

Death in a Dry River: Black Life, White Property, Parched Justice

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Our essay begins in the dry creek bed of an ephemeral river, on the fringes of the desert town of Alice Springs. This is the red heart, as a hundred tourist brochures would have it, of Australia – even as its name invokes another geography altogether: that of the pastoral English countryside that underwrites the territorial advance of a colonising/civilising imagination in these parts. Alice Springs is no rural haven or oasis, however, but a frontier town, one whose settler origins are mythologised in Neville Shute’s famous post-World War II novel, *A Town Like Alice*, and in the film and television series that followed it in the putatively postcolonial 1980s.

Space, Achille Mbembe (2003: 26) notes, is ‘the raw material of colonial sovereignty’. Settler societies depend on practices of territorialising conquered space and domesticating and normalising the lives that occupy the land at the expense of its colonised inhabitants. This normalisation and domestication of settler life depends on the maintenance of ‘a profound divide’, between settler and Aboriginal, one defined by what John Hinkson (2007: 288) describes as ‘a social logic’ that ‘buffers’ the former ‘within an aura of innocence’, allowing them to ‘avoid the experience of knowingly dispossessing another people of their means of existence’. The ‘innocence’ of settler society, then, depends on a social logic that must both continually assert and continually forget the origins of its proprietorship over place.

Alice Springs is a place still marked by the territorial (that is, spatial, racial, epistemic) demarcations that hold in place relations

between colonised and coloniser, black and white (see Mbembe 2003). The contemporary topography of the town and its surrounds is the product of the carving out of cattle stations, missions and reservations from Aboriginal homelands and of a history of forced evacuations, relocations and round-ups (see Tilmouth 2007: 235–6). If Aboriginal people are no longer formally prohibited from remaining within town limits after dark, their places remain on the fringes of Alice Springs: among scattered ceremonial grounds or as presences to be monitored and moved on at the edges of malls and souvenir shops, in dilapidated and dangerous town camps, and in the shadowy, uncertain shelter of the dry river bed.

The town camps and fringe dwellings of Alice Springs have acquired national visibility and a new symbolic force in recent years as a consequence of the Northern Territory Intervention. The Intervention, which began in 2007 and is still continuing as this essay goes to press, is the latest of the state's efforts to radically remake the space of remote Aboriginal communities of Central and Northern Australia 'for their own good'. It was mounted following the release of a report into child abuse, with the federal government declaring a national emergency necessitating the suspension of the Racial Discrimination Act 1975. The Intervention, justified by a sense of moral mission and buttressed by military force, assumes authority over every aspect of life in the target communities. Aboriginal leaders such as Pat Turner, one of the authors of the original report, have responded by arguing that 'child sexual abuse is the Trojan horse to resume total control of our lands' (Turner and Watson 2007: 205). William Tilmouth, Director of the Tangentyere Council which administers the town camps of Alice Springs, locates the move as part of a long history in which 'crises mark the mobilisation of Aborigines and their problems as resources in conflicts among groups which are essentially controlled by whites' (2007: 231). In this instance the Intervention represents an ideological conflict between a welfare-based and essentially segregationist form of management of Aboriginal townships and an increasingly hegemonic program of neoliberalisation aimed at producing new kinds of Indigenous subjects. It is characterised by a repressive biopolitics of health and moral hygiene (compulsory medical checks for children, bans on alcohol and pornography, income sequestration) combined with an economic regime under which 'concerns with custom, kin and land will give way to individualistic aspirations of private home ownership, career and self-improvement' (M. Hinkson 2007: 6). Control over leases and other forms of tenure over land, such as collective title, the permit system (whereby

Aboriginal townships exercise control over entry to their land) and the regulation and management of communal housing and property through compulsory acquisitions, are at the very core of the Intervention, and are characterised as essential to its success.

In Alice Springs at the beginning of Intervention the federal government offered sixty million dollars to turn the dilapidated and shamefully overcrowded town camps into 'normal suburbs' – with the proviso that the current Aboriginal management 'would relinquish its leasehold back to the Northern Territory Government' (Tilmouth 2007: 232). The offer was rejected by the Tangentyere Council on the grounds that acceptance would have brought to an end 'the communal nature of town camp tenure' (Tilmouth 2007: 232). The incredulity and impatience with which this rejection was received is explicable only in the context of an occupying (neoliberal) rationality that continually erases the conditions of its own generosity. In the wrecked places where the effects of occupation and colonisation are all too palpable at the level of everyday life – the town camps and riverbeds of Alice Springs or the Block in Sydney's Redfern – there can be no such 'forgetting'. The offer to renovate and remake, coming from the very agents responsible for the wreckage in the first place, meets with scornful derision, defiance and refusal. In *Studies in a Dying Colonialism* Fanon (1965: 65) noted that in the context of military occupation, 'Every contact between the occupier and the occupied is a falsehood'. In such an environment, the 'dominant psychological feature of the colonized is to withdraw before any invitation of the conqueror', to 'reject the values of the occupier even if those values objectively be worth choosing' (1965: 62–3). As the experience of colonisation and occupation are felt as a continuation of the dispossession and displacement of colonial times, the repeated invitation to enter into the occupier's normality is received with rejection and withdrawal.

Mr E Rubuntja, the first president of the Tangentyere Council recalled:

They tried to push us away. But this was our country. Arrente country. Aboriginal country. The other people living in the camps – Warlpiri, Luritja, Pitjantjatjara, Anmatjere – had been pushed off their land too. We wanted our own land so we could sit down and not worry about whitefellas pushing us off. (quoted in Tilmouth 2007: 236)

The town camps as a 'sitting down place', however beleaguered and compromised, represent the spaces of respite and survival for peoples under occupation, where the territorialising practices, values and 'social logics' of settler society are resisted. The incorporation of the

townships into the structure of white property through their forced acquisition thus carries far broader implications about the place of Aboriginal communities within the national landscape, and the continued attempt to remake their inhabitants as new kinds of social and economic subjects.

It is in this charged context of contemporary Alice Springs, where autonomy over and access to land, and the significance of remote townships and town camps, are bitterly contested as part of a wider clash over Aboriginal subjectivities, citizenships and futures, that we situate our analysis of the sentence handed down by the court over a killing in a dry river bed. Drawing on Cheryl Harris's critical insight (1993: 1714), discussed in detail below, of how 'rights in property are contingent on, intertwined with, and conflated with race' in the United States, we locate this judicial sentence against the multiple meanings of property: as land, title and material goods and belongings; in terms of its symbolic and racialised operations as capital, resource, surety and bankability; of property as the guarantor of privileges and rights; and finally as that which secures, entitles and affirms the possibility of life and future itself.

Death in a Dry River: The Sentence

In April 2010 a sentence was handed down regarding the death of Kumantaye Ryder, a 33-year old man, in the creek bed of the Todd River in Alice Springs. The posse of five who caused his death had driven not once, but twice, at speed in their Four Wheel Drive along the riverbed where people lay asleep. Witnesses testified that the men in the car hurled racist abuse, 'shouting "niggers" and "black bastards" and that they "stink"' (Storr 2010). They drove at the sleepers, narrowly missed an old man, Tony Cotchilli, leaving tyre tracks across his blanket:

Then they drove home to fetch a gun – a replica of a Colt 45 – and some blank ammunition and returned. En route, Hird fired out of his window. The car stopped so he could unjam the gun. Job done, he pointed it at the campers and fired again as the sleepers ran for their lives. (Storr 2010)

It was when they were driving back this second time that Kumantaye Ryder flung a bottle at the 4WD. Then he turned and ran. The posse of five – four drunk men and one stone cold sober, the driver – took off after Mr Ryder, even as he ran away. When he tripped and fell down, they stood over him, kicking him in the head and hitting him on the

neck with a bottle. After he stopped moving, they drove away and began to concoct alibis to cover up what they had done.

The setting of this story alone makes it clear that the victim was an Aboriginal man. Those responsible for his death, as surely, were not. The riverbed is a racially marked and politically charged site, one whose historical and continuing role in defining relations between settler and occupied invests this killing and the trial and judgement that followed with a particular significance. Our analysis is an attempt to draw out some of the implications of the judgement, one that, like the killing of Mr Ryder itself, has received comparatively little coverage at the national level.

In handing down its sentence on the death of Kumantaye Ryder, the Supreme Court of the Northern Territory, presided over by Justice Martin, characterised it not as murder but ‘a tragedy for all concerned’ (*R v Doody & Others* 2010: np). The Court determined that the killing was ‘at the lower end of the scale of seriousness for crimes of manslaughter’, stating that it could not be certain whether death had been caused by the repeated beating and kicking or by a burst aneurism. It noted that Kumantaye Ryder’s death had created great racial tension in the community, and did not doubt that there were ‘racial elements in the earlier events and that a tone or atmosphere was set of antagonism towards and harassment of Aboriginal persons that is likely to have influenced the later conduct of all offenders’ (2010: 3). The final sentence handed down to the accused, however, was very lenient, taking in to account that:

Each of you has grown up in circumstances that have brought you into close contact with Aboriginal persons. Each of you has always got on well with Aboriginal people. However, on this occasion your normal attitude and standards of behaviour were pushed into the background. (2010: 8).

The Court further considered the fact that all except one of the men, the driver, were very drunk. The driver was told:

I accept that when you made that decision [to drive in to the river bed] you did not have in mind harassing anyone, but as you were driving you made the offensive and stupid decision to harass the Aboriginal people camped in the riverbed. As your counsel put it, you were hooning. Another word is lairising. But it must be said that you hooned and lairised in a particularly dangerous and offensive manner. (2010: 3)

Thus an embarrassment of reasons and fine discriminations explains the killing of Kumantaye Ryder: the attackers were drunk or they were not; they were hooning or ‘lairising’; they didn’t mean to harass

'anyone' – although, as the judgement also acknowledges, they did harass Aboriginal people by driving into the sleepers on the river bed. Finally, although their targets were Aboriginal people, the offenders were not actually racist. Rather, their 'normal attitudes and standards of behaviour were pushed into the background' (2010: 14).

White Law and Inventories of Whiteness as Property

In the lead-up to handing down the sentences against the five men responsible for the death of Kumantaye Ryder the Court supplied a detailed biography of each of the accused. Reading these biographies, two striking features emerge: an emphasis on white property and white futures. There emerges, as a consequence, a disturbing disjunction in the sentencing remarks: the death of an Aboriginal man is juxtaposed and largely subsumed by a concern to inventory the material conditions of the white defendants and to delineate the horizon of white futures that must be preserved and fostered for these five white men. On the surface, this incongruous juxtaposition of a black death and white property/futures is disorienting. We situate this juxtaposition in the context of Harris' groundbreaking essay, 'Whiteness as Property', in order to begin to delineate the institutionalised relations of racialised power that inform black deaths, white lives and practices and the operations of white law.

In the opening pages of her essay, Harris underscores the fundamental ways in which the privileged racial category of whiteness translates, across the broad spectrum of social practices and institutions, into property that assumes both material and symbolic forms. Developing her thesis against the historical backdrop of the colonisation and violent dispossession of Native Americans and the attendant development of a political economy of black slavery, Harris proceeds to track the manner in which whiteness as property has interpenetrated virtually every level of US culture so that it has become, for whites, largely invisible:

In ways so embedded it is rarely apparent, the set of assumptions, privileges, and benefits that accompany the status of being white have become a valuable asset that whites sought to protect ... Whites have come to expect and rely on these benefits, and over time these expectations have been affirmed, legitimated, protected by the law. (Harris 1993: 1713)

So structurally embedded that they are difficult to discern, a set of white assumptions, privileges and benefits continue to be affirmed,

legitimated and protected by law. Despite significant historical differences, Harris's thesis resonates profoundly in the Australian context. On one level, the Australian historical context effectively reproduces the violent effects of white colonial attempts at Indigenous genocide and dispossession; on another level, the institution of black slavery also finds its equivalent in the Australian historical landscape in the context of the enslavement of Aboriginal people during the era of the Stolen Generations, a period that effectively saw Indigenous women, men and children placed in conditions of forced, and largely unpaid, labour in white households, farms, pastoral stations and so on.

Harris (1993: 1714) brings into focus the operation of 'white privilege as a legitimate and natural baseline' by examining 'how rights in property are contingent on, intertwined with, and conflated with race. Through this entangled relationship between race and property, historical forms of domination have evolved to reproduce subordination in the present'. This understanding of white law, as founded upon, and critically intertwined with, the preservation of white privilege-as-property and the reproduction of modalities of subordination, is graphically exemplified in the judgement handed down on Mr Ryder's death. The biographies of the defendants detailed in the judgement are inventories of whiteness as property, understood in the broadest sense of the word: inventories that will supply the legitimate grounds for the virtual redemption of the crime. The biographies are constituted by both a material catalogue of property that ranges from goods – such as 'tools', 'books', 'paperwork' – to practices and attributes of cultural and economic capital that enable the accumulation of property, such as 'property maintenance', 'refrigeration and air conditioning technician', 'ambitious and talented tradesmen', 'good worker', 'solid, hard-working young man', 'boilermaker', 'metal fabrication apprenticeship', 'outstanding apprentice', 'tiling apprenticeship', 'apprenticeship as a mechanic', 'spray painting apprenticeship', 'trainee pest controller', and 'licensed pest technician' with a 'strong work ethic' (*R v Doody & Others* 2010: np). Once situated in the economic and racialised geography of Alice Springs, this catalogue of white property assumes specific ideological dimensions that, by default and in an unspoken way, mark both the critical differences and asymmetries of power between the white defendants and their various networks of support on the one hand, and the silenced Aboriginal victim and his community on the other.

In a context where Aboriginal unemployment is endemic because of histories of dispossession, economic and political

disenfranchisement and institutionalised racism, these catalogues of whiteness as actual property (goods and practices) and symbolic and cultural capital (skills, attributes and accreditations that will lead to accumulation of property) could not be reproduced with such ease for an Aboriginal defendant. The histories of white employment and economic productivity painstakingly recapitulated in Justice Martin's sentence all work to establish the 'good character' of the defendants, their stake in the society and community and their future as productive citizens. This is underscored by the fact that the 'good character' of every single white defendant is strongly vouched for by each of their employers. In a chorus, every employer of these white men declares that they 'would not hesitate to employ [them] in the future' (2010: 36).

This conflation of white employment/property as a guarantor of 'good character' and future powerfully evidences Harris's thesis that whiteness, as universal arbiter of value, works to preserve white privilege. Precisely what remains unspoken in the court's bio-narratives of these white defendants, as all men of 'strong work ethic' with impressive histories of employment, is that it would be extremely difficult for an Aboriginal defendant, particularly if a young man, to call upon a virtually unbroken record of employment that would not only self-evidently demonstrate a 'strong work ethic'/'good character' but that would, in addition, enable employers to vouch for this good character by declaring that they would 'unhesitatingly' employ him in the future. Quite simply, the manner in which the statistics of rural Indigenous unemployment translate, in criminal justice terms, into the shocking statistics of the over-representation of Aboriginal youth in jails graphically evidences these structural asymmetries of racialised power predicated on white privilege-as-property. The Australian Bureau of Statistics states (ABS 2007) that: 'Indigenous people who had been arrested were also more likely than those who had not been arrested to be unemployed (29% compared with 11%) and were more likely to be living in households experiencing financial stress (72% compared with 51%)'. The critical role that economic disenfranchisement (in terms of employment and financial security) plays in the rates of imprisonment of Indigenous people in Australia is graphically evidenced by the fact that 'In 2008, almost half of Indigenous males (48%) and 21% of females aged 15 years or over had been formally charged by police (over their life time)', and that Australia's Indigenous people (2.5% of the total population) represent '25% of the total prisoner population' with an imprisonment rate '14 times the non-Indigenous rate' (ABS 2010).

