

***Unutterable Shame/Unuttered Guilt:
Semantics, Aporia, & the Possibility of Mabo***

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We are a society in which causation—what we do—is understood as deriving from individual action. But in fact our identity—who we are—is plural. The failure to recognise the productive aporia inherent in this relation has seriously confused the debate on Australian history in the wake of, indeed more accurately in the shadow of, terra nullius. In this essay, I want to distinguish between guilt and shame as responses to the past and to insist on the importance of the latter, to demonstrate the paradox within the concept of shame itself, and to argue that the tension between opposites which it contains is in fact a force for beneficial social change.

Guilt

In the shadow of terra nullius there have been murmurings of guilt and surrations of denial. The Prime Minister John Howard righteously declares that he refuses to feel ‘inter-generational guilt’ over the actions carried out by White Australians long before he was born: he has said so in relation to the cases of *Mabo* (1992) and *Wik* (1996) and he has said so in relation to the Human Rights Commission report on stolen children. Such a response is his

reaction to a history of exploitation and appropriation of indigenous peoples described in the judgment of Justices Deane and Gaudron in *Mabo* as 'a national legacy of unutterable shame' (1992: 104). On the one hand a desire for an impossible utterance, then; and on the other a refusal to utter. Between these two species of voluble silence, the empty space and the denial of space, lies a world of difference. Neither is it simply the government which has nailed its colours to the Endeavour's mast in this way. Throughout the country, in academic articles (see for example Webber 1995; Patton 1995a and b; Detmold 1993) and magazines (an earlier version of this paper was originally published as one of a series in *Quadrant* 1997: 96), in the popular press and on radio talk-back, Australia finds itself divided on the appropriate response to an historical agenda which the High Court has been influential in setting.

Those who abjure any gestures of culpability find the accusation of guilt woolly-headed. Our understanding of guilt is, no doubt, strongly influenced by law. To feel guilt is to accept personal responsibility for certain actions. It requires a causal connection between individual acts and bad consequences, the connection itself being neither an objective fact nor a subjective opinion, but rather determined by socially constructed norms of relevance (*March v. Stramare* 1991: 514-17 per Mason CJ). A criminal act or a tortious wrong alike demands a finding of guilt if my *individual* acts *caused* injury to another. Theories of causation in the law, whether common-sense or more fully theorized, insist on precisely this nexus between individual action and direct consequence (Hart & Honoré 1959: 103-59 *passim*; *Haber v. Walker* 1963: 358-59 per Smith J.; more complex explications of the idea can be found, for example, in Epstein 1973: 160-69; Weinrib 1987) at the same time as they emphasize that the purpose of the inquiry is directed towards not philosophical semantics but legal pragmatics (*March v. Stramare* 1991: 509 per Mason J.) as to the context in which the question of causation arises—a finding of guilt.

To feel guilty involves a causal and personal relationship, an attitude to the past which mandates a stance towards to the future: reparation. One expects the guilty to atone for their acts, to compensate the victim or pay a fine perhaps: since the relationship is personal and based on individual action, so also must be the response. Guilt, in other words, derives ultimately from Aristotelian notions of corrective justice (Aristotle 1980: V.i at 106-17; see also Weinrib 1992); wrongful action is rectified by individual acts which restore, whether notionally or otherwise, the *status quo ante*. Guilt, then, incurs a debt (from the past) which must be repaid (in the future).

It is clear that John Howard and many others 'refuse to feel guilty' exactly because they deny personal responsibility or any causal connection for what happened in the past. But the relationship between past action and present responsibility is in fact more complicated than such a straightforward syllogism might imply. It is not self-evident to assume that a denial of reparation flows from a denial of guilt. 'Inter-generational guilt' is not an impossible concept. The children of a bank robber are not guilty of theft; but neither are they entitled to live off illegal earnings with impunity: that debt must still be repaid. It is a principle that we express not only in law (see for example, *Proceeds of Crime Act*, 1987) but in ethics, as for example over the issue of the return of Jewish property, land, money, and art, confiscated by the Third Reich. Likewise, although it was previous generations of white Australians who were *guilty of* the theft of Aboriginal land through the ideology of terra nullius, their descendants continue to reap its benefits. The present-day privilege of white Australians has been built upon the guilty acts of their predecessors.

