like fealty to the weaker, and the finding of connection with God through a personal search for the Holy Grail,69 which involves personal sacrifice. The methodology of ‘lived experience’ facilitates the journey into this other meaning-perception.70

The fall of mankind from the divine has entailed his self referencing as opposed to being open to being guided by values that take mankind beyond himself. Hence mankind’s reliance on purely human values has led to debauchery, wars and various sexual practices that tend towards the deviant. Mankind’s search has been for material sustenance and pleasure, but it is a question of priority, as sustenance will be given anyway as long as we are connected to that which is around us:

But strive first for the kingdom of God ...and all these things will be given to you as well.71

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67 ibid, p259.
70 This phrase comes from Colin Wilson’s Beyond The Outsider (1965) and is discussed below.
71 Matthew 6:33
The Jewish religion points to a responsibility not to take too much as "when you reap the harvest of your land, you shall not reap all the way to the edges of your field"; 72 and the Muslims say "eat and drink but waste not by excess, for Allah loves not the wasters". 73

The "real face of atheism" 74 is therefore worship of the self or the self projected onto idols. Paganism exults in the worship of the self by making moral choices a matter of situational ethics. The modern trend in Australia has been towards religions that emphasize personal transformations 75 rather than a connection to that around us. So this research has relevance for the direction of Australian consciousness: perhaps this reliance on human values alone is the Sacred wound for all of humanity, as "the grail romance is (really searching for) the God in your heart". 76 The spiritual quest or service for me was coming down into a wounded country, Tasmania, as a wounded man: wounded naturalism seeking the God within and the God without.

For the Tasmanian Aborigines the Sacred wound was the loss of spiritual attachment to the Ancestors and their own antecedents, which was occasioned by the trauma of the genocide. The evidence lies in the graveyard of Wybaleena on Flinders Island where, between 1831 and 1847, the majority of the captured Aborigines died and are buried. It is a site of great trauma as I was to discover on my trip there, which is discussed in chapter fourteen.. It was the defining event both as a reference back for genealogical purposes as discussed in chapter eight, and as a reclaiming of the land itself. Wybaleena during the period of time mentioned above, defines the "before" and "after" of genocide. Wybaleena is the defining event spiritually for Tasmanian Aborigines, just as probably the Holocaust was the defining spiritual event of the twentieth century where God's chosen people the Jewish people were killed for their religion.

The sexual abuse I experienced (for me) was one such defining event, as it took me almost forty years to start to understand the complex interaction of the wounds I suffered as a child. My Sacred wound was also one concerning an inability to communicate. Of the various wounds, the speech impediment made me feel like an outsider and was the deepest. As a consequence I developed suspicion and distrust for others and in turn was regarded with distrust by some. Yet I did not know this secret inside due to self-suppression, so therefore generally I felt I had something to hide. The paradox is that it was not something essential to my nature but something that had been imposed as a reaction and self-defence to something from without.

However, the outsider is in a unique position to comment on the reality and to promote a new thinking on the subject:

In conditions of extremity, simple and comfortable categories of good and evil, guilt and innocence are rarely to be found... 77

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72 Leviticus 19:9
73 The Holy Quran, 7:31
74 Zacharias, A Shattered Visage, p168.
76 Campbell, "Where There Was No Path: Arthurian Legends and the Western Way" , p211.
77 Judt, Tony (1998) "The Stranger": (review of Albert Camus-A Life by Oliver Todd), New Republic, UK
My spiritual journey through the Sacred wound is intertwined with the Tasmanian Aborigines both on a physical level in working for them, and on a spiritual level in being able, by reconnecting, to overcome abuse, powerlessness and non-recognition. By weaving together these various concerns, at the time I was able to help facilitate some justice for Tasmanian Aborigines through my job as a criminal lawyer, and also to minister to myself. Through this work, I came to recognise my Sacred wound as such. I came to terms with the wounds of self and realised the condition is between God, and me and is not something to be used as a means of exchange for something else. This wound is to be treated carefully, in a sacred way, certainly not to be imposed on others. The wound that partly arose out of an assault on myself could only be subsumed in a supernatural way.

**Terra Nullius Mindset**

The expression of the Aboriginal Sacred wound is the loss of connectedness to their Ancestors through the lands. This entails resulting problems for both European and Aborigine, and has meant distrust between both groups ever since because of "the terra nullius mindset".  

The discourse of healing needs to go something like this: The Sacred wound brings spiritual transformation by creation of a new dialogue or state of awareness of the Spirit of the Divine, which is the Spirit of the Earth,

> which carries the psychic structure as well as the physical form (of everything)...
>
> humans are (but) one dimension...

The Creator, according to Aborigines, is the divine and the Ancestral Beings the servants of the Creator. At another level there are also the spirits of the Aboriginal ancestors, which are involved in dialogue with the divine and those who are still living.

The meditation for me has not been to prove the existence of the Sacred wound, but to tell the story, thereby detailing my transformation, and establishing the framework for the myth of the Sacred wound. Being able to see spiritually is much like being able see physically, as the attributes are the same: bringing light into darkness, discerning the real from the illusionary; and being aware that the spiritual significance of the Sacred wound may differ according to the watcher:

> We never look at just one thing; we are always looking at the relation between things and ourselves. Our vision is continually active, continually moving.

(16/2/1998)


79 Berry, Thomas *The Dream of the Earth*, p195.

80 Charlesworth et al. *Ancestor Spirits: Aspects of Australian Aboriginal Life and Spirituality*, p80: "Ancestor deities...who created..."

continually holding things in a circle around itself, constituting what is present to us as we are.\footnote{Berger, John (1972) WAYS OF SEEING, Penguin, London, UK, p9.}

In my researches and intuition it is the very attribute of the loss that is the means to the solving of a personal or societal conundrum as we cannot resolve it ourselves because our own subjectivity prevents us from seeing. The wound presents the means within itself to heal the psyche of the sufferer through a reconnection with the divine. The Sacred wound for Tasmanian Aborigines started with a gradual assault, which did not appear as an assault except for isolated instances. It ended in the loss of their lands and culture. They soon realised that they had no recourse at the time. This was not an assault by God-fearing Christians, but by men and women who glorified in the self, rather than seeking for God in the other.

The turning point in this thesis was when I felt inspired one day in April 1998 to develop the theme of the Sacred wound. It was as though some force overcame me and I felt so strongly moved that I could not actually write down my own story of the Sacred wound through my own experience of abuse. Instead I made the oral presentation referred to above, which I tape recorded:

The deprivation brought more into focus the very things which I needed to develop. More importantly "...some very significant things happened to me as a result of coming into contact with the (Tasmanian) Aborigines: my life was transformed...one of the things that happened to me...was I realised the importance of my wound which was being born unable to speak.\footnote{Kidd, M J (1998) “The Sacred Wound”.}

At the time of coming to work for the Tasmanian Aboriginal Legal Service I was also working through a handbook for sexual abuse survivors,\footnote{Bass, E & L Davis, A HOBBOK TO “BEGINNING TO HEAL”, Mandarin Paperback, London, UK.} and learning to write down my past experiences in a meaningful way so that I could later apply a method of inquiry which turned out to be that detailed in chapter One. I discovered many of the emotional stratagems that grown children, as adults, use to deny the pain associated with the abuse.

My resurrection from this wounding was the relearning of the ability to make myself understood, learning to bridge my personal gap with others: with the Aborigines I worked for, to let go of my separation from them, which I realised was due to detachment from God, and to realise that

men may do the right thing from a mixture of motives, and with equal ease they may make terrible mistakes and commit terrible crimes with the best of intentions or with no intentions at all.\footnote{Judt “The Stranger”, p25.}

Like myself, temporarily, the Tasmanian Aborigines had lost the power to speak on behalf of themselves. They lost their voices or never had their tales acknowledged, as human rights are worthless unless there is the means to speak about them. In my view, if you rely solely on rational human understanding, without recourse to a personal
spirituality, to enforce rights, there will always be injustice due to the limited meaning-perception\textsuperscript{86} of the western person. It seems to me that objective morality comes from laws that go beyond the formulations of mankind, particularly those coming from one group of mankind and trying impose their worldview on the other group. Some would call these God-given laws, but it is essentially establishing an equilibrium between competing interests, which comes from being treated equally even though we may not be the same. Whether this is achieved from the perspective of a God like presence, or some objective existential reality that is free from the projections of mankind, is a matter of personal spirituality.

The dominant influence in Australia is the whiteman’s (European) culture with its emphasis on materialism and outright land ownership, and as a contradistinction to this, the whiteman needs to develop the willingness to enter into his feminine side which involves moral courage to enter into the unknown, a new dimension, and the willingness to listen and see the "other".

Socrates was condemned by a majority of his fellow Athenians not for corrupting the morals of the young men of Athens but for encouraging them to think outside the parameters of the known

\begin{quote}
(It) ... was more than the voice of conscience, as (he) believed that it was
God who spoke to him.\textsuperscript{87}
\end{quote}

Socrates listened to this spirit of God rather than the dictates of the external Gods founded in the greater society. Those who rely on an independent spirit untrammeled by the majority have to be prepared like Socrates (and Jesus) to sacrifice something in return as the irony is that it is connection with this spirit of higher agency that defines whether man or woman are truly human.\textsuperscript{88}

**Detachment from the Objective principle**

Mankind’s Sacred wound of detachment from the spirit of God takes its form in three ways:

a) Separation of the soul from the Spirit of God

Separation of the Spirit from the soul has occurred over the course of humankind’s time on this planet. The task according to Hillman is to find our inherent destiny, which is written on our souls before we are born. But only few discover this aspect of being,\textsuperscript{89} according to Myss, a person who works in the spiritual healing area:

\begin{quote}
the journey toward becoming conscious is more ...attractive in theory (than)
\end{quote}

\textsuperscript{86} Wilson, Colin (1965) *Beyond the Outsider*, Pan Books, UK, p80ff. This is discussed more fully below.


\textsuperscript{89} Hillman, *The Soul’s Code: In Search of Character and Calling*, p8.
There are several aspects to spiritual leadership that need to be understood: the element of sacrifice; giving up all you know; giving up various forms of materialism, including ego, and certain friends; it involves experiencing as opposed to avoiding pain; the giving up of advantage over one's opponents; doing things because they are the right thing to do.

b) The Dualism of Innocence and Actuality

Perls likens human life to an unfolding gestalt peeling back the onion-skins of experience and knowledge in the self to find yet more things to integrate. For Perls this was never complete as "the becoming" is a constant, and he died at the age of 78 before the process was complete.\textsuperscript{91}

The traditional Christian view is that the search is centred on the innocence lost in the fable of the garden of Eden. Eve reached for the apple not because she was hungry but because it was forbidden, as innocence is a quality that cannot be feigned and defies explanation. The eating of the Tree of Knowledge of Good and Evil in the Bible in \textit{Genesis} 3:5 might have led to parity with God and also led to immortality through "the tree of life".\textsuperscript{92}

The misreading of the fable of the garden of Eden\textsuperscript{93} is that man and woman kind were thrown out of the garden of Eden for wanting to find about life and self knowledge. It was not self-knowledge nor knowledge of good and evil, but the fact that man might seek to live forever and worship himself. This is the schism that forms the basis of modern thought and the traditional theory of evil that has pervaded Christian and western thought.

The reality of the parable of the garden of Eden that has pervaded western consciousness is that man and woman sought "outside" knowledge, which leads to worship of the self or ego as opposed to self knowing.\textsuperscript{94} The necessity is integration of the self with unresolved issues both in oneself and the environment around, but as society is changing so much being centered in one's self is more important.\textsuperscript{95}

Humanity lives a kind of dualism alongside both good and evil. Unless you know both, and therefore know the difference, you are not complete.\textsuperscript{96} However, the essence of the tale of the garden of Eden, is that of mankind seeking to figure out life for himself rather than looking for help from a higher agency. This departs from reliance on a spirituality, which emphasizes the existence of transcendence from within, with guidance from others.

\textsuperscript{90} Ibid, p260.
\textsuperscript{91} See introduction written posthumously to Perls F, (1969) \textit{In and Out of the Garbage Pail}, Real People Press, USA.
\textsuperscript{92} \textit{Genesis} 3:22
\textsuperscript{93} Kidd, M J (1998) Oral Testimony to Sydney Quaker meeting (11/5/98)
\textsuperscript{94} Rajneesh, Bhagwan Shree (1977) \textit{The Dharmapada Lecture No 1}. Osho Foundation, Koregoan Park, Pune, India.
\textsuperscript{95} Perls, Frederick (1969) \textit{Gestalt Therapy Verbatim}, Real People Press/Gestalt Journal NY USA, p49ff
\textsuperscript{96} Segal, R A (1992) \textit{The Gnostic Jung}, Princeton University Press, USA, p112.
who have gone before; or obtaining assistance from a supreme all powerful all knowing being external to ourselves.

I submit that man's quest for "outside" knowledge comes from a desire to obtain power over other beings and at the same time to replace a sense of God within; that is the essential evil as it is not human and leads to inhumanity:

you can only understand the Holocaust as a radical evil unconnected with mankind but acting through certain men.97

This is not as contradictory as it sounds as the Holocaust was an example of a certain thinking of the ego associated with mankind trying to obtain absolute control over the environment, and the seeking of power over life and death. This is not the destiny of mankind and is the ultimate sin of materialism. Hitler through his deliberate genocide could only destroy not create life and it was partly due to his thinking that he could not allow a certain dualism to exist side by side.98

Without stirring abroad
One can know the whole world;
Without looking out of the window
One can see the way of heaven
The further one goes
The less one knows.99

"The other" is an extension of ourselves and involves a necessary melting of the ego as "love does not adhere to the I in such a fashion that the 'Thou' would be its content or object, for love is between I and Thou" and is an expression of the inner state of the beholder and is essentially an unfolding because the beholder and the observed are affected and change each other.100 An objective principle of love is important as a common reference point and the principle of higher agency is the manifestation of this. God resides within, and in the environment around us.

3) The Feminine Suppressed

The lack of influence for the feminine principle may have roots in the western past. Eisler postulates that mankind in Neolithic times lived with a natural balance of power between men and women. This conclusion is based on archaeological diggings101 which indicate that an agrarian, cultivator way of life gave way to meat-eating people in walled cities.

97 Rabbi Fox of Temple Emmanuel, Eastern Sydney: conversation and meeting of the Joint Council of Churches and Jewish Synagogue, April 1998, which coincided with the Jewish commemoration of the Holocaust or Shoah.
98 I read Hitler’s Mein Kampf (1939) at the age of 14 and was put off by its black and white nature.
100 Schipp, P A & M Friedman (1967) The Philosophy of Martin Bulber, La Salle, Illinois, USA, p44.
Society at this time was peaceful, agrarian and female headed and war was not practiced as an art form. Cities as a consequence had no walls. Kurgan invasions from the east headed by male warrior castes destroyed this set-up, and there was a shift towards "more effective technologies of destruction...power to dominate and destroy through the sharp blade."  

There is also a certain amount of fear attached to the feminine principle due to an aspect of association with the dissolving of the ego:

We say the night sky is the Womb of the Goddess, because it is dark like the womb and encloses us, and within it the billion living stars are points of light like the souls of the dead swimming in the dark cauldron womb towards rebirth.

**Holocaust Downunder**

The European settlers of Tasmania overwhelmed Tasmanian Aborigines who lived in balance with nature and appeared to be free of disease and natural pastoralists. Hughes refers to the Aborigines as having those dark, feminine, mysterious qualities that threatened the white man and Summers refers to a suspicion of anything feminine in Australia at this time. The whiteman it seems was not in touch with his own basic spirituality and communion with the land. The settlers preferred to act as a "dominator". They were, in fact, threatened by the Aborigines because of the settlers' lack of understanding of themselves, thus not stirring their "own souls to activity."  

The Tasmanian Aborigines lost possession of all their lands and were almost entirely wiped out as a race and culture. I postulate that the colonising English had some design, not dissimilar to the Holocaust, for this process. Genocide has been a long term human propensity and to my mind represents a forgetting that we all come from the same source spiritually, genetically and sociologically. In this particularly negative human activity the voices of the victims are seldom heard. Genocide is part of the Sacred wound, the falling away from God.

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102 Also called Sthlyians from the area of present day Crimea, Kurgan referred to their burial mounds.
103 Eisler *The Chalice and the Blade*, p53.
108 Eisler *The Chalice and the Blade*, at p53: “the power to dominate and destroy through the sharp blade (speaking of Neolithic mankind)...supplants...support and nurturing of life”.
110 Morris, "The Final Solution, Down Under", p204.
The Sacred wound for Australia is also the non-recognition of spirituality per se and its ability to speak truth. For the Aborigines the myth of their wounding has been told around the campfire and handed on orally from generation to generation. Now this is the role of modern story tellers.

The inherent violence of mankind need not be an endless cycle as sacrifice is an essential part of changing this dynamic.\textsuperscript{112} Sacrifice is a universal truth and the essential point to mankind's developing a congruence between the ways of a fallen mankind, and an objective reality, which is the I AM\textsuperscript{113} or higher agency. It does, however, involve giving up the known, and walking the untried paths. There are several areas to explore that flow from this, the non -comprehension by the whiteman's law of the role of the Spirit and its non recognition of inherent indigenous rights to control their lands.

In 1998 a number of mainland Aborigines with the support of Aborigines in Tasmania, tried to have Prime Minister Howard and various other Federal politicians arrested for genocide by denying Aborigines their cultural rights. I was contacted to act in an advisory capacity and I draw on these papers in the thesis. However, below is a very interesting interchange between Isabel Coe, one of the applicants, and the High Court in August 2000:

Kirby J: What is the substantive thing that you want to say to the Court?

Ms Coe: Well, we want to say that, you know this war against our people has to end.

Kirby J: Yes, but - - -

Ms Coe: It has been an undeclared war for 212 years.

Kirby J: Well, this is a Court of law. We are obliged to conform to the law and there are some very complicated legal questions which are before the Court and Ms Hampel has addressed the Court on those issues and we have to consider those. Now, is there anything else you want to say relevant to those issues? We cannot fix up every issue in the country. We can only deal with the matters that are before the Court.

Ms Coe: Well, I appreciate that but someone has to help us stop the genocide in this country against Aboriginal people. Now, if we cannot get justice here in the highest Court of this country, then I think that this Court is just a party to the genocide as well.

Gummov J: No, we will not hear that sort of thing.\textsuperscript{114}

One could not accuse Kirby or Gummow of being unsympathetic to Aboriginal concerns. However, this exchange is symbolic of the different meaning-perceptions expressed in Aborigines’ and the whiteman’s institutions.


\textsuperscript{113} \textit{Exodus 3:14}

\textsuperscript{114} \textit{Nulyarimma & Ors v Thompson C18/1999 High Court of Australia (Transcript 4 August 2000)}
It is sometimes strange that the most compelling insights come from innocent activity. Alone one Sunday, I wandered down to the central park in Hobart and pondered, I noticed that the European Tasmanians from last century commemorated their dead in the cemetery in the park in the grounds of the little church at the back of the Supreme Court at Salamanca Place. There was not one monument to Tasmanian Aborigines, and the statues and plaques related to a foreign land its Kings and Queens and ruling classes. Surely this was evidence of cultural genocide.

Genocide does not require actual malice or specific intention, as the acts speak for themselves. Non-recognition of culture and incidental rights is often a prelude to actual genocide, as occurred in the Jewish pogroms before and during World War II. There is a certain blindness on the part of jurists who avoid seeing this essential connection.

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115 16 January 2000

116 Schwartzman, Arnold (1982) Genocide: (video tape) narrated by Elizabeth Taylor and Orson Welles, Simon Wesenthal Centre, Los Angeles USA

41
Chapter Three

The Intersection of the Self, Sacred Wound and Aboriginality

The Sacred wound is discernible through re-establishing connection with a higher agency through the Spirit, and the path to establish reconnection itself is a lonely path of self discovery. The journey may not itself be sacred because not all arrive at the resolution of the wound. What marks the Sacred from the ordinary wound is a matter of quality and the compelling nature of the wound, which itself is of a life defining nature. Lawyers have a particular phrase “but for”: the presence of a particular event stopping the unfolding of what would be an inevitability. I discovered I had a Sacred wound in April of 1996 as I was undertaking the bulk of the research for this thesis. I was told that there was something holding me back from realising great spiritual potential. So this was the Sacred wound.

As a consequence the Sacred wound keeps us from connectedness with the things around which God is connected. For example, the wound may result in an inability to connect with sacred duties such as parenthood or the responsibility to preserve the ecology of place, which leads to a spiritual sense of lack of belonging:

In this post-modern world the hunger to belong has rarely been more intense…
(but) many of the ancient, traditional shelters (are) now in ruins.

But we have the answer, which is so obvious modern mankind overlooks, that we carry our world with us- within us:

know that you are God's temple and that God's Spirit dwells in you.

The body is the temple where we meet God, and it is through lived experience that we can resolve our personal issues and come to terms with higher agency. I am the raw subject matter, even when I write about others. Through living in the body we can come to terms with our lives through clearing the soul of trauma and attaining a high grace. Here is a poem I penned when I left Tasmania at the beginning of 1997 after I had finished the ground research for this work. It reflects a sense of completion and connection to the Sacred:

Poem to Janina

You remind me of the manuka blossom
it only comes once and awhile,
and yet is so fragrant,
delectable; soft curves and sweetness
to my taste, I salute.

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1 Experiential workshop, April 1996, held near Cygnet, southern Tasmania, conducted by the Center for Human Transformation, Victoria, Australia.
3 1Cor 3:16
Across the water, in the bush of
Oyster Cove you live not far
from where lie the first Tasmanians; and
my love it is no co-incidence
for both are sacred to me.

In ocean waters so formless so alive
with mystery lies the human
spirit, from whence we came.... but
whence they go?...it is the sky
to fly, to fly. alone, alone.

There lies the power and beauty of love,
to set the soul free, yet to share
purity of heart, passion of
body, coolness of being.
So there, so there. 4

This poem of mine involves the two perspectives of "inside" and "outside" of oneself, 5 which are essentially intertwined and do not necessarily relate to each other. As a purely human condition it is hard to disentangle where the outside stops and the inside starts. But this is necessary to come to a sense of who we are, and to properly connect with others.

God is both inside and outside us and is the common connecting force; the poem is really therefore about reconnection to the spirit of God. By beholding a beloved we are also beholding the beloved within us: God. The mistake of mankind is not to realise this point and it results in a certain denial of the existence of the force of a higher agency, or divine or Godly presence.

The poem is also indicative of the flowing together of the inside and outside perspectives that become in a material sense a balancing of the positive and negative leading to wholeness or acknowledgement of higher agency:

The lived body is integral to the continual transformation of self in situated contexts where self reflects on self...examination of that context may well facilitate...understanding. 6

By the admission of the presence of a higher agency we can be transformed through surrender to a divine force. The revelation I discovered at the end of my research is that I was transformed through my contact with Australian Aborigines, which started with my answering of a NSW newspaper advertisement in July of 1988 to work for the Aboriginal Legal Service in Dubbo, NSW. I was a bored, general legal practitioner looking for more meaning out of the practice of law. The conclusion of my time with the Tasmanian Aboriginal Legal Service in October 1995, coincided with the life and death event described at the beginning of chapter Two, which was a turning point in my life.

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4 Poem, M J Kidd 14 April 1997
6 Olesen, “Extra ordinary Events and Mundane Ailments”, p205
I had entered that realm of working closely with Aborigines as an uptight, middle class New Zealander with little understanding of his own Celtic origins. I had issues around my own sexual assault that had never been addressed, as confronting sexual assault that occurred as a child is like dealing with cotton wool. If you push it comes back and it is hard to get a definite shape and focus. I had been vaguely aware of such issues for about ten years. If you do not face these, death, either on a physical or spiritual plane, is the inevitable result.

Death is something that defies philosophising as we all have to face death either through the many deaths of everyday life or the actual death at the end of our lives. Significant events change preconceived notions through bringing feeling of spiritual rebirth through coming to terms with death. Moses came to terms with his own death as he confronted the burning bush which was not consumed, and as a consequence had to let go his preconceived idea of God and deal with the actual presence. As he could not see God, He was a sense of sacredness.

I needed to face the challenge to find the owner of the inner voice, described in chapter Two, which had cried out to me that my real work was yet to happen. In that new search I would eventually abandon the eastern path of renunciation and find Jesus’ path of sacrifice and resurrection and find perhaps my true character as “each person enters the world called” to some undertaking.

There are various names for God: the Spirit, the Great White Spirit, the Holy Ghost, the Creator, a sense of Sacredness. This speaks to different people of various callings and religious persuasions all the time. We choose not to listen a lot of the time until suddenly one gets a message that can’t be ignored, such as the story of St Paul on the road to Damascus:

Saul was felled by a blinding light from God and under went a miraculous conversion.

Saul became Paul and had an instant conversion through the grace of God, and immediately asked what he could do for God. A similar conversion happened to me in March 1998 when I was hitch hiking from Northern NSW to Sydney. I was stuck by the side of the road with no water in blazing sun with no ride for 48 hours. It was unusual to say the least and as I walked along I thought, “This must be it... I’m going to die”. I was really exhausted but as I passed a telephone box a voice from within said to me: “If you need help all you have to do is ask!”

I was dumbfounded and then plucked up the courage to ring an ambulance that took me to a hospital, which treated me for sunstroke and dehydration. Whilst I was there a woman came and talked to people in the day ward. It turned out she was a Christian and

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7 Exodus 3:2
8 Hillman The Soul’s Code: In Search of Character and Calling, p6.
10 Acts 9:3
I felt this peace and love coming from her. I resolved then and there to seek connection with the living God who had previously spoken to me, as a calling.

Mystical experience begins with an invitation...and the answer to the call is also a gift.\(^{11}\)

We tend to lament "what on earth does one have to offer?", which is an irony as one is called or chosen to do certain things, as was the apostle Paul, \textit{despite} the previous record. Another reason you can't say no is that you have come along a particular path so you can't go back. There is an element of sacrifice in going down this particular road--giving up all you know and own. Such a decision to follow a calling inevitability gives rise to a more holistic state on a personal level. This brings up the various personal demons that need to be confronted and in order to do that, the demons need to be acknowledged.\(^{12}\)

Character is a misunderstood and increasingly overlooked feature of a person's makeup, we are born with a particular destiny and character. In biographical terms of the unfolding of my Sacred wound to myself, I had graduated in New Zealand as a lawyer in 1978 and afterwards in NZ had worked in some very difficult areas with some success. But there was some sense of purpose missing. My character and beliefs about myself told me there was something more for me. Hillman terms it "calling".\(^{13}\) We are all gifted at birth but:

no gift is ever for your private use...(it) is a calling.\(^{14}\)

As a child, I had been vaguely aware of a calling for myself through a close relationship to my mother, who affirmed my special ness, which she said carried leadership qualities. I had an especially difficult relationship with my father who was abusive towards both my mother, myself and the rest of the family. He was especially abusive whenever I took a stand on a particular issue as a child or young adult.

I migrated to Australia in 1985 because I wanted to connect with the Aborigines and the spirit of Australia, a desire that I remember picking up as an eight-year-old listening to the recorded sound of a kookaburra.

I feel I was called to come to Tasmania at the end of 1993 through a peculiar set of circumstances. I was approached by the Aboriginal Legal Service from that state, even though I was in another job in NSW, which I was not finding very satisfactory. After the shock of the transition of arriving in Tasmania, I realised after working for only a short time that I was treated with suspicion because I was an outsider. Being an outsider has a special relevance to myself as this is an aspect of my psyche I had rebelled against for most of my adult life. Yet within that state of mind was the answer to my particular problem. Wilson describes the qualities of the outsider as follows:

\(^{12}\) Hillman, \textit{The Soul's Code: In Search of Character and Calling}, Introduction.
\(^{13}\) ibid, p4.
\(^{14}\) O'Donohue, \textit{Eternal Echoes: Exploring Our Hunger to Belong}, p89.
(the outsider) is basically a religious man free from being bound to the material.\textsuperscript{15} he is an outsider because he wants to be free.\textsuperscript{16} he is not sure who he is...his main business is to find his way back to himself.\textsuperscript{17} he goes beyond the general understanding.\textsuperscript{18}

Even though I had five years of experience working for mainland Aborigines, I had to overcome the feeling of being the outsider. I had to earn the trust by going beyond being the outsider. It was going beyond my propensity for clear-cut solutions into the acceptance that change can more effectively come through working with ambiguity. Colin Wilson influenced me greatly at this time, to be aware of some of the internal reasons for failure, that self-defeating behaviour is akin to a virus that affects thinking which lies deep within our psyche.\textsuperscript{19} Going beyond the outsider's position meant working in the space between competing factors and being aware of these self-defeating patterns because:

\begin{quote}
man is involved with the world on many levels. His beam of consciousness picks out matters for attention as a pocket torch might pick out single objects is a dark cave. An enormous area of his own being is inaccessible to the beam of consciousness.\textsuperscript{20}
\end{quote}

By going through this process, I became aware of the limited quality of my western education, and the temporary results to be obtained from both conventional and non-conventional psychotherapy.\textsuperscript{21} The answer for me was connecting my personality developed through the various forms of reflection, to my spiritual being, which is something that is not encouraged in western oriented thinking.

\textbf{Overcoming Powerlessness}

The outsider perspective that I became aware of at this time\textsuperscript{22} was partly a feeling based on my own feelings of powerlessness to understand the Tasmanian Aboriginal perspective; and partly my response to the situation in my legal job of having to stretch myself to cover vast geographical areas of Tasmania. The other aspect to the outsider was also of being the "white lawyer on the white charger", as pointed out to me by one elder who said it was natural not to trust a person who could not move beyond this framework of thinking.

\begin{flushleft}
\textsuperscript{15} Wilson, Colin (1956) \textit{The Outsider}, Pan Books London UK, p285. \\
\textsuperscript{16} Ibid, p 127. \\
\textsuperscript{17} Ibid, p 160. \\
\textsuperscript{18} Ibid, p222. \\
\textsuperscript{19} Wilson, Colin (1979) \textit{The Mind Parasites}, Oneiric Press, Berkeley, California USA. \\
\textsuperscript{20} Wilson Beyond the Outsider, p160. \\
\textsuperscript{21} For example one of the apostles of new age psychotherapy, Arthur Janov (1978) \textit{The Anatomy of Mental Illness}, Abacus, London UK, likens mental illness as a response to old trauma which has to be acted out. But the spiritual aspect is ignored, and a shaman would probably say that the insanity is a path to higher spirituality: Somo, Malidoma (1993) \textit{Ritual, Power, Healing and Community}, p103. \\
\textsuperscript{22} Early 1994 at the beginning of my stay in Tasmania
\end{flushleft}
Over the next several years I was to win some grudging acceptance by the Aboriginal community, and then praise by Tasmanian Aboriginal elder Ida West, who said she liked the draft of my work that I had shown her. 23

Some Acceptance

I asked a Tasmanian Quaker friend of mine, Rose Brown, how to go about winning Aboriginal trust. She said it was up to me:

    do not expect Ida (West) to do anything in her area of work to "smooth things over" for the benefit of whites...Aboriginal community is very divided as you know and she has herself on occasions copped it from her own people..your research is in a sensitive area...it falls on you to build the trust yourself. 24

I asked Annette Peardon, 25 who later became Tasmanian Aboriginal Centre (TAC) state secretary, to help me to understand what it is like to be an Aborigine. She gave me Kath Walker/ Oodgeroo Noonuccal's book A New Dawn, and also the school publication prepared by Tasmanian Aborigines called Living On The Land which I shall draw on.

Here is Oodgeroo Noonuccal's summation of what it is like to live the life of an Aborigine in the cultural divide:

Civilisation

We who came late to civilisation.
Missing a gap of centuries,
When you came we marvelled and admired,
But with foreboding.
We had so little but we had happiness,
Each day a holiday,
For we were people before we were citizens,
Before we were ratepayers,
Tenants, customers, employees, parishioners.
How could we understand
White man's gradings, rigid and unquestioned,
Your sacred totems of Lord and Lady,
Highness and Holiness, Eminence, Majesty.
We could not understand
Your strange cult of uniformity,
This mass obedience to clocks, time-tables.
Puzzled, we wondered why
The importance to you, urgent and essential,
Of ties and gloves, shoe-polish, uniforms.
New to us were jails and orphanages,
Rents and taxes, banks and mortgages.
We who had so few things, the prime things,
We had no policemen, lawyers, middlemen,

23 Interview (10/2/98)
24 Rose Brown letter to Michael Kidd (24/7/1996)
25 Conversation April 1994
Brokers, financiers, millionaires.
So they bewildered us, all the new wonders,
Stocks and shares, real estate,
Compound interest, sales and investments.
Oh we have benefited, we have been lifted
With new knowledge, a new world opened.
Suddenly caught up in white man’s ways
Gladly and gratefully we accept,
And this is necessity.
But remember, white man, if life is for happiness.
You too, surely have much to change.26

Noonuccal’s summation of Civilisation was a message for me as well. When I spoke to Annette I would have liked something more definite, but the path she pointed out to me was an exploratory one. As a European I would have liked something more definite like her saying, “Well Aboriginal people are like this, or think that!” On reflection such an answer would have done my soul little good. When I read Noonuccal’s book of poems in a quiet moment later I found myself crying unexpectedly. I had found that my response at a heart felt level was not very different from what I had experienced as a lawyer: the rationalistic legal system that denies justice at a heart level. The poem is a useful device, a meditation on getting things clearer by pointing to the world beyond the divide and living in the ambiguity.

The Black and the White Worlds

Noonuccal’s poetry is caught between the two worlds of blackman and whiteman. The poem illustrates the ambiguity between these two cultures, recognising the need for them to come to terms with each other. The poem also makes a comment on the lack of spiritual awareness in western civilisation, which is very close to the point made by Colin Wilson:

western man is in the position of the blind man, his meaning-perception is so limited that he is forced to rely on his intellect and upon symbolism to give him a grasp of meanings27.

This is the whole crux of the difference between Aborigines’ and the whiteman’s meaning-perception. The Aboriginal religion is not centered in a place. It depends on a sense of sacredness and the indeterminate. The whiteman’s religion, all too often these days, and also I argue in recent history, lies in the acquisition of things and knowledge. There is a certain immediacy or deterministic sense of the how the whiteman’s knowledge operates:

...the human mind is aware that its view of the world is strictly limited, it sees the world from its ‘natural standpoint’ and assumes that the natural standpoint is the whole truth.28

This gives rise to the statement by Justice Kirby in the Wik decision, who argued that there are not two systems of law in Australia but only the whiteman’s legal system:

27 Wilson, *Beyond the Outsider*, p80ff.
28 ibid, p89.
The source of the enforceability of native title in this or in any other Australian court is, and is only, as an applicable law or statute provides. Different considerations may arise in different societies where indigenous peoples have been recognised, in effect, as nations with inherent powers of a limited sovereignty that have never been extinguished. This is not the relationship which the indigenous people of Australia enjoy with the legal system of Australia. For Aboriginal legal rights, including native title, to be enforceable in an Australian court, a foundation must be found within the Australian legal system.29

According to the view of the dominant society, Aboriginal law is only that which is allowed by the rules of a competing, deterministic, rational system. Such a view ignores the antiquity of the Aboriginal customary law, which in most cases predated the European legal system by thousands of years. Unfortunately, the European legal system also imposes the concept of, and perpetuates terra nullius by saying that the Aborigines did not have a system of government in which their sovereignty was inherent.

29 Wik Peoples v Queensland (1996) 187 CLR 1, per Kirby J at 214
Chapter Four

Introduction to The Legal Standoff

Rights and interests possessed under the traditional laws or customs of the Aboriginal peoples and Torres Strait Islanders are not per se enforceable under the Australian legal system. They are enforceable only to the extent that the common law or statute recognises and gives effect to them.\(^1\)

Within the heart of this statement contained in Yarimirr decided by the High Court in October 2001, lies the standoff between Aboriginal and the whiteman’s systems of law. Implicit in the statement is the non recognition of Aboriginal customary law prior to the annexation of Australia, and non-recognition of the concepts of this alternative legal system that do not find their equivalent in the whiteman’s law. It is partly because of the different meaning-perceptions between the whiteman and Aboriginal views and power differentials.\(^2\)

It is contended that from the Aboriginal, or indigenous, perspective residual sovereignty still adheres after annexation.\(^3\) There various names for this- customary law, chieftainship, custodianship.

Therefore, it is my contention that European control and ownership of land needs to be moderated with Aboriginal claims of residual sovereignty for several reasons. Firstly, there are two systems of law and the words described above do not have the same meanings in either system. Secondly, custodianship is one of those concepts that do not fit well with the whiteman’s law due to its different meaning-perception. Custodianship in my analysis is a partial form of autonomy or residual sovereignty which has been repeatedly disallowed by the courts. But there are contradictions in this view as the whiteman’s concept of ownership and control of land tended to be all embracing. The Wik case\(^4\) caused, in my view, more of an upheaval than Mabo because it allowed Aborigines native title rights over land that had been in pastoral leases since colonisation. In my view, the cause of the backlash, was not the size of the area of Australia covered by Pastoral leases, but the fact that the whiteman had to share this land with the Aborigines:

… the High Court has forced pastoralists and Aborigines into an unacceptable competition over land use.\(^5\)

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\(^1\) Commonwealth v Yarimirr; Yarimirr v Northern Territory [2001] HCA 56 (11 October 2001) para 175 per HCHugh J.

\(^2\) There is also a strong argument that International law recognises continuing Aboriginal collective rights as against the all encompassing sovereignty encompassed by annexation in 1788: Neithheim, Garth (1998) “The International Law Context” in Peterson, Nicolas and William Sanders Citizenship and Indigenous Australians.

\(^3\) Australia was annexed in 1788 by the act of raising a flag at Port Botany.

\(^4\) Wik Peoples v Queensland (1996) 187 CLR 1 which allowed for a residual interest of Aborigines in pastoral leases.

There is considerable scope for recognition of customary attachment to the land which does not require continued physical occupation.\textsuperscript{6} Alienation of the ownership of land in the white man's sense still prevails against Aboriginal needs for self determination and custodianship of land.

This has been so because Aboriginal need for custodianship has not been understood by the dominant white man's legal system as a different right, some-what like the luminescence of the watch face:

\begin{quote}
(To the westerner) meaning hangs (around the world) as a dim aura, rather as a luminosity around the figures on a watch. (and we tend to) notice only the figures on the watch...\textsuperscript{7}
\end{quote}

The Aborigines were not particularly interested in owning the land but were interested in continuing their cultural and religious rights, whereas the white man, adopting the analogy above, tended to be more interested in telling the time from the figures on the watch face.

The not so hidden agenda of governance by the corporate state, part of that being the intrinsic need of law to maintain social control, is part of the equation:

\begin{quote}
The overriding end of law is public tranquility...legal institutions have few resources other than the coercive power of the state...legal rules give power the colour of authority...\textsuperscript{8}
\end{quote}

The legal history of Australia up to the Mabo\textsuperscript{9} decision shows that law has been used for determining the priorities of the sovereign state rather than the rights of particular groups of persons within a particular state.\textsuperscript{10} The concept of sovereignty has been used to override Aboriginal sensibilities yet as an idea in itself, it has changed according to the circumstances. It has:

\begin{quote}
oscillated throughout the history of law and of the state since medieval times... it is much less homogeneous than the society of European political communities in the 17th and 18th centuries, which produced the concept of state sovereignty... it reflects a legal order predominantly between co-ordinated, juxtaposed states as its typical subjects.\textsuperscript{11}
\end{quote}

\textsuperscript{7} Wilson, Beyond the Outsider, p81.
\textsuperscript{9} (1992) 175 CLR 1. This is actually "Mabo No 2" decision and all references will be to this decision.
\textsuperscript{10} "Mabo No 1" concerned a successful interim application concerning a law passed by Queensland with the purpose of defeating Mabo No2.
Self-determination of indigenous peoples has as a consequence been seen as somewhat separate from other human rights norms because their collective rights have not been recognised. The only international binding convention that covers the area of group indigenous rights is International Labour Organization (ILO) Convention No 169:

In applying the Convention governments shall respect the special importance for the cultures and spiritual values... of their relationship with the lands...

The draft UN Declaration on the Rights of Indigenous Peoples (1993) still remains mired in opposition by former colonial powers. Australia to my own personal knowledge opposes adoption of this convention by the UN General Assembly.

The problem has been the reluctance of governments to treat the principle of self-determination as applicable to indigenous peoples within states that have become independent under the dominance of non-indigenous people.

This is a reflection of the general law. There is a certain blindness of the conventional legal system to the human rights of Aborigines, as it has stripped Aboriginal people of personal and group autonomy through the use of legal fictions such as terra nullius, and the disregard of indigenous religions, which depend on attachment to land. The law grows out of, and its application is influenced by, the society around it. Any given legal, factual finding may be as much a product of the conceptualisation of what constitutes the elements of the particular legal problem than as a realisation of the contextual facts in existence at any given time.

At the time of the colonisation of Tasmania, British society was undergoing a revolution in social and economic relations which produced much hardship for the poor. There was a greater emphasis on profit or surplus from economic activity. Individual effort in combination with access to capital led to material rewards. Individual ownership of land as opposed to collective use, and the view of land as an economic resource to be exploited were strong features. This was in marked contrast to the relationship of indigenous people to their lands.

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12 Ibid (McRae) pp327: UN Seminar on Relations Between Indigenous Peoples and States (1989)
14 Article 13 (1) ILO Convention 169
17 Famously chronicled in the series of books written by Charles Dickens
Aborigines viewed the land as their mother. This is not simply a good metaphor but to the Aborigines a reality; the land is a living force, sustaining them and to which they were bound to reciprocate by good husbandry of the land. Appropriate rituals to farewell their own ancestors and to claim custodianship of the lands were very significant features of Aboriginal religion. The departed ancestors would therefore continue to live in the land. Wilson calls this different way of thinking a different meaning-perception.

In the series of Hindmarsh cases, that upheld Aboriginal woman’s secret business on Hindmarsh Island, a hitherto unreported Aboriginal male objection to the bridge being built was uncovered:

the character of the island as an island will thus be lost by reason of its linkage to the mainland and that is said to be an unacceptable affront to the spiritual identity which the Aboriginal community has with the land of its forebears.

In this case the issue, in the different Aboriginal meaning-perception, was whether the character of the island should be changed. The bridge, if built at all, would destroy the spiritual, physical nature of the island being set apart from the rest of the country. Perhaps this was the fundamental objection: that any bridge would change the character of the dreaming place. The main inquiries to that point had been charged to establish the existence of Aboriginal woman’s secret business and whether there were any specific Aboriginal sites directly in the way of the bridge itself. There is a world of difference between the two types of inquiry. This illustrates that by getting involved in the details of where to put the bridge, one can lose sight of the spiritual “luminosity” involved in the Aboriginal custodianship of the island.

Generally the whole debate on this particular issue showed the different uses of language and the difficulty of expressing Aboriginal dreamtime concepts in English, which tends to be a mercantile language by comparison.

The differences between the white man’s and indigenous attitudes to relationship with the land is the fundamental divide. The Aborigines worshipped a divine creator who resided in the land.

Aboriginal law is the table, the solid structure underneath. Whitefella law is like the table cloth that covers the table, so you can’t see it but the table is still there.

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18 Jim Everett: Public Talk at Cygnet Folk Festival, Tasmania. (7 January 2000)
19 Wilson, Beyond the Outsider, p78.
21 Two Commissions of Inquiry and a South Australian Supreme Court case.
24 William Tillmouthe, 3rd Annual Aboriginal and Torres Strait Islanders Legal Service conference (NT), March 2001
We as westerners, on the other hand, tend to have a corporate view of God as being "out there" and not in the land. Land is therefore a resource and not a sacred entity in its own right. The result of denying the existence of a sacred principle in the land is to deny the reality of the religion of the indigenous, as the connection with a sense of the sacred is not at the dictates and the convenience of mankind. Our theology, according to Martin Buber, needs to emphasize mankind's obligation to come to terms with the earth instead of pursuing goals that are at variance with this God in the world:

(As) man has an obligation to achieve an identity by refusing to abdicate his will before the monolithic power of party, corporation or state.  

The luminescence of the divine is all around us in the land but one needs to have eyes and ears to sense this aspect. This presence of the divine connects us to each other, but it is not of this material world, as we are destined for another place when we die. The worldly things pass away.

Worship is not limited by place, or priestly or material considerations imposed by conventional economic or religious practices; or rules of evidence and legal constructs that impose a certain thinking that divorces us from the particular dreamtime story. Tasmanian Aborigines, by following their own inclinations, were necessarily in conflict with the whiteman's law and conventional 19th century social control and materialism prevailing at that time.

This explains how the paradox grew over time. The Australian legal system up to the Mabo decision of 1992 granted Aborigines full protection as citizens but it did not grant them full property rights by recognition of their prior native title. Additionally, as a kind of overlay the law set out to establish sovereignty or the rights of the corporate entity of the state, and the material worldly order over group rights of Aborigines. This also excluded Aboriginal religious practices.

It is not only Aborigines who have secret business. What is clear is that those Aborigines who refused to accept the rules of legal discourse relating to custodianship as opposed to ownership, have been excluded up to now, from the legal process, which is much like a game of winners and losers. The whiteman's legal system excludes many people from

26 1Corinthians 7:31; Hebrews 11:15,16.
the workings of the law by use of restrictive entry, delay, use of semantics and linguistics in such a way the actual language of the law is not understandable to the uninitiated. Aborigines, or indigenous people in all settled countries, have been systematically stripped of rights to land, autonomy and the exercise of culture by various stratagems through the law.

On the other hand Aboriginal law emphasizes community sanctions and finality.

...Aboriginal Law is open and transparent and is a public ritual and a very quick process thought out by the Elders and determined by Aboriginal law, everyone witnesses the punishment and are satisfied, which allows people to move on with their lives.

These values are also sought after although elusive, in the whiteman’s law.

There is much continuing conflict between the systems of law. To my way of thinking, European law has tended to have effected a type of naiveté or assumed innocence that the very process of land holding derived from the British common law could have ever acted detrimentally against the Aborigines. There has been an increased understanding amongst judges that language can have a pernicious effect by defining away Aborigines’ rights. Implicit within a particular doctrine such as tenures is the way possession and ownership of land can be lost:

...when did the use of the word "extinguish" or the use of the concept of extinction begin in this area of discourse? It is a word that seems to have been in use for substantial time, but what is it’s origin, do you know? (Gleeson CJ).

We can be grateful that the judge can ask the question. It is at the least indicative of awareness of the requirements for definition and the fact that the word “extinguish” has a shifting meaning depending on the viewer. The voice of dominant materialism works through the legal concept of land holding. This legal doctrine of tenure says that people only hold land at the behest of the sovereign power, as opposed to being absolute owners of the land; and if one person sells these rights in the land to another this has the effect of extinguishing the right of the seller to any on-going connection with the land.

32 Appeal Aboriginal Advancement League to Secretary-General, United Nations, (30/10/1970).
34 William Tilmouth, 3rd Annual Aboriginal and Torres Strait Islanders Legal Service conference (NT), March 2001.
37 Brennan J in Mabo at para 48 defined it as “The land law of England is based on the doctrine of tenure...every parcel of land in England is held either meditely or immediately of the King who is the Lord Paramount.”
This doctrine conflicts with the Aboriginal idea of custodianship in a number of respects, namely:

Aboriginal ongoing connection with land is maintained despite loss of possession. You cannot possess or own land because you come out of the earth. Your individual merit or spiritual readiness determines whether you are to go on to particular land or manage land.

To the Aborigines the implications of the word "extinguished" embrace genocide, and loss of these sorts of relationships with the land, loss of custodianship, as well as the physical loss of the lands.

Jurisprudence needs to connect such different meanings of land loss by close self-examination. Continuing Aboriginal claims to self determination were put forward at the end of 2000 by Australian Aboriginal representatives Dodson and Pritchard, as requiring a formalised agreement to overcome the lack of whiteman’s meaning-perception at the interface of European and Aboriginal laws.

These are the special areas of interest claimed by Aborigines, which are not recognised in Aboriginal terms as such by the whiteman’s legal system:

Constitutional recognition
Self government
Political representation
Comprehensive land claims settlement
Recognition of customary law
Dispute resolution
Heritage protection
Cultural and intellectual property rights
Economic development and fiscal relations.\(^\text{38}\)

These claims amount to a claim for continuation of a form of residual sovereignty, a human rights issue that transcends the present Australian constitution and decided case law. We therefore need to start working in the in-between space of the two systems of law, and the whiteman’s legal system needs to recognise the other system of law. The legal system’s attitude is contradictory. In the case that put the building of the Hindmarsh bridge before the sacredness of a particular Aboriginal site in South Australia, dissenting Justice Kirby of the High Court was prepared to recognise the women’s secret business as a legitimate reason to stop the bridge being built in a particular location. But he appealed to the whiteman’s law relating to human rights, not to the Aboriginal customary law to find that:

...justice must take precedence in any final determination of interests and rights ...there is a strong presumption that the Constitution, adopted and accepted by the people of Australia for their government, is not intended to violate fundamental human rights and human dignity....\(^\text{39}\)


\(^{39}\) Kartinyeri v Commonwealth [1998] HCA 22 (1 April 1998), per Kirby J dissenting at para 166ff.
From the Aboriginal perspective, these claims amount to sovereignty (albeit within the confines of the overall Australian State) as they are fundamentally connected to the land issue - custodianship. From the whiteman’s perspective, they are not issues involving sovereignty at all - Aboriginal claims have been ignored because they do not fit into the system of parliamentary sovereignty - and the “legal fiction of Terra Nullius remains as far as acquisition (of) sovereignty (over Australia).”

Original customary law is not affected by a change of sovereignty and “customary rights might ‘be so complete as to reduce any radical right in the Sovereign to one which only extends to comparatively limited rights of administrative interference.”

What the whiteman calls customary rights indigenous people elsewhere regard as something stronger and the NZ Court of Appeal upheld rights to possible indigenous ownership of the seabed on this stronger basis, despite a treaty ceding sovereignty to the Crown:

...common law recognises the customary property rights (or customary title) of Maori as the aboriginal people of the country...it is the common law that is the basis for the successful appeal.

The Aborigines, Dodson and Pritchard, are asking for the same consideration - therefore they are asking for recognition of the Aboriginal Nation’s residual sovereignty or custodianship over their lands.

Aboriginal concepts of self determination are hidden in the whiteman’s law and vice versa. There is a necessity to listen to and bring out these repressed or hidden voices in the study of legal discourse:

language...is not a transparent or neutral means for describing or analysing the social and biological world....rather...it controls knowledge.

The word “justice” is alive and is at the heart of both systems of law. This shows that justice in both systems is not a reducible concept:

justice is the utopia (sic) at work (within law) that must be respected if law is to work...at all.

The need is to have the Aboriginal perspectives, some of which are shared in the inner workings of the whiteman’s legal system in various forms, actively recognised and espoused. The legal system has been reaching out in a number of cases to embrace other

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41 Ngati Awa and others v AG of NZ & others NZCA 173/01 (19/6/2003) per Elias CJ, para 31.
42 Ibid, per Keith & Anderson JJ para 139: “te tino rangatiratanga” or rights of “chieftainship.”
other concepts of ownership, such as custodianship, that go beyond the established and recognised systems of ownership, in order for whitemans’ law to have legitimacy in the eyes of Aborigines.  

Self-determination is intertwined with custodianship of lands still claimed by Aborigines, and is rightly regarded as part of the sovereign rights enjoyed by a people. Difficulty in satisfying the legal criteria to claim back lost lands results in exclusion from the legal process for Aborigines and generally translates into marginalization. This is the linkage contributing significantly to the high Aboriginal deaths in custody and low group self esteem of Aborigines.