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These contemporary racialised asymmetries of power, as affirmed and reproduced by white law, must be connected back to that foundational colonial history of Indigenous dispossession and the manner in which, in the Australian context, this history assumes its contemporary manifestations in the political geography of the riverbed camps in which Mr Ryder was killed. Harris maps the US dimensions of this colonial history in her essay. This US colonial history is inscribed with powerful Australian resonances:

the settlement and seizure of Native American land supported white privilege through a system of property rights in land in which the 'race' of the Native Americans rendered their first possession rights invisible and justified conquest. This racist formulation embedded the fact of white privilege into the very definition of property, marking another stage in the property interest in whiteness. Possession – the act necessary to lay the basis for rights of property – was defined to include only the cultural practices of whites. This definition laid the foundation for the idea that whiteness – that which whites alone possess – is valuable and is property. (Harris 1993: 1721)

In the Australian context, this rendering 'invisible', and thus *juridically unrepresentable*, of Indigenous 'first possession' of the land was facilitated by the foundational legal fiction of *terra nullius*, which effectively declared the continent as justifiably open to white conquest and possession by scripting it as empty of a 'civilised' people who adhered to the rule of 'law'. What lay before the imperial gaze of the British colonisers was an arid 'waste' land passively awaiting the productive intervention of the white man in order to be converted into 'productive' property. Once again, the US-Australian parallels of this colonial narrative can be clearly discerned in Harris' thesis:

Although the Indians were the first occupants and possessors of the land of the New World, their racial and cultural otherness allowed this fact to be reinterpreted and ultimately erased as a basis for asserting rights in land. Because the land had been left in its natural state, untilled and unmarked by human hands, it was 'waste' and, therefore, the appropriate object of settlement and appropriation. Thus, the possession maintained by the Indians was not 'true' possession and could safely be ignored. (1993: 1721–2)

What Harris draws attention to here is not just an 'historical' dimension of colonial dispossession that can be relegated to the past. On the contrary, the murder of Kumantaye Ryder, the violent and

racist acts of the five white men, and the sentencing remarks themselves all compel a return to this history. The original legal act of rendering Indigenous possession of country void continues to ramify into the present. The historical, systemic and legally sanctioned practices of Aboriginal dispossession have been constitutive, as we discussed above, in the construction of the cultural geography of the Indigenous camps on the fringes of the town of Alice Springs.

Framed by the white citizens precisely as geographies beyond the pale of white-human habitation when judged against white values and standards of property, the Aboriginal camps emerge as 'waste' lands through which a car can be freely driven, despite the fact there are human beings sleeping on the ground of these camps. As such, the Aboriginal inhabitants of these 'waste' lands are stripped of their human subjectivity and are framed as mere 'fauna' available to be hunted and killed for entertainment.

What further remains unspeakable in the judgement is that these white men were really participating in the time-honoured settler rite of the 'coon hunt' or 'spree'. An account of one such excursion, the terrorising of a camp of sleeping Aboriginals by a gang of drunken white men in search of a good time, appears in Kim Scott's award-winning novel, *Benang*. Scott's account exposes what must remain unacknowledged in the Court's use of terms such as 'hooning' and 'lairising', or in the protests (ABC TV 2010) by relatives of the accused that driving in the riverbed is just doing what young men in Alice Springs do for a good time: that these pleasurable pastimes and activities are intimately bound up with practices of racial terror. This point is reinforced by Henry Reynolds' argument (1999: 132) that historically the category of Australian mateship, one seen as constitutive of the 'national' character, is predicated on the unspeakable bond engendered among white male settlers by a sense of racial solidarity forged by their complicity in racist violence against Aboriginal people, in particular 'the use and abuse of Aboriginal women'. This pleasurable racist violence, which bound settler men together in mateship, remains largely invisible in national consciousness, Reynolds adds, because of the mythologisation and romanticisation of the men who lived and worked on the frontier:

How did Australia itself forget the truth about pioneering around the vast frontiers? One answer is that an unexpurgated account of settlement robs the bushman of his glamour. He becomes a far less attractive and decidedly more sinister figure once the Aborigines are brought back into the story . . . *His innocence can only be maintained for as*

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long as the witnesses for the prosecution are kept out of court. (1999: 132, our emphasis)

In the trial of those responsible for Ryder's killing, the witnesses for the prosecution who continue to be kept out of court are those voices that testify to the violence entwined in the white boys' games of the spree and the coon hunt. That this contemporary spree through the riverbed was a racist hunt is evidenced by the fact that, after the first act of terrorising Aboriginal sleepers by driving through their camps and scattering the inhabitants, the defendants returned home in order to pick up a gun and then proceeded to shoot, for sheer entertainment, at their hapless targets from their speeding car. The Court remarked on the racism that informed these white men's actions:

By driving the way you did, you behaved aggressively and dangerously towards two different groups of Aboriginal people camped in two different locations in the riverbed. Having regard to the totality of events that night, I am satisfied that underlying your dangerous driving in the river was a negative attitude to, and a complete lack of respect for, those camped in the riverbed because they were Aboriginal people camping in the riverbed. I have no doubt that if white people had been camped in the riverbed in tents, you would not have set out to harass them in the aggressive manner in which you set out to harass the Aboriginal people who camped there. (2010: 7–8)

The subtext of these remarks is that white people camping in tents in the riverbed would have appeared to the five white men as *humans* conducting a recognisable and valid cultural practice: camping. As such, their whiteness would have rendered them visible as human subjects, so to speak, placing them outside the schema of animal subjects vulnerable to the terror of a hunt. Yet, while acknowledging the racism that enabled the white men's terrorising of black targets, the judgement neutralises the violent dimensions of this racism by proceeding to frame the actions in terms of 'hooning' and 'lairising'. The assumptions that underpin the judgement return us to John Hinkson's analysis (2007: 288) that settler societies buffer themselves 'within an aura of innocence, completely dependent on a lack of empathy for Indigenous people'. Only within the cocooning 'social logic' of settler societies that 'works to categorise Indigenous people as worthless in order to allow a positive settler ideology to develop' can hooning and lairising in the riverbed be seen as pleasurable and 'innocent' pastimes, rendering invisible the Indigenous bodies asleep there.

'Hooning and lairisng' are white boys' games. They are the ritualised rites of passage of white masculinity that simultaneously reaffirm the raced and gendered solidarities on which the nation was built: you get drunk with your mates, act 'stupidly' and 'recklessly' (as the judgement puts it) and, once you've got into trouble and are dressed down and punished, you are initiated into adulthood, with all of the attendant responsibilities of work and care that the judgement so meticulously documents as attending each of the defendants in their prospective white futures. The terms hooning and lairisng, in other words, instantiate acts of legal rationalisation and also of naturalisation: white boys will be boys – it's in their nature; but the law will work to redeem them, after their foolish transgressions, in order that they can resume their role as productive white men, contributing to the ongoing accumulation of white property and the consolidation of national values – their employers, without exception, unhesitatingly vouch as guarantors for this desired outcome.

Kept Out of Court: Ancestral Rituals, Living Memory and Sites of Massacre

What remains further unremarked in the description of the terrorising of Aboriginal people in the riverbeds that surround Alice Springs is the historical and contemporary fact that this practice has all the dimensions of a ritualised practice of white supremacist settler violence. Historically, the colonial frontier was marked by ritualised hunts and massacres of Aboriginal people (Moses (ed.) 2005; Cunneen 2001; Elder 1992). The Coniston massacre, just a few hundred kilometres north-west of Alice Springs in the Northern Territory, is often cited as the 'last recorded massacre'; it occurred in 1928. The Coniston massacre saw

some 60 to 70 Walpiri people ... killed over several weeks by a police party. Murray, the officer in charge, openly admitted to a policy of shoot to kill. According to a missionary who spoke to survivors of the killings, 'the natives tell me that they simply shot them down like dogs and that they got the little children and hit them on the back of the neck and killed them' ... Murray admitted killing 31 people. Other estimates by missionaries put the figure at between 70 and 100 Aboriginal people killed by the expedition. An inquiry headed by a police inspector, at which Aboriginal people were refused representations, was established into the killings. The inquiry cleared those who were involved. (Cunneen 2001: 55)

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Bruce Elder has documented in unsparing detail the exterminatory zeal with which the Coniston massacre was executed by the white hunters over a number of days:

The killing was without motive or sense . . . They were being killed simply because they were Aborigines . . . His [Murray's] reputation as a crazed, vengeful and irrational killer spread up and down the soaks and camps along the Lander River. Fearful for their lives, Aborigines decamped and headed north along the riverbed or into the dry wilderness which lay to the west of the river. (1992: 147)

The next phase of the massacre, Elder recounts, took place along the dry riverbed where the Warlpiri had set up camp hoping to escape the pursuit. The pursuit and massacre continued for over a week. 'Murray returned to Alice Springs on 1 September', Elder writes,

and was immediately hailed as conquering, local hero. News of his 'work' along the Lander had filtered back to the town and he was greeted with admiration and approval. Once again white justice had been brought to the recalcitrant blacks. (1992: 148)

The Coniston massacre dramatises the relations of racist violence that inscribe the cultural geographies of dry riverbeds, Aboriginal camps and white supremacist hunting parties. These massacres are still within the living memories of some of the survivors and their communities. Elder, in his recount, cites the oral evidence of Martin Jampijinpa, who was a small boy at the time and one of the few survivors of the massacre:

When I was a small boy . . . I seen him. Murray grabbed me then and he's hold me on the shoulder. There was a big camp there. They [the tribespeople] was getting in all the bush tucker. But he shot about ten o'clock in the morning, eight o'clock in the morning. Shot seven, eight, that way . . . They yardem round, bringem to one mob . . . and they shot it two or three shot guns going . . . all the old people were sleeping here. Round 'em up, just like cattle . . . and bringem to one mob this way just suddenly. And shot it there. (1992: 151–2)

The premeditated return of the five white defendants to the Aboriginal camps in the Todd River bed was marked by an intensification of the terror that they looked to inflict upon the Aboriginal people in the camp. Returning with a gun, and proceeding to brandish it in their terrorising spree, the defendants can be seen, once situated in this historical context, to be re-animating their own ancestral rituals of white violence. For the Aboriginal people who were the targets of their violence, this was not a mere episode of 'hooning' or 'lairising'; rather,

it was one more instance of racist violence and assault inscribed with the trauma-memory of exterminatory massacres. Mapping the dimensions that constitute the history of colonial genocides in Australia, A. Dirk Moses cites Kevin Gilbert's harrowing testimony whilst noting that:

It should come as no surprise that Indigenous peoples have used genocide to name their traumatic experiences because the colonial enterprise is experienced as criminal. 'The black extermination drives of the Hawkesbury and Manning Rivers. The genocide of the Tasmanian blacks,' declared Aboriginal activist Kevin Gilbert. 'These and many, many more were the links in the chain of white inhumanity that lives on in the memories of the southern part-bloods today'. (2005: 17)

The 'links in the chain' articulate the oral transmission of Aboriginal cultural memory. The links in the chain provide the continuity of history for those at the receiving end of a colonial violence that has attempted to shatter – through extermination, dislocation, forced removals and institutionalisations, incarceration and systemic disenfranchisement – every attempt at cultural and historical coherence. But, as Gilbert testifies, the memories live on, informing the survivors of their past and allowing them to make sense of the present in the light of this historical knowledge. And this knowledge of the past is invaluable in arming contemporary Aboriginal people in order to survive the ongoing assaults and violence of colonial practices that have not been superseded. So, for example, when the five white defendants descended on the Aboriginal camps in the riverbeds, the people armed themselves with bottles and sticks in order to attempt to drive away the white invaders as they proceeded to fire rounds from their gun and attempted to drive over the sleeping people in the riverbed. For Kumantaye Ryder, this act of resistance was to prove fatal, as narrated in the sentencing remarks:

As the Hilux proceeded west across the causeway, the deceased was walking along Schwarz Crescent not far ahead. On seeing the Hilux approaching him, he threw a bottle at the vehicle and it smashed on one of the right hand panels. This precipitated an angry reaction and, in the next few seconds, the tragedy unfolded. Immediately following the impact of the bottle you, Mr Kloeden, quickly executed a u-turn and drove up to the deceased, stopping right in front of him so that he had to put his hands out and held onto the bullbar . . . No doubt frightened, the deceased attempted to escape by running in a westerly direction . . . everyone but the driver got out and gave chase . . . The deceased fell to the ground where the offender Hird kicked him to the head one time,

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the offender Swain kicked him twice to the head and by that time the offender Doody was next to Swain; Spears struck the deceased with a bottle. One of the offenders said during the altercation 'Don't fuck with us'. (*R v Doody & Others* 2010: np)

Lying on the ground of the dry riverbed, Mr Ryder incarnates, in the course of this racist bashing, the body of his Aboriginal ancestors: a body that can be assaulted, shot, savaged and killed with (virtual) impunity. Standing over this traumatised black body, the defendants proceed to reincarnate their white ancestors, enacting those ritualised practices of racist violence that continue to constitute the repertoire of cultural practices available to the white residents of Alice Springs and its surrounds.

The ritualised practices of settler violence simultaneously can be placed in the context of the contemporary terror that continues to inscribe Aboriginal lives in Alice Springs and its vicinity. The anthropologist Yasmine Musharbash (2010: 2) recently researched the phenomenon of fear in Warlpiri communities, considering 'whether it is a pervasive or a sporadic presence in people's lives, whether it is provoked or intensified by particular events'. Musharbash's study straddled the periods immediately before and during the Intervention and included phenomena such as internal feuding between Indigenous groups. In the pre-Intervention phase of her research she found (2010: 2) that there 'seems to be a direct correlation' between this contemporary internecine violence and 'a distinct lack of engaged de-colonisation after decades of enforced sedentisation, institutionalization, and assimilationist policy'. Returning to Warlpiri country after the Intervention, however, Musharbash identified new sources of threat. Although now 'the feuding had stopped; there was a dramatically increased presence of non-Indigenous people out bush (in the main Intervention public servants) . . . [and] a different spectre of fear' as anecdotes of renewed forms of white terror circulated:

Stories abounded about the Klu Klux Klan being active in Alice Springs and on pastoral stations in the vicinity . . . Most graphically, perhaps, there was much talk about how unsafe it was these days to sleep in the dry creek bed in Alice Springs 'because really late, when everyone is asleep, whitefellas come and pour petrol over people and set the camp on fire'. (2010: 8)

Musharbash's research pre-dates the killing of Kumantaye Ryder in the dry riverbed. In attempting to account for the deep sense of terror that

pervaded Warlpiri communities even before his killing, she argues (2010: 8) that the ‘radically altered relation between Warlpiri and non-Indigenous people lies in the impact the Intervention seems to be having on contemporary everyday life’. Combined with the historical experiences of settler violence, she concludes: ‘The subtext of these stories is: whitefellas do not like Indigenous people, whitefellas actively try to harm Indigenous people, whitefellas cannot be trusted’.

This intensified climate of violence continues. As we write in mid-2010, Jennifer Mills (Mills 2010) reports from Alice Springs: ‘Last week two white guys pulled up at a waterhole about half an hour from Alice Springs and accosted a 44-year old man, also white, and his partner. The court was told the men said “You’re right mate, we thought you were blackfellas and we were going to shoot you”.’ These are not acts of racist violence that can be complacently relegated to ‘red neck’ towns in the outback. On the contrary, they have been, and continue to be, reproduced across the country. At Macksville, just outside Port Macquarie on the central coast of NSW, a young Aboriginal man, Kane Mason, was killed by a group of white youths who ‘allegedly waved a shortened shotgun in the air and laughed “Let’s blow-up some cars, we’ll kill some niggers”’ (Goldner 2003: 1). Viva Goldner (2003: 1) relates the course of events that followed this homicidal declaration. Kane Mason, when cornered by the white trio on the hunt for some ‘niggers’, was shot in the chest:

After the incident, Clifford [who fired the shot] was allegedly laughing with the 17-year old, boasting, ‘see how I kicked him in the head.’ Police later searched Clifford’s Wallace St flat and found a hand-written note in a bag owned by the 15-year old defendant making reference to killing ‘niggers,’ it was alleged. (Goldner 2003: 1)

Once situated within the historical and contemporary relations of white supremacist violence, specifically, the terrorising and killings of blacks by whites, the judgement on the racial motivation of the killing emerges as disingenuous in the extreme: ‘Ultimately it remains unknown whether the attack would have gone as far as it did if the deceased had been a drunk white person. I doubt that any of the offenders now know the answer to that question’ (2010: 16).

We now turn our attention to this amorphous area of unknowns that appears to be located beyond the pale of legal reasoning and juridical judgement.

Legal Unknowns and the Dead Certainty of Combat Breathing

In its mapping of the acts of violence that the defendants inflicted upon the person of Kumantaye Ryder, the judgement notes that, 'Following this assault the deceased did not move' (2010: 11). The comments that follow appear to us as a form of white apologia couched in legal discourse that effectively works to exonerate the defendants and situate the case 'at the lower end of the scale of seriousness for offences of assault' and manslaughter:

It needs to be understood clearly that although cowardly and violent, your joint physical attack upon the deceased did not cause any fractures and did not cause any major external injury. In particular, the deceased's skull was not fractured. Externally there were abrasions on the deceased's face, arms and leg. An abrasion on the deceased's right forehead was accompanied by swelling. All the abrasions could have been caused when the deceased fell while running away from the group of you. *It is impossible to know* whether your blows caused any of the abrasions. The deceased also sustained a three centimeter laceration on the back of his head. This cut extended through the soft tissue only. It was not deep enough to expose bone. It was accompanied by mild swelling. This wound could have been caused in the fall, or it might have been caused by the blow. *It is impossible to know with certainty* which was the cause. (*R v Doody & Others* 2010, n.p. our emphasis)

In the midst of the clinically precise forensic analysis of Mr Ryder's injuries, the judgement repeats a phrase that plays a critical, because repeated, role throughout: 'it is impossible to know with certainty'. There is a structural tension in the textual fabric of this juridical document: on the one hand there is the forensic precision in the description of the wounds and bodily trauma and, on the other, the absolute imprecision and amorphousness of the 'impossible to know with certainty'. What is known with absolute certainty is that, at the end of the judgement, the mitigating role of 'uncertainty' enables the court to position 'This crime toward the lower end of the scale of seriousness for crimes of manslaughter' and 'in particular' be '*satisfied that none of the offenders had an awareness of a substantial risk of causing death*' (2010: 39, our emphasis).

It is at this very juncture that, for us, legal reasoning and juridical judgement breaks down and exposes its 'baseline' whiteness. It is at this critical juncture that we are compelled to ask: within what conceptual frame is it possible to frame a violent assault that entails the driving of a car, with a *sober* driver, through a riverbed camp of sleeping people and not know, with some certainty, that your actions could be

fatal? What are the limits of legal reasoning and juridical judgement if they cannot allow for the fact that repeated beatings to the head and the smashing of a bottle over the head of one's victim must signify to the perpetrators that there is the potential for the person to die because of their violent actions?

These are questions, we would argue, that can only begin to be answered by naming the constitutive colonial dimensions of contemporary white law, dimensions that continue to legitimate, at the level of the state, racist violence. In his writings on the violence of the colonial state, Fanon long ago refused the liberal democratic ruse that insists on separating violent relations of power from the very production and exercise of life and freedom for some and the unfreedom and death of others. On the contrary, the freedom of the one and the unfreedom of the other, the life of the one and the death or suffering of the other are, within the operations of the state, shown to be caught within relations of violent interdependence. In the context of Fanon's meditation (1965: 65), the subject who is on the receiving end of state violence is positioned in the fraught, traumatic and potentially fatal exercise of 'combat breathing' – combat breathing names the mobilisation of the target subject's life-energies merely in order to continue to live, to breathe and to survive this exercise of violence. If, in this context, Weber (2007: 310) long ago drew attention to what he termed the 'intimate' relation between the state and violence, it was Fanon who clearly embodied the intimate, because lived, effects of this relation. We invoke Fanon's concept of 'combat breathing' in relation to the institutionalised violence of the state as it so clearly names both what unfolded in the death of Kumantaye Ryder and what transpired in the sentencing of the four white defendants.

It is known with certainty that the Aboriginal people who were terrorised by the white supremacists in the dry riverbed camps on the outskirts of Alice Spring were compelled to embody the terror of combat breathing in the face of racist violence. It is known with certainty that Kumantaye Ryder, as he fled the car of white supremacists firing shots and attempting to drive over him would have experienced the trauma of combat breathing. Once on the ground, experiencing blows to his head and the smashing of a bottle against his skull, Kumantaye Ryder would have been mobilising all of his life-energies merely to continue to breathe and survive this exercise of racist violence. It is known with certainty that Kumantaye Ryder's combat breathing failed him in the face of this violent assault, that in the trauma of attempting to survive this bashing,

a 'traumatic subarachnoid haemorrhage' erupted in his brain and killed him.

Mundane White Violence: In The Realm of the 'Ordinary' and the 'Unremarkable'

The detailed biographical documentation provided for each of the defendants' lives is at pains to exonerate their actions through the cataloguing of their 'unremarkable history'. One of the defendants is directly interpellated as follows: 'You have been a steady, reliable person, but you have not done anything exceptional. This view of your life might seem somewhat negative, but in reality it is not negative' (*R v Doody & Ors* 2010: np). If the intention of this juridical scripting of the defendants as 'ordinary' and 'unremarkable' is to justify the situating of their crime at the 'lower end' of the crime of manslaughter, then, we would argue, it simultaneously performs another effect altogether: it positions their crime as a mere aberration that, effectively, effaces the structural and institutional racism that inscribes both the crime and the juridical judgement. The judgement works to instantiate an unbridgeable disconnect between the ordinariness of the defendants' everyday lives and their criminal acts of racist violence. This is achieved through the systematic inventorying of the defendants' normative white biographies and their everyday practices and values. The mundane, 'unremarkable' status of these white normative practices and values is mobilised in order to underscore the exceptional nature of their criminal act. We would argue, on the contrary, that it is from this mundane, unremarkable ground that white supremacist violence springs and is enacted: ritualised, mundane racist violence pervade the culture of everyday white life.

So, for example, in the article cited above, Mills responds to Germaine Greer's comments at the NT Writers' Festival talking about the fact that she had witnessed 'an incident at Darwin's art gallery the previous day. She had seen a policeman push an Aboriginal man with his boot. "You've become inured to it," she said'. The remark leads the writer to speculate whether 'this kind of racism, the kind that outraged Greer, is so common that maybe it is true that we have become inured to it' (Mills 2010).

The inscription of this white violence within the minute, banal, everyday practices of civilian life goes unnoticed by whites precisely because they are not on the receiving end of this violence and because it constitutes the very fabric of the dominant culture. Situated in this context, then, the disjunction that the sentence in *R v Doody*

£ Others labours to maintain between an exceptional act of racist violence and unexceptional white lives devoid of racism becomes untenable. 'In a society structured on racial subordination', Harris (1993: 1730) notes, white privilege operates as 'an expectation', as 'the quintessential property of personhood'. Grounding this observation in the mundane everyday practices that transpire in Australian society, the expectation by whites is that they will never be kicked by a policeman: this would constitute an actionable assault on the quintessence of their personhood. For a black person, on the contrary, this assault is par for the course: it is what whites viewed, in the context of the art gallery event in Alice Springs, as an 'unremarkable', mundane, ordinary incident to which they are naturally immune and to which they have become inured. These white expectations, Harris (1993: 1731) explains, become invisible, as do the positions of racialised subordination and hierarchy, precisely because they have become 'reified in law'. Whiteness, once situated in this juridical frame, assumes 'the legal legitimization of expectations of power and control that enshrine the status quo as the neutral baseline, while masking the maintenance of white privilege and domination' (Harris 1993: 1715). The 'neutral baseline' of whiteness, we would argue, is precisely what informs the judgement in *R v Doody & Others* and the untenable split it labours to maintain between ordinary, non-racist white lives and exceptional white racist acts.

Parched Justice

In the closing sections of her essay, Harris (1993: 1758) stages a profound reflection on the structurality that underpins political economies of whiteness and that ensures asymmetrical outcomes according to the racial category one embodies: all things considered, 'whiteness retains its value as a "consolation prize": it does not mean that all whites will win, but simply that they will not lose, if losing is defined as being on the bottom of the social and economic hierarchy – the position to which Blacks have been consigned'. In the sentencing of the five white men responsible for the death of Kumantaye Ryder, the defendants do not lose their case; rather, they are awarded the consolation prize of whiteness: a reduced sentence situated 'at the lower end of the scale of seriousness for crimes of manslaughter', significantly sweetened by the prospects of white futures replete with inventoried prospects of full employment, fulfilling careers and attendant property accumulation and wealth generation.

Death in a Dry River

Citing the work of Andrew Hacker, Harris (1993: 1785) powerfully names the neutral baseline that so effectively determines precisely how much whites can lose, and what is really at stake for them within a criminal justice system predicated on white privilege and its structural reproduction: 'the artifact of whiteness . . . sets the floor on how far [whites] can fall'. The sentence effectively drew on all the resources of the artifact of whiteness in order to set the floor on how far the men responsible for their race-hate crime could fall. This floor, however, in keeping with that sense of entitlement and privilege so constitutive of whiteness, was seen by one of the defendants to be too low: Anton Kloeden, the sober man who drove his 4WD through the sleeping people of the riverbed, has appealed his sentencing to a non-parole period of four years in jail on the grounds that it is excessive. Ray Jackson, President of the Indigenous Social Justice Association, posted the following remarks on this appeal:

Kloeden was the ring-master of the evening's events and this was not refuted in court. It was he who drove the vehicle, he who drove up and down a section of the dry riverbed forcing Aborigines to jump up from their sleep and run for their lives . . . It was he who enjoined the drunks to assault Mr. Ryder after he had thrown a bottle at the speeding vehicle in an attempt to slow it down or stop it . . . he egged them on . . . he was the sober one, the one with a duty of care to Mr. Ryder . . . Did Kloeden do any of the actions required to find out the health or otherwise of their victim? Of course not. He callously left the scene, in essence, not caring whether Mr. Ryder was dead or alive. (Jackson 2010)

The legal machinery of white law will no doubt recalibrate the level to which Kloeden will be allowed to fall.

For Uncle Ray Jackson

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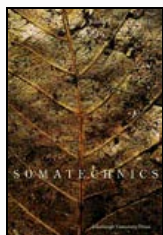
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