

Danse Macabre

TEMPORALITIES OF LAW IN THE VISUAL ARTS

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Foreword

BEFORE DEATH

It is not customary, I know, to write one's own foreword. Perhaps it suggests a control freak, or just a sad lack of friends. I hope that neither is true in this case. It is rather that the idea of a before-word, a temporal marker that sits both outside the text proper yet propels it into the future, moving with and shaping its momentum, captures so well the productive tensions at the heart of this book. *Danse Macabre: Temporalities of Law in the Visual Arts* is about time, and how it manifests and governs our experience of art and law alike. It performs a delicate dance that intertwines three distinct parameters, three distinct points of view: a legal subject, a visual object, and a temporal predicate. As we will see, for every foreword there is an afterword, for every 'before' an 'after' that likewise embodies complex temporal ambiguities, voices that haunt and shadow us from beyond the grave. We are always beforehand: before death, before God, before the law. We are always after, 'always late', as Levinas said, 'for the rendezvous with the neighbour'.¹ And we are always perched between two voids, like a book between bookends, held in place and framed by other times, other lives.

Georges Didi-Huberman provides an excellent point of departure, an excellent way forward:

Whenever we are before the image, we are before time. Like the poor illiterate in Kafka's story, we are before the image as *before the law*: as before an open doorway.²

There is a complex doubleness at play in Kafka's story 'Before the Law', and in Derrida's reading of it; they evoke a relationship which is both temporally *prior* to its object and yet already spatially *subject* to it. Janus-faced, to be 'before the law' looks in two directions at once: towards a state of nature and a state of subjection, an

¹ Emmanuel Levinas, 'Language and Proximity', in *Collected Philosophical Papers*, trans. Alphonso Lingis (Dordrecht: Martinus Nijhoff, 1987), pp. 119–26, at p. 119.

² Georges Didi-Huberman, 'Before the Image, Before Time: The Sovereignty of Anachronism', trans. Peter Mason, in Claire Farago and Robert Zwijnenberg, eds., *Compelling Visuality: The Work of Art in and out of History* (Minneapolis: University of Minnesota Press, 2003) pp. 31–45, at p. 34.

innocent freedom and a guilty prohibition.³ With time as with law, we are in the presence of something that exerts a force over us while – indeed, *by* – eluding our grasp. *Noli me tangere*, warned Christ when he appeared before Mary Magdalene in the Garden of Gethsemane, a scene that likewise explores the difference between seeing and believing, withholding as a form of desire, and absence as a magnified form of presence.

But this is certainly not the end of it. On closer inspection, the author posits a complex triangulation. To begin with, ‘[if] we are before the image, [then] we are before time’. The relationship is not so much causal as inherent, a question of definition or essence. To be before the one, he seems to imply, is inevitably to be before the other. But this temporal subjection, he straightaway goes on, is itself a mode of *law*: ‘like the poor illiterate in Kafka’s story, we are before the image *as* before the law’. Is the comparison just an analogy? He does not say that time’s relation to the image works ‘like’ a law, but that in both cases, before the image and before time, we are positioned ‘like’ the man from the country – before the law. The relationship is not analogical but structural. Law, the text seems to suggest, is a form that structures time – and vice versa – and we experience both ‘before the image’. The image already summons us before the bench of time, to be subject to its cross-examination, force, and judgement, like ‘the poor illiterate in Kafka’s story’, which is to say, implicitly, necessarily, and against our will. In short, the image is a mode that manifests time as a law, and law as time.

Time, art, and law are the partners of this interdisciplinary dance. But what *kind* of dance are we talking about? What is its genre, its character? – waltz? polka? tango? No; the answer is surely something stranger and more gruesome – a *danse macabre*. Death will be our constant companion throughout this book. Consider Artus Quellinus’s mid-seventeenth-century Vierschaar (or tribunal chamber) in the old Town Hall of Amsterdam (Figure 0.1). This is where sentences of death were passed. It is both lofty and claustrophobic, small yet cavernous. Weeping, distraught children ornament its podium. Double height, and carved entirely out of cold, pallid marble, the walls of the chamber are decorated with images of deaths-heads and serpents, and supported by carved caryatids, their heads bowed and their eyes covered. This blindness has nothing to do with the ‘blind justices’ of Brant or Bruegel or Reynolds. If anything, *Oedipus* or *Lear* or *Equus* might come to mind. The law is not shown in the pose of a just authority, but neither does it signify corruption or ignorance or disregard or distance or pride or arrogance or neutrality or faith or reason. *This* is not blind justice but blind grief, staggering under the shocking blow of law’s

³ Franz Kafka, ‘Before the Law’, in *Collected Stories*, trans. Willa and Edwin Muir (New York: Knopf, 1993), pp. 173–4; Jacques Derrida, ‘Before the Law’, in *Acts of Literature*, trans. and ed. Derek Attridge (London: Routledge, 1992), pp. 181–220; Panu Minkkinen, ‘The Radiance of Justice: On the Minor Jurisprudence of Franz Kafka’ (1994) 3 *Social & Legal Studies* 349–63.

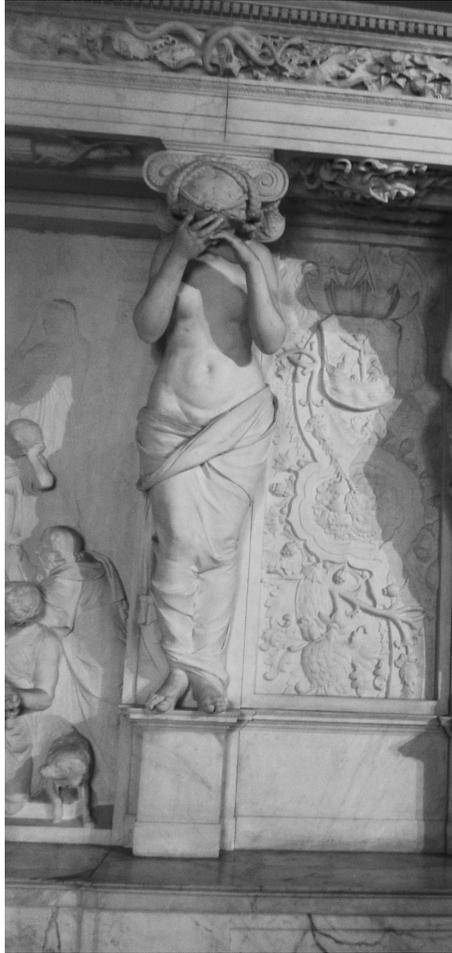


FIGURE 0.1 Artus Quellinus I, sculpture in the Vierschaar ('Weeping Angel'), c. 1660. White marble, Paleis op de Dam, Amsterdam (Photocredit © D. Manderson, 2014)

fateful decisions. We are at a funeral, where mourners weep inconsolably and bury their heads in their hands. Here the tribunal pronounced its decisions as if from beyond the grave, as if the voice of the law was emanating from *inside* a tomb. Executions took place immediately afterward, in the room next door that opened onto Dam Square, centre of public life in the city. Like some chamber of horrors, the dead summon the dead. Discussions of this extraordinary space have not fully absorbed its aesthetic implications.⁴ The caryatids, who literally carry the burden of the legal institution on their heads, are pall-bearers.

⁴ See the discussion in Judith Resnik and Dennis Curtis, *Representing Justice* (New Haven, CT: Yale University Press, 2012), pp. 48–61, esp. pp. 54–6.

Law is a place of mourning.⁵ We are not in a courtroom; we are in a mausoleum. The Vierschaar does not represent or illustrate or ‘signify’ the court’s function, but actually embodies it, constituting, as the source of its violent authority, the temporal title which the dead extort from the living, dragging its victims into its gaping maw. In this *partage du sensible*, to speak the law is to speak of death.

Artists have always seen the law through a veil of blood. Recall the *Judgement of Cambyses* (1498), Gerard David’s lovingly detailed image of a judge being flayed alive – the dreadful phylactery, literally flesh transformed into the body of the law as if by some gruesome alchemy, clearly visible in the background. In this book, I focus on other images, but they share David’s morbid fascination. A *danse macabre* runs like a threnody through the images discussed in this book. Pieter Bruegel’s *Justice* is crammed with the dead, so many scenes of execution and torture piled one on top of the other that, as one commentator put it, we seem to have stumbled onto a ‘festival of sadism’. In nineteenth-century Tasmania, *Governor Arthur’s Proclamation* is a celebration of British legal principles that comes from the same time and place as the annihilation of its Indigenous inhabitants. It visualizes the rule of law by means of a spearing, a shooting, and a hanging or two. This equation of law and gallows, like its conflation of justice and genocide, has haunted colonial art and law in the Antipodes ever since, as the work of the modern Australian painter Gordon Bennett makes clear. J. M. W. Turner’s *Slave Ship*, which commemorates a famous legal case and famous piece of legislation, features dismembered body parts being devoured by fish. In Gustav Klimt’s *Jurisprudence*, an abject man is being embraced by a monstrous octopus. Here, perhaps, is a festival of masochism. In Chapter 7, the disturbing murals of Rafael Cauduro in the Supreme Court of Mexico bring this litany of violence to a gruesome climax – law as a ghost story or a horror movie.

In the three sections that follow, I propose to sketch in broad outline the particular questions and scholarly constellations which animate this book, asking in turn why we might be interested in the relation between visual images and time, between time and law, and between law and images. These three axes form the sides of the triangle that comes together for the first time in this book, and whose distinctive features will I hope be of interest to readers. As we will see, along each of these axes the shadow of death is never far away. We are always walking in its valley.⁶ Law’s bloody undertow of violence underpins the representations that give affective life to its structures, and justify its acts. Death makes law *matter*. As Robert Cover famously puts it, law ‘takes place in a field of pain and death . . . A legal world is built only to the extent that there are commitments that place bodies on the line.’⁷ The shadow of death dramatically raises the stakes and focuses the mind for the methods and theories articulated and practised here.

⁵ Robert Cover, ‘Violence and the Word’ (1985) 95 *Yale Law Journal* 1601; Austin Sarat, ed., *Law, Violence, and the Possibility of Justice* (Princeton, NJ: Princeton University Press, 2001).

⁶ Psalm 23:4. This footnote insults the intelligence of my readers. Apologies.

⁷ Cover, ‘Violence and the Word’, 1601–5.

BEFORE THE IMAGE, BEFORE TIME

So it is no surprise that the focal point for the representation of time in the visual arts is so often death. Death, as Elisabeth Bronfen puts it so forcefully, is ‘the navel of the image’, the ‘knotted scar’ that records ‘the mutual implication of representation, mortality and maternity’; which is to say, an ever-present physical mark that ‘reminds us of the loss of the mother and prophetically warns of our own death’.⁸ Michelangelo’s *Pietà* shows the body of Christ in the arms of his mother (Figure 0.2). But his mother is still clearly the young woman who gave birth to him; she has not aged a whit. This is not simply an aesthetic choice or a bit of poetic licence or a conventional trope.⁹ No; Michelangelo’s temporal compression profoundly alters the meaning of the work as a whole. The sculpture speaks to the doom of predestination that hangs over the whole Christian tradition: Christ’s death was already immanent in his birth. These two embraces, the first and the last, are inextricably linked to one another, theologically speaking. Christ’s whole life, one might say, was played out ‘before the cross’, prior to and in the shadow of death. But quite aside from the religious significance of the sculpture, Michelangelo taps into a universal emotional truth. Mary cradles Jesus, dead, just as she did when he was a baby. There is nothing fanciful about this. The relationship of parenthood, once initiated, never goes away. To parents, a child is always their baby. To a child, their mother arouses the tender associations of that first caress and bond. And at the moment of any child’s death, be they ever so old, I think we find ourselves transported back to that primal scene, summoned to its recollection by the utter dependence and passivity to which their baby has been so dreadfully returned. Birth inaugurates a responsibility and a vulnerability that never leaves us, even in death – never goes away, never gets old, never dies.¹⁰ In our birth our death is already foretold; in our death is our birth recalled.

There is something frozen in time about the parent–child relationship, or perhaps, better yet, something forever trapped in amber. Michelangelo gives us access to this terrible truth as it cuts across the orthodox logic of time, like the topology of a ‘crumpled handkerchief’ that brings together distant corners – or the crumpled skin of a navel. “Two distant points suddenly are close, even superimposed.”¹¹

⁸ Elisabeth Bronfen, ‘Death: The Navel of the Image’, in Mieke Bal and Inge Boers, eds., *The Point of Theory* (Amsterdam: Amsterdam University Press, 1994), pp. 79–90, at pp. 80, 85–6.

