

## Culture in a sealed envelope: the concealment of Australian aboriginal heritage and tradition in the Hindmarsh Island Bridge affair.

by James F. Weiner

**This article analyses the Hindmarsh Island Bridge controversy in South Australia to argue that the legislative requirements for the presentation of indigenous culture and society conceal the extent to which this culture and society are themselves elicited by the very form and process of the legislation. The anthropological task of articulating a relational view of culture and identity in a legal and political domain which makes invisible the relational bases of its own procedures of knowledge and identity formation is one of the main challenges that emerges from the controversy. This article examines the versions of Ngarrindjeri culture and religion that were aired during the Royal Commission into the Hindmarsh Island Bridge in 1995 and speculates on the failure of both anthropology and the state to consider the relational nature of social knowledge and culture.**

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Anthropology might at first seem to garner some hope and optimism from legislation that protects the cultural heritage of indigenous peoples and gives them ways to regain ownership and control of their traditional lands. In 1976, the Federal Parliament of Australia passed the Aboriginal Land Rights (Northern Territory) Act, which allowed Aboriginal persons in the Northern Territory to assert legal title over their traditional territories. A somewhat different but related set of legislative acts have been the various State and Federal Aboriginal Heritage Protection Acts, including the Commonwealth Aboriginal and Torres Strait Islander Heritage Protection Act of 1984. These now exist in most Australian states, including those normally referred to in Australia as comprising coastal 'settled' Australia (as opposed to the remote interior 'outback' regions), where there is the highest density of urban, European-descended Australian populations. These Acts, along with the more recently enacted Native Title Act (1993), give Aboriginal persons and communities the means to protect sites and objects that can be demonstrated to be particularly important to the culture or religious life of Aboriginal claimants.

The difficulty with these Acts is that although they have worked well with Aboriginal communities still identifiably 'traditional' in their appearance and practice, they have proved to be far more problematic for Aboriginal communities in 'settled' Australia. By and large, Aboriginal populations in these areas have been dispossessed of their traditional territories, no longer speak their original language, have forgotten much of their traditional mythology, religion or other pre-Contact practice, and have undergone severe social transformation.<sup>(1)</sup> In many of these communities, conscious efforts are being made to re-appropriate the documented forms of their 'traditional' culture within contemporary lived structures (see Merlan 1994).

In such cases, it is difficult or impossible to demonstrate ownership of land, mythological and religious validation of the sacred status of certain sites or objects, and continuity of tradition. Given that the Australian public has a highly romantic and sketchy idea of what 'traditional' Aboriginal culture is, they may well ask what culture do such peri-urban Aboriginal groups possess that is not some debased and unsalvageable version of that of their compatriots in remote areas (see Bourke 1983)? We anthropologists might well want to ask, in turn, what kind of legislation is needed to protect such culture, to allow its reinvigoration and to accord it contemporary legitimacy? Are the definitions of culture which these Acts employ actually contributing to a series of confrontations both within Aboriginal communities and between Aboriginal and non-Aboriginal Australians? Is the very notion of culture that anthropologists have operated with for so long finding itself at odds with that of the Heritage Legislation and therefore an obstacle for both claimants and anthropologists in these cases?

As a recent analysis of the invention of contemporary Chumash identity in California has indicated (Haley & Wilcoxon 1997), these questions are significant wherever indigeneity is given not only legal protection but also a positive cultural valuation. In the United States, the Department of the Interior established guidelines for the assessment of 'properties of traditional cultural significance', protection of which is granted in the National Historic Preservation Act. Haley and Wilcoxon concern themselves with explaining the rise of Chumash Traditionalism, 'a movement which seeks to transform contemporary traditions by instituting beliefs and practices that the group's members believe are ... taken from their own past' (1997: 761).

In 1978, a liquefied natural gas (LNG) terminal was proposed for a site a few miles to the east of Point Conception. This triggered a protest on the part of conservationists, local property owners and Chumash. A

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number of anthropological accounts of the religious significance of Point Conception were submitted in support of the Traditionalists' claim that it was the Western Gate, a central spiritual portal for the departure of souls to the afterlife. In their investigation of this claim, Haley and Wilcoxon found evidence for the recent refiguring of this belief, which diverged markedly from accounts collected early in the century. They concluded that contemporary Chumash Traditionalists had explicitly engaged in this refiguring. Haley and Wilcoxon focus on one report in particular, which 'included verbatim testimony by Native American LNG-resistance participants who interpreted and embellished Point Conception's role in traditional Chumash culture' (1997: 771). They conclude that the Chumash Traditionalists are in the dilemma of strongly asserting 'a version of Chumash tradition which conflicts with ethnohistorical and ethnographic evidence' and yet 'their cultural identity and social position are most dependent upon being accepted as culturally similar to - and continuous with - the past' (1997: 776).

I will discuss some aspects of the Hindmarsh Island Bridge case in South Australia that bear striking similarities to the Point Conception case. I wish to begin with the following observation. By virtue of the practices that have arisen regarding the legal protection and adjudication of Aboriginal land rights and culture in Australia, what in fact is tested judicially is not strictly speaking 'Aboriginal culture' but some relational product of indigenous Aboriginal exegesis and Western notions of tradition. I will argue, as have Haley and Wilcoxon (1997) and Hanson (1991), that the process by which this relational product emerges is masked by the current emphasis on contemporary versions of cultural significance insisted upon by indigenous communities (especially those engaged in confrontation with outside forces), by anthropologists' desire to authenticate and legitimate these versions, and by indigenous heritage protection legislation that must distinguish between documentary and archaeological evidence of the past and contemporary significance accorded to such practices. In the case of Hindmarsh Island, this contrast took another form: that of empirically observable and documented ritual practices and their archaeological evidence on the one hand, and a more ideational notion of religion as an individual, subjective right to a belief on the other.