The denial of guilt which we have seen argued so vociferously over the past year, does not therefore deny a duty to provide reparation. In Aristotelian terms, if the wrongful taking of land remains unrectified, the rent in the fabric of justice likewise cannot be repaired. (Ironically, this is an argument most

strongly supported by the most conservative of legal writers, since it reflects their absolute commitment to the sanctity of private property: e.g. Nozick 1974: 4-9, 149-82; Epstein 1979: 499-504; 1985: 3-18, 331-50).

Shame

There is however another dimension to this argument, and a more important one. Guilt is one attitude to the past, but there is another. Shame. The law knows guilt, but it knows no shame. Nevertheless, it remains an important element of our moral universe, and its absence from the debate over *Wik* is both striking and alarming. In particular, a confusion between the distinct concepts of guilt and shame bedevils us. Shame differs profoundly from guilt both in how it relates to the past and the future. Guilt is about taking responsibility for what we did—it stems from our actions. Shame on the other hand is about *who we are*—it stems from our character (Lewis 1992; Goldberg 1991). ‘You should be ashamed of yourself’ we say. Shame is the feeling which accompanies an unpleasant revelation about ourselves, rather than simply our behaviour. But precisely because of the strength of shame, and its connection to our inner selves, the public use of shame can be a powerful tool in effecting personal change. It is just these elements in the process of shaming which, drawing in particular on the sociological work of Braithwaite (1989), have been developed in recent years as alternatives to legal sanctions.

The idea that shame is about our identity moves us away from the legal ideology of individual responsibility and asks us instead to acknowledge the communal wellsprings of our selfhood (Lewis 1992; Broucek 1991). Who we are is not just constructed by each of us alone. We are palimpsests of others’ writing and rewriting. ‘I’ am not a parthenogenic god but a product, complex

and unpredictable no doubt, of my genes, my culture, my background, and my humanness. To a greater or lesser extent, my identity has been and continues to be created by overlapping, but particularised, communities of family and city, of ethnicity and culture, of time and space. Accordingly, therefore, I identify with these communities—there is a bit of them in me, and me in them.

The logical implications of this are significant. If shame is about identity not cause; and my identity extends beyond *my* body to the communities to which I see myself as belonging; then I can and do feel shame for acts which I did not cause or bring about for they nevertheless impact upon that identity. Does this seem counter-intuitive? The point emerges more clearly if we think of the opposite of guilt and shame. The opposite of guilt is credit; the opposite of shame is *pride*. Both are emotions which allow to us feel positively or negatively about those *relevant* to our cultural identity although we are not directly implicated in causing their actions.

Our Prime Minister, for example, may be justly proud of D.G. Bradman, or H.C. Coombs. In different ways, their actions seem to draw on elements which have helped to form our own character. When we say that we are proud because they are Australian, like us, we are expressing in a shorthand way that we identify with their character because our identity has been forged in the light of their actions, or out of the same time or soil. The notion of pride allows a vicarious self-promotion because there is a little part of me I see in them, or them in me. Pride appeals to the mutual construction of identity within a community.

But so too does shame. What do I feel when I learn of the theft of land from its dwellers, the theft of children from their parents, the theft of life itself from generations of murdered, or diseased, or impoverished Aboriginal people? I recognise that I am a product of the society that did those things and that my identity—who 'I' am—is bound up with that of the oppressors, though they

were different people living in a different time. If I look honestly in the mirror of my soul, I see parts of my character in them and in the culture and society which we have jointly made: it is not always a pretty sight.

Justices Deane and Gaudron claim, in memorable language in their *Mabo* opinion, that the treatment of Aboriginal people has left 'a national legacy of unutterable shame' (1992: 104). It is not simply that Australian history involved individual acts of tyranny or cruelty. On the contrary, social policy and cultural orthodoxy encouraged *as a norm* the treatment of Aboriginal people in this way. This is why terra nullius, the legal invisibility of a culture, is the fulcrum around which the pendulum of injustice swings. It was the *grundnorm*, epitome and legitimation of a social history which forged our national identity and the identity of each of us within it, at the same time as it purged, mythologised, and silenced the Aboriginal peoples. And this normative and systemic element implicates *our* identity as a product and constituent of that society and system. That is why shame is an appropriate response in the shadow of terra nullius, and why it has remained unutterable.

Ah, but there is a paradox here. We feel shame because our identity is not just personal: it comes from and includes a family, a society, a culture, a *nomos* (Cover 1983: 4-11, 44-46). But why then do I not feel pride in the survival of Aboriginal people (who are, after all, also 'Australian') instead of shame in their treatment? The answer is that I do not identify with all cultures equally. The culture and society in which I see myself and of which I am a product is predominantly a white Australian one. Yet this *differential* identification with some families, cultures, and laws more than others, seems to reproduce exactly the politics of otherness which produced the shame of Australian racism in the first place.

To adopt the language of deconstruction—and not for the first time in this debate (Patton 1995a and b; Detmold 1993)—this aporia, then, has two related

aspects. Firstly, if we really took our cultural identity seriously, why would we actually feel shame at all? Why would we care about our treatment of others except that, somewhere, we believe that they are not so radically different from ourselves after all. The feeling of shame relies on a sense of empathy that assumes that we are all the same at the same time as it relies on a sense of identity that assumes that we are *not* all the same. Conversely, this view of identity through which we identify with some groups and communities in preference to others has an overtly destructive aspect. Ironically, the experience of shame seems to perpetuate a politics of distinct identity which reinforces the very divisions between 'white' and 'black' Australians of which it is critical. The aporia of shame is that it resists the very self/other distinction on which it depends. There is a necessary contradiction at its base.

Reconciliation

Is this merely an academic point, as many critics of deconstruction contend (e.g. Habermas 1991), or does it illuminate a point of practical significance? To answer this question, let us turn from the past to the future. Shame differs from guilt in its stance towards the *future* as it differs from it in its approach to the past. Guilt demands reparation—an outward act which undoes the wrongful act. Shame, because it makes no causal claim, cannot be repaid by action. Rather, it looks inward. It is a feeling about who we are and it requires therefore that we *change* who we are. This is both a more subjective and a more difficult task.

Shame, because it comes from within, is itself an act. On the other hand, mere words, the outward form, are inadequate. One suspects that for many people, outward statements about 'unfortunate acts in Australia's past', from terra

nullius to the stolen generation, are not accompanied by any genuine 'regret' (Webber 1995). But words without feeling are an utterance worse than silence. Such words are, literally, shameless. In their lack of shame and lack of interest, their contempt and indifference, they establish the very conditions of possibility for the perpetuation of injustice.

Honest shame, on the other hand, ignites a healing process in which our changing sense of who we are changes our relationship to others. The youth who is made to confront an elderly woman he assaulted and robbed may feel shame. What brings about this feeling is the awareness that she is a specific human being whose suffering is worthy of his consideration. And the result of this feeling may be that his sense of identity is changed to include her (see Braithwaite 1989). His idea of community, the group of people with whom he identifies, has, we hope, expanded. This change is enduring because it is not outward acts but rather the sense of self which has been altered. If guilt repays a debt, shame heals a wound. It expands the boundaries of our identity, our community, to include those who we previously excluded from it. A contrite heart, by altering how we understand ourselves, prevents the conditions of possibility of shame from ever recurring.

In this way, the dynamics of shame demonstrates that the aporia which a deconstructive reading offers, is in fact productive and ethical rather than simply impotent (Derrida 1990, e.g. at 949-51, 969-73; Krell 1992; Butler 1990). Shame relies on a sense of identity to enable it to challenge and to reach out *beyond* that identity, thereby to lay the foundations for a broader community in which the divisive acts of the past will no longer be possible. I feel ashamed of the treatment of Aboriginal people in the past because I acknowledge that my identity is bound up with the legal system of white Australia. I was born in the shadow of terra nullius, and it is who I am. But the shame that I feel is also a challenge to that identity, a demand to develop a sense of self which

incorporates black Australians within it. And isn't that a development which would make discrimination and ill treatment, finally, impossible? Not guilt but shame is its necessary precondition. Furthermore, shame allows this process to evolve precisely because it contains within it *both* the seeds of an identity politics and the potential for resistance to it (Norris 1988). It is, indeed, the deconstructive aspects of shame which produce an instability, a generative paradox, a force for change. As it concerns our relationship to Aboriginal Australians, this healing process of expansion and concern, of identity acknowledged and surpassed, goes by the familiar name of reconciliation.

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