⁹ Neil MacGregor and Erika Langmuir, *Seeing Salvation: Images of Christ in Art* (London: BBC, 2000); Joanna Ziegler, ‘Michelangelo and the Medieval *Pietà*: The Sculpture of Devotion or the Art of Sculpture?’ (1995) 34 *Gesta* 28–36; John Pope-Hennessy, *Italian High Renaissance and Baroque Sculpture* (London: Phaidon, 1996), p. 304; William Wallace, *Michelangelo: The Artist, the Man, and His Times* (Cambridge: Cambridge University Press, 2009).

¹⁰ See Tina Chanter, *Time, Death and the Feminine: Levinas with Heidegger* (Stanford, CA: Stanford University Press, 2002); Robert Manning, ‘Thinking the Other without Violence’ (1991) 5 *Journal of Speculative Philosophy* 132–43; Lisa Baraitser, *Maternal Encounters: The Ethics of Interruption* (New York: Routledge, 2009).

¹¹ Michel Serres in Michel Serres with Bruno Latour, *Conversations on Science, Culture and Time*, trans. Roxanne Lapidus (Ann Arbor, MI: University of Michigan Press, 1995).



FIGURE 0.2 Michelangelo Buonarroti, *Pietà*, 1498–9. Carrara marble, 174 cm × 195 cm, St Peter's Basilica, Vatican City. (Manuel Cohen Art Resource, NY)

Michelangelo achieves this strange but faithful juxtaposition using the materials of his art. The paradox of marble is that it looks so soft but feels so hard; looks so warm but feels so cold. The *Pietà*, with its cold white skin and the organic, luminous orange light that suffuses the grotto around it, gives shape to a temporal experience

that is paradoxical yet true. Madonna and child are caught in the amber of time. Aren't we all?

Michelangelo shows us how deep and complex, and how human, is the representation of time in the visual arts. It is a line of inquiry pursued by many contemporary writers on art and art history: Georges Didi-Huberman, Christopher Nagel, and Alexander Wood certainly, their work strongly influenced by the pioneering contributions of Mieke Bal and Hubert Damisch; but also Chiara Bottici, W. J. T. Mitchell, and others. Indeed, one could well conclude that temporality is one of art's central concerns precisely because, as opposed to music or dance for example, the frozen tableau of a painting or sculpture already constitutes, in its unnatural stillness, a crisis for representation. Supposing that art might be defined as the struggle to interrogate and transcend the limits of genre, then time is surely a compelling aspect of that struggle and those limits.¹² Within the confines of a single frame, time is not frozen at all; it is *distilled*.

To clarify: temporality is not just a synonym for time. If time is habitually conceived to be something external and objective, temporality attempts to capture our experience of it; if the former can be measured by an instrument, the latter is indicative of a culture.¹³ Temporality is to time as mentality is to mind – it denotes habits of thought and feeling.¹⁴ Temporality focuses on the particular representations that structure how groups and discourses frame the passing of time, how they situate themselves in relation to it, and with what social, conceptual, and normative consequences. It is not an ever-fixed mark, a single star in the night sky, a thing. It is a constellation, or a zodiac: on the one hand, a set of relations that allow us to chart the infinite expanses of the cosmos, and on the other hand a cultural framework for instilling the mythologies, values, and memories that matter to us. Temporality in this sense is not the oceans of time so much as the barks we build to set sail on it.¹⁵

'But how are we to be equal to all the temporalities that this image, before us, conjugates on so many levels? . . . What plasticities and fractures, what rhythms and jolts of time, can be at stake in this opening of the image?'¹⁶ Didi-Huberman asks. Good questions, yet too often brushed aside as 'non-existent' or 'meaningless' in favour of a reductive obsession with the historical conditions surrounding the creation of the artwork, or to parsing iconographic details within it. Attribution, explanation, description, historicism. This limited terrain fails to do justice to the

¹² See Jacques Derrida, 'The Law of Genre', trans. Avital Ronell, in (1980) 7 *Critical Inquiry* 55–81.

¹³ See, among a broad literature, esp. Norbert Elias, *Time: An Essay*, trans. Edmund Jephcott (Oxford: Blackwell, 1993); Niklas Luhmann, *The Differentiation of Society*, trans. S. Holmes and C. Larmore (New York: Columbia University Press, 1982), particularly 'The Future Cannot Begin', pp. 271–89, and 'World Time and System History', pp. 289–324; Barbara Adams, *Time and Social Theory* (Oxford: Blackwell, 1990).

¹⁴ Peter Burke, 'Strengths and Weaknesses in the History of Mentalities', in *Varieties of Cultural History* (Cambridge: Polity, 1997), pp. 162–82; Roger Chartier, *Cultural History: Between Practices and Representations* (Ithaca, NY: Cornell University Press, 1988).

¹⁵ The analogy draws on Elias, *Time: An Essay*, pp. 11–12.

¹⁶ Didi-Huberman, 'Before the Image, Before Time', pp. 31–45, at pp. 33–4.

many complex ways we actually experience the relationship to time in art. Neither, and just as importantly, does it account for the mysterious power that emanates from an artwork, generating something like an electric current that jumps across the synaptic gap from its time to ours.

Mieke Bal, for one, has pioneered similar themes. She seeks to radically incorporate the *afterlife* of an image – its reception, quotation, citation, evocation, and transformation by viewers – into our understanding of art’s meaning, force, and normativity. She invites us to ‘take the image not as an illustration of a narrative that is already around, but as the production of a narrative that would necessarily be new or different, as a result of the pictorial gesture folded into the viewer’s compulsion to read’.¹⁷ Such an approach to history is ‘preposterous’,¹⁸ she concedes (for reasons that I develop in Chapter 6, I prefer the word ‘fabulous’) but nonetheless ‘necessary’.

Perhaps originally coined by its enemies as an insult, and lately reclaimed by its friends as a compliment, the term ‘anachronism’¹⁹ has in this context a long history going back to the pioneering work of Aby Warburg.²⁰ He never tired of drawing our attention to the *Nachleben* – afterlife, again – of images across time. Ditto Walter Benjamin, who saw in the *montage* a visual embodiment of the unconscious, images piling up, colliding, and overlapping without regard to any temporal sequence.²¹ This creative spark was somewhat repressed or at the very least disciplined by the next generation, led by Erwin Panofsky who was keen to secure for his chosen field the legitimacy afforded to a positivist science.²² But more recent writers—first Damisch and Bal, then Didi-Huberman and Nagel and Wood—have embarked on a revisionist project. On one level, they have reminded us that so-called ‘anachronistic’ or ‘anachronic’ representations of time were in fact part and parcel of the orthodox conception and practice of art in the Renaissance. That is to say that the bringing together of different temporal moments, for example by introducing images of patrons or mentors into historical or biblical scenes, was not evidence of some kind of temporal muddle but on the contrary captured the ways that past and present were seen, particularly in religious experience, as being contemporary, mutually implicated, or continuous. Time is *topological* not linear.²³ On another level, a similar insight can likewise be seen to have influenced Renaissance ideas

¹⁷ Mieke Bal, *Travelling Concepts in the Humanities: A Rough Guide* (Toronto: University of Toronto Press, 2002), p. 267; see also her, *Quoting Caravaggio: Contemporary Art, Preposterous History* (Chicago, IL: University of Chicago Press, 1999).

¹⁸ Bal, *Quoting Caravaggio*, pp. 1–7.

¹⁹ See Didi-Huberman, ‘Before the Image, Before Time’; Alexander Nagel and Christopher Wood, *Anachronic Renaissance* (New York: Zone Books, 2010); Bal, *Quoting Caravaggio*.

²⁰ See Georges Didi-Huberman, *L’image survivante: histoire de l’art et temps des fantômes selon Aby Warburg* (Paris: Minuit, 2002).

²¹ Walter Benjamin, *The Arcades Project*, trans. Howard Eiland and Kevin McLaughlin (Cambridge, MA: Belknap Press, 1999), Convolute N.

²² Didi-Huberman, *Confronting Images*, pp. 50–5. The contrast between Panofsky and Warburg is drawn strongly throughout *Confronting Images*, as well as in *L’image survivante*.

²³ See Serres with Latour, *Conversations*.

about the impact and legacy of art. In other words, time bleeds not just across the pages of the past but seeps into the future. The old masters, no less than the young theorists, understood perfectly well that art transcends the moment of its creation, radiating power and relevance like a force field.²⁴ Summing up the work of many scholars, Didi-Huberman insists: 'You cannot acknowledge the memorial dimension of history without accepting at the same time both its anchoring in the unconscious and its anachronic dimension.'²⁵

Fra Angelico's *Annunciation*, to take a famous example, does not simply portray a historical episode, situating it in the distant past, like a document or archive.²⁶ The delicate tonal colouration that suffuses the background of the fresco creates a connection between the light as it is represented in the picture and the light experienced by the viewer in the very space on which they stand to look at it. The light that bathes the fresco is inseparable from the light that pours in from the convent windows, uniting spectator and spectacle in a single field, a single experience incapable of being reduced to one temporal moment or another. The presence of God is an event that takes place both in the historical past that Fra Angelico describes, and in the present, in the viewer's own experience of it. He creates a visual space which reaches beyond the narrative confines of the artwork, in the prayerful hope that God might again put in an appearance – not just *then*, in the presence of the Virgin Mary, but *now*, in the presence of the viewer.²⁷

The Annunciation, an announcement or presence, was that moment when the angel of God became present to the Virgin Mary, and moreover, the moment when God took on the physical form of a child in her womb. It is thus the instant that the holy spirit – word, symbol, referent, image, idea – 'came down to earth' – was incarnated, embodied, made real, made flesh. The figure of annunciation, then might even be thought to embody something essential about artistic creativity more broadly. Almost sixty years ago, Hans Gadamer made a remarkably similar point in the course of his magisterial *Truth and Method*.

For Gadamer, the task of an artwork – its *work* so to speak – is to clear a space . . . in which an unseen or overlooked transformative possibility concerning *this* world can appear. Primacy is given to aesthetic appearance as a means of transforming our understanding of the *real* . . . Recollection is not repetition but *annunciation*. Inverting the standard interpretation of Plato, Gadamer insists that 'imitation and representation are not merely a second version or copy but

²⁴ Didi-Huberman, *Confronting Images*, p. 27.

²⁵ *Ibid.*, p. 37.

²⁶ Fra Angelico, *Annunciation* (fresco, Convent of San Marco, Florence, 1437–6).

²⁷ See Georges Didi-Huberman, *Fra Angelico: Dissemblance and Figuration*, trans. Jane Marie Todd (Chicago, IL: University of Chicago Press, 1995); Hubert Damisch, *Théorie de la peinture. Pour une histoire de la peinture* (Paris: Seuil, 1972); Louis Marin, *On Representation* (Stanford, CA: Stanford University Press, 2001).

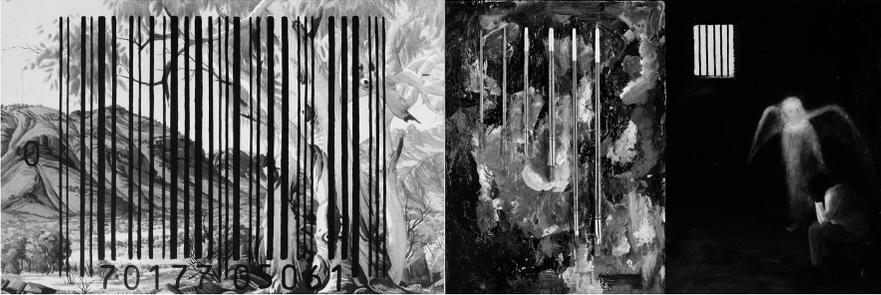


FIGURE 0.3 Gordon Bennett, *Valley of the Ghost Gums*, 1989. Mixed media on hardboard, 40 cm × 122 cm, State Art Collection, Art Gallery of Western Australia. (Image courtesy of Art Gallery of Western Australia; © Estate of Gordon Bennett)

a recognition of the essence ... they are not merely repetition but a bringing forth'.²⁸

The actual material – the physical stuff, the clay, dye, stone, or fibre – that was used to *incarnate* the artist's image or idea, to bring it to life or announce it, comes into direct contact with the viewer, notwithstanding the passage of hundreds of years. As Louis Marin writes concerning another *Annunciation*, this time by Piero della Francesca, 'the voice of saying comes to meet the seeing of the gaze ... [and] the voice conquers the virtuality of its presence'.²⁹ He means by this rather Levinasian formulation that what is 'conquered' by the signifier (the author, the 'voice' which is 'saying') understood as separate from, yet wholly embodied in the signified (the object they made) is the gap that separates that voice from later spectators, whose 'gaze' is doing the 'seeing'. In other words, what art conquers is time. In this important respect, an act of artistic creation is itself a species of divine annunciation: word made flesh, then and now. At stake is not a mode of representation but transubstantiation. Before the image, we are before time – before God, before death. This, Fra Angelico surely knew.