The collusion between anthropologist and indigenous advocate is a dimension of the current global politics of identity. But it also has its theoretical implications, one of which is an elision of the differences between Western and non-Western forms of social representation under the rubric of constructionism, which is both a methodology and a political doctrine. I thus conclude by pointing out the

difficulties in sustaining this contrast as a result of contemporary anthropological commitment to an excessively voluntarist notion of culture and identity as self-conscious and deliberate constructions.

The Hindmarsh Island bridge controversy: 1994-1996

A remarkable confrontation over the Aboriginal religious significance of a proposed site of development involved Aboriginal people of the Lower Murray River area in South Australia, the State Government of South Australia and the Australian Federal Government and galvanized the Australian media attention between 1994 and 1996 (this summary is taken from Stevens 1995). In 1980, the Binalong Pty Ltd requested approval for the development of a marina and tourist facilities on the southeast corner of Hindmarsh Island, which lies off the coast of the South Australian mainland opposite the town of Goolwa (about 90 km southeast of Adelaide), in the mouth of the Murray River. It is adjacent to Mundoo Island directly to the east, to which it is linked by one of a series of barrages built during the 1930s, but is accessible only by ferry. Approval for the development was granted in 1981, and by 1985 the marina was operational. In 1988, the District Council of Port Elliott and Goolwa sought support from the State Government of South Australia for the design of a bridge linking Goolwa to Hindmarsh Island.

In that same year, an archaeological survey was commissioned by the South Australian Department of Environment and Planning in order to provide the State Aboriginal Heritage Branch with information concerning the extent and significance of Aboriginal cultural or archaeological sites on Hindmarsh Island. The Aboriginal inhabitants of the Murray mouth and adjacent regions are the Ngarrindjeri, who are also referred to as Yaraldi or Kukabrak (see Berndt & Berndt 1993: 19). By the end of the nineteenth century, the traditional life of the Aboriginal populations in that region was little more than a memory (see Jenkin 1979). In recent times, however, the Ngarrindjeri have made successful attempts at cultural, political and socioeconomic re-invigoration. They have begun to take roles within the various official and quasi-official government Aboriginal organizations, and this has been paralleled by the emergence of different local heritage, development, social and consultative committees which represent and promote Ngarrindjeri community interests in South Australia. By 1989, the Coorong Consultative Committee, established in 1986 and charged with management of environmental and national park issues, considered the applications for both the expansion of the marina and the proposed bridge.

Towards the end of 1989, a Draft Environmental Impact

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Statement was sent to the State Aboriginal Heritage Branch, which recommended a detailed archaeological and anthropological survey of the proposed bridge site and the area considered for the extension of the marina. The archaeological survey was carried out under the auspices of the Department of State Aboriginal Affairs, while the anthropological assessment was provided by Rod Lucas acting on behalf of the developers.

Lucas spoke to Henry Rankine, a prominent Ngarrindjeri man who was the first Chairman of the Raukkan Community Council (on the Community Council, see Mattingley & Hampton 1992: 179-83), and also conferred with the Ngarrindjeri Tendi, a governmental council of the Ngarrindjeri. Although Lucas reported that there was no mythological significance attached to Hindmarsh Island, he did note that the issue of the marina development was likely to emerge as a focus for Ngarrindjeri political and cultural aspirations, about which I will have more to say shortly.

Lucas reported that the members of the Ngarrindjeri Tendi wished to achieve some agreement 'both within the Aboriginal community and between the community and developers' (Stevens 1995: 65). But also, 'Lucas noted the competition and factional divisions amongst the various representative bodies mentioned in his report, particularly between the Raukkan Community Council and the Ngarrindjeri Tendi' (1995: 65). He recommended that the developers consult directly with the various Ngarrindjeri representative bodies in the future.

In April 1990, the State Aboriginal Heritage Branch advised Binalong that no sites of anthropological or archaeological significance would be affected by the proposed developments. In October 1991, the Premier of South Australia officially opened the marina and announced that the bridge would be completed by 1993.

Aboriginal objection began in earnest in October 1993 when bridge construction began. In December 1993, the South Australian Aboriginal Legal Rights Movement (ALRM) applied, under the South Australian Aboriginal Heritage Act (1988) and the Commonwealth Aboriginal and Torres Strait Islander Heritage Protection Act (1984), to block the construction of the bridge, based on the existence of archaeological sites on Hindmarsh Island. At the end of April 1994, Doreen Kartinyeri, an Aboriginal research officer at the South Australian Museum in the Aboriginal Family History Project and well known in the Aboriginal community of South Australia, was contacted by a group of Ngarrindjeri women from Murray Bridge to help fight the bridge project. The next month she met with a group of Ngarrindjeri women at a house on Hindmarsh

Island and revealed to them that Hindmarsh Island was the site of 'women's business'. In a fax sent to the then Federal Minister for Aboriginal Affairs in Canberra as part of their application under the Commonwealth Act, they reported that:

Kumarangk is the Aboriginal word for fertile (pregnancy). This is also the name of Hindmarsh Island. It is all Aboriginal 'women's business'. This area represents a crucial part of the Ngarrindjeri culture beliefs about the creation and consistent renewal of life along the Lower Murray lakes, the Murray Mouth and the Coorong. The most serious cultural heritage dilemma concerns the Goolwa channel and its vital cultural heritage significance as part of the Meeting of the Waters (quoted in Stevens 1995: 126).

The applicant women maintained that this women's business concerned the articulation and maintenance of fundamental reproductive principles in the Ngarrindjeri cosmos and that these principles had been a component of Ngarrindjeri tradition 'for 40,000 years' (Stevens 1995: 235). The Minister responded in June by placing two successive 30-day emergency declarations on the Hindmarsh Island bridge development. He commissioned a female Professor of Law, Cheryl Saunders, to meet the applicants and to assess the claim. The meeting was arranged by the ALRM, who also retained the services of a female anthropologist of the University of Adelaide to act as 'facilitator' between Saunders and the Ngarrindjeri applicant women. The consulting anthropologist had no ethnographic familiarity with the Ngarrindjeri at the time. Initially, she had been retained for only two days. Nevertheless, she was persuaded by both the ALRM and Saunders to provide an anthropological assessment of the applicants' claim of what came to be known as restricted women's religious knowledge relating to Hindmarsh Island and its adjacent waters. Her report (Fergie 1994) provided an evaluation of what she later referred to as a 'significant anthropological discovery' (Transcript: 5330) of a domain of restricted women's cosmological knowledge (Transcript: 5336), or 'business' as Aborigines commonly call such knowledge.

In the report Fergie (1994: 19) stated:

My informants believe that the construction of the bridge will form a permanent link between two parts of the landscape whose cosmological efficacy is contingent upon separation. It is a link which would, by undermining cosmological and human reproduction, cause Ngarrindjeri society (and with it its tradition) ultimately to disappear.

She then explained the difference between the proposed

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bridge, which would form a permanent and material link between the island and the mainland, and the existing barrages, which by regulating the back and forth flow of fresh and salt water in and out of the Murray estuary actually 'act to maintain the integrity (in cultural terms) of this local area' (1994: 19). Fergie went on to explain why the women believed the bridge would have its destructive effect:

There are at least two facets to the understanding of such convictions. On the one hand there is the belief that Hindmarsh and Mundoo Islands and the waters around them are at the heart of Ngarrindjeri traditions about human and cosmological reproduction ...

But all [the applicant women] presented a final and compelling argument. It was in essence that, at the time when the barages [sic] (or series of ferries for that matter) were built around 1940, Aboriginal people did not have the power to stop them being built. Aboriginal people had no power in those days. All my informants on this issue went on to quote a history of the disempowerment of Aboriginal people - the invasive control of the Acts under which their everyday lives were administered, and the power of the Protector of Aborigines. Indeed the case must be made that this history, in itself, is a crucial dimension of contemporary Ngarrindjeri tradition (Fergie 1994: 19-20).

I will return shortly to the relationship between these two facets of the Ngarrindjeri women's claim, as allegedly adumbrated by the applicant women.

The anthropologist's report included three appendices, two of which were placed in sealed envelopes that she labelled 'Confidential: To be Read by Women Only'. One sealed appendix contained the more-or-less verbatim account by Doreen Kartinyeri of the nature of Ngarrindjeri secret women's business on Hindmarsh and Mundoo Islands. The other contained the anthropologist's analysis of this account. These latter two appendices would later become known as the 'secret envelopes'.

In July 1994 the Federal Minister for Aboriginal Affairs placed a 25-year ban on the construction of the bridge. By late 1994, however, the media began to report comments from a number of Ngarrindjeri men and women questioning the claims of 'women's business' on Hindmarsh Island. In February 1995 a High Court set aside the Federal Minister's ban on the bridge (Chapman v. Tickner and others 55 FCR 316). By April 1995 differences of opinion between a group of Ngarrindjeri women and the original applicants became public. In May and June a number of Ngarrindjeri women who would become known as the 'dissidents' were interviewed by the

media and publicly disputed that such women's business existed in Ngarrindjeri tradition. Allegations that the applicant women had invented the claim of women's religio-cosmological business came to national attention by June. On 16 June, the South Australian State government appointed Iris Stevens to head a Royal Commission into, among other things, whether the claims of Ngarrindjeri secret women's business were a deliberate fabrication for the purpose of stopping the bridge.

A key foundation of the Royal Commission's case was that there was no mention of a separate domain of women's restricted knowledge in a compendious catalogue of pre-Contact Ngarrindjeri culture and religion compiled during the 1940s by Ronald and Catherine Berndt (Berndt & Berndt 1993), nor was it mentioned in any other published sources. Not only did the Berndts' elderly informants (one of whom was alleged to be an original custodian of the women's business) not indicate the existence of such a regime to them, the Berndts suggested that Ngarrindjeri society was unique in Australia in lacking pronounced gendered divisions of ritual and religious knowledge (see also Tonkinson 1997). After nearly six months of testimony from a number of individuals, including historians, archaeologists, anthropologists and Ngarrindjeri men and women, the Royal Commission reported that the claim was a recent fabrication. (The anthropological testimony has been criticized in Brunton 1995; 1996; Tonkinson 1997; Weiner 1997b; 1997c).(2)

In this article I focus on the relation between the Federal and State Aboriginal Heritage Protection Acts themselves and the course of events and in particular on the anthropological claims made. I will inspect certain dimensions of the account of Ngarrindjeri culture, religion and tradition that was put forth by the consulting anthropologist during her testimony. Because the women who originally made the Heritage protection claim, who came to be called the 'proponent' women, boycotted the Commission, the consulting anthropologist was the only witness who knew the contents of the secret envelopes.

Australian Aboriginal heritage protection legislation

The primary anthropological objection to the various heritage protection acts is that they employ a terminology which has no real technical use in anthropology. Section 3 of the Federal Act defines 'Aboriginal tradition' as 'the body of traditions, observances, customs and beliefs of Aboriginals generally or of a particular community or group of Aboriginals, and includes any such traditions, observances, customs or beliefs relating to particular persons, areas, objects or relationships'. Section 4 says: 'The purposes of this Act are the preservation and

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protection from injury and desecration of areas and objects in Australia and in Australian waters, being areas and objects that are of particular significance to Aboriginals in accordance with Aboriginal tradition'. Within the broad ambit of the phrase 'particular significance' lies everything an anthropologist would be required to place in an account of such 'areas' and 'objects', namely a cultural and historical explanation of such significance.

The South Australian Aboriginal Heritage Act 1988, which has 'one of the broadest definitions of Aboriginal cultural heritage in any of the State and territory laws' (Evatt 1996: 322), distinguishes between 'Aboriginal object', 'Aboriginal site' and 'Aboriginal tradition'. Section 3 of the Act is sub-headed 'Interpretation'. It states that an "Aboriginal object" means an object - (a) of significance according to Aboriginal tradition, or (b) of significance to Aboriginal archaeology, anthropology or history', and defines an 'Aboriginal site' as 'an area of land' in the same terms. But it defines 'Aboriginal tradition' as 'traditions, observances, customs or beliefs of the people who inhabited Australia before European colonization and includes traditions, observances, customs and beliefs that have evolved or developed from that tradition since European colonization'. Here there is no reference to the significance of such tradition to Aboriginal anthropology (although, otherwise, 'tradition' seems to be defined in slightly more respectable anthropological terms in comparison with the Federal Act). More than its precursors, the 1988 Act is oriented towards the protection of sites and objects deemed significant by Aboriginal people themselves. Section 13(2) of the Act states: 'When determining whether an area of land is an Aboriginal site or an object is an Aboriginal object, the Minister must accept the views of the traditional owners of the land or object on the question of whether the land or object is of significance according to Aboriginal tradition'.

A circularity underlies the definition of Aboriginal tradition. It stems from the definition given to Aboriginal culture as discrete both from Euro-Australian society and from the very legislation that is defining it, and takes the following form. In both the Federal and the South Australia Acts, significance ultimately is decided by Aboriginal people themselves rather than by the anthropological, historical or archaeological record. However, since an anthropologist is usually called on to interpret this assertion of significance (this was the case in Hindmarsh Island) the anthropological contribution to the constitution of 'Aboriginal tradition' is preserved in concealed form.

Another difficulty with Hindmarsh Island was that the 'traditional owners' of the area were not those who made the application. If restricted religious knowledge in Aboriginal societies is intimately tied to stewardship,

control and knowledge of specific territories, then a vital support of such knowledge is weakened when land is permanently lost and access to it restricted, as has been the case with the Ngarrindjeri. It is reasonable to surmise that the drafters of both the South Australian and Commonwealth Acts were influenced by the historic Northern Territory Land Rights Act (1976) and, specifically, Woodward's comments pertaining to contemporary sites of significance to Aboriginal people (see Rumley n.d.; Woodward 1974). In the Aboriginal Land Rights (N.T.) Act 1976, Section 3(1) defines a 'sacred site' as 'a site that is sacred to Aboriginals or is otherwise of significance according to Aboriginal tradition, and includes any land that, under a law of the Northern Territory, is declared to be sacred to Aboriginals or of significance according to Aboriginal tradition'. The difficulty in ensuring that legislation designed for groups in the Northern Territory, who had maintained far more continuity in their productive and religious occupation of land, could be effectively extended to dispossessed groups like the Ngarrindjeri now seems evident.

The early assessments of Hindmarsh Island focused primarily on the archaeological evidence and it was on these terms that the proposed development was approved. The alleged women's business arose later and its justification was chiefly cultural and historical, though it ultimately encompassed archaeological significance. It was in this space created by distinguishing between documentary and contemporary significance that much of the dispute in the Hindmarsh Island Bridge Royal Commission took place.

### Restrictions on what we can know

One of the main points of contention during the Hindmarsh Island affair, as well as in a case in the Northern Territory (Wootten 1992), is the legal provision for the protection of knowledge that is deemed sensitive, restricted or confidential by its Aboriginal holders. Their dilemma is that in order to secure site protection they must divulge knowledge to those who should not, in Aboriginal terms, receive it. They risk an exposure of secret knowledge and the erosion of the institutions which it supports, for restriction buttresses the social power of knowledge and lends it political and religious efficacy (see Evatt 1996: ch. 4; Rose 1996; Wootten 1992: 73-4).

There thus exist in the Aboriginal Heritage Protection Acts varying degrees of protection for sensitive cultural knowledge. Section 35 of the South Australian Aboriginal Heritage Act stipulates that '(1) except as authorised or required by this Act, a person must not, in contravention of Aboriginal tradition, divulge information relating to - (a) an

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Aboriginal site, object or remains; or (b) Aboriginal tradition.' The proponent women and their counsel appealed to this section when they announced that they would refuse to testify before the State Royal Commission (Transcript: 106). But this begged the question, for the proponent women were assuming the very tradition of secret knowledge that was being called into question by other witnesses. It is true that the Ngarrindjeri applicant women were simply asserting that the knowledge existed and invoking the State Act to justify their refusal to divulge it. However, it is the circular effect that anthropological adjudication produced, both in the articulation of this particular knowledge claim and more generally in the definition of Aboriginal Tradition in the Heritage Protection Act, that created the problem in the first place.

As soon as restricted knowledge is identified, Aboriginal people are under pressure to divulge it, particularly from developers and others with commercial interests in sites acknowledged as significant. In a recent court decision (Tickner v. Western Australia No. WAG 18 and 19 of 1995; unreported judgment of the Full Court of the Federal Court delivered 28 May 1996), it has been claimed that natural justice is thwarted if developers cannot learn why an area is denied to them under the provisions of the Heritage Protection Acts.

In her report, Fergie (1994: 4) remarked on the applicant women's decision to divulge restricted knowledge to outsiders:

The questions these women grappled with were:

(1) In the light of a long and compelling history of breaches of trust and cultural abuse by non-Aboriginal people in respect of Aboriginal people and their culture, would the revelation of Ngarrindjeri women's secret knowledge to non-Aboriginal women, especially to one who was required to report on the matter to a man, pose any less a threat of injury and desecration to their culture and traditions than would the construction of a bridge which they clearly believed would gravely injure a significant cultural area and their traditions.

(2) Would keeping the secret to themselves still leave them with something precious?

(3) Would the construction of a bridge so gravely injure an area which was the key to their culture's existence that their possession of such secret knowledge would no longer be of any consequence?

One of the applicant women remarked to Fergie that 'the traditions at issue were things that should never be

questioned in the way that is required by the process of having it declared under this Heritage Act' (Fergie 1994: 5).

What Hindmarsh Island therefore made visible was a commonplace that anthropologists in this field seldom describe: where there is restricted knowledge, an anthropologist might come to know more about an Aboriginal culture than some of those people who claim it as their own (see the testimony of Dorothy Wilson, a key dissident Ngarrindjeri woman; Transcript: 781-2). Fergie appealed to her age, gender and parental status as helping put her in a position to learn of the restricted knowledge (see Weiner 1997c). If this is the case, then the anthropologist's authority or perspective on indigenous society and culture is in no way inferior analytically to that of the participants. In other words, I am posing the question, how are we to measure the disparity between the dissident and proponent women's account of 'their' culture, and that between the various anthropologists who gave testimony in the Royal Commission, or between the anthropologists' and the various Ngarrindjeri accounts? Given that the artificial establishment of difference makes culture visible, we cannot easily assign ontological priority to any of these versions, and yet this is what the legislation demands.

The culture of the courtroom

What is therefore confounded by the Heritage Protection Act, and by the politics of authenticity it makes inevitable, is the idea of a culture as a relational product of anthropologists' engagement with their informants. Let us assume that what we describe in our accounts is not 'the culture of the X' but something more like 'an account of the culture of the X as revealed by my mode of questioning and rendered in the terms of my own language'. While anthropologically appropriate, this is singularly inappropriate to the purposes of Heritage legislation, which grants autonomy to Aboriginal custom and makes invisible the mutually constitutive arena wherein white and Aboriginal cultures define each other out of engagement with each other.

But while the Acts conceal the relational character of culture in general, the courts which apply them inevitably produce a relational product. Here I take a position diametrically opposed to that of Bell (1998) in her defence of the Ngarrindjeri proponent women's claim. The courtroom, the Royal Commission, the Australian Parliament, all the legal and constitutional institutions of Australian society and the public media, are inextricable components of what we might identify as the elicitory mechanisms of Aboriginal culture. They are as much a

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part of the conditions and forms of its visibility as ritually-enacted creation myths or ceremonially-revealed iconographic designs.(3)

What, then, if we were to view the Royal Commission itself as an elicitory strategy, on a par with those we employ as anthropologists? Those working with Aboriginal people under the guidelines of the Northern Territory Land Rights Act repeatedly confront this:

Land Claim hearings produce more than simply the record of the way a particular group constructs itself in relation to its neighbours and its land. Land Claims produce records that are the culmination of an intensive period of research and interaction between members of the Aboriginal group, lawyers, anthropologists and advisers focused on an objective of demonstrating certain facts before a formal inquiry.

It can be expected that such a process will have a profound effect on the Aboriginal people involved and on the communities in which they live. Prior to the intensive research involved in a Land Claim many Aboriginal members of the group may never have consciously articulated or even thought about abstract issues such as the model for traditional ownership of the land in which they hunt and forage, who their great, great grandparents were, how they are related to other groups in the area and what features of the landscape constitute sacred sites (Ritchie n.d.: 6; emphasis added).

To see the Royal Commission as an elicitory strategy is to see it and the Ngarrindjeri as co-situated within a relational matrix or social field, rather than seeing it as some external intrusion into Aboriginal culture and belief. It is also to see the Federal and State acts as themselves being in a state of conflict, thereby allowing political manipulation by both Euro-Australian and Aboriginal groups. Indeed, the Federal Act was set up precisely as a last resource for Aboriginal people in those cases where State Acts failed to offer sufficient protection or redress, or where applicants felt that their claims had not been given due consideration (see Fergie 1996). The dispute between the Ngarrindjeri and the State of South Australia was cast as part of the political contest between a Liberal state government and a Labour federal government, even though in this case the State Act was better worded anthropologically and provided more protection for Aboriginal secrecy than the Federal Act did. Thus, although the original application was made under section 10 of the Federal Act, it was under Section 35 of the State Act that the proponent women boycotted the Royal Commission.

Tradition, belief, practice

It is important to understand that the proponent women were not claiming the contemporary existence of a ritual practice; they were claiming knowledge of a tradition of such practice in the past, knowledge which was still being handed down to select Ngarrindjeri women. In 1996, the significance of these areas was phrased in these terms by the applicant women:

There are sites and oral traditional stories and observances of ancient lore and customs of particular traditional significance to Ngarrindjeri women, although only certain custodians hold the knowledge about these beliefs. There are such sites on both the Goolwa and Hindmarsh Island sides of the Lower Murray River and the area between them. The waters in the Lower Murray River have particular significance to the Ngarrindjeri women because there are sites now covered by the water that are themselves important. The knowledge about the significance of the water and the sites are only held by certain Ngarrindjeri women custodians (Mathews 1996: 124).(4)

During the Royal Commission we were confronted squarely with the discrepancy between such appeals to 'knowledge' and 'belief' in the absence of a plausible account of their connexion to people's actions, for the asserted knowledge and belief could not be convincingly shown to relate to contemporary Ngarrindjeri practice or what was known of their cosmology at the time. One problem is that the handing down of knowledge of a tradition may or may not be part of the tradition itself, strictly speaking (see Myers 1986: 149). The Ngarrindjeri applicant women's claim implied the contemporary existence of such a mechanism of selective knowledge transmission and it was this mechanism whose existence was also disputed by the dissident women.(5)

This, I think, was the substance of scepticism voiced by other witnesses in the Royal Commission: Where restricted knowledge helps define and allocate social status, the fiction of complete ignorance is difficult to entertain. As Tonkinson (1997: 13) has remarked, 'while in most societies there is little problem in maintaining unshared knowledge over time, i.e. the content of secrets, the notion that the category can exist undetected over time is a much more difficult claim to sustain'. If it is being claimed that restricted knowledge is the foundation for a cosmology and social system, how could such knowledge function if no-one even knows of its existence? At what point must we consider that such knowledge ceases to be social knowledge in the manner in which I have defined it? But again, it was in the context of the Royal Commission

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and its media coverage, and not in an anthropological context, that the relationship between the alleged restricted knowledge and a set of social divisions within the Ngarrindjeri community was established.

However, even if the knowledge that underwrites a belief system is no longer a basis for ritual action, it can nevertheless serve a political function for people like the Ngarrindjeri. But what, then, are the Heritage Acts protecting? The belief itself, or its reconstructive functions in contemporary Aboriginal life? Let us return to the consulting anthropologist's original report (Fergie 1994). The women, she claimed, lacked the power to stop construction when the barrages were being built. But if the barrages help maintain the Ngarrindjeri world, why stop them at all? The problem here is that one cannot infer the use of a cosmology from the 'cultural logic' of the cosmology itself. It might be that the theory concerning the regulation of salt and fresh water around the Goolwa Channel and Murray mouth is a rationalization of a critical event in Ngarrindjeri subjugation, one that anthropologists could term 'subversive bricolage' or 'cosmological resistance'; this is what Fergie may have meant on page 20 of her report, quoted above. But, again, the place of this rationalization within the logic of 'traditional' cultural formulae is essentially retrospective.

This leads to the central question I wish to pose: are these Acts protecting Aboriginal ritual and religion 'as such', or their current rhetorical and symbolic value within a contemporary political field? If the practice of Aboriginal ritual had no praxic dimension of 'belief', then beliefs must be inferred by the anthropologist in the process of describing 'knowledge of how to do X'. This is very different from 'knowledge that X existed in the past' and 'conviction that X is important now'. Those of us impressed with the continuity that any cultural convention requires may wish to minimize the contrast between these (see Weiner 1995a). We may wish to accept that in contemporary cases of indigenous cultural revival around the world, 'traditional religious practices' may be more important for the contribution they make to identity management and promotion than to social and cosmological maintenance. But for the purposes of legislation intended to protect the cultural and cosmological sine qua non of indigenous communities, the difference is marked.

As another demonstration of this, the Ngarrindjeri and other Aboriginal Australians are intensely interested in the archaeological record of their previous life, looking to the archaeologists' reconstruction of this life to provide them with some vital link to their heritage. Most of the Ngarrindjeri applicants who gave testimony at the Federal

Inquiry into the Royal Commission attested to the central importance of middens and other remains to this task (see Mathews 1996: 148). But here again is the dilemma. The Heritage Protection Act covers sites of significance to Aboriginal people. Are the sites significant in themselves, or because Aboriginal people now accord them significance unrelated to whatever happened in the past? Mathews (1996: 148) was forced to conclude that 'it is not sufficient for the purposes of the Act that [the Ngarrindjeri applicants] regard midden sites as significant areas. The Act also requires that this significance be derived from Aboriginal tradition'. If only their contemporary importance is considered, then we face the possibility of the obverse of Hindmarsh Island, contemporary Aboriginal communities disputing, ignoring, forgetting or finding inconvenient the traditional importance of sites previously registered.(6)

In this regard, one more point made by Mathews is critical. During the Federal inquiry, the applicant women divulged certain dimensions of a crucial myth, referred to as the Seven Sisters Dreaming, which they maintained supported the cosmological analysis given in the anthropologist's original report. Mathews (1996: 182) stated:

It is known that this story relates to the Pleiades and that it is used in a cautionary way to deter women from entering waters during particular seasons when the stars are still in the sky. Most importantly, there is Betty Fisher's account, from which it can be inferred that the mother's tears 'covered her search places' and 'gave waters life'. The applicants say that these waters include the waters of the Goolwa channel, and that these waters are spiritual sacred waters by virtue of this tradition.

But she concludes:

The applicants tell us that according to this story nothing must come between the waters around Hindmarsh Island and the sky. If that happens, according to Veronica Brodie, 'Ngarrindjeri women will get very very sick'. The proposed bridge would come between the waters and the sky in the area of the Goolwa channel and would thus, the applicants say, desecrate the area.

But this cannot suffice to make the requisite connection. The proposition that nothing must come between the waters and the sky is not part of the tradition but a rule deriving from it. The question still remains as to why it is that nothing must come between the waters and the sky. The answer is that we do not know. The connection has not been made. Nor has a connection been made between the rule (nothing can come between the waters and the sky) and the claimed consequence, namely that

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Ngarrindjeri women will get sick (Mathews 1996: 203).

It is important to repeat that the proponent women did not claim that there are still ritual observances and practices of which the cosmological analysis given by the consulting anthropologist was an interpretation. They claimed solely that the knowledge of these practices and their cultural and cosmological significance had been handed down to them. A decisive component of the dilemma that Mathews confronted, therefore, is the difficulty in assessing Aboriginal 'knowledge' as something divorced from social practice: these are the components of the 'rule' she finds missing in the account of the knowledge and which Bell has still not provided us with in her published version of the proponent women's business (Bell 1998). As Keen (1994: 253) remarks for the Yolngu, their word for 'knowledge' is marnggi, which 'implies ability and the right to do something. It was what a person could do that was important rather than what they could think or remember', a characterization that could be said to be general for Aboriginal societies (Avery n.d.; Berndt & Berndt 1993).

From dialectical to constructionist accounts of Aboriginal society

Hindmarsh Island drew attention to the contemporary transformations which led to a convergence of method and object of study within anthropology under the rubric of constructionism (see Ricoeur 1970; Weiner 1995b; 1998). I refer to the demise of the dialectical basis of non-Western society (see Weiner 1997a). Society, Nature and the Divine used to be forces or entities revealed intermittently to people through various procedures, usually ritual, mythic or magical. Entities such as 'society', 'cosmology', 'culture' and 'ethnic identity' were often not articulated as such by non-Western people. Within Aboriginal communities people worked to make things like ancestral actions, fertility and sorcery power visible and efficacious, but it is anthropologists who gloss these activities as components of a 'culture'. In short, traditional Aboriginal people lived in a world which they did not construct, but which was made by the power of the ancestors. What humans 'did' was try to compel or coerce these forms of given, immanent power to human ends, such as fertility and the maintenance of food supplies.

Nowadays, however, Aboriginal culture has been thoroughly aestheticized and politicized through its appropriation of and by Western signifying regimes. Making a ritual and, through it, a culture for oneself is now a deliberate construction and representation, and both are moments of deliberate objectification. Aboriginal people are hard at work fashioning and re-fashioning cultures for themselves. 'Being a subject' is now a hard-won goal

deliberately achieved, rather than an insight or revelation whose source is concealed. Both Aboriginal and Western authorities therefore collude in demanding an order and durability for Aboriginal tradition that is quite at odds with the way such symbolic assertions function socially. This collusion seemed to force upon the Ngarrindjeri women claimants a mode of assessment of their own knowledge system in conflict with the manner in which it was appearing to function socially and politically.

The function I refer to concerns the role of restricted and sacred knowledge. Such knowledge might be less important for what it reveals about the cosmological fabric of the world than for how it is distributed and how it operates to create disparities within a political economy of symbolic capital. One of the distinctive features of those Aboriginal societies in the Northern Territory which have been extensively documented is the manner in which access to and control of knowledge are employed to create gradations in status and authority (see Keen 1994; Michaels 1985; Morphy 1991). In his original report to the Binalong Pty Ltd, Rod Lucas wrote that

time has had its own effect, creating symbols of the past that have a very contemporary currency. A second 'Ngarrindjeri Nation' has emerged with its own historical geography of the missions and camps and the movement of people which have shaped Ngarrindjeri experience for over a century. This new 'Nation' is engaged in an ongoing campaign to be recognised, and have its authority acknowledged. For this it needs symbols of identity and association. 'History' and 'heritage' are an important source of such symbols in any society. It is not surprising, therefore, that places of the past (such as traditional lands) become the focus of political action in the present.

Hindmarsh Island (or any other development site) will become the focus of contemporary Ngarrindjeri concerns precisely because development provides an arena for asserting identity, responsibility and authority. This does not make the concern any less genuine; it merely locates it realistically within the realm of politics (quoted in Mathews 1996: 118-19).

Lucas's words, written in 1988, strike us as prescient. Could either the South Australian or Federal Act have a definition of tradition flexible enough to accommodate this constructionist evaluation? The applicant Ngarrindjeri women's appeal to a common Aboriginal feature of religious knowledge, its restriction, created a division within the Ngarrindjeri community between those who were construed as caretakers of secret knowledge and those who were not. Similarly, to return to the Chumash case, Haley and Wilcoxon (1997: 762) observed that

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'guided by notions of persistence of continuity, and lacking a contrasting [and, I would say, dialectical - JW] concept of identity differentiation or creation, local anthropologists ... have facilitated the creation and empowerment of Chumash Traditionalists at the expense of other Chumash, who come to be viewed as nontraditional'. Once the dispute between the proponent and dissident Ngarrindjeri women became public, the original applicants were forced to adhere to their role as custodians of core, unchanging, Ngarrindjeri tradition. In the end, a quite Aboriginal division of religious knowledge emerged, but its contemporary and distinctive Aboriginal authenticity depended upon the role that the Aboriginal Heritage protection process and the Royal Commission played in creating it, and on the anthropological assessments of the claim, which, by focusing exclusively on the 'constructed' in social life, could produce no legitimate space for such dialectically counter-invented formations.

### Conclusions

The Royal Commission assumed that the truth of a culture is the fidelity of its transmission over time. If the experience of peri-urban Aborigines like the Ngarrindjeri is viewed only as one of progressive loss of 'traditional' culture, then claims to such fidelity can be called into question. However, if it is acknowledged that Aboriginal culture is now a source of capital, both symbolic and otherwise, then dispute between those seeking to authorize it and legitimize it are inevitable. An anthropological approach to this issue would see the dispute between the dissident and proponent women over the existence of secret women's business as an event within a contemporary symbolic arena upon which we can focus our social analysis, rather than some adventitious insufficiency of data without which analysis cannot proceed.

However, if peri-urban Aborigines such as the Ngarrindjeri proponents presented their elaboration of their tradition as an effect of contemporary Aboriginal cultural resurgence, then the status and content of 'cultural logic' upon which the Acts implicitly rest would be called into question. The anthropologist who submitted the report attempted to hold simultaneously onto two incompatible versions of 'women's business': one engendered by the Heritage Protection legislation and one by the contemporary politics of Aboriginal culture. In the case of Hindmarsh Island, we witnessed the resurrection of an allegedly pre-colonial description of Ngarrindjeri gender claimed to be immune from exogenous influences, without considering whether such influences themselves were and continue to be an integral part of 'Ngarrindjeri culture'.

In retrospect, a key dilemma was created at the outset of the Royal Commission. On the second day of the hearing, the applicant women and their counsel asserted that the Commission was an unfair attack on the beliefs of Aboriginal people and formally withdrew from the Commission. It is here that I locate a key point in the Hindmarsh Island affair, the point at which Western constructionist and voluntarist conceptions of culture became pre-eminent (see also Saunders 1994). The applicants were unable to demonstrate, by reference to archaeological or ethnographic evidence, that Hindmarsh Island and the surrounding channel had been sites of religious activity appropriate to the women's business. This raised the distinction between religion as an interior conviction and as a set of observable practices.

Here, another case from North America might be instructive. In 1982, members of the Lakota and Tsistsistas (Northern Cheyenne) Nations brought an action against the managers of Bear Butte State Park in South Dakota. They claimed that tourist developments would diminish the value of and impair their access to traditional ceremonial grounds. A U.S. Court of Appeal, however, found that 'to the extent their right of access was temporarily restricted at the ceremonial grounds ... the plaintiffs' interests are outweighed by compelling state interests in preserving the environment and the resource from further decay and erosion, in protecting the health, safety, and welfare of park visitors, and in improving public access to this unique geological and historical landmark' (Crow v. Gullet 541 F. Supp. 785, 794 (D.S.D. 1982)).(7)

Given the fact that the Lakota and Northern Cheyenne people could already demonstrate their genuine and continuing commitment to legitimate ritual and ceremonial action around the sites in question, the appeal court judgement seems unduly harsh by Australian standards. Nevertheless, given the doubts raised by the Hindmarsh Island Royal Commission on the reliability of anthropological assessments of a set of indigenous beliefs, it could be that we can secure the best results from Aboriginal Heritage Protection legislation if it restricts itself to the protection of demonstrable and continuing ritual and religious actions and practices.

I am afraid that things are not this simple, however. Despite the epistemic disparity between Aboriginal and Western knowledge systems by virtue of being rendered 'law-like' in terms of its consistent and logical application, Aboriginal Law is now thoroughly imbricated with and dependent upon Australian legislation. The Heritage Legislation itself creates a field within which contemporary Aboriginal communities can come into a relation, harmonious or otherwise, with each other, with Aboriginal

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bureaucracy and with non-Aborigines.(8)

However, the legislation calls for, and fails to make, a distinction between two appeals to Aboriginal tradition'. One is a tradition whose symbolic and conceptual contours are worked out in the everyday and in the ritual. The other is a resurrection of tradition, which, while still valid and authentic as a sociocultural phenomenon, is rather differently situated conventionally and metadiscursively (to echo a phrase recently used by Charles Briggs 1996). The dilemma of Heritage Protection Legislation is that all the processes of eliciting, investigating, challenging and denying the 'sacred' from Aboriginal communities have the effect of transforming the second sense of tradition into the first sense. The dilemma of anthropologists is that we cannot forestall this process without repudiating the dynamic aspects of culture and meaning that we confront.

### NOTES

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1 For an introduction to a range of issues arising from the ethnography of Aboriginal communities in settled Australia, see Keen (1988).

2 Among the key findings of the Royal Commission were: (1) the first involvement of Ngarrindjeri people in anti-Bridge activity occurred after they were contacted by Bridge opponents, including conservationists, local white residents of Hindmarsh island and members of a local trade union; (2) women's business was first mentioned only in March 1994, after another local female anthropologist had suggested to two Ngarrindjeri leaders that 'it would be nice if there was some women's business', which became the title of one journalist's account of the affair (Kenny 1996); (3) Testimony outside the Royal Commission by a Ngarrindjeri man active in community leadership suggested that it was another prominent Ngarrindjeri man who first informed Doreen Kartinyeri about the feminine significance of Hindmarsh

Island (Transcript: 2467): (4) one of the purported elderly custodians of the alleged women's business from whom Doreen Kartinyeri claimed to have learned it denied knowing anything about it in a letter written to the Federal Minister for Aboriginal Affairs (Transcript: 4632). These accounts together made a compelling case for the recency of the claim of women's business on Hindmarsh Island and its emergence as a measure to halt the Bridge. This interpretation has been supported by Brunton (1995; 1996).

3 I am indebted to Peter Sutton for discussion of this point.

4 The archaeologist employed by the South Australian Department of State Aboriginal Affairs said that this area was 'one of the most significant focal points and crossroads of traditional, social, economic and spiritual interaction in South Australia' (Mathews 1996: 131).

5 Counsel Assisting the Commissioner made this same point in detailing the allegations of fabrication: 'It is not necessarily the existence or the fact of there being women's business in respect of Hindmarsh Island which is alleged to be fabricated by arrangement, it is the claimed existence of secret and/or sacred women's business which is challenged as a fabrication' (Transcript: 113).

6 This was the case with the Kuku Yalanji speakers of the Bloomfield River area of Cape York, Queensland, who supported the construction of a road through their community, in an area of rainforest highly prized by white Australian conservationists (Anderson 1989).

7 The precedent for this is far more general. In *Cantwell v. Connecticut* (310 U.S. 296 [1940]), Mr Justice Roberts pointed out that while freedom of religion embraces both the freedom to believe and the freedom to act, 'the first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society. The freedom to act must have appropriate definition to preserve the enforcement of that protection'.

8 Haley and Wilcoxon (1997: 776) conclude: 'It is no accident that Chumash Traditionalism and local archaeology and ethnohistory accelerated at the same time in the late 1960s and 1970s, as environmental and heritage preservation laws came into effect and created a contract archaeology that has produced a wealth of new information about the past as well as new roles for the Chumash'.

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