Repression by the Law

The repressive model of the law was the mode of legal relations between the white man and Aborigine during the colonising of Tasmania, as little was done to correct legal and human rights abuses against the Aborigines. If one accepts that the position in Australia up to Mabo was an anomaly, it is difficult to reconcile jurisprudence, it is argued, which has tended not to distinguish the implications inherent in the concepts of ownership, sovereignty and custodianship of lands. From an Aboriginal perspective the concepts are distinguishable because spiritual association with the land continues despite the fact that the clans may not have been living on the land for some generations. A physical attachment to the particular land, as required by the Mabo test, and continuing practice of traditional customs, is an artificial construct:

when the tide of history has washed away any real acknowledgment of traditional law and any real observance of traditional customs, the foundation of native title has disappeared. A native title which has ceased with the abandoning of laws and customs based on tradition cannot be revived for contemporary recognition.

In Coe’s case, there was no acknowledgement Aborigines were a sovereign people, the court upheld a repressive legal fiction which twelve years later it called unfortunate.

The fiction by which the rights and interests of indigenous inhabitants in land were treated as non-existent was justified by a policy which has no place in the contemporary law of this country.

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47 Noel Pearson (Aboriginal legal activist) feels the High Court has lost touch with the principles of Mabo in its decisions on the ‘Yorta’ & ‘Mirriwung’ claims discussed below: Botsman, Peter (2003) “Pearson Strikes a Blow in Native Title Fight” The Australian (17/4/03)
50 Nettlem “Wik: On Invasions, Legal Fictions, Myths & Rational Responses.” p495.
51 Mabo v Queensland (1992) 175 CLR 1, per Brennan J at paragraph 66.
52 Coe v Commonwealth (1979) 53 ALJ 407
53 “Fictions usually are acknowledged or created for some special purpose, and that purpose should be taken to mark their extent”: per Gummow J, Mabo (1992) 175 CLR 1, at p212.
54 Per Brennan J, Mabo (1992) 175 CLR 1, at para 42.
Although the later Mabo case refused to follow terra nullius, it still did not recognise Aborigines as a sovereign people; as to admit that they were sovereign before the white man came is to admit of the possibility, after colonization, of the existence of residual sovereignty issues, and therefore continuing native title rights beyond the narrow test laid down in Mabo.  

There are certain ideologies in this attitude of non-acceptance of original sovereignty, from the nineteenth century's point of view:

a) The state should have all-encompassing power, as the legal order:
   
   is not alive to the rich variety of intermediate or alternative associational groupings... not reducible either to the liberties of the citizen or the prerogative of the state.  

b) As a matter of policy, the ends justifying the means:  

   in the nineteen century ... the living human being with his desires and woes, loses more and more his central place in the system, and this place is occupied by business and production...the market as the prime regulator is freed of all traditional restrictive elements and comes fully into its own....

   c) Liberty was given to the 19th century Tasmanian settlers to exploit the land for material gain but the Tasmanian Aborigines as the indigenous people were not given the freedom of religion to carry on with their accustomed lifestyle, which was to treat the land as an aspect of God's creation.

The whiteman's pre-occupation with economic causes and effects overcame any recognition of the rights of the indigenous inhabitants so that "any inconsistent dealing" could deprive the Aborigines of their lands. This legal ideology is still existent and underlying that formulated by High Court Justices Deane and Gaudron in Mabo:

   common law native title could also be effectively extinguished by an inconsistent dealing by the Crown with the land.

The problem is that this inconsistent dealing was often the illegal occupation of Aboriginal lands by squatters. United States colonial history is replete with such examples as even though the Indian tribes were acknowledged as possessing rights to lands by treaty, ways were found to overcome this impediment. In the case of Cherokee Nation v State of Georgia, which was relied upon by Deane & Gaudron JJ above, the

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55 Such as autonomy over community structures; self governance & custodianship of Sacred sites.
57 Anaya, Indigenous Peoples in International Law, p14.
60 Mabo per Deane & Gaudron JJ, at para 23ff.
denial of Cherokee Indian rights of "chieftainship," as against the US Congress, over their lands eventually set the scene for their forced removal and eventual deaths. The reality for the Indian nations protected by treaty was not greatly different from the Australian Aborigines, resulting in loss of culture and fragmentation. According to the US Supreme Court:

> the Indian tribes were not sovereign...their lands could be taken at the will of the sovereign Federal power with out compensation if need be.

It is interesting that in 1831, whilst the US Supreme Court was taking away Indian rights as against the US Congress over their lands, on the other side of the world the last of the Tasmanian Aborigines were being gathered up for trans-shipment to a concentration camp on a prison island, Flinders Island.

The US Supreme Court used legal semantics to call the Indian tribes "domestic dependant nations" meaning that they had a limited form of sovereignty within the overall sovereignty of the US. These words have retained currency today among apologists for 'no treaty' for the Aborigines, in the discussions of whether or not a treaty should be entered into by the Australian Government and Aborigines. Such words were a linguistic device to get around the requirement for US Congressional continued adherence to Indian treaty rights. Whilst, on the face of it, the decision recognized residual sovereignty as against the State of Georgia, the legal framing of the Cherokee decision was based on the need for land and the desire of the US Government to provide land for its voters.

However, one dissenting voice in that decision found that Indian tribes indeed were independent sovereign powers with whom the US had made treaties which could not be broken; and based on this prior dealing:

> it is not perceived how it is possible to escape the conclusion, that they form a sovereign state...

In Australia, in 1980, Paul Coe\(^{69}\) of the New South Wales Aboriginal Legal Service brought an action against the Australian and British Governments asserting the same claim:

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\(^{62}\) Phrase used by Keith & Anderson JJ in Ngati Apa and others v AG of NZ & others NZCA 173/01 (19/6/2003), para 139.

\(^{63}\) In 1838, the President of the US, Jackson, removed the Indians from their lands and 13,000 were force marched to new lands which took 6 months, over quarter died - ref: G P Horse Capture (1991) "An American Indian Perspective" in Viola (1991) Seeds of Change, Smithsonian Institute Press USA, p197.

\(^{64}\) Cherokee Nation v State of Georgia (1831) 30 US 1, reasons for decision.

\(^{65}\) See chapter fourteen.


\(^{68}\) Cherokee Nation v State of Georgia (1831) 30 US 1, per Thompson J at pp53.

\(^{69}\) Coe v Commonwealth (1979) 53 ALJ 407

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There is an Aboriginal nation, which before European settlement enjoyed exclusive sovereignty over the whole of Australia; that Aborigines had proprietary and possessory rights in land; Australia was conquered therefore the Aboriginal people retained their proprietary rights... 70

However, according to Gibbs CJ:

such a proposition could not be entertained. 71

The Court in Mabo, whilst allowing native title said basically the same thing in relation to sovereignty:

(which) carries the power to create and to extinguish private rights and interests in land within the Sovereign's territory. It follows that, on a change of sovereignty, rights and interests in land that may have been indefeasible under the old regime become liable to extinction by exercise of the new sovereign power. 72

The Court said that it would simply be too disruptive to recognize Aboriginal sovereignty, and this is the basic compromise of Mabo. It does not recognise original Aboriginal sovereignty and the possibility for continuing custodianship or 'chieftainship' of lands. This makes it harder to recognise spiritual attachment to land, going beyond loss of association - the physical attachment. This non-recognition of continuing custodianship is contrary to Australia's ratification of the International Covenant on Civil and Political Rights, which granted equal rights to property and protection before the law. 73

Secondly, because native title is a defeasible title under Mabo 74 it is a "second class form of title" 75 because it can be dissolved without notice to the indigenous people by an "inconsistent act" and according to Mabo 76 compensation is not payable at common law; native title is merely a "burden on the common law", a "usufructuary right" 77 as opposed to "real" property right. In my submission the "association test" as understood in Mabo is therefore another variation of the terra nullius situation as it allows cultural marginalisation of Aborigines in relation to their lands.

Aboriginal understanding is that the issue of custodianship is not dependent on the continued occupation of their lands, but on the different way they sanctify their lands. It is not a question of ownership as you cannot own something that in reality is greater than you:

70 Ibid Statement of Claim.
71 Ibid reasons for decision.
72 Mabo per Brennan J (1992) 175 CLR 1, at pp63.
73 Article I (1) "all peoples have the right to self determination"; Article I (2) "may freely dispose of their wealth"-Native Title can't be alienated (sold); Article 26 "all persons are equal before the law".
74 Mabo (1992) 175 CLR 1, per Brennan J at para 73
76 Mabo v Queensland (1992) 175 CLR 1, per Brennan J at para 83, see points 1 to 9 : the implication of the Crown being the radical holder of title is, when it becomes the beneficial holder by alienation, compensation is not payable.
77 Ibid per Deane & Gaudron JJ, at para 61 ff.
Aboriginal children are born of women but conceived of a spiritual source whose font is the land. 78

The Aboriginal respect for the rites of funerals and worship of ancestors is based on the belief that they are not of the world, for after death they go to walk in the spirit land. This is connected to the concept of place. This Aboriginal belief in the after-life being connected to a particular piece of land was universal 79 and is a very important paradox for differing treatments of Aboriginal heritage between the two cultures. There is an obvious conflict here with respect to the common law doctrine of feudal tenure, where the sovereign "owns" the radical title to the land, which provides for a permanent form of alienation of the land itself, due to ownership in white man's terms. Here Biblical principles are interesting as the word used in the relevant Genesis scripture is "dominion", 80 which in my view is a form of custodianship. According to traditional Christian beliefs, mankind's ultimate aim is not this world at all:

for we know that if the earthly tent we live in is destroyed, we have a building from God a house not made with hands, eternal in the heavens. 81

Even the logic of the law was not connected as there is a strong argument that the tenurial system in England long ago ceased to have effect, as Australia with its fiction of terra nullius, vacant -land-on-settlement 82 was probably the only place in the world in 1788 where legal effect was given to the fiction of the doctrine of feudal tenures that the sovereign held all land. 83 In the October 2001 decision of Yarrri, the High Court held that Magna Carta deprived Aborigines of exclusive rights to fish between the high and low tide marks:

In 1215 King John confirmed a public right to fish in tidal waters. There was also from very early on in England a public right of navigation in coastal waters. When white law brought those rights to this country, they ended any exclusive Aboriginal control of fishing and access to traditional seas. 84

The reasons for what I term the misapplication of systems of law foreign to Australia's indigenous peoples are quite complex. These were to better enable the dispossession or "extinguishment" of Aborigines from their lands and waters because of economic imperatives, and cultural blindness due to narrowness of vision. The unfortunate result was genocide.

79 Howitt, "Burial Practices of the Native Tribes of South-East Australia" in Charlesworth et al Religion in Aboriginal Australia p225.
80 Genesis 1:28 & 2:15
81 2 Cor 3:1
82 R v Congo Murrell 1836 Legge Rep 72, was the NSW case that enshrined this principle.
In Australia the most famous incident of extinguishment was Tasmania, where loss of Aboriginal rights to land was total, and was accompanied by genocide: Tasmanian Aboriginal lands were taken by the settlers and Government prior to any legislation what so ever and most of the Aborigines who were sent to the Wybaleena concentration camp in 1834; had died by the dates of the enactment of any validating Imperial legislation:

...activities on Crown land, particularly where the land was acquired without payment, unsurveyed and beyond legal and administrative control...the Crown Lands Unauthorized Occupation Act 1839 (NSW) ... the Sale of Waste Lands Act 1842 (Imp) (5 & 6 Vict c 36), the Imperial Parliament brought all grants of Crown land under legislative supervision...in 1846 the Imperial Parliament enacted the Sale of Waste Lands Act Amendment Act 1846 (Imp) (9 & 10 Vict c 104)....

In 1844 the Tasmanian Government by proclamation remitted arrears on all quit lands, which were lands occupied illegally by settlers provided they paid the Government an annual "quit rent". This form of tenure was abolished in 1846 where purchase outright was allowed

the effect of these new regulations was nothing more than to transform all quit rents into purchase...absolutely.

Pybus has good reason for calling Australians a society of thieves.

Therefore for the reasons above there is a schism within Australian society of which the High Court is part.

But my argument is that the Tasmanian Aborigines did not lose their custodianship or connection to these lands by legal artifices. A good example of residual Aboriginal sovereignty is Aboriginal rights to fish and collect game, which predated European presence and have been recognised in law to continue as an adjunct to the common law. The High Court in Yanner upheld native title to hunt crocodile in Queensland by saying that loss of ownership does not entail a loss of custodianship, which is a traditional right over the lands which these rights to hunt and fish represent. This decision in my view opens the door very narrowly to say that limited forms of sovereignty as custodianship survived annexation. Yanner also throws an interesting light on the position that the sovereign has radical title to the land. According to the court, radical title has to be shared with whatever rights of custodianship exist by the Aboriginal people, as a

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84 Wik Peoples v Queensland (1996) 187 CLR 1, per Kirby J in para 2 "Pastoral leases".
85 This term came from feudalism whereby "souage tenure" requiring work for the over lord was converted to rental payment allowing the tenant to go "free quit", ref below, Edgeworth at p403.
proprietary title is but dominion or the right to control land. This brings us full circle to the Aboriginal concept of custodianship discussed above, and the contradiction that lies at the heart of the Australian treatment of Aboriginal rights:

The fundamental problem at the heart of Australian Jurisprudence...is (that it is) increasingly difficult to sustain the view...of lack of Aboriginal sovereignty.

It is not clear whether Reynolds was talking in a historical or contemporary sense. In my view sovereignty is just a change of governance in terms of traditional whiteman’s jurisprudence. Traditional rights survive a change in sovereignty because they are under a separate system of law that predates the change in sovereignty. Though this is accepted for other nationalities it is not accepted for Aborigines. Noel Pearson says the High Court ignores overseas cases like Delgumukw, discussed below, even when Aborigines can prove their rights of ancestry to particular land.

The same applies to a change in the actual incidence of ownership whether by lease or freehold. The Federal Court case of Yarmirr, concerning the application of traditional Aboriginal customary law relating to fishing rights established a more flexible definition of what constitutes "traditional" than the Mabo case. This was not disturbed in the High Court appeal of Yarmirr decided on the 11 October 2001, which confirmed that non-exclusive Aboriginal fishing rights survived the change in sovereignty. The High Court applied and liberally interpreted this dictum of Mabo’s case:

where a clan or group has continued to acknowledge the laws and (so far as practicable) to observe the customs based on the traditions of that clan or group, whereby their traditional connection with the land has been substantially maintained, the traditional community title of that clan or group can be said to remain in existence.

The strength of Yarmirr for Aborigines, which was not disturbed by the High Court, lies in a flexible idea of ‘traditional’ which is not prescriptive. Questions of what is

91 Ibid, para 22 per Gleeson CJ.
93 Wik Peoples v Queensland (1996) 187 CLR 1. per Kirby at 214. Commonwealth v Yarmirr; Yarmirr v Northern Territory [2001] HCA 56 (11 October 2001) at para 289 Kirby applied the case of Neil v Duke of Devonshire (1882) 8 App Cas 135 which upheld an Irish traditional fishing right against all comers because this existed before the change of sovereignty by the occupying English in 1600. In Yarmirr Kirby held that the Aboriginal fishing right though it existed before the whiteman came to Australia, was subject to the whiteman’s law and therefore was not exclusive.
94 Botman, Peter (2003) “Pearson Strikes a Blow in Native Title Fight” The Australian (17/4/03)
97 See para 112 of Yarmirr v Northern Territory [2001] HCA 56 per McHugh J accepting the finding of Oney J, Federal Court trial judge, who found that the community had a connection with the claimed area in the nature of a non-exclusive native title right to have free access to the sea and sea-bed of the claimed area for all or any of the following purposes:
(a) to travel through or within the claimed area;
(b) to fish, hunt and gather for the purpose of satisfying their personal, domestic or non-commercial communal needs, including the purpose of observing traditional, cultural, ritual and spiritual laws and customs;
traditional, and from whose view point do you accept what is traditional, are at the heart
of the argument over connection to land. If it is held that the same traditions that were
then in practice have to be maintained, this would destroy Aboriginal ability to change
with the times, to adapt to, or attempt a modification of those traditions to deal with, and
include a modern cash economy. By limiting a claim to only those clans that continue
exactly the same traditional practices is to present the very real danger of injustice by
applying what has been described as a "frozen in time" concept: 98

It is wrong, however, to see "traditional" as, of its nature, a concept concerned with
what is dead, frozen or otherwise incapable of change. As Beaumont and von
Doussa JJ observed in Commonwealth v Yarrimir the meaning of "traditional"
is that which is "'handed down by tradition' and 'tradition' is 'the handing down
of statements, beliefs, legends, customs' etc, from generation to generation,
especially by word of mouth or by practice." 99

"Traditional" is a live, evolving practice of traditional lore saying the connection with
land is still maintained through spiritual connection with the Creator. This includes
contemporary practices handed down and modified from the earlier generations. "Spirit"
is a live, evolving entity. The capacity is in the law to expand the meanings of traditional
association to include contemporary Aboriginal attachment to land in a sense that
continues the spirit of the traditional, without being attached to the form of observance.

This would also be part of seeing the problem from the Aboriginal perspective.

For example, seeing this matter from the Aboriginal perspective would mean that the
obtaining of bones of an ancestor back from a museum that has held them for a hundred
years 100 should qualify as ceremony to sanctify, and claim attachment to the lands of that
ancestor. It is equally important that the word "traditional" does not allow the invention
of claims to ceremonies, 101 although it is not for the white man to say what is or is not
authentic. 102

There must be an appropriate balance whereby the spiritual practices inherent in the
traditional find independent acceptance in the contemporary legal world without
corruption of the ideals of Aboriginal connection to the divine through the land. The
answer lies in the legal system allowing itself to be open to correction by Aboriginal
perspectives:

If our law was respected- equal with non indigenous law- then non

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100 I refer to the case of Truganini see chapter seven.
102 Chapman v Luminis Pty Ltd (No 5) [2001] FCA 1106 (21 August 2001) per Von Doussa J at para 12 : "...the evidence received by the Court on this topic is significantly different to that which was before the Royal Commission. Upon the evidence before this Court I am not satisfied that the restricted women's knowledge was fabricated or that it was not part of genuine Aboriginal tradition".

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indigenous people should also be subject to Aboriginal law.\textsuperscript{103} The law must be open to being moved by oral histories of the land\textsuperscript{104} whereby the land is sanctified through custodianship and ceremonies associated with these oral myths:

Notwithstanding the challenges created by the use of oral histories as proof of historical facts, the laws of evidence must be adapted in order that this type of evidence can be accommodated and placed on an equal footing with the types of historical evidence that courts are familiar with, which largely consists of historical documents.\textsuperscript{105}

One of the other reasons for the inability of the law in Australia fully to engage with Aborigines is reflected in a peculiar geographical fact of Australian society. As a large city-coastal society we are in fact out of touch with the greater part of the land in the interior:

white Australian consciousness is only superficially part of the Australian scene.\textsuperscript{106}

Essentially, that is the challenge. For the impasse to be broken, equality of the two systems of law must be allowed rather than instead of one system being subservient to the other. Then each system will be able to draw from the other the concepts that are buried within, in order to share the land. In the words of Moynihan J, who tried the facts in the Mabo case before it went on for legal decision in the High Court:

That is the nicety of my dilemma. We are talking about two parallel systems of law

\textsuperscript{103} William Tillmouth 3rd Annual Aboriginal and Torres Strait Islanders Legal Service conference March 2001.
\textsuperscript{104} It could be argued that Mabo went a long way to acceptance of oral histories, but these oral histories were corroborated with a number of documentary sources such as Merr Island Court records over the last ninety years. In Moynihan J’s determination of facts in Mabo he said the case “raised considerations of the evaluation of the evidence arising from an oral tradition, with regard to ‘the Perception of One Culture from the Perspective of Another’” Mabo v Queensland, Determination of Facts (Supreme Court of Queensland, Moynihan J, 16 November 1990) Mabo v Queensland [1992] 1 Qd R 78.
\textsuperscript{106} Tacey, \textit{Edge of the Sacred - Transformation in Australia}, p61.
and their effect on each other. Ultimate questions revolve around how far I enter from one into the other in order to determine matters of evidence. (But) that's the question I cannot decide.\footnote{Justice Moynihan of the Queensland Supreme Court, 23 February 1987 : quoted in Affidavit of David Shaw in Support of Summons High Court (12 March 1987) ref Mabo Collection vol 21, para 15.}
PART ONE

Chapter Five

The Story Tellers

Clever men in some regions could both cause illness or death and heal people; in other regions they are either sorcerers or healers, but not both. A man becomes a clever man either because he has had a psychic experience, or, in some regions through an apprenticeship. In the latter case, a young boy with potential, such as demonstrated psychic abilities, is selected for training. The powers of a clever man, and the techniques used, vary between individuals and regions and are sought out by members of their communities for consultations and treatments, especially of the spiritual or interpersonal dimensions (the ‘why’) of illness.¹

The indigenous shaman or clever man goes across many cultures, according to Campbell² the shaman was the indigenous artisan or cleverman who kept the stories of the people alive by enacting myth as ritual, which was to *throw the person out of the known into another reality.*³ As I see it, the use of religious ecstasy or magic by a shaman was a secondary aspect of the role of shaman. The story telling is the most important device to link the people with the land and is the primary aspect of the role. The storyteller gives these myths a being, and story tellers who are connected to these ancient lands and who themselves have been through the hardship of life are necessary to bring these myths to life.

Essentially the shaman was the indigenous priest who had come to a personal relationship with the divine through either sickness or psychological breakdown that led to a brush with death, leading to a type of resurrection. The shaman was then able help others through keeping alive the stories that help transformation.

Ancient stories are in us all and they have the effect of showing that there is an invisible presence that sustains us, which animal and human spirits return to the source on death.⁴

Myths show the beauty of the way that the body is the vehicle of the consciousness. According to Campbell, our modern western society has lost this presence of myth as all the wild animals are either locked up or there are no wide open spaces for them to roam, and mankind lives in concrete houses in cities far removed from these primeval sources or in poverty in rural slums.

³ Campbell (above) used this phrase with this meaning, but I adapt this wording from Castaneda, Carlos (1993) *The Art of Dreaming* Harper Collins. Another reality also means another meaning-perception (see Wilson, *The Outsider*, p77ff), but is not limited to that.
⁴ Ibid
Myth through story telling turns “the other” into a “thou”5, thus illustrating, for example, the interdependence of the hunter and hunted, the environment and humanity. Myth gives reverence to these things as an aspect of the Divine, integrates experiences and heals.

The principal Aboriginal storytellers, described below, really discuss the emergence of Tasmanian Aboriginal consciousness from the verge of genocide and they needed to have crystallised their own experiences into a kind of learning and healing so that they could pass on the story.

As an unseen influence, shaman Mannalargenna, the last great Aboriginal chief, who died in 1835, tells the story of his people through a spiritual means via the contemporary Aboriginal storytellers. Many others, such as Robinson, Truganini and Fanny Cochrine-Smith, have in some way have influenced this work by the example of their lives. The latter two, being historical Aboriginal women yet able to adapt to the changes brought by the white man, thereby according to chronicles5 written about them, retained their own integrity. As a result the particular myths about them live on in the Tasmanian Aboriginal consciousness.

In a sense, the three people to whom I now turn stand out and could be called the contemporary shamans, the contemporary storytellers of the Tasmanian Aborigine.

Little published biographical material can be unearthed about Jim Everett, poet and former government Aboriginal administrator and state secretary of the Tasmanian Aboriginal Centre. This confirms my impression after my dealings with Jim Everett of him being an elusive almost shadowy figure compared to Michael Mansell, who has written and said a lot that has been published in various sources. Everett together with Ida West was one of the principal figures in the video Blackmans’ Houses 7 which is discussed chapter fourteen. He has at various times agitated for recognition and protection of sacred Aboriginal caves firstly through involvement with the 1983 Franklin River campaign to save them from being flooded by the proposed dam; and secondly, by visiting various Aboriginal caves, an arduous task physically. In Blackmans’ Houses he recounts his first visit to Flinders Island, as a young man. One of the Aborigines there immediately recognised him as a relative; an unexpected occurrence that brought tears to Everett’s eyes.

Ida West great grand-mother and elder and according to Living with the Land6 grew up on Flinders Island. She left there in the 1950s and moved to Hobart. In the 1970s she lived on the north west coast and tracked down Aboriginal descendants so she could form a branch of the TAC (then named Aboriginal Information Service) in Burnie. She was president of the TAC in Hobart and for many years has been a person to whom both European and Aboriginal could look for wisdom in promoting reconciliation. Her book

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5 Ibid.
7 Thomas, Steve (1992) Blackmans’ Houses (video tape), Ronin Films Canberra ACT
8 Living With The Land (1990/91) Books 1 to 6, Tasmanian Department of Education Hobart in conjunction with the Tasmanian Aboriginal community.
Pride Against Prejudice (1984) has been an invaluable reference about Flinders Island Aborigines and she was present on the 28th of February 1999 when the title deeds to the entire Wybaleena site were handed back by the Premier of Tasmania to the elders of the Aborigines.

Michael Mansell, legal advisor to the Tasmanian Aboriginal Centre, has probably been the principal driving force of the TAC since its inception in the early 1970s. He was the second Tasmanian Aborigine to be admitted as a legal practitioner and his many statements are spread through this work. I did not consult Michael directly for this work, as there appeared to be little need due his many published statements. Directly I worked with him for 22 months and found him an extremely intelligent and dedicated fighter for the Tasmanian Aborigines. His part time activities are football and fishing, as he owns a fishing boat, which he takes regularly to the Furneaux Islands.

I spoke to and collaborated with others including John Clark and Alma Stackhouse of Flinders Is, who told their own stories, sometimes in opposition to the TAC but always with Aboriginal interests at heart. I learned to be a storyteller, as the story herein of the Tasmanian Aborigines involved me in telling their unspoken story and also coming to terms with the Sacred wound and telling my own unspoken story and learning that “the other” is an aspect of myself. Coming into contact with the story tellers facilitated my own healing as well.

The most charismatic figure to die at Wybaleena, Mannalargenna, was the last great chief of the Aborigines. Jim Everett, Alma Stackhouse and Ida West claim him as an ancestor as do a significant number of present day Aborigines. His bones lie in the graveyard at Wybaleena, Flinders Island, but he still lives in many ways. Chapter fourteen, which deals with Wybaleena, has been written with him in mind. Even though he was only at this settlement some two months before he died, his spirit hangs over the place and his name is most frequently spoken of in connection with Wybaleena. In a real sense he tells his story through me because the methodology adopted in this thesis, but also because of the experience of transcendence I experienced thus entitling me to tell these stories.
Chapter Six

The Sacred Journey to Reclaim and Restore Domain Over the Lands

In early March of 1995, just after the abortion, I became aware of a peculiar action through the media that shook me out of my despondency. Jim Everett, an Aboriginal activist, had been arrested for trespassing on the Tarkine lands because he wanted to stop a road being put through the area. I didn't really understand the issues at the time, but to my amazement I was appointed his solicitor for the resulting bail applications. The writing and research involved in writing about this incident has opened understanding about Aboriginal connection to ancestors and the necessity of ceremony to connect with the lands.

At the lands rights conference¹ almost eighteen months later in Canberra, I dictated this note after having a long conversation with Everett around a campfire at the Aboriginal Embassy at Old Parliament House:

The sacred journey to reclaim and restore the domain over the lands Aborigines didn't own, but had dominion over...whiteman wanted to control by owning land and thereby controlling spirituality...Aborigines practised different ways to reinvigorate land and themselves, through walking or singing the land.²

At the time of the Mabo decision there was a widespread belief among indigenous people in the eastern states that little benefit would come to them from Mabo because of the Court's rejection of Aboriginal alodial rights in favour of the doctrine of tenure. The voices of the dispossessed Aborigines are still crying in the wind ³.

The legal situation exemplified by Everett's clash with the state is the denial of aspects of Aboriginal sovereignty from the earliest time of the white man coming to the present day. Everett's action in walking on the Tarkine lands was challenging the sovereignty of the Tasmanian Government by asserting alodial land ownership rights, and protesting the High Court's requirement for a traditional connection to be maintained with the lands.

Mabo did not quench but only increased the calls for compensation for lost lands of the most dispossessed Aborigines in the eastern states.⁴ I represented Jim Everett in his arrest for trespass on the Tarkine lands of the West Coast of Tasmania in March of 1995.

The legal doctrine of tenures—that the sovereign owns all the basic or radical title to all lands was rejected by those revolting against British sovereignty at the time of the American war of independence, which was the subject of comment in the Wik case:

² Personal dictated (17/8/96).
³ Henry Reynolds public talk, Friends Hall Hobart (28/10/95).
⁴ Submissions Tasmanian Aboriginal Centre to Senate Committee convened at TAC Hall Launceston: Senate Committee Report (December 1995).
the American Revolution was followed in several of the States by legislative repudiation of the
tenure system as the ultimate root of real property title.\textsuperscript{5}

Unlike Mabo, this was an important acknowledgment by the High Court that the issue of
sovereignty and the type of land tenure are linked. The most important reason for the US
rebellion had been philosophical in nature as it was equally \textit{against} the system of
monarchy, and \textit{for} the system of individual rights as espoused by Paine.\textsuperscript{6} By abolishing
the "divine right" of the sovereign to hold all lands as an overlord, the revolution for
these individual human rights was centered on the new rationalist thinking that mankind
is solely responsible for his or her own affairs and that commerce is the life blood of the
nation.\textsuperscript{7}

This action Everett took, and his subsequent imprisonment, was an assertion of
Aboriginal sovereignty over these lands, as Aborigines had "allodial ownership" or full
ownership of all lands under their control prior to the coming of the white man.
Sovereignty, treaty rights, the concept of native title and subsequent extinguishment are
in my view transactions, with the common link of being connected with the
religion of the land and dependant on the definition and practice of traditional laws.
They also reflect the dynamics of power differentials and the transfer of rights between
the powerful and the less powerful.\textsuperscript{8}

In my view legal transactions have a similar effect, and reflect and acknowledge various
underlying dynamics. These words sovereignty, treaty, native title and extinguishment
actually entail discourses of various sorts.\textsuperscript{9} I submit that the problem has been the
artificial compartmentalization of these concepts from each other rather than seeing their
essential inter dependence.

Concession of a right by one party to some other group will depend on whether the same
meanings apply. It is a form of surrendering of a part of you and it needs to be
acknowledged in the same terms as it is understood in the culture that receives the
benefit. Otherwise disputes will arise later as to the fairness of the bargain.

It is an energy transfer, in very simple terms, and in legal or sociological terms it is a
"compromise" with various rights and obligations for either side attached. In the legal
system there can be some recognition of social dynamics. Courts in equity will look at
disparity in power between agreement makers,\textsuperscript{10} but in essential terms what is often
overlooked is the conditional nature of the bargain that underwrote the exchange in the
first place.

\textsuperscript{5} Wik Peoples v Queensland (1996) 187 CLR 1, per Gummow J pp150ff.
\textsuperscript{6} Paine, Thomas (1792/1987) \textit{The Rights of Man}, Penguin, UK. There are some aspects of Thomas Paine's
writings which benefit Aborigines such as his adoption of the French National Assembly’s \textit{Right}’s of \textit{Man}
which included at XVII “the right to property being inviolable and sacred.” pp110ff.
\textsuperscript{7} Ibid “Ways and Means” p210ff.
\textsuperscript{8} Lyotard, Jean-Francois (1993) \textit{The Postmodern Condition: A Report on Knowledge}, University of
Minnesota Press, USA.
\textsuperscript{9} Luke “Theory and Practice in Critical Discourse Analysis”.
\textsuperscript{10} Equity arose from the English Chancellor's inquiry into the conscience of the matter.
In 1830, Mannalargenna, the principal Aboriginal chief, negotiated an agreement with Governor of Tasmania, Arthur, but it was entered into under duress and it was never honoured by the whiteman. Furthermore, it was never put in writing because; according to Reynolds,11 the Aborigines didn't know they had to put it in writing for it to be effective. Mannalargenna had negotiated an agreement to surrender in exchange for certain guarantees, but the settlers and succeeding Tasmanian governments had been unable to appreciate that fact of an agreement between equals.12 As I interpret it, a scrutiny of this in energetic terms suggests that the whiteman defaulted in several ways:

- There was no exchange of ideas and knowledge about the land.
- There was no enforcement of the guarantee of the long-term sustenance of the land and protection of the Aboriginal people in Tasmania.
- Access to lands Aborigines had agreed to leave was denied.
- Aborigines subsequently languished in what was virtually a concentration camp.

On the face of it, Everett's decision to walk the Tarkine lands was a protest against a road being bulldozed through the Tarkine tribes' sacred lands (Illustration 1 map Searle), but the decision to protest was an indirect result of the historical failure to keep to the terms of the agreement worked out with the Governor. Under Aboriginal law he (Everett) was obliged to go to the lands once walked by his great, great grandfather Mannalargenna. It was also a protective measure to save Aboriginal sites from being disturbed.

The area of the Lindsay and upper Leigh rivers formed the backdrop to this struggle of discourses, when Everett was arrested for "trespass" for exercising his traditional rights of access to the Tarkine lands, and for trying to stop the government from building the "road to nowhere".13 The road was a hastily arranged project to promote tourism through the Tarkine country, so named after the tribes who were most resistant to being gathered up by Robinson after the agreement negotiated by Mannalargenna. Robinson was almost killed during his journey of "reconciliation" to the Tarkine tribes in 1831,14 as they undoubtedly did not trust the whiteman to keep their word under the agreement.

Subsequent events were to prove the Tarkine tribes right.

The Tarkine area is also a pristine wilderness area so there was more at stake than Aboriginal land rights. There had also been no consultation with Aborigines and the environmental movement headed by Senator Bob Brown and aided by Peter Sims, who were also arrested at the same time at Everett (plate 15).... The road was clearly illegal on a number of points: the Tasmanian government had bypassed relevant planning laws in its haste to build the road.15 It breached the Aboriginal Relics Act and compromised the world heritage listing potential of the area and the existing listing under state and federal

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15 Peacock, "Tarkine Link Road, News", p4.
wilderness areas protection. It was the world heritage aspect that had been used by the federal government in 1983 to stop the Franklin dam from being built, but there was no such intervention this time (1995) by the Keating federal government, because the world heritage listing had not proceeded to completion.

The image in the media was almost poetic in a very sad sense: bulldozers building a road to "nowhere" through pristine lands:

The 350,000 ha area known as the Tarkine Wilderness area was the subject of a campaign by the Wilderness Society for the Tasmanian Government to have this area nominated for World Heritage. It never got to the nomination stage even though the area does meet the World Heritage criteria...is on the National Wilderness inventory, classified as High Quality Wilderness and much of it was listed on the register of the national Estate.16

Failing any federal governmental response, Everett went to the Tarkine with Dr Peter Sims, who assisted me with some of the research for this chapter. Everett's aim was to try to block the building of the road but he was arrested on the 21st March 1995. He, like Bob Brown of the Greens, refused to sign a bail undertaking not to return to the Tarkine, and so both men became famous for spending time in jail as a result. Everett challenged the validity of his arrest on the basis that there was no honouring of the agreement with the Aborigines and that the land concerned was his ancestral land, as it was never validly ceded to the Crown which did not and does not exercise sovereignty over the land.17

This is what he said to the media at the time of his arrest:

the area of land known as the Tarkine is land that was used by my ancestral grandfather. It is the land of our people. The rights and responsibilities of the land, its environment, are what I have inherited from my forebears. These rights and responsibilities are enmeshed in Aboriginality itself. As Custodians of the land these are manifested in Aboriginal culture as a whole way of life, religion and intellect.18

In appearing for Everett in court to try to get bail I had a lot of difficulty in persuading the court that he had a right to walk on the ancestral lands. Eventually he was released when he signed the bail undertaking under duress (his sister was seriously ill) not to visit his ancestral lands. The court did not agree that the issue of sovereignty was an open issue.19

According to Everett I could not continue to challenge the validity of the court system in Tasmania as I was "a whiteman", so he ended up defending himself three months later. The case was never appealed after the conviction and fine were imposed. Interestingly, the transcript of the hearing was "routinely destroyed" only some ten months after the

17 Interview Everett (16/8/96).
18 Media statement Everett (23/3/95).
case, and though I requested Everett for a copy several times, he had not kept a copy either.

The implication of the defence raised by Everett to the charge of trespass was that there had been no consultation by the Government with Aboriginal organisations over the route, nor over the need for the actual building of the road:

Got a fine of $90.00 on 16/6/95, won't pay it...they haven't chased me for it....
refused to recognize jurisdiction of Court...because of sovereignty issues...no treaty,
the land stolen......Court had no right to stop me walking in the shoes of my ancestor.

He could have used the criminal defence of necessity in order to preserve Aboriginal artefacts that potentially could be destroyed by the road building, and the statement that he had the right to walk the land as part of his religion. The Government claimed that they had consulted Aboriginal organisations but this was deliberately misleading and the records that Everett requested to be produced to Court under subpoena were in fact not produced in time for his hearing. The Government never produced the archaeological evidence to show that they had taken steps so as to avoid Aboriginal sites, and to prove they had consulted the Aboriginal community. I eventually obtained the material some two years later, in 1997, and it transpired that there simply were no consultations.

The Tasmanian Aboriginal Lands Council (TALC) had this to say about the design of the road:

...(the proposal by the Government) does not resolve the broader issues of increased access to this relatively undisturbed area and the subsequent increased impact on the Aboriginal heritage values of the region" and "in terms of the potential damage to Aboriginal heritage in the area of the proposed road we hold very real concerns.(and) will not endorse the proposed road nor will TALC participate in a shoddy assessment of the Aboriginal heritage values of the area..."

The two archaeological reports, by Prince and Searle respectively, showed there was no consultation with TALC by the Government. The report by Searle concluded that because of the dense vegetation in the area it would be hard to determine one way or the other whether there were Aboriginal sites in the area; both reports based their assessments on reputedly low Aboriginal density in the area from Robinson's travels there 160 years ago,
rather than consulting present day Aborigines who have access to some of the oral histories as custodians.

Oodgeroo Noonucal’s poem about *Civilisation* is a microcosm of the white/black divide at work. In this case, the building of the road across the Tarkine shows the continuation of this credo of development at all costs at the expense of spiritual values and the ignoring of a system of Aboriginal roads that were in place (illustration 2).

In this case Everett spent time in jail, much like Nelson Mandela in protesting lack of self-determination for his peoples. The building of the road in opposition to Aborigines’ wishes also illustrates the difficulty the whiteman has had in managing Australian and Tasmanian eco-systems with sensitivity. According to Everett Aborigines were very successful managers of the environment due to their knowledge of the land and their understanding of the energy systems and how the land could be renewed. Intimate knowledge of the land is a necessary precondition and not a superficial perspective to land management.

The first archaeological report of 1985 was Prince’s and was the more detailed. It noted evidence of a number of mines of Aboriginal origin in the area and observed several deposits of:

spongolite, a major source of material for West Coast Aborigines.

Spongolite is a hard flinty like substance that can be used for tools and was much traded by the Tasmanian Aborigines. Its location was found after a bulldozer had accidentally uncovered it in previous road building:

if anyone walked on the spongolite quarry site prior to the bulldozer, it would be the most unlikely that they would discover what lay beneath the leaf litter on the forest floor. That’s how hard it is to locate Aboriginal sites after a period ....of 200 years.

Prince observed from historical records that an ochre route from Sandy Cape had passed only 20 kilometers to the south of the first stage of the proposed Tarkine road (illustration 2): and ochre from this locality had also been discovered in coastal midden sites. Ochre was used in body painting and for painting caves. Two important Aboriginal caves, Kutikina and Ballawinne, lie about one hundred kilometers to the south, reached by several weeks walking. Ochre is the primary pigment used to decorate such caves.

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27 Interview (16/8/96).
33 Ibid, p37.
Bulldozing associated with forestry activity in the past had uncovered 26 associated artefact scatter sites, raising the likelihood of further sites being disrupted:

we noted a section of the surveyed road passed very close to an outcrop of quartzite...there appeared to be some worked stone flakes that could possibly indicate an Aboriginal quarry site...the actual bulldozed track does not always follow the previously surveyed route...there is also a major deviation ..which has not been inspected or assessed for Aboriginal cultural sites. 34

Searle’s later report, in my view, was much more political in nature and though it was compiled without the support or participation of the Aborigines, it tried to give the impression these considerations had been uppermost. All it succeeded in doing was to display superficiality. The 1985 report, Prince’s, though older was more thorough and revealed the real dangers.

There were good legal grounds to stop the road due to the combination of grounds mentioned above but the case, which was filed in Court in 1995, was never fully pursued but probably would have been successful. It was eventually was withdrawn due to lack of legal aid funding. 35 The strongest ground for the view that it had good prospects, was the breach by the Government of state planning laws. They commenced construction without first seeking the local Council’s permission. 36 In retrospect, the only effective action taken by way of drawing attention to the issue of the road was that of Everett (and other protesters) in being prepared to go to jail.

This discourse raises a number of issues and voices, to which the chapter will now pay close attention.

The Renewal of Lands

Aboriginal management of the energy systems of their lands, both on a spiritual and physical level, is symbolised by Everett’s walk onto the lands under threat in early 1995. The use and management of energy is a significant part of indigenous culture 37 and this deserves consideration not as a truth in itself, but as existence of a different paradigm of thinking from the European idea of exploitation of land solely for the sake of gain. 38 Interchangeability of energy and matter finds ready acceptance in the Aboriginal dreamtime 39 and is somewhat bolstered by the scientific theory of relativity put forward by Einstein, 40 which postulated an intertwining between time, matter and light, which are

34 Peter Sim’s letter 19/3/95 to TALC reprinted with permission.
35 Peacock "Environmental News" March 1999 at p4, reports that the substantive case was withdrawn in late 1998 due to lack of Legal Aid funding, Barrett-Peacock v State of Tasmania (22/12/95) Supreme Court of Tasmania A90/1995.
37 Conversation (2/7/1998) Mr Deva Daricha, Center for Human Transformation Victoria, who leads quests into the desert areas of Australia in conjunction with Aboriginal elders.
38 Flannery The Future Eaters, p355.
39 This is the general conclusion and point in Cowan, James (1989) The Mysteries of the Dreaming Prism Press, UK.
40 This is the general conclusion and point in Einstein, Albert, (1938) The Evolution of Physics: the Growth of Ideas from Early Concepts to Relativity and Quanta, Cambridge University Press, UK.
inter-changeable with energy. According to his theory everything is a manifestation of energy at a given moment. Energy is the basis of life, and every transaction a product of energy exchanging with other forms of energy.

Europeans did not honour the Aboriginal management systems because they did not enter into an intimate communication with the guardians of those lands. At the time they did not understand the interchangeability of energy represented by Aboriginal knowledge of the land:

Nothing could be more unwise than the hostility shown to the natives (as one could learn) much that is useful and valuable.41

The settlers in Tasmania were concerned with commercial exploitation and mercilessly conquered the indigenous people by a combination of murder, trickery and attrition through an undeclared war. The settlers also imported Aborigines from the mainland as "black trackers" and learned through the example of Robinson to use well-worn paths established by Aborigines that criss-crossed Tasmania (Illustration No 2).

Generally, colonisers around the world, paid little or no heed to the indigenous religion of the land and ceremonies for enrichment of the lands.

until recently every migrating race inherited from the native magicians of the new country the spiritual secrets of the landscape coming to identify their memory with the local spirits.42

Energy systems in the land in ancient cultures were not unknown. Ancient peoples including indigenous peoples were aware of these invisible aspects to the land. However, European people by contrast had by the time of the industrial revolution started to lose this intimate attachment to the land, which according to Bly, has affected family ties such as the father-son connection. They could work together and learn by working the land, but it was impossible when the father had to go off to a mill or factory.43

The settlers were impressed by the power of new technology and the Newtonian idea of science being an excessive concern with things that could be measured or weighed. Now science itself is increasingly coming to a more holistic view that alternative approaches including other explanations may assist, not hamper, science.44 Scientists can describe the phenomena of energy and describe their effects on physical things, but there is still missing a wider explanation or deeper understanding of occurrences such as renewal of lands, climate change and how weather affects crops.

43 It is even worse today generally see Bly's Iron John. See also Somé, Malidoma (1993) Rites, Power, Healing and Community Portland, Or.: Swan/Raven & Co, USA, p79; “the spiritual needs of family and self (is) the starting point for social transformation...the magnet of materialism is keeping people too busy....”
It may be a case of the invisible effect of energy systems not yet understood. For example we as human beings are surrounded by our own energy fields and these can show whether a person is well or sick. Perhaps the Aborigines thought of the earth as akin to a human body, with its own energy signature.

The Tarkine lands are rich with different Aboriginal sites, and other Aboriginal structures have been discovered in different parts of Tasmania about which little is known. Aborigines in particular show a reverence for special stones and places. Carvings were done on stone, and sometimes stones were specially arranged. These places were "extending through Queensland to Cape York and possibly to Tasmania." To date much reliance has been placed on the writings of Robinson's dairies to record Aboriginal culture in Tasmania, but this was dependant on his acceptance and understanding of their culture and whether he had been taken to special sites by Aborigines. There is little evidence that he was ever invested with this level of trust, so the historical record is not available. Independent observers in the 1830s, the Quakers Backhouse and Walker, had little good to say of Robinson, in essence saying that he was unchristian in the way he treated the Aborigines, and showed bad judgment and should not have been be given responsibility at Wybaleena.

Historical Aboriginal sites may not have been recorded in Robinson's journals, but these sites are coming to light all the time. One such site was discovered on the Tasmanian central plateau comparatively recently in 1999. The significance of this carving, estimated to be at least 10,000 years old, is unique in that it is the only:

engraving recorded in an inland environment in Tasmania . the Central Plateau area was of importance to Tasmanian Aboriginal people.

Concentric circles are a common Aboriginal motif on petroglyphs throughout Australia and have strong religious significance to do with the land. These concentric drawings on the rock at the central plateau site constitute the largest petroglyph found in Tasmania. A media account of this discovery reported a consultant archaeologist who visited the site as saying:

I would not be surprised if it was a ceremonial site, considering the location, amount of work and the fact that it is so rare.
Circles were drawn or carved into stone in shelters and sometimes carved into peoples' skin (illustration 3), elaborate rituals were used in negotiation for access to and renewal of lands, stones, rock carvings, and cave drawings were part of this elaborate system of land custodianship. The ring of stones discovered in early 1997 and publicised in Tasmanian newspapers (Plate 3 "Rocks found on Central Plateau") as well as the petroglyph consisting of a large engraved circle about one metre in diameter were possibly part of a system of custodianship of land. These newspaper articles were careful not to disclose the exact location due to a history of Aboriginal sites being treated with disrespect, or actually destroyed in Tasmania.

Because of the lack of historical and oral histories one can only surmise about the significance of such finds. In other areas in the world similar structures are associated with "draw(ing on)... the creative energy of the sun ..." Tasmanian Aborigines after all dealt with extremes of climate without wearing much clothing.

Pauline Gordon, an elder from the Northern Rivers area of NSW, said of bora rings that they "bring sustenance to the land and replenishment to the individual".

Ancient Britons recognised Ley Lines perhaps analogous to the "songlines" so called by Aborigines, which run throughout Australia and have a definite delineation so they could literally be walked along. The term "songlines" was used by Everett to describe a connection between the Three Sisters in Katoomba NSW, and the Three Patriarchs on Flinders Is (plate 7 & 9).

Tasmania had an extensive system of Aboriginal tracks which "crisscrossed many districts and ...were often carefully maintained by fire and constant usage" (See illustration 2). Both Prince and Searle commented on the existence of these Aboriginal tracks in the Tarkine leading to sites of heritage value.

Mannalargenna visited the great ochre site Toolumbunner using these tracks on his way to the Tarkine. The North and North West tribes also had ochre mines and other mining

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53 Sunday News Examiner (16/3/97).
54 Darby "Aboriginal Rock Art Find Marred by Damage Fear".
55 Michell The View Over Atlantis, p183.
56 Ritual rings in Aboriginal folk lore for the performance of ceremony, I have visited some near Lithgow, NSW.
57 "My Experiences as a Stolen Child" a Night of Reconciliation, Temple Emanuel, Chatswood, Sydney (6/5/98).
59 Interview (16.8.96)
61 Plomley, N J B (1966) Friendly Mission: The Tasmanian Journals of George Augustus Robinson 1829 -1834. Tasmanian Historical Research Association, Hobart, at p600 records the digging of red ochre near the present town of Hampshire which is about half way between the Tarkine area and Deloraine. On the 27/4/1832 Robinson arrived there with Mannalargenna after having passed through Toolumbunner three weeks previously.
sites for spongelite, so he would have had a religious reason or duty to perform by walking these tracks as it was well out of his usual orbit.

To the original people of this country, land is Spirit and religion, not property to be exploited...this is fact in Aboriginal religion and law...it is therefore not something that courts of law have the prerogative to "accept" or "not accept."62

The religion was the visioning inspired by access to the secrets of the land and their connection with the cosmos, so "in circumstances where it is impracticable for the descendant community to continue a physical presence, it may nevertheless maintain its spiritual and cultural connection with the land in other ways".63

Of importance is the right to have use of the land for our purpose...the freedom to move through our lands without being impeded.....the right to perform business and law of significance to our culture. The right to determine the use of the land, whether it is good or not good for us. 64

Mannahargenna would not have been able to converse with the Tarkine tribes because he spoke a different language, so he communicated by sign language.65 He was their enemy but he probably brought ochre from Toolumbunner to perform ceremony, possibly to persuade them to abide by the agreement he had negotiated with the Governor, but their hostility is well-recorded.66 Mannahargenna had walked this major Aboriginal route to communicate with the Tarkine people by the route that:

ran east-west along the southern boundary of the tribal territory from Norfolk Plains past Quamby's Bluff to the Mt Vandyke (ochre) mine and then on to the Surrey Hills and eventually across the Norfolk Ranges to the west Coast at Sandy Cape.67

Everett's protest over the possible desecration of these walking routes and sacred sites therefore had a deep significance in the light of the process of the making of the original Mannahargenna/Arthur agreement. By implication he was demanding return of these Aboriginal lands. Everett by going on the Tarkine land, not only challenged the bulldozers, but he was reclaiming and sanctifying the land.

In retrospect, Everett could have obtained an acquittal if he had shown this aspect, and if this aspect had been recognised and accepted by the Australian legal system. There was, even in the whiteman's law, lack of consultation and probable evidence of destruction of Aboriginal sites, as under S14 1) (a) of the Tasmanian Aboriginal Relics Act it is an offence to destroy Aboriginal heritage sites.

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63 Western Australia & others v Ben Ward & others [2000] FCA 191 Para 244, per Beaumont, & von Doussa JJ.
65 Plomley, Friendly Mission, p620.
66 Pybus, Community of Thieves, p124.
When I appeared in Court on the 20 June 1995 (in what was my final appearance) I was ridiculed and laughed at by other lawyers for suggesting that Everett may have had a claim or right to trespass on these lands because he had a defence of "good cause". Putting aside my own feelings of embarrassment (which were considerable) the reaction to my submissions is indicative of the high level of denial that pervades the legal profession in respect of issues like residual sovereignty and spiritual access to lands for Aborigines. As a whiteman I was only experiencing the ridicule that Aborigines have had to put up with since the coming of the whiteman to Australia.

Whilst his case in the Burnie Court of Petty Sessions was proceeding without me, the Aborigines were negotiating with the Government over the general return of lands of cultural and spiritual significance and had reinforced their insistence on the return of the mutton bird islands. This must have boosted their negotiating power so Everett’s case was more than symbolism. Everett’s journey and arrest in the Tarkine was the acting out of the claims for custodianship at a deeper spiritual level as Everett was pointing out the situation of the historical breach of the agreement for access to traditional lands negotiated by Munnalargenna.