BEFORE TIME, BEFORE THE LAW

A contemporary Annunciation (as I see it) graces the cover of this book. It is part of *Valley of the Ghost Gums* (Figure 0.3), a triptych by the Australian artist Gordon Bennett, whose work is discussed in detail in Chapter 6. The painting as a whole tells a complex story around the work and life of Albert Namatjira, an Indigenous artist whose westernised paintings gained national recognition in the middle years of the

²⁸ Nicholas Davey, 'Gadamer and the Ambiguity of Appearance', in Francis Halsall, Julia Jansen, and Tony O'Connor, eds., *Rediscovering Aesthetics* (Stanford, CA: Stanford University Press, 2009), pp. 147–62, at 150–2.

²⁹ Marin, *On Representation*, p. 350; see Piero della Francesca, *Annunciation* (fresco, Basilica of San Francesco, Arezzo, 1464).

twentieth century. Bennett's images reference themes of cultural appropriation, ownership, and power; tensions and ambivalences which ultimately led Namatjira to be imprisoned, not long before his death in 1959, after he was charged under colonial legislation making it an offence to supply alcohol to an Aboriginal person. The vertical bars that rhyme across the three sections of the painting link together in multiple ways ideas of property and commodification, the tools of the artist's trade, and imprisonment. *Valley of the Ghost Gums* argues strongly for a relationship between a kind of cultural recognition and a kind of cultural hypocrisy, a dynamic that Australian attitudes towards Indigenous people and Indigenous artists have by no means outgrown. But in the right-hand panel, Bennett's image of an angelic visitation surely exceeds the specific narrative history it recounts. Its dark and oppressive intensity explicitly connects the suffering figure to the redemptive potential of light and art; and to an uncanny temporal destabilization. Along the lines we have just seen, the angel in Bennett's painting seems to position art as a form of annunciation; as the instrument of salvation – or a ghost. Before *The Valley of the Ghost Gums*, as if before a Fra Angelico, we do not just witness the power of art, but find ourselves drawn into its charmed circle. Bennett's misty evanescent angel does not just appear to Namatjira, but to us.

But Bennett goes further. He completes the triangulation that binds image and time to the law, and in this respect the story that motivated Bennett's painting is the occasion to address far bigger issues. His Annunciation shows a man who is not just before the image and before time, but likewise 'before the law', in precisely the dual sense of being simultaneously excluded from it yet oppressed by it. Those who are familiar with the terrible history of the incarceration of Indigenous Australians will note here a political and historical context that goes far beyond the story of one man.³⁰ And how does this 'countryman', like the 'poor illiterate in Kafka's story', experience the law? Bennett shows a prisoner *doing time*. The phrase is suggestive. The incarcerated are condemned to the weight and burden of this emptiness, consigned to a period of forlorn and hopeless waiting. The power of law is most assuredly a power over time, whether it chooses to cut it short with a noose or an axe, or to drag it out behind bars. Either way, the time of law is a dead loss.

So time is a common horizon shared by art and law; it matters deeply and paradoxically to both. But with this difference: when theorists of art write in praise of anachronism and rail against the linear logic of time, they sound like heretics; theorists of law, on the other hand, have been making similar claims for a long time. To be before the law is *always* to be before time – waiting for it, confronted by it, subject to it.³¹ Gordon Bennett's painting alludes to only the most obvious aspects of that relationship: imprisonment and execution. Acts Interpretation Acts

³⁰ Commonwealth of Australia, *Royal Commission into Aboriginal Deaths in Custody* (Elliott Johnston, Commissioner), 5 vols. (Canberra: AGPS, 1991).

³¹ See Didi-Huberman, 'Before the Image'; Derrida, 'Before the Law'; Panu Minkkinen, 'The Radiance of Justice: On the Minor Jurisprudence of Franz Kafka' (1994) 3 *Social & Legal Studies* 349–63.

around the world, for example, drawing on an English model, declare that ‘the written law shall be considered as always speaking’.³² Hardly a word in this sentence is not peculiar. Why ‘shall be’? Why ‘considered as’? Why is it ‘written law’ if it is ‘always speaking’? Yet leaving aside its oddly gothic construction, the overall impression we are left with is terrifying and macabre. Law is written and therefore mute, yet here it finds its voice, like a mummy come alive. Indeed the power of that voice apparently extends not just to the moment of its enactment but now and into the future, not at any one moment but always and for all time. Does this not make clear exactly what Marin had in mind? ‘The voice of [law’s] saying comes to meet the seeing of the [legal subject’s] gaze and [thereby] conquers the virtuality of its presence.’ Or, in other words, law ‘shall be considered as always speaking’. It is to take up residence in our head for eternity. We must not – cannot – shut it up. It wanders the corridors of time, like some demented patriarchal ghost, haunting and tormenting us. Was it not the voices in his head that drove Hamlet mad – voices ‘always considered as speaking’, voices that would not *die*?³³ The spectre of the law is a shadowy figure. It hides behind the arras – but it lurks within earshot. We can close our eyes, but we cannot stop our ears. Law pours its commands into them like poison from a bottomless jug.

So the notion of anachronism, for art history considered an anomaly (*a-nomic* – against the law), is not against the law at all. On the contrary, if the law were not capable of staving off its own death, it could not last a day. Law is always in a dialogue with the past, reinterpreting and rereading prior texts whose temporal distance is a stamp of their authority and their authenticity – texts which ‘shall be considered as always speaking’, and without whose support and apparatus the law would find itself struck dumb. And law at the same time harbours ambitions for a future it cannot foresee. English Acts of Parliament traditionally require the assent of the ‘lords spiritual and temporal’. An eternal jurisdiction is partnered with a jurisdiction condemned to death. Like Michelangelo, temporality and mortality commingle. Nonetheless, the ‘lords temporal’ are not just imprisoned in time. They are obliged to consider it. Law’s ‘temporal jurisdiction’ is both a warning – remember you must die – and an exercise in speculative fiction – imagine the future.

The one thing that legislators, and judges for that matter, cannot fix – meaning to repair, but also to define, or fasten securely in place – is the present instant. Time is never at a standstill. Mark Tansey, whose parents were art historians and who often draws on contemporary philosophical debates for inspiration,³⁴ captures this circumstance in *Action Painting II* (Figure 0.4). Norman Rockwell, Jackson Pollock, and others are depicted satisfying the more or less conventional desire that art

³² For example, see Interpretation Act (WA), s. 8; Interpretation Act (RSC, 1985, c. I-21), s. 10.

³³ William Shakespeare, *Macbeth*, V.5, 18–23.

³⁴ See Mark Tansey, *Derrida Queries De Man* (oil on canvas, 212 cm × 139 cm, Montreal Musée des Beaux-Arts, 1990).



MARK TANSEY *Action Painting II* 1984 Oil on canvas 76 x 110 inches (193 x 279.4 cm)

GAGOSIAN GALLERY

FIGURE 0.4 Mark Tansey, *Action Painting II*, 1984. Oil on canvas, 193 cm × 279.4 cm, Musée des Beaux-Arts, Montreal. (Courtesy of Gagosian; © Mark Tansey)

represent the world realistically.³⁵ Tansey parades the comforting common sense of this mimetic delusion.

Then, a second later, the painting's joke, a visual *reductio ad absurdum*, kicks in. What seems natural is in fact impossible. Time is as fleeting as a space ship. It rises into the wide blue yonder and is already nothing but a vapour trail. So the onrush of time means that perfect accuracy in art or law is not an option.³⁶ We cannot paint the present; neither can we write the present law. On the one hand, painting and lawmaking are always behind the times, late for their rendezvous with a world that has turned without them. On the other hand, they strive to shape a future that they will never live to see. Anachronism, in short, the complicated temporal topology of law, is its very condition of possibility. Art and law share the same obsession with time, the same paradox, the same predicament. It's the fixation they share; it's the fix they're in.

³⁵ I will return to Jackson Pollock and his 'action paintings' in Chapter 6 (on Gordon Bennett).

³⁶ In just the same way, the short story by Jorge Borges, 'On Exactitude in Science' imagines that the only perfect map of the Empire must be as large as the Empire, 'which coincided point by point with it'. Jorge Luis Borges, 'On Exactitude in Science', in *Collected Fictions* (New York: Viking, 1998), p. 325.

Building on pioneering work, for example by Carol Greenhouse and François Ost,³⁷ the relationship between law and time has recently attracted new interest.³⁸ While this literature is dwarfed by the work done on space, place, and legal geography, the imbalance is gradually being corrected. It is not enough simply to observe that ‘legal time’ is sometimes measured in seconds and sometimes in years, sometimes determined by the exact moment when documents are filed and sometimes by the operation of legal fictions ranging from deeming provisions and the rule against perpetuities to the ‘time immemorial’ of English custom. Law unfolds through a series of complex accommodations that involve dialogues and judgements about and in time. A legal system expecting the Messiah will think, speak, and act very differently from a legal system mourning the passing of its golden age. Utopian justice has a different flavour from nostalgic justice. Ghosts and ancestors express very different relationships between the dead and the living.³⁹ The doctrine of precedent is the product of a different temporality – a different *mentality of time*, as it were – than the civil code.

Take Mikhail Bakhtin.⁴⁰ He retraces the whole history and development of literary forms, and through them aspects of the wider culture, by means of their distinctive approaches to the treatment of time.⁴¹ Bakhtin’s term ‘chronotope’, a portmanteau of *chronos* and *topos* along the lines of Einstein’s ‘spacetime’,⁴² has formed the starting point for a variety of legal texts, most notably Mariana Valverde’s *Chronotopes of Law*.⁴³ Valverde argues that the so-called ‘spatial turn’, certainly in the field of legal geography but more broadly than that, has led to a marginalization

³⁷ Carol Greenhouse, ‘Just in time: Temporality and the Cultural Legitimation of Law’ (1989) 98 *Yale Law Journal* 1631–51; François Ost, *Le temps du droit* (Paris: Odile Jacob, 1999).

³⁸ See Jon May and Nigel Thrift, eds., *Timespace: Geographies of Temporality* (London: Routledge, 2003); José Brunner, ‘Modern Times: Law, Temporality and Happiness in Hobbes, Locke and Bentham’ (2007) 8 *Theoretical Inquiries in Law* 277–310; *The New Legal Temporalities?: Discipline and Resistance across Domains of Time*, Kent Law School, Sept. 2016; Rita Birla, ‘Performativity between Logos and Nomos: Law, Temporality and the Non-Economic Analysis of Power’ (2011) 21 *Columbia Journal of Gender and Law* 90; Liaquat Ali Khan, ‘Temporality of Law’ (2009) 40 *McGeorge Law Review* 55; Renisa Mawani, ‘Law As Temporality: Colonial Politics and Indian Settlers’ (2014) 4 *UC Irvine Law Review* 65; Pierre Legendre, ‘The Lost Temporality of Law’ (1990) 1 *Law and Critique* 3–20; Irus Braverman et al., eds., *The Expanding Spaces of Law: A Timely Legal Geography* (Stanford, CA: Stanford University Press, 2014).

³⁹ Bruce Springsteen, *Born to Run* (New York: Simon & Schuster, 2016), in John Lahr, ‘Greasers and Rah-Rahs’, 39 *London Review of Books*, 2 February 2017, 27–9, at 29.

⁴⁰ Mikhail Bakhtin, ‘Forms of Time and of the Chronotope in the Novel’, in *The Dialogic Imagination: Four Essays by M. M. Bakhtin*, ed. and trans. Caryl Emerson and Michael Holquist (Austin, TX: University of Texas Press, 1981 [1937–8, 1973]), pp. 84–258.

⁴¹ Mikhail Bakhtin, *The Dialogic Imagination*, ed. and trans. Michael Holquist and Caryl Emerson (Austin, TX: University of Texas Press, 1981).

⁴² Bakhtin, ‘Forms of Time and of the Chronotope in the Novel’, p. 84.

⁴³ See Jennifer Haselberger, ‘The chronotope of the courtroom: Bakhtinian dialogics and actions for breach of promise of marriage in mid-nineteenth century legal literature and fiction’ (Ph.D. dissertation, London, Birkbeck College, 2005); Desmond Manderson, ‘Mikhail Bakhtin and the Field of Law and Literature’ (2012) 8 *Law, Culture and the Humanities*; Mariana Valverde, *Chronotopes of Law* (London: Routledge, 2014).

of thinking about time in law.⁴⁴ In an argument parallel to Didi-Huberman's critique of art history, she claims that this has been accompanied by the 'reduction of time to history', a move that forecloses any more complicated discussion of the temporal dimensions of law.⁴⁵ Talking about legal history all too often smuggles in a treatment of time that is reductive, objective, and linear.

In line with Bakhtin's neologism, Valverde calls for the fusion of spatial and temporal analysis.⁴⁶ But I make no apology for singling out temporality in this book. Indeed, Bakhtin did the same:

It can even be said that it is precisely the chronotope that defines genre and generic distinction, for in literature the primary character in the chronotope is time . . . In the analyses that follow we will devote our entire attention to the problem of time (the dominant principle in the chronotope) and to those things and only those things that have a direct and unmediated relationship to time.⁴⁷

Even his analysis of spatial tropes in literature – the path, the castle, the city, or the provincial town – demonstrates how they embody a certain form of 'viscous, sticky time'; the notion of progress embodied in the path, for example, the cobweb of tradition in the castle, or the stultifying stillness of Flaubert's *Tostes*.⁴⁸ 'Chronotope' is not so much Bakhtin's term for the importance of time *and* space, as for 'the materializing of time *in* space'.⁴⁹

Inasmuch as Valverde's book reads as a prospectus, a manifesto, and an invitation,⁵⁰ *Temporalities of Law in the Visual Arts* answers the call. But with an important difference. Valverde connects time to law more or less directly. Bakhtin explicitly relates experiences of temporality to cultural *representations*. Complicated temporal structures of thought, action, and feeling are at work in, and indeed define, aesthetic genres. But only implicitly or ad hoc does he connect these forms of cultural representation to the wider social discourses at play.⁵¹ So too in this book, I focus on specific works in the visual arts in order to make visible the relationships between temporal and legal discourses. Artworks do not simply represent changing concepts of time and discourses of legal justification; these cultural forms form the bridge between them.

⁴⁴ Valverde, *Chronotopes of Law*, p. 39; compare Frederic Jameson, 'The End of Temporality' (2003) 29 *Critical Inquiry* 695–718. See also Martin Jay, 'Cultural Relativism and the Visual Turn' (2003) 1 *Journal of Visual Culture* 267–78.

⁴⁵ Valverde, *Chronotopes*, p. 39.

⁴⁶ Bakhtin, 'Forms of Time and of the Chronotope in the Novel', p. 84.

⁴⁷ *Ibid.*, pp. 85–6.

⁴⁸ *Ibid.*, pp. 248–9.

⁴⁹ *Ibid.*, p. 250 (italics added).

⁵⁰ *Ibid.*, p. 181.

⁵¹ See the discussion of Rabelais in Bakhtin, 'Forms of Time and of the Chronotope in the Novel', pp. 167–206; and Bakhtin, *Rabelais and His World* (Indianapolis, IN: Indiana University Press, 1984 [1965]).

BEFORE THE LAW, BEFORE THE IMAGE

Despite being a relatively new field, law and visual studies is flourishing.⁵² We live in a world of ‘ocular epistemology’.⁵³ The visual and spectacular are indispensable elements of how we come to know and are known by politics, law, and regulation – from social media and biometric surveillance to the image-making central to political power in modern elections, modern war, or modern terror.⁵⁴ There could be no world and no subject without images; no public, no imagined community,⁵⁵ no state or nation or law or sovereign without the representations that bring them into existence, like the condensed steam of our breath on a wintry morning.⁵⁶ The ineffability and evanescence of the relationship between representation, myth, and norm is not just part of its subliminal power but part of its meaning. Once again we find ourselves, like Mary Magdalene, faced with a dead body and an empty tomb. *Noli me tangere*, says the image of the law – do as I say, but keep your distance.⁵⁷ Affective and enigmatic, visual elements are crucial to the constitution, not to mention the seduction, of the law. Images are prime sites of law’s theory and law’s praxis. They are also, on occasion, prime sites for the critique of law, too.

Temporalities of Law in the Visual Arts mounts a distinctive foray in two respects. First, law and image are not just concepts. To play around with Bruno Latour’s term, this book asks what is woven out of the *fabric* of law and the *fabric* of art, the warp of one as it rubs up against the weft of the other.⁵⁸ How they are materialized in the world makes a difference. In the pages that follow, image is not just a synonym for concept, *imago*, or mental picture. Chiara Bottici distinguishes images, *sensu stricto*,

⁵² Robert Jacob, *Images de la Justice* (Paris: Léopard d’Or, 1994); Otto Kiesel, *Die Justitia* (Munich: Beck, 1984); Costas Douzinas and Lynda Nead, *Law and the Image: The Authority of Art and the Aesthetics of Law* (Chicago, IL: University of Chicago Press, 1999); Judith Resnik and Dennis Curtis, *Representing Justice* (New Haven, CT: Yale University Press, 2011); Richard Sherwin, *Visualizing Law in the Age of the Digital Baroque* (London: Routledge, 2011); Peter Goodrich and Valérie Hayaert, eds., *Genealogies of Legal Vision* (London: Routledge, 2015); Peter Goodrich, *Legal Emblems and the Art of Law* (New York: Cambridge University Press, 2014); Desmond Manderson, ed., *Law and the Visual: Representations, Technologies, Critique* (Toronto: University of Toronto Press, 2018); Alison Young, *Judging the Image: Art, Value, Law* (London: Routledge, 2005); José María González García, *The Eyes of Justice: Blindfolds and Farsightedness, Vision and Blindness in the Aesthetics of the Law*, trans. Lawrence Schimel (Frankfurt: Vittorio Klostermann, 2017).

⁵³ Wendy Hesford, *Spectacular Rhetorics* (Durham, NC: Duke University Press, 2011), p. 29.

⁵⁴ Chiara Bottici, *Imaginal Politics: Images beyond Imagination and the Imaginary* (New York: Columbia University Press, 2014); Peter Goodrich and Valérie Hayaert, eds., *Genealogies of Legal Vision*; Desmond Manderson, ed., *Law and the Visual*, esp. part II; Walter Benjamin, ‘The Work of Art in the Age of Its Technological Reproducibility’, in Howard Eiland and Michael Jennings, eds., *Walter Benjamin, Selected Writings, Vol. 3, 1935–38* (Cambridge, MA: Belknap Press, 2006), pp. 101–33.

⁵⁵ Benedict Anderson, *Imagined Communities* (London: Verso, 2006).

⁵⁶ See Bottici, *Imaginal Politics*.

⁵⁷ Goodrich, *Legal Emblems*, p. 253.

⁵⁸ Bruno Latour, *La fabrique du droit* (Paris: La Découverte, 2002). Translated as *The Making of Law*, trans. Alain Pottage and Marina Brilman (Cambridge: Polity, 2010). I am of course aware that I am making a bilingual pun not necessarily present in the original.

from related terms such as imagination or the imaginary. Images are representations that, at the same time that they are unquestionably reminders of an absence – both the absence of the representing subject and of the represented object – are also unmistakably *present* to viewers. They have a physical and observable form.⁵⁹ My interest lies in specific paintings, etchings, sculptures, and photographs, and in the sensory, visual forms of their embodiment.⁶⁰ Faced with a painting or a sculpture we are not just responding to an idea, but to a thing. So, too, while it is far broader than the mere sum of statutes, codes, and cases, law is not just a synonym for norm.⁶¹ It relates to discourses that frame our thinking about structure and authority, governance, regulation, sovereignty, rights, control, and punishment. In their titles and on their face, the artworks in this book are quite specifically focused in this way: they are images of Justice, Jurisprudence, Proclamation, Law, Crime.

In recent times, exceptional contributions to this new field have undertaken a synopsis, overview, and catalogue of a large number of images.⁶² This work has been indispensable. It has set the stage for research, including my own, for years to come. But it is only the first step. And this is the second area in which this book attempts to forge a distinctive path. Joseph Slaughter writes, ‘How often do we show a film or read a testimonial in human rights classes where only the plot and themes are discussed? What are we missing when such texts are taught with little or no attention to the forms of their expression?’ The project of law and art might benefit from similar reflections. We must go further than a mere semiotics of images or sculptures. Explanation or description are not enough. We must inhabit them, engage with them: think and see the world *with* them both in their own time and ours. Only then will we really be taking these visual resources seriously.

The school of New Criticism spoke of the ‘heresy of paraphrase’.⁶³ But what was deemed heretical in literary criticism is an occupational hazard for lawyers, whose job necessarily involves the violence of reduction and translation – from specialist knowledge to the sort of information a court can use; from human experience to legally cognizable categories; from poetic truths to Latin maxims; from the complex shading of human behaviour to yes/no questions. Everything is grist to the mill of legal translation, and law ultimately prides itself on the power to set the terms and decide the result. As Arcimboldo’s portrait of a jurist (Figure 0.5) might be thought to

⁵⁹ Bottici, *Imaginal Politics*, ch. 1.

⁶⁰ I use the word sensory here rather than material because I do not want to engage in a debate as to the material existence of digital images, which to my mind are nonetheless present to the senses in the way I am using this distinction here.

⁶¹ See e.g. Pierre Legendre, *Dieu au miroir* (Paris: Fayard, 1994), and several of the chapters in Douzinas and Nead, *Law and the Image*. I am far from suggesting that image or law cannot or should not have these metaphorical, metaphysical, or psychoanalytic dimensions. I only wish to assert the materiality of the present study in both these dimensions.

⁶² The two most important recent contributions are González García, *Eyes of Justice*; Resnik and Curtis, *Representing Justice*. Preceding them of course was the remarkable and visionary Jacob, *Images de la Justice*.

⁶³ Cleanth Brooks, *The Well Wrought Urn* (New York: Harcourt Brace, 1947), ch. 11.



FIGURE 0.5 Giuseppe Arcimboldo, *The Jurist*, 1566. Oil on canvas, 64 cm × 51 cm, Nationalmuseum, Stockholm. (Photo credit: Nationalmuseum)

imply, law ultimately risks a kind of reverse alchemy – an inverse Midas touch: it turns art (along with everything else it touches) into dust, and confirms yet again that the jurist is nothing but a dry old fish.

With Arcimboldo's salutary counter-example in mind, this book endeavours to engage with specific works of art as fully as possible, bringing to bear not only their legal and social contexts, but the generic, visual, and aesthetic resources of other disciplines, including crucial work, as I have indicated, in art theory and criticism. Each of the chapters that follow have at their heart a single image or set of images. They are arranged chronologically from the sixteenth to the twenty-first centuries. But my approach is not teleological. Diverse threads of thought and feeling are woven too densely for any one, schematic thesis to capture how the relationship between law, time, and the visual arts changed from the sixteenth to the twenty-first centuries. Indeed, the idea of anachronism itself suggests that images and temporalities of law do not disappear or evolve in any straightforward way, but continue to influence or illuminate our understanding of law and justice for a long time and in surprising ways.

What follows is a *danse macabre*, an interdisciplinary *pas de trois*. Before time, before law, before the image. This book is about what it means to be *before* all these things. Ultimately, they are all just ways of being before death, again in that double sense that we can only ever be *prior* to our death and are yet already its loyal *subject*, directed towards it, driven, governed, and haunted by it. We all move to the rhythms of a *danse macabre*, transfixed by death as before the light that streams from an open doorway, barred from ever entering it and yet bathed in it, all at once.

Bennett's *Laws**Colonial Time*

INTRODUCTION

Colonial representations give visual form to distinctive concepts of legal time. The story goes that when Gandhi was asked what he thought about Western civilization, he replied that he thought it would be a good idea. The same could be said of postcolonial Australia. That too would be a very good idea.¹ Aboriginal people in particular do not live with the 'legacy' of colonial attitudes and laws, a word implying the aftermath of discontinued policies. Jennifer Biddle describes remote Australia as living 'under occupation'.² Colonialism is an ongoing reality in their lives. What makes this perseverance of colonial law possible is a set of temporal discourses that allow the legal system simultaneously to disavow and to legitimate its effects on Indigenous people. This chapter demonstrates the point through a detailed analysis of the art of Gordon Bennett. His work illuminates at least three temporalities at work in the colonial project: the mystical foundation of authority, which is to say colonialism's primal scene; the deferral of the rule of law; and the experience of law as a repetitive trauma. Bennett's art shows the continuing importance of colonial representations in modern life, and at the same time reveals the underlying legal temporalities they enable.

Prior to his untimely death in 2014, not yet 60, Gordon Bennett had produced a body of work that was the most careful and comprehensive aesthetic reflection on the fantasies and implications of the colonial project, at least in Australia.³ His paintings unpack both the complex temporal logic and the visual ideology of

¹ The remark was made at a dinner party with Luis Gomez Romero and Richard Mohr; I can't remember now who first uttered it. On the question of postcolonial art in the context of Bennett's work, see Rex Butler, 'Two Readings of Gordon Bennett's the Nine Ricochets' (1992) *Eyelime* 18–23; Jeanette Hoorn, 'Positioning the Post-colonial Subject: History and Memory in the Art of Gordon Bennett' (1993) 31 *Art and Australia* 216–25.

² Jennifer Biddle, *Remote Avant-Garde: Aboriginal Art under Occupation* (Durham, NC/London: Duke University Press, 2016).

³ See Ian McLean and Gordon Bennett, *The Art of Gordon Bennett* (Roseville: Craftsman's House, 1996). For further discussion, see Ian McLean, 'Gordon Bennett', in Rex Butler, ed., *Radical Revisionism: An Anthology of Writings on Australian Art* (Brisbane: IMA, 2005) 272; Ian McLean,



FIGURE 6.1 Gordon Bennett, *Possession Island*, 1991. Oil and synthetic polymer paint on canvas, 162 cm × 260 cm, Museum of Sydney on the site of first Government House, Historic Houses Trust of New South Wales, Sydney. © Estate of Gordon Bennett. For the colour version of this figure, please refer to the plate section.

Australian colonial law, the images that enact and justify its arrogant assertion of the right to dispose of Australia's native inhabitants. As we have seen throughout this book, the visual and the temporal go hand in hand. Bennett's artworks demonstrate how powerfully fantastic images of colonial representation resonate through time and continue to form the foundation of Australian authority. He refuses to consign these events in Australian history to some prior and finished moment. He shows how they remain actively implicated in ongoing assumptions and practices. It is in this way that Bennett is able to pull off an exceptionally difficult trick. He is able to recuperate certain tropes of the colonial imaginary without at any point letting the viewer off the hook, or permitting contemporary Australians to satisfy their voyeuristic urges under the guise of a critical distance or the alibi of irony.⁴

Bennett's attention to the question of colonial representation derives at least in part from his own story of origin. Until he was in his teens he did not know that his mother was an Aboriginal woman. She had been brought up on a Queensland mission station after her own mother had died of TB. The discovery of his heritage profoundly disoriented his sense of identity.

'The Aura of Origin: Ghouls and Golems in Gordon Bennett's Art' (2001) 21(4) *Artlink* 24; Kelly Gellatly, *Gordon Bennett* (Melbourne: National Gallery of Victoria, 2007).

⁴ See in particular the powerful discussion of the problems of 'post' colonial voyeurism and complicity in Mieke Bal, *Double Exposures* (New York: Routledge, 1994), pp. 195–224.

When I first discovered my Aboriginal descent I first denied it and repressed it. When the repression became unbearable, and that was a true de-centring, not a matter of a 'failed locality' but almost of an entire system of belief – I mean psychic rupturing.⁵

Bennett's work therefore brings to bear what Mari Matsuda termed the 'multiple consciousness' of colonized subjects.⁶ He was forced to negotiate his experience of the world across two cultural registers. Nick Thomas writes that he engages two histories, and two artistic traditions, each his own, that are 'linked but remain incommensurable . . . a strange dynamic which involves distance and collision, connection and rejection'.⁷ But Bennett's standpoint is more complicated than that. The employment of 'Aboriginal' art motifs in some of his early work came in for considerable criticism for their unearned quality.⁸ Since then, his appropriation of Indigenous references has been far more circumspect. Thomas to the contrary, Bennett approaches the question of white Australia's colonial heritage, and its effect on Aboriginal lives, not as someone who belongs to two traditions ('each his own') but as an outsider to *both* of them. Indeed, as Ian McLean told me, *Insider/Outsider* was the title of his retrospective exhibition in Holland. The question of how and where he belonged was always, for Bennett, painfully problematic.

Bennett does not offer *information* about how Western colonialism was experienced by Aboriginal people, in the past. Other modern Aboriginal painters have described their role as essentially historical. Judy Watson sees her art practice as a way of doing history. Robert Campbell, Jr.'s painting *Abo History* is pointedly subtitled (*Facts*).⁹ Fiona Foley, likewise, insists categorically on the historical basis of her work.

What I am trying to talk about is a notion of truth . . . It is an oversimplification to call me a political artist and just slot me in a box. I don't see myself that way. I've worked with different themes at different times in my life . . . I can show, because I understand notions of truth – hence my continual historical research.¹⁰

Bennett's art is different.¹¹ He interrogates the fantasies and delusions that nourish Western perceptions of that history, then and now. He does not simply relativize the

⁵ Gellatly, *Gordon Bennett*, p. 17.

⁶ Mari Matsuda, 'When the First Quail Calls' (1989) 11 *Women's Rights Law Reporter* 7.

⁷ Nicholas Thomas, 'Introduction', in Nicholas Thomas and Diane Losche, eds., *Double Vision: Art Histories and Colonial Histories in the Pacific* (Cambridge: Cambridge University Press, 1999), p. 15.

⁸ McLean, *Art of Gordon Bennett*.

⁹ Robert Campbell, *Abo History (Facts)*, synthetic polymer paint on canvas, 130 cm × 200 cm (Canberra: National Gallery of Australia, 1989).

¹⁰ Bennett, interview for MCA exhibition, 2009, in Gellatly, *Gordon Bennett*.

¹¹ For further on the treatment of history in Bennett's work, see Bob Lingard and Gordon Bennett, 'A Kind of History Painting: An Interview with Gordon Bennett' (1989) 17 *Tension* 39–42; Ian McLean, 'Gordon Bennett: History Painter – The Ghost Returns', in I. Were, ed., *Selected Recent Acquisitions 2009–2011* (St Lucia, Qld.: University of Queensland Art Museum, 2012) 61–4; Ian McLean, 'Angel of History' (2002) 16 *Third Text* 212–16.

truth and facts of our colonial past. Rather, he emphasizes how that past has been mediated not only by layers of aesthetic tradition, but by centuries of self-representations about it. The encounter between Indigenous and settler Australians is always already read through the images and reproductions, fantasies, and blind spots of the colonial gaze. So Bennett's raw materials are not facts or truth as such, but rather the *representation* of history in the iconic and familiar visual record of Australian colonialism – the set pieces and pageants that pass for and into memory through stamps, paintings, drawings, old newspapers, and school textbooks.¹² Bennett's virtuoso ability to layer multiple aesthetic references and materials on top of this colonial source material, ranging from traces of Renaissance perspective to the modernist icons of Pollock, Preston, and Mondrian, is not simply a postmodern gesture of alienation and drift. It suggests with uncanny precision the layers of memory that connect to one another without relation; and that repeat their effects without intention. It suggests a nauseating feedback loop in our cultural worldview.

These images – the stockman, the explorer, the settler, the native – never existed in the form they have come down to us. They were always chimeras – partial, misleading, or fantastic creatures. But their illusory quality does not prevent them from generating real-world consequences; on the contrary, it is this quality of mythic innocence that enables them. In this, images are not only creations of but precisely analogous to the unconscious: inaccessible to conscious thought and yet for that very reason, capable of motivating and guiding action. Representations, argues Bennett, are not real, but they *produce* the real. The ghostly presence of these tropes do not simply 'haunt' Australian life like a shameful secret, or in some ill-defined and poetic sense. They animate it, generating the continuing consequences we live with. They grind out the repetitive nature of our actions without our being fully aware of it.

Crucially, however, Bennett shows art's potential not just to diagnose the power of colonial representations and colonial temporalities of law; but to intervene and transcend them. As Georges Didi-Huberman argues, art cannot be reduced to the realm of representation or semiosis.¹³ Robert Rauschenberg said, 'I don't want a picture to look like something it isn't. I want to look like something it is.'¹⁴ The artwork's presence is not reducible to what it represents. On the one hand, its materiality, its corporeal embodiment, constitutes its own effects on viewers. On the other, and Bennett's work is exemplary on this point, its disruption of our temporal assumptions, its ability to make a synaptic leap between the historical and the contemporary, makes possible, through the experience of art, the very encounter

¹² McLean, *Art of Gordon Bennett*.

¹³ See Georges Didi-Huberman, *Confronting Images*, trans. John Goodman (University Park, PA: Pennsylvania State University Press, 2005); Georges Didi-Huberman, *Devant le temps: Histoire de l'art et anachronism des images* (Paris: Minuit, 2000).

¹⁴ Carolyn Lanchner, *Robert Rauschenberg* (New York: MOMA, 2009), p. 37. The quote comes originally from an interview with Calvin Tompkins.

between different lives that colonialism disciplined or prevented. Through art, the encounter between peoples, laws, and civilizations is experienced *not* as a prior history that took place hundreds of years ago, but as an ongoing event. Bennett does not just represent the visual fantasies and temporal logics of colonialism; he unsettles them, creating a new space of possibility for new encounters that might not simply rehash the failures of the past. Bennett's art therefore exemplifies the capacity of art in our own times to move from an ideological to a critical engagement with legal subjectivity.

REPRESENTATIONS OF COLONIAL TIME

The Primal Scene: Possession Island

The colonial relationship is founded on an encounter, a primal scene, a *Grundnorm* in legal terms,¹⁵ or as Derrida put it, the 'mystical foundation' or mythic structure of authority.¹⁶ This encounter takes place in historical time but is not confined to it. On the contrary, as Derrida makes clear, the origin of the legal system is temporally located in what he calls the *futur antérieur* tense, that is, as a claim which is not tenable at the time of its making but will, in retrospect, come to assume the momentous importance of a point of departure.¹⁷ History is told through a rear-view mirror. Thus, the Declaration of Independence of the United States of America was a criminal act of rebellion when it was made. It is only in retrospect that it has come to assume the paramount significance of an origin.¹⁸ And just as the status of such an act cannot be determined until a much later stage of social and legal development, when it assumes a wholly mythic aura, so too, its terms and meaning continue to be the object of scrutiny and assessment. Kelsen to the contrary, neither its interpretation nor its implications can be confined to a single point in historical time.¹⁹ Legal points of departure reverberate through and in time, defining the foundation of the relationship between peoples. As a framing event or an ongoing encounter rather than as a historical moment, images become a particularly important mode of entry into how we understand the paradoxical temporality of the primal scene.

¹⁵ Hans Kelsen, 'The Pure Theory of Law' (1934) 50 *Modern Law Quarterly* 474; (1935) 51 *Modern Law Quarterly* 517; *Pure Theory of Law*, trans. M. Knight (Berkeley, CA: University of California Press, 1978).

¹⁶ Jacques Derrida, 'Force of Law: The Mystical Foundation of Authority', trans. Mary Quaintance (1989–90) 11 *Cardozo Law Review* 920–1045; Jacques Derrida, 'Declarations of Independence' (1986) 7 *New Political Science* 13–32.

¹⁷ Derrida uses the phrase and elaborates its implications in up to one hundred passages throughout his work; see the reference list compiled in *Index des mots de Jacques Derrida*, www.idixa.net/Pixa/pagixa-1008171026.html

¹⁸ Derrida, 'Declarations of Independence', 10.

¹⁹ The key point of Kelsen's *Grundnorm* is that he assigns it a purely formal and structural role in the inauguration of a legal system, without giving it any normative or legitimating function.

My first encounter with the mystic foundations of colonial law might be described as the primal scene and point of origin of my own career. In the very first class of a course on the 'foundations' and 'principles' of Australian constitutional law, in my first week as a law student, my lecturer announced with blithe insouciance that when Captain Cook planted the British flag on 'Australian soil' – Possession Island, a speck of land off the very tip of Australia's northern coast – the whole continent, with which the island was not even contiguous and which had not then even been mapped, became at that very instant subject to British law. This was the moment that a legal system came into existence in a new land. I do not remember anyone challenging this assertion, though the next several weeks were taken up by the study of various retrospective confirmations of law's claim to an irrefutable sovereignty, such as the Colonial Laws Validity Act.²⁰ But the chutzpah of the argument fair takes one's breath away. In what way was this assertion even remotely true, given that up to 750,000 Aboriginal inhabitants then lived under their own laws right across the continent, almost none of whom even saw a white man until many years later, and some of whom not for a century and a half? The legal claim that founds the colonial project in Australia cannot be true in the literal way in which it was presented, and indeed bears no relation at all to lived experience. It can only be a myth, a powerful constitutive illusion or fiction which assumed, as Derrida predicts, a retrospective importance about what 'will have been' considered a turning point. But, as my legal education makes very clear, this temporal paradox has continuing effects on the laws we live under, not least their legitimacy, and their immunity from challenge, not to mention the legal subjectivity of all who live here.

Some mental images, already familiar from my childhood, must have rendered plausible this myth of the birth of Australian law. It probably looked a lot like the iconic painting by J. A. Gilfillan (1857), now lost, engraved by Samuel Calvert, and published in the *Illustrated Sydney News* in 1865 (Figure 6.2). The image already has a retrospective quality, illustrating as it does a scene which had by then taken place a century beforehand, imagined through a nostalgic and imperial haze. Here there is scarcely an encounter or a clash of legal systems at all, certainly no indication of consent or exchange or conquest. The local inhabitants are reduced to fauna, with the sole exception of a black man in European dress. Who this figure might be is hard to say. Recent scholarship has even proposed Tupaia, a Tahitian elder who had been brought on board the *Endeavour* both for his navigational knowledge and to act as a mediator.²¹ Here he is reduced (against all the documentary evidence) to a waiter holding the drinks, but his function in the image is ultimately more important than that. He draws a connection with the Indigenous Australians but also marks his distance from them. He is the focalizer of the image, the eyes through

²⁰ United Kingdom, Colonial Laws Validity Act 1865 (28 & 29 Vict. c. 63).

²¹ See Joan Druett, *Tupaia – The Remarkable Story of Captain Cook's Polynesian Navigator* (Wellington: Random House, 1987); Maria Nugent, *Captain Cook Was Here* (Cambridge: Cambridge University Press, 2009), p. 34.

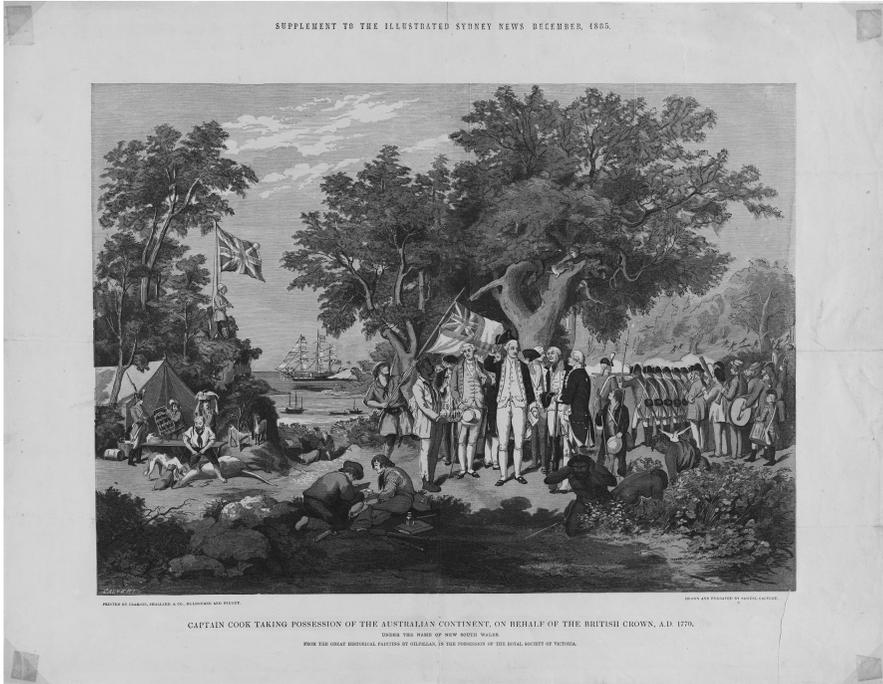


FIGURE 6.2 Samuel Calvert [after J. A. Gilfillan], *Captain Cook Taking Possession of the Australian Continent on Behalf of the British Crown, AD 1770, under the Name of New South Wales*, *Illustrated Sydney News*, December 1865. Wood engraving, hand-coloured, 43 cm × 57 cm, National Library of Australia. (Reproduced courtesy of National Library of Australia)

which we see. As a witness to Cook's actions he relegates the native inhabitants of Torres Strait – and Australia – and the South Pacific – to mere bystanders at the event of their own subjugation. Unlike *Governor Arthur's Proclamation*, there is no question of a contract, an agreement, or a treaty. Neither the knowledge nor the ignorance of Aboriginal people matter. Conquest is treated as a legal fact not a social discourse. The hoisting of the colours in the name of the king, the show of force and the military parade with fife and drum, even the celebratory tipples to follow, are all ritual actions. They are performative in J. L. Austin's sense.²² They change legal relations by the mere fact of carrying them out, requiring not the consent of hearts or the melding of minds but only the presence of some witness to confirm that the specified actions and words have indeed been correctly performed.

The uncanny importance of the central black figure in the picture suggests that it is not Tupaia at all, or at least not only him. The juxtaposition of savage islanders and this resplendent servant suggests an anachronism in time and space. Many other

²² J. L. Austin, *How to Do Things with Words* (Cambridge, MA: Harvard University Press, 1962).

aspects of the image seem equally muddled in time. The image transfers Captain Cook's claim of sovereignty from the Torres Strait, where it actually took place, to Botany Bay, 2,500 kilometres further south, where Cook had landed several months earlier and where the British settlement of Australia was to commence twenty-five years later.²³ Even the Union Jack is an anachronism, since the flag did not exist until 1801. The figure is a time traveller, a ghost in reverse – some Bennelong²⁴ transported back a generation in order to witness Australia's 'declaration of dependence'. The scene imagines the legal origin of a civilization that, according to the logic of the *futur antérieur*, will have transformed him, his clothes, his function, his nationality, and his manners, from a savage into a docile British subject. Indeed, his bare feet suggests a further anachronism and makes him appear more like the pastiche or parody of a US slave from the antebellum South. The black servant was a common feature of late-eighteenth-century paintings of British gentry and there were, in fact, several ex-slaves transported on the First Fleet. But his role here is clearly not that of a convict. He has been redeemed – the ideal colonial subject to come, in relation to whom the civilizing process of the conquest in all its formal majesty 'will have been' valorized and modalized. That transubstantiation, the *fait accompli* of colonial law, is also depicted as a fact rather than the outcome of an encounter, a choice, or a negotiation.

Reproduced in multiple school textbooks in the twentieth century, in the course of which it came to acquire almost the character of an eyewitness account, despite its palpably fictional and retrospective character, Calvert's engraving was an ideal subject for Gordon Bennett's art. In *Possession Island*, his reworking of this primal scene (Figure 6.1), he spotlights the brightly coloured black figure against the background of an abstract grid, bringing starkly home the disciplinary power thus exerted over certain black bodies. This highlights the black servant's peculiar centrality and incongruity. The black geometric frame against which he is set makes him appear as if he has arrived from the future through a portal in time, while also indicating the logic or grid of western order that is his real prison. Bennett dramatically foregrounds the 'fabulous retroactivity'²⁵ of the mystical foundation of colonial authority, which is both temporally anomalous and yet continuously active. The primal scene is a moment in which the future imagines the past imagining its future. It oscillates in this way not just at the moment the event took place, but (not so happily) ever after.

Captain Cook and the rest are reduced to pallid translucent spectres by comparison. In Bennett's retelling, the oblivious natives squatting in the

²³ In fact the story is even more convoluted than that. Captain Cook had landed in Botany Bay in 1770 and recommended it as a site for future settlement. But when Captain Phillip arrived in 1788, he found it unsuitable and made camp at Port Jackson, a few miles further up the coast, where the town of Sydney would slowly take shape.

²⁴ Bennelong was a senior man of the Eora people who served as a mediator between the British and the Eora both after the arrival of the First Fleet in 1788, and later in England, where we travelled in 1792.

²⁵ Derrida, 'Declarations of Independence', 10.

foreground of the engraving have been erased altogether, an excision that further focuses our attention on the presence of the witness and the look that passes between white man and black. Their eye contact is the only encounter that takes place. Yet in that moment, the witness suddenly accumulates not just legal significance but moral power. Bennett focuses our attention on the ways in which the colonial gaze was always already returned by its supposed objects, from the first encounter onwards, generating not only memories of the colonial experience, but an alternative site of self-consciousness of difference, with distinctive moral implications and vulnerabilities. Gilfillan and Calvert invite us to observe the spectacle of sovereignty from an external perspective, the witness playing a necessary but wholly subsidiary role in the performance of British rituals. Bennett shifts the focus of the relationship. Tupaia/Bennelong is not merely depicted as the passive product of colonialism. He is its silent and attentive archivist, a role with which Bennett himself surely identified. He insists on the moral significance of the witness, unnoticed and unconsidered, but he also reminds us that the true witness is the victim. So Giorgio Agamben, in *Remnants of Auschwitz*:

The 'true' witnesses, the 'complete witnesses', are those who did not bear witness and could not bear witness. They are those who 'touched bottom': the Muslims, the drowned. The survivors speak in their stead, by proxy, as pseudo-witnesses; they bear witness to a missing testimony. And yet to speak here of a proxy makes no sense; the drowned have nothing to say, nor do they have instructions or memories to be transmitted. They have no 'story' (Levi 1986: 90), no 'face', and even less do they have 'thought' (ibid.). Whoever assumes the charge of bearing witness in their name knows that he or she must bear witness in the name of the impossibility of bearing witness.²⁶

There we have the meaning of Bennett's omission. The true witnesses cannot be represented because they have been 'dismayed, displaced, dispersed, dispirited, displayed, dismissed' – and, finally, 'disappeared'.²⁷ Instead, the pseudo-witness, an after-image, must accept the impossible burden of bearing witness in their name. Across the erasures of time, to testify to what did not happen to them; to offer a presence on behalf of the absent; to insist on watching and seeing; to constitute an immanent encounter that is constantly being shirked; to judge.

Even the colours of the picture suggest the moral ambiguities of this complex temporality. The Europeans are covered in wild splatterings of colour that surely resemble a deconstructed Union Jack. But the Indigenous figure is dressed in black, yellow, and red. It's the same combination that Klimt used to implicate the Austro-Hungarian Empire in legal violence. Here, the implications are different; these are the

²⁶ Giorgio Agamben, *Remnants of Auschwitz* (New York: Zone Books, 1999), p. 34.

²⁷ Gordon Bennett, *Untitled*, 1989, oil and synthetic polymer paint on six canvas panels each 30 cm × 30 cm (Collection: Museum of Contemporary Art, Sydney).

colours of the Aboriginal flag. The association is made explicit in a different version of the same painting, entitled *Possession Island (Abstraction)*,²⁸ in which the figure is replaced by abstract swatches of colour, black – yellow – red. So, if at one moment, the painting implies the constitution of the colonial subject to come, at another moment, Bennett may be suggesting the potential, as yet unrealized, for the constitution of a new sovereign subject under a new flag. As to which of these readings or prophecies is in any sense right, time will tell, for the power of fabulous retroactivity *works both ways*.

The Colonial Pantocrator: A Legal Emblem

As discussed in Chapter 3, *Governor Arthur's Proclamation* constitutes the colonial encounter on different terms, according to the abstract logic of modern law.²⁹ The transfer of sovereignty from Aboriginal to British rule, spelled out so explicitly in the second panel of the *Proclamation*, suggests a weaker opponent manfully conceding to a stronger. The two sides look like they are shaking hands at the end of a rather one-sided cricket match. But the handshake does not just signify a cessation of hostilities. It inaugurates a new social contract – Aboriginal people are shown to be exchanging autonomy for the protection of British justice. The rule of law is held out to subject peoples as a benefit of their adapting to modern conditions. More than that, the *Proclamation* uses the abstract equality of the rule of law to *justify* the assumption of legal and political power by our colonial masters. In fact, there is more than a little retroactivity in this temporal logic too. The promise of the rule of law to come justifies the surrender of sovereignty now and for all time.

The *Proclamation* stages this encounter in unusually civil and abstract terms: in fact, the abstraction and civility of British law was its point. Tim Bonyhady argues that nineteenth-century colonial art shows a fundamental schism between two arcadias, the Aboriginal and the pastoral, each of which occupy a separate imaginative space.³⁰ But as Nicholas Thomas points out, colonial art – for example in the Tasmanian paintings by John Glover, who arrived in Australia only just after the events which gave rise to *Governor Arthur's Proclamation* – may be better understood as portraying a narrative of succession: not the one or the other, but the one and *then* the other.³¹ Glover's work echoes, perhaps, the *Proclamation's* argument for displacement, assimilation, and disappearance. "This temporal construction of the

²⁸ Gordon Bennett, *Possession Island (Abstraction)*, 1991, oil and synthetic polymer paint on canvas, 182 cm × 182 cm (Collection: Museum of Contemporary Art Australia and Tate, purchased jointly with funds provided by the Qantas Foundation, 2016).

²⁹ See Chapter 4 of this book and sources there cited.

³⁰ Tim Bonyhady, *Images in Opposition* (Oxford: Oxford University Press, 1985).

³¹ Nicholas Thomas, *Possessions: Indigenous Art / Colonial Culture* (London: Thames & Hudson, 1999), pp. 153–7.

colonial relationship', writes Thomas, 'finds settler accomplishments blessed, while lamenting the passing of the Indigenous way of life'.³²

As we saw, however, in Chapter 3, colonialism's temporal temper is more complicated still. Every Aboriginal resistance to assimilation triggers the deferral of these legal principles. The state of exception does not give up on the handshake promise of western law, but defers it, indefinitely, until such time as subject peoples have shown themselves capable of receiving its blessing. Imagine a highway. Western law is represented as the broken line in the middle of the road that drives us onwards to the future, while Aboriginal people are doomed to slip between the cracks. Thus, the *Proclamation* sets out a narrative of colonialism that is characterized neither by two incommensurable visions, à la Bonyhady, or an orderly succession from one system to another, à la Thomas, but by a temporal *aporia*. Aboriginal peoples are perpetually consigned to the no-road or abyss, the *dies non juridicus*, carnival, or outlaw state,³³ the broken white lines of a justice perpetually deferred.

Gordon Bennett provides an aesthetic representation of this colonial temporality, not from the point of view of the legal system but of the colonized. In several paintings, including *The Persistence of Language*,³⁴ *The Coming of the Light* (Figure 6.3), and a decade later as part of the *Notes to Basquiat* series (Figure 6.4), he introduces an alternative coat of arms, or should I say a single arm with a fist at both ends.³⁵ One holds a torch, upwards, and the other holds a belt, downwards. On the first occasion, the belt is choking the contorted head of an Aboriginal jack-in-the-box. The treatment in *Notes to Basquiat* is more explicitly iconographic, and might be taken to be Bennett's emblem of the rule of law. Like a legal emblem, the image floats in front of the picture plane – a stamp of overriding authority, pronouncing the specific relationship between norm and exception, always existing, never admitted.

The image echoes a long iconographic tradition. Images of the Last Judgement were recurring points of reference for human justice throughout the Middle Ages and the Renaissance.³⁶ The figure of 'Christ Pantocrator', judge of all humanity, is depicted sending the blessed to heaven and consigning the damned to hell. In each and every case the gesture which identifies Christ in the role of judgement is virtually identical. He points up to the heavens with the fingers of one hand and points or presses down to hell with the palm of his other. The symmetrical posture of the two

³² *Ibid.*, p. 109.

³³ Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, eds. W. Hamacher and D. E. Wellbery, trans. D. Heller-Roazen (Stanford, CA: Stanford University Press, 1998).

³⁴ Gordon Bennett, *The Persistence of Language* (Perth: Art Gallery of Western Australia, 1987).

³⁵ Gordon Bennett, *The Coming of the Light*, 1987, synthetic polymer paint on canvas, 152 cm × 274 cm (Collection: Queensland Art Gallery, Gift of Leanne and Caitlin Bennett in memory of and admiration for Gordon Bennett through the Queensland Art Gallery/Gallery of Modern Art Foundation 2016. Donated through the Australian Government's Cultural Gifts Program); Gordon Bennett, *Notes to Basquiat (The Coming of the Light)*, 2001, synthetic polymer paint on canvas, 152 cm × 152 cm (Collection: The Estate of Gordon Bennett, Brisbane).

³⁶ Robert Jacob, *Imagines de la Justice* (Paris: Léopard d'Or, 2000).



FIGURE 6.3 Gordon Bennett, *The Coming of the Light*, 1987. Synthetic polymer paint on canvas, 152 cm × 274 cm. (Collection: Queensland Art Gallery, gift of Leanne and Caitlin Bennett in memory of and admiration for Gordon Bennett through the Queensland Art Gallery/Gallery of Modern Art Foundation 2016. Donated through the Australian Government's Cultural Gifts Program; © Estate of Gordon Bennett)

hands creates a sinuous line, like a sideways ogee or figure S, extending from hand to hand, straight across the body of Christ, or swaying and tilted slightly. The curvature of the arms forms a single counter-balanced form – almost like the scales of justice itself. Michelangelo's great version on the wall of the Sistine Chapel³⁷ is unusually dynamic. Christ is shown almost as a magician, levitating one group by a gesture of his right hand, while casting down the other by a movement of his left. They appear to be propelled through the air like leaves borne on some cosmic wind. Other images of Christ Pantocrator, with which Michelangelo would have been familiar, are more static, more decidedly emblematic in their presentation – versions, for example, by Memling, Bosch, Cranach, or Fra Angelico.³⁸

The notion of judgement is sometimes accentuated by the presence of the Archangel Michael, a traditional figure of justice, who incorporates a similar gesture. Giordano's version shows a balletic St Michael delicately poised, and his outstretched hands appear to be enabling him to keep his balance. In Memling's triptych, Michael and Christ are depicted on top of each other, each posed similarly.

³⁷ Michelangelo, *Last Judgement*, fresco, 1,370 cm × 1,220 cm (Rome: Sistine Chapel, Vatican, 1536–41); Bernadine Barries, *Michelangelo's Last Judgment* (Berkeley, CA: University of California Press, 1998).

³⁸ Hans Memling, *The Last Judgement*, distemper, oil on panel, 241 cm × 180.8 cm (Gdansk: National Museum, 1467–71); Hieronymus Bosch, *The Last Judgement*, oil on wood panel, 167.7 cm × 60 cm and 164 cm × 127 cm (Vienna: Kunsthistorisches Museum, 1482); Lucas Cranach, *Last Judgement*, oil on wood panel (Kansas City, MO: Nelson-Atkins Museum of Art, c. 1525–30); Fra Angelico, *The Last Judgement*, tempera on panel (Florence: San Marco, 1425–30).

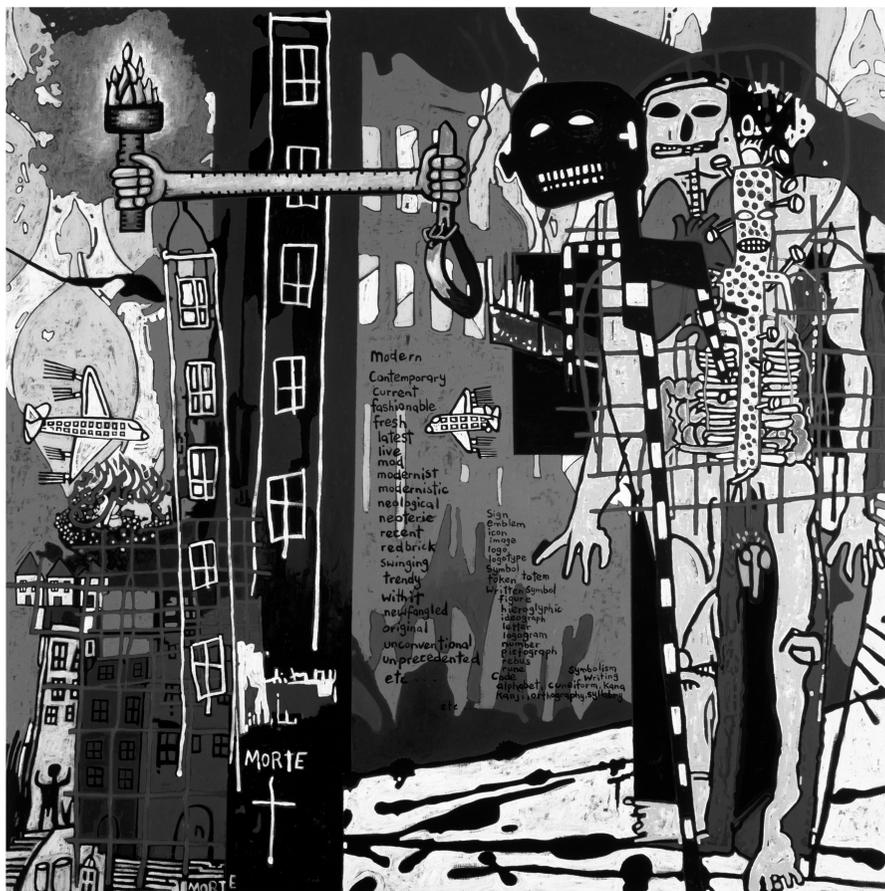


FIGURE 6.4 Gordon Bennett, *Notes to Basquiat (The Coming of the Light)*, 2001. Synthetic polymer paint on linen, 152 cm × 152 cm. (Collection: Estate of Gordon Bennett, Brisbane; © Estate of Gordon Bennett)

The *Gerechtigheidsstafereel* or *Allegory of Justice* by Jan van Brussel in the Town Hall of Maastricht (Figure 6.5) creates a striking triple accord.³⁹ The figure of Christ sitting in judgement brackets and unifies the two halves of the image shown below, where a scene of earthly justice on one side is balanced against an angel (perhaps not St Michael) on the other. Christ's familiar gesture, the fingers pointing up and the hand pushing down, are consciously paralleled by the gesture of the angel. The connection that is drawn between heavenly and earthly justice, each under the watchful guidance of Christ the judge, is explicit. In Brussel's *Allegory*, law's menacing violence is depicted as a monster lurking behind the courtroom's veneer

³⁹ Jan van Brussel, *Allegory of Justice* (Maastricht: Antechamber of the former Council meeting hall, 1477 or 1499).



FIGURE 6.5 Jan van Brussel, *Dual Justice*, 1477 or 1499. Oil on panel, 211.5 cm × 158 cm, Town of Maastricht. (Image courtesy of Gemeente Maastricht)

of civility. But, as elsewhere, the parallel with the Last Judgement is both a terrifying threat and a reassurance. The presence of Christ and the angel confirm to us that the weighing of souls is not arbitrary but just. So too in human justice we are reassured

that the law's terrible punishment marks out its victims with care. The demon of violence that haunts human law is intended to keep us on the straight and narrow.

Bennett distils into its purest emblematic form exactly the same gesture. The single line of the arms, one hand turned up and the other turned down, is reduced almost to the status of a symbol. But the bodily balance, and the echo of the scales of justice, is unmistakable. This is Bennett's version of the Last Judgement. But the emphasis and meaning of the gesture has subtly changed. In figures of the Last Judgement, heaven and hell, punishment, and salvation, are shown as temporally simultaneous alternatives. Either heaven or hell are our final fate. But Bennett shows a colonial discourse in which heaven and hell operate simultaneously. Enlightenment and exception are represented as *implicated* in one another, the one delayed the better to produce the other. The arm with a hand at either end recalls the scales of justice, also supposed to be even-handed. But, here, the relationship between the promise of enlightenment and the reality of violence is not one of balance but of complicity. Law claims to be 'the coming of the light', while simultaneously keeping its colonized subjects 'at arm's length' – and suspending them by the neck until civilized. The strangling man, his head lolling obscenely to one side, reminds us of a hanging. This is the perfect image of the deferral of the rule of law: a promise on the one hand, which is held in abeyance on the other, subordinated to an exceptional violence. Under the guise of justice, law has Aboriginal people in a chokehold. As opposed to figures of the Last Judgement, then, the violence of colonial law is not a threat that balances a promise; it is the legal reality that the legal vision actually enables. The distinction, which is temporal as well as logical, might be summarized as follows. The shapely gesture of the Last Judgement conscripts the terrors of hell, the better to bring us to heaven. The same gestures in Bennett's emblem conscript the promise of heaven, the better to keep Aboriginal people in hell.

Bennett recuperates a familiar juridico-theological form in order to imply a different temporal relationship, neither of separation, succession, or synthesis but a paradox – an encounter deferred on the one hand, and yet experienced in the bluntest material way, on the other. He brings abstraction and materiality into close relation, insisting that they are not opposites so much as counterpoints: 'two poles, irreconcilable but indissociable'; 'two poles, irreducible but indissociable'.⁴⁰ The abstract vision of enlightenment is not the *opposite* of the physical violence of the belt, but its imprimatur, a light that does not just illuminate but draws our eye away from the zone of darkness beyond it, and in fact makes that darkness harder to penetrate. At the heart of Bennett's treatment of colonialism lies this *aporia* between the abstract benevolence of colonial representation, and its material and

⁴⁰ Jacques Derrida, 'Forgiveness', in *On Cosmopolitanism*, trans. M. Dooley and M. Hughes (London: Routledge, 2002), pp. 51 and 54.

legal violence. Bennett stages the paradox of a missed encounter that continues to scar minds and bodies.

Traumatic Repetition

Along with the concept of deferral, the experience of repetition, unnoticed or historicized, seems to organize colonial time. *Governor Arthur's Proclamation*, which was the central focus of Chapter 3, is certainly a blunt acknowledgement of law's dependence on violence. The violent conflict that raged across Van Diemen's Land in the 1820s is the explicit backdrop of the image. What is promised is the even-handed administration of death. The violence of gun and spear will be replaced by the violence of the noose. Yet although the Proclamation unflinchingly acknowledges legal violence, it is much less honest in owning up to the experience of it. Death by hanging dominates the image. But it is presented in mathematical terms, as an expression of law's in-felicitic calculus. The death penalty is a dramatic sign of the universal commensurability of the rule of law.

The *Proclamation's* even-handed portrayal of public execution to the contrary, the reality of colonial violence was monstrously one-sided, whether condoned by the rule of law or excused by the state of exception. And its continuation and repetition in the modern world has not gone unnoticed, by Indigenous people at any rate. Indigenous Australian artists have turned with astonishing regularity to the role of law in this unfinished history, and specifically to the image of a hanging: in a 1963 piece by Jack Wherra, for example, called *Speaking Stockman*,⁴¹ and repeatedly in the late 1980s and early 1990s: in Robert Campbell, Jr.'s *Abo History*,⁴² in the brutally direct sculpture by Fiona Foley,⁴³ *Annihilation of the Blacks*, and in a torrent of works by Gordon Bennett, including *Cornfield (with Scarecrow)*; *Hanging Man*, *Sleeping Man*; *Ask a Policeman*; and *The Persistence of Language*.⁴⁴ Of course, the symbol of a hanged man has been a staple of western art illustrations of legal authority since the invention of the printing press.⁴⁵ But with nagging insistence, the colonial enterprise has been

⁴¹ Jack Wherra, *Speaking Stockman*, carved boab nut (Canberra: National Museum of Australia, 1963).

⁴² Campbell, *Abo History*.

⁴³ Fiona Foley, *Annihilation of the Blacks*, wood and other materials (Canberra: National Museum of Australia, 1986).

⁴⁴ Gordon Bennett, *Cornfield (with Scarecrow)*, 1991, watercolour on paper, 37 cm × 27 cm (Collection: Gift of Dr Paul Eliadis through the Queensland Art Gallery | Gallery of Modern Art Foundation 2013. Donated through the Australian Government's Cultural Gifts Program); *Hanging Man*, *Sleeping Man*, 1995, mixed media on paper, 60 cm × 40 cm (Collection: National Gallery of Victoria, Melbourne); *Ask a Policeman*, 1993, soft ground etching on paper, 60 cm × 40 cm (Collection: Museum of Contemporary Art, Sydney); *The Persistence of Language*, 1987, synthetic polymer paint on three canvas panels each 152 cm × 137 cm (Collection: Art Gallery of Western Australia, Perth).

⁴⁵ See several examples in Michael Widener and Mark Weiner, *Law's Picture Books* (Clark, NJ: Talbot Publishing, 2017) (catalogue for exhibition held at Grolier Club, New York, September–October 2017); notably *Coutumes générales d'Artois* (Paris: Chez Le Clerc, 1756).

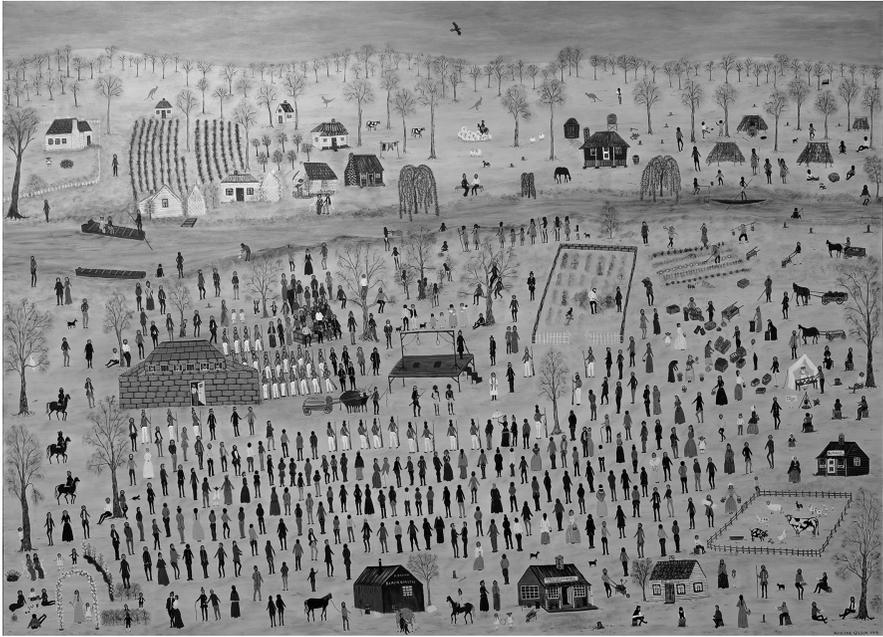


FIGURE 6.6 Marlene Gilson, *Standing by Tunnerminnerwait and Maulboyheenner*, 2015. Acrylic on linen, 142.5 cm × 198.5 cm. City Gallery at Melbourne Town Hall. (Image courtesy of City of Melbourne Art and Heritage Collection; © Marlene Gilson)

summed up by a black man on the end of a rope. Fiona Foley presents ‘the annihilation of the blacks’ through nine black dolls strung up in a row, under the supervision of a single white doll.⁴⁶ She evokes the image of the *Proclamation* – a line of black bodies hung out to dry. A recent artwork by Marlene Gilson makes the connection even more overtly. *Standing by Tunnerminnerwait and Maulboyheenner*, from 2015 (Figure 6.6), addresses the execution of two young Aboriginal men in Ballarat in 1842. It incorporates, as this detail from the much larger canvas shows, highly specific references to *Governor Arthur’s Proclamation* which leave no doubt that what is intended is a darkly ironic commentary on the its naive promises of brotherly love and equality before the law.

Still more direct in confronting the real legacy of *Governor Arthur’s Proclamation* is the photo by Geoff Parr (Figure 6.7). Parr plays on the myth of origin of the *Proclamation*, copies of which were supposedly nailed to trees the better to communicate the benign intentions of the colonial regime to the Indigenous inhabitants. But the real and racist application of the Australian legal system is nailed to the same tree, an abrasive contrast. Neither can the image be read as limited to historical revisionism; the black man’s modern suit is not enough to save him from the real

⁴⁶ Foley, *Annihilation of the Blacks*.



FIGURE 6.7 Geoff Parr, *Place II*, 1983. Silver gelatine photo, Plimsoll Gallery, University of Tasmania, Hobart. (Photo credit: Geoff Parr; © Estate of Geoff Parr)

violence of the noose, whether we are to read the image symbolically, or to acknowledge its associations with modern histories of suicide and of deaths in custody.

These multiple derivations bring home to us the continuing afterlife of *Governor Arthur's Proclamation* as a touchstone for Australian Indigenous artists. The choice of a noose, above all, must be accounted for. It attributes racial violence not just to personal animus or a racist ideology, but to the legal system as such, to discourses of authority and right. As the *Proclamation* boards make abundantly clear, the noose is a universally recognized symbol of legally *authorized* violence. Bennett supplements this register with the intimate domesticity of a settler's belt, extending its meaning to other contexts, other stories on the colonial frontier, while suggesting a certain attitude of crass expedience. The belt implies a domesticated racist violence that could not proceed without the complicity of the legal system, in just the same way that domestic violence against women could not proceed without the complicity of a patriarchal legal system. Bennett insists that the agents of this violence were not simply military or judicial officers – as *Governor Arthur's Proclamation* implies – but colonial settlers, ex-convicts, and farmers. Nonetheless, the image of the noose swaddles these actors in the authority of the law. What they did was not murder. It had about it some of the trappings of ritual and formality, the whiff of legitimacy and of self-justification. Slavoj Žižek observes that there is 'an obscene underside to the law'.⁴⁷ This underside is not

⁴⁷ Slavoj Žižek, *The Metastases of Enjoyment* (London: Verso, 1994), p. 54; Laurent de Sutter, ed., *Žižek and Law* (London: Routledge, 2015), p. 82.

acknowledged by it, but operates as ‘an open secret’ that sustains the law by licensing the enactment of its fantasies of freedom and omnipotence. This indeterminate zone of legal fantasy is ‘obscenely visible to each of his subjects in the privacy of their own visual field, yet must be shrouded in a cloak of invisibility in the public realm. This is the site of the gaze.’⁴⁸ This is the role of hanging both in the work of these artists and in the unfolding of the colonial project. An obscene fantasy of genocidal violence which was rarely admitted in so many words, but which was nevertheless an ‘open secret’ of colonial ideology, and which allowed many white settlers to live out their unspoken violent desires. In *Hanging Man, Sleeping Man*, Bennett associates what was done to Aboriginal people in Australia with the lynch law of the American South.⁴⁹ Those men and women, too, were hanged, an indication of ritual elements, of underlying normative principles, and a manifestation of law’s open secret. Lynching did not simply borrow the iconographic trappings of the state; it depended on a relationship of tacit approval that shored up law’s social cohesion while allowing it maintain a plausible stance of deniability. The hanged body itself was not merely the product of this dynamic but was forced to participate in the production of colonial meaning.

A society, Žižek says elsewhere, is bound together by what it cannot say as much as by what it does say – a silent pact that outsiders know nothing about. In this light, *Governor Arthur’s Proclamation* takes on an ominous hue, giving shape to this ‘open secret’ while formally denying it. A neat trick; what it says out loud and what it only whispers are entirely opposite. To belong to Van Diemen’s Land society was to be able to read the image both ways, the public law disavowing what the private law allowed. Hobart was a town bound together by winks and nods that remained unsaid, a righteous violence shackled to a guilty conscience. It would not have been the first place, particularly in settler colonies, in which these two aspects strangely sustained one another; the secret shame only provoking ever louder protestations of justification.

Indigenous Australian artists are particularly sensitive to the long-term patterns of legal violence that repeat themselves across hundreds of years. From 1987 to 1991, the Royal Commission into Aboriginal Deaths in Custody investigated the deaths of over one-hundred Aboriginal men in a ten-year period, at least thirty of whom died by hanging, and seventy by other preventable causes.⁵⁰ Those familiar with the workings of Australian political life will be unsurprised to learn that twenty-five years later, Aboriginal deaths in custody continue to ravage the carceral system, while the recommendations of the Royal Commission lie gathering dust. Robert Campbell, Jr.’s *Abo History (Facts)* explicitly connects colonial violence and modern deaths in

⁴⁸ See Henry Krips, ‘The Politