

## **I Still Call Australia Home: Indigenous Belonging and Place in a White Postcolonizing Society**

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Our story is in the land . . . it is written in those sacred places. My children will look after those places, that's the law. Dreaming place . . . you can't change it no matter who you are. No matter you rich man, no matter you King. You can't change it . . . Rock stays, earth stays. I die and put my bones in cave or earth. Soon my bones become earth . . . all the same. My spirit has gone back to my country . . . my mother. (Big Bill Neidjie, in *Kakadu Man* [1985: 47, 62]).

I've been to cities that never close down, from New York to Rio to old London town but no matter how far or how wide I roam, I still call Australia home. I'm always trav'lin, I love being free and so I keep leaving the sun and the sea, but my heart lies waiting – over the foam. I still call Australia home. (Extract from the song *I Still Call Australia Home* written by Australian international entertainer Peter Allen.)

Migrancy and dispossession indelibly mark configurations of belonging, home and place in the postcolonizing nation-state.<sup>1</sup> In the Australian context, the sense of belonging, home and place enjoyed by the non-Indigenous subject – colonizer/migrant – is based on the dispossession of the original owners of the land and the denial of our rights under international customary law. It is a sense of belonging derived from ownership as understood within the logic of capital; and it mobilizes the legend of the pioneer, 'the battler', in its self-legitimization. Against this stands the Indigenous sense of belonging, home and place in its incommensurable difference. It is these differences in conceptions and experiences of belonging that I address in this chapter. I do this through a reconsideration of the discourses on British migrancy and a critique of the ways that migrancy is mobilized in postcolonial theory. My focus on white British migrancy is because of its role in colonization and the dominant and privileged location of white people and institutions, which remain at the

centre of Australian society. I then discuss some of the ways in which Indigenous people configure home, place and belonging and the social, political and legal impositions that define us, the original owners, as not belonging, but as homeless and out of place. I argue that Indigenous belonging challenges the assumption that Australia is postcolonial because our relation to land, what I call an ontological belonging, is omnipresent, and continues to unsettle non-Indigenous belonging based on illegal dispossession.

### **British Migrancy and the Sentiment of Belonging**

The words of Bill Neidjie and Peter Allen carry the marks of these differences in relations of belonging. Bill Neidjie is of the *Bunitj* clan, *Gagudju* language group, a traditional owner of the world heritage-listed Kakadu National Park in the Northern Territory. The late Peter Allen was a white Australian entertainer and songwriter who mostly lived out of Australia. His song 'I still call Australia home' is used by Australia's international airline to promote travel. It is a song that has wide appeal among many non-Indigenous white Australians because it captures the experience of 'awayness' and 'belonging'. It points to the current of movement and migrancy, which runs through conceptions of belonging among non-Indigenous white Australians and is at the heart of Australian colonial history. This sense of belonging is often expressed as a profound feeling of attachment. It is derived from ownership and achievement and is inextricably tied to a racialized social status that confers certain privileges: a social status that is enhanced by a version of Australian history that privileges the exploits of white Australians by representing them as the people who made this country what it is today.

The British Empire established itself through colonization and the concomitant waves of migrants from British shores to colonized ones. This was not a passive enterprise but was bound inextricably with the dispossession of the original owners of the land. Under international customary law colonies were established usually under the doctrines of conquest or cession. Possession of Australia was taken on a different basis. The first wave of invading white British immigrants landed on our shores in 1788. They claimed the land under the legal fiction of *Terra Nullius* – land belonging to no one – and systematically dispossessed, murdered, raped and incarcerated the original owners on cattle stations, missions and reserves. In all these contexts the lives of Indigenous people were controlled by white people sanctioned by the same system of law that enabled

dispossession. Indigenous people were denied their customary proprietary rights under international law and their rights as British subjects of the crown. Indigenous people only attained Australian citizenship in the late 1960s and continue to be the most socio-economically impoverished group in Australian society today. The non-Indigenous sense of belonging is inextricably tied to this original theft: through the fiction of *Terra Nullius* the migrant has been able to claim the right to live in our land. This right is one of the fundamental benefits white British migrants derived from dispossession.

This fiction is constitutive of discourses on British migrancy. Recent studies of British migrants who came to Australia in the 1880s show that their sense of belonging was to Britain, and their relationship to Australia was a resource for the Empire. Migrants envisaged their task as being the establishment of a new colony for Britain. They were her 'pioneers', with all the associations that term has with notions of the new and previously unexplored, the unknown. They saw themselves as the first to take control of and manage the land; according to these discourses, it was the hard work and determination of these early migrants that developed the nation (Nettelbeck 2001: 100). Through their achievement, usually understood as being individual in nature, singular and independent, these British migrants brought us 'civilization'; they 'gave' us democracy and the market economy.

These migrants represented the newly emerging national identity. Belonging to this new nation, therefore, was racialized, and inextricably tied to the accumulation of capital, and the social worth, authority and ownership which this conferred. The Indigenous was excluded from this condition of belonging. The right to determine who was allowed into the country and therefore who could belong was exercised by a white British constituency at the heart of the nation. They legally ensured their social reproduction through the *Immigration Restriction Act, 1901* and the white Australia policy, which until the 1950s gave preference to white British, Canadian, American or New Zealand migrants (Markus 1995). The white body was the norm and measure for identifying who could belong. The white Australia policy despite being revoked in 1973 continued in practice for many years as Cavan Hogue, a former Australian ambassador to the Philippines in the 1970s, discloses:

Mixed race applicants could be approved if they were 75 percent European in appearance. We had some guidance on what to look for but measurement was difficult. You had to measure their noses, check the skin colour, gaze into their eyes and try to calculate the percentage of European appearance . . . In 1981 I

went to work for Ian MacPhee (minister) and John Menadue (secretary) in Immigration. They wanted someone with Asian experience to help cope with the refugee influx and also to participate in a review of policies and practices. We found many leftovers of White Australia . . . For example, staffing patterns still reflected the good old days so processing was quicker and easier in the 'traditional' countries. We had some anomalies such as the British Boys Scheme where the taxpayer paid to send to Australia people who wouldn't make it if they applied in the normal way (Hogue 1998: 17).

The need to reproduce socially whiteness saw the continued migration of British after the Second World War, and the pioneer legend continued well into the mid-twentieth century. It is evident in the accounts of post-war British migrants and their representations of themselves as 'battlers', people who struggled to overcome adversity, worked hard and achieved a better life in the new society (Hammerton and Coleborne 2001; Thomson 2001). Their achievements were perceived as positive contributions to and investments in the nation and reinforced their social status. Their 'right to be here' attached particular capacities, opportunities and privileges to them, including a sense of ownership and authority, by virtue of their legal and social status as white immigrants. This notion of rights and the sense of belonging it engendered were reinforced institutionally and socially.

Australia is less white than it used to be due to the global shift to decolonization and economic necessity. Multiculturalism was adopted as the charter for the nation in 1970s by the Commonwealth government. In his book *Belonging: Australians, Place and Aboriginal Ownership*, Peter Read analyses a cross-section of migrant Australians of different ethnicities about their sense of belonging, in particular with reference to Indigenous ownership and the history of dispossession. Many of the non-white migrants' responses echoed a familiar theme. They felt that they belonged to Australia because they had chosen to live here and had contributed to the nation through their hard work. However, many believed that other Australians questioned their right to belong. They can belong but they cannot possess. Non-white migrants' sense of belonging is tied to the fiction of Terra Nullius and the logic of capital because their legal right to belong is sanctioned by the law that enabled dispossession. However, whiteness is the invisible measure of who can hold possession. The majority of voices in this book were troubled by the history of dispossession and Indigenous ownership but this did not erase their sense of belonging. Read himself feels similarly, and in this book tries to apprehend his own sense of belonging and its groundings. As a white Anglo middle-class male who considers himself 'native-born', he writes that for him, his

profound attachments derive from many sources: from literature, awe, fear and fascination, respect for spirituality. They derive from listening rather than speaking, sharing rather than competing, the self flowing into and part of the whole, a sadness at the violation of what we first encountered. And belonging derives partly from law. (Read 2000: 217).

Then later he goes on to say:

I have no right to claim on behalf of non-Aboriginal Australia that all the non-Indigenous are now part of Australia's deep past, nor do I wish to. Belonging ultimately is personal. There are as many routes to belonging as there are non-Aboriginal Australians to find them. My sense of the native-born has come – is coming. It comes through listening but with discernment; through thinking but not asserting; through good times with my Aboriginal friends but not through wanting to be the same as them; through understanding our history but being enriched by the sites of past evil as well as good. It comes from believing that belonging means sharing and that sharing demands equal partnership (ibid.: 223).

For Read and others belonging is experienced as a profound attachment, one figured as *personal*. Personal sentiment is privileged in Read's account. This is problematic for a number of reasons, notably for its denial of the racialized structural power relations that have produced the legal conditions in which this sentiment is possible, enabled and inscribed. In the context of Australian postcolonizing relations, these power relations are themselves based on the denial of original dispossession.<sup>2</sup> It is the foundation of the nation and its structures. Likewise it is the denial of original (and continuing) dispossession that forms the foundation for Read's belief that his personal sense of belonging is based on an equal partnership with Indigenous people. There can be no equal partnership while there is illegal dispossession.

Who calls Australia home is inextricably connected to who has possession, and possession is jealously guarded by white Australians. Australia's migration patterns are less white than they used to be in part out of economic necessity, including the perceived imperative that Australia has increased influence in the Asia-Pacific region. However, the dominant institutions such as law and government, and their epistemologies, remain anglicized. The current Australian government, under the leadership of Prime Minister John Howard, ran its 2001 election campaign along race lines. The campaign played on the fears held widely among white Australians that the country is under threat of invasion from 'queue jumpers' and terrorists among the refugees from Iran, Iraq and Afghanistan. Since

arriving on our shores, they have been placed in detention centres, under conditions many have argued are in breach of international law. In this move, the Government asserted white sovereignty. It asserted its right to choose who enters Australia – that is, who will be granted the status of migrant and who will be deemed ‘illegal’ trespasser – and to choose along race lines. This occurred despite its avowed policies of ‘multiculturalism’ and the ostensible breakdown of hegemonic whiteness.

### Postcolonial Theory and the Metaphor of Migrancy

Postcolonial theorists provide us with useful concepts such as diaspora and hybridity to explain the experience of migration by coercion and choice (Ashcroft et al. 1995; Gandhi 1998; Bhabha 1994; Chambers and Curti 1996). In particular there is an interest in exploring the ways in which, under conditions of diaspora, multiple and hybrid identities and cultures emerge. According to these postcolonial theorists, in this hybridity lie possibilities for counter-hegemonic discourses. Diasporas are seen to produce conditions in which the cultural traditions of an imagined homeland are infused with structures of subordination and oppression in the new country, producing hybridity. Experiences of dislocation are disruptive of the migrant’s sense of belonging to a particular place and provide the conditions for multiple identities.

In the process of theorizing the postcolonial, the narrative of colonization is significantly restaged. As Stuart Hall writes, it has come to signify ‘the whole process of expansion, exploration, conquest, colonisation and imperial hegemonisation which constituted the “outer face”, the constitutive outside, of European and then Western Capitalist modernity after 1492’ (Hall 1996: 249). Postcolonial theory examines the effects of colonization and reconfigures the colonizer/colonized axis in different ways. The utility of postcolonialism lies in its ability to reveal the operations of counter-hegemonic discourses as produced by the dispersed, or diasporic, subject. However, for many it does so through a metaphor of migrancy that privileges the positionalities, multiplicities and specificities of migration. In doing so it can say very little about the effects, or the positionalities, multiplicities and specificities of Indigenous subjects. As Huggan eloquently summarizes:

What is noticeable in much of this work, which might be loosely bracketed under the fashionable heading of ‘travelling theory’, is the *metaphorisation* of migration as a composite figure for a series of metaphysical, as well as physical, displacements. The metaphor of migration serves a variety of

different purposes: to illustrate the increasing fragmentation of subjecthood and subjectivity under (post)modernity; to reflect on the semantic instability underlying all constructions of (personal/cultural/national) identity; to insist on the homology between experiences of dislocation and the destabilisation of essentialist ideologies and ‘fixed’ paradigms and patterns of thought. Migration has become a useful code-word for the different kinds of conceptual slippage that are characteristic of postmodern/poststructuralist approaches toward linguistic and cultural systems; in addition, migration functions as a catalysing metaphor of the exploration of cultural change and the apprehension of new, mobile cultural subjects in the nominally postnational era . . . migration and other patterns of human movement in the modern era tend to carry an imperial legacy that is often mystified in the voguish academic categories of nomadism, migrancy and displacement (Huggan 2001: 119).

In the work of Homi Bhabha (1996) and Iain Chambers (1990) for example, what is often overlooked is the particular situatedness of different migrants in relation to power and the legal context in which their hybridity has been and is manufactured. Social constructions of home, place and belonging depend not just on ethnicity and ties to an imagined homeland. They are conditional upon a legal and social status as well as upon the economic and political relations in the new country and its imperial legacy. What is often emphasized is the emergence of hybridity in the new country. This forecloses considerations of, for instance, the specificities of Irish, Scottish and English migrants’ situatedness because it refuses the hybridity that has already resulted from the Irish and Scottish diasporas in England. That is, all British migrants are not positioned in the same way in relation to British imperialism because of their ethnicity. But in the Australian context whiteness confers certain privileges to those whose skin colour represents sameness. Irish, English and Scottish post-war migrants to Australia are differently positioned in relation to British imperialism than, say, Italian, Greek and Vietnamese migrants, and different conceptions of home, place and belonging are therefore produced. The elision of certain kinds of migration denies the way in which whiteness as a possession will mark migrants’ differing implications in a colonizing relationship between themselves and Indigenous people.

This is also evident where post-colonial critics have recognized the ambivalent relationship of Australia to her colonial past through the terms ‘settler’ and ‘settler culture’. There is a tendency for analyses to equate the empirical and substantive with the semantic and the metaphorical, which has the effect of reducing racialized power relations to the symbolic through the figurative possibility of language. In *Uncanny Australia, Sacredness and Identity in a Postcolonial Nation*, Ken Gelder and Jane

Jacobs (1998) argue that Australia is postcolonial because the Indigenous population are now inserted into the national imaginary through the symbolic rendering of 'the sacred'. They argue that this is an outcome of land rights struggles and the recognition of sacred sites. What they fail to acknowledge is that the majority of Indigenous people in Australia do not have land-rights nor do they have legal ownership of their sacred sites. This representation of postcolonial Australia offers the symbolic appropriation of the sacred as a way that white Australia can seek to achieve the unattainable imperative of becoming Indigenous in order to erase its unbelonging. A sentiment of belonging is furthered through white possession of the 'Indigenous sacred' as well as Indigenous lands. This is a problematic view of postcolonialism for it rests on the premise that the Indigenous population and white Australia have equal access to symbolic and material power (Schech and Haggis 2001: 145).

Against this and other representations of Australia as postcolonial, I argue that it is not postcolonial in the same way as India, Malaysia and Algeria can be said to be. These nations do not have a dominant white settler population. In Australia the colonials did not go home and 'post-colonial' remains based on whiteness.<sup>3</sup> This must be theorized in a way which allows for incommensurable difference between the situatedness of the Indigenous people in a colonizing settler society such as Australia and those who have come here. Indigenous and non-Indigenous peoples are situated in relation to (post)colonization in radically different ways – ways that cannot be made into sameness. There may well be spaces in Australia that could be described as postcolonial but these are not spaces inhabited by Indigenous people. It may be more useful, therefore, to conceptualize the current condition not as postcolonial but as *postcolonizing* with the associations of ongoing process which that implies. Through my use of the term 'postcolonizing' I seek to distinguish between the specificities of Indigenous/white settler societies such as Australia and those countries such as India and Algeria where the different specificities of historical experience are theorized within postcolonial studies. For the majority of the population in Australia belonging, home and place are inextricably linked to dispossession because

[t]he resonance of migrancy is compounded . . . by the twinning of the always having arrived with the wilful forgetting of the nature of that arrival – of colonial conquest and racism – such that a sense of belonging and being at home was always reliant on a tension between awareness of arrival and skating over the nature of that arrival and its consequences (Schech and Haggis 2001: 148).

In postcolonizing settler societies Indigenous people cannot forget the nature of migrancy and we position all non-Indigenous people as migrants and diasporic. Our ontological relationship to land, the ways that country is constitutive of us, and therefore the inalienable nature of our relation to land, marks a radical, indeed incommensurable, difference between us and the non-Indigenous. This ontological relation to land constitutes a subject position that we do not share, and which cannot be shared, with the post-colonial subject whose sense of belonging in this place is tied to migrancy. Indigenous people may have been incorporated in and seduced by the cultural forms of the colonizer but this has not diminished the ontological relationship to land. Rather, it has produced a doubleness whereby Indigenous subjects can 'perform' whiteness while being Indigenous. In this sense, we are not 'other' or 'non-other' as Fanon describes the colonized subject in the Algerian context. There is always a subject position that can be thought of as fixed in its inalienable relation to land. This subject position cannot be erased by colonizing processes which seek to position the Indigenous as object, inferior, other, and its origins are not tied to migration. It is an incommensurate subject position evident in the work of Indigenous scholars such as Gunn Allen (1992), Huggins (1998), Monture-Angus (2000), Churchill (1994; 1995) but under-theorized within postcolonial theory.

### Indigenous Belonging

Australia was a multicultural society long before migrants arrived. It is estimated that over 500 language groups held title to land prior to colonization. Indigenous people owned, lived on, were taught to know and belonged to particular tracts of 'country' which is the term used to refer to one's territory/land of origin or a person connected to the same piece of land. Indigenous people's sense of belonging is derived from an ontological relationship to country derived from the Dreaming, which provides the precedents for what is believed to have occurred in the beginning in the original form of social living created by ancestral beings (Moreton-Robinson 2000). During the Dreaming, ancestral beings created the land and life and they are tied to particular tracks of country. Knowledge and beliefs tied to the Dreaming inform the present and future. Within this system of beliefs there is scope for interpretation and change by individuals through dreams and their lived experiences.

The ancestral beings created animals, plants, humans and the physiographic features of the country associated with them. They also established

the Aboriginal ways of life: a moral code for its social institutions and patterns of activity. Ancestral beings provided the rules for what can and cannot be done through both good and bad behaviour. Ancestral beings are immortal. They are creatures of the Dreaming who moved across country leaving behind possessions which designate specific sites of significance. They met others of their kind; they created and left the world of humans through being metamorphosed as stone or some other form, disappearing into the territory of another group or into the sky, ground or water. In doing so they leave behind tangible evidence of their presence on earth.

Ancestral beings also changed form and gender and in many cases are associated with elements or natural species. For example an ancestral being who is in one form an owl is in the mundane world associated with all owls today, thus the spirit character of the ancestral being continues today. Because the ancestral spirits gave birth to humans, they share a common life force, which emphasizes the unity of humans with the earth rather than their separation. The ontological relationship occurs through the inter-substantiation of ancestral beings, humans and land; it is a form of embodiment. As the descendants and reincarnation of these ancestral beings, Indigenous people derive their sense of belonging to country through and from them. Thus for example Warlpiri, Kurna and Quandamooka people belong to Warlpiri, Kurna and Quandamooka countries. This ontological relationship to country was not destroyed by colonization.

It may be argued that to suggest an ontological relationship to describe Indigenous belonging is essentialist or is a form of strategic essentialism because I am imputing an essence to belonging. From an Indigenous epistemology, what is essentialist is the premise upon which such criticism depends: the Western definition of the self as not unitary nor fixed. This is a form of strategic essentialism that can silence and dismiss non-Western constructions, which do not define the self in the same way. The politics of such silencing is enabled by the power of Western knowledge and its ability to be the definitive measure of what it means to be human and what does and what does not constitute knowledge. Questioning the integrity and legitimacy of Indigenous ways of knowing and being has more to do with who has the power to be a knower and whether their knowledge is commensurate with the West's 'rational' belief system. The anti-essentialist critique is commendable but it is premised on a contradiction embedded within the Western construction of essentialism; it is applied as a universal despite its epistemological recognition of difference.

## Home and Place

The premise of colonization that Australia *belonged to no one* informed the relationship between Indigenous people and the nation state from its very inception and continues to do so. Legislation and state policies served to exclude Indigenous people from participation as citizens through their removal to reserves, missions and cattle stations where their everyday lives were lived under regimes of surveillance. Many people were removed from their traditional countries but carried with them knowledges of those countries, while others were not removed. Some reserves and missions were set up on other people's traditional country where the incarcerated traditional owners retained close links and ties to that country. Similarly, cattle stations usually had traditional owners of that country attached to them and hunting and gathering subsidized their de facto indentured labour. Other Indigenous people were stolen from their families and placed in institutions or adopted by white families. In effect colonization produced multiple contexts that shaped the construction of Indigenous subjectivities, which were and are positioned within discursive formations of history relative to a particular space, country and time. These subjectivities are tied to our ontological relationship to the land and serve to ground our political as well as our cultural identities.

We are not migrants in the sense that we have moved from one nation state to another, but the policies of removal transferred different Indigenous peoples from their specific country to another's. This dislocation in effect means that Indigenous people can be out of place in another's country but through cultural protocols and the commonality of our ontological relationship to country we can be in place but away from our home country. This is a different experience of migrancy to that of the post-colonial subject. It is not a hybridity derived from a third space; a kind of menagerie of fluid diasporic subjects. Instead there is an incommensurate doubleness superimposed by marginality and centring. Marginality is the result of colonization and the proximity to whiteness, while centring is achieved through the continuity of ontology and cultural protocols between and among Indigenous people. This suggests that Indigenous 'subjectivity represents a dialectical unity between humans and the earth consisting of subject positions whose integration requires a degree of mimetic performativity.

The effects of removal and dislocation have resulted in different constructions of subjectivity that link people to place in multiple ways. In the last two decades of the twentieth century, Indigenous women wrote

their life histories. All these women were removed from their families and country of origin. Indigenous women's life histories are based on the collective memories of inter-generational relationships between predominantly Indigenous women, extended families and communities. These relationships are underpinned by connections with one's country and the spirit world. In all of the life histories, Indigenous people are related either by descent, country, place or shared experiences.

Social relationships are important in all cultural domains, but their nature differs and the moral universe, which informs these relationships in Indigenous cultural domains, is outside the experience of migrants. Relationality is one dimension of this moral universe that is spiritually interconnected. Indigenous women perceive the world as organic and populated by spirits which connect places and people. In *My Place*, Sally Morgan's grandmother and mother hear the corroboree in the swamp when Sally's father is ill and understand this as the spirit's recognition of the father's mental turmoil (Morgan 1987). After his death the corroboree is no longer heard. When Daisy Corunna dies, it is the call of the bird that tells Sally about the end of her grandmother's life. In *Wandering Girl*, Glenyse Ward learns from the older girls of the spiritual beings, the *mumaries*, in the caves near Wandering mission. The older girls tell her that if she and the other children are naughty the *mumaries* will come and take them away (Ward 1988). And in *When the Pelican Laughs*, Alice Nannup returns to make peace with her country by performing a water-based ritual to appease the snake that lives in the waterhole at Mallina (Nannup et al. 1992). In *Ruby Don't Take Your Love to Town*, Ruby Langford receives a sign of bad news when late at night there are three knocks at her door but no one is in sight (Langford 1988). The next morning Ruby's friend Harold Leslie is told his father has died.

These experiences illustrate the way in which the spiritual nature of the world is incorporated into one's connection to place, home and country (Moreton-Robinson 2000: 19). The spiritual world is immediately experienced because it is synonymous with the physiography of the land. In the life histories the reality of spirituality is a physical fact because it is experienced as part of one's life. Indigenous women perceive themselves as being an extension of the earth, which is alive and unpredictable. Hence their understandings of themselves, their place and country also reflect this view. In their life histories Indigenous women perceive their experiences and others' experiences as extensions of themselves. This is a construction of subjectivity that extends beyond the immediate family. As Barry Morris points out

The interconnectedness of self to others is related to those with whom one is familiar: those with whom one is related, one grows up with or, more specifically, those with whom one engages in relations of mutuality . . . where notions of generalised reciprocity shape and inform daily interactions (Morris 1989: 215).

The life histories of Indigenous women show a moral ordering of sociality that emphasizes mutual support and concern for those with whom they are interconnected. Their ontological relationship to home and place facilitates this connectedness and belonging. While this ontology is omnipresent it is rarely visible, often elusive and most often unrecognizable for many non-Indigenous people in their inter-subjective relations with Indigenous people.

### Homelessness

This ontological relationship to land is one that the nation state has sought to diminish through its social, legal and cultural practices. The nation state's land-rights regime is still premised on the legal fiction of *Terra Nullius*. After a sustained effort over a number of years by Koiki Mabo and others, the existence of indigenous proprietary rights in land was recognized by the High Court of Australia in *Mabo & Ors vs Queensland (NO 2) (1992)*. However, Professor Kent McNeil argues that the rule of extinguishment used by the High Court in the Mabo (2) decision is inconsistent with the broad rule of common law. The High Court's interpretation, that at Common law, native title can be extinguished by the nation state if it is inconsistent with its sovereign power, transgresses the common law rule that the Crown cannot derogate from the vested interests of its subjects (McNeil 1995: 36). This rule is encapsulated in the Privy Council decision in *Attorney General of the Isle of Man v Mylchreest (1879) 4 AC 294* (McNeil 1995: 39). McNeil argues that 'it doesn't matter whether those rights were derived from Crown grant or adverse possession or customary law. That is a fundamental limitation on the executive power' (1995: 41). Effectively what the High Court did in the Mabo (2) decision was to invent a rule of extinguishment that did not exist under common law, to allow for inconsistent grants to extinguish native title prior to the Racial Discrimination Act (1975). That is, it invented a rule of extinguishment that allowed the Crown to derogate retrospectively from the vested rights of its Indigenous subjects. In doing so the High Court judges made a decision based on politics and economics rather than on the rule of the law. The decision affirms the nation state's sovereignty

by creating in law a hybrid of settlement that diminishes but does not erase Terra Nullius.

Pursuant to the Mabo decision and the subsequent *Native Title Act (1993)*, Indigenous people have in effect become trespassers in our own land until we prove our native title. Tragically and ironically, even though we were dispossessed of our lands by White people, the burden of proof for repossession of our lands is now placed on us, and it must be demonstrated in accordance with the White legal structure in courts controlled predominantly by white men (Moreton-Robinson 1998). As the written word is generally regarded as more reliable by courts, all claimants must be able to substantiate their oral histories with documents written by white people such as explorers, public servants, historians, lawyers, anthropologists and police. These documents often distort and misrepresent events through misinterpretation as they are racially and culturally biased. In the process of preparing a native title claim, this often results in the generation of conflicting reports, which lawyers usually seek to resolve by introducing the words or texts of yet another white expert. Confirmation of the Indigenous belonging to country is dependent on the words of white people.

The legal regime of the nation state places Indigenous people in a state of homelessness because our ontological relationship to the land, which is the way we hold title, is incommensurable with its own exclusive claims of sovereignty. The legal regime has reproduced the doctrine of Terra Nullius in order to give place and a sense of belonging to itself and its citizens. According to this regime it is Indigenous people who belong nowhere unless they can prove their title according to the criteria established by the state. Those who are unable to demonstrate ritual, ceremonial and the exercising of continuous rights in land do not belong anywhere other than to be positioned within a discourse of citizenship that seeks to erase dispossession through privileging white sameness over Indigenous difference.

## Conclusion

Our ontological relationship to land is a condition of our embodied subjectivity. The Indigenous body signifies our title to land and our death reintegrates our body with that of our mother the earth. However, the state's legal regime privileges other practices and signs over our bodies. This is because underpinning this legal regime is the Western ontology in which the body is theorized as being separate from the earth and it has no

bearing on the way subjectivities, identities and bodies are constituted. In Australia, Indigenous subjectivity operates through a doubling of marginality and centring, which produces an incommensurate subject that negotiates and manages disruption, dislocation and proximity to whiteness. This process does not erase Indigenous ontology; this suggests that Indigenous subjectivity is processual because it represents a dialectical unity between humans and the earth. It is a state of embodiment that continues to unsettle white Australia.

The subsequent legal regimes we all live under are outcomes of post-colonizing conditions. Indigenous people's circumstances are tied to non-Indigenous migration and our dislocation is the result of our land being acquired for the new immigrants. We share this common experience as Indigenous people just as all migrants share the benefits of our dispossession. In most postcolonial theory the postcolonial is positioned in relation to the dominant culture in the country of arrival and the one they left. In this sense postcolonialism or, as Ahmed (2000) argues, post-coloniality exists in Australia but it too is shaped by white possession. What requires further theorizing is how the white and non-white postcolonial subject is positioned in relation to the original owners not through migrancy but possession in countries such as Australia.

As I have argued, Indigenous people's sense of home and place are configured differently to that of migrants. There is no other homeland that provides a point of origin, or place for multiple identities. Instead our rendering of place, home and country through our ontological relation to country is the basis of our ownership. It informs a counter-hegemonic discourse to that of citizenship and migrancy. Gelder and Jacobs's (1998) assertion that Australia is postcolonial due to the symbolic incorporation of the Indigenous Sacred into the nation belies the kind of discourses whereby we are symbolically placed outside the nation.

Under Australia's white anglicized legal regime Indigenous people are homeless and out of place because the hybrid of settlement, which now exists in common law, continues the legal fiction of Terra Nullius through positioning us as trespassers. Who belongs, and the degree of that belonging, is inextricably tied to white possession. The right to be here and the sense of belonging it creates are reinforced institutionally and socially; personal profound sentiment is enabled by structural conditions. The colonizer/colonized axis continues to be configured within this post-colonizing society through power relations that are premised on our dispossession and resisted through our ontological relationship to land. Indigenous people's position within the nation state is not one where colonizing power relations have been discontinued. Instead, these power



relations are at the very heart of white nationhood and belonging; they are postcolonizing.

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### Notes

1. I use the verb *postcolonizing* to signify the active, the current and the continuing nature of the colonising relationship that positions us as belonging but not belonging.
2. My point here is that the law shapes our behaviour but our consciousness of it usually occurs through breaking it. We do not walk around contemplating what piece of legislation governs our ability to function and perform in any context on a daily basis second by second, minute by minute, hour by hour.
3. I use whiteness in accordance with Frankenberg's (1993) definition: a position from which white people view the world, as a privileged structural location and a set of cultural practices.

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