The mutual energy interchange was missing between whiteman and Aborigine in the historical instance, which meant that the conqueror remained the outsider:

the spiritual curse...is that they will never feel at home...in stolen territory. 

Historically, the whiteman destroyed the wiseman of the Aborigines who could have helped them to manage the lands so that there was enough for all. In the case of Everett, a direct descendant of Munnalargenna, the Government, through the Courts, locked him up. They may have got him to renounce his intention to visit the lands as a condition for getting bail, but they only signalled that the time had come to address Aboriginal historical rights. They may have fined him, even though he had spent almost a week in jail, but no one denied the significance of his stand.

Even though no one in the media or Government legal services professed to publicly acknowledge his need to visit the land, all levels of government were aware of the legal consequences of his disputed claim of sovereignty. Freedom of Information requests were withheld. Even his lawyer (myself) was personally ridiculed in violation of normal legal ethics.

The Legal Significance of Everett's Journey, and also its Impact on myself

The Everett case was never appealed and the transcript was destroyed, even so the legal precedent and impact was great on a number of levels. The action leading to the arrests acquired a lot of publicity at the time as the Tasmanian Green party leader Bob Brown was incarcerated for the same reason as Everett.

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The background to his case was that the negotiations were continuing for the handing back of Aboriginal lands, which is discussed in chapter thirteen. Everett's case was about exercising Aboriginal custodianship over these lands and would have had an effect on the minds of the parties in helping both sides to concentrate on the really deeper issues.

My experience, as the advocate in the early part of his case, enables me to say that the Government brought a lot of pressure against Everett, which indicates the sensitive nature, even symbolism, of his stand.

At a personal level this case and my personal story intersected and I became acutely aware of my own shortcomings as a lawyer in the legal medium of rationality and materialism. I also became aware of my own frailty as a human being and perhaps this was the first taste of the Sacred wound and its remembering in my soul.

It is difficult to say more about this case as sometimes the profound is very hard to express. Everett's walk, his arrest and his defiance in refusing to sign for a week the bail bond, somehow sets the themes for the thesis and particularly the legal issues previously discussed in chapter three. At the time, it was an awakening for myself. It brought to light several things: the agreement between Mannalargenna and the Governor which is discussed in part two, the richness of Aboriginal religion associated with the land and the principle of custodianship in a contemporary sense.

As such it was a very subtle, but at the same time the arrest and imprisonment was a very public action, the significance of which has only grown on me with time.
Chapter Seven

Protection of Aboriginal Heritage: Tebrikuna

Tasmanian Aborigines were dispersed from their lands after colonisation and their inability to carry out traditional practices associated with the death of ancestors had the consequence that many died before their time. The prime cause of these deaths was the loss of the protection of the spirits of the land, Ancestors and ancestral spirits. The Aborigines that survived removal to Wybaleena were in a state of effective captivity, but they were unable seek the protection of the ancestors as they could not put the spirits of the dead to rest. They could not perform ceremony on the land to connect with the Ancestral Beings. The death of so many, leading up to (and including) the concentration camp at Wybaleena, can be attributed to this loss of spiritual communion, as well as the whiteman’s contracted illnesses\(^1\) and shootings. The previous chapter records that Everett walked the land to give and receive protection through a spiritual communion with the spirits of the ancestors.

In the early part of 1994 ancient bones were discovered in some sand dunes of the Portland area in the north-east of Tasmania, at Tebrikuna, a well known Aboriginal burial area. These remains were shovelled into plastic rubbish bags by the Police and sent to the coroner's office. The Tasmanian Aboriginal Centre obtained an injunction to prevent this desecration in April 1994.\(^2\)

Commonsense would have indicated that the Tebrikuna bones were very, very old; and there had been no reports of a murder in the vicinity. The appropriate, culturally sensitive procedure would have been to refer the find to the representatives of the original inhabitants as custodians of the site, for them to make arrangements for the bones interment according to their own customs. The other issue is these relics were found by a whiteman raising the question as why a non-Aboriginal person was able to access these ancient burial grounds.

This chapter deals with the story of this particular case; about the initial whiteman’s dishonouring of the bones, and the Aboriginal honouring of those spirits by the taking of legal action to protect the bones. Those spirits wander about after death.

There was reasonably extensive evidence to support the case for retention of the injunction. However the Courts in May of 1994 refused to renew the injunction raising many issues about the importance in Tasmania of the protection of sacred sites. No rationale beyond a very narrow legal, constructionist, statutory interpretation basis was given for failure to continue the injunction, and little attempt was made to address the weight of evidence by Cox J, the eventual trial Judge who said:

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\(^1\) *Blackmans' Houses* Thomas (1992) is a video which amongst other things looked at the remains of the brick terrace houses the Aborigines were forced to live in at Wybaleena. They were damp, closed in without fresh air and very cramped.

\(^2\) Tasmanian Aboriginal Center (TAC) & Tasmanian Aboriginal Lands Aboriginal Council (TALC) v Wilson, Supreme Court of Tasmania A38/1994 (18 April 1994), per Wright J; the “Tebrikuna” case.
the evidence presently available, although strongly supportive of the plaintiff's contention as to the identity of the remains, does not completely rule out the possibility that they are recent and are those of a person who died in that remote area in circumstances justifying a normal coroner's inquest. 3

A person by the name of Briscoe discovered these bones and had testified in an affidavit to being present on previous occasions when finds of Aboriginal relics were shovelled into rubbish bags without any protocol. Anthropological evidence, Aboriginal elders statements and the statements of Aboriginal field workers trained in archaeology were used to establish overwhelmingly that the bones could only have been thousands of years old; 4 and no evidence was adduced by the government to counter this antiquity. Yet the Court found the coroner was not exceeding his jurisdiction in carrying out what the Judge euphemistically termed "preliminary inquiries" 5.

The problems from the Aboriginal point of view were several. These bones had been discovered by a European person and given to the police, who passed them on to the coroner's office without contacting Aboriginal custodians. As a consequence the remains had not been dealt with in accordance with custom and had the prospect of being held at the coroner's office for several months in plastic rubbish bags. 6 The Tasmanian Aboriginal community objected to this manner of dealing and the time involved, and it was decided to obtain an injunction in the Supreme Court due to lack of respect and inappropriate access by non-Aboriginal persons to these bones. This was granted on the 18th April 1994 by Justice Wright and served the same day by myself on Wilson, the coroner. 7 The final outcome of the Tebrikuna case, in my view, in the light of the practice and application of heritage law in Tasmania at that time, was a foregone conclusion. It saw the overturning by Justice Cox of the initial injunction granted. 8

In the Kartinyeri case 9 concerning the validity of the legislation for the proposed bridge at the South Australian Hindmarsh sacred site, Justice Kirby examined the place of the sacred in our general law. In a dissenting opinion he linked these sacred aspects to human rights. Where the protection of Aboriginal heritage in certain cases was important to the Aborigines concerned, this should supersede decided cases and statutes:

There is no doubt that, if the constitutional provision is clear and if a law is clearly within power, no rule of international law, and no treaty (including one to which Australia is a party) may override the Constitution or any law validly made under it. But that is not the question here. Cases, which establish that rule, are irrelevant to the present problem. Where there is ambiguity, there is a strong

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3 TAC & TALC v Wilson, Supreme Court of Tasmania A38/1994, pp 5 & 6 Judgement (27/5/94).
4 Ibid, various affidavits filed by the applicants.
5 Ibid, per Cox J at p 5 Judgement (27/5/94).
7 Ibid.
8 I acted in a long criminal trial, R v Haywood, Marshall & Roughley No. C75/1994 Supreme Court of Tasmania, before Wright J, which started in early May 1994, so he was not available to hear Tebrikuna, which I feel would have had a different outcome, if he had presided. Interestingly, Justice Wright retired early from the Tasmanian Supreme Court several years later.
9 Kartinyeri v The Commonwealth 195 CLR, 337.
presumption that the Constitution, adopted and accepted by the people of Australia for their government, is not intended to violate fundamental human rights and human dignity.\textsuperscript{10}

Just who should exercise custodianship over burial sites is the issue. These sites should not be disturbed. In the mid-1980s under Australian law there was the beginning of recognition for this position with the Northern Territory Sacred sites case.\textsuperscript{11} This attracted a great deal of publicity at the time and marked a new consideration for most Australians that Aboriginal sacred sites deserve, and should receive protection.

In the 1994 case of Milpurruru,\textsuperscript{12} a case concerning copyright protection for sacred Aboriginal designs, the Federal Court in its ground breaking decision, equated the protection of the sacred with fair dealing. Milpurruru was heard the same year as Tebrikuna. But the Tebrikuna case was notable for the absence of any such arguments and considerations, leading to the decision on the 27 May 1995 to discontinue the injunction.\textsuperscript{13}

The paradigm of difference between European and Aboriginal cultures centers on the Aboriginal nurturing of sacred secrets so that a sense of appropriateness of access is maintained. It is the soil out of which the mystery comes that is an important element of the dreamtime. Aborigines in Australia universally believed in a life for the person's spirit after death.\textsuperscript{14} Even tribes quite widely separated held this same belief. Howitt\textsuperscript{15} carried out a study in 1903 amongst southeastern Aboriginal tribes in Victoria, South Australia and Southern NSW:

> the spirit was believed to wander about (after death) near the grave site and there wasn't a definite time limit on how long the spirit stayed around the grave, if the site was disturbed any way, this disturbed the spirit of the ancestor and harm could come to the person who disturbed the gravesite.\textsuperscript{16}

The traditional legal protection for the medium of the sacred is either the law protecting unauthorised disclosure of information, or the law of ownership via intellectual property rights. What is required is a means to establish a medium of traditional custodianship and it is precisely this aspect that defies conventional analysis. Kirby introduced human rights norms as an alternative means of protection, but in my view the human rights approach is more of a shield than a sword because it still leaves open the question as to who has the right to be a custodian. This aspect is related to that person's ability under traditional Aboriginal law to have access to the "secrets" involved, this brings in the idea of spiritual readiness or entitlement, which defies legal definition. Protection of these Aboriginal secrets and its companion custodianship are not absolute rights under the conventional

\textsuperscript{10} Ibid, para 166, per Kirby J, p418.
\textsuperscript{11} Aboriginal Sacred Sites Protection Minister v Maurice [1986] 65 ALR 247.
\textsuperscript{12} Milpurruru & others v Indofurn Pty Ltd 54 FCR 240.
\textsuperscript{13} TAC & TALC v Wilson Supreme Court of Tasmania A38/1994 per Cox J, Judgement (27/5/94).
\textsuperscript{14} Charlesworth et al. Religion in Aboriginal Australia - an Anthology, p221.
\textsuperscript{15} Howitt, A W (1904) "Burial Practices of the Native Tribes of South-East Australia" in Charlesworth et al., Religion in Aboriginal Australia - an Anthology, p227.
\textsuperscript{16} Ibid, p226.
law, as "one should be cautious in extending heads of claim to withhold evidence required for the proper administration of justice". However, from an Aboriginal perspective access to these secrets is protected by absolute laws written down by the Ancestor Beings.

In contra-distinction to rational legal considerations is the spiritual aspect. There is a challenge to bring these absolute spiritual values within the ambit of legal protection. Perhaps this could be achieved under the heading of a claim of public interest immunity by extension of this concept to embrace Aboriginal sensibilities:

(See) that the information in question... gathered under a promise it would be kept confidential and that the Aboriginal custodians of (this) information were bound under Aboriginal law and custom to keep the information confidential...(so)...production and disclosure ...would cause dismay and resentment.

The Northern Territory Sacred sites case is very good authority that could have been explored by counsel and the Court in Tebrikuna. It would have lead, in my view, to the injunction against the coroner (examining the Tebrikuna bones), Wilson, being made permanent and so radically altering the protections of heritage in favour of the Aborigines. Even though the Sacred sites case had resolved that Aboriginal secrets should take precedence over many other aspects of public policy, there appeared to be an additional legal barrier in Tebrikuna. In order to succeed, the Tasmanian Aboriginal Centre had to prove that the coroner was maliciously acting beyond his jurisdiction:

I am of the view that the plaintiffs have not established a prima facie case that the Coroner is intending to act in excess of his jurisdiction.

This is very difficult to prove, and as a consequence it tends to overturn the legal truisms that every case is decided on its own merits. It is doubly difficult when there is a piece of legislation in force, in this case the Aboriginal Relics Act, which the government itself is not bound to observe in coroner's matters:

The Aboriginal Relics Act 1975, s24 provides: "Nothing in this Act affects or prejudices the operation of ... the Coroners Act 1957".

It is equally clear that the Tasmanian Aboriginal Relics Act does not provide Aboriginal people with much of a role in deciding what should be protected. The only right they have is to apply for protection, a right they share in common with all other citizens.

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17 Aboriginal Sacred Sites Protection Minister v Maurice [1986] 65 ALR 247, per Bowen CJ, para 18.
20 TAC & TALC v Wilson Supreme Court of Tasmania A38/1994 para 19, per Cox J (27/5/94).
22 Quote from decision (27/5/1994) per Cox J.
Aboriginal people do not decide whether or not a site is significant or if so whether or not it should be protected.\textsuperscript{23}

Australian common law recognises an extensive system of confidentiality in the course of dealings in many areas of professional, business, trade secrets, public and private institutions. One of the considerations is whether or not the access to be controlled, or secrets proposed to be protected, are already in the public domain as a public interest right may override confidentiality:

for example, the possibility of establishing the innocence of an individual in a criminal case, weighs heavily in favour of disclosure.\textsuperscript{24}

The common law concept of confidentiality is a useful device to use in this area of the protection of Aboriginal access rights and heritage, even though the particular principle grew out of a desire to protect commerce and property. The law of confidentiality reflects that commercial ethics requires a balancing act between protecting the free flow of ideas and ownership of trade secrets. It very much depends on the relationship involved. In the Foster case\textsuperscript{25} traditional secrets were imparted to the anthropologist Mountford as part of his study of the Pitjantjatjara people some thirty-five years previously on the explicit understanding that the secrets would not be communicated to others. The Court held very strongly the nature of the agreement and sensitivity of the material meant a very high level of protection would be accorded:

(as) continuing publication...would reveal secrets to those to whom it was always understood such secrets would not be revealed, thus occasioning social damage of a serious nature and of a type to which monetary damages were irrelevant.\textsuperscript{26}

The European concept of confidentiality places Aboriginal spirituality and ownership of relics as a relative right which is dependant on a private agreement made between the parties and is a product of some financial arrangement. The Foster case went beyond this as there was no financial arrangement or consideration, and the case was brought some thirty-five years after Mountford was given access to the secrets. The original elders he “contracted with” were actually dead.

Historically, Australia has not regarded Aboriginal heritage values very highly. The Commonwealth Parliament passed a Heritage Act only in 1975 and it was mainly concerned with protecting European heritage. It was not until the passing of specific Commonwealth legislation in 1984 that the area of the protection of Aboriginal heritage received attention on its own merits. Even then the legislation on which the 1986 permanent legislation is based:

was devised over a weekend by a committee of lawyers.\textsuperscript{27}

\textsuperscript{23} Aboriginal Relics Act 1975 (S 7, 8 & 9).
\textsuperscript{24} Aboriginal Sacred Sites Protection Minister v Maurice [1986] 65 ALR 247, per Bowen C.J, para 8.
\textsuperscript{25} Foster v Mountford (1976-78) 29 Federal Law Reports 233.
\textsuperscript{26} Ibid, p234.
\textsuperscript{27} Goldflam R.,(1995) “Between a Rock and a Hard Place” Aboriginal Law Bulletin, Vol 3, No 74, June
There is something here which suggests different meaning-perceptions attaching to death and spirituality between the European and Aboriginal cultures.

**Digging Up Burial Grounds**

We would not dream of digging up a Kartiya (white) burial ground or drilling for oil in a church.\(^8\)

According to the publication *Living with the Land*,\(^29\) the Cape Portland area of Tasmania is an ancient Aboriginal burial ground, and in my view the site should have qualified for protection under the Aboriginal Relics Act and been registered as such. It is not. This official indifference illustrates the lack of protection for Tasmanian Aboriginal heritage and the attitude that Aboriginal heritage is somehow similar to European heritage. The situation in Tasmania has been the subject of academic comment and official investigation\(^30\) without any action.

There is a blind spot here that needs to be explored as the Aborigines have an elaborate belief that the spirit lives after death whereas the conventional Christian belief is that

\[\text{man is destined to die once, after that to face judgment.}^{31}\]

According to this Christian heritage it is only at the final judgment that a person's body is resurrected but nothing is said about what happens to the spirit in the meantime except it will be taken to the "inner Court" before the resurrection of the mass of humanity.\(^32\) This difference may explain why it is hard for European people to comprehend the dreamtime afterlife where ancestral spirits are still active. It may be partly responsible for the much hardship experienced by indigenous peoples who have come into contact with Christianity.

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\(^8\) Mindibungu Aboriginal Corp. letter to Prime Minister, Paul Keating, Senate record of Native Title debate, 1993 (15/12/93).

\(^29\) *Living With The Land* (1990/91) Books 1 to 6, Tasmanian Department of Education Hobart.

\(^30\) Powell, Lesa (1994) "Aboriginal Law & Heritage in Tasmania: A Critique of the Aboriginal Relics Act 1975", BA (Hons) Thesis University of Tasmania. Also Justice Evatt, in her 1996 Review of the Aboriginal & Torres Strait Islander Heritage Protection Act 1984 found the following in respect of Tasmania (all refs Aboriginal Relics Act):

\# It is a defence to any offence concerning a relic (eg under ss 9 or 14) that the defendant did not know or could not reasonably be expected to know that it was a relic, ss 21.

\# The Act is not stated to bind the Crown.

\# The penalties are very minor: $1,000 or 6 months gaol, ss 20.

\# There had been only one prosecution in the last 20 years.

\# There is no legal provision for registration, although the Parks and Wildlife Service keeps a register of sites which have been identified as a result of archaeological work and surveys.

\# There are no legal provisions concerning the protection of confidential information, or to limit the information that has to be revealed.

\(^31\) Hebrews 9:27

\(^32\) Revelations 11:2.
Robinson was a practicing Christian and on his journey of reconciliation witnessed several funeral rites. Practices he noted included the following: an elaborate cremation pile was made after death, which is suggestive of belief in an afterlife; there was a complex spirituality that used the spirits of the departed as healing and to tell of danger; in death Tasmanian Aborigines used charms of dead relatives' bones to ward off evil spirits and sickness; the names of the deceased were not used and burial places were avoided, a dying person would usually know before they died as dead relatives' spirits would often visit them; on death a cremation pile would be built and the body put in a sitting position; the following morning the pyre would be lit after people with illness had slept around the pyre during the night, hoping that the dead person’s spirit would cure them as illness was caused by devils or evil spirits.

The law in my opinion suffers from a European based perspective that confuses Aboriginal heritage with unchristian pagan beliefs. There is an inherent spirituality of Aboriginal traditional law that transcends particular creeds. Aboriginal heritage protection, in whiteman’s terms, will sanction ancestor’s bones being shoveled into plastic rubbish bags because the European perspective tends towards the material, utilitarian viewpoint, even though no offence was probably intended. If “heritage” is only looked at in terms of the material, buildings and balancing economic outcomes, then there will always be the possibility of the inappropriate dealing of ancestor’s remains.

In the Wamba case legal semantics allowed a golf club to be built over a burial ground. The Federal Minister of Aboriginal Affairs had gone through “the steps to consult Aborigines” but it was up to his discretion whether or not he declared the site a protected area:

when Parliament uses the English language the word ‘may’ in a statute means ‘may’ (which) is generally an empowering word which imports a discretion to do or not to do something.

The leading case in Tasmania that considers the priority attached to Aboriginal heritage, as opposed to other values, remains the 1983 High Court decision of the Tasmanian Dams case, which predated the Commonwealth legislation referred to above. It was the World Heritage listing of the site which was protected by Commonwealth regulations specially passed by the Hawke federal government to stop the damming of the Franklin river. Aboriginal heritage values were a distant second even though several Aboriginal caves, including Kutikina handed back in October 1995, would have been flooded:

it cannot be said that the rules of customary international law cast any obligation on a nation to preserve the heritage (meaning Aboriginal) within its own boundaries.

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33 Plomley, Friendly Mission, p545.
34 Roth, H. Ling (1899) The Aborigines of Tasmania (fascimile 2nd ed.), Fuller’s Bookshop, Hobart.
35 Plomley, Friendly Mission, p543.
36 Wamba Wamba Local Aboriginal Land Council v Minister Administering Aboriginal & Torres Strait Islander Heritage Protection Act 1984 (1989) 23 FCR 239.
37 Ibid, para 28 & 29, per Lockhart J.
38 Commonwealth v Tasmania (1983) 57 ALJR 450 (“Tasmanian Dam case”).
39 Ibid, per Gibbs CJ, at para 98.
The High Court in the Dams case showed an inability to use customary international law to enforce an obligation to preserve Aboriginal heritage per se. Albeit the case used a fairly broad construction of the use of the external affairs power to override State law on the environment (World heritage), but it displays an attitude, in my submission, of indifference to Aboriginal custodianship—because international law is not specifically directed to preserving indigenous heritage values as an end in itself.40

Only those laws “designed to perform an obligation or receive a benefit under the Convention” were to be covered by the external affairs power,41 which is the power the High Court used in the earlier case of Koowarta,42 which concerned the applicability of the International Convention against Racial Discrimination and its reception into Australian law. Mabo used the Koowarta reasoning as a foundation for its determination that failure to recognise native title was racially discriminatory.43

Aboriginal connection to the Ancestral Beings is not recognised on its own terms by the whiteman's legal system, and as this Aboriginal axiom of the dreamtime finds no ready equivalent in the whiteman’s legal system, it is therefore easily circumvented. The High Court majority in Kartinyeri, which was essentially about protecting women’s secrets and Aboriginal grave sites in the path of the proposed bridge, decided on “finality” as a matter of public policy. The whole saga had involved three court cases and two public inquiries, which had stretched over some seven years and cost lots of money. In the absence of the recognition of the dreamtime law of respect to the ancestors, the legal barrier in the whiteman’s law that was satisfied in Kartinyeri was unsatisfactory—namely that Aborigines were not being singled out as a race— but a valid law (Aboriginal Heritage Act) was being partly repealed or modified; and there was no constitutional barrier to this fait accomplie.44 The point is there was no Constitutional protection for Aborigines as the original owners of the land either.

Though Kirby, the sole dissenting Judge, was not impressed by this reasoning he could not refer to the parallel system Aboriginal law as a way to halt this disrespect:

the Bridge Act ... is...detrimental to all .. it removes their opportunity of making an application...the aphorism that “what Parliament may enact it may repeal” must give way to the principle that every law made by the Parliament under the constitution must be clothed in the raiments of constitutional validity.45

His point was that Parliament's power under the Constitution:

does not extend to the enactment of laws detrimental to, or discriminatory against, the people of any race (including the Aboriginal race) by reference to their race.46

40 Specifically the Convention for Protection of World and Cultural Heritage
44 Kartinyeri v The Commonwealth 195 CLR, 337, per Brennan CJ at p356.
46 Ibid, para 159, per Kirby J who exhaustively analysed the Parliamentary debates behind the 1967
However parliament is sovereign, it should have recognised a parallel system of Aboriginal laws as part of the package of the 1967 amendment to the Australian Constitution. In embracing Aborigines as full citizens, there was a need to recognize their ongoing custodianship, and installing as a matter of whiteman’s law, all due protections for heritage contained in Aboriginal law. Kirby came close by saying the law must reflect changing community attitudes, which are increasingly in favour of according special protection to Aboriginal heritage.\(^{47}\)

A substantial body of human rights obligations that has arisen over the last twenty-five years now inferentially and directly binds Australian courts in the constructions of the laws of Australia, and the Balliol Judicial Colloquium of 1992 determined:

in proper and lawful ways, to bring the basic principles of Human Rights down from the tablets of International treaties into the daily work of the courts of the common law operating throughout the Commonwealth of Nations and beyond... (as to) reflect the universality of human rights.\(^{48}\)

**Tebrikuna and the Ghost of Terra Nullius**

The Tebrikuna case,\(^{49}\) in 1994, therefore arose against this background and that of the ineffectual Tasmanian Aboriginal Relics Act 1975, which recognises and continues the fiction of the last Aborigines dying in 1876.\(^{50}\) There is great Aboriginal dissatisfaction with the "Relics" Act\(^{51}\) and the Tebrikuna case in my submission was partly to rectify the lack of ownership of relics by Aboriginal people and to assert the principle of custodianship. Parks & Wildlife as the government department responsible should have assumed responsibility for the Tebrikuna relics on behalf of Aboriginal people.\(^{52}\)

There was to my reading of the case no objection on the part of the Aborigines to the coroner at least initially looking at the Tebrikuna bones to make a determination, but the question was how long would this take? The case was about asserting Aboriginal custodianship of theses ancestral bones, as against the ghost of terra nullius, which is still very much in the Australian public subconscious.\(^{53}\) Indicative of the legal framing

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\(^{47}\) Ibid, per Kirby, para 156: “they are read with different eyes at different times in the light of different necessities.”


\(^{49}\) TAC & TALC v Wilson, Supreme Court of Tasmania A38/1994.

\(^{50}\) Aboriginal Relics Act 1975, definition section (S 2(3)c), S 11, respectively.


\(^{52}\) Aboriginal Relics Act 1975 (S 12 (2)): “Without prejudice to the acquisition of a relic under this section by any other means, the Minister may serve notice on the owner of the relic informing him that the relic is required by the Crown and requiring him to deliver the relic to the place specified in the notice, and on the relic so delivered it vests in and becomes the property of the Crown.”

whereby non-justiciable issues determine legal outcomes,\textsuperscript{54} is the fact that Aborigines are marginalized from the centers of political and legal power.\textsuperscript{55} They are not stakeholders in the operation of the law.

The trial judge Cox J ruled as inadmissible some archaeological evidence on the grounds of hearsay. Had this evidence been allowed, it would have overwhelmingly established the antiquity of the remains, for Aboriginal curator Lehman stated:

\begin{quote}
this location is an Aboriginal burial site called Tebrikuna where a "reburial" had taken place the year before of bones that had been returned from the Tasmanian Museum.\textsuperscript{56}
\end{quote}

It was open for Cox J to take judicial notice of these publicly known facts but he chose not to, and in addition seemingly ignored the weight of evidence.\textsuperscript{57}

In my view, the Tebrikuna case raises several matters of significance:

a) Recognition that the law sometimes imposes a mind set that the Aborigines of Tasmania had become "extinct" at a certain time;
b) That no Aborigines could be classed as descendants to claim any relics;
c) The actuality of presumed illegality of the handing over of relics to anyone other than the Parks & Wildlife department, as the legislation under S20 imposes penalties on any one who is not entitled to lawful possession;
d) In order for the coroners office to establish the age of the relics, tests would result in partial destruction and are an offence under S14 (1) (a) of the Aboriginal Relics Act;
e) The difference between custodianship and ownership;
f) The continuing problems that Aborigines face with the law of evidence, namely hearsay, on their knowledge of Sacred sites.

Unfortunately, the Tebrikuna case was not appealed nor was it fully argued in terms of extending the law, as clearly the coroner could not be considered an adequate custodian in the eyes of Aborigines. It was clearly very distressing to the Aboriginal community to have those who they did not want handling the relics.

There was adequate legal basis to have argued that the Tasmanian government should have been more sensitive, as the Milpurrurru case\textsuperscript{58} had been commenced in the Federal Court in 1993 and achieved wide publicity. It had argued for the protection of indigenous secrets from those who are not entitled to access as of right. The applicants, in that case the artists, had pleaded defamation to the culture and the danger to the integrity of indigenous community, of publication. Unfortunately, Milpurrurru only came to trial between the 25th and 29th July 1994, with a decision on the 13th December 1994:

\textsuperscript{56} Affidavit Greg Lehman of TALC, TAC & TALC v Wilson, Supreme Court of Tasmania, A38/1994.
\textsuperscript{57} Ibid, p 6, 7 and p 11 transcript (19/5/94), and per Cox J, p 6 Judgement (27/5/94).
\textsuperscript{58} Milpurrurr & others v Indofurn Pty Ltd (1994) 54 FCR 240.
The glimmer of precedent for this line of reasoning was the 1976 case of Foster which had protected against publication of secrets which would have done serious damage to the authority of Aboriginal custodians of the culture.\textsuperscript{60} In my view, it embodied a principle of ‘defamation of culture’ within the private common law concept of confidentiality, because the initiated would not have understood the secrets and may have distorted their application. Milpurrurruru took the principle further into the zone of the public domain by:

enshrining sacred law as a concept in its own right and also establish(ing) the ground breaking rule that the profit motive should be subject to fair dealing in respect of Aboriginal heritage even if the secrets are not covered by the conventional law of copyright and are in the public domain.\textsuperscript{51}

In the 1995 South Australian case concerning the Hindmarsh bridge, it was held that legislation protecting Aboriginal custodianship was a special measure authorised by the Commonwealth Racial Discrimination Act and that whilst

the protection is not absolute, but qualified, ...it remains as a whole a provision which is directed to the better enjoyment by the Aboriginal race of their culture...a fresh category of public interest immunity should be recognized, covering secret and sacred Aboriginal information and beliefs\textsuperscript{62}

Creative use of the common law in such cases has given some light and life to the area of the protection of indigenous heritage, at least giving rise to a necessity for consultation, which is the spirit of the law that Kirby was referring to in the High Court consideration of the Hindmarsh case\textsuperscript{63} referred to above.

Consultation is a first principle and imports equality, but the reality is that in the area of heritage protection, the spirit of the law is as unequally unrecognised as the ‘spirits of the ancestors’. The European view is to prefer things that can be touched, not the invisible living, ancestral spirits. We worship the profane over the sacred, which is an old issue for humanity for when Moses came down from the mountain he heard much celebration instead of prayer:

It is the sound of revellers that I hear.\textsuperscript{64}

\textsuperscript{59} Ibid, per von Doussa J, para 17.
\textsuperscript{60} Foster v Mountford (1976-78) 29 FLR 233; reasons for decision at p234.
\textsuperscript{61} Milpurrurruru case, pp 280, per von Doussa J.
\textsuperscript{62} Aboriginal Legal Rights Movement Inc v The State of South Australia and Iris Eliza Stevens (No 2) (16 August 1995), Full Court of the Supreme Court, per Doyle CJ.
\textsuperscript{63} Kartinyeri v Commonwealth [1998] HCA 22.
\textsuperscript{64} Exodus 32:18.
It was the sound of the worshipping of the idol of the golden calf over the worship of the silent living God: I AM. The people wanted something they could touch, the idol of materialism over the invisible spirit of the place.

Ancestors’ spirits have a real presence for Aborigines which is not appreciated by the dominant European culture, as famously pointed out in Stanner’s book "Whiteman got no Dreamin’". It is a question of the subtlety of the dreamtime religion, for these ancestral spirits have ethereal presence that is quickly smothered by the material or by religious sensibilities that do not recognise the spiritual connection to the divine.

In the Wamba case the Federal Court did not want to decide on the "merits" of the case as some of the bones in that case had been located and reburied and it would probably have cost too much to look for others. The Court used the fiction instead that there had been "sufficient" consultation, but the definition of what constitutes "sufficient" would depend on whether you were an aggrieved Aboriginal or a developer. As if to justify itself the Court said:

it is a difficult and delicate situation. It is not for this Court to enter into the merits of the dispute between the parties. The juridical function is to ensure that any actions of the Minister which may be contrary to law (including any failure to observe the rules of natural justice) are corrected.

What the Tasmanian case of Tebrikuna did prove is that the spirits of the ancestors as exemplified in their bones are alive and that:

to be an ancestor you do not need to be dead, but (we the living) do need to know the dead....the invisible world and how it touches the living.

The Tebrikuna case allowed the voices of the ancestors to be heard, though it resulted in a legal loss. For the Aboriginal people, because the injunction was in place from the 18th of April to the 27th of May 1994 - some 39 days - it was a time when their customary law overrode the coroner’s jurisdiction, albeit temporarily. It was a psychological victory and symptomatic of the recognition of the differing concepts between European and Aborigines of life and death, and that the spirits of the ancestors continue.

Direct experience of the spirit through communion directly with the ancestral and godly elements is necessary to understand this different way of thinking. Under Aboriginal lore the dead are respected as entities in their own right and are still being "heard on the voices of the wind", as detailed in one of the supporting affidavits in the Tebrikuna case.

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67 Wamba Wamba Aboriginal Land Council v Minister Administering Aboriginal & Torres Is Heritage & Protection Act, 86 ALR 161.
68 Ibid, per Lockhart J para 55.
69 Hillman, The Soul’s Code: In Search of Character and Calling, p89.
71 Affidavit of Tasmanian Aboriginal elder, Laurie Lawry in TAC & TALC v Wilson Supreme Court of
The "cut off date" in the Aboriginal Relics Act 1975 is the death of Truganini in 1876.\textsuperscript{72} One hundred years elapsed after her death before her skeleton was returned and disposed of according to her wishes. In the interim, it had been on public display in a museum as an example of an extinct species of human being.

On the 30th April 1976 a service was held at the Cornelian Bay crematorium for Truganini, the skeleton was viewed and identified by a doctor who pointed out various things which were related to Truganini's recorded history e.g. missing finger, height, broken right forearm. The coffin was placed in the furnace. Truganini's ashes were scattered on a lovely sunny morning about 10:30, a porpoise was swimming around us when the ashes went down. Truganini had asked for this to be done, but it took a hundred years to come about.\textsuperscript{73}

The pretext for the treatment of her remains might have been scientific exploration pursuant to the theory of evolution\textsuperscript{74} but the actual practice was and is regarded by Aborigines as barbarism of a high degree, and literally saturated with blood.\textsuperscript{75} I was only to learn and understand these things by having direct contact with the Aborigines, the descendants of those who died in various ways, due to the direct or indirect genocide of the whiteman:

as I sat around the campfire at the Aboriginal Tent Embassy at the Old Parliament House in Canberra in August 1996 listening to Jim Everett who told me I was a special type of person, for a Lawyer at that. I thought I know nothing! I am just a simple whiteman struggling with my own Spirit.\textsuperscript{76}

The Kingdom of Innocence

What I felt as I sat around the campfire is that I had not come to terms with my own wound in my psyche, so I felt isolated even as Everett was praising me. One of the aspects of child abuse I had experienced was a loss of the sense of innocence and the ability to process my own secret world at my own pace. Abuse tends to turn the child against itself.\textsuperscript{77} It is necessary to protect individual secrets if a person is to have a sense of integrity.

Tebrikuna's Effect As a Spiritual Reality

The Tebrikuna case brought into action the spirits of the ancestors plus the historical lack of completion between Aborigines and the whiteman. The way Aborigines and their remains had been treated in the history of Tasmania was shameful. There was a more

\textsuperscript{72} The Act says at (S 2 (3) (c)): "the remains of the body of such an original inhabitant or of a descendant of such an inhabitant who died before the year 1876 that are not interred (in a cemetery)."


\textsuperscript{74} Pybus, Community of Thieves, p181.

\textsuperscript{75} West, Pride Against Prejudice: Reminiscences of a Tasmanian Aborigine, p113.

\textsuperscript{76} M J Kidd, field note (16/8/96).

\textsuperscript{77} O'Donoghue, Eternal Echoes: Exploring Our Hunger to Belong, p50.
mysterious aspect to the case, concerning the significance of its timing and its legal import. It came after the inquest into the death of an Aboriginal teenager shot by the police in 1993. In an unusual confrontation the youth was armed with a plastic toy gun, but the police refused to call the Aboriginal field officer to defuse the situation. Instead after warning him, they shot the teenager. Wilson, the same magistrate, was involved as coroner and in the writer's own knowledge had been criticised for cultural insensitivity to Aborigines in that particular case.

There is some anecdotal evidence that the Tebrikuna case marked a turning point in relations between the Aboriginal people and the government, leading to a more active commitment to heritage consultation by the government and to the handing back of Aboriginal lands.

The Tebrikuna hearing concluded some two days before the government/Aboriginal Forum to discuss and consult on the handing back of Aboriginal lands discussed below. The Forum was a watershed in relations, so perhaps the Tebrikuna case was the spiritual midwife to this process as the injunction was not finally lifted until after the Forum, on the 27th of May 1994.

The ancestors were hard at work

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78 Chapter fourteen.
Chapter Eight

Repatriation of Artefacts

The "La Trobe case" marked a significant turning point in relations between Tasmanian Aborigines and university led exploration of the past, as it was against this background that in June 1995 the Tasmanian Aboriginal Lands Council (TALC) decided to sue La Trobe University for return of some non-human artefacts. Though it could well be that in the minds of the scientists at La Trobe these artefacts were not as important as bones, it is important to reiterate that as it is the spirit that must come to rest so Aborigines did not make this distinction. This case was a culmination of a deterioration in relations between TALC and the university over eighteen months previously, which is described below; and it was not seriously in question that the TALC had standing to require La Trobe university through its archaeology department to return that which it had kept after the permits ran out. I first heard of the La Trobe case whilst visiting the Burnie office of the Tasmanian Aboriginal Centre in June of 1995 respect of the Everett case and I was able to gauge the level of strong community feeling against La Trobe University. I got the feeling at the time that it was very much a case of "enough is enough", that there had been a background of general insensitivity shown to Aboriginal people by what amounted in their eyes to professional grave robbers. When I visited the Flinders Island Aboriginal Association in February of 1998 there was still strong feeling against Sydney University, which had done some digging and excavation in 1968 on the Wybaleena site (see illustration 13), but had not reported back to the Aboriginal community, or consulted with them on the results.

...the granting of the permits (in the La Trobe case) and the interfering with the relics on those sites was something that was controversial as far as the (Tasmanian) Aboriginal community was concerned.

Cultural Imperialism

Truganini's bones being on display for many years in a museum and archaeologists excavating Aboriginal sites and taking what ever they chose for analysis and storage, are the backdrops to this case of the forced repatriation of some non-human artefacts from La Trobe University back to Tasmania in 1995.

The Sacred wound is really the non-recognition by others of the ability to control one's own life. In one sense we are not in control because life is an un-folding, but if we are continually denied our boundaries and lose the ability to say no to actions that are threatening and invading, then we lose self-esteem, the ability to love ourselves.

1 TALC (Sainty) v Allen VG 643 of 1995 Victorian Division Federal Court.
2 See chapter five: The Sacred Journey to Reclaim and Restore the Domain Over the Lands.
3 I knew the plaintiff "Rocky" Sainty through working at the TAC. His name derives from the large number of archaeological digs he had been present at as an Aboriginal worker.
4 Interview John Clark (4/2/98).
5 Submissions (5/7/95) Merkel QC (later Justice Merkel), counsel for TALC; TALC (Sainty) v Allen VG 643 of 1995 Victorian Division Federal Court.
This personal statement of the Sacred wound was inspired by the La Trobe case. The fate of Truganini's bones and their display in a museum is the prototype of colonisation of a particular group of people. As a nation we need to stop the continued colonising of the weaker or poorer so that an elite may carry out research or simply grow richer. The appropriate place for storage of human or non-human artefacts is not in a museum or university but in a burial ground, with the sense of sacredness preserved. The customary law in relation to the disposal of artefacts was stated by Michael Mansell:

…it is better...they go back to their general area than sit in museums...it helps
"settle the spirit". This applies to all artefacts as the items are a guidance
of who you are, where you come from...your make-up.7

It is important to realise that Aboriginal people regard the disturbance of the grave or occupation site as a disturbance of the spirit, so the distinction between bones and non-human artefacts, whilst legally made, is not a reality for the dreamtime. Whether Aboriginal customary laws survived colonisation8 is not a rhetorical question but one capable of much development as there has been extinction of Aborigines by legislation at various levels in Australia.9

The Sacred sites case10 and more recently Milpurrrru11 have attempted to translate or correlate Aboriginal laws into parity alongside European concepts of law:

The recognition of the sacred and religious significance of these paintings, and the restrictions which Aboriginal law and culture imposes on their reproduction is only now being understood by the white community.12

Compare this compassionate approach to the harsh language of S 2(3)(c) Aboriginal Relics Act:

the remains of the body of an original inhabitant of Tasmania who died before 1876
not interred in a lawful burial ground or marked grave is a relic, but no object
made or created after the year 1876 shall be a relic.

This extract from the Act is an example of the colonising of Aboriginal heritage:

...colonisers had little regard for indigenous law...indigenous systems of law...would have
challenged the view of the social anthropologists and international jurists of the day that 'natives'
should be grateful for the blessings of colonisation.13

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10 Aboriginal Sacred Sites Protection Authority v Maurice (1986) 65 ALR 247.
11 Milpurrrru & others v Indotum Pty Ltd 54 FCR 240.
12 Ibid, per Von Doussa J, para 16.
Traditional laws have more to teach the legal system about sacredness, sense of place and personal sovereignty and the courts will take into account the likelihood of traditional punishments, as happened in the well known murder case of Sydney Williams. The South Australian Supreme Court sent Williams back for punishment by traditional means because under that law he had been provoked by the deceased woman. The main aspect of Williams’ traditional punishment was to submit to a course of instruction in tribal lore by the elders at a secret location.

Customary Aboriginal law recognises that interaction between the two systems is a two-way process as:

punishment of the Aboriginal law breaker may to a large extent be determined by the success or failure of action in the Anglo-Australian Courts.

However the basis for non-recognition of Aboriginal customary law always has been and continues to be “the one law for all” rationale.

This has its most recent expression in one of the unsuccessful stolen children cases, Cubillo:

section 6 of the Aboriginals Ordinance permitted the Director of Native Affairs, a Commonwealth public servant, to undertake the care, custody and control of a part Aboriginal child ...against the express wishes of the child’s family.

This can hardly be called a two way process of informed consent as the victims themselves were marginalised from the very political and legal process. In the famous High Court case involving Albert Namatjira’s failure to overturn his jail sentence for supplying liquor to wards of the state, the case turned on the fact that the young men were not aware that they had been declared wards, nor was Namatjira. Colonialism is not only carried out on a macro level but removes the ability of a people to manifest their beliefs, culture and care for their children on an individual level.

The other point of divide is that there is no consistent approach to Aboriginal heritage in Tasmania. The area is covered by a multiplicity of Acts and there is no one Act that

Australia (internet copy accessed October 2000).


16 Ibid, para 16.

17 Sarre “Aboriginal Customary Law”.

18 Per O’Loughlin J : summary of Judgement, at para 4, Cubillo v Commonwealth [2000] FCA 1084 (11 August 2000). The implication of the failure of the various stolen children cases is that a statutory right to take children of a particular racial group is not discriminatory as long as it was not expressed in a discriminatory fashion.

19 See the discussion of Kirby J, para 157, Kartinyeri v Commonwealth [1998] HCA 22. The reason for the 1967 referendum was to remove discrimination against Aborigines and make them citizens.

20 Namatjira v. Raabe (1959) 100 CLR 664.
deals with the issue comprehensively or to the satisfaction of the Aborigines. 21 The need for reform has been well argued 22 but no action has been forthcoming despite the prodding of the Courts in the Tebrikuna case dealt with earlier 23 and the La Trobe case looked at in this chapter, which dealt with non-human artefacts.

The Aboriginal Relics Act only applies to relics created before 1876 and defines “relics” to include:

(a) Any artefact, painting, carving, engraving, arrangement of stones, midden, or other object made or created by any of the original inhabitants or the descendants of any such inhabitants;
(b) Any object site or place that bears signs of the activities of any such original inhabitants or their descendants. 24

The legislation does not give any special status to Aborigines by way of either consultation, ownership or custodianship. This fact alone establishes that the primary aim of the legislation is not to protect Aboriginal interests as such. The La Trobe case went beyond that as will be shown.

Murphy’s formulation in Onus 25 summed up the frustration Aborigines experience in the heritage area:

Australia is a nation composed of peoples deriving from a variety of cultures, which are not restricted to Western European... many of which are not “Judeo-Christian”... “Western European Judeo-Christian culture”, if there is such a culture, has no privileged status in our courts.
Aboriginal culture is entitled to just as much recognition. If a cultural or religious interest founded on “Judeo-Christian Western-European” traditions is enough to establish standing, then a cultural or religious interest founded on aboriginal tradition is also enough. There is no justification for using “standing” to introduce religious, racial or cultural discrimination to the courts. 26

In that case the lower courts had held in considering whether Aborigines should be given standing that Aboriginal spiritual interests were not a sufficient interest over and above the interests of other Australians. The High Court in looking at the Onus appeal 27 essentially reversed the Australian Conservation Foundation (ACF) case, 28 which had denied the ACF environmental group standing to challenge the non-compliance of the federal government with environmental impact legislation over a proposed development in Queensland. The case held that ACF did not have a greater interest than other Australians in the issue.

24 S 2 (3) Aboriginal Relics Act 1975.
26 Ibid, para 11 at p41.
27 Ibid.
In this case (La Trobe) the plaintiffs sought to be given the power to effectively enforce the Aboriginal Relics Act 1975 for three reasons:

a) The Tasmanian Minister concerned had directed La Trobe to return the relics to TALC.

b) Under the authority of Tickner v Bropho,29 TALC had the right to seek the upholding of the duty for preservation of cultural heritage under the International Convention.

c) TALC had the necessary interest to give it standing as defined (at that time) in a recent industrial relations case in South Australia.30

The law on standing gave TALC the right to sue in respect of the expired permits because as the Aboriginal representative body for matters of heritage in Tasmania, it had a special interest:

A plaintiff has no standing to bring an action to prevent the violation of a public right if he has no interest in the subject matter beyond that of any other member of the public; if no private right ... there is standing to sue only if he has a special interest in the subject matter of the action.31

In the Tasmanian context the Peacock case32 giving standing to a member of an environmental organisation to sue the State Government over the Tarkine Road, Slicer J of the Tasmanian Supreme Court laid down several criteria to be satisfied:

whether the claim is made bona fide,
reasonable prospects of success,
whether the plaintiff is a true plaintiff,
whether a plaintiff seeks to enforce a public right or obligation.33

In my view political considerations had played a part in the High Court's determination of the ACF case. The Peacock case granted standing in similar circumstances, and from a reading of Peacock it is, first, a matter of construction by the judge as to what constitutes special interest. Secondly, in Peacock it is as much a question of the bona fides of the applicant.

The English authority of Bedford v Ellis established the test that with appropriate expansion, still stands today:

Given a common interest and a common grievance a representative suit was in order if the relief sought was in its nature beneficial to all that the plaintiff proposed to represent.34

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29 114 ALR 409.
30 Shop Distributive & Allied Employees v Minister Industrial Affairs 129 ALR 199
32 Barrett-Peacock v State of Tasmania 22/12/95 Supreme Court of Tasmania A90/1995.
33 Ibid, P3ff per Slicer J.
Lack of Real Veto

The subject of the La Trobe case was permits that the Tasmanian government had granted to the university without a formal consultation process with the Aboriginal community. Although Parks and Wildlife, the department responsible, certainly took the views of the Tasmanian Aboriginal Centre into account, it was not a legally sanctioned transaction. The Tasmanian Aboriginal Land Council (TALC) was formed in 1992 and these permits predated this. Formal processes had been put in place for consultation around the time of the beginnings of the La Trobe case and it is clear Parks and Wildlife refused the renewal of the permits under this new policy but once again there was not a legal requirement. There had evolved, by the time of the La Trobe case, a greater awareness of Aboriginal sensibilities and TALC played an active part in the management of Aboriginal artefacts even though there is no mention of a consultation process in the state legislation, the Aboriginal Relics Act 1975.

This area of sensitivity over the digging into other people’s past has in practice been an aspect probably least understood by European pragmatism, which makes the distinction between human and non-human artefacts. The conventional scientific rationale cannot contain such perspectives, as the following quotations demonstrate:

a) ...you carry the spirit of this place that you come from...the only true people in this country that have an identity are the Aborigines in that sense because we belong here.

b) These discoveries are transforming notions of Late Pleistocene human behaviour in Australia, (and) the rapid spread and adaptability of modern humans to adverse climatic conditions...it is permitting an informed...debate on Australian Pleistocene prehistory, in terms of time and behavioural resolution...(and) bulks large on the international archaeological horizon.

Both perspectives are worthy and the challenge is to reconcile them in a synthesis, as it is in the Aboriginal interest that the wider society really understand Aboriginal culture both past and present. Aboriginal cultural rights go beyond the merely uttered words of custodianship and ceremony and it is hard for people brought up in European culture to understand the subtlety of these aspects of a religious system. If we take a framework of striving for connectedness, as illuminated by Berry, the various viewpoints can be reconciled as a surrender to the domain of God in the earth.

Ancestor worship is completely misunderstood by the wider society as a form of pagan devil worship and we will see that Robinson described it in those terms. Generally, the

34 Bedford v Ellis (1901) AC 1, at p97, per McNaughton J.
35 See below
38 See discussion in chapter one and ref. p 105 Dream of the Earth (Berry).
worship of ancestors has been painted as an evil thing because of the whiteman’s own misconceptions:

ancestry in our (European) culture implies chromosomal connection (to the person)
...from whom I have inherited bodily tissues... (thus) biogenetics replaces the spirit world.

The spirits of the ancestors could be in the land or near a particular outcrop of rock. Robinson reports Mannalargenna telling him that he and his tribe, who were at large during the Blackline of 1830, and were able to elude the whiteman as:

devils...told them when the white was coming...devil walked about with them and kept watch.

During the travels Mannalargenna pointed out to Robinson various burial sites, which I noticed were also a reference point for mention of "the devils", so the reference by the Aborigines of "devils" guiding them may have been the spirits of the ancestors.

Robinson in his journal was sceptical, because he was insensitive and more interested in money and converting the Aborigines to Christianity rather than possessing a genuine interest in their concepts of religion. But perhaps Aborigines did receive some form of special guidance from the ancestors, for as here are some contemporary accounts, written by settlers, which testify to Aborigines’ superior skills in eluding capture:

The settlers seldom pursue them from a despair of finding them in the almost inaccessible fastness.
They exercise such cunning...keen sighted...well acquainted with the ....woods...(we can't ) track them.
Coming up on them by day (light is) quite hopeless.
No one can conjecture how crafty and subtle they act in the bush....the facility and rapidity with which they move to some secret hiding place.

Taken at face value these settler comments attest to frustration, but they also show underlying murderous intent and these words also speak plainly of how ill equipped the Europeans were on many levels to counter Aborigines in the bush. The Aborigines might well have been receiving guidance from invisible sources, the unseen hand of the ancestors and perhaps the Aboriginal version of God.

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39 Chapter twelve.
40 Hillman, The Soul’s Code: In Search of Character and Calling, p89.
41 The Blackline, an idea of Governor Arthur's, took place in October 1830. It involved three thousand soldiers and volunteers walking in a line in order to drive the Aborigines into Tasmania’s bottom south eastern corner, Arthur’s Peninsula which probably takes its name from this event. It was unsuccessful in terms of capturing Aborigines, but it was an effective psychological threat to the Aborigines, demonstrating the European superiority in man-power and weapons.
42 Ploemey, Friendly Mission., p545.
43 Ploemey Friendly Mission.
44 Pybus, Community of Thieves.
45 Refs respectively: (Army Captain CSO/1/323 TSA); (Hobart Town Courier 5/4/1828); (E Dumaresq 6/11/1829 CSO/1/316 TSA; (T Hooper 19/8/1830 CSO/1/316 TSA); (1831 return to an address CSO/1/316 TSA) all from H. Reynolds With the White People.
Misunderstanding of the concept of ancestor worship and lack of consultation were part of the frame of reference for the dispute when La Trobe applied for an extension of the permits. When this was refused for the first time ever, that was the subject of some amazement on the part of the university, who attempted to negotiate a solution, to no avail. Legal framing holds that background issues are just as important as legal issues in determining the outcome of litigation. La Trobe University had a long association with Tasmanian Aborigines and both Professors Allen and Murray of their archaeology department worked closely over a number of years with various members of the Aboriginal community. Documents placed before the Court by La Trobe suggested very strong consultation with Aborigines even before the setting up of TALC.

To the Aborigines the relics in question were not "just" old tools, discarded animal bones, or the remains of middens. They were the spiritual medium of communication with the ancestors who once possessed those things; as such they give access to the spirit of the place of the land. The case brought to the surface the tensions generated by the past, acknowledged by the experts themselves, that archaeology and anthropology have not always proceeded with the interests of indigenous people in mind.

The matter came before Justice Howard Olney on 5 July 1995, at which time an Interim Order was obtained for the material to be delivered to the Museum of Victoria pending a full hearing and La Trobe University was joined as a party. On 24 July 1995, the Court heard argument from both parties regarding the continuation of the Interim Order. On 28 July 1995 Olney J confirmed the original order and the relics were subsequently delivered to the Museum of Victoria for safekeeping. In his judgment Olney J encouraged Cleary, the Tasmanian Minister for Parks and Wildlife, to intervene and the Minister directed that the material be returned to Tasmania. In essence, this finalised the litigation.

Counsel for La Trobe argued that a spiritual connection with the items did not raise legal issues of ownership and also argued that the common law concept of detinue was applicable; that the university had just become involuntary bailees after the expiry of the permits:

"an interest, for present purposes, does not mean a mere intellectual or emotional concern. A person

47 Parks & Wildlife Service letter to Prof Allen 22/12/93 saying that in order to process the application for extension consultation would now be necessary with TALC.
48 Material submitted by La Trobe in the case attached to affidavit of Dr Tim Murray.
49 Letter Dr Tim Murray (15/2/1990) to Mike Strong of the TAC Hobart concerning the discovery of contemporary Aboriginal artefacts at the Burgley site dating from the 1830s at the VDL.
53 Arguments of counsel Dr Buchanan at p38-39 transcript 24/7/95 TALC (Sainty) v Allen VG 643 of 1995 Victorian Division Federal Court.

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is not interested within the meaning of the rule, unless he is likely to gain some advantage, other than the satisfaction of righting a wrong, upholding a principle or winning a contest, if his action succeeds or to suffer some disadvantage, other than a sense of grievance or a debt for costs, if his action fails.\footnote{Australian Conservation Foundation v Commonwealth (1980) 146 CLR 493, per Gibbs CJ, p530.}

This argument does not run with the principles in Onus,\footnote{Onus v. Alcoa of Australia Ltd. (1981) 149 CLR 27, per Stephen J, para 9.} which overruled the Australian Conservation Foundation (ACF) case\footnote{Australian Conservation Foundation v. Commonwealth (1980) 146 CLR 493.} and significantly changed the law in favour of the indigenous people’s spiritual interest in objects of their ancestors. But it is peculiar that counsel for La Trobe were relying on the restrictive ACF case when Onus had found that standing should be granted when there are issues of public importance involved:

the absence of mere material interest in that subject matter, in the sense of property or possessory rights, will not, as the law now stands, be in itself any bar to standing.\footnote{Onus v. Alcoa of Australia Ltd. (1981) 149 CLR 27.}

An argument that concepts such as indigenous relationship to the ancestors are too tenuous to be considered a legal right could only be termed an unattractive argument\footnote{Tavita v. Minister of Immigration (1994) 2 NZLR 257: wherein a deportee argued that NZ was bound to take into account the Convention and the International Covenant on Civil and Political Rights.} not based on international precepts of human rights, and that courts need to listen to human rights norms as a matter of public policy.

When there is a will, Courts are able to construct ways around the difference between Aboriginal and European sensibilities. In the Milpurruru\footnote{Milpurruru & others v Indofurn Pty Ltd (1994) 54 FCR 240.} case, though the intellectual ownership of designs on carpets vested with the individual indigenous artists as opposed to the Aboriginal community, the Court was able to find a way around the problem. It stopped production of the carpet on the basis of the harm it would do to indigenous religious practice by a false representation under the Trade Practices Act.\footnote{Ibid.}

The La Trobe case was a matter of cultural autonomy as the effect of the whiteman’s non-recognition of Aboriginal cultural sensibility is to cause Aboriginal religious practices to veer towards the accepted dominant European values.\footnote{Mansell, Michael (1996)"Barricading Our Last Frontier-Aboriginal Cultural and Intellectual Property Rights" in Land Rights Twenty Years On: Our Land, Conference proceedings, 16 &17 August 1996, Canberra.} If TALC had not been successful in this case it would have involved TALC giving up the important right of getting the items back in order to settle the spirits. The effect of veering towards the cultural norm is to force Aboriginal sensibilities to:

assimilate into the values of white society... the more Aboriginal artists draw on their culture...the less likely will ownership of their product be recognised...more they draw on European values...the more likely they will gain...protection.\footnote{Ibid.}
The university tried to imply that TALC were acting in bad faith in bringing their action, yet they readily conceded TALC was not a party to previous attempts to resolve the matter between Parks and Wildlife and the university, particularly in the previous January (1995). The university argued estoppel by way of implied contractual agreement. In response Olney J found that Parks and Wildlife were not estopped from enforcing the return of the items pursuant to the expired permits under the Aboriginal Relics Act 1975 as the doctrine of estoppel does not apply to actions carried out according to legislation, and in this case the Minister had the power to direct that the items be returned to a third party, namely TALC.

The objection of Professor Murray of La Trobe to the "early" return of the items was based on the principle that a forced premature repatriation would involve substantial information loss if the material were disposed of by scattering, which may have amounted to destruction and technically been illegal under the Aboriginal Relics Act. The critical point according to Murray is that "heritage policy should also evolve from the society in which such policies are expected to be effective". The Aboriginal viewpoint and the greater society’s view should not be kept "hermetically sealed one from the other". But interestingly, he does not incorporate the Aboriginal perspective of settling the spirit and overall his attitude is that the pendulum had swung too far in favour of Aboriginal heritage.

Olney J, the Judge in the La Trobe case, made the following comments:

> By their conduct, evidenced by the published writings and the correspondence which hasemanated from the first and second respondents I have grave doubts as to their willingness toreturn the relics until they have concluded their research and this view is supported by the ratherextraordinary statement made by Counsel at the conclusion of his submissions in which he set outa timetable for the return of various classes of relics... I am of the opinion that there is a reallikelihood that the respondents will not return the relics in a timely manner even if it be held thatthey have no entitlement to continue in possession and accordingly I am satisfied that the balanceof convenience falls heavily in favour of requiring the delivery up of the relics for safe keepingpending the hearing and determination of this proceeding.

Whether this view would have survived an appeal is a moot point but it must be stressedthat these were interlocutory proceedings and as the Tebrikuna case illustrated, theinjunction granted in the La Trobe case may well have been overturned once a fullhearing on the merits was held. Olney J suggested that the Tasmanian Parks and Wildlife

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63 TALC (Sainty) v Allen VG 643 of 1995 Victorian Division Federal Court, p 27 transcript 24/7/95.
64 This equitable doctrine says you can’t argue the existence of a right if you have engaged in conductwhich suggests that you did not wish to enforce your right.
66 Ibid, p313.
68 TALC (Sainty) v Allen VG 643 of 1995, p 5 & 6 and order of 28/7/95, per Olney J.
69 Chapter Seven.
Minister order the Museum of Victoria to return the items to Tasmania, which the Minister complied with.\textsuperscript{70}

Certainly in May 1995 Ranson, the chief archaeologist for Parks and Wildlife, had written to La Trobe's archaeology department with a new draft permit application procedure emphasizing wider Aboriginal community de facto ownership of uncovered material.\textsuperscript{71} It was, however, submitted by counsel for the university that they were not in breach of any law as holding material over permit time limits is not an offence under the Tasmanian Act.\textsuperscript{72}

This argument ignores several facts. TALC had not been part of a formal, legally binding consultative process for the original permits even though other Aboriginal organisations prior to TALC's formation may have been informally consulted. The Aboriginal Relics Act 1975 does not give Aborigines a place in decision making and any ownership or custodianship of either bones or other material.\textsuperscript{73}

The argument of counsel for La Trobe that this was "just a case in detinue" could only have aggrieved the Aborigines still further. Their argument that a spiritual connection is not the equivalent to legal rights in the goods\textsuperscript{74} flies in the face of developing jurisprudence that traditional common law concepts need to take heed of human rights norms. Onus had this to say about arguments that ignored the reality of Aboriginal spiritual interest in sacred objects:

...appellants claim not only that their relics have a cultural and spiritual significance, but that they are custodians of them according to the laws and customs of their people.\textsuperscript{75}

In my opinion La Trobe was not only in an untenable legal position because of the expired permits, it permitted its lawyers to use legal arguments that flew in the face of High Court authority and that reduced the Aboriginal spiritual beliefs into non-existence. It is likely that the court would still have ruled in favour of TALC even if the permits had still been operative because of the considerations that applied in the Onus case, as the Aboriginal body with the rights of custodianship, TALC, did not agree to the university retaining the artefacts.

Some history may throw some light on dealings between Aborigines and La Trobe. On the 15 February 1990 Murray had uncovered a site\textsuperscript{76} that indicated Aboriginal re-occupation, after the removal of all the Aborigines to Wybaleena. A misunderstanding in the Aboriginal community may have arisen because Dr Murray had been digging at this

\textsuperscript{71} Letter Don Ranson, Parks and Wildlife Service to Head of Department Dept of Prehistory and Archaeology, La Trobe University (10/5/1995); reference was also made to the earlier letter of (22/10/1994) where P&W said La Trobe should consult with TALC.
\textsuperscript{72} Submissions of counsel Dr Buchanan, p32 transcript (24/7/95),
\textsuperscript{73} Powell, Lesa (1994) "Aboriginal Law & Heritage in Tasmania".
\textsuperscript{74} Submissions of counsel Dr Buchanan, p32 transcript (24/7/95)
\textsuperscript{75} Onus v Alcoa of Australia Ltd. (1981) 149 CLR 27, per Gibbs at para 7.
\textsuperscript{76} At a place called Burghley on Van Diemens (VDL) Company land.
site from 1988, and no permit was necessary as he thought it was a non-Aboriginal site, being the location of historical shepherds' quarters that had probably been burnt down.\textsuperscript{77} Correspondence from TALC to La Trobe on the 5 June 1995 suggests this permit, No 90/5, was to run from only 13 March 1990.

There was no suggestion at the hearing that Murray had removed any material before this permit commenced, and it is clear also that Murray had stopped work and extensively consulted with the Aboriginal community, after he discovered the Burghley site’s significance on the 15 February 1990. As this occurred well before the establishment of TALC in 1992,\textsuperscript{78} there may have been miscommunication leading to Aboriginal community resentment. There are several reasons to suspect that Murray and his colleagues were singled out.

According to my discussions with Professor Murray,\textsuperscript{79} TALC were content to turn a blind eye to other institutions’ tardiness in returning items out of permit. Furthermore, the university had unsuccessfully attempted to get an extension to the permits and had returned other artefacts after being requested. There was a lot of heat and desire on the part of Aborigines to make certain points in the La Trobe case, which I observed during the case. Karen Brown, the manager of TALC, had told community members that TALC had seriously considered renewing the permits through the Parks and Wildlife department:

\begin{quote}
but Allen and Dr Murray have demonstrated over a period of time that they are not interested in what the Aboriginal community wants, and are only interested in determining the scientific aspects in regard to our material.\textsuperscript{80}
\end{quote}

The university did not help itself with the way it conducted its defence. Counsel for the applicants TALC, Merkel QC (later to be Justice) submitted that the anthropologists in this case were asserting a moral or ethical right to safeguard their research that was over and above the Aboriginal Relics Act.\textsuperscript{81}

Some better balance needs to be worked out between science and indigenous rights over the dead. The Israeli position is to put a 5000 year time limit on community claims to artefacts and there have been discussions along these lines in Australia. But the practicalities and politics are to do with the objection that the whiteman has to the granting to the Aborigines of absolute rights of custodianship over places of spiritual significance. North American legislation places quite specific limits on the basis of which claims for attachment can be sustained\textsuperscript{82} but this is in the context of United States and

\textsuperscript{77} Letter Dr Tim Murray (15/2/1990) to Mike Strong of the TAC, Hobart, concerning the discovery of contemporary Aboriginal artefacts at the Burghley site, dating from the 1830s at the VDL.

\textsuperscript{78} Ibid

\textsuperscript{79} Visit by the writer to La Trobe University and interview (15/10/96).

\textsuperscript{80} TALC "Information for Community Members on Cultural Material Held by La Trobe University" (7/7/95).

\textsuperscript{81} Submissions of Merkel, counsel for TALC, p4 transcript (24/7/95).

\textsuperscript{82} Moran, V (1995) "Prehistorians" quoted in Murray & Allen "The Forced Repatriation of Cultural Materials to Tasmania".
Canadian Indian tribal authorities having a larger retained autonomy over all matters affecting indigenous self-government. The emphasis is reversed from the Australian situation: the inquiry of courts in those jurisdictions is:

whether any limitation exists to prevent the tribe from acting not whether any authority exists to permit the tribe to act.

The La Trobe case was about advocating the principle of tribal autonomy and custodianship. This is a necessary prerequisite to re-asserting the Aboriginal relationship to the spirits of the ancestors through ceremony, which is well documented by previous research. The repatriation was not only to do with the self recognition that "we are still here!": that Aborigines in Tasmania were never extinct. It was also to allay community concerns. Within the Aboriginal community in Tasmania these had grown for some years. They were not necessarily to do with La Trobe university, but concerned the weaknesses of protections generally in relation to Aboriginal heritage and the lack of land.

In the words of one commentator on the La Trobe case:

there is a need for the establishment of uniform State, or preferably, national cultural heritage legislation, so that problems relating to jurisdiction can be overcome. It is also apparent that there needs to be established some kind of Aboriginal cultural heritage organisation, independent of those presently operating out of the various government bureaucracies.

The reality is that more than an intellectual understanding is required to comprehend Aboriginal attachment to "ancestors" and the need for custodianship of sacred sites, otherwise it does not make "sense" in a rational setting. Aboriginal author Mudrooroo Narogin sums up this white/black experiential paradigm:

I doubt if any white person could understand what Aboriginals are talking about. (Unless) you have the direct experience of the rainbow serpent, you don't know what it is.

To my way of thinking, the La Trobe case showed this cultural divide at work, as Murray's approach is that heritage protection should be meaningful to both Aboriginal and non-Aboriginal people.

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83 Canby, W C (1988) American Indian Law In A Nutshell, West Pub. Co. St. Paul, Minn. USA. See also Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978) where the U.S. Supreme Court upheld the rights of a Tribal Authority over internal matters pertaining to Indians and Indian law, but held their "power is constrained so as not to conflict with the interests of this overriding (US) sovereignty". In Canada the Supreme Court in Delgamuukw v. British Columbia (1997) took for granted the rights of the Gitksan and Wet'suwet'en to control heritage sites.

84 Canby, American Indian Law In A Nutshell, p72.

85 Charlesworth et al, Religion in Aboriginal Australia -an Anthology, p85.

86 Auty, "Aboriginal Cultural Heritage: Tasmania and La Trobe University".


The point of departure is non-recognition of the very type of Aboriginal spiritual attachment to land and artefacts turns from non comprehension by the wider community into a form of spiritual colonisation for the Aborigine. Economic and political power lies in the hands of the wider society and it has only been through the Courts that the Aboriginal people have been able to seek redress. The political process seems unable to answer to their needs.  

The very importance of the La Trobe case is that the Tasmanian Aborigines asserted the rights of the dreamtime over the whiteman's way of doing things, though it would appear that TALC selectively chose La Trobe as a test case. Professor Murray in most respects had behaved within, and kept, the law which does not in any way favour Aboriginal custodianship. It was another question whether he was keeping within the spirit of the law. The way the case was managed by the university-assuming he was instructing the university solicitors-suggests that there is room for doubt.

Even though there was not a final hearing, the Court after legal argument accepted and established the legal principle of custodianship and Aboriginal sensibilities for control of their own ancestral objects against broader interests of research and data collection. Despite the fact that TALC was not a party to the original permits in terms of consultation and legally did not own them, in the context of the history of Aboriginal/whiteman relations in Tasmania TALC's win was a sweet victory.

Goodall noted the paradox of western-style rules of evidence and their effect upon telling the Aboriginal tale: "subtleties are always present..(in Aboriginal spirituality which can not be elucidated by legal) questions (which) shadow and cloud the facts". As a successful practitioner of the art of cross-examination with many trials and hearings to my credit, I can only agree with this point of view. To a legal practitioner cross-examination is not necessarily about arriving at the truth but about discrediting the opposition. Many an Aboriginal witness I have seen simply bamboozled by artful cross-examination. The lasting impression for Aborigines is of whiteman's inherent ability for double-talk.

Of equal concern are those rules of evidence that restrict the ability to tell Aboriginal stories handed down from generation to generation on the basis that this infringes the rule against hearsay evidence or is not considered relevant:

Rules (of evidence rarely) guarantee "the truth":all they ensure is a narrative of a particular shape and style.

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91 See discussion p650ff on the effects of cross examination in a criminal trial to destroy a person's character: Cross On Evidence 4th Australian Edition.
92 Ibid, formulation of this rule at p800ff: "evidence of a statement made to a witness by a person who is not called as a witness...".
93 Goodall. "The Whole Truth and Nothing But..' Some Intersections of Western Law, Aboriginal History
These rules exclude the Aboriginal sacred stories and viewpoints that may not fit within western logical considerations but may explain Aboriginal sensibilities succinctly. For example, one view of the La Trobe case, from an Aboriginal perspective, could be:

the roll back the takings of war syndrome. 94

Goodall’s account of a particular South Australian Aboriginal elder’s explanation of a measles epidemic and its connection in his viewpoint to atomic testing in the desert explains this peculiar perspective. The testing was seen as whiteman’s waging of war on Aboriginal people in the period 1948 to 1955. Because the measles killed mostly Aboriginal people these two events were seen to be connected. The poison associated with the testing was seen by the elders of the Kunmanara as part of white war on black people, as only the Aboriginal people, because of the lack of immunity, fell to the measles and only they had to shift from their lands because of the atomic testing:

here at last was an explanation that made sense (to the Aborigines). 95

Clearly Aborigines in Tasmania and elsewhere in Australia saw the whiteman’s pre occupation with digging up their burial grounds and sometimes displaying the bones in public as a form of warfare. Perhaps they saw the very fact of their enemies holding these items as a denial of their own spiritual power. Although the La Trobe case did not concern bones as such, in my view, TALC chose to make a symbolic stand.

This perspective probably explains the somewhat exasperated comments by one well known commentator on the La Trobe case:

both sides are the losers…chickens only came home to roost…regrettably the unethical
treatment by evolutionary minded scientists has now reaped the whirlwind. 96

The La Trobe case did not concern human remains so this commentator misses the point. Because of the inherent power differential, research needs to be controlled by Aboriginal groups as a matter of custodianship. This prerequisite I submit is the answer for the partnership between Aborigines and archaeologists that Murray asks for in his commentary on the La Trobe case. 97 The interesting fact not contested by either side in the La Trobe case is that trained Aboriginal site workers had been a feature of excavations for some time prior to the issuing of these permits, and that there had been consultation carried out at every step with Aboriginal organisations prior to the formation of TALC; but still the Parks and Wildlife had overall custodianship of the relics rather than the Aborigines.

and Community Memory", p108.
94 Ibid, p117.
95 Ibid.
Previous to the La Trobe case self-regulation was put in place by archaeologists, but the La Trobe case was about asserting regulation by the Courts. Even though these following extracts from the so called self regulation code stipulated, in relation to human and non-human artefacts, that:

Aboriginal skeletal remains to be disposed of according to wishes of deceased if known… if not transferred to the appropriate Aboriginal community to dispose of as they see fit. All other Aboriginal skeletal remains are of scientific importance and should be destroyed by being reburied or cremated. The Aboriginal community and archaeological profession share a common concern to protect and preserve prehistoric sites and material of importance.

It is possible for Aborigines and archaeologists to reach a compromise…

There are Aboriginal concerns which show in the use of this language. The use of the word “destroy” shows a non-comprehension that the return of remains are from the Aboriginal perspectives to re-create connection. How is the appropriate community selected? Clearly, self regulation does not work from the point of view the Aborigines, especially, in the context of Tasmania where there are no state laws that give Aborigines the power of custodianship or any legal interest in the relics.

Archaeologists feel that they have lost power and “become very self-effacing…cultural relativism has become turned on itself, (they) vie with each other to demonstrate the relativity and inconclusiveness of their analyses…the observed has become a product of the observer to an extent that the observed no longer exists...” Such commentators however need to go a step further into another meaning-perception. The scientific order, with its evolutionary bias, tends to contradict a fundamental credo of the Aborigines in the south eastern part of Australia, of which Tasmania is part. The Aborigines believed in “All Father as Creator”. This is an ongoing process through the Ancestral Beings, in the spirit of the place, and must not be confused with Creationism in a Christian sense. In the eyes of Aborigines, the disparity between the world-views of the scientific order and the dreamtime gives rise to suspicions that they are only scientific objects of study.

Here postmodernism can make a contribution so as to construct the place for alternative interpretations from the normal, but there is still the problem of weighing the intangibles of spirituality which postmodernism does not do well. Both the spiritual and material are in a form of interplay where the observer can become the observed and understanding as exemplified by Buber occurs in the space in-between. This space in-

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98 Australian Archaeological Association Policy. There is no specific policy relating to relics being scattered or returned to the environment: Murray, Tim (1996) “Archaeologists, Heritage, Bureaucrats, Aboriginal Organisations and the Conduct of Tasmanian Archaeology”, Tempus, Vol 6, 1996.


101 Hodge, Bob (1997) (editorial) Off the Sheep’s Back: New Humanities (ed.) Johnson, Lee Schlunke & Sheaves, University of Western Sydney, School of Humanities, Richmond, NSW.


103 Buber, M dialogue with Carl Rogers in Buber, The Knowledge of Man.
between is where true experiential learning occurs and accords with indigenous peoples' mode of teaching and instruction where those giving the instruction:

tell a personal story and leave their audience to make the necessary connections and understand how the story illustrates and illuminates the issue in question.104

Those who are not watchful and cannot combine direct experience with theory miss out.105 In closing, the question needs to be asked, if we look at the hapless archaeologists Murray (and his colleague Allen), did they manage to get into this space in-between, or did they somehow miss what was really going on with their case? In my view they were within their legal rights to explore the boundaries of the evolving question of the varying Aboriginal and the whiteman's treatments of heritage values. The question of whether they were blameless is a matter of opinion but they carried the accumulated baggage of the whole archaeological profession in its dealings with the Aborigines.

The forced repatriation of artefacts back to Tasmania in mid-1995 probably tilted the balance towards the Aborigines and it is clear the fundamentals of how research is carried out in Tasmania have been changed.106 The case has ramifications for the personal narrative of the Sacred wound and also the Aborigines' healing of their own Sacred wound, as injustice is often non-comprehension by others of either a personal story or of a people's dreaming. Self-respect grows as a result of making stands on points of principle, even though it may appear illogical to the observer. In my experience this is one of the most important means to resolving this type of wound. The observer must be prepared to get into the space in-between the viewpoints and be affected by that which he or she does not understand. The earth may thank us for stopping and rethinking this alienation from the spirits-of-the ancestors-in-the-earth. To quote Albert Schweitzer:

Man has lost the capacity to foresee and to forestall.
He will end up by destroying the earth.107

104 Peat, Blackfoot Physics, p72.
105 Ibid, p73.
107 Berry, Dream of the Earth, p112.
Chapter Nine

Issues of Aboriginal Identity

.. the most dispossessed, dispersed and alienated Aboriginals might find it hardest to establish their descent and identification.¹

This “catch 22”² situation for Aborigines was summed up by the Judge in Shaw v Wolf,³ the 1998 case brought by the TAC concerning Aboriginal identity in Tasmania. The case will be looked at closely, as this is a struggle that is tied into re-establishing connection with lands.

The Court in the Shaw case⁴ held that the issue goes beyond simply one of genetics, yet at the same time appeared to lessen the significance of completed and recognised genealogies as the acceptable method of determining Aboriginality, a result that disadvantages Aborigines in a number of respects and will be examined below.

Theoretically it is possible for those with no genetic descent to self identify as Aborigines and claim benefits to which morally they are not entitled. Consequently there is a requirement to monitor the situation because resources available to Aboriginal people are limited.⁵

Though the Shaw case is direct final judicial proof that there are Tasmanian Aborigines, it adopted previous case law in Queensland.⁶ The law is reliant on the definitions of "Aborigine" in S4 of the Commonwealth Aboriginal and Torres Strait Islander Act (ATSIC), and the following recognition tests: self identification, biological descent and community acceptance.

These criteria are not in themselves objectionable but with the history of genocide and the deliberate scattering of the Aboriginal peoples from their lands by force and the taking of children, they represent a significant hurdle to be overcome to establish connection to lost lands. The last part of the test, the community recognition test, is the area where cultural revival can lead to successful Aboriginal claims to land:

- a small degree of Aboriginal descent coupled with genuine self-identification
- or with communal recognition may, in a given case, be sufficient for eligibility;
- communal recognition as an Aboriginal person may, given the difficulties of
- proof of Aboriginal descent flowing from, among other things, the lack of written
- family records, often be the best evidence available of proof of Aboriginal descent.⁷

³ Shaw v Wolf [1998] 389 FCA.
⁴ Ibid.
⁷ Shaw v Wolf [1998] 389 FCA, per Merkel J.
There are several levels in dealing with the defining question of who is a Tasmanian Aborigine as it is a question of genetic descent, connection to place, connection to the spirits of the Ancestors, Aboriginal community acceptance and self-identification.

Self-identification does not occur in a vacuum; it encompasses the process by which a person comes to recognise that he or she is an Aboriginal person.  

You build Aboriginality, boy, or you got nothing...if our Aboriginal people cannot change how it is among themselves then the Aboriginal people will never climb out of hell.  

When you forget or repress the truth and depth of your invisible belonging and decide to belong to some system, person or project, you short circuit your longing and squander your identity.  

There is also some scientific confirmation of the Aboriginal oral history that we are all related: Cavalli-Sforza argues that the Australian Aboriginal languages are a primary language and are not derived from any other, and Diamond implies that the ancestors of the Aborigines may in fact be our ancestors as “this is the continent where modern human behaviour arose, 65,000 years ago”.  

For much of the time of the European colonising of Australia Aborigines have been treated as minors or as perpetual children through a variety of legislative acts and practices:  

for Aborigines who have been treated as minors, as perpetual adolescents by the law, the crisis of identity usually thought of as a developmental phase, existed not only through their adolescence but through their adult life as well.  

This attempted to stop the development of a personal identity because of the desire of a colonising power to control the group. The colonising of the person or group in this way means that by treating a person or group as not capable of managing their own affairs someone else gets the benefit of their lives. Separation from one’s own identity is also separation from calling and community:  

for individuals the possibility of forming a stable identity is dependent upon their ability to objectivate such a symbolic universe...to locate themselves within this universe...to recognise their self-sameness and continuity and be conscious that others also affirm this location as well.

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8 Ibid, per Merkel J.  
9 Gilbert, Ken (c.1971) “End of Dreamtime”, (unknown), Sydney Australia.  
11 As an Aboriginal elder told me at the camp fire outside Old Parliament House (17/8/1996).  
I believe the calling of the Aborigines in Australia is to get their own identities back as full participants in the Australian community, so that they can bring Australian society back into touch with its soul and spirituality. Current Australian society, by worshipping the idols of money and consumerism, brings spiritual defilement on itself, leading to things like demonic pornography, which is debasement of love and procreation, and gambling, which is debasement of the use of money to support one’s family.\textsuperscript{16}

Those waiting to claim connection or "association" with lost lands cannot do so because their ancestors were either driven off the lands or murdered by the agents of the same legal rule making institutions which now set the rules. This is in conjunction with the widespread attitude amongst Australians that people with less than 50 per cent Aboriginal lineage (are) not 'real' Aborigines.\textsuperscript{17}

A survey conducted for the Australian Council on Reconciliation that produced this finding also found that the majority of Australians did not think any official Commonwealth apology for the past mistreatment of Aborigines should be forthcoming, as compensation could become payable to the descendants of those who were wronged in the past.

I was asked when interviewed in December of 1993 for the job of lawyer with the Aboriginal Legal Service in Launceston Tasmania:

what about Aboriginality; those who say only full bloods should be able to call themselves Aboriginal.\textsuperscript{18}

I said:

it is what you are like on the inside; this applies to both white and black.

The acceptance of my reply belies the reality that many restrictions are in place on the definition of "aboriginal person" which comprehends not only full blood descendants of the original inhabitants but also persons who possess some Aboriginal genetic material and the actual accepted test is determined by a number of factors that are hard to determine.\textsuperscript{19}

some degree of descent is necessary, but not of itself a sufficient, condition of eligibility to be Aboriginal person; a substantial degree of descent, given the general communal recognition of Aboriginality that usually accompanies it, may by itself

\bibitem{15} Ibid, p110.
\bibitem{16} Costello, Peter (2000) address to 3\textsuperscript{rd} Annual Spirituality, Leadership and Management Conference Ballarat, University, Victoria (3/12/2000).
\bibitem{18} Question asked of me by John Wells the then state secretary of TAC (3/12/1993).
\bibitem{19} Gibbs v Capewell (1995) 128 ALR 577, per Drummond J.
be enough to require that the person be regarded as an "Aboriginal person."\textsuperscript{20}

Tasmanian Aborigines are a unique people with cultural links to mainland Aborigines. The Emu dreaming line, connecting parts of both the mainland and Tasmania and drawings of the Tasmanian tigers in Kakadu,\textsuperscript{21} are evidence of the connectedness of the mainland cultures and Tasmanian Aborigines. The Tasmanian tigers became extinct on the mainland and later in Tasmania after European colonisation but in the meantime were protected by the Bass Strait from introduced dogs and dingoes.\textsuperscript{22} There are some important differences from mainland Aborigines as the Tasmanians were woolly haired people according to observations of Robinson in the journals\textsuperscript{23} and some contemporary drawings (plates 1, 2 & 5).

It is not known whether this is an ancient feature or due to genetic change during isolation.\textsuperscript{24}

The Tasmanians exclusively practised cremation, which was not as common on the mainland, and they did not use the same implements as mainlanders except for the spear and club. It is clear whatever the origins, there was a divergence, which could explain different resistance to disease, giving the Tasmanian Aborigines a different coping mechanism and explaining the almost total disappearance of the Tasmanian Aborigines due to disease and other causes after colonisation.

\textbf{Not Dead!}

Survival of the descendants of Tasmanian Aborigines was consistently denied by various Tasmanian governments.\textsuperscript{25} The important consideration is it said more about the arrogance and denial of European people than it did about the actual presence of communities of Aboriginal descendants. The caption of the \textit{Last Tasmanian}, a film released in 1978, showed a picture of Truganini with the words:

\begin{quote}
\textit{The Last Tasmanian: A story of Genocide. A film by Tom Haydon presenting a search by Rhys Jones to Discover The Life and Death of the Tasmanian Aborigines.}\textsuperscript{26}
\end{quote}

Ryan's comment on the defensive reaction by the whiteman to Aboriginal criticism of the film, was that it is:

\begin{quote}
\ldots much easier for white Tasmanians to regard Tasmanian Aborigines as a dead people rather than confront the problems of an existing community of Aborigines who are victims of a conscious policy of genocide.\textsuperscript{27}
\end{quote}

\textsuperscript{22} Daimond, Jared (1997) \textit{Guns, Germs and Steel}, Random House, USA, p
\textsuperscript{23} Plomley, \textit{Friendly Mission}.
\textsuperscript{24} Mulvaney et al. \textit{Prehistory of Australia}, p340.
\textsuperscript{26} Ibid, p 254.
\textsuperscript{27} Ibid, p 255.
On the basis of this conscious denial, Groom, the incoming Premier of Tasmania, abolished the state Aboriginal Affairs department in 1993, an act that caused widespread resentment in the Aboriginal community and led to cynicism when eventually Groom wished to start a dialogue (Illustration 17). As was seen in the previous chapters, the thinking that the last full-blooded Aborigine, Truganini, died in 1876 led to a European myth that the race died out or had become "extinct". This myth actually flew in the face of some accessible and realisable facts. There is historical doubt that Truganini was the last Aborigine, as a full-blooded Tasmanian died some years later on Kangaroo Island. Fanny Cochrane-Smith is accepted by the Aboriginal community as the last full-blooded Aborigine and she died only in 1905. All the parties in the Shaw case discussed herein also accepted her as the last full-blooded Aborigine even though each of the individual respondents in that case except for two, traced their ancestry to persons other than Fanny Cochrane-Smith.

The admission by all the parties in Shaw that Cochrane-Smith was the last full blooded Aborigine raises an interesting dilemma for the Tasmanian Government as to whether to amend the Aboriginal Relics Act to mark her death in 1905 as the cut off point for what constitutes a relic. That is not as silly as it sounds as the march of time has considerably eroded the effectiveness of that particular piece of culturally insensitive legislation.

A controversial brass inscription at the Wybaleena cemetery which attests to the myth of extinction, refers to the "last of the Aborigines". Testament to the large amount of European forgetting was the film, discussed above, which was shown in Hobart without any consultation with Aborigines, and which marked some of the first modern protests by the Aboriginal community. A sticker was placed over the billboards advertising the film, which said:

RACIST! This film denies Tasmanian Aborigines their LAND RIGHTS.

The Question

Shaw's departure from strict genealogical descent as a pre-requisite for identity was criticised by Michael Mansell, who complained that it would make it harder to administer scarce resources since anyone would be able to walk in off the street and claim they were Aboriginal. The Tasmanian Aboriginal Centre (TAC) administers the bulk of Aboriginal programs in Tasmania including the substantial legal and health programs.

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28 (S 2) Aboriginal Relics Act 1975, definition of relic.
30 Pybus, Community of Thieves, p186.
31 Shaw v Wolf [1998] 389 FCA.
32 Ibid.
33 See Ryan, The Aboriginal Tasmanians, and my personal observation from visiting the site.
34 Ryan The Aboriginal Tasmanians, p254.
By supporting the plaintiffs in Shaw that were trying to prevent ineligible people from claiming benefits.

The question according to the respondents in Shaw was: who has the right to determine whether or not someone is Aboriginal, and should this be defined by one organisation, the TAC, or the wider Aboriginal community of which there are many organisations?

Shaw was a test case that was long overdue and concerned the Hobart regional election for ATSIC held pursuant to S132 of the Act on 12 October 1996. Just prior to this election a number of Aborigines, including elders, had occupied the Launceston office of the TAC and been arrested by police. They were protesting the executive power of the committee represented by Michael Mansell that runs the TAC.\textsuperscript{36} Brian Mansell, brother of Michael Mansell, had earlier that year, on the 21 March 1996, written a letter to the editor of the main Hobart paper, the Mercury, highly critical of the TAC's withholding of programs because of their withdrawal of the recognition of Aboriginality of individual Aborigines.\textsuperscript{37}

Shaw did decide that people who could not trace their ancestry back to the original Tasmanian Aborigines were not entitled to call themselves Aborigines for the purposes of the Act, but it set a very high standard, applying the Briginshaw test.\textsuperscript{38} Effectively this says those who wish to disprove the Aboriginality of a particular individual had:

1) the burden of proof legally and,

2) to prove the lack of Aboriginality to a high standard:

> it is clear that the determination of the issues arising in the present case carry significant consequences for each of the individuals concerned. A finding that any of the relevant respondents is not an Aboriginal person, as that term is understood in current Australian parlance, can have a severe and deeply personal impact on the particular respondent's identity, family and communal relationships and entitlement to participate in programs for the benefit of Aboriginal persons.\textsuperscript{39}

There is no doubt that the case was something of a setback for the TAC due to this very high standard, which goes some way to answering the criticisms by Brian Mansell. The decision means that the TAC would have a lot of difficulty in stopping the proliferation of alternative Aboriginal organisations, as long as the members came within the tests.

With the genocide and dispersal of Aborigines from their lands, the deciding of identification issues is a doubly difficult task, as conceded by Dr Pybus, who gave evidence for the petitioners in Shaw:


\textsuperscript{37} Mansell, Brian (1996) “Aboriginality” (letter to editor), Mercury (21/3/96).

\textsuperscript{38} Briginshaw v Briginshaw (1938) 60 CLR 336.

\textsuperscript{39} Per Merkel J, Shaw v Wolf.
At least as compelling was the oral history of the defendants who said it’s always been known in our family that we were descended from little black Mary or that my great-grandfather’s name was Black Tom, it’s always been known in my family. In this case, the proof that was being offered up by genealogy, history, colonial records etc. was not weighed sufficient in the balance with ‘We’ve always known’, and if that’s the case you’ll never be able to disprove that anybody is Aboriginal if they claim that they are, it seems to me.40

The frustration evidenced here hides the complexity and dangers of using simple tests in the multi-layered answer as to who constitutes an Aborigine. There are in my submission:

middle class Aborigines;
people who may have denied any Aboriginal ancestry out of shame;
some who just quietly earn a living;
some who go in and out of prison;
others who live in a semi or traditional way.

This is the same as in European society (except for the last) so there is a need to move away from stereotypes.41

John Clark, of the Flinders Island Aboriginal Association is a business man and community member and was also a defendant in the Shaw case. The principal applicant, Shaw, was a person who he shared community with on Flinders Island. Clark was quite clear that the deeper meaning to the case was that it related to the control of Wyballeena. As one of the defendants and the chairperson of the Flinders Island Aboriginal Association he was at that time in conflict with the Tasmanian Aboriginal Centre over management of Wyballeena. According to him, if successful the case would have disenfranchised most of the people in Tasmania claiming to be of Aboriginal descent, including Michael Mansell himself. Clark said only those people with the surnames Everett and Maynard and a couple of others would be able to claim Aboriginality, as everyone in Tasmania is mixed up as different people from different tribes are now all over Tasmania.42

The Court also considered the book on Tasmanian Aboriginal genealogy by Mollison and Everett, which contains family trees going back to Aborigines who were at the Wyballeena camp. Merkel J placed some reliance on these studies but also held that other material is also important for establishing genealogy:

A significant source of information in relation to genealogies of Aboriginal families in Tasmania is the research carried out by B Mollison and C Everett in the 1960s and 1970s (the "Mollison genealogies"). This study traced the descent of the known descendants

42 Interview, John Clark (10/2/98).
of the Aboriginal people who were moved to Wybaleena on Flinders Island, and of the community of Aboriginal women and sealers from the Islands. The research supports the idea that the established Aboriginal community in Tasmania traces its ancestry to the islander communities or to one of two Aboriginal women who were returned last century from Flinders Island to the mainland of Tasmania. The two women, Dolly Dalrymple and Fanny Cochrane-Smith, are recorded as having children. The genealogies are important but are also recognised as containing some inaccuracies.\(^{43}\)

On many occasions when I worked for the Aboriginal Legal Service in Launceston, I had reference to the Mollison book of two volumes, as before the Shaw case it was exclusively relied upon by the TAC and is still generally accepted by Tasmanian Aborigines as accurate.\(^{44}\) Illustration 8 is a typical example of a genealogical map based on Mollison's research,\(^{45}\) showing descent from Mannalargenna. The Mollison volumes are readily available to the public in the library system.\(^{46}\) However, according to West\(^ {47}\) the Mollison book is now out of date having been published in 1978, and Mollison himself is not interested in bringing it up to date on account of his advanced age.

The main way now is through affidavits and statements of relatives.\(^{48}\)

Genealogy is recognised by Tasmanian elders to support the spiritual claims of the present generation\(^ {49}\) to heritage values and property rights and it would appear to me it is the most reliable way to establish Aboriginal identity as it also carries an element of self-recognition for the proponent.

Genealogy was accepted by the Tasmanian Supreme Court to establish probate rights in an Aboriginal estate.\(^ {50}\) The Aboriginal community was able to get back ownership of land near Babel Island\(^ {51}\) and the Three Patriarchs mentioned by Everett as being on the Emu dreaming line.\(^ {52}\) I visited the land in February 1998 (plates 7, 8 & 9) and noted that it was close to the beach, did not have water and was in a marshy place with very poor access, which might have influenced the subsequent decision of the Aboriginal community to sell. The Registrar had accepted, on the face of it, the applicant's genealogical evidence of descent\(^ {53}\) from the "owner" of the land, but there is not a consistent approach in the Australian court system.

\(^{43}\) Per Merkel J, Shaw v Wolf.
\(^{44}\) Interview, Ida West (10/2/98).
\(^{45}\) Under written by the Australian Institute of Aboriginal Studies Canberra and the then Australian Department of Aboriginal Affairs.
\(^{46}\) Mollison, Bill and Coral Everitt (1978) The Tasmanian Aborigines and their Descendants: Chronology, Genealogies and Social Data, University of Tasmania, Hobart.
\(^{47}\) Interview, Ida West (10/2/98).
\(^{48}\) Ibid.
\(^{49}\) Ibid.
\(^{50}\) (S 44 (7) of the Administration and Probate Act 1935 (Tas) would have required next of kin, if there were no descendants of the deceased's, or worse still the estate would have passed to the government in default.
\(^{51}\) At a place on the beach called "Red Bluff" three kilometers south east from the Patriarchs Inlet. Babel Island is about five kilometers further on, and was one of the mutton bird Islands handed back, discussed in chapter 14 below, it can be walked to from Flinders Is at low tide.
\(^{52}\) Interview, J. Everett (16/8/1996).
\(^{53}\) Estate of "A.L.M", for reasons of confidentiality the name of this case has been with held. The
The Yorta case put strong barriers to the acceptance of genealogical evidence to establish unbroken connection with land:

The difficulties inherent in proving facts in relation to a time when for the most part the only record of events is oral tradition passed down from one generation to another, cannot be overstated.52

Aborigines of Victoria had unsuccessfully attempted to use genealogy to establish a connection with the lands of their ancestors in upper Victoria and lower NSW. The Federal Court on 18 December 1998, in my view wrongly, stated that Aborigines would have to prove that their direct ancestors were in occupation at the date of annexation of the particular lands claimed:

To provide a genealogical connection to the original inhabitants necessarily involves establishing the identity of one or more persons who occupied the relevant area at, or prior to 1788.56

The test in Mabo for Aborigines to claim association with particular land was not to be displaced by annexation, the planting of a flag at Port Jackson (Sydney) in 1788. The correct criteria for alienation are a later inconsistent act by the Crown or a third party removing custodianship and control by the Aborigines. Genealogy can be used to establish connection (by the descendants) to the particular land at the time of removal of custodianship. It is therefore the most powerful single tool in the hands of Aborigines. The use of genealogy can bolster Aboriginal claims to land because the law relating to alienation of Aboriginal land has become separated from the incidence of annexation pure and simple, and this view receives some backing from the Full Federal Court decision of Yarmirr:

Where native title survived the Crown's acquisition of sovereignty and radical title, it nevertheless was liable to extinguishment by a valid exercise of sovereign power inconsistent with the continued right to enjoy native title.57

Mabo equates extinguishment with a conversion of the plenum dominion, "the underlying title", into a form of non-native title; Yarmirr comes very close to saying that underlying title is an alodial or absolute title to land not held via an overlord or Sovereign, because other rights like fishing and hunting rights survive a change of sovereignty. Sovereignty in fact was only gradually extended throughout Australia during the course of

Administration and Probate Act 1935 (Tas) allowed this use genealogy via an aunt and uncle's descendants. They were finally able to be located, as the deceased had no children and never married. The adminatrix of the estate appointed by the Court was the adopted daughter under Aboriginal law of the deceased, but this was never legally ratified so she had to share the estate with about 15 other descendants. Eddie Mabo had the same problem (traditional v legal adoption) in claiming his adopted father's estate in the famous Mabo case.

54 Yorta v Victoria [1998] 1606 FCA.
55 Ibid, per Olney J, para 24.
56 Ibid, per Olney J, para 32.
settlement. This raises some interesting possibilities, as this inconsistency between the doctrinal effect of sovereignty and the actual practice is "jurisprudence (which) does not make sense".

The Yorta decision, however, was upheld on appeal and thus confirmed the unrealistic barriers to use of genealogy to establish ties to traditional lands:

(the Court) derived little assistance from the testimony of the various experts...there is no evidence to support the proposition that because two or more Aboriginal tribes or groups spoke the same or similar languages that they thereby necessarily enjoyed (the same) native title rights...there are no objective facts to which the Court can have regard to support a conclusion one way or the other.

The Shaw decision with its de-emphasizing of genealogical descent gave something of a precedent for the later Yorta decision. Though the Shaw case was not referred to as such by Olney J, his language is reminiscent of that used in Shaw's case:

To demonstrate descent from the indigenous inhabitants of a particular area (genealogy) is but one step in establishing native title rights and interests.

It is jurisprudence that does not make sense compared with other approaches to the inter-relation of genealogy, kinship and custodianship of lands elsewhere in Australia and the world. Northern Territory legislation reflects that kinship systems are of paramount importance, but they display a wider definition as to who constitutes a descendant of a particular person. The legislation also covers custodianship rights, so the consideration as to who is entitled to land as a descendant under Aboriginal law takes into account these spiritual values. Whilst the legislation is much wider in terms of bloodlines, than conventional law represented by probate which insists on strict descent by bloodline, it is stricter in terms of linking "descent" to custodianship and ceremonial rights. Both the Yorta and Shaw cases tend to de-emphasize both genealogy and these spiritual aspects. These decisions have the capacity to add to the Diaspora of Aborigines.

Probate law as exemplified in the case above uses the method of proving descent by bloodline descendants, or where there is no direct descendant the "next of kin" provision, which roughly equates to the widely extended family system of Aborigines. But Probate law does not distinguish between kin when it comes to deciding distribution or entitlement to land, which may be an entitlement due to certain cultural rights. Simply put, the Aboriginal concept of ownership, does not equate with the whiteman's law of

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61 Yorta, per Olney J, paras 54 to 61.
63 Ibid, para 105, per Olney J.
66 Probate "A.L.M" (Date of grant 12/12/1995) Supreme Court of Tasmania.

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ownership, nor the sense of entitlement. This divide requires to be fully explored as neither "individual" ownership of land nor descent in whiteman's terms is a concept that fits within the dreamtime.67

The clan "owns" the land but custodianship, or entitlement, is more important, as the criterion is who has the right to manage the land. Firstly, this form of custodianship is dependent on ceremonial aspects, so genealogy is vitally important to establish the link between people who performed past ceremonies, and people who may perform present ceremonies which have been adapted for modern usage. Secondly, the ceremony for custodianship of the land does not necessarily have to be carried out on the land itself, just so long as "they continued to perform ceremony."68

In this respect, the Canadian position is superior to the Australian one, and recognises the invisible, spiritual traditions based in the oral histories of the indigenous:

aboriginal title arises from and should reflect the pattern of land holdings under aboriginal law...the source of aboriginal title appears to be grounded both in the common law and in the aboriginal perspective on land; the latter includes, but is not limited to, their systems of law. It follows that both should be taken into account in establishing the proof of occupancy.69

Ancestors bring wisdom and power to the living because the ancestors are united with the spirit world and the land which is part of the Creative principle and they are connected to the land and the Ancestor Beings through the ceremonies performed by the living. Robinson observed the care with which Aborigines cremated the dead.70 This, I suggest, was a process of connection to the land which enables claims to this land for later generations (see illustration 4). This ceremonial connection to land is the real identity of Aborigines.

In Yorta, Olney J did not regard ceremonies and burials on the land as sufficient to establish a Mabo style connection to the land as

those (people) were no longer in possession of their tribal lands (and)...ceased to observe those laws and customs based on tradition...dispossession of the original inhabitants and their descendants have continued through to the present time.71

However, the Yorta applicants established a clear line of genealogy and it is clearly a moot point as to what constitutes traditional laws and customs and possession of land. Olney J, respectfully, adopted a circular style of reasoning. If genealogy on its own is not sufficient to establish rights, then the question becomes how can Aborigines establish any

70 Plomley, Friendly Mission, p638.
71 Per Olney J, Yorta v Victoria, para 129.
rights at all when their hereditary lines of descent are subject to such scrutiny as to make them disappear into a mass of other evidence that is often conflicting. 72

Genealogy is reasonably objective and should be preferred by the Courts so Aborigines do not disappear again. The writer has a sense of awe at the ingenuity of Courts to continue to make this happen, as the Yorta reasoning makes terra nullius alive and well and with us in spirit:

(but) the indigenous people... continue... to pose a problem by their unwillingness to disappear. 73

Looking to the past through archaeology, and reciting the stories of the culture connecting with that particular place, are effective ways to establish identity; and genealogy is a useful antidote to the colonising of the spirit of the Aborigines. Establishing connection through bloodlines and seeking a contemporary definition of what constitutes traditional customs are ways for Aborigines to establish legal connection to the places that they still regard as actually occupied by their ancestors:

Such has been the impact of European settlement upon Aboriginal people that questions may well arise as to whether particular customs are "traditional" ... or whether their link with the past is so tenuous they can no longer be seen as "traditional"... even in the latter case the asserted "traditional" law or custom may nevertheless provide indirect support for rights founded upon what are truly "traditional" laws and customs. Practices that are not "traditionally based", in the sense that they are not rooted in the past, may still illuminate and support other practices that are "traditional". 74

Identity and the Spiritual Path

The past is a useful device for any person/s to reconnect with identity, as the person or group can go beyond the construction of the dominant culture of what it means to be an individual, or member of that group. The spiritual path is a unique lonely journey. I had to struggle against my father’s prescription for my life, which would have had me join the police force to put down life’s rebellion against the uncertain. Professionally, I have to struggle constantly against fellow lawyers who found me too unconventional. To free myself of these forces of restraint I had to go into my past and find my true identity, that God has a special place and calling for me, as he does for all.

Spiritually, the fact that the Aboriginal Legal Service had to bring a case to define just who is an Aborigine, and to affirm that there are Aborigines in Tasmania was the sad fact of genocide, and evidence of the almost complete domination of the whiteman’s legal and social system over that of the Aborigines.

74 Yorta v Victoria [2001] FCA 45, para 37 per Black CJ.
It is an example of the domination of the rational over a way of life that was also a religion. The whiteman’s law does not look at the very complex systems of Aboriginal entitlement relationship, such as moiety, patrilineal, matrilineal, totems and skin groups, to decide “identity”. Entitlement is an intrinsic part of identity. Entitlement can be awakened by ceremony.

This was completely missing from the Shaw\textsuperscript{75} case which, by being rational and perhaps politically correct, allows for non-genealogical members (with community recognition) because of the burden of disproving descent; and potentially excludes the genealogical descendants of ancestors who lie in the graveyard at Wybaleena because they may not be widely accepted by the community. Popularity is not an aspect of entitlement that finds much support in the dreamtime.

Aboriginal identity is discrete from the whiteman’s attempts to confine and describe just who is an Aborigine. The alternative to self-determination is cultural genocide because of:

the “nature of things,” including that of society, was so defined as to justify repression and even suppression as perfectly rational. True knowledge and reason demand domination over, if not liberation from, the senses.\textsuperscript{76}

\textsuperscript{75} Shaw v Wolf.

\textsuperscript{76} Marcuse, Herbert (1964) One Dimensional Man, Routledge & Kegan, UK, p147.
Chapter Ten

Ochre Quarries: Toolumbunner A Cultural Landscape

...so long as you know how to manage the spiritual power that may be in a sacred site, all is well but it may be dangerous if you don’t know how to manage it.1

Toolumbunner, near Mole creek in the North of Tasmania, is a sacred site that was inappropriately disclosed to the public in a non-Aboriginal publication in 1992. The disclosure breached Aboriginal sensibilities and showed the weakness of legislation in Tasmania protecting sacred sites. I was involved in that in 1996, the organisation that published the whereabouts of the site, the Deloraine Environment Centre (DEC), asked me to advise them on the difficulty from the Aboriginal perspective, as they as whiteman, could not see any problem. After I advised them of the cultural sensibilities they wrote an explanatory letter to TALC, which appeared to settle the case. I also sought permission and visited the vicinity of the site in early 1998. I was transformed by contact with the spirit of that place and I believe that spirit was the spirit of the Ancestors.

I remember looking up at one point to see these black cockatoos playing and circling in the high trees above. They seemed to have followed me at one point from where I had discovered the overgrown path to the Toolumbunner site from my campsite. Their screeches where the only sound above the burble of the river. It was peaceful yet scary..black cockatoos were the sign of the spirit and were very special in Aboriginal lore.2

The place can tell us something about the human condition that accords with the Aboriginal dreamtime but it is important to emphasize that the state of mind is equally as important as the place.3 The feeling of the place could tell a lot about Aboriginal spirituality and our own spirituality. The secret of Toolumbunner is that it is a place that was intimately connected with the Aboriginal ability to prosper and survive. The secret leads to sacredness. The actual secret places in Aboriginal lore are necessary to manifest the state of mind or dreaming. This is the prime reason for the existence of sacred places legislation, and the little protection that comes through an assortment of Tasmanian legislation.4

the content of the secrecy is often not that important (by whiteman’s standards)
...its the process of keeping things secret that seems important.5

Connectedness to place is a subtle part of indigenous religion:

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2 Personal, dictated at site (13/2/98).
When we were young, one of the things that was taught to us, especially after the rains, to feed from the earth, you know licking the earth - and it tastes very nice actually, licking the earth and tasting the earth and getting to make it part of our inner being. Because the earth is not just an object out there. It's part and parcel of being. Perhaps these are not rational things. I don't think they can be found by (analysis of reason). I think these are things of the heart, if you like, these are spiritual things. You cannot interpret them in an empirical sense. You have to understand them ... - perhaps you can only understand it when you lose your own parent. In the same way, the pain of being deprived of your land, of your heritage...  

Toolumbunner is therefore one of the most sacred Aboriginal places in Tasmania on account of its multifaceted significance for Aborigines depended on red ochre for their cultural life. It is a sacred place for women and a source of renewal of the land, yet it is comparatively exposed to the indiscretion of the curious or those insensitive to Aboriginal culture.

The story of my connection with Toolumbunner started about six months before I left the Aboriginal Legal Service. In April of 1995, I was talking with a community member about sacred sites and the retention of visiting rights to those sites, when I was told about the Tasmanian anthropologist who reputedly told third parties about the existence of this important site near Mole Creek. I was not told the name of the site, but something intrigued me and I resolved to find out more when it was appropriate. This is about a potential Foster v Mountford case as this information had obviously been told the anthropologist, who did not keep in it in confidence.

Though Toolumbunner (illustration 14) is an Aboriginal sacred site, it is only registered under the register of the National Estate kept by the Australian Heritage Commission. It is actually on land owned and administered by the Tasmanian Forestry Commission, although management is in conjunction with representatives of the local Aboriginal community, the Deloraine Aboriginal Cultural Association, and TALC. It was not one of the sites handed back to the Aborigines in 1995. Due to the public nature of the ownership there is nothing to stop members of the public from accessing the site through a public road, which runs by the cement works at Mole Creek. I crossed through a small reserve owned by the cement works, and waded across a ford across the Mersey River to a forestry commission 4 x 4 wheel track.

This state of affairs belies the real nature of the site. According to Gaughwin  the real custodians of the site are a committee of Aboriginal women under the umbrella of TALC.

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8 Australian Heritage Commission Act 1975 (Cth) established the Australian Heritage Commission but there is no direct connection between this organisation which keeps the national register and an organisation such as TALC which may have its own management structure for such a site as Toolumbunner, ref: Gaughwin, Denise (1993) “Toolumbunner An Aboriginal Ochre Mine Gog Range”, Tasmania, Forestry Commission Tasmania, p11.
Women are the custodians because Aboriginal men did not traditionally mine the red ochre at the site and were in fact barred from the site.\textsuperscript{11}

My eventual visit to the Toolumbunger site between the 11 to 13 February 1998 took place at the end of a long eventful field trip to Tasmania, during which I had several strange experiences, which are worth mentioning as they explain my state of mind at the time:

After I visited the Aboriginal Oyster Cove celebration in mid-January 1998, savage bush fires broke out south of Hobart. The house where I was staying was in the line of fires, which we watched slowly advance. Then the wind suddenly changed.

I had the experience of being slowly overcome physically during the three days at my camp site on Flinders Is at the end of January. Much later I wrote a poem called 'Dream' based on that I had on the 29/12/98.

Dying to oneself; on the same trip to the Three Patriarchs I had a sensation of liberation from my feelings of being trapped in the past.\textsuperscript{12}

Part of the story of this chapter was my connection with the spiritual presence at Toolumbunger, which was either the spirit of the Ancestors, the spirit of Aboriginal antecedent ancestors or the presence of higher agency, as I was aware of a presence that guided me and also frightened me. I thought of the biblical passage previously quoted\textsuperscript{13} about Moses seeing the burning bush and experiencing an awesome presence.

\textbf{Significance}

Though it may not be for me to say, but my understanding of the significance of the site is as follows. It is a woman's space as the colour of the red ochre is the same colour as a woman's menses during the monthly cycle. According Aboriginal legend this signifies renewal meaning for the land. The cycle of the moon in conjunction with the menses fertilises the land spiritually- which is belief they have on common with Africans.\textsuperscript{14}

Funeral rites also used red ochre. The cremated remains were soaked in ochre by Tasmanian Aborigines, in a usage possibly dating back to mankind's earliest times, as red ochre has been found in pre-historic graves. Other uses were in a general decoration, usage in wedding rites, and the mixing of ochre with animal fat to provide protection against the cold.\textsuperscript{15} Red ochre was part of the earth and was rubbed on the body for spiritual reasons. The dominant whiteman culture does not readily appreciate the intimacy with "mother earth" that this practice denotes. There are several reasons for this blindness.

\textsuperscript{11} Sagona (1994) \textit{Bruising The Earth \textit{Earth--Ochre Mining and Ritual in Aboriginal Tasmania}} Melbourne University Press, Australia, p142.

\textsuperscript{12} Dictation extracts period 5/1/98 to 22/2/98

\textsuperscript{13} Exodus 3 : 6.

\textsuperscript{14} Sagona : \textit{Bruising The Earth}, p11; Mutwa, Credo "Links Between Africa & Australia", Living Now, July-Aug No 10 (1997), p1

\textsuperscript{15} Sagona : \textit{Bruising The Earth}, p32ff.
To paraphrase Jesus in the healing of the blind man at Jericho, it is not physical blindness but spiritual blindness that needs to be healed. The most important spiritual attribute is the ability to appreciate unseen presences of the sacred. Lack of ability to experience this leads to the inability to appreciate the sanctity of places that may have a connection to the divine.

We do not have an inner spiritual life unless we have the experience of a beautiful world. . . . The more we destroy the world the less a sense of God is possible.

The manifestation of western present day religion is secular and people are more concerned with self-actualisation than connection with the sacred. The original message of Christianity was that worship of the sacred was not to be confined to temples and such places. According to John, one of the apostles of Jesus, the essence of connection with the divine is the connection through the Spirit: “that is the essence of worship.”

The Christian theistic tradition is a corruption of this message on several points. First is the great emphasis on building majestic edifices such as cathedrals, elaborate churches and other grand buildings, which are a substitution for the state of a mind that is open to receive the sacred. Scripture emphasized that the body is the temple of the spirit and through this we worship God. The inability of westerners to understand the subtlety of place is partly this attachment to places or houses of worship. Secondly, intercession by priests is a substitution for direct connection with the divine.

Compare this to the Aboriginal tradition, which does not rely on a priesthood but on a system of entitlement which is based the totemic and degrees of initiation giving every one some rights to participate at varying levels. Ritual is the lifeblood of the community.

Jesus said the material world is not to be relied upon in substitution for the spiritual “do not hold on to me…”

But the essence is that material benefits will be given, if the believer seeks spiritual fulfillment:

These things will be given to you as well.

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16 Mark 10:46.
19 John 4:24
20 John 2:23.
23 Jesus in his translucent form after arising from the dead (John 20:17).
The Toolumbunner camp site I chose turned out to be only two kilometers from the actual Toolumbunner sites, in a shady bush clearing in the state forest about three minutes from the Mersey River. The sound of the cement works which were in operation 24 hours a day was a distant hum in this idyllic spot. Being alone amongst the bushes where Aborigines had trekked and knowing the spiritual significance of the site nearby, concentrated my mind. I did not have a clue where to look for tracks leading to the site as it was densely wooded and I only had the general map from the Sagona book.  

I went deep into the bush at dusk and became aware of a higher presence and also a presence of death. On the third day I had almost given up, and I am sure that it was the voice of the supernatural that said to me within my mind:

follow this path and then you will come to another track and then follow this...

I had found a track that meandered through the undergrowth before leading to the Toolumbunner "B", the site of some European workings. About a half kilometer away was the Toolumbunner "A" site, which is the actual Aboriginal mine workings (see illustration 15). I had realised during my investigation and confirmed it after my visit, that Toolumbunner has profound continuing significance for Aboriginal people in Tasmania. I picked up a piece of red ochre and held it in my hand. I decided not to go any further as I felt I was not ready to face the spiritual power of the site.

Red ochre was used as spiritual medicine, a way to ward off evil spirits, to nurture a connection to the land, a way even of keeping well, a way of nurture of self and community. If one looks at the Tasmanian Aboriginal language there is a connection between the words blood and ochre:

balooyuna (blood) and baldewinny (ochre).

A baldewinny stone is seen at Plate 6 and the Aborigines at Plates 1, 2 & 5 all have red ochre in their hair.

The shamanic healing of diseases through the use of red ochre should not be overlooked and most importantly the Aborigines' lack of ochre is a factor in the decline of the Aboriginal population whilst in captivity after they were taken to Wybaleena. Red ochre was not available there and the importation of supplies was banned, so the Aboriginal population at Wybaleena was at risk. The whiteman may not have known, or if they did not seem to care, that the red ochre was crucial to the survival of the Aborigines. They died in large numbers as a result of not having access to their own clevermen and traditional cures. The lack of immunity of indigenous populations to European diseases is a compelling explanation for the high rate of Aboriginal deaths, but the real explanation must be the drastic change in lifestyle forced on Aborigines, and the loss of access to traditional ways such as the use of red ochre to ward off disease.

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25 See illustration 15.
27 Interview, Ida West (10/2/98) and also Sagona: *Bruising The Earth*, p24.
The introduction by the Europeans of mono-cultivation cropping and the rearing of domesticated animals in human habitation only increased the danger and meant that a lot of disease migrated over the human-animal barrier to Aborigines. The mono-cultivation of plants also led to a reduction of diversity and increased likelihood of disease. 28

According to Everett 29 Aborigines were constantly firing their lands, which acted as a fumigation so the wallabies roamed free and plant life was grown along with other varieties of plants. The lands were used again next season or left, depending on their condition. The Aborigines never took more than they needed and never hunted more animals of one sex than necessary so as to manage diversity and keep the population stable. This together with spiritual practices to ward off evil spirits and disease kept the population stable.

Indigenous people were reduced by disease before the actual invasion by Europeans in various countries:

...it is impossible to say how many (died) ...those who survived faced slavery, servitude or forced labour. 30

Tasmanian Aborigines probably numbered 5000 before the first contact in 1790, and numbered less than 1000 by 1832, the year Wyakeena started. 31 It needs to be accepted by the wider Australian community that the deeper aspect of the high rate of disease and death amongst indigenous Tasmanians in the early days of colonisation is cultural, a significant cause being lack of access to red ochre.

The continuing nature of cultural genocide avoids and denies these facts. An antidote would be for the wider society to have a willingness to go beyond its own mono cultural conditioning. Aboriginal religious practices have their own veracity and one way to allow this would be to allow continuing Aboriginal sanctification of sacred places. This would have the effect of enabling present Aboriginal religious rituals through their access to the secrets of the past and keeping these for their own use.

How the Disclosure Happened

The location of this site, which was indirectly connected with the genocide of Aborigines, was made publicly known in a non-Aboriginal publication "Plains to Plateau", 32 This was published at the end of 1992 by the Deloraine Environment Centre (DEC). The authors termed the site "an ochre quarry" rather than using its real name so as to take away some of the sin of disclosure. But they displayed a map, which effectively showed anyone with local knowledge how to access the site. The site is known by the Aborigines

28 Peat, Blackfoot Physics, p112.
29 Discussion around the camp fire (16/8/96), Old Parliament House.
31 Plomley: Weep In Silence, p3ff: chapter 1 Prelude to Deportation.
32 Published by the Deloraine Environment Centre, Deloraine, Tasmania.
as "Toolumbunner" and by the general title of "Gog Range ochre quarries". The map on page two of the publication showed the location in a not-to-scale map opposite the township of Mole Creek with the caption: "Gog Range Ochre Quarries".

In April of 1996 the TALC wrote to DEC asking for the publication to be withdrawn. I do not know why it took such a long time for this request to be made, but the response of the DEC to the demands of the Aborigines for withdrawal of this publication was defensive:

DEC...has not made public any information concerning this important Aboriginal site.\textsuperscript{33}

Such a response avoided the issue that a decision to publish the details of the site had been made and the denial was only going to aggravate the ongoing wound of the Tasmanian Aborigines due to the non-availability of red ochre for the survival of their ancestors. Opening of this Sacred wound without comprehension, out of some mistaken idea that it would be in Aboriginal interests to publish was only going to cause pain without healing.

The published article was written by Norwood, whom I interviewed for this research.\textsuperscript{34} According to her, it drew on material supplied by an anthropologist Breen who refused to reply to a letter from me.\textsuperscript{35} The location is not drawn in Robinson's journals but according to Gaughwin,\textsuperscript{36} the journals were a great assistance in relocating the site, which had apparently been done by the University of Melbourne in the 1970s.\textsuperscript{37}

The Gaughwin study was published a year after "Plains to Plateau" (1992), and Breen may have been privy to oral information given him by elders in the area, but that has not been able to be conclusively proved one way or the other, except for some anecdotal comments made to me when I was still working for the Aboriginal Legal Service.\textsuperscript{38}

The statement I took from Rosemary Norwood in Canberra said that:

"Plains to Plateau" and the section to do with Aborigines 10,000 years of Aboriginal heritage was based on work Shane Breen had done...it (Toolumbunner) was not referred to by name as such. The publication was prepared with a grant from the World Heritage, and copy was vetted with the Aboriginal section there, and with the Humanities section at the University of Tasmania.\textsuperscript{39}

According to Norwood they had apparently tried to speak to a local Aboriginal elder to get permission and failing that had relied on a male field officer of TALC which was just

\textsuperscript{33} DEC to TALC (draft June 1996) sent December 1996 , source Rosemary Norwood interview (23/7/97).
\textsuperscript{34} Rosemary Norwood interview (23/7/97).
\textsuperscript{35} By letter undated in late August/September 1997 I wrote to Breen at the address in Launceston supplied by Norwood.
\textsuperscript{37} The results of this work appears in Sagona (1994) the site was actually relocated by Plomley in the 1970s using descriptions in Robinson's journals.
\textsuperscript{38} Conversation with a client from the area, April 1995, Aboriginal Legal Service offices Launceston. (Identity confidential)
\textsuperscript{39} Rosemary Norwood, interview (23/7/97).
prior to publication towards the end of 1992. Norwood was aware of the letter of complaint from the Aboriginal Lands Council to the Deloraine Environment Centre.\textsuperscript{40}

The Aboriginal custodians of Toolumbunner are women under the umbrella of the Aboriginal Lands Council (TALC) and the author of the offending "Plains to Plateau" article never mentioned that fact in interview\textsuperscript{41}, so Norwood obviously did not know, and because of the lack of a register had no way of checking. The real failing is the toothless quality of the Aboriginal Relics Act (Tas), which has been criticised by many.\textsuperscript{42} The Act makes no provision for a register, powers of enforcement, and adequate staff to carry out protection work.\textsuperscript{43}

The appropriate elders, who were the Aboriginal women custodians of the site, had not been consulted. I knew some of these personally as I had dealing with them in relation to some lands near Deloraine that were donated to the Tasmanian Aboriginal Elders in 1994. The overall problem is that the importance of Aboriginal custodianship principles are not recognised legally. This is derived from the inadequacy of the Aboriginal Relics Act, and the lack of Aboriginal land rights legislation in the State of Tasmania.

The very fine protection accorded sacred sites in the Northern territory derives its legislative and authoritative basis from the Aboriginal Land Rights (Northern Territory) Act 1976 (Commonwealth) which empowers the Territory to pass legislation protecting sacred sites under the Northern Territory Aboriginal Sacred Sites Act 1989.\textsuperscript{44} Custodians' decisions in respect of declaration and management of sacred sites can only be countered by the Northern Territory Minister Responsible for Heritage, by way of the tendering of reasons for a contrary decision in the Legislative Assembly. Of interest in the case concerning Tebrkuna and Wilson the coroner\textsuperscript{45} is that the Custodians take custody of all human remains and carry out any investigation to ascertain their age and to which Aboriginal grouping the remains should be returned.\textsuperscript{46}

Aboriginal Custodians actually make the decisions, supported by anthropologists and field staff with an extensive system of fines and enforcement mechanism:

\textit{...Custodians have statutory rights which amount to a significant legally recognised interest in areas, which fall within the definition of a 'sacred site' ... the right to access such sacred sites in accordance with Aboriginal tradition, regardless of the underlying land tenure ... the right to authorise other people (both Aboriginal and non-Aboriginal) to cross any land whether it is public or private land for the purposes of entering a sacred site. These rights of Custodians are reinforced by a provision that makes it an offence to obstruct an Aboriginal Custodian from exercising these rights ...(who) also have the power to refuse permission for persons to enter or remain on a sacred...}

\textsuperscript{40} Ibid.
\textsuperscript{41} Ibid.
\textsuperscript{43} Ibid.
\textsuperscript{44} The Northern Territory Act establishes the Aboriginal Areas Protection Authority which has an Aboriginal majority.
\textsuperscript{45} See chapter Six.
\textsuperscript{46} Powers conferred on the Aboriginal Areas Protection Authority, Northern Territory, Australia.
site...and may also determine the nature and extent of works (if any) that may be undertaken on or in the vicinity of a sacred site.\textsuperscript{47}

In addition, and of crucial relevance to the management of such a site as Toolumbunner, the Northern Territory Custodians have the power to restrict disclosure of confidential information, which was tested and affirmed in a Federal Court case:

The proper protection of minority rights is very much in the public interest, as is respect for deeply held spiritual beliefs. In particular, the rights and beliefs of the Aboriginal people of Australia should be accorded a special degree of protection and respect in Australian courts. Thus I can well imagine a court finding on balance, for example, that the outrage in an Aboriginal community caused by a forced disclosure of information about a sacred site, would outweigh the importance in that particular criminal or civil trial precisely identifying the place or explaining why it was sacred.\textsuperscript{48}

The Court in that case upheld the position that there is a separate public interest immunity privilege, which protects the disclosure of Aboriginal secrets, which can be seen as a further development of the Foster v Mountford\textsuperscript{49} principle which concerned a private agreement, as opposed to documents of a quasi governmental nature. The location of a sacred site is a secret and it is now law that it is in the public interest, that Aboriginal secrets be protected.\textsuperscript{50}

This has not always been the case as Aboriginal places of spiritual importance have only belatedly been recognised in the last two decades in Australia:

the concept of 'cultural landscapes'.. is particularly appropriate for the recognition of Aboriginal heritage because it embraces interaction between people and the 'natural' environment, and includes places having powerful religious, artistic or cultural associations even in the absence of material cultural evidence.\textsuperscript{51}

In 1983 the High Court laid down the principles for protection of Aboriginal heritage, which went beyond the white man's perspective and held that the intrinsic nature of Aboriginal spirituality itself had to be protected:

something which is of significance to mankind may have a special and deeper significance to a particular peoples because it forms part of their cultural heritage. Thus an aboriginal archaeological site which is part of the cultural heritage of people of the aboriginal race has a special and deeper significance for aboriginal people than it has for mankind generally.\textsuperscript{52}


\textsuperscript{49} Foster v Mountford (1976-78) 29 F L R, 233.

\textsuperscript{50} Aboriginal Sacred Sites Protection Authority v Maurice (1986) 65 ALR 247, and Milpururruru & others v Indofurn Pty Ltd (1994) 54 FCR 240.


\textsuperscript{52} Commonwealth v Tasmania (1983) 57 ALJR 450, at 501, per Mason J.
Unlike Mannalargenna, who visited the site in the early 1830s, I was not an Aboriginal initiated man so in the finish I did not actually go to the Aboriginal mine works. I had, however, managed to find the direction to the site through dense bush, after some guidance from the spirit of the place, and it is not for me to categorise who or what that spirit was. It is important that the cooperation I received from this spirit, in my view, was dependant on the fact that I had actually asked for permission from the actual guardians or custodians to go to the site for my visit in early February 1998. When I did not get a reply, I33 perhaps this up with a discussion with the principal Tasmanian Aboriginal elder, Ida West.34 With this blessing from Ida West:

people with a genuine interest and with respect for the wishes of the Aboriginal people, there would no problem...35

I resolved to visit the vicinity of the site and see where my travels would take me. I also resolved not to go on to the actual site if after asking guidance of the spirit of the place, I was not encouraged to do so.

It is in the public interest that only the people directly concerned should have access to secrets of the past, because it is their past and no one else's. Clearly there is also an element of readiness, as when I had the conversation with the Aboriginal client six months before I left the Aboriginal Legal Service, some three years previously, I doubt that would have been ready, and would have visited the site out of curiosity. I surmise that it was also in this spirit that the whiteman in the DEC published the whereabouts of the site. Perhaps they thought it would even help the Aborigines. Such sites should only be visited as a result of a burning feeling inside. To connect with something that was actually deep inside.

My visit to Toolumbunner taught me to pray, for the first time for a long time. It was not the prospect of a brush with my own death so much as it was a connection to the sacredness of the place and my sense of wonder inspired me to ask the divine for help and guidance. The visible is only a threshold and at Toolumbunner I connected with my own soul and a sense of sacredness, not as a conscious effort but because

in a wild place you are actually in the middle of the great prayer.37

Dying to oneself involves surrendering to something that actually controls our destiny:

...do not be surprised at the fiery ordeal that is taking place among you to test you as though something strange were happening to you.38

33 Letter M J Kidd (10/12/97) to the Woman’s Committee of Toolumbunner c/o TALC, Hobart.
34 Interview, Ida West (10/2/1998).
35 Ibid.
37 Ibid, p288.
38 I Peter 4:12
By the time I had come into contact with this feeling of death I had been opened spiritually, after, I believe, what had transpired only days before at Wybaleena. The improbable was the turning point. Everything was totally beyond my control and yet I was being nurtured by an invisible and benign presence. There were several levels to this feeling of death that need to be explored:

*a feeling similar to suicide fantasy: when the spiritual path gets too much;*

*an interlocking of perspective as the turning point;*

*the voice that guided me through the paths*

I am sure the last is the real meaning of the famous Frost poem "The Road Not Taken". We just do not know which is the correct path, even after the choice is made, unless there was an invisible guidance, but it makes a big difference if we take the least popular path:

**The Road Not Taken**

Two roads diverged in a yellow wood,  
And sorry I could not travel both  
And be one traveler, long I stood  
And looked down one as far as I could  
To where it bent in the undergrowth;  
Then took the other, as just as fair,  
And having perhaps the better claim,  
Because it was grassy and wanted wear;  
Though as for that the passing there  
Had worn them really about the same,  
And both that morning equally lay  
In leaves no step had trodden black.  
Oh, I kept the first for another day!  
Yet knowing how way leads on to way,  
I doubted if I should ever come back.  
I shall be telling this with a sigh  
Somewhere ages and ages hence:  
Two roads diverged in a wood, and I—  
I took the one less traveled by,  
And that has made all the difference.

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59 See the last paragraph of chapter fifteen.  
PART TWO

Chapter Eleven

A Need to Remember

This is a prophetic statement spoken in 1821 by an Aboriginal boy, George Van Diemen, in an orphanage in Hobart:

Can you see that the moon is after that star and will soon catch him - that star is just like my people - it won't be long before the moon - the white people - has caught us too. \(^2\)

They were caught by the whiteman's spirits which worshipped idolatry and materialism, and the little boy who spoke this statement had died by the age of twelve, on his return to Tasmania, after he had been taken to live in England for several years, probably as a curiosity or as a trophy of colonisation.

This section, part Two, looks at the relationship between loss of religion, the spirit of the treaty, loss of lands, and the genocide. It is necessary to look below the surface of the genocide in Tasmania to tell the story from an Aboriginal perspective, otherwise it becomes glib. To examine some of the deeper currents existing not so far below the voices of discourse in Tasmania,\(^3\) one only needs to talk with Aboriginal descendants. In my time with the Aboriginal Legal Service at Launceston several historical events were still brought up from time to time by Aboriginal community members in discussion, which in my view make them still defining features today. Among many, three stand out: the massacre at Risdon Cove on the 3rd May 1804 (see illustration 7); the Blackline of October/November 1830, which was an attempt by the military forces of the day to carry out a 'search and destroy' operation against Aborigines stretching along the entire Tasmanian settled countryside; the Wybaleena concentration camp, which resulted in the death of most of the Blackline survivors. In one sense the first event was the beginning of the genocide of the Aborigines and the second was the end for the Aborigines, as it was psychologically responsible for their eventual surrender to the whiteman. The third event, their detention in the camp at Wybaleena, lasted for some fifteen years, but the event is still continuing in many senses, and this will be looked at in chapter fourteen..

Risdon Cove Massacre

The first clash between Aborigines and the settlers took place at Risdon Cove on the 3rd of May 1804 and resulted in a massacre when an Aboriginal hunting party was mistaken

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\(^3\) Luke, "Theory and Practice in Critical Discourse Analysis".
for a raid on the beginnings of European settlement. Even today the numbers of Aborigines killed are disputed, if these two viewpoints are any indication:

close to one hundred were killed that day... 4

the official figures were of the order of ten... 5

There is no dispute that the whiteman was to blame for misinterpreting the nature of the hunting party: unlike a war party it included women and children. Lt. Governor Collins took no action against the soldiers, some of whom were drunk. Even as late as 1830, the Government never admitted wrongdoing, and these British attitudes at the time had an effect on later relations between Aborigine and the whiteman, both in defending what was clearly an atrocity and in covering it up. 6 Collins, the Governor at the time, was biased against the Aborigines from the first and believed they were cannibals, which was not an uncommon prejudice against Tasmanian Aborigines: 7

W.C. Wentworth thought they were even more barbarous than New Holland (Australian mainland) Aborigines, having "neither houses nor clothing"; another commentator Dixon, thought they were the "lowest scale of human beings". 8

But to remember accurately is to encourage understanding. 9 This clash set the tone for interaction from then onwards and was regarded by the whiteman as the first sign of hostility and by the Aborigines as a sign of things to come. 10 The character of the interchange between white and black was significantly affected to the detriment of both, though Fels, who has done a study of the period up to 1811, thinks there was not a lot of mutual hatred between black and white at this time. 11

However it is clear Collins, the officer in charge of the colony, probably through feelings of guilt, thought the clash and the resulting loss of life for the Aborigines would mean retribution by Aborigines against all Europeans. 12 The Aborigines on the other hand, today see it as the first of many such massacres. 13 There was an element of pre-emption by the whitemen in the massacre, the "shoot first" mentality that was to be the main feature of conflicts between the whiteman and Aborigines in the next thirty years.

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6 Lehman, "Our Story of Risdon Cove".
10 Lehman, "Our Story of Risdon Cove".
11 Generally this was Fel's conclusion in (1982) "Culture Conflict in The County of Buckinghamshire Van Diemens Land 1803-11", Papers and Proceedings, Tasmanian Historical Research Association, Sandy Bay, Hobart, No2 Vol.29, p 47ff.
13 Chester, "A Need to Remember".
The Blackline

The Blackline between 7 October 1830 and 24 November 1830 was a military scheme devised by the later Governor, Arthur, to root out the last remaining Aborigines. According to the Executive Council minute of the time:

it (was) calculated to bring to a decisive issue a state of warfare to which there seems no happy ending.\textsuperscript{14}

Literally, as the name implies, the Blackline was a line of soldiers and auxiliaries of about two and half thousand men, which stretched from Deloraine through to Fingal on the East Coast and onto the Central Plateau. The idea was to drive the Aborigines down into the Port Arthur area. I not propose to mark this shameful act of genocide with a map.

This is what Robinson said in his journal at the time, 23 November 1830:

The Line: The question is, if the lines are to be so close that a native can't get out, what way will they get rid of the lagoons, the rivers, the tea-tree swamps, the impervious forest through which a native will pass, the fallen timber, the craggy precipices along which the natives can crawl, the deep gullies and ravines? The answer might be that a strict watch is kept up, but no guard could prevent the escape of these people even by day; they would pass at night.\textsuperscript{15}

What Robinson predicted came to pass. Looking at his later journal entry of 9 December 1830 no significant numbers of Aborigines were caught by the Blackline:

The Line had broken up at Pittwater and not a single native taken.\textsuperscript{16}

Ironically, the Blackline had coincided with the climax and eventual victory of the anti-slavery league in the UK and

despite (Tasmania's) isolation, knowledge (of what had happened) became common... the rapid decline of the native population was a matter of much notoriety.\textsuperscript{17}

But it was an attempt at genocide as the settlers were frustrated. Although undoubtedly many Aborigines had already died at the hands of the settler roving parties, the Tasmanian Aborigines acquitted themselves well in the bush and were admired by British soldiers for their courage and resistance.\textsuperscript{18}

It is not clear why there was a sudden loss of Aboriginal numbers after the Blackline but it is clear there were several factors at play. It marked the final turning point for the Aborigines. Prior to the Blackline, Robinson had only partial success in persuading

\textsuperscript{14} Reynolds, Henry (1994) \textit{Fate of a Free People}, Penguin, Australia, p117.
\textsuperscript{15} Plomley, \textit{Friendly Mission}, p281.
\textsuperscript{16} Ibid, p290.
\textsuperscript{17} Reynolds, Henry (1990) \textit{With the White People}, Penguin, Australia.
\textsuperscript{18} Reynolds, \textit{Fate of a Free People}, p28.
Aborigines to surrender but afterwards they were readily persuaded to surrender. Jorgensen, a convict who spent a great deal of time ‘hunting’ Aborigines, said at the time of the Blackline that

no conciliation was effected until after the Blackline had taken the field...the display of the white man's strength frightened the blacks...the business of the line was the main cause of Mr. Robinson's success in bringing in the tribes... (they) imagined that we would not cease until they were so harassed that surrender or extermination must ensue...they preferred the former.19

The Blackline was successful in intimidating the Aborigines, though they were far superior in the bush. Being able to evade capture they seemed to appear at many different points; being able to connect with the knowledge of the land's spirits also helped considerably:

...the blacks knew the whites was after them, that the black man's devil tell him so.20

The Aborigines by this time were guerillas and were able to ascertain where their enemies were and avoid them at night by escaping through holes in the line. The whiteman clearly wanted to demonstrate his superior forces but on the other hand was despairing because of the elusiveness of the Aborigine. The Aborigine had every reason to be elusive, as Robinson recounted a typical massacre near Oatlands in the middle part of Tasmania:

...a great many natives had been killed...they killed seventeen...first killed seven and then followed them to the lagoon and killed ten more. The natives could not get away...stockkeeper used to watch them at night and then go and (kill them).21

Of the Aborigines left after the Blackline, it is likely the majority died as a result of introduced respiratory disease.22

Introduced diseases exacted a heavy toll on indigenous societies. Literally, the diseases of civilisation, they included included small pox, measles, pneumonia and tuberculosis, incubated in the crowded conditions of European cities and partly the result of the infections passing the human animal barrier due to intensified domestication of farm animals.23

It can be seen that these two single events, the Risdon Cove massacre and the Blackline, and the continuing tragedy of Wybaleena, constituted the most significant historical events in the genocide of the Tasmanian Aborigines in the nineteenth century, and in the

19 Plomley, The Aboriginal Settler Clash 1803 to 1831.
20 Plomley, Friendly Mission, p491.
21 Ibid, p503.
23 Diamond, Guns, Germs and Steel, p207.
shaping of attitudes right down to the present day. They hang specter-like, and in the words of Michael Mansell:

had these things not taken place we would still be in control of our lands we would not be the poorest section of people in this State...we would be the richest. 24

Far more important than any single event were the loss of religion entailed in the loss of the lands and the non recognition of any treaty rights by the colonial authorities. This has led to the principal weakness that exists today in protection of Aboriginal heritage and ignorance of rights for Aborigines in a variety of areas. The Toolumbunner episode involving the disclosure of an important site to the public, was discussed in the previous chapter. It is but one example of non-recognition of Aboriginal sensibilities that could have developed into a major court case; and a political event had there been a treaty in existence in Tasmania. Wybaleena was a tragedy resulting from the failure of any protections for Aborigines.

The whiteman’s law has a peculiar self-justifying aspect, when you consider the implications of how the law operated one hundred and twenty years later to jail Aborigines’ most famous person, Albert Namatjira, on a technicality. The offence was supplying liquor to a ward of the state. The ward did not know he had been declared a ward, and the supplier of the liquor, Namatjira, did not know either. 25 The fact that Namatjira would be considered a religious figure or cleverman in the eyes of most Aborigines, was I feel the real reason the whiteman’s system imprisoned him, as they wanted to imprison his spirit.

24 Mansell, Michael (1992) Risdon Cove commemoration ceremony, quoted in Chester “A Need to Remember”.
Chapter Twelve

The Role of Religion in Tasmanian Aborigines’ Diaspora

Cleave a piece of wood, I am there, lift up the stone and you will find me there...the Kingdom of the father is spread on the earth and men do not see it.  

The form of Christianity brought to Australia by the settlers destroyed indigenous culture, and the sense of ritual which was the totally of religious ceremonies to order various phases of life. In the name of dogma, these whitemen did not understand the need to have a personal relationship with the divine, nor did they understand that God was in the earth.

Tasmanian Aboriginal shamanic rituals were necessary for their connection with each other and with the divine; and a matter of life or death for the survival of all indigenous peoples. The form of connecting with the divine, emphasizing rituals such as rites of passage, is necessary for any society, as in my opinion any society that does not have rituals for the various life passages of men and women is not a healthy society. As I illustrated with the suicide prevention workshops I organised in Tasmania in early 1997:

rituals not only protect society from the demonic: they also protect it from its own paranoia, from falling prey to its own obsessive and viscous measures of purification.

Several references in passing have been made to the religion of the Tasmanian Aborigines. The role of the shaman or healer was important and the rituals concerning the burial and cremation of antecedent ancestors were most important. Aboriginal custodianship of their lands and these sites was an important part of their religion, and this was made a theme in part one. Consideration must now be given to the actual religion lived by the Aborigines, which was a form of ecstatic connection to the sacred.

I have mainly drawn on the works of Charlesworth, who has collected good material about Aboriginal religion in Australia. The present contemporary knowledge of Tasmanian Aboriginal practices, in the past, have been resourced from the journals of Robinson. I have also had the benefit of secondary materials such as the extremely well

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1 Title from: Rigsby, Bruce (1983) "Diaspora People and the Vitality of Law and Custom: Some Comments” in Langton, Marcia and N Peterson (eds.) Aborigines, Land and Land Rights, Australian Institute of Aboriginal Studies Canberra.
2 Campbell, The Inner Reaches of Outer Space: Metaphor as Myth and as Religion, p61; quoting sayings of Jesus in the Gnostic gospels.
3 “In the absence of ritual, the soul runs out of its real nourishment”, p121: Somé, Malidoma (1993) Ritual, Power, Healing and Community.
4 Peat, Blackfoot Physics, p136.
5 Hillman The Soul's Code: In Search of Character and Calling, p247.
7 Plomley, Friendly Mission, Weep in Silence. Other references are either not contemporary or drew on secondary sources: Calder, James (1875/1972) The Native Tribes of Tasmania: Some Account of The Wars, Extirpation, Habits etc of the Native Tribes of Tasmania; Fenton, James (1884) History of Tasmania (facsimile); Bonwick, James (1870) The Last of The Tasmanians: The Black War of Van Diemen's Land.
researched *Living With The Land,* and speaking with various Aborigines previously indicated, in the course of researching this work. Most sources are secondary and suffer from a bias of regarding the Aborigines as either extinct or dying out. For a view of how the Aborigines were as people before the whiteman came I drew upon Plomley's researches of the visit by the Frenchman D'Entrecasteaux to Tasmanian waters between 1792 and 1793.

At the outset I need to say that for a whiteman researching Aboriginal religion there is a lot that Aborigines will not tell you because of your background. I add the disclaimer that I believe that the Aboriginal religion is an experiential religion. It must be lived.

The phrase that sums up this state of inquiry is that of Campbell, who appears to have a multi-layered appreciation of religious experience in his work. He equated religious experience with the spirit, so hence the words, mythology, metaphor, shamanism, story telling and dreaming were all part of the spirit of religious experience. The essential quality was its lack of a predictive element:

> One can not predict the mythology any more than one can predict tonight's dream, for a mythology is not an ideology, it is not something projected from the brain but something experienced from the heart.  

In carrying out the research I was struck by the work of Deren, who noted in her 1975 study of the origins of Voodoo in Haiti that "people of primitive societies have an excellent pragmatic control of their environment" and that instead of regarding primitive religion as a falsification of the true, the nature of such systems is essentially correct. Voodoo is an example of an ecstatic religion involving temporary possession. It originated in Africa and grew in Haiti as a result of the slave revolt against the French in 1804. It sustained the local population of Africans and Haitians in their fight against colonial oppression in the way that Christianity had not, for two reasons:

Christianity was associated with the French oppressors, and

Voodoo incorporated aspects of the dominant Catholic religion with ancestor worship.

Voodoo was primarily a positive possession not dissimilar to Jesus possession cults in the deep south of the USA and the growth of Pentecostalism as conventional Christian

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8 *Living With The Land* (1990/91) Books 1 to 6, Tasmanian Department of Education, Hobart.  
10 Campbell, *The Inner Reaches of Outer Space: Metaphor as Myth and as Religion,* p17.  
11 Deren, Maya (1975) *Divine Horsemen: Voodoo and the Loa in Haiti,* Paladin Books USA.  
religion had not catered to the needs of the people because of its pre-occupation with a priesthood interceding with the divine. The Aboriginal religion of the Tasmanians allowed spiritual union with the divine through the antecedent ancestors and the Ancestral Beings. The ecstatic provided a more useful connection to the divine.

Early Christian scripture supports this spiritual connection with the divine, when Jesus said: *I am the way the truth and the life.* In my view he did not mean that a church or priest was necessary to achieve that connection. He meant it would be through his being, but this could be through self-understanding together with a master-disciple relationship. There is a body of work that was excluded from the early Bible called the Gnostic Gospels, being the writings of the apostles Thomas, and a gospel allegedly written by Jesus. In my view, and the view of Pagels, these writings emphasize the ecstatic nature of connection with the divine through a spiritual connection and a master-disciple relationship, by exploration of the individual psyche:

There is a light within a man of light and it lights up the whole world.  
If he does not shine he is darkness.

These early Gnostic teachers usually reserved their secret instruction sharing it only verbally to ensure each candidate’s suitability to receive it.

Conflicts in the early church arose in the formation of Christianity between these restless inquiring people who marked out a solitary path of self-discovery and the institutional framework.

Aborigines both on the mainland of Australia and in Tasmania practised a form of ecstatic religion with direct connection with the divine and the spirits of the ancestors. This was facilitated through a master-disciple relationship by the indigenous clevermen or shamans. Ecstatic religion was not a worship of the devil as painted by colonial missionaries. In fact, we have already seen in the early part of the thesis that the devil’s true sin was seeking independence from the guidance from higher agency, or a Master.

Unfortunately the Aborigines were deprived of their own religion because they lost their custodianship of lands. Their own developed sense of the sacred they regarded as far superior to that practised by the whiteman, as this contemporary European writer asserts:

all the thanks (the religious teacher gets) from the black native for attempting to introduce our religion into his tribes is a laugh of derision or the silence of deeper scorn. “You! “ he says “ you who tie one another up, and flog one another within an inch of life, you who begrudge one another enough to eat; you who deprive me of my hunting grounds; you a people of two classes, one hateful the other contemptible.

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16 *John 14*: 6  
18 Ibid, p146.  
the tyrant and the slave; you, who keep and train men to human slaughter you teach me to be better! ME who walks in the forest free who appropriate no more than I need who would not lay a lash upon my dog much less my brother you convert me preposterous!!

The Aboriginal religion was a good deal more humane than the particular brand of Christianity that came to Tasmania with the settlers, and to the Aborigines practised a type of ‘form over substance’ and appeared to be mainly an adjunct to economic priorities. In other words the whiteman did not practise what he preached. This was, of course, a complaint Jesus made of contemporary Jewish religion:

you diligently study the Scriptures (but) you do not have the love of God in your hearts."22

Buildings for worship were emphasized by the whiteman over the worship of the spirit of sacredness or the spirit of the place, yet such stress on buildings was an empty adherence to religion. Long ago Jesus said we should worship our Ancestor the father in spirit:

...believe me, the hour is coming when you will worship the Father neither on this mountain nor in Jerusalem ... the true worshipers will worship the Father in spirit and truth God is spirit, and those who worship him must worship in spirit and truth.23

Maddock24 suggested that the Aborigines worshipped the Creator in the land, and they had rituals to bring the spirit in the land into focus or within the spiritual hearing of the initiate. Ritual, I found in my study of the causes of youth suicide in Australia,25 has practically disappeared from Australian life, but for the Aborigines at the time of Mannalargenna, it was the means by which the land was blessed and all generations were filled with the spirit of the dreamtime:

the function of ritual is to make us awake and focus our attention to remind us to reconnect us to those who have gone before us, and to those who are yet to come.26

Community is another aspect of the Aboriginal religion emphasizing a common sharing of the relationship with the divine in conjunction both with one’s own tribe and mankind in general:

If we are to understand what it means to construct a reality together and inhabit it together, we must explore community and friendship.27

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22 John 5:39 - 42.
23 John 4:21 to 24.
26 Ochs, Carol (1986) *An Ascent To Joy*, University of Notre Dame Press, Indiana USA, p74.
27 Ibid, p 114.
Religious thinker, Martin Buber, supports community of mankind as establishing religious relationship to the Divine by seeing God in the other person:

There is a "close connection of the relation to God with the relation to one's fellow-man."  

In order to see the God in the other person one must be able to connect with the God within, but also remain distinct; and Christianity at the time of the settlement of Tasmania took an excluding view of Aborigines and their religious practices. The whiteman's religion seemed to permit against the Aborigines many of the evils it claimed to be against. It had departed from the original message of Jesus, which in many respects was closer to the Aboriginal religion.

Tasmanian settlers may have been escaping a rigid class system, but they were not escaping virulent religious persecution. The settlers went to this new land expecting an Arcadia, a paradise based on the profit motive, but:

the myth which sent them . . . did not correspond with the reality.  

Terra nullius and the paradox of Mabo, referred to above, has its beginnings here. The materialism from which settlers were escaping was that which hanged a person for stealing a loaf of bread, but these very attributes from the home country within the settlers would kill Aborigines for the acquisition of land. The Aborigines were seen as useless, as the settlers' primary motivation was property and its acquisition, and the real criterion was success.

Under Aboriginal lore everything and person had a place, under the prevailing whiteman's ethos neither the free settlers nor convicts had a place or a real connection with their cultures, as they were displaced by pressures of capitalism in its various guises. The ancestors of the settlers had themselves been driven from the Highlands of Scotland, the tenant farms of Ireland and the slums of free market England. It is an irony indeed that these same people practiced the infamy that had been passed on their fathers' and grandfathers' heads, on the original inhabitants of Tasmania, by driving them off their lands and denying them livelihood and sustenance.

Alice Miller speaks of the sins that are handed from generation to generation by the pedagogical sins of the family and schools in seeking to discipline but really, mistreating children. Such treatment is always excused as being for "the good of the victim". The same children (when grown) inflict the same punishments on their own children, and so it goes on until somehow a break of consciousness means that new paradigms can come into play. Brady refers to both the conscious and unconscious hatred the settlers had

30 See chapter Four.
31 Brady, *Can These Bones Live?*, p52.
towards the Aborigines as born out of social Darwinism and aggravated by the fact that both wanted the same thing, the land.33

Darwin on his trip to Sydney and Hobart in 1836 said that the Aborigines had no future:

wherever the European has trod, death seems to pursue the Aboriginal...
It is very curious to see in the midst of a civilised people, a set of harmless savages wandering about without knowing where they shall sleep at night...
(they) were all too grateful for the small help they got from the white man...
offal from his slaughterhouse...milk from his cows.34

The summation of this attitude is that one part of the Homo sapiens species was inherently better than the other because of outward appearances. This thinking has its genesis in the belief that there was no God who created both equally, and overlooks the divine spirit inherent in man and womankind. The Aborigines believed a Spirit Being created the earth and all its inhabitants and infused them with life; that it was never intended for one species to be devoured by another; for one part of humanity to destroy another part.

Cohabitation is a principle of nature, hence the Aborigines allowed the whiteman to come in the first place, as all beings were equal and that there was enough for all. Creation was a mystery.

But the leap from creationism to the expendability of one part of our species is not a large one if you take the literal meaning of the Old Testament “fill the earth and subdue it”,35 but ignore the teaching of Jesus.

The Dreaming Sacrificed to Idols

"Dreaming" may not be the whiteman's method of spiritual discovery, but it is one way indigenous people get in touch with spirituality. It leads to a different thinking. Castaneda's stories were probably a combination of invention and experience36 but this is surely the point of departure from the rational and the journey to the truly spiritual:

Because modern man has a binding to the social order and ancient man has a binding to antiquity/ nature, this affects the thinking process by making concepts for modern man more important than the actuality.37

Brady touched on the whiteman's alibi of terra nullius to gloss over the genocide, because the whiteman was actually in another reality and this is the different thinking. The gulf is between the rational thinking of the whiteman that is able to compartmentalise, and shamanic experience that is bound up literally in dreaming, which will not allow

33 Brady, *Can These Bones Live*?, p190ff.
35 *Genesis* 2:29
36 Carlos Castaneda's Obituary, Australian (24/6/98).

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differentiation of the moral and practical, as God communicates through the dreaming. The Bible is full of such communications, for example:

Daniel had a dream and a vision came into his head as he laid in bed...the four winds of heaven stirring up the great sea... 38

There are a number of dreaming experiences of the writer which form the basis to this work, and these have been recounted where appropriate.

Dreaming is not readily acceptable as the views of modern man prefers to deal with an unfamiliar concept as if it were an empty ideality... (only) regards dreaming as an idea... (but does not) believe in the reality of dreaming. 39

In short it is the difference between an intellectual concept and an experiential fact as the dreaming referred to by Castaneda may be facilitated by connection to a particular piece of land as happened to me at Toolumbunner (and also at Wybaleena, as will be described in chapter fourteen):

Well, you can go to the moon, and you can build a church, and that becomes a sacred place. But that is not possible for us. Our sacred place is our particular set of mountains, and they can never change. And we can go to the moon and we can live on the moon but that will not be a sacred place. 40

The Tasmanian Aboriginal dreaming inevitably succumbed to convict pressure, markets and industrialisation, class warfare, the whiteness' subconscious hatred for the divine and the hunger for land caused by the demands for the pasturing 41 of sheep. Dreams are the substance of a living spirituality, just as intellectual concepts are the values of a society unconnected with the land. It is to dreaming we must look to assist us with interpreting the historical record as a contradistinction to a purely rational analysis.

**Tasmanian Aborigines and Their Calling**

The Aboriginal loss of lands by the failure to enact a binding treaty was a spiritual loss, which today is amenable by Aboriginal descendants and the people around them attaining a certain level of new maturity and wisdom. The wise men and women of the Tasmanian Aborigines of today are many and some of them were discussed above 42 but historically the settlers mistreated the wise men and women of the Aborigines. Mannalargenna died on his prison island (Flinders Island) 43 knowing he had been betrayed by Governor

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41 Schlunke, Katrina (1997) "Moving Coffins: Temporalising 'Settled' Space in the 1840s" in Johnson, Lee et al.(Eds.) (1997) Off the Sheep's Back: New Humanities, University of Western Sydney, School of Humanities, Richmond, NSW.
42 See chapter Five: The Story Tellers.
43 (5/12/1835) ref Plomley Weep in Silence, p313.
Arthur and Robinson but never giving up his hope and faith in his religion. His death was not a form of suicide by giving up, because:

in the east the Upanishad says that the true killer of the self, the true suicide is the person who lives without knowing oneself.

Although Aborigines lost their lands the whiteman in my view lost his soul:

....when two people come together, you can’t just make Treaty with them and walk away, and I think that needs to be understood with people who enter treaties. Like, when you condemn our spirituality, spirituality is key. It gives meaning to life. It gives meaning to purpose of life... spirituality... otherwise you have no heart and no soul. So for us to have a feeling for each other and mutual respect, you need to have that, we need to feel that who you’re dealing with is another human being....

Perhaps Mannalargenna might have associated his own impending death from respiratory illness with a foreboding of the many deaths of his people. Another interpretation is that he and his people were familiar with the walk with death that is the burning-bush-that-is-not-consumed, the actual presence of sacredness. These rights of the Aborigines had not been acknowledged because those who had contributed to their deaths themselves had no personal knowledge of sacredness, so the temple of the Aboriginal religion—the land—was taken away. As they had confronted the burning bush in their own lives, the Aborigines were a threat to the culture of the whiteman:

Aboriginal religion regards everything as pertaining to Spirit... Ancestors are a literal unalterable truth... Aboriginal religion is ‘the world’ in the earth as the Spirit goes to live in the earth.

44 Pybus, Community of Thieves, p132.
47 Charlesworth, Ancestor Spirits, p89 & 84.
Chapter Thirteen

Treaty Reconsidered: *A Meditation on the Disappearing Treaty*

It is part of the oral and written history of the Tasmanian Aborigines that there was an agreement falling short of a formal treaty entered into between Governor Arthur, Mannalargenna and other chiefs. They placed great reliance on the historical fact that Mannalargenna met Arthur at Launceston on the 5 October 1831. According to Mannalargenna's descendants who contributed stories to the educational series of booklets, *Living With The Land*, this meeting was a negotiation between the Governor and two Aboriginal leaders, Mannalargenna and Umarrah. Presumably this was in the context of surrender and cooperation with Robinson, and at the very least promises of housing were made by the Governor.

According to Fenton, a nineteenth century commentator, Governor Arthur, with whom the Aborigines dealt over these negotiations, was a peculiar mixture. He was a military man and authoritarian by nature, who believed in hierarchical structures and did not believe in freedom of the press. He was overruled in this latter matter by the British Home Office, with the fortunate result that later generations are able to discern in the press accounts the social attitudes of the settlers and government towards Aborigines. He was unpopular with the civilian population as Arthur believed that Tasmania was a penal colony, and should be run like one. Although, the Governor was aware of the moral claims of the Aborigines, his actions were contrary to any sympathies he may have held for Aborigines.

This caused misgivings by those under his authority as "their (aborigines') country has been taken from them piecemeal without purchase or treaty."

Arthur's response to the white/black conflict over land had been to put a bounty on Aborigines' heads on the understanding that he preferred them "alive than dead", and continued to give their land away for political favours. It was only after the drastic decline of the Aboriginal population and the failure of the policy of warfare that he turned to conciliation, which had been suggested by various missionaries and Robinson some eighteen months before the Blackline failed to catch any Aborigines.

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2 *Living With The Land* (1990/91) Books 1 to 6, Tasmanian Department of Education, Hobart.
4 Fenton, James (1884) *History of Tasmania*, Foot & Playsted, Launceston.
6 William Darling, Commandant of Wybaleena 1833-34, quoted Reynolds *Fate of a Free People*, p174.
8 Desailly "The Mechanics of Genocide": p 11 ff the growth in the wheat export economy and the growth between 1816-1825 of so called gentleman farmers owed significantly to the granting of land as rewards for service or support of the government.
The whiteman, however, does not rely on or have access to this oral history, and would say as there was no record of an Agreement, it is not an existential legal fact- which anyway falls short of a treaty. This is inexplicable in moral terms. It is true that there is no mention in Robinson's journal of any written Agreement on this day, but there is evidence Arthur met and had a "conference (with) the whole of the natives". In the note to this entry there is mention of Mannalargenna and Umarrah, the other surviving leader, being provided with a "home". This could be the exchange of the mainland, by Aborigines leaving the mainland for Flinders Island, and as a homeland.

It is not clear from Robinson's journal- the only historical text available where a participant noted the proceedings- just what took place. It is clear that some eight days after the initial Launceston meeting between Arthur and Mannalargenna, there was a second major conference at Campbell Town on the 13 October 1831. Mannalargenna seems to have been promised a house and land at Campbell Town, which was never built; and this was one of the first mentions of the "Great Island" (Flinders Island) as a home for the Aborigines.

This second conference also involved men by the name of Batman and Cottrell, who had dealings with Aborigines and could be considered intermediaries. Robinson, who subsequently went out into the bush to gather up the Aborigines, was also involved. History records through the diaries of Robinson that Robinson traded with the Governor some parcels of land that had been previously granted, for bigger blocks of land. The so-called "Mission of Reconciliation" by Robinson started in earnest from this time, but it is clear from Robinson's own account that he was to receive payment for his services.

There must have been an Agreement with the Aborigines, as these conferences resulted in Mannalargenna helping Robinson for the next four years in rounding up Aborigines. The lack of official recollection has been a source of resentment on the part of Aborigines ever since. We can only surmise about what was promised by Arthur, and what he never delivered.

According to Reynolds, Robinson believed much later, in 1838, that the Aborigines had been betrayed, as according to contemporary observers he used to mutter incoherently about the failure to honour promises of Aborigines being able to keep their own land, and in conjunction with a white protector, to keep their own customs. These promises were part of the Agreement.

It seems during the period of the immediate aftermath of the Blackline leading up to the conferences mentioned above, Pedder, the Chief Justice, was the only government official to have a conscience, as during an Executive Council meeting in February 1831, he advocated that only those Aborigines responsible for fighting should be taken into

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9 Plomley Friendly Mission, p483.
10 ibid, p575.
11 ibid, at p575 (footnote).
12 ibid, p484.
13 Reynolds, Fate of a Free People, p152.
custody, and that a treaty be concluded with the chiefs of the Aborigines over lines of demarcation. Robinson assured the Executive Council that the chiefs had little influence over the tribes, and thereby effectively dissuading the Council from entering into a treaty as the chiefs "could not deter them from committing further atrocities".

This is simply not true, as Robinson was later to rely on chiefs such as Mannalargenna to gather up the Aborigines. In my view, Robinson's later statements referred to above, were the conscience of a troubled man who had told the Aborigines one thing but betrayed them to government officials. There was another troubled conscience, as Governor Arthur later wrote with regret in his papers, which were reproduced in the House of Commons Select Committee on Aborigines in 1837, that a treaty had not been entered into:

...on the first occupation of the colony it was great oversight that a Treaty was not... made with the natives...such compensation given...for what they had surrendered.

When Arthur actually wrote this it was January 1835, Mannalargenna was still alive, and died only some eleven months later in captivity on Flinders Island. There was still time to conclude a formal treaty but nothing transpired as the whiteman now had all the lands. Arthur probably rationalised that there already was an Agreement. Arthur had the power, but not the will, to formalise this Agreement into a treaty, as he was still Governor only surrendering his commission in October of 1836.

The Tasmanian Aboriginal Centre has searched the Tasmanian State Archives in vain for a written Agreement.

In my view Arthur concluded a legally binding Agreement with Mannalargenna and Umarrak, two of the surviving Chiefs. When Umarrak died some five months later, in March of 1832, after helping Robinson gather Aborigines, this left Mannalargenna, who continued to help gather Aborigines until he went to Flinders Island at the end of 1835. It is presumed he went there because the promised house at Campbell Town never eventuated.

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15 Ibid
17 Gov, Arthur to Spring-Rice (27/1/1835) British House of Commons, Select Committee on Aborigines (1837).
18 Died (4/12/35), ref Plomley Friendly Mission, p807.
19 Ibid, p949.
20 Whilst I was attending the Tasmanian state archives in late October 1996, the Tasmanian Aboriginal Centre had a Tony Rayner looking for much the same material: evidence that would support a Treaty or agreement (letter from Archives Office of Tasmania (13/1/1997) ref: Ian Pearce).
21 When Mannalargenna died at the end of 1835 only three leaders remained out of ten who went into captivity, these were: Towturer of the south-west people, Rolepa of the Ben Lomand and Tonger-longer of the Oyster Bay tribes, ref Living With The Land (book four), p28.
Direct instructions of the Crown\textsuperscript{22} to the Governor of NSW, of which Tasmania was a part, stipulated that the natives were to be treated fairly. The intention of the Australian Colonial Government to allow Aborigines free range over their lands was a decisive factor in the 1996 Wik decision,\textsuperscript{23} in allowing native title claims over pastoral leases. But greed, self-interest and a form of social Darwinism that pre-existed the works of Darwin meant these instructions were never put into effect.

Brian Plomley, in two volumes of Robinson journals,\textsuperscript{24} recorded the consequences of this failure of policy. These are replete with the reported deaths of Aboriginal men and woman by gunfire, discarded bodies being found, and various Aborigines telling Robinson of the tragic deaths of loved ones. The original numbers of Tasmanians were estimated\textsuperscript{25} at between 3000 to 5000 at the time of invasion in 1803. By 15 November 1830 there were only seventy Aborigines left stretching from the Tamar River in the north to the Derwent River in the south.\textsuperscript{26}

Genocide was the main reason the Aborigines did not get a formalised treaty, but it is my view, the failure of the whiteman to honour the Agreement entered into contributed greatly to the genocide.

The spiritual aspect, or psyche of the genocide was as follows:

(The settlers) were justified...and chosen by God for the task of civilising the world...(somehow) repeating the Biblical story of the Chosen People on the way to the Promised Land.\textsuperscript{27}

This gap between this supposed justification and the real was not bridged by an exercise of dialogue with the Aborigines, even though to them:

\begin{quote}
\textit{every rock, watercourse, mountain...was charged with meanings...}\textsuperscript{28}
\end{quote}

The Aborigines would not have given up this spiritual attachment without substantial inducement and the behaviour of the various parties at the time suggests there was an Agreement between the Aborigines and the Administration in Hobart, the capital of Tasmania. Even though it may not have been consigned to writing, the evidence does point towards an Agreement similar to that later negotiated with North American tribes for relinquishment of lands, but never written down.\textsuperscript{29} Reserved lands were granted to

\textsuperscript{22} Instructions to Capt. Cook, and Governor Phillips: commented on by Henry Reynolds in \textit{The Frontier} (1988), \textit{Fate of a Free People} (1994), \textit{This Whispering in Our Hearts} (1998); see also Morgan, Sharon (1992) \textit{Land Settlement in Early Tasmania: Creating an Antipodean England}. Cambridge University Press, Cambridge, UK, at p143; ref also Instructions to Collins the first Governor of Tasmania (Van Diemens Land) ref HRA 1 iv, p12.

\textsuperscript{23} Wik Peoples v Queensland (1996) 187 CLR 1.


\textsuperscript{25} Diamond, \textit{Guns, Germs and Stee}, p205ff.

\textsuperscript{26} Plomley, \textit{Friendly Mission}, p276.

\textsuperscript{27} Brady, \textit{Can These Bones Live?!}, p25.

\textsuperscript{28} Ibid, p21

\textsuperscript{29} Ibid, p156.
the American Indians in exchange for the giving up of their lands, and which has formed the basis for an international treaty jurisprudence which survives today. Such exchanges were a more humane policy and more in the spirit of the original instructions given by the British Home Office to the very first officials, and inherited by the Arthur Administration in Hobart.

The text of this Tasmanian Agreement is also written in the palpable feeling of betrayal that exists in the Aboriginal community today.

The 'disappearing treaty' for the Tasmanian Aborigines resulted in a sense of betrayal and unfairness. Mannalargenna probably had the realisation, that if his people stayed in the bush, they would probably die of starvation or be murdered. On the other hand, though the whiteman offered safety at the Wybaleena camp, they never followed through by granting Aborigines continuing access to the former lands, which in my view must have been demanded by Mannalargenna. Otherwise there would be no way they could conduct their religion.

Instead, Wybaleena became part of a prison island, and this was a bitter blow to Mannalargenna from which he never recovered.

To the Tasmanian settlers the Aborigines had become an inconvenient reminder of the dishonoured Agreement. They were accordingly made to feel invisible, like ghosts watching powerlessly as their lands disappeared forever. Poor people (speaking of the modern equivalent) are made to feel invisible, because they do not have any purchasing power "shop keepers and others do not want to know them", so they are made to exist at the periphery of society. The Aborigines' purchasing power was their land, which was gradually being lost to them from the time of the Risdon Cove massacre in 1804 shortly after the arrival of the whiteman, to the Blackline.

The final trip of the Aborigines to Wybaleena in 1832 marked the end of realistic hopes for an honouring of the Agreement.

**Some Attempt to Enforce**

The Aborigine, Arthur, in the modern sense was the first Tasmanian Aboriginal land rights activist. He was a "stolen child" who spent part of his early life in orphanages in Launceston and Hobart until going to Melbourne with Governor Arthur at the end of his term in 1836.

On his return, in 1846, he was sent to Wybaleena, Flinders Island, and was notable for his activism for equal rights and better conditions. In the early part of the following year he organised a petition to Queen Victoria about the conditions at the camp. This petition is the foundation for evidence of an Agreement (or treaty) that was (for the whiteman)

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30 Reynolds, Fate of a Free People, p198ff.
conveniently never put in writing. The petition said that the Aborigines were not captives, and in complaining of mistreatment, it was pointing to pre-existing rights to be treated in a certain way, namely as equals; that the Agreement negotiated with the government through Mannelargenna, should be honoured.32

This petition led to the closure of Wybaleena, as the orders from London were received within six months.33

The petition in my view provides the real foundation for the legal frame work for the 1995 process of the return of lands detailed below, and is an example that law has by necessity a moral foundation,34 as eventually moral wrongs come to haunt later generations.

Such petitions are two-edged swords as both USA and Australian courts have held such petitions to be evidence of final dispossession and alienation from lands claimed by the petitioners. In the famous USA case of the Santa Fe35 railroad’s unauthorised seizure of Indian lands for a railroad, the highest US court held that the Indian request for a reservation and a petition for return of their original lands was evidence that they had lost the lands permanently:

No forfeiture can be predicated on an unauthorized attempt to effect a forcible settlement on the reservation unless we are to be insensitive to the high standards for fair dealing in light of which laws dealing with Indian rights have long been read. Certainly a forced abandonment of their ancestral home was not a ‘voluntary cession’...we conclude that its creation at the request of the Walapais and its acceptance by them amounted to a relinquishment of any tribal claims...36

In the Australian state of Victoria case of Yorta,37 which was a claim by the Yorta Aborigines over many of their lost lands, some of the journals of Robinson, who was Protector of Victorian Aborigines after gathering up the Tasmanian Aborigines, were used unsuccessfully to establish a connection to the lands and genealogical descent. The Judge, Olney J, used the factual existence of a petition by aggrieved Aborigines as evidence of final dispossession:

the copy of the petition was tendered in the course of the applicants’ counsel’s opening address as evidencing a long history of efforts to obtain land. It is clear that by 1881 those through whom the claimant group now seeks to establish native title were no longer in possession of their tribal lands and had, by force of the circumstances in which they found themselves, ceased to observe those laws and customs based on tradition ....38

32 Reynolds Fate of a Free People, p9.
33 Ibid, p15.
One of the Aborigines who was taken to Flinders Island after the death of Mannalargenna, William Lanne, was captured as a result of the re-occupation of his tribal lands by members of his family; there is archaeological evidence to support this reoccupation.\(^{39}\) The question needs to be asked why would his family finally surrender after re-occupying tribal lands, if there was not some inducement to do so?

For the Aborigines, a treaty was an honouring of the land and the people, whereas for the Europeans the negotiations were a matter of expediency, or even as something of a last resort. In 1840 the New Zealand Maoris concluded the Treaty of Waitangi with Hobson on behalf of the NSW Governor, but the Maoris were armed with muskets and greatly outnumbered the Europeans. By comparison the Tasmanian Aborigines were only armed with stone age weapons.\(^{40}\)

The Aboriginal free-ranging over the land was conveniently misinterpreted, rather than seeing this as an extremely close connection to the land:

> The Kangaroo was capable of domestication...but impossible for (Aborigines) to stay long enough in one spot to attempt the task”. Cultivation was the essence of claiming title to land and “affords the only foundation upon which the right to appropriate land from the common flock can rest.\(^{41}\)

**The Man: Arthur the First Aboriginal Rights Activist**

But this view of the Aborigine is racist and not based on the Aborigines' intelligence observed by many. Reynolds\(^{42}\) describes petitioner, Arthur, as articulate and possessing a good knowledge of English, and understanding of legal and moral tactics. He was part of the whitman's Diaspora that took away the lived lives of Aborigines as well as their treaty rights. From reading many of the personal accounts in *Bringing Them Home*\(^{43}\) the writer surmises he must have shared deep sadness with his contemporary Aborigines at having had his life disrupted, missing out on his Aboriginal parents and seeing so many of his friends and family die.

Not put off by the apparent inaction on treaty rights after the closure of Wybaleena, he continued to agitate for the following, whilst he was resident at Oyster Cove until his untimely death by drowning in 1861:

a) Equal rights for Aborigines to be given free land allotments

b) Education for the Aborigines

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\(^{39}\) Letter Prof Murray to Mr M Strong TAC (15/2/90), he detailed the former site of the Van Diemens Land Company at Burghley, and consulted with local Aboriginal representatives.

\(^{40}\) Diamond, Guns, Germs and Steel, p255 - 258.

\(^{41}\) Windeyer, Richard (1842). "On the Rights of the Aborigines of Australia" (manuscript) Windeyer Papers Mitchell Library NSW.

\(^{42}\) A stolen child is the term used to denote an Aboriginal child taken away by european authorities ref *Bringing Them Home Report.*

\(^{43}\) Report of The National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families *Bringing Them Home.*
c) Better sanitary conditions as the Aborigines at Oyster Cove were given marshy land
d) A recognition that Aborigines needed to rise above inter tribal rivalries.  

He was unsuccessful in his agitations at the time but caused the government to take some notice as there were a number of inquiries instigated as a result of his actions, including an inquiry into conditions on Cape Barren Island.  

It can definitely be said that some of the fruits of his agitations only came almost one hundred and fifty years after his death.  

**Issues Flowing from the Agreement**  

If we assume that part of the Agreement, referred to above, reserved some of the islands of the Furneaux group for Aboriginal use then there is considerable scope for claims in this area.  

If the existence of the Agreement were to be upheld, then this could constitute a reservation of these lands for, at least, the customary use by Aborigines. As detailed in chapter four, there has been development of the law recognizing customary indigenous use or custodianship, which is regarded as an aspect of native title.  

It shows that the return of lands as detailed in the next chapter was actually forced upon the government by a consideration of the moral and possible legal implications that there was a binding Agreement when Mannalargenna met Arthur at Launceston on 5 October 1831.  

Native title issues are applicable in some areas of the Furneaux group of which Flinders Island is but one island. Aboriginal traditional mutton bird harvesting has extended back prior to the coming of the whiteman in the Furneaux islands, and these "mutton bird" islands are some of the lands that were handed back. In addition, the creation of Aboriginal Reserves on Cape Barren Island were in recognition of Aboriginal occupancy and may act as a shield against the government denying native title to the descendants, if it is accepted that at the time of annexation Tasmanian Aborigines were in occupation of those lands. To adopt the argument of Castan QC in the Mabo case, which was accepted by the High Court:  

The declaration of the (Murray) Islands as a reserve for Aborigines in 1882, and again in 1912, had the effect of removing land on the Islands from the category of land, which might be the subject of a Crown grant pursuant to the Land Acts dealing with alienated Crown land. The declaration did not extinguish Islander interests in land. 

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45 Ibid.

46 In early 1994 I had a discussion with John Wells of the TAC who confirmed that the TAC had contemplated filing a common law claim in the Federal Court, but this was abandoned after the Native Title Act 1993 was passed. He confirmed there were other native title issues such as traditional rights for Mutton Birding and fishing which had to be dealt with.

47 This is the whole thrust of the Wik decision, and the subsequent Native Title Amendment Act 1998 to curtail these as much as possible.

48 Essentially accepted by the High Court, Mabo v Queensland (1992) 175 CLR 1, p7.
The Cape Barren Island Reserve Act 1912 might have had highly restrictive provisions, but was in recognition of some rights of the Aborigines in relation to the land they were occupying:

which has been withdrawn from leasing and has been in part occupied by certain half-castes or their descendants but with out any legal title thereof or defined rights therein.  

The Reserves were recognition of the thriving community on Cape Barren Island of Aborigines descended from sealers and their Aboriginal wives who escaped being sent to Wybaleena. At the time of the Act, the Aborigines concerned probably did not see the need for ownership in whiteman’s terms, as they regarded the land as theirs as compensation for the loss of the mainland by occupation of the settlers. Interestingly, the Act had modified the common law applying in Tasmania that granted title to land after a period of occupation, by overriding squatting rights.

There was a history, as detailed in the Bringing Them Home Report, of a long term government strategy to remove children, in order to stop the Cape Barren Islanders from claiming land rights by absorbing:

the half-castes into the white population.

By the time the Cape Barren reserve land reverted to the Crown in 1951, only one lessee was eligible for a land grant. (Under this system)...the government demanded they move to the mainland or risk having their children taken.

In this case, there was no formalised treaty to stop the government from practising what amounts at the very least to cultural genocide. There are signs, now, that the common law after Mabo recognises the rights of these people to peaceful occupation of their ancestors’ lands. The November 1998 Federal Court decision of the Miriuvung Gajerrong peoples of Western Australia held that public reserves were part of native title even if the public were allowed to use the reserve without restriction. There was a question that the Miriuvung Gajerrong were not in continuous possession of the various parcels of land from the time of change of sovereignty, but the Court followed the approach in the Canadian case of Delgamuukw:

Needless to say, there is no need to establish an unbroken chain of continuity...between present and prior occupation. The occupation and use of lands may have been disrupted for a time, perhaps as a result of the unwillingness of European colonizers to recognize Aboriginal title. To impose the requirement of continuity too strictly would risk...

perpetuating the historical injustice suffered by aboriginal peoples at the hands of colonizers who failed to respect aboriginal rights to land.

69 Cape Barren Island Reserve Act 1912.
50 Bringing Them Home, p95
31 Ibid.
52 Ben Ward & Ors v State of Western Australia & Ors [1998] 1478 FCA (24/11/1998); “Miriuvung Gajerrong case”
53 Ibid.
The Court in the Miriuwung Gajerrong case went on to say that:

the only limitation on this principle might be the internal limits on uses to which land that is subject to Aboriginal title may be put which are inconsistent with continued use by future generations of Aboriginals.55

This case has potential revolutionary consequences for Aboriginal dispossession as it is at last adopting the Aboriginal perspective of land use into the whiteman’s law.56

**Land is the Answer**

The whiteman is starting to accept the Aboriginal claim that land is a necessity to overcome the "fringe" mentality. The history since the whiteman’s occupation of Tasmania was dispossession, and frustration on the part of Aborigines when they tried to get the land back by various means. The disappearing treaty has started to be honoured in the spirit and in recognition of the events following on from the Agreement. The dependence created by the concentration camp rations, at Wybaleena led to the gradual but inevitable death of the Aborigines concerned.57 The "protected" were supplied with rations only if they stayed in the compound. The issue was that the whiteman did not want to even share the island of Flinders with the Aborigines.

The Aboriginal need for land can no better be described than in the words of one Australian mainland ATSIC commissioner:

> In addressing our status in this country, if you go through the history of invasion, imposition, colonisation, whatever you want to call it, you can see from the word go we are placed in the position of being fringe dwellers. Even today we live in the cities, the towns, but operate largely in communities of our own. It is still in a fringe place. In the services that are there, they are fringe services. It is a part of what the mainstream mob do but cut out so that we have those things of our own or take a portion of what they provide and adapt them to meet those needs we say are ours. There is, still, in all of it, a fringe mentality.58

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57 Reynolds *Fate of a Free People*, p163.
Chapter Fourteen

Return of the Lands

Wanti nindo ai kabb a kabb a. Ningkoandi kuma yerta.;
Where have you pushed me to? You belong to another country.
(Ngurpo Williamsie's song 1)

One of the major findings of the Royal Commission into Aboriginal Deaths in Custody 2 was that the disadvantaged and unequal position of Aboriginal and Torres Strait Islander peoples within Australian society is a direct result of dispossession of their lands. In turn, this dispossession has made it impossible to achieve any substantial form of economic base. From this inherent poverty flowed the all too familiar problems of unemployment, substance abuse, poor living and housing conditions and poor health. 3

A New Approach

In 1995 the Tasmanian Government returned some lands as part of reconciliation with the Aboriginal community, which seems to have been brought about by a number of factors:

a) An apparently genuine desire for reconciliation on the part of the Government, based on the realisation that the 1992 Groom Liberal government had grossly offended the Aboriginal Community by abolishing the Office of Aboriginal Affairs.
b) The realisation by all parties that the Commonwealth Native Title Act 1993 would be of little benefit to Aborigines in Tasmania.
c) The realisation that the Indigenous Land Fund, if based on past purchases by ATSIC, would do little to rectify the anomaly of dispossession of Tasmania.
d) A desire on the part of the Government to avoid expensive legal challenges in the Furneaux Islands group and the Van Diemen Company (VDL) lands. 4
e) The research in the series of Inquiries into Aboriginal Deaths in Custody during the early 1990s. 5

This was a break with the past that could not have happened but for the Mabo 6 decision and it is this kind of facilitation process that will be Mabo's most enduring legacy. Tony Fether, Leader of the Tasmanian Upper House assisted with the research for this

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1 Ngurpo Williamsie’s song an eight-word song written on a loose piece of paper, and discovered within the pages of another book at Sydney’s Mitchell Library. The page is believed to belong to the missing journal of Matthew Moorhouse, an Aboriginal protector who recorded S A tribal languages last century, ref Australian (11/5/99).
4 Mansell, Michael (1995) “A New Legal Shield”, Alternative Law Journal, Vol 20: a draft statement of claim was prepared by TAC suing the VDL company & Government for breach of fiduciary duty for loss of lands arising from a massacre of Aborigines at Cape Grim November 1828, but it was never filed.
As an insight to government motives, Fletcher told an audience that he personally had been:

motivated by a desire to perform some lasting task that would be substantial.\(^7\)

I was present at this meeting and decided to contact Fletcher at a later time because I was impressed with his obvious sincerity, and the way forward out of years of denial is to seek a higher calling in the particular issue. I could see that Fletcher’s conversion to making a lasting difference went beyond the usual political positioning and it was similar, in my view, to the conversion of mayoress of Flinders Island to making a lasting change to the situation over the cemetery at Wybaleena.\(^8\)

**Spiritual Ties and Significance**

The Aborigines claimed these lands that were returned as they had spiritual significance:

<table>
<thead>
<tr>
<th>Location</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oyster Cove</td>
<td>Last resting place and settlement</td>
</tr>
<tr>
<td>Risdon Cove</td>
<td>First massacre site of Aborigines 1802</td>
</tr>
<tr>
<td>Wybaleena</td>
<td>First concentration camp</td>
</tr>
<tr>
<td>Cape Barren Island</td>
<td>Occupation and settlement of lands by descendants</td>
</tr>
<tr>
<td>Mt Cameron West</td>
<td>Important archaeological /gathering sites</td>
</tr>
<tr>
<td>Kutikina Cave</td>
<td>&quot;</td>
</tr>
<tr>
<td>Ballawinne Cave</td>
<td>&quot;</td>
</tr>
<tr>
<td>Margata Mina</td>
<td>&quot;</td>
</tr>
<tr>
<td>Rocky Cape</td>
<td>&quot;</td>
</tr>
<tr>
<td>Cape Portland</td>
<td>Burial site</td>
</tr>
<tr>
<td>Steep Island</td>
<td>(Part of Furneaux Islands/sealers descendants &amp;</td>
</tr>
<tr>
<td>Badger Island</td>
<td>(also important cultural significance e.g. mutton bird</td>
</tr>
<tr>
<td>Mt Chappell Island</td>
<td>&quot;</td>
</tr>
<tr>
<td>Babel Island</td>
<td>&quot;</td>
</tr>
<tr>
<td>Great Dog Island</td>
<td>&quot;</td>
</tr>
</tbody>
</table>

The cartoon at (illustration 17) was motivated by this change of approach. It implies that the Premier, in initiating dialogue after so much denial of the rights of Aborigines will have to await the convenience of the Aboriginal community until the “birders ball”.\(^9\) However, in the words of Fletcher who was a facilitator of the process of the handing back, outlined:

the Premier did (in fact) recognise that the race was continuing.\(^10\)

In 1992 the State Office of Aboriginal Affairs office had been closed under some government rationalisation. This was not just another failure of communication. It was

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\(^7\) (28/10/95), Friends Hall Hobart also attended by Henry Reynolds and Justice Slicer of the Tasmanian Supreme Court: organised by Community Aid Abroad.

\(^8\) Interview (4/2/1998), Mayor of Flinders Island Council

\(^9\) These dance hall gatherings complete with bands were held in May every year to celebrate the successful mutton bird season on the Mutton bird islands.

\(^10\) Interview, Fletcher (14/4/1996).
the continuation of the long held attitude of the Tasmanian European community that the last Tasmanian Aborigine died in 1876. As a departure from this denial, on 16 December 1993, the Premier, Mr. Groom, indicated he was amenable on behalf of the government, to open dialogue with a view to recognising Aboriginal culture, part of which involved the possible handing back of certain Crown lands.

What was interesting about the departure from the old attitude and treatment was that the Premier said he was interested in doing what the Aboriginal people wanted rather than laying down a prescriptive program.

At the time of this announcement the Native Title Bill (1993) dealing with the Mabo decision was before the Commonwealth Parliament in the Senate committee stages. There was widespread public interest and controversy on the issue of Aboriginal lands and the recognition that the Mabo legislation would benefit only about 10% of Aborigines on the mainland. The position of the Federal Liberal opposition was that the Native Title Legislation would not benefit any Tasmanian Aborigine, and within the Tasmanian Liberal Government it was recognised as a result of the Government's own legal advice that any Mabo legislation would not assist the Tasmanian Aborigines to claim land, due to the problem of 'absolute dispossession'.

Handing Back of Aboriginal Lands

In July and October 1995 respectively legislation was passed in the Tasmanian Legislature that recognised Aboriginal fishing rights under Inland Fisheries legislation allowing Aboriginal claims to fish in inland waters without a licence provided that they were not commercial fishers. Furthermore, as a first for Australia, the Tasmanian Aborigines were given back about 1% of land of the Tasmanian Islands, after bilateral negotiation that did not involve the Aborigines surrendering any rights in exchange.

The following is a brief description of the rather complex negotiations that extended from early 1994 to mid-1995:

After the public announcement on 16 December 1993 that the Premier was amenable, on behalf of the government, to open a dialogue with a view to recognising Aboriginal

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11 Truganini died in 1876: the Aboriginal relics Act 1975 still has this date as the cut-off date for what constitutes a relic.
12 Press announcement, Premiers Department (16/12/93).
14 Hansard debates (17/12/93), Chris Miles, MP Northern Tasmania.
15 Interview, Fletcher (14/4/2001).
16 Living Marine Resources Management Act 1995, S10 states the regulation of fishing does not exclude or extinguish native title rights or preclude any Aboriginal cultural activity, S60 abolishes the need for a fishing licence for Aborigines provided it is not commercial activity.
17 Aboriginal Lands Act 1995: this legislation transferred to Aboriginal ownership 12 crown land sites which have historical, cultural, social and economic significance to the Aboriginal community. The land is vested in perpetuity in the Aboriginal Land Council of Tasmania, established under the Act., Wybakeena was added in April of 1999.
culture, there was silence and a non-response from the Tasmanian Aboriginal Centre, except to be cautious:

So you have decided we exist now Groomie!? Well you will have to wait until after the Birders Ball! (Illustration 17)

However, the Premier asked Fletcher to sound out some Aboriginal groups including the Tasmanian Aboriginal Center (TAC), as on 18 January 1994 the TAC had written to Premier Groom as a result of the announcement in December. They had requested dialogue in which they wished to cover several broad issues including land and hunting rights. Groom had further discussions with Fletcher and requested he present a paper detailing options for dealing with the matter of reconciliation with Aboriginal people of Tasmania, “in view of the low self esteem of the Tasmanian Aboriginal people”. In March of that year Fletcher contacted Mrs. Alma Stackhouse to arrange a reconciliation meeting, Fletcher having based his choice of Stackhouse on the fact that she was a former "Tasmanian Aborigine of the year" for her work on achieving reconciliation between Aborigine and the white man. Stackhouse asked that a number of others be invited to any talks.

In early March, Fletcher met at Parliament house with Alma Stackhouse, John Clark, both of Flinders Is, and Glen Shaw of the Tasmanian Regional Aboriginal Council. Interestingly, the TAC was absent and was probably seeing what would happen. The discussion went as follows. They told Fletcher that there was no single community of Aboriginal people and he would have to talk to some 35 separate groups. They emphasized their grievances over loss of land, poor housing, health and education. They were very critical of the decision of the Groom Government to close the Office of Aboriginal Affairs, and the 1992 statement by the Premier that Tasmanians were all one people under one law.

Fletcher was a little taken aback at the strength of feeling. This, in my view, confirms that when an oppressor race finally asks the real views of the subjugated race they are often surprised at the strength of feeling. Fletcher thought the meeting was going to end in disaster as a result, but he assured the group that the Premier did recognise the continuation of the Aboriginal race and that he was continuing to support funding for a wide range of Aboriginal services.

The Government, through Fletcher at the meeting with Stackhouse, indicated that they offered Risdon Cove and Oyster Cove without any strings attached and said that the

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18 Interview, Fletcher (14/4/1996).
19 Letter state secretary TAC, John Wells, to the Premier Mr Groom.
20 Interview, Fletcher (14/4/96).
21 Ibid.
22 Ibid.
23 Ibid.
24 Interview, Fletcher (14/4/1996).

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tourism potential was also good for these sites. This was only offered as a start although the remark about the tourism potential was made in good faith. In my view, based on the general state of the Tasmanian economy at the time, it could have been seen as perhaps disguising some economic motives of the Government, which was concerned about falling tourism in Tasmania.

On 16 March 1994 Fletcher met with John Wells, state secretary of the TAC, for a discussion about the Premier’s offer for talks and about the proposed Forum later in May. Although this was the first official contact with the TAC, the meeting was facilitated by the successful meeting earlier in the month with Aboriginal community members. The subject of Oyster Cove and Risdon Cove was mentioned again as likely to revert back to the Aboriginal Community. It was decided, that the broader Aboriginal community were to be represented at the Forum by a large number of Aboriginal organisations with working groups on diverse areas.

The Government appeared to Wells to be wavering a little on the return of some lands so the TAC leadership was taking a wait and see approach. At this stage no community consultative meetings had taken place within the TAC, though from my own observations at the time there was excitement within the TAC at large that something might finally come of the process.

As a result of this meeting and encouragement from the TAC for the Forum consultation process Fletcher carried out a second round of talks with Aboriginal groups the names of which were supplied by Alma Stackhouse and others who attended the early March Parliament House meeting. Jim Everett, who had been state Secretary of the TAC some years before and held a position in Government with responsibilities for Aboriginal affairs, also became involved with this process. It was decided to confirm the Forum for May at Wrest Point Casino to which all Aboriginal groups in the State would be invited.

As part of displaying the Government’s bona fides the Premier announced the re-establishment of the office of Aboriginal Affairs and called for the position of manager, which was eventually filled by Jim Everett. Meetings were held with TAC and other groups to convince them to attend the Forum, and the TAC in a private meeting with the Premier received an assurance that he would meet with them for further discussions after the Forum.

The Forum: 21 of May 1994, Wrest Point Hobart

Approximately seventy Aborigines representing twenty Aboriginal groups attended the Forum and the Aboriginal flag flew over Parliament House for the first time though the event received scant media attention from newspapers and only passing mention in the TV news. The Tasmanian Aboriginal Centre and the Aboriginal Lands Council (TALC)

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25 Ibid.
26 Report on meeting with Tony Fletcher, undated memo, John Wells state secretary TAC.
27 Interview, Fletcher (14/4/1996).
28 Ibid.
elected not to attend but maintained a watching brief, as individual members of the TAC were at the Forum, which fact was known to the Government.\textsuperscript{29}

The event was far from being mere window dressing, and its successful conclusion meant the TAC and TALC had to become involved or become side lined, as competing claims to represent the Tasmanian Aborigines generally were heightened at this point. The Circular Head Aboriginal Corporation had this to say about the Forum meeting and subsequent decision of the TAC to co-ordinate the consultative process:

The Circular Head people welcome the Government's response through the Forum held (in May) but are not represented by the TAC which does not represent all Aboriginal people in this State, which is undemocratic and takes all the funding.\textsuperscript{30}

Fletcher, however, thought the Forum was a great success and claimed in an interview with me that the TAC took control of the process after the Forum, on the basis of an undertaking given by the Premier on the initial contact in January and the meeting with the TAC State Secretary John Wells in March.\textsuperscript{31}

In early May the TAC had held some internal consultative meetings of its own with those employees who were field workers who had contact with the community. I attended one such session and the questions asked of the workers were:

* What lands do the Community want returned?
* Are these lands to be in substitution of Land Rights?
* What about hunting and fishing rights?
* Is Oyster Cove and Risdon Cove sufficient?\textsuperscript{32}

Clearly, before the outcome of the Forum, the TAC had already decided to become involved at least in finding out what the community wanted. Already there was a tentative offer of Oyster and Risdon Coves because of their cultural significance and this was expanded later to various other sites on the mainland of Tasmania of spiritual and cultural significance.

It was decided by the TAC after the Forum to ask the Premier to come and meet the Aboriginal Community on 28 August 1994 at the TAC community hall in Launceston. Mr. Groom came onto the territory of the people he had said did not exist only two years previously. It was a very successful encounter from my observation, with the Premier addressing the meeting and answering questions, after a preliminary introduction from Michael Mansell:

...he is the first leader of any government state or federal to present himself to the Tasmanian Aboriginal community...it is a sad fact that today it is not we who control our lands, our rights and our destiny...the opportunity to redress the imbalance is squarely in the hands of

\textsuperscript{29} Ibid.
\textsuperscript{30} Circular Head Aboriginal Corporation, press announcement (5/6/94).
\textsuperscript{31} Interview, Fletcher (14/4/1996).
\textsuperscript{32} TAC staff memo (12/5/1994).
It is not clear whether it was after the Forum or after the Premier’s meeting with the Community that the formal Aboriginal Working Party was set up, however what seems clear is that the process of consultation had already begun at many levels and that the Flinders Island Aboriginal Association, which had some differences with the TAC, was actively involved in the consultative phase.

The working party committee was composed of people of authority within the broader Aboriginal community, essentially to take into account the range of views across the community. There was in fact some dissent within the Aboriginal community as to the validity and authority of the Working Party was questioned but this did not come to anything.34

Elder, Ida West, of Hobart was a significant player. Michael Mansell and Jim Everett met her in September of 1994 and she told them not to score points against the Government and other sections of the Aboriginal community, but to work in consensus, and most importantly, not to be in a trade-off situation.35

Fletcher said he wanted something that would pass the Legislative Council, the infamous Tasmanian Upper House, which tended to block most contentious things, such as homosexual law reform and the previous Labor Government & Green Party Bill on Aboriginal Land Rights in 1989. According to Fletcher, Michael Mansell agreed not to comment adversely in public as long as the lands were transferred on a reasonable sustainable basis for the Aboriginal community. Fletcher talked to me about the "long march"36 approach he took to the process, and that everyone would need "patience to work at something and be acceptable to the Aboriginal community, government and the wider community and pass the scrutiny of the Upper House".37

The Working Party agreed with this approach and Fletcher consulted the World Heritage Foundation, which said they had no objection to Kutikina and Ballawinne caves being transferred to the Aboriginal community. Mt Cameron West was regarded as Aboriginal so there was little opposition but some European community members at nearby Circular Head were afraid they would lose access to the beach. However, the Working Party and later the statutory Aboriginal Lands Council set up to administer the returned lands guaranteed access for these people to the beach.38

The mutton bird islands were not included in the Government’s offer at this stage and after a while the Working Party said if they were not there could be no deal. On 2 June 1995 the Aboriginal community was consulted by the Working Party to discuss the offer

33 Address by Michael Mansell to community meeting with Premier of Tasmania (28/8/1994).
34 Interview, Fletcher (14/4/1996).
35 Ibid, these comments were read with approval by Ida West.
36 According to Fletcher (14/4/1996) this comes from Mao’s "long march" against the Chinese Nationalists in the 1930s.
37 Interview, Fletcher (14/4/1996).
38 Ibid.
of the two coves, the South West coves and Mt Cameron West, and there was an emphatic "no". This was communicated to Groom, the Premier, via Mr. Fletcher.\(^{39}\)

Between this date in June and September 1995 the mutton bird islands were added to the final settlement after Fletcher visited Flinders Island and spoke to the Flinders Island Council, which indicated that it did not have a significant objection and appeared cooperative in the spirit of reconciliation. Fletcher was pleasantly surprised, particularly as one councillor suggested some land also be added on Cape Barren Island.\(^{40}\) The return of Wybaleena on Flinders Island ran into problems as the Council saw that the area also had "white" significance and Little Dog Island was in the same category. These issues were left in abeyance though they have since been resolved.

Wybaleena obviously has been the subject of intense ill feeling in the past, as discussed in the next chapter, and during these consultations proved to be the real sticking point. A five year lease with an option of freehold was offered by the Government to the Working Party but was rejected on the basis that it would offer little in the way of possibility for Aboriginal control of the site. As an example of the toing and froing of the discussions over Wybaleena please refer to the map (plate No 13) provided to me by Mr. Fletcher. The words "out" written over Wybaleena is conclusive proof indeed that the Government originally intended to return this but was stopped by local opposition from Flinders Island.

Finally, after the show of Aboriginal community solidarity culminating in the meeting on 2 June 1995 and ending after intense consultations, the Government agreed that various mutton bird islands, the caves and the two coves were to be transferred to the proposed statutory Lands Council, with elections to be held on the same basis as the ATSIC elections. The conditions of transfer were as follows:

Lands may not be sold except through a majority vote of all electors. Land tax is not payable for non-commercial use, but this was in line with recent changes to land tax in Tasmania. Rates are payable on improvements and building permission in the normal way from relevant councils has to be sought.\(^{41}\)

The legislation passed both houses of Parliament in October 1995 and the following lands were transferred and the titles given to the elders at the special Risdon Cove celebration in mid-December 1995. The titles of the lands below were given to two elders from each of the three areas of the statutory Lands Council:

\begin{itemize}
  \item Oyster Cove
  \item Risdon Cove
  \item Mt Cameron West
  \item Kutikina Cave
  \item Ballawinne Cave
  \item Margata Mina
  \item Steep Island
\end{itemize}

\(^{39}\)Ibid.
\(^{40}\)Ibid.
\(^{41}\)Ibid.
Badger Island
Mt Chappell Island
Babel Island
Great Dog Island

The history of land rights in Tasmania has had a checkered career, and there is still no statutory system of land rights, despite the process of the handing back of these culturally significant sites during the course of 1995. The land handed back amounts to no more than 1% of the land area of Tasmania.

It is worth stating that these lands were not given back as a substitution for land rights or Native Title claims under the Native Title Act 1993 (Commonwealth), but probably it could be said that it was in recognition of the paucity of the possibility for Native Title claims in Tasmania. Secondly, according to Jim Everett these were the first land grants ever since Fanny Cochrane-Smith was granted 300 acres at the end of the nineteenth century. There had been official doubt cast on her "full bloodedness" after she received the grant, which has been discussed by Pybus at length. Pybus concluded that these allegations were unfounded and were made in bad grace by a colonial government unable to deal with its guilt.

Indigenous Land Fund Debate

No discussion would be complete without an examination of the debate over the Federal Indigenous Land Fund Bill which took place over this period as well. In my opinion this helped both the Tasmanian Government and TAC to decide quickly on the handing over of the lands. In October 1994 the Federal Government had initiated its Indigenous Land Fund Bill and it had quickly become apparent that very little money would come to Tasmania under this legislation. To quote from a letter of the TAC state secretary, Wells, around this time to the Prime Minister:

The Government says a one billion fund will be set up but in reality this is only $50 million a year and will duplicate existing ATSIC bureaucracy, based on ATSIC purchases to date, it will continue the situation of the most dispossessed.

Further submissions were made to the Senate Committee taking objections in Launceston, Tasmania in December 1994. The debate mirrored the national debate within Aboriginal circles over which parts of Australia were going to benefit and resurrected an old debate:

whether land rights should be based on an entitlement or needs basis.

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42Ibid.
43 (8/12/96), letter Registrar Native Title Tribunal, Hobart to M J Kidd.
44 Public talk, Cygnet Folk Festival (8/1/2000).
45 Pybus, *Community of Thieves*, pp186.
46 "TAC warns Prime Minister on Land Fund" John Wells, October 1994.
One of the amendments proposed by the federal Greens to the proposed Commonwealth legislation was that the "most severely dispossessed", which means Tasmania and the eastern states, should receive preference from the fund, which is a reflection of the "needs" argument. On the other hand, the "entitlement" argument says that funding should go to where the bulk of Aboriginal people live, namely Western Australia, Queensland and the Northern Territory. Keating rejected this "needs" amendment despite a vigorous effort on the part of the Senate Committee, which pointed out in its report that an overwhelming number of submissions from Aboriginal people around Australia supported the "needs" argument.48

The Indigenous Land Fund Bill became law in the early part of 1995 and in fact marked the turning point in the downward fortunes of the Keating Government. It is worth while detailing some of the unsuccessful submissions to the Senate committee on the Indigenous Land Fund Bill. At the meeting with the Senate committee at the Launceston TAC Hall in December of 1994, both the TAC and the TALC supported the concept of the most disadvantaged receiving benefit from the fund first. They also pointed out the disadvantage of centralised control of the Indigenous Land Fund:

it is therefore in the interests of all governments to provide lands for dispossessed Aborigines as a deterrent against going to court over land claims. 49

The total funds provided according to the TAC submission would have taken 100 years to rectify injustice in the rural areas, based on Aborigines acquiring some funding to purchase land in proportion to their population. Without legislative guidelines giving land to the most dispossessed, the achievement of a "more equal level around Australia has not been obvious".50 They argued for substitution of the Greens' amendment "most severely dispossessed of their traditional lands" with the words "have the least amount of land". Finally, on the question of which bodies should hold ownership of purchased lands, which was a significant point bearing in mind the later return of Tasmanian Aboriginal lands, they argued for "collective ownership (which) accords with the principles of self determination".51

Epilogue

On 20 November 1996, at Hadspen near Launceston, the statutory Tasmanian Aboriginal Lands Council held its first meeting after the handing back of the land. Through a spokesman they said the land was in poor condition and in need of such urgent attention that the Aboriginal community felt the government had merely offloaded a problem by returning the land. The meeting called for State and Federal government funding for a

49 Submissions to Senate Select Committee (22/12/94), Launceston Tasmania, source: p 5 to 9 annexure to report of Senate Select Committee, February 1995, Australian Parliament.
50 Ibid.
51 Ibid.
$500,000.00 management plan for the land and at least $5 million for works to rehabilitate the land, being the Babel, Big Dog, Chappell, Badger and Steep Head islands.

Mr Stanton of TALC said:

while the community welcomes the return of the land, there is very much a feeling that it has been dumped on the community without due regard for its condition.⁵²

Overgrazing had reduced mutton-bird rookeries on Chappell Island by 80%, in just one example of the degradation of the land which reflects Australian-wide degradation of land that has been used by Europeans exclusively for the generation of profit:

Our role in society...in the future will be land restoration, not land prostitution.⁵³

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⁵² Examiner (21/11/96).
⁵³ Ibid
Chapter Fifteen

Wybaleena: "Blackmans' Houses"

A Dream...

Wybaleena: I see a mother and daughter
dead body, very old.
The baby died before her time.
The mother, the mother of all
of all.
Dead bodies abound
like lots of photos from
some great tragedy.
But look again.¹

In my view the Wybaleena site is a site of trauma that has a certain memory.² It is one of
the most important sites in Australia because it is unique in several ways. It is the site:

of the first concentration camp in the history of British colonialism,
where the majority of the detainees perished for want of adequate care,
where the bodies of those who died lay in unmarked graves until 1992,
where a significant amount of bitterness between whiteman and Aborigines existed, and was
only recently resolved,
where genocide was enacted on the basis of theories of the inferiority of black people.

For these reasons, and also because the settlement of the handing back of land took about
four years longer to effect, Wybaleena merits separate treatment from the other lands that
were handed back.

Whilst working for the Aboriginal Legal Service I visited Flinders Island twice in the
course of doing legal work, but for some reason I did not visit Wybaleena. Though I
came close to the site I was not aware of its history, because at the time (1994 and 1995)
not many people in the two communities, whiteman and Aboriginal, wanted to talk about
Wybaleena. My fascination with this wall of silence about Wybaleena prompted me to
make it a separate chapter as this silence is indicative of something. I have deliberately
avoided stating just what the Sacred wound for Aborigines has been, apart from the loss
of lands, culture and lack of access to the Ancestors and the antecedent. It is here in this
chapter that we come face to face with the Sacred wound of the Tasmanian Aborigines.

¹ Poem, M J Kidd (29/12/98)
² Erikson, Kai (1995) “Notes on Trauma and Community” in Caruth, Cathy (1995) Trauma: Explorations in Memory, John Hopkins University Press, London, p187ff discussion about the community memory of massacre sites which act to draw a community of survivors together, this was the Buffalo Creek massacre during the US Indian wars. Wounded Knee is another site of memory which is chronicled in Brown, Dee Alexander (1971) Bury My Heart at Wounded Knee: An Indian History of the American West, Holt Rinehart & Winston, NY USA
Drawing on the previous chapters in part one, the Sacred wound in my work is the loss of the ability to honour the ancestors to communicate with us all.

When I visited Wybaleena in February of 1998 I was struck by the empty, strange quality of the place (illustrations 10 & 11) I could almost imagine the spirits of the hundred or more Aborigines in the graveyard crying out to any one who would listen.

This statement was dictated and occurred at the changing of the day from light to darkness:

Looking down from the hill above at the gravesite and the Aboriginal area has been fenced in as happened a few years ago and there still no markers on the Aboriginal graves. It's a bit of an unusual sight, sitting here and looking down and seeing...the cemetery has got gravestones and various other memorials and...the Aborigines gravesite is just mown lawn. With the setting sun I can see various shadows and indentations in the ground of the 100 or so Aborigines known to be buried here.3

In the dusk we can probably see things that are hidden from the eyes in broad daylight, and this work herein is like peering into the dusk to see invisible shapes.

Two hundred Aborigines had been shipped to the site by 1832, and by 1837 an average of one a week was dying to be buried in this cemetery, at a place called Peajacket point, Flinders Island. It came to be called Wybaleena, which means Blackmans' Houses, and by the time it was closed in 1847, the Aborigines of Tasmania had literally become the spirit people. As there were very few left, they became the sky people due to the experience of being "concentrated" at Wybaleena. The video Blackman's Houses,4 described the 1992 recording and marking of the gravesites.

The brass inscription I saw at the cemetery testified to the "last of the Tasmanian Aborigines" but this was wishful thinking on the part of the whiteman. Milligan, one of the last of the overseers of the "Aboriginal Establishment" on Flinders Island, shows this mixture of guilt and genocide which underlay Wybaleena:

(It) was formed for the concentration of Aborigines...and to protect (them) from...the settlers who possess the land to which these poor creatures have a natural right...and they ought to be conciliated and soothed with every indulgence consistent with their circumstances.5

Reynolds makes the point that though the Aborigines were not prisoners in the sense that the accompanying convicts were, eventually the convicts could leave and become free men but the Aborigines, by virtue of the colour of their skin and their birthright, and the threat they posed, could never be left free.6 But in a sense the greater freedom has been won by these bones of the captured Aborigines, resting in the cemetery at Wybaleena, and buried without Aboriginal ceremony, for they, or perhaps their spirits, still retained

4 Thomas, Steve (1992) Blackmans' Houses (video tape), Ronin Films, Canberra, ACT.
5 Plomley, Weep in Silence. p144.
6 Reynolds, Fate of a Free People, p183.
the freedom to be the force for the reconciliation that eventually occurred in early 1999, by the unconditional handing back of Wybaleena by Mr. Bacon.7

Wybaleena was a death camp where the people were worn down by detachment from their ancestral spirits, land and community. If they had free will they would have been on their home soils, living with family and carrying out their occupations, either for living or survival. The mere fact that their free-will had been taken away was sufficient in my view to cause their spirits to want to wander beyond the confines of the body, perhaps to the country of their ancestors. By the time Arthur's petition against the hated camp commandant, Jennerett, had succeeded in closing the camp, the work of extirpation had been done.8

There was a denial on the part of the whiteman's community on Flinders Is that Aborigines had ever lived and died on Flinders Island in those days, and also denial of the existence of Aboriginal descendants on Flinders Island.9 A local whiteman interviewed for the documentary Blackmans' Houses denied that there where any Aboriginals still living on the island. Denial and ostracism of the Aboriginal descendants hides shared responsibility for the healing process, which requires a certain amount of reliving of the original trauma needing the actual wound to be brought into the light. Not hidden, as

vulnerability ...will be our saving grace.10

The three photos taken in early February 1998 (plate four) show a panoramic view of the cemetery joined together as one picture. They are the equivalent of many words. I invite the reader to note the area of cemetery without headstones on the left, as compared to the area on the right of the photo, which is the whiteman's part of the cemetery. This is eloquent testimony to amnesia. Up until just before the 1992 video Blackman's Houses11 the cemetery fence finished right at the end of the headstones in the middle of the picture, and cattle were grazing over the graves of the Aborigines.

We are called to become healed and repentance means just opening our less savoury sides to the light, as "the words 'health' & 'wholeness' and 'holiness' have the same roots".12 Behind the denial of the whiteman residents of Flinders Island was denial of the spirit of being our brother's keeper. Ida West, whom I also interviewed for this chapter, explained in Blackmans' Houses:

....if you had a spoonful of white blood in you, you were right...do yourself up with powder...Tulip, Max Factor, Ponds to look white...they were called half-casts quarter-casts...you might as well say outcasts.13

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7 Letter to M J Kidd, from Mr Jim Bacon, Premier of Tasmania (1/10/1999).
8 Reynolds, Fate of a Free People, p15.
9 Thomas, Blackmans' Houses (video tape).
11 Thomas, Blackmans' Houses (video tape).
13 Ida West, quoted in Blackmans' Houses; West Pride Against Prejudice. p87.
Reconciliation is a story of shared blood. European kinship systems may be a momentary passing experience by comparison with those of Aboriginal people where love goes beyond generations\textsuperscript{14} but true reconciliation involves the question of blood on many different levels and the sharing of souls.

**Massacre**

Understanding also needs to be based on connection with a higher agency and access to the actual truth of what occurred. It is clear from my research for this chapter that all truth has not yet been arrived at concerning the genocide at Wybaleena.

As at 1839 one hundred and eighteen Aboriginal deaths were recorded in the burial book of G A Robinson\textsuperscript{15} and he drew a diagram (Illustration 9) which was used almost 160 years later to identify the actual graves of the people buried there.\textsuperscript{16} The interesting factor is the discrepancy between those buried there and the numbers who came to the Island and left in 1847. On my calculations there are about twenty people unaccounted for and the fear in the Aboriginal community- and one expressed to me by Ida West\textsuperscript{17} - is that separate from these graves in the cemetery lies a mass grave of murdered Aborigines.

In my view, this is the cover-up of what really happened at Wybaleena. I visited the Tasmanian Government Archives in late October 1996 and was told that a number of important files concerning the administration at Wybaleena during the crucial period of the mid-1830s were missing:

\begin{itemize}
  \item[a)] Concerning a complaint by Aborigines, and
  \item[b)] A report by Robinson on the giving up of charge.\textsuperscript{18}
\end{itemize}

This is probably evidence of a cover-up by the government of the day. Though the gaps are not significant, due to the multiplicity of other materials, one can only speculate as to the reasons for these missing files that could perhaps further attest to Aboriginal grievances and suffering.

Ida West also makes a passing mention of this possible massacre in her book *Pride Against Prejudice*:

> At the settlement on Flinders Is where Robinson took the Aborigines, some old ones made wings to fly back. They were flogged. There's a terrible feeling there...the Big Slaughter was at midnight.\textsuperscript{19}

\textsuperscript{14} West, *Pride Against Prejudice*, Introduction.
\textsuperscript{16} Thomas, *Blackmans' Houses* (video tape).
\textsuperscript{17} Interview, Ida West (10/2/98).
\textsuperscript{18} Archives Office of Tasmania (ref 17389): concerning a complaint by Aborigines; Archives Office of Tasmania (ref 17713): report by Robinson on the giving up of charge.
\textsuperscript{19} West *Pride Against Prejudice*, p80.
Just after Christmas in 1998, almost a year after my visit, I had a near death experience through being involved in a freakish accident on my bicycle. Afterwards I had a dream and later wrote the poem *A Dream...* (at the beginning of this chapter). This was influenced, I feel, by my experience, I recounted to Ida West, of feeling close to death, as a result of camping near a particular site at Wybaleena:

.....the strange feeling of personal death that I experienced when I camped near the grassy mound close to the beach at Wybaleena. My experience in the three nights there was of gradually getting weaker and weaker until I felt I was going to die there. I then left and came upon some Aborigines who were the caretakers at the old farmhouse.\(^{20}\)

One of the caretakers gave me a cup of tea and told me of voices screaming in the night at certain times of the year, always at midnight. When they looked there was never anybody there.

**Mannalargenna**

Mannalargenna died a sad death at Wybaleena and his bones were not accorded due rest, as they would normally have been cremated, so the spirit could be set free. In my view it is still roaming unsettled and influenced my dream.

Perhaps his death meant the beginning of the end for those on Wybaleena as

...when any (great) spirit leaves the earth the entire energy field (of the earth) is influenced ...a very powerful spirit (makes a) dramatic impact.\(^{21}\)

Mannalargenna came to the settlement in October 1835 with Robinson, who noticed his tears in the boat when he sighted the camp from the distance. Shortly after this, Mannalargenna shaved off his head of hair impregnated with ochre and fat, and within a month caught pneumonia and died in December 1835. His tears, in my view, were the tears of resignation that he would never see his lands again. I read in him a greatness of spirit which goes beyond the stereotypes of what constitutes greatness, and I do not see this greatness of spirit is an evil in itself merely because he was not in the same mould as those Christians around him.

For example, consider the image of the Blackman in the eyes of the then contemporary educated European, who denied totally the greatness of spirit of the Blackman, and particularly the great charismatic leaders of the Blackman:

...the untutored savage was Australia's monarch...barbarism of the most wretched and degrading description desolated the land...since that period how great, how rapid the change, instead of savages: human beings....\(^{22}\)

\(^{20}\) M J Kidd, dictated (7/2/98).
\(^{22}\) Editorial “Australian” (19/12/1837).
An ally of Aborigines, Paul Bernhardt, presented a paper, prior to the passing of the original Commonwealth Native Title Act in 1993, which summed up the peculiar mixture of colonialism and racism that denied the humanity of the Blackman:

...brutalisation was the foundation stone upon, which was laid the theories of evolution, a measure that placed Aboriginal people ... on the lowest scale of human existence, and these were used not only to justify dispossession, but to assuage the consciences of those that committed atrocities in the process...easier to kill someone if you can convince yourself that your victim is less than human.23

This is the lament of genocide. Alas the inability to see the other’s perspective from the eyes of the other. Mannalargenna died on the 4 December 1835 and his funeral was reenacted and recorded in the video, Blackman’s Houses,34 where his body was shown being carried by his enemies, British soldiers and antagonist members of other Tasmanian tribes. His wife was not even present and his body was placed in a hole in the ground; the Bible was read over the body and the hole filled in. The ceremony from his point of view was a significant departure from the usual Aboriginal rites, and the post mortem was also an insult. It involved cutting open the body by a non-Aboriginal and was carried out by a Dr Allen. The cause of death was found to be pneumonia.25

Robinson must have been moved by great regret and guilt. He tore out of his journal the entry for the day of the burial26 and finally wrote in his diary on 7 December 1835, three days after the death:

. the sad mortality, which has happened among them since their removal, is cause for regret, but after all it is the will of providence, and better they die here where they are kindly treated than shot at and inhumanly treated by the depraved portion of the white community.27

How did they survive?

It is to the Bass Strait sealers that one must look for the survival, if not the salvation of the descendants of the captive remnants of Tasmania’s Aboriginal population, for scattered among the islands of Furneaux Strait were several dozen Aboriginal women that the government had been unable, for various reasons, to send to Wybaleena. Aborigines were supplied with rations only if they stayed in the compound and this had the effect of preventing Aborigines from wandering and performing ceremony. This restriction on their movement was to allow whiteman farmers to occupy as pastoral lands what would otherwise be hunting grounds on Flinders Island. As a consequence, the Aborigines never had enough fresh food to eat.

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34 Blackman’s Houses video tape.
26 Ibid, p313.
27 Ibid, p315.
This concentration camp history is one of the reasons the whiteman community of Flinders Island had difficulty coming to a settlement with the Aborigines in 1995, because they were troubled by guilt about what happened there, thus prompting Ida West to say:

why can't they live with it? This is some of our cemetery anyway, they would feel better. I don't know why they always try to hide it...something's been done that doesn't worry us...we don't feel awful towards them. We'd share with them and feel better with them...(sometimes they write) a book and say no Aborigines there...it does not matter where they (the Aborigines) were brought from...they are still here.  

The difficulty for the whiteman is to accept that the Aborigines, according to Greg Lehmann "...died of broken hearts and broken souls".  

Wybaleena has therefore been a microcosm of the Denial, and is illustrative of the need for healing in the relations between Aborigines and whiteman: which healing would require the whiteman's adoption of new spiritual ways regarding negotiation, and opening to a more flexible definition of Aboriginal association with lands. Aborigines are associated with Wybaleena because their ancestors are buried there, even though the site had been used for farming for over a hundred years since the last of the remaining Aborigines left to go to Oyster Cove.

For a long time management of the site was vested in the local European dominated council, which was unable to prevent desecration of the unmarked graves, because those Aboriginal graves were not even in the designated cemetery. Management of the Wybaleena site should have vested with the Aborigines, but for the attitude of the local European population who owned the site until purchased by the National Trust in 1969. They had continuously opposed any Aboriginal control of the site even though the site was designated as a historical site under the Department of Parks and Wildlife. The European population was clearly in some sort of Denial over what had happened at Wybaleena.

Taking Over the Spiritual Management of the Site

In 1990 the Aborigines took the matter into their own hands and occupied the site, including the old farm house referred to above, but even within the Aboriginal community the site has created controversy. The Flinders Island Aboriginal Association (FIAA) for a long time opposed central control by the Hobart based Tasmanian

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28 *Blackmans' Houses* (video).
29 Ibid.
31 *Blackmans' Houses* (video): in 1992 interviews were carried of adjoining european landowners and long term residents who opposed Aboriginal control of the Wybaleena site on the basis that there weren't "any aborigines left" and that the Aboriginal groups were getting special rights and treatment.
Aboriginal Centre. This led the FIAA to conclude their own agreement on 15 November 1996 with the local Flinders Island Council and the Liberal Government in Hobart.\(^{32}\)

As pointed out in the previous chapter, the Government in 1995, in its negotiations for handing back of Aboriginal lands, could not resolve the Wybaleena situation even with the widespread community consultations. The issues were very clear: whether the site should be leased to the Aborigines or given in freehold as preferred by the Aborigines. This was the text of the media statement by Mr. Groom, the Premier, in October 1995:

Cabinet agreed to part of the Wybaleena site being leased but not transferred to the Aboriginal community. The Flinders Island Council opposed the transfer of land title. The Aboriginal community has indicated its firm position...that the land should be transferred...it is considered that the land should be retained by the Crown and not transferred to the Aboriginal community at this stage.\(^{33}\)

A year later, on 15 November 1996, the Minister for Local Government Denise Swan, the Mayoress of Flinders Island and John Clark of the FIAA concluded the agreement.\(^{34}\) This was opposed by the Tasmanian Aboriginal Centre, which believed that control should be held on behalf of all Aborigines in the state of Tasmania\(^{35}\), so the agreement was never put into effect. At the time of my visit there in February 1998 the situation was still in stalemate.

At my interview in February 1998 with Lynn Mason, Mayoress, I asked her what had changed the Flinders Island Councillors’ minds leading to this agreement, at least with the local Aboriginal group. She told me:

I had a revelation driving between Whitemark and Lady Barren (two small towns on Flinders Island) in November 1997 that Wybaleena would be a great International site for reconciliation between white and Aboriginal and Indigenous people around the World.\(^{36}\)

The agreement of 15 November had been reached the year before, but I could not help thinking that this was the power of a higher grace in planting seeds in peoples’ minds which come to conscious realisation after the event.\(^{37}\) John Clark\(^{38}\) of FIAA had considered the site as belonging to the Aboriginal people of Flinders Island. According to him, the Wybaleena chapel was more a memorial to the white man’s overlordship of Aborigines, so was not as important as the cemetery. The plaque at the chapel refers to "the extinction of the Aborigines", phraseology to which he took exception. FIAA had agreed with the “white” council’s desire to keep ownership of the chapel and this was the

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\(^{32}\) Heads of Agreement (15/11/96) between FIAA, the Flinders Island Council and Government, supplied by Ms Mason, the Mayoress of Flinders Island Council.

\(^{33}\) Press announcement October 1995, recited in the Heads of Agreement above.

\(^{34}\) Which proposed to transfer all of Wybaleena except the chapel to Aboriginal control under the Flinders Island Aboriginal Association (FIAA).

\(^{35}\) Media statement by Steve Stanton, Tasmanian Aboriginal Lands Council (TALC), December 1996.

\(^{36}\) Interview, (4/2/1998).

\(^{37}\) Ibid.

\(^{38}\) Ibid.
essence of the compromise agreement,\textsuperscript{39} which was itself an advance over the previous position, where the Aborigines had only been offered a five-year lease.

The custodianship of the graves is the real issue and the site is a sacred place even though it is part of a dedicated European grave site. For this reason I sought permission to reproduce Robinson’s map of the grave sites, and that was when Clark told me of the existence of the video \textit{Blackmans' Houses}. He said he could not see any problem with me staying there a few days and as the map was reproduced in the video, \textit{Blackmans' Houses} there was no problem with that as well. The rediscovery and marking of the graves in 1991\textsuperscript{40} was a truly great event and the video is a record of that event.\textsuperscript{41}

According to Clark\textsuperscript{42} the concern of FIAA about consultation and control of the site went back a long time. For example the 1970 University of Sydney "dig" resulted in the removal of artefacts without permission or consultation\textsuperscript{43} (illustration 13); and he referred to grave robbing from the actual cemetery at Wybaleena - various Aboriginal bones and artefacts that had disappeared off the Island in wool bales over the years.

Clark said an apology had been received by the Flinders Island Aboriginal community from the Mayoress on the 25 January 1998, the day before Australia Day, at the celebration for the site. This was part of the text that I was provided with by the Mayoress of Flinders Island, which I subsequently forwarded to Ida West at her request:

\begin{quote}
\textit{(The Bringing Them Home Inquiry)} held its very first national meeting at Wybaleena...this community and members of its Council have come to realise the tragedy and injustice of a government policy which set out to separate these children...so they could be part of a different culture...we are deeply ashamed...\textsuperscript{44}
\end{quote}

\textbf{Australia Day 1998} was the day that the book \textit{The Stolen Children: Their Stories}\textsuperscript{45} was dedicated. Greg from Cape Barren Island, one of the personal, confidential submissions to \textit{Bringing Them Home}, had said:

\begin{quote}
(the teacher) was the eyes and ears of the Welfare Department...I was flown off the Island...(when I returned 30 years later) I just wanted to be part of a family that I never had.\textsuperscript{46}
\end{quote}

The Wybaleena land was ready to be handed back as a result of these various honouring processes.

\textsuperscript{39} Ibid.

\textsuperscript{40} "The Unearthing of the Tragedy of Wybaleena", Mercury, (29/11/91).

\textsuperscript{41} \textit{Blackmans' Houses} video.

\textsuperscript{42} Interview (4/2/98).

\textsuperscript{43} "Dig for a Lost Race", Sydney Morning Herald (17/10/1970).

\textsuperscript{44} Statement of Mayoress of Flinders Island read to the elders of the Furneaux Aboriginal Community (25/1/98); see discussion pp11 \textit{Bringing Them Home}.

\textsuperscript{45} Bird, Carmel (Ed.) (1998) \textit{The Stolen Children: Their Stories}, Random House, Sydney, Australia.

\textsuperscript{46} Ibid, page ref not available.
Bringing Them Home

On the 28 February 1999 the title deeds to the whole of Wybaleena were handed back by the Premier of Tasmania, to elders of the Aboriginal Tasmanians, including Ida West. The entire Wybaleena site, including the chapel and cemetery, was handed back to the Aboriginal community and the whole site came under the management of the Tasmanian Aboriginal Lands Council. Under the new arrangement, negotiated by the new Labour Government, the Aboriginal residents of Flinders Island appoint a representative to the Lands Council, which is a statutory creation of the Aboriginal Lands Act 1995.47

When the Premier, Mr. Bacon, handed back the site to Aboriginal elder representatives he made reference to the petition of Arthur as being one of the justifications for the handing back of the site.48

By amendment to the Aboriginal Lands Act 1995 which was passed on 16 April 1999:

...the Council may delegate any of its functions or powers in respect of the use and management of Aboriginal land or other land acquired by the Council to any Aboriginal group which, or Aboriginal person who, the Council considers appropriate. 49

This provides the basis for local Aboriginal involvement in the management of the site. It is also noted that under the Act a member is elected from both Flinders Island and Cape Barren Island, and Clyde Mansell of the Aboriginal Lands Council set up by the Act confirmed to me that FIAA has full management of the site:50

Wybaleena is the most important place in this world... our heart is there... an anchor we can go to have a cry and a laugh if we want to...51

The handing back of Wybaleena was really compensation for a number of different aspects: the non-performance of the Agreement with Robinson was no longer in the past for the whiteman. The Spirits of the ancestors buried there saw to that. The Agreement is talked about as the living reality in the oral stories and increasingly in the written history of the descendants of the Aborigines who died there. It was also recompense for the dishonesty of Robinson.

47 § 18 (6) Aboriginal Lands Act (Tas).
49 § 18 (6) Aboriginal Lands Act (Tas).
50 Conversation, (24/1/2000)
51 Ida West, interviewed in Blackmans’ Houses video.
Robinson's Betrayal: a Reflection of the Different Meaning-Perception

Generally, Pybus takes the view, shared by the contemporary observer, the Quaker Backhouse, in 1837, that Robinson was unsuited to be overseer on Flinders Island and was a devious, misguided man. Nevertheless, the journals edited by Plomley reveal that Robinson had considerable empathy for the Blackman and his predicament. There is no doubt that Robinson had considerable insight into the Aborigines and by the standards of his time appeared to be enlightened. Aborigines trusted Robinson in heeding his call to go to Flinders Island in exchange for protection and a probable guarantee of the Islands as a repository of their lost lands. Reynolds refers to this as the Aborigines' pragmatic recognition of the impossibility of driving away the whiteman, as the Aborigines did not suddenly revert from being "tigers to kittens" without an inducement in some form. Robinson was in another world from the Aborigines.

From this other perspective, the lesson of Wybaleena and the real force of the revelation of the Mayoress of Flinders Island is that generally Aboriginal society was destroyed because of its dark mystery and its feminine qualities of relationship with the land. Ancestral Beings, Aborigines' strong sense of community both with the living and the dead, have survived down to the present day; this is despite Aborigines being a threat to the ideology of reason or resisting dominance by the masculinistic ideology, which was atheism in practice.

Australia has been called a "hard culture... secular, populist, racist, masculinist". These attitudes were discussed by Summers in her seminal book looking at the early origins of the settlement of Australia, where the feminine was either put on a pedestal and worshipped, or looked upon as a sexual object to be used at will. The whiteman displayed a similar double ness of attitude towards the Aborigines either they were praised as the noble savage, or hunted down and killed like animals.

Henry Reynolds details in the chapter of This Whispering in Our Hearts entitled "Sharing the Soil", the widespread massacres and illegal use of force against Aborigines to clear them off their land in the nineteenth century. This was ostensibly against British colonial

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52 Pybus, Community of Thieves, p191.
59 Windeyer, Richard (1842) " On the Rights of the Aborigines of Australia" (manuscript) Windeyer Papers (ML SS 1400) Mitchell Library NSW
60 Reynolds, H (1998) This Whispering in Our Heart, p21 takes the title from a phrase used by Windeyer, "On the Rights of the Aborigines of Australia."
office policy, which was to treat Aborigines as worthy of protection of the law and to deal with them on just terms in relation to their lands. But my view is that the British turned a blind eye. These "clearing" actions were genocidal in nature even though securing land and grazing rights seemed to the settlers to be sufficient justification.

The result is the almost schizophrenic attitude towards "the other" in Australian society today, because these contrary attitudes were never openly acknowledged as demons to be embraced, thereby to be purged, and the whole healed by the fusion of opposites. Today, we find an Australia with strongly materialist, homophobic and xenophobic tendencies: a country that has effectively sidelined the Aborigines.

The modern story of Wybaleena is one of arriving at forgiveness. It is my postulation that it is necessary to forgive in order to be able to live in the present. The fact that this forgiveness could happen, allowing the handing back of some lands and the eventual solution to the Wybaleena dilemma, is testament to the power of higher agency or grace. The Aborigines of Tasmania and the whiteman needed to forgive each other in grace in order for there to be a true decision on what to do with the existing site, grace through connection with the Sacred.

Reconciliation is about connecting with the self, or the earth mother, to quote Jim Everett.61 This was essentially the process leading up to the handing over of the title deeds to Wybaleena on 28 February 1999, the culmination of allowing of the memory to happen and then of grace allowing the forgiveness to happen:

for (God) came to Earth ....that... man might have access again to the grace...62

Those who wait for the mythical event miss out on the essential message of reconciliation as Christians everywhere wait for the Second Coming of Christ; but the essential element of the Second Coming of Christ is to bring Christ consciousness into the daily processes of life; to make that consciousness live among us.63

There was, as has been shown, a certain amount of issuing of false promises to lure the Aborigines out of the bush, just as the Nazis lured their victims with a promise of a shower or resettlement.64 Even captives have certain rights, and this does not absolve the Government of responsibility for the welfare of those captives one hundred and fifty years later.

Aborigines had never acquiesced to the loss of their lands and modern claim for land rights in Tasmania had its basis in this old grievance:

It is the latest manifestation of a political tradition dating back to Flinders Island and the Black Wars (1830s).65

61 Public talk, Cygnet Folk festival (8/1/2000).
64 Schwartzman, Arnold (1982) Genocide: (video tape) narrated by Elizabeth Taylor and Orson Wells, Simon Wesenthal Centre, Los Angeles, USA.
There is strong evidence that when the Aborigines were finally removed to Oyster Cove in 1847 it was not for their own welfare but as a cost cutting measure due to their much diminished numbers.66 There was much opposition at the time to the Aborigines coming back to the "mainland". John West, the editor of the Launceston Examiner led the calls for Aborigines to be kept on Flinders Island, when it was obvious that a large number had already died. As he wrote in his History of Tasmania:

it is not in the nature of civilisation to extalt the savage...a savage he was found and a savage he perishes...sovereignty over a savage people is justified by necessity...a barbarian that cannot comprehend laws or treaties must be governed by bribes or by force.67

People who try to contradict the record are often attacked by a characterisation of the rewriting of history as an "exercise in recrimination".68 This is simply Denial which is not valid. Sir Ronald Wilson, the Commissioner of the Bringing Them Home Report comments

light (needs to be cast) on our shared history (to) initiate a process of healing...on the basis of truth and justice.69

There is strong evidence that the Aborigines were treated as captives after they freely surrendered to Robinson: the undeclared state of war, the Blackline, the bounty for captured Aborigines and the fact that the Aborigines once on Flinders Island were not free to leave. This is evidence that they were prisoners of war without the usual privileges such as prisoner of war rights, and determinate sentences as in the case of criminals. The fact that the war was undeclared meant that the usual niceties did not apply to the captured; as the war was never declared, there still has been no formal peace.

As the conditions at Wybaleena amounted to a concentration camp70 there would still need to be some official acknowledgment of that deliberate genocide, and the bodies of all unaccounted Aborigines found and honoured to allow their spirits to settle. For a real peace to happen the ancestors must sanctified, and I have no doubt that the dream I had almost a year later, was from those ancestors who are unaccounted for, both in the whiteman’s and Aboriginal terms.

Spiritually I consider I received a spiritual awakening from my experiences at the site: A P Elkin71 summed up the traditional mystical training of Aboriginal initiates at the turn of

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66 Chester, Jenny, Examiner (letters to the editor 9/5/95 & 13/5/95), Contemporary Aboriginal Issues Group, Launceston.
67 Ibid, quoted by Chester above.
69 Letter to the Editor “Critics deepen pain of stolen children” Australian (7/3/98).
70 Alford, John (1989) “The Control and Management of Aboriginal Sites in Tasmania: A Case Study-Wybaleena,” Project Graduate Diploma Aboriginal Studies, South Australian College of Advanced Education, Underdale, SA, p41: “as with the significance of Auschwitz or Treblinka...Wybaleena...represent attempts by one culture to totally destroy another.”
71 Elkin, A P (1977) “Mystic Experience: Essential Qualification for Men of High Degree”, in
the nineteenth century, and it is very similar to what transpired with the experience I had at the grassy mound:

(Those to be trained in the way of the shaman were) taken to a burial place to sleep...a guide watched to ensure spirits did not kill him...which came to him in a dream ...took him away.\textsuperscript{72}

\footnotesize

Charlesworth, et al. \textit{Religion in Aboriginal Australia.}
\textsuperscript{72} Ibid, p283.
Chapter Sixteen

Conclusion

...the society which projects and undertakes the technological transformation
of nature alters the base of domination by gradually replacing personal dependence
with dependence on the "objective order of things".

The Sacred wound of genocide for indigenous people is the destruction of indigenous attachment to ancestors and places of sacredness on the earth that are evidences and part of a higher agency. These aspects of the Aboriginal religion are the existence of a deeper mystery, not merely some evolving principle of evolution, so recognition and enhancement of these motifs will energise, and heal the wounds of genocide. As a corollary, by embracing the Sacred wound of genocide and its lessons for humanity a new path can be created:

if God were eternity, then the way of contemplating time...would necessarily remain in
a state of perplexity so long as it knows nothing of God and fails to understand
the inquiry concerning him.

Australia inherits its present spiritual ill at ease situation from the historical avoidance of
the paradoxes in its treatment of the indigenous people. Spiritually Australia has not
come to terms with the custodianship of the lands by either the whiteman or Aborigines.
By avoiding custodianship issues the whiteman avoids his own capacity for an expanded spiruality. Australia can take ethical, legal legitimacy of title to the land by embracing the lessons of this Sacred wound. Genocide was the modus operandi.

(As all) human beings have genetic propensities for both altruism and aggression.

We all have a moral responsibility to avoid cultural violence that renders another race into the category of second class citizens:

where the subjected group is forced to express a dominant culture and not its
own, at least not in public space...a kind of brain washing.

The choice is up to the individual whether to choose to walk the unknown paths in search
of a different meaning-perception, or to stay with known reactions. The sin of Cain who
killed his brother because his brother made a better sacrifice, was to place his own needs
before his brother’s right of self-expression. He killed the threat to his peace of mind,
rather than learning from his brother. This is a quote from a letter a British official wrote
privately to the British Prime Minister in 1883 about the treatment of Blacks in Queensland:

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1 Marcuse, One Dimensional Man, p146.
6 Genesis 4:5, Genesis 4:8

187
The habit of regarding the blacks as vermin to be cleared off the face of the earth is very difficult to understand. I have heard men...talk not only of the wholesale butchery...but of individual murder of natives exactly as they would...of a day's sport or having to kill some troublesome animal.\footnote{Tatz, Colin (1999) \textit{Genocide in Australia}, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, Australia, p15; also quoted Reynolds, Henry (1998) \textit{This Whispering in Our Hearts}, Allen & Unwin, Australia, p125.}

What is interesting about the above quotation is the private nature of this complaint. There was a normalization of violence against Aborigines achieved through several features: the 'doomed to extinction' view of Aborigines, the demonization of Aborigines as incarnation of the Devil, and the categorization as Aborigines as an underclass of 'unchosen people' as opposed to the settlers being 'chosen'.\footnote{Galtung, “Cultural Violence”, p293: particularly children being deliberately de-socialised away from their own culture & re-socialised into the dominant culture; see also "adoption" of Aboriginal children in Tasmania before 1811; Fels, Marie (1982) "Culture Conflict in The County of Buckinghamshire Van Diemens Land 1803-11," Tasmanian Historical Research Association, abductions of Aboriginal women and children were recorded from 1804, pp63-65.}

It is through these false moral perspectives that our early settlers viewed the Aborigines. In 1842, Windeyer wrote his now famous treatise\footnote{Windeyer, " On the Rights of the Aborigines of Australia"; referred to in Reynolds \textit{This Whispering in Our Hearts}, p21.} on the "Rights of Aborigines", and incorporated all of these viewpoints either directly or indirectly. According to him, because the Aborigines were nomadic they were doomed to extinction. He stated directly that they were not worthy of protection by the normal process of the common law.\footnote{Windeyer, " On the Rights of the Aborigines of Australia".} The Aborigines were not seen as human. The settlers thought they were somehow doing the Aborigines a favour, because the land should be better utilised. That particular idea, however, went against Jewish/Christian principles of honouring one's neighbour and protecting the weak from exploitation. What happened in Tasmania was an early example of the victory of economic rationalism over the common rights of humanity to survive. But it was more. There are many aspects of cultural hegemony of the white man over other cultures implicit in the process outlined above.\footnote{Galtung, “Cultural Violence”, p299: the modern nation state was formed from the need to keep the military option, rather than the other way around.} What happened in Tasmania was cultural violence that led to direct violence against the underdog because a lot of the oppression of one race is achieved through cultural violence, rarely is direct violence required, but the latter is the product of the former.\footnote{Ibid}

It is clear from the record that the British did not in fact regard Tasmania as terra nullius as there was a consistent theme of attempting to define the legal status of the Aborigines and to assign them a corner of Tasmania.\footnote{Reynolds, Henry (1996) \textit{Aboriginal Sovereignty}, Allen & Unwin, Australia, p112.} But the effect of these attitudes above was to push the indigenous peoples to the most unproductive lands and destroy their hunting grounds and any negotiation was, in effect, by the barrel of a gun. The Aborigines were starved into submission. Although Irish convicts appear as a possible instrument of
genocide in Tasmania, more recent historical analysis establishes that convicts up to 1840 made up only a small proportion of the population and once their tickets of leave came through they left Tasmania or did not own land in any great numbers.\textsuperscript{14} It is clear that the genocide was due to Aboriginal loss of their traditional lands by the Government granting huge tracts of land to non-Aborigines, and the actions of those land grantees in denying Aboriginal access.\textsuperscript{15}

The taking of children up to recent times in Tasmania and elsewhere in Australia was just part of the process of putting the Aborigines within these "just bounds".\textsuperscript{16} Witnesses from Cape Barren testified in late 1995 (during the Inquiry into the stolen generations \textit{Bringing Them Home}) that many prominent Tasmanian Aborigines, both as descendants and in actuality, are part of the record of these stolen children. The modern land rights movement in Tasmania had its genealogies in this grievance based on the disappearance of these children, because it was one of the principal instruments of genocide:

the tradition dating back to Flinders Is and the black wars (was one of resistance).\textsuperscript{17}

\textbf{Destroy Your Enemies}

T.R. Young\textsuperscript{18} postulates that the Biblical commandment in \textit{Deuteronomy} 2:34 to destroy conquered enemies utterly has been a significant rubric down the years. In early 2000 I visited Hobart and spoke about this to the Quakers at a meeting for worship:

\ldots we can't be selective and use parts of the Bible just because the Old Testament says a certain thing as an excuse for inhumanity, as the New Covenant is that of the message of Christ.\textsuperscript{19}

Wandering through the park in Hobart afterwards, I noticed the cultural violence inherent in the historical marginalisation of Aborigines from the reality of power in the modern state. The insight I previously recounted\textsuperscript{20} of seeing only the monuments to the whiteman's power structure is:

\begin{quote}
\textit{a violent structure (that) leaves marks not only on the human body but also on the mind and spirit.}\textsuperscript{21}
\end{quote}

Genocide in many respects is a killing of the spirit. Competition for resources, perhaps, explains a possible rationale for the behaviour of those settlers who professed Christianity

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\textsuperscript{14} Fels, "Culture Contact", 49ff; see also generally Williams, John and Richard P Davis, (1994) \textit{Ordered to the Island: Irish Convicts and Van Diemen's Land}, Crossing Press, Sydney.
\textsuperscript{16} Reynolds, \textit{Aboriginal Sovereignty}, p112 : from Vattel see discussion below.
\textsuperscript{17} Reynolds, \textit{Fate of a Free People}, p194.
\textsuperscript{18} Young, TR (1992) "The Drama of The Holy", The Red Feather Institute for Advanced Studies in Sociology 8085 Essex, Weidman Michigan, 48893 USA.
\textsuperscript{19} Michael Kidd, testimony to Hobart Quakers (16/1/2000).
\textsuperscript{20} End of chapter two.
\textsuperscript{21} Galtung, "Cultural Violence", p294.
but who actually departed from the teachings of Jesus to turn the other cheek, and share the land. We must look to something more active as a rationale for genocide than merely economic progress or pressure to produce agricultural products. Rationalisations of one sort or another usually accompanied the expulsion of the Aborigines from their lands in Tasmania, but the underlying effect of these stated aims was usually the opposite:

(It was) the genocidal impulses and actions of the settlers that we must turn to for evidence.

It is a necessity that the legal system should incorporate all the viewpoints, and have a moral base that is connected to spirituality. This is important. Spirituality and morality are not the same thing, but in my view they both get their life from a connection to higher agency. A principle of higher agency is an objective but subtle reality. The relative point of view tends to hold that the end justifies the means, so that one gets to a point of view that if everything is relative, anything can be justified in some way or another.

Higher education can lead to better explanations but not to moral certainty. In early 1942, Hitler assembled a panel of experts containing seven Ph.D.s to supervise and plan the "final solution" of extermination for the Jewish population. One can disguise the horror of certain behaviours with empty banalities: reportedly the Nazi SS executors of the actual gassings in the concentration camps were allowed, under war time rationing, to treat themselves to a meal of ice cream and chicken afterwards. The settlers in Tasmania probably attended church as regularly as possible.

Windeyer represented the prevailing view of the 19th century Australian colonial governing elite, with his attitude that the Aborigines did not deserve consideration because of their perceived backwardness and nomadic life style and because they did not have the trappings of governance. This attitude masked the attributes of genocide where even children were not spared. The settlers in Tasmania were particularly mean-spirited people:

ambitious, avaricious men, primarily concerned with increasing their holdings at the expense of both other Europeans and of the native population.

Look at the following very clever 1821 parable by a young Tasmanian Aborigine, George Van Diemen, who was talking to a soldier by the name of Captain Kneal:

George asked: "Who made the moon?"
Kneal replied "God, God made the moon"
George continued to look up at the sky. He was silent for a while, and seemed to be reflecting on what was said. "Do you see that star near the moon?"
he asked finally. "I suppose God made that too?"

23 Tatz, Genocide in Australia, p14.
24 Schwartzman, Genocide: (video tape).
25 Ibid.
26 Windeyer, "On the Rights of the Aborigines of Australia".
Kneal said "Yes, he did".
"Ah" said George. "Can you see that the moon is after that star and will soon catch him - that star is just like my people - it won't be long before the moon - the white people - has caught us too."  

The Moon Catching the Star People

The economic situation of the Aborigines was dire as by that time they had lost their best lands. In 1823 alone, 441,871 acres had been granted by the colonial government to settlers, which was three-quarters of all grants in all years since settlement. The export of wool had started in the 1820s, and in the period 1828 to 1830 wool exports to England from Tasmania exceeded wool exports to the mother country from NSW. Continuity of supply was essential to maintaining markets, and greed on the part of the settlers had supplanted the ability to see the needs of "the other".

If one compares the best hunting grounds of the Aborigines (illustration 5) with the spread of European settlement (map 8 in illustration 6) these areas practically coincide. If one then looks at plate 14 it can be seen that the occurrence of clashes just before the Blackline in 1830 reinforces the likelihood that the clashes between white man and Aborigines were over loss of food gathering areas.

Plomley noted the Tasmanian Aboriginal liking at this time for flour, sugar and tea in the robbing of shepherd and farmer's houses. This was a sign of starvation. Aborigines also dug potatoes from the ground for consumption, as even by 1823 the Aboriginal supply of food had been severely compromised. The worst Aboriginal settler clashes (Plate 14) that took place from July to December 1830 were over these same hunting grounds.

Through demonisation of the Aborigines in the then media, newspapers and journals, the real needs of the Aborigines for food were not appreciated. Though the Aborigines still had free range over a lot of bush covered areas, food was not as plentiful, as the best hunting was always in the open areas and not in the bush. But the Aborigines couldn't afford to be in the open as they were liable to be shot on sight. It was not until June of 1832 that the bounty of five pounds on the heads of Aborigines was revoked.

My contention is that apart from murder, what killed the Aborigines in such large numbers was cutting them off from their food supplies, their spirits and their lands of the ancestors.

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38 Kevin McDonald "Injustice" Tunapai, p 37.
42 Ibid.
43 Ibid.
44 Plomley, Friendly Mission, p639.
There is therefore a very real question mark over the benefit to the Aborigines of the so-called reconciliation work of Robinson, given that the majority of the flourishing contemporary Aboriginal community are descended from the Bass Strait Aborigines rather than deriving from those whom Robinson rounded up:

his instrumentality in the survival of Tasmanian Aborigines as people
today is questionable.  

Robinson had tried to gather these women from the Bass Strait, but met resistance from the women themselves and their spouses. Perhaps these women had spiritual foresight that these rough and ready sealers who were criminals in the eyes of the world, would be the guardians of the genetic stock for future generations. The descendants of Tasmanian indigenous people come not from those who died at Wybaleena and Oyster Cove, but from Aboriginal women stolen by sealers for wives and unpaid domestic servants.

Mutuality

Perhaps survival by this means was the work of some higher agency, but it is an example of mutual enemies learning to come to an accommodation with each other. The Aboriginal women must have come to some accommodation with the sealers, just as the sealers must have started loving the women as wives. Humans, in relationships with each other and animal species, can form a natural co-operative working relationship if left alone sufficiently. After a period of trial and error and running away from ones adversary or refusing co-operation, both parties learn it is in their own interests to cooperate to build a system where even enemies learn to support enemies. But this depends on generosity and being aware when one is being exploited- to be aware of this and being experientially rewarded for seeking consensus.

Within fifty years the indigenous people in various colonial countries had been tamed by the methods used in Tasmania which was effectively a proving ground for the domination of indigenous people. The displacement and removal to Flinders Island mostly occurred after the abolition of slavery of 1831 in the British Empire. It was also the place in the world where the genocide took place in its most complete form. What had happened to the Tasmanian Aborigines by 1834 was a precursor to the African/Zulu wars and the final Indian wars of America that saw the extirpation of Indian resistance through massacre. The 1870s New Zealand Maori land wars resulted in historical wrongs that have been addressed only in the last twenty five years, through the Treaty of Waitangi Tribunal with Court supervision.

37 Ibid p31.
38 Ibid, p38.
Failure of co-operation was the main reason for the genocide of the Tasmanian Aborigines. However, Aborigines had little choice but to resist and then eventually to acquiesce. The terms of the Agreement\textsuperscript{41} were not mutually enforced for the benefit of both parties. Alexrod\textsuperscript{42} has simulated with computers a lesson showing that those species that survive are those that learn the lesson of flexibility and co-operation:

\begin{quote}
(initially) the evolving social environment led to a pattern of decreased co-operation and decreased effectiveness, followed by a complete reversal based upon an evolved ability to discriminate between those who will reciprocate co-operation and those who will not.\textsuperscript{43}
\end{quote}

The Aborigines had already learned these lessons of co-operation through their religion, but the whiteman was one-dimensional so he did not reciprocate. Tatz refers to this process of lack of mutuality as inevitably leading, through a conspiracy of sorts, to genocide. The Aborigines, through their community and religion, lived in a mutuality with nature, so they tried to co-exist with all that were around.

But the whiteman:

\begin{quote}
did conspire and did attempt genocide.\textsuperscript{44}
\end{quote}

Tatz was actually referring to the "disappearance" of the half-caste children taken by state and federal Australian Governments from colonisation up until the 1970s, but this policy of assimilation was one of the principal mechanisms for the genocide, and illustrates the actual mind-set. The elimination of the Tasmanian Aboriginal race involved a sentiment approaching that of contempt for an inferior part of the species, due to a similarity to the theory, such as Hitler's about the respective biological characteristics of distinct races.\textsuperscript{45}

The scramble for the remains of both Truganini and Lanne in the late 1800s is testament to this mind-set, a collective murderous intent that was rationalised by science and early eugenics. The drawings, reproduced from Gould's study of the biological determinism of this period,\textsuperscript{46} (illustrations 18 & 19) are in my submission an exhibit to the charge of this murderous intent.

\textbf{Can One Imply an Intent to Practice Genocide?}

The Convention on the Prevention and Punishment of the Crime of Genocide Article II 1948 declares the following as prima facie genocide:

\begin{quote}
\textsuperscript{41} See chapter Thirteen.
\textsuperscript{43} Ibid, p23.
\textsuperscript{44} Tatz, Genocide in Australia, p28.
\textsuperscript{45} Ibid.
\end{quote}
a) Killing members of the group
b) Causing serious bodily or mental harm to the group
c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part
d) Imposing measures intended to prevent births in the group
e) Forcibly transferring children of the group to another group

This United Nations definition of genocide implies intent where children and populations are forcibly removed. The fact of forcible removal, whether of populations or of children, as happened with the Aboriginal children taken from their communities into social welfare custody, is sufficient to constitute genocide. In a moral sense a display of an intent to disrupt the reproductive life of a racial group is not necessary. As illustrated in the findings of the Bringing Them Home report\textsuperscript{47} the actions speak for themselves:

The Inquiry concluded that forcible removal was an act of genocide…and concluded that even before international human rights law developed in the 1940s the treatment of indigenous people breached Australian legal standards. Two relevant legal principles were denied on racial grounds: 1) that children should not be removed unless a court makes that decision 2) parents are the legal guardians of their children unless a court orders otherwise…\textsuperscript{48}

This point is further re-enforced by Tatz:

we always assume that the wording on Article II (requires) intent with mala fides (bad faith, evil intent)…\textsuperscript{49}

But the wording of Article II does not preclude liability for actions done with good intentions, such as the historical removal of Aboriginal children from their parents, nor the 1830s removal of Aborigines to Flinders Island, and later to Oyster Cove. This interpretation unfortunately was not accepted by the High Court in Kruger\textsuperscript{50} a case which concerned an adult child suing the Commonwealth for breach of care. Kruger found that the policies of forced removal did not amount to attempted genocide because the ordinance concerned did not have genocide as an objective.\textsuperscript{51}

But Storey has written an analysis of the decision which disagrees with this logic:

The essence of the intent requirement in genocide then, would appear to be the undertaking of one of the prohibited acts in relation to one of the protected groups with the intent to destroy that group as a group in whole or part. The fact that this act is committed with a beneficial motive is apparently irrelevant. Genocide does not require malice; it can be (misguidedly) committed "in the interests of" a protected population.\textsuperscript{52}

\textsuperscript{47} Guide to the Findings and Recommendations of National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families Bringing Them Home.
\textsuperscript{48} Ibid, p27.
\textsuperscript{49} Tatz, Genocide in Australia, p33.
\textsuperscript{50} Kruger v Commonwealth (1997)146 ALR 125.
\textsuperscript{51} Ibid, per Dawson J, at 161.
As a matter of commonsense, would people thinking of committing genocide actually announce it to the world? Hitler’s rantings from the early 1930s against the Jews in Mein Kampf were a far cry from the thousands of concentration and designated death camps his regime eventually set up by the early 1940s. There is evidence that the policy was never announced to the German public but everyone knew what the camps were for, and it did not prevent ordinary Germans from lining up and spitting on Jews as they were led on the infamous death marches in the closing days of the Second World War.

If Hitler’s "intent" had been to "reform" the Jews, it would be lacking in commonsense to say it was not genocide simply because there was either no stated intention, or it was to achieve some other object. This can be a disguise for cultural hatred.

The second aspect of the Kruger decision, which I find disturbing, is the non-recognition of cultural genocide, which said this was specially excluded from being part of the UN Convention Against Genocide. However the removal of children and the loss of the ability of a people to physically reproduce themselves is one of the definitions of genocide in Article II. This reasoning does not make sense. Genocide may also be achieved by: denial of religious practice of a culture that depends on access to land and hunting grounds for spiritual well being, and denial of the rights of parents to bring up their children in the culture of their choice.

The British Administration in Tasmania did not actually intend the Aborigines to be wiped out. Nevertheless, the policies of denial of access to land, hunting rights and access for communion with the ancestors had this effect. There is plenty of evidence that many people with a conscience at the time had profound disquiet about what was happening but this was not translated into a meaningful response from the public at large.

The third aspect of this decision I take issue with is "the community standards at the time" argument:

(According to the majority in Kruger) it is the standards of the period under question that is the relevant standard. Standards of child care may have changed over the period of the early 1900's to the late 1960's, where the systematic removal policies and practices were operating. Practices that may have been acceptable forty years ago, may be totally unacceptable today. However, it is what was acceptable at the period under challenge which the court will focus on, not today's standards.

53 Hitler, Adolf (1939) Mein Kampf, Hurst and Blackett, UK.
55 Ibid, p465; “The death marches of 1945...showed) anti-Semitism in its purest form because Germany was defeated there was no external compulsion for ordinary citizens to take part or just stand by.”
57 Ibid.
58 Storey, “Kruger v The Commonwealth : Does Genocide Require Malice?” at p 229; “the second plume is the denial of continuation of the features that define the group as a group”.
59 Reynolds, This Whispering in Our Hearts: the general statement in this publication.
60 Buti, Tony (1998) "Kruger & Bray and the Common Law," 21 University of NSW Law Journal,
Num Lagger...the white man comes..

We have already seen that the standards in force at the time saw Aborigines as less than human and capable of extinction\(^1\), so the last part of the Court’s decision in the Kruger case is not realistic. The criteria for the settlement of Tasmania had been “success” as a virtue in itself so that theft of sheep, corruption and murder by bushrangers were rife amongst the European population,\(^2\) and Aborigines were often shot on sight. Robinson recounted one such incident on one of his expeditions on 13 May 1832, near the present day town of Port Latta at Rocky Cape:

> At night, whilst all the people was asleep, the encampment [in which Robinson was] was suddenly attacked by an armed party of thirteen or fourteen men who rushed impetuously upon the encampment, vociferating very opprobrious epithets and calling out to each other ‘here they are here they are cut away cut away’.\(^3\)

It turned out these were armed shepherds from the Emu Bay, Van Diemens Company, who were perfectly aware of Robinson’s presence, and he with difficulty intervened to stop any blood-shed. Robinson was quite disturbed by the significance of this incident and he concluded that the true savages were the whiteman.\(^4\) At night in order to quiet their children the Aborigines used to say: "num lagger... the white man comes". This was sufficient to silence even the most upset child, as the very name infused fear.\(^5\)

Empire Building and its Legacy

When Cortes and his men entered Mexico City, the Aztec capital

was a city much larger, more spacious and much more impressive than anything in contemporary Spain... there was an effective system of administration and an elaborate economy.\(^6\)

Diamond\(^7\) points out that the eventual conquest of indigenous peoples by the European was not a question of superiority of one culture over another, but guns and steel over bows and arrows:

> technology, in the form of weapons and transport provides the direct means by which certain people have expanded their realms and conquered other people.\(^8\)

\(^1\) No1(1998), 232 at p 239.
\(^3\) Morgan, Land Settlement in Early Tasmania: Creating an Antipodean England, p39.
\(^4\) Plomley, Friendly Mission. p606.
\(^5\) Ibid, p607.
\(^6\) Ibid, p632.
\(^8\) Daimond, Guns, Germs and Steel, p75.
At the beginning of the western powers' colonial expansion in 1550 there was much
debate about the rights of native peoples. Charles V, the Holy Roman Emperor who was
also Charles I of Spain, convened fifteen theologians at Valladolid Spain to debate the
treatment of American indigenous peoples, whose treatment as inferior beings had been
justified by the conquistadors by Aristotle's doctrine of "natural slavery". This did not
sit well with contemporary Christian principles of 'love thy neighbour'. But the debate
was inconclusive and raged on for two days. Afterwards the colonial process continued
 unabated using another pretext:

the sins (of the Indians) such as idolatry and cannibalism.

So Christianity was itself taken over as the vehicle to enslave the native peoples, and
bring them under the power of the secular authorities. It is interesting to note that
Aristotle, a pre-Christian pagan, was used by de Sepulveda a Spanish Christian
theologian during the above debate, to justify genocide.

Everyone Accounted For

In Tasmania, unlike the rest of Australia, almost every Aboriginal person is tragically
accounted for, and so the idea that you can have people who are descended
from unknown Aborigines, Aborigines unknown, is a difficult matter to run here.

Ida West told me that the true accounts of the killings in Tasmania have never made it
into the history books and that when she wrote her book she discovered there were two
versions of Bonwick's book of 1870. According to her, the version giving a true account of the atrocities was suppressed by the then Tasmanian Government. She told me
of the massacre of Aborigines at the Wybaleena settlement (dealt with in chapter Fifteen).
She said the only way to discover the truth would be to dig up a certain area at Peajacket
point opposite some rocks which only show at low tide. Whether there is confirmation
or not of both these statements is not the point as these comments of West's is evidence
of a Group memory of genocide, the trauma of place.

The terminology "genocide" was coined by a Jewish, Polish theorist at the end of World
War II:

He didn't say the killing had to be wholesale, or in a compacted time frame, or in

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70 Ibid.
71 Ibid.
73 Interview, Ida West (10/2/1998); West, *Pride Against Prejudice: Reminiscences of a Tasmanian Aborigine*.
74 Ibid.
75 Bonwick, James (1870) *The Last of The Tasmanians: The Black War of Van Diemen's Land*, London
76 Interview, Ida West (10/2/98).
Certainly the genocide that took place in Tasmania was piecemeal, and it is possible to see the Wybaleena experiment as a delayed form of genocide under Tatz's definition above. Although Tatz does not make the point explicitly it is implicit in his argument about the historical genocide of the Tasmanian Aborigines, that this is also a continuing event:

a major underpinning...of Australian race relations...has been a Social Darwinist notion that the unfit don't survive...succumbing to disease...perishing at the premeditated hands of settlers...part of a mindset that beheld extinction as inevitable.  

The genocide case against Howard in 1998 over the "Ten Point Plan" was an indication that in the minds of the Aboriginal applicants, genocide was still continuing and that the events of the original dispossession of the Aborigines still live on in a number of ways. The memories live on in the individual and collective unconscious for both European and Aborigine. The environment still shows the effect of the loss of the stewardship of the Aborigines. The stories of genocide and dispossession get passed down in the Aboriginal community, as evidenced by the comments of West. The collective guilt of the white man is real, and there is a suggestion that the modern plagues that still affect modern Australia, such as the El Nino effect, droughts, fires, cyclones and natural disasters, are the dreamtime's way of saying that the white man is out of touch with the land.

The genocide against the Aborigines was a gradual process that started with the Risdon Cove massacre in 1804 and finally overwhelmed the Aborigines forty-three years later when the last of the Aborigines were returned to the mainland at Oyster Cove:

They (Aborigines) were at risk from predatory sealers and settlers. In 1824 settlers were authorised to shoot (them). In 1828 martial law (was declared)...soldiers and settlers arrested or shot any blacks found in settled districts...vigilante groups avenged...by wholesale slaughter (of Aborigines) the deaths of any white man.

Reynolds points to the higher proportion of deaths from the black wars in Tasmania than in either World War I or II, which is quite remarkable given the wholesale slaughter

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77 Tatz, Genocide in Australia, p14.
78 Ibid, p11.
79 Wadjalarrinna v Thompson, which was appealed by the applicants to the Full bench of the Federal Court. Merkel J upheld the notion of creating new offences but not cultural genocide: see Nulyarimma v Thompson (1999) FCA 1192.
80 Flannery, Tim (1994) The Future Eaters, compares accounts at the time of settlement with the remains of vegetation today, 218ff.
81 Interview Ida West (10/2/1998), see above and also chapter 15.
82 See Flannery, The Future Eaters, p389ff.; Flannery does not necessarily make the spiritual connection with these phenomena and the white man's guilt, but I take his statements as foundation for this view.
83 Tatz, Genocide in Australia, p15
84 Reynolds, Fate of a Free People, p210.
of trench warfare of World War I, but most Australians are unaware of the implication of these statistics.\textsuperscript{85} This is the contrary: the Group Denial.

**Spiritual Survival**

The star people were caught by the moon race and the moon appeared bigger because it is closer. But the stars held infinite possibilities, and are fiery. The moon was dead and circled endlessly around the earth, reflecting light not its own.\textsuperscript{86}

Genetically, Aborigines survived through the offspring of Fanny Cochrane-Smith and the Aboriginal women taken by the sealers,\textsuperscript{87} who perhaps gave them some protection from the whiteman's social and physical diseases. Ostensibly, the high death rate of Aborigines whilst on the Flinders Island reserve was due to European diseases like pneumonia, tuberculosis and influenza, which are all diseases that affect breathing in one way or another. Could it have been the close confining nature of the accommodation, or the spiritual disease of being unable literally to breathe in the land?

It is a fact that Aborigines had been dying of disease ever since the whiteman came to Australia, and continue to have very poor statistics in the mental and general health areas.\textsuperscript{88} Immune systems are weakened by the stress of dispossession, which has a basis in Aboriginal spirituality as land is the basis for well being. One has to breathe in the connectedness to a particular piece of land. Therefore whiteman's role in the death of Tasmanian Aborigines was more than just the passive handing on of diseases:

> We need to open our eyes to...premeditation...in the 210 years since the British arrived.\textsuperscript{89}

**Ideology of Dispossession**

The third aspect of cultural violence is the particular ideology justifying land acquisition, used to marginalise the victims, in this case the indigenous people.\textsuperscript{90} The ideology of colonisation was contained in the theory of Vattel which held that Europeans could dispossess indigenous populations by taking land for their own economic needs and reserving some for the indigenous populations.\textsuperscript{91} The violence that is implicit in this...

\textsuperscript{85} Ibid, p211.
\textsuperscript{86} George van Diemen "Injustice"
\textsuperscript{87} This is discussed at length in chapter Nine.
\textsuperscript{88} Swan P & B Raphael, (1995) *Ways Forward National Consultancy Report : Aboriginal and Torres Strait Islander Mental Health* Commonwealth Department of Human Services and Health, Canberra, vol. 1, p1: Executive summary "extensive problems of Aboriginal mental health and high levels of unmet need."
\textsuperscript{89} Tatz, *Genocide in Australia*, p11.
\textsuperscript{90} Galtung, "Cultural Violence,"p 294: one of the tools of exploitation is marginalisation of the subjected group from the broader society and from each other, & at p297 expulsion from traditional lands- here Galtung uses the example of Israel expelling the Palestinians from the West Bank.
\textsuperscript{91} Actually De Vattel, see his "The Law of Nations" 1760 : extracts in McRae, Nettlheim & Beacroft
theory is not acknowledged. Reynolds points to aspects of genocidal premeditation with the application of Vattel’s fiction of confining indigenous people within "just bounds".  In my view, Vattel’s theory was either deliberately misused as justification for gradual dispossession resulting in the eventual complete marginalisation for the indigenous people, or Vattel himself was engaging in a rationalisation derived from his own cultural blindness:

...what Vattel pointed to was a negotiated redistribution of land rather than complete dispossession.

But the reverse was the practice. If we fail to see the God in the other person rationalisations for the most barbaric behaviour become commonplace:

......the worship of God
is honouring his gifts in other men
and loving the best men best
each according to his own genius
which is the Holy Ghost in men;
there is no other God than that...

If you do not see the gifts of others because of your social conditioning, you are likely to ignore the divine in them as well. The first Tasmanians shared the land with the first white people and then realised too late that the whiteman did not want to share it with them in turn. They were not aware of being judged as primitive and in danger of dying out. They had enjoyed the land and as a duty to the Creator, protected it in return. This was not to be the case with the European settlers, who appeared to believe it their inherent right to exploit other men and the land itself.

Social Darwinism

Although, the publication of Darwin's work was some years after the Aborigines died in large numbers on Flinders Island, it was a scientific expression of an idea that had been around the western world since the onset of colonisation: "survival of the fittest race." Darwin's ideas were a re-statement of old attitudes that were already latent in the hearts of the settlers:

Mr. Darwin was by no means the discoverer of the theory of evolution. That is at least as old as Aristotle, who supposed individuals to be produced, not by a simultaneous creation of a minute copy of the adult, with all the different organs, but by epigenesis—that is, by successive acts of generation or growth, in which the rudiment or cell received additions. Other ancient philosophers, and in more modern times Descartes, Spinoza, Leibnitz, Bonnet, Lamarck,

Aboriginal Legal Issues: commentary and materials pp76 ff.
52 Reynolds, Aboriginal Sovereignty, p112.
53 The use of this is predicated on the legal meaning of the word fiction, and also cultural violence hidden within the use of the fiction as a convenient pretext: see Galtung, "Cultural Violence," p294ff.
54 Reynolds, Aboriginal Sovereignty, p113.
56 Living With The Land (book 1).
and Cuvier, have adopted and used this theory to a greater or less extent. But it never had a substantial basis of fact or a thoroughly scientific application until Mr. Darwin worked it out.97

The theory espoused evolution as opposed to creationism and was imbued with a view of the world as being ordered into higher and lower species. Later, men and women who had been brought up as Christians, as Nazis adopted the concept of Lebensraum or "living space" which gave the German "superior" race the right to carve out adequate resources at the expense of "inferior" races.98

Concentration on biological explanation or even geographic, technological reasons for one race's ascendancy over other races takes away from mankind and womankind the ability to decide on the moral imperatives of how to treat their fellow human beings. Biological determinism based on race (see illustrations 18 & 19) was fashionable prior to Darwin's work, but this biological determinism had little scientific basis in fact:

and was set in "the cultural milieu of a society whose leaders and intellectuals did not doubt the propriety of racial ranking."99

Tasmanian settlers were prepared for the genocide of the Aborigine by such images as these and by the demonisation of the Aborigine through the media. The people who read Tasmanian newspaper accounts of Aborigines, at the time of the loss of lands from the 1820s to 1830s, had no first hand knowledge of what was happening, as the mass killings of Aborigines were not reported and still largely remain unreported today.100 But they were given negative stories of Aborigines both through the local Tasmanian media where it was stated in 1829 that "extermination"101 of the Aborigines seemed to be the only outcome and through the fashionable, biological deterministic theories of the day. Benjamin makes a significant point about the use the mass media prior to the Holocaust and its inherent applicability and suitability for information distortion. The same applies whether it is by modern media or 19th century newspapers:

The aura which, on the stage, emanates from Macbeth, cannot be separated for the spectators from that of the actor. However, the singularity of the shot in the studio is that the camera is substituted for the public. Consequently, the aura that envelops the actor vanishes, and with it the aura of the figure he portrays.102

Negative images whether mental or actual images can be manipulated to facilitate property expropriation and cultural deprivation:

98 Hitler, Mein Kampf, see chapter by the same name.
100 Desailly (1977) "The Mechanics of Genocide: Colonial Policies and Attitudes towards Tasmanian Aborigines 1824 - 1836" MA Thesis University of Tasmania, p19: commentators at the time noted that the numbers of murdered Aborigines were so great that the ground in certain areas was strewn with their bones.
Distraction as provided by art presents a covert control of the extent to which new tasks have become soluble by apperception...Fascism sees its salvation in giving these masses not their right, but instead a chance to express themselves. The masses have a right to change property relations; Fascism seeks to give them an expression while preserving property. The logical result of Fascism is the introduction of aesthetics into political life. The violation of the masses, whom Fascism, with its Führer cult, forces to their knees, has its counterpart in the violation of an apparatus, which is pressed into the production of ritual values. All efforts to render politics aesthetic culminate in one thing: war. War and war only can set a goal for mass movements on the largest scale while respecting the traditional property system. This is the political formula for the situation. The technological formula may be stated as follows: Only war makes it possible to mobilize all of today's technical resources while maintaining the property system.

The Blackline was used to unite a fractious colony. A survey of references to Aborigines in the media at the time showed them being painted as dangerous and not amenable to civilisation. Worse still is this 1829 characterisation by *The Tasmanian* of subhumanity:

> They were compared unfavourably with slaves which at least had a value whereas the Tasmanian Aborigines were "only considered as vermin which everyone is bound to destroy."

The preparation had been laid for a bounty to be placed on Aborigines' heads, with martial law and the 1830 Blackline leading to implementing the final solution by rounding them all up and shipping them to an island out of sight, out of mind. The European aesthetic viewpoint was that property rights could not accrue to a lower species of human being.

Aborigines from 1823 onwards started to increasingly fight back against the European, because they had to, as they were losing their lives by various means. The contradiction in Robinson's "friendly mission" was that by saving them he destroyed them and made it much harder for their descendants to survive. Robinson was imbued with a certain moral superiority from being born an Englishman and holding a religious condescending attitude to these "creatures" of God.

**Am I My Brother's Keeper?**

- Take up the white man's burden
- Send forth the best ye breed
- Go forth your sons to exile
- To serve your captives' need
- To wait in heavy harness...

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103 Ibid.
105 Ibid, p73 quote from 18/9/1829 article.
This Kipling poem, *The Whiteman's Burden*, espouses the ideology of white superiority. The Crown and British values generally were the cultural considerations that permitted transportation of undesirable elements to the colonies, and the exploitation of those colonies with little regard for indigenous peoples.

Darwin's *Origin of Species* did not refer to man as such but was later adapted to a cause already busy in the heart of man...and found use by self-elected evolutionary superiors everywhere to justify rampage.\(^\text{107}\)

Genocide is an evil unconnected with mankind's true relation to the divine, and Jews and Aborigines, amongst the many minorities in the world, have in common the victim-hood of genocide. The genocide of the Tasmanian Aborigines was a more subtle application of the superior race theory. Though there was not an overt racist theory of supremacy, it was there in the culture of the whiteman. Britain was colonising Tasmania and making slaves out of its original inhabitants in all but name:

> Slavery is often viewed as an unpleasant activity of a handful...but it contributed significantly to the development of Britain and other European countries...Africa lost a substantial section of its most productive work force (to slavery).\(^\text{108}\)

In some respects slavery might have given more rights to the Aborigines. The British Empire was built on the attitude that brown skins were inferior and Britain had been the leading force in transporting slaves\(^\text{109}\) for several hundred years. Between 1445 and 1870, Africa lost 40 to 50 million people to this trade.\(^\text{110}\)

Colour prejudice predates the British Empire, and we can look to the received practice of religion for the rationalisation of racism- it was the natural order of things for blacks to serve whites because it was ordained by the Old Testament Bible.\(^\text{111}\) The word "black" came to be associated with evil, death, baseness sinister-ness, the devil, blackmail, Black Death, disaster, a black day.\(^\text{112}\)

On the contrary, white stood for good and positivity and it is a small step indeed from these uses of language\(^\text{113}\) to the justifications for the exploitation and loss of subject lands involved with colonialism.

Kipling's "Half Devil Half Child" is a cultural expression or projection of the innate lack of spirituality in the whiteman's world, of being unable to see God in "the other",

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\(^\text{106}\) Rudyard Kipling (1865-1936): "Selected Verses".


\(^\text{109}\) Pankhania, *Liberating the National History Curriculum*.

\(^\text{110}\) Ibid, p21.

\(^\text{111}\) Ibid, p22.

\(^\text{112}\) Ibid.

\(^\text{113}\) Ibid, p24.
experiencing God within, and the worship of God in spirit. For Kipling, it was also being unable to see the log in one's own eye,\textsuperscript{114} as this poem was the expression of his own Sacred wound, of being separated from his parents who were in India, whilst he was brought up by abusive relatives in England. He had a dislike of "difference":

The whole world of Kipling’s life is to be shot through with hatred.\textsuperscript{115}

\textbf{Justified Fear of Continuing Genocide}

Aborigines today have a justified fear of genocide based on actions taken in the past by various Australian government and non-government agencies. The following public documents are testament to the continuing process, of putting the Aborigines in "just bounds":

a) The Royal Commission into Aboriginal Deaths in Custody detailed the extraordinarily high incidence of imprisonment. Aborigines are twenty times more likely to receive a custodial sentence than non-Aborigines. Whilst it may be pleaded that these sentences are carried out according to valid laws, the effects of depriving Aboriginal families of their menfolk are culturally genocidal in nature.

b) The Inquiry into the Removal of Indigenous Children 1997, Bringing Them Home, detailed the widespread removal of Aboriginal children from their parents up to comparatively recently. Once again, these removals were probably done with some mistaken idea of assimilation or protection and it will doubtless be pleaded they were done pursuant to valid laws, but the effects are culturally genocidal in nature.

c) It is a matter of public record that the Aborigines were not consulted over the 1998 Native Title Amendment Act's final negotiation.\textsuperscript{116} Aborigines were effectively cut off from any meaningful input into these measures, which will undoubtedly impact later on their well-being. In my opinion, this may lead to the further deterioration of the mental and physical health, social and financial position of Aborigines in Australia, and therefore lead to an increased death rate, incarceration and social breakdown.\textsuperscript{117}

Such effects are genocidal in nature, and the following measures contained in the Native Title Amendment Act 1998, it is submitted, have genocidal implications:

Loss of ability to claim physical connection and therefore spiritual connection with the land after one generation and the problems of organization to prove this connection and any exceptions to the general rule. The right to negotiate over mining uses has effectively been emasculated with a politician's decision and not a tribunal decision as the final arbitrator. Extinction of Native Title over pastoral leases has been back dated to events that happened last century, which offends against the legal principle of retrospective legislation and may be against the

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{114} \textit{Luke 6:42}
\item \textsuperscript{115} Wilson \textit{The Wound and the Bow}, p96ff; quote from p99.
\item \textsuperscript{116} Brennan, Frank (1998) \textit{The Wik Debate: its Impact on Aborigines, Pastoralists and Miners} University of New South Wales Press, Sydney, p84.
\item \textsuperscript{117} "Wik Has Impacted on Aboriginal Health" Dr B. Bartlet et al (letter to editor) \textit{Australian} (7/4/98).
\end{enumerate}
\end{footnotesize}
principle laid down in the famous Koowarta case in the High Court. 118

Under this legislation all forms of primary production may now proceed on pastoral leases irrespective of the terms of those leases and irrespective of the wishes of Aborigines claiming native title rights and wishing to practise traditional customs. The language of the Ten Point Plan, which was the Howard government's proposal for the legislation, is not dissimilar to what Marcia Langton calls the de-Aboriginalising of areas of Australia. The former lands of the Aborigines are recast as Aboriginal "free zones" or wilderness areas where the right of Aborigines to hunt is curtailed in the interests of "conservation", which in turn was a "mystification of genocide". 119 The latter is using linguistic devices to deny rights to those already marginalised.

If one looks at the language of the Native Title Amendment Act 1998 it is dressed in the language of de-Aboriginalisation. For example, spiritual connection to land is halted one generation back from the applicants, in the interests of removing "ambit" claims. This fundamental denial of continuing Aboriginal religious connection to the land, it is submitted, is one of the principal rationales for the Act, which was applied retrospectively in Yorta to deny Aboriginal spiritual attachment to land. 120

Denial

Denial is the single most important ally of genocide:

There is an array of conservative critics who refute genocide. [Tasmanian Premier Groom in 1992] contended that there have been no killings in the Island State making him the foremost genocide Denialist in the 1990s. 121

In this area, the single most important aspect of Australian law to date has been its tendency to subtract from Aboriginal rights rather than adding to them. The Native Title Amendment Act of 1998 is good evidence of that, as is the continuing nature of the cultural genocide as pointed out in the Wadjularrinna case. 122 The appeal of which, to the full bench of the Federal Court, was partly successful. The dissenting Judge in the full bench Wadjularrinna case happened to be Merkel J, the former counsel for TALC in the La Trobe case. His opinion is revealing and shows the dark side of the legal system which reflects Denial in the Australian psyche:

(The) observations in (the) Pinochet (House of Lords case) does not support the view that customary international law, whether civil or in respect of universal

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118 Submission drafted by M J Kidd for Wadjularrinna
120 Yorta v Victoria [1998] 1606 FCA 18, The trial commenced in Melbourne on 8 October 1996. The evidence concluded on 30 October 1997. Final submissions were made on 15 May 1998. Subsequent to the passing of the Native Title Amendment Act 1998 (Cth) the parties made further written submissions concerning the effect of the amendments made by that Act and the Court sat again for two days in the week commencing 2 November 1998.
121 Tatz, Genocide in Australia, p38.
122 Nulyarimma v Thompson [1999] FCA 1192; this was appealed to the High Court Nulyarimma & Ors v Thompson C18/1999 (4 August 2000), but leave was not granted as the High Court considered there was no question of law arising.
crimes, can only be incorporated into municipal law in common law states, like Australia, by legislation...it is not accurate to say that the reception into the common law of a universal crime under international law involves the courts in "creating" a new crime. Rather, the court is determining whether to "adopt" and therefore receive as part of the common law an existing offence under international law which has gained the status of a universal crime.  

Unlike his fellow judges, Merkel J shows a flexibility to incorporate new crimes of genocide into the Australian domestic legal system despite various state and federal parliaments' reluctance to make genocide a domestic crime. Unfortunately, he also adopted the prevailing authority of Kruger in deciding that cultural genocide is not a crime:

> none of the allegations relied upon by the appellants are capable of raising an arguable case that any of the persons (Howard and others)... have engaged in any conduct that is capable of constituting the crime of genocide under international and domestic law.

There is a fundamental denial of the reality of what actually happened in Australia even though the Bringing Them Home Inquiry, reporting on the Tasmanian-stolen-children-experience, conclusively proved the fact that many Aboriginal children were taken inappropriately, and put into orphanages. But there was always a fair amount of self-righteousness on the part of those in authority, which disguised the ability to see Aborigines "as people like us". The self-righteousness with which this cultural genocide was carried out meant that the very people perpetrating the crime of removal often projected on to the children the very things they were themselves doing.

Reynolds\(^2\) gives this example of early settlers in Tasmania who looked after these orphans but could not understand the lack of gratitude of these children so they described the children as:

- a) Deficient in feelings of social affection
- b) Full of depravity
- c) Obstinate, perverse
- d) Dishonest

One cannot help thinking this is an accurate picture of the ways that the Tasmanian colonists behaved towards the Aborigines.

But it is important to establish reconnection with the past wrongs and Australians missed the opportunity with the Kruger case to truly conduct a self-analysis as a people. According to specialists in the treatment of victims of genocide, the subjects of torture, family dislocation and various forms of genocide show distress for at least three


\(^{125}\) Reynolds, With the White People p186.
generations after the events. This distress takes the form of depression, learning difficulties, low threshold of stress and poor self-esteem.\textsuperscript{126}

The point is, according to many Aborigines and very profoundly expressed in July 1998 by Wadjularinna speaking to the Judge of the ACT Supreme Court at the Aboriginal Tent Embassy, which the genocide is continuing. This was the point that Jim Everett was making with his walk on his ancestors’ lands.

It is necessary to all peoples, Aborigines as well as the whiteman, to find their spiritual roots (or wings) because of the dislocation that is the principal feature of genocide. If we do not achieve integration of internal conflicts, or realise the underlying gestalt\textsuperscript{127} for our behaviours, by finding a spirituality which connects us to the divine, as mostly eloquently expressed by Wadjularinna, we will perpetuate the past wrongs on others:

\begin{quote}
I wouldn't like to be sent from one place to another place far, far away and then just expected to find my way.. because they (Europeans) haven't dealt with it, that kind of stuff is handed down from generation to generation.. the children who were sent out here by the ships.. thousands of children.. taken off their parents and sent out here.. they're still human beings. These young people came out here and then they were abused, they were put into institutions, no parents, no love, but had to be, like, military up-bringing.. those white children grew up in this environment and then they turned around, and they're the people, and their descendants are ruling and controlling us.\textsuperscript{128}
\end{quote}

In the Australian context Brady describes the process, illustrated by Wadjularinna above, and mentioned by Reynolds\textsuperscript{129} as "othering",\textsuperscript{130} where you project all your own wounds onto a people that you have the desire to destroy:

\textbf{Quamby Bluff Poem: For All Those Children Who Were Not Wanted}

\begin{quote}
I look out this morning and see Quamby Bluff.
I do see in the mist,  
where I walked first as a courting lover.  
So long ago, so long ago.  
I see, I see:

That place is where they
threw the women and children to their deaths
shouting, pleading: Quamby Quamby!
Mercy! Mercy!

Bareness of spirit: the children of
the Earth which still weeps...

For mercy they had none:
\end{quote}

\textsuperscript{127} Perls, Frederick S (1969) \textit{In and Out of the Garbage Pail}, Real People Press, USA
\textsuperscript{129} Reynolds, \textit{With the White People}, Penguin, p186.
\textsuperscript{130} Brady, \textit{Can These Bones Live?}, pp71 & 72.

207
there was no record of that blood
spilled into the ground;
except that in the Land and Spirit.

I see below in the river children splashing as
they play: innocence, innocence

Enough is enough:
superficiality is contaminating,
and those who take without recourse;
well, the heavens would have no
chance if it was just up to them.

The children will inherit, what ever is left
none the less,
as God will allow.\textsuperscript{131}

\textsuperscript{131} Poem, M J Kidd, February 1996
Epilogue

No Person Has Seen God

No man has seen God,
That doesn't matter to me
And I hope it doesn't matter to you;
What must matter is that we have seen each other.¹

According to the prevailing orthodoxy "the secularisation of Australia is nearly complete". Christianity and the tradition of relying on the spirit of teaching that comes from the Bible will be replaced by many different forms of spirituality involving varying mixtures of the occult, as "people want bite sized chunks they can swallow". According to this scenario the idea that God is sacred is replaced by the idea that the self is sacred: "in order to develop the sacred self, anything goes".²

Is this familiar? The discussion of the legal extinguishment of Aboriginal customary title is a good pointer to discourses that are based on avoidance of moral attachment to objective truth. This leads to the secularisation of society that comes from avoidance of the deeper questions. Relationship to the Divine is the basis of life. The story of the worship of the self, as being sacred as opposed to dealing with the wounds of childhood or whatever, is a kind of avoidance and leads us away from God. The Sacred wound of mankind.

If one considers the discourse of the Native Title Amendment debate, and the discussion, in the chapter entitled "The Legal Standoff", of the inability of Australian law to embrace "the other", we can see various directions at work that lead us away from spirituality. Economic rationalism is one such direction, which was most important in the late 1820s in Tasmania, in pushing the settlers away from sharing the land with Aborigines. Economic rationalism in its various historical guises has always been at loggerheads with the spirit of the Aborigines, which is the dreamtime attachment to land:

I would term this the "Great Misunderstanding" which pervades Government Aboriginal relations in Australia: of the cultural causes and basis for the phenomena of a dreamtime at odds with the effects of economic rationalism in Aboriginal communities across Australia. In many ways, economic rationalism is another name (and an inheritor) for various economic and social exigencies forced on Aboriginal people since the invasion.³

The Core Question is the Spirit

But does not the ultimate title to the land lie with the Spirit of God? Indigenous wisdom recognises this as a reality with the Legend of the Rainbow Serpent and its ability to create and destroy. This accords with an experience I had when I visited "Painting the Land Story" on 31 August 1997 in Canberra (plate 12). One of the stories depicted in that exhibition was of the Aboriginal myth of cyclone “Tracey,” on Christmas-day 1973, being the Rainbow Serpent, destroying Darwin for the sacrilege of mining at Roxby Downs. I dismissed this as, ‘well, that’s “just a myth’ until I saw the satellite photo of the cyclone that was juxtaposed against the exhibit. It looked coiled like a serpent. The story is that the Aboriginal people were “told” of the impending destruction by the sudden absence of birds in Darwin and promptly left town!

The view that appears to form the basis for much of our legal and social thought in the west is that spiritual beliefs should not form a decisive part of such deliberations because of the requirement to maintain objectivity. Post-modernism eschews this, even by looking at the different voices of legal discourse it still denies the Spirit because Post modernism is essentially rationalistic.

Why do European concepts find it difficult to incorporate the spiritual world as an actuality? One reason is the perception that spirituality cannot be measured and so is just part of the imagination, a product of the mind and an “illusion”. Here are some different approaches to this concept of Spirit:

In Christian mythology Spirit is a gift from God:

God has revealed (these things) through the Spirit; for the Spirit searches everything, even the depths of God. For what human being knows what is truly human except the human spirit that is within? So no one comprehends what is truly God’s except the spirit of God; now we have received not the spirit of the world but the spirit that is from God.

Consider the spiritual attributes of Mannalargenna as a shaman and his use of “fear” to hold the tribal following in place. Fear of the Spirit world plays a very important part in Ancestor worship. The respect accorded to ancestral bones is part of the blood avenger system in central Australia where Aborigines who broke taboo were punished by part men part-spirit entities called blood avengers. In my opinion these blood avengers are similar to the Biblical principle of just retribution in blood.

3 1 Corinthians 2:10
4 Streghew, Kathleen Stuart (1977). The Operation of Fear in Traditional Aboriginal Society in Central Australia, Streghew Research Foundation, Prospect, South Australia.
5 Exodus 21
Mannalargenna was a person to be feared and it is precisely this aspect that held sway. According to myth he could be in several places at once and survive battles untouched. This can be explained partly by belief of dreamtime religion practiced by Tasmanian Aborigines that the initiated man is the particular totem, which in a particular case may be an animal. This indigenous framework of thinking is closely aligned to the spirit world where physical attributes make little difference:

\[
\text{to be the two successively is no different from being the two simultaneously.}
\]

This singularity extends to all aspects of indigenous life, so that perceptions are not separated from the phenomena. To use the analogy of the storm “Tracey” that destroyed Darwin, the destruction of Darwin is seen by the whiteman as disturbing the natural order, whereas in the indigenous mind

\[
\text{the interruption in the regularity is accepted as real as is the regularity itself.}
\]

Indigenous mythology says that until the dead are properly buried their spirits continue to roam around disturbing the living from their allocated tasks. This belief and practice is reasonably widespread in the world. The soul will go to the underworld only if the correct procedures have been followed in burial and an ancestral ghost will appear to warn a person of their coming death. Ida West confirmed historical accounts of the Tasmanian Aborigines having similar beliefs and referred to similar experiences of her own.

Long ago the Christian church suppressed the Gnostic tradition, which emphasizes self-knowledge; it was not until 1903 that the direct Pentecostal (Holy Ghost) connection with God was recognised and acted on in the western world on a large scale. The personal relationship with the divine has largely been suppressed in our society as a result, and replaced by the cult of the priests and their intercession with the divine. This is one of the reasons for disillusionment with traditional religions.

Thomas Paine referred to this disillusionment with conventional religion in his treatise on human rights, and reacted by saying that in reality human rights should come from "The People", which he termed "society", the implication being that humans do not come from

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9 Living With The Land (book 5).
10 Strehlow, The Operation of Fear in Traditional Aboriginal Society in Central Australia.
13 Ibid, p36.
15 Interview, Ida West (10/2/98).
16 Johns, Cheryl (1993) Pentecostal Formation- a Pedagogy Among the Oppressed, Sheffield Academic Press UK, see the chapter on the rise of the modern Pentecostal movement in the west of USA.
17 Kohn, "In Good Spirit" (interview by Deborah Hope).
God except by genetic inheritance from Adam, so therefore human rights must be self generated as a result.

This important change to the world-view has ramifications for how human rights are seen as a matter of utility, rather than being derived from a spiritual basis. It also affects how we see the afterlife. Europeans do believe somewhat in the idea of the association of the living with the dead but prefer to separate the two with a funeral as a farewell, whereas in indigenous culture death is seen just as the passing to another level, where the spirits continue to roam around and may be called upon by the living.\(^{18}\)

This fact was frighteningly brought home to me as a European, when I attended a wailing for the death of an Aboriginal elder in Brewarrina, NSW, in early 1989. The intensity of the sound (of the wailing) brought me in touch with my unconsciousness, which made me as a whiteman realise that there was much that I did not know about death.

This experience was one of the first awakenings to my own Sacred wound.

One could say that this belief in the lack of personal connection with the divine and the necessity for intercession by a priest is itself a superstition. This is the central point of Pagel’s outstanding works looking at how dogma has caused Christianity to fall away from its original focus. It is largely because of the theology, which suppresses personal connection with the divine, that traditionally "witches" were persecuted in the past. In much the same way Aboriginal beliefs and practices were disregarded by the colonising settlers. It is only now that Aboriginal beliefs and practices acquire currency, because it is precisely this tradition and the experiential basis for its existence that has been suppressed in western culture and religion and is now attaining a revival:

It is always there, next to your skin, if you look on it that way, cowering in your soul, if you prefer it so. It is your object, remains it as long as you wish, and remains a total stranger, within you and without. You perceive it, take it to yourself as the "truth," and it lets itself be taken; but it does not give itself to you. Only concerning it may you make yourself "understood" with others; it is ready, though attached to everyone in a different way, to be an object common to you all.\(^{19}\)

This is the lessons of "the other" and in many ways this represents the dichotomy of the western view of things and the indigenous one. Buber’s view is that what takes place between two people is essentially that each changes the other because the two are aspects of the whole. In this world-view dialogue can be silence.\(^{20}\) This, in my view, is the essential relationship to the divine as it is through silence we stop the mind.

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\(^{18}\) Somé, Malidoma (1993) *Ritual, Power, Healing and Community*, p120ff: it requires a humble state of mind to embrace and accept our weaknesses, in order to be able to call on "the Otherworld."

\(^{19}\) Buber, *I and Thou*, p32.

\(^{20}\) Buber, *The Knowledge of Man*, p175.
The results of the clash of these two world views are so tragic in the consequences for the environment, which affects everyone as we need to see the Earth as the "other" so that it can be "re-enchanted as a living reality."\textsuperscript{21} In religious matters one of the differences between western and indigenous religion is western religion's division into the concepts of heaven and hell. To compartmentalise the afterlife into categories where souls "go" is to overlook indigenous religions' experiential basis for its practice of caring for the spirits of indigenous ancestors which are still living. There is no good and bad, just life, the good and bad are interwoven. But this is not to say this is relative thinking, as the relationship to the divine is the deciding factor. The very existence of Spirit is \textit{it just is} : I AM.

The idea that the Spirit exists is experiential and is summed up in the phrase: "I know because I have experienced it", which is different from just thinking about it. A lesson told by Indian mystic Rajneesh sums up the difference between experienced knowing and rationalised conceptions:

A farmer dissatisfied with the egg laying capacity of his flock decided to use a bit of psychology on his hens. Accordingly he purchased a gay coloured-talking parrot and placed him in the barnyard. Sure enough the hens took to the handsome stranger immediately, pointed out the best tit-bits to eat with joyous clucks and followed him around like a bevy of teenage girls following a new singing star sensation. To the delight of the farmer even their egg laying capacity improved. The barnyard rooster, naturally jealous of being ignored by his harem, took to the attractive interloper and assailed him with beak and claws, pulling out one green or red feather after the other. Whereupon the intimidated parrot cried out "Desist sir afterall I'm only here in the capacity of a language professor".\textsuperscript{22}

This is precisely where I differ from Campbell,\textsuperscript{23} who said shortly before he died that God can only be experienced through the mind and not the senses. Life passes by those who just think about life which has to be experienced. It cannot be separated from death as it is part and parcel of death:

\begin{quote}
(those who) live in words and concepts, theories, theologies... life goes on passing... slipping out of their hands. Then one day suddenly they become afraid of death... when a person is afraid of death, know well... that person has missed life.\textsuperscript{24}
\end{quote}

It is the same with the experience of God. When Moses saw the burning bush he did not sit down and try to figure it out and argue with the I AM: indeed, his mind was the barrier.

\textbf{Another Dimension: the Knowing of the Indigenous}

It is in the area of connection with the ancestors that most conflict appears to arise between western systems of thinking and governance on the one hand, and indigenous

\textsuperscript{21} Berry \textit{The Dream of the Earth}, p21; see also discussion chapter 5 “Ecological Age”.

\textsuperscript{22} Rajneesh, Bhagwan Shree (1990): \textit{Death}: a compilation of discourses, Osho Foundation Koregoan Park, Pune, India, (Audio tape).

\textsuperscript{23} Campbell, \textit{The Power of Myth : The First Story Tellers}, (video : TV).

\textsuperscript{24} Ibid.
concepts. T.R. Young divides mankind into three stages: pre-modern, modern and post-modern. Pre-modern mankind worshipped god and ancestors not as an article of faith but as a kind of ecstasy:

Sacred (activity) used together, create extraordinary psychological states in which one's genius and imagination are freed from everyday worries and problems to ponder and to solve the larger problematic of life that arise in ever-new concatenation. 25

The Tasmanian Aborigines may have been culturally isolated but were at one with their environment. They had no outside threat having been separated for 10,000 years from the mainland and therefore no use or need in developing more sophisticated weapons or hunting or fishing regimes. 26 In fact they stopped fishing which was not an unusual thing as many indigenous and non-indigenous societies stopped technological development for cultural and spiritual reasons rather than failing to develop as a society. 27 They had (and have) a complex spirituality which relied upon communion with the land and the Creator through rituals.

Evoking the Will of God has Several Forms: asking, praying, guiding, miracles

Asking, praying, guiding, and miracles all involve surrendering the will in some kind of ecstasy with God through rituals. As spirituality for Aborigines was not merely the place but the state of mind so ancestor worship is an experiential fact for indigenous people as it is connected with the worship of God in rituals.

To paraphrase Hillman, 28 our lives may be determined less by the past than the way we image the past to be. To pre-modern people this had multi layered application through the discourse of having continuous guidance from one's departed parents through the boundaries of death; in a greater sense our parents may not only be our physical parents but our ancestors. Ancestor worship is connection with the divine, which brings the past into the present. Forgiveness is possible through this connection, both in respect of the departed, and through the help of the departed.

Adopting Young's divisions we may say that modern man, in the guise of the Tasmanian settlers, was influenced by the different idea of God that had certainly become apparent by the Enlightenment, a distant God to say the least one that was side lined by the ideas of:

Kepler, Copernicus, Galileo and Newton (who) made the most dramatic change in the god concept... from a personal, watching, judging, condemning god to an impersonal creator far removed from the cares

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26 Daimond, Guns, Germs and Steel, p253.
27 Ibid, p412; also Flannery, The Future Eaters, devotes several chapters to the Tasmanian Aborigines and agrees with Daimond's view. The reason both these writers have concentrated on this aspect is because of some past, racist views expressed about the Tasmanian Aborigines' backwardness.
Whereas, pre-modern man dissolved the boundaries of time, modern man tended to want to define time restrictively and measure it. But Einstein proved that time is relative. He also postulated that there is an independent objective existence independent of humans and human observation. This can be interpreted as a God like figure. Even mankind's ability to effect changes in the physical world does not detract from Einstein's statement of objectivity. According to Einstein the chaos of micro nuclear systems is because we cannot measure and therefore understand. It is a problem of perception rather than proof that there is no order. Nuclear physics can be used to prove the existence of an objective order by this simple argument: if the macro-nuclear level is a reflection of the micro-nuclear level, then there is also order at the micro-level as this argument assumes that there is some order or relationship between what happens at the micro and macro-level and is itself indicative of objective order.

Differing ideas of time by various cultures will also have an impact on their ideas of the nature of mankind and community. The dreamtime is based on a specific ordering of existence, so the whole concept of time is different from a scientific system that insists on measuring everything:

To put duration in space is really to contradict oneself and place succession within simultaneity.

Increasingly in our western society there is recognition of the fluidity of time, and we relive the past through various media such as films, TV and sound recording, even art. We need to accept the many aspects of time are beyond the senses and are invisible:

the rise of rationalism and the Enlightenment...blinded the modern age to the invisibles.

This leads to a kind of moral, emotional blurring simply because we cannot see these invisibles. It can be likened to a case of culture shock where the hardest part in adapting to new cultures is the unspoken etiquette and courtesies, they are not obvious because they are everyday and no body bothers to tell you. The Aborigines of Tasmania stood back and looked at the newcomers in the early 1800s and noted that the whiteman seemed to have little idea of honour, nor respect for the land and other people, and seemed to take pleasure in inflicting pain and death.

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29 Young, The Drama of The Holy.
32 Ibid, p250.
36 Living With The Land (book 3).
The whiteman were operating from a different time frame that did not see the essential interdependence of everything as relevant to their self-survival and nor did they see connection to the land as an end in itself. The whiteman saw time in terms of finite quantity rather than time being infinite—never ending never beginning and therefore connected with everything around. The whiteman were operating from a different compartment of the soul that did not have connection to the Holy Spirit which is timeless.

If, for example, the whiteman was told he only had a short time to live, those out of touch with themselves would drastically alter the rest of their lives. On the other hand those living in harmony with the life around would not feel the need to change, as a sense of the Spirit is timeless. If you are not connected to the internal and external spirits, which are part of the whole and those of the ancestors, then there will be a tendency to focus on the material and operate in that time frame.

If we were to liken the relationship between a person's soul and Spirit to a radio program to which we are constantly listening at any one time, there will be a disparity between the given and the received depending on the listener. Lanigan looked at social interaction involved in listing to a radio program. The listener was bombarded with stimuli from not only the radio but also the people with the listener and other conversations that the listener might have had in the day. The radio program itself is a juxtaposition of lots of events competing with other things. Time itself goes in and out from past, present to future and mental images are varied to cope with the message desired to be listened to by mental tuning\(^{37}\); the listener had to tune in and focus but needed a reference point otherwise the listener would not be able to decode the babble.

Over time, changing ideas of God and changing ideas of personal relation to God will have the same effect. Soul has become estranged from the living spirit of God, and therefore in the modern world soul has ceased to be identified with character and one's personal destiny, which are attributes of an objective morality.

The rational mind cannot see or feel the soul, as opposed to thinking about it, and therefore the connection between the soul and such things as character and destiny for the individual person, remain diffuse in a rationalistic system. At any one time we are all capable of such connections, and through the tools of ‘lived experience’ can understand it for ourselves.

Lack of connection between the two different spheres of the experiential and the rational leads to a kind of grayness and leads to the Sacred wound in the individual and society.

If we accept that indigenous rituals for bringing young adults into responsibility are designed to integrate all these different things, then there is going to be a vast gulf between western ideology and indigenous knowing. There needs to be some recognition of Aboriginal attainment of land that goes beyond mere possession, and recognition that

the dream time of the Aborigines has a focus for the need for sacrifice on the part of mankind.  

**Wisemen and Women and the Sacredness of the Law**

Tasmania is also the first place in Australia or New Zealand to have given back partial control of significant, culturally sensitive areas by way of bilateral negotiations similar to the Inuit negotiations in the Canadian North West. There is still no Act for Aboriginal Land Rights in Tasmania, and the handing back of these lands detailed in chapter thirteen specifically disavowed such a facility. The action of giving back the land as detailed was ad hoc but very much the result of extensive community consultation on both sides. It was an acknowledging on both sides of the right to exist and in the common good to be gained by working together.

What needs to be examined is the need for our legal system with its various concepts to move into the dimensional aspect of inter-relatedness as outlined above. To quote Black Elk an indigenous American:

> The first peace, which is the most important, is that which comes within the soul of man and woman kind when they realise their relationship, their oneness with the universe and all its powers, and when they realise that at the center of the universe dwells Wakan-Tanka (God) and that this center is really everywhere; it is within each of us. This is the real peace, and the others are but reflections of this. The second peace is that which is made between two individuals, and the third is that which is made between two nations. But above all you should understand that there can never be peace between nations until there is first known that true peace which...is within the souls of men.

The Peace of God is attained by moving towards the Sacred by acknowledging the evil or demon within ourselves rather than projecting it on to others:

> (as) prevention of the demonic must be based...on...transcending the very idea of prevention itself...(what) makes...demonic...is single track obsession ...monothestic literalism.

When we try to lock away the problems rather than giving them light, this is the evil. Just as the early settlers, our Australian ancestors, tried to lock away the Aborigines on Flinders Island and only succeeded in destroying them. Of course, the motivation was mixed, partly to protect the Aborigines. But this was a rationalisation as it didn't take account of the real needs of the Aborigines, nor were the demonic motives in the whiteman understood and acknowledged by the whiteman. Actual motivation was insufficient on its own. The demonic motives of the whiteman in this case were the desire

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41 Hillman, *The Soul’s Code: In Search of Character and Calling*, p246.
to obtain possession of the land at all costs, to avenge the deaths of white people, and to produce profit from the land without homage to the Creator.

The Bible says to "forgive" and "love our neighbours" but on its own, without spiritual attachment, they are only words, and these were not enough to save the Aborigines as they were denied their rituals:

  touched by beauty, transcendence, adventure and death.42

To make contact with the sacred, Australians, must go within.43 A glimpse, a personal thing, the quest, call it what you want. To set out we must all follow the impossible. A society is made up of individuals, but a spirit moves us all:

From nothing I come to nothing I go..
The trees and ferns in this gully
live regardless of the clatter of my mind.

The apparent obscenity of the human life
masks the dichotomy of the soul: futility and joy.

A cloud pulls over the sun,
birds sing timelessly:
orphanage of rocks, sticks of pine,
juniper struggling to beautify
their ceramic tiled years...
this song has no ending.44

42 Ibid, p246.
43 Tacey, Edge of the Sacred - Transformation in Australia, p93.
44 Poem, (1/1/90) M.J.Kidd
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>TAC:</td>
<td>Tasmanian Aboriginal Centre</td>
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<tr>
<td>TALC:</td>
<td>Tasmanian Aboriginal Lands Council</td>
</tr>
<tr>
<td>ATSIC:</td>
<td>Aboriginal and Torres Strait Islanders Commission</td>
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<tr>
<td>Dreamtime:</td>
<td>Aboriginal religion</td>
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<tr>
<td>Ochre (red):</td>
<td>Iron ore impregnated rock : baldewinny</td>
</tr>
<tr>
<td>Holocaust:</td>
<td>Hitler's plan to eradicate Jews and other unwanted national groupings</td>
</tr>
<tr>
<td>Blackline or Black line:</td>
<td>search and destroy operation carried out October November 1830</td>
</tr>
<tr>
<td>Bushrangers:</td>
<td>bandits</td>
</tr>
<tr>
<td>Wybaleena</td>
<td>camp set up at Peajacket Point mid eastern part of Flinders Island or means Blackman's houses</td>
</tr>
<tr>
<td>FIAA</td>
<td>Flinders Island Aboriginal Association</td>
</tr>
<tr>
<td>Ballooyuna:</td>
<td>blood</td>
</tr>
<tr>
<td>Baldewinny:</td>
<td>ochre</td>
</tr>
<tr>
<td>Furneaux group:</td>
<td>Islands between Tasmania and Victoria in the Bass Strait includes Flinders Is</td>
</tr>
<tr>
<td>Flinders Is:</td>
<td>Island called &quot;the Great Island&quot;, off North East tip of Tasmania</td>
</tr>
</tbody>
</table>
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Plate 1 *Ouriaga*. Probably a native of Bruny Island. Gouache portrait by Nicholas Petit. Ouriaga's hair is plastered with a pomade of red ochre and grease, and fashioned into overlapping scales. (Courtesy Muséum d'Histoire Naturelle, Le Havre)

Plate 2 *Manalargenna*. A Chief of the Eastern Coast of Van Diemen's Land. Watercolour by Thomas Bock, 1837. Manalargenna's scalp hair and beard are loaded with a pomade of red ochre and grease, and coiled into ringlets. He wears an ochre-smeared sinew necklace. (Courtesy Tasmanian Museum and Art Gallery, Hobart)
Plate 3  Rocks found on Central Plateau Tasmania early 1990s. Photo courtesy of Sunday Examiner 16/3/97.
Plate 4  Wyhaleena cemetery February 1998; Aboriginal section
to left (unmarked graves). European section to right with memorials;
Plaque in memory of the last of the Aboriginals: middle left in front.
(Photo: M J Kidd February 1998)
Plate 5 *Arra Maida and her child.* Gouache by Nicholas Petit. Both mother and child have patches of red ochre on their forehead and cheeks. (Courtesy Museum d'Histoire Naturelle, Havre)

Plate 6 *Ballywinne* stone and fragments, pounder and naturally formed scraper
Plate 7, 8 & 9 respectively: Three Patriarchs from the west looking East; Stones marking Eastern boundary Marj Mansell's land; one of the Patriarchs looking West from Marj Mansell's land
(Photo: M.J. Kidd February 1998)
Plate 10 Wybaleena Cemetery general area: cemetery under trees: Chapel to left.  
(Photograph: M J Kidd February 1998)

Plate 11 General area of Toolumbunner  
(Photograph: M J Kidd February 1998)
Plate 13 Map provided by Tasmanian Government via Minister Fletcher showing proposed sites to be handed back.
Plate 14 From Plomley, N J B (1992) The Aboriginal Settler Clash 1803 to 1831

Van Diemen's Land Company properties.

Aboriginal/Settler clash: locations of reported incidents July - Dec., 1830
Plate 15  Everett being arrested March 1995 (Tarkine)
Illustration 1: map showing proposed road through the Tarkine

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Illustration 2:

*Living With The Land* (1990/91) Books 1 to 6, Publication of the Tasmanian Department of Education Hobart (in conjunction with the Tasmanian Aboriginal community)
Symbols used by the Aborigines in their art work.

These symbols were drawn in charcoal on the walls of their houses, and on the inside of their tombs. They were also cut into stone rock faces, as on the rocks near Mt Cameron West, and some were used as ritual marks cut into people's skin.

A tomb.

After a cremation, the eastern tribes collected the remaining ashes and crumbled bone and covered them with grass. The grass was then weighed down with stones, and a cone-shaped covering built of poles and bark was placed over it to form a tomb. These tombs were known as rayghe-linene. Symbols were sometimes drawn on the bark walls inside the tomb. The western tribes also made tombs from grass, bark and stones that were similar in appearance. They called them temmen-warloom.

Illustration 3 : Symbols used by Tasmanian Aborigines
and Illustration 4: A funeral pyre

Living With The Land (1990/91) Books 1 to 6, Publication of the Tasmanian Department of Education Hobart (in conjunction with the Tasmanian Aboriginal community)
Some important Aboriginal hunting grounds in Tasmania.

Illustration 5

*Living With The Land* (1990/91) Books 1 to 6. Publication of the Tasmanian Department of Education Hobart (in conjunction with the Tasmanian Aboriginal community)
Illustration 6: Progressive settlement of the whiteman 1813 to 1823

The settlement at Risdon Cove, May 1804.

Illustration 7:

*Living With The Land* (1990/91) Books 1 to 6, Publication of the Tasmanian Department of Education Hobart (in conjunction with the Tasmanian Aboriginal community)
PLATE 20: “Last return of the number of deaths at Flinders Island, March 1839” showing the grave sites of the Aborigines at that date (Mitchell Library, State Library of New South Wales – Robinson Papers).

Illustration 9:

Illustration 10 From Ratcliff P E, (1975) The Story of Wybaleena,

Illustration 10:

Ratcliff P E, (1975) *The Story of Wybaleena*, G Hawley Stancombe, the Glendessary Press, Launceston
Illustration 11 Wybaleena campsite “Blackmans Houses”

Illustration 11:

Ratcliff P E, (1975) The Story of Wybaleena, G Hawley Stancombe, the Glendessary Press, Launceston
Tribes, bands and their territories
The numbers are a key to the location of the bands on the map.

Oyster Bay Tribe
Bands:
1. Leetirrc-maan-mner—St. Patrick's Head
2. Lilaflle-maara—North Molting Lagoon
3. Looi-tit-ti-maara-mner—North Oyster Bay
4. Toemerem-a-mner—Shouten Passage
5. Purk-nner—Little Swanport
6. Lucre-maara-mner—Grindstone Bay
7. Tyrc-kar-cy—Maria Island
8. Purma-maara-mner—Fraser River
9. Pyla-nner—Tasman Peninsula
10. Moonma-maara-mner—Pitwater, Risdon

North-East Tribe
Bands:
11. Trewal-wu—Cape Portland
12. Leenmer—uncertain
13. Piner—uncertain
14. Pyrrh-ranger—uncertain
15. Pyla-maara-mner—Piper River
16. Lucre-nner—uncertain
17. Pumk-kan—uncertain

North Tribe
Bands:
18. Punower—Port Sorell
19. Palitecorn—Quamby Bluff
20. Nettaker—Hampshire Hills
21. Plucre—Ennui Bay

Big River Tribe
Bands:
22. Loomow—New Norfolk
23. Panger-ongere—Clyde-Devent junction
24. Bary-swey—Que and Dee rivers
25. Lamur-nner—West of Dee
26. Luger maaraern—Great Lake

North Midlands Tribe
Bands:
27. Leetirrc-maan—Port Dalrymple
28. Pumk-kan—Norfolk Plains
29. Tyrc-durr—Campbell Town

Ben Lomond
Bands:
30. Planger-maan—uncertain
31. Pyla-maara—uncertain
32. Turem-wagner—uncertain

North-West Tribe
Bands:
33. Turem-wagner—Table Cape
34. Parper-lein—Robbins Island
35. Pumk-kan—Cape Grim
36. Pender—Studland Bay
37. Purk—West Point
38. Manegi—Arthur River mouth
39. Tarkora—Sandy Cape
40. Pumk-kan—Piemain River mouth

South-West Tribe
Bands:
41. Turem—Macquarie Harbour
42. Nernet—Low Rocky Point
43. Nitheer—Port Davey
44. Nettaker—Cox Right

South-East Tribe
Bands:
45. Turem—Hobart
46. Nettaker—Bruny Island
47. Meiker—Hajon River
48. Luger maaraern—Recherche Bay

Tribal areas and the homelands of each band (after Ryan 1981). Tasmania was called Trew-wanner by most of the tribes living in the east of the island. The South East tribe called it Looi true-waller.
First Excavation of the Aborigines' Cottages
September, 1969

In the search for whole bricks for the restoration of the chapel (middle
distance), the enthusiasts inadvertently began a most important archeo-
logical "dig". The rubble limestone outside wall, and brick partition wall
end fireplace can be clearly seen, as well as the brick flooring and part
of a mysterious waterproof rendered underfloor slates (one of three).

Illustration 13:

Ratcliff P E, (1975) *The Story of Wybaleena*, G Hawley Stancombe, the
Glendessary Press, Launceston
Illustration 14:

*Living With The Land* (1990/91) Books 1 to 6, Publication of the Tasmanian Department of Education Hobart (in conjunction with the Tasmanian Aboriginal community)
Illustration 15: Toolumbuner site Gog range

The saying of Sorry.

You would like me to acknowledge what has been done to your people and to your country.

Yes I would.

You would like me to acknowledge the injustice, the brutality and tragedy that has been inflicted on your culture — to acknowledge that you are unique people with extraordinary qualities and profound sensitivities.

Yes I would.

Then you must accept that in our culture we don’t do such acknowledgements — even about ourselves, PARTICULARLY about ourselves! So we’re not likely to do it to your lot. You would be well advised to acknowledge our cultural way!

Yes I would!

How can we see your pain when we can’t see our own pain?

You wouldn’t BELIEVE how wretched and miserable we are under all this arrogance. How frightened and lost we are. You wouldn’t believe it.

Yes I would.

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Illustration 16:

Leunig: cartoon The Australian (circa October 1996)
I've decided that you mob do exist! and need to know what you want. Reconciliation?

What do we want Regina! I have to talk to my mob first Grammy. We'll let you know after the Birders Ball.

Illustration 17: "Reconciliation cartoon" Tasmanian Aboriginal Centre

Illustration 17:
Tasmanian Aboriginal Centre cartoon (circa May 1994)

Illustration 18:

2.2 An unsubtle attempt to suggest a strong affinity between blacks and gorillas. From Nott and Gliddon, *Types of Mankind*, 1854. Nott and Gliddon comment on this figure: "The palpable analogies and dissimilarities between an inferior type of mankind and a superior type of monkey require no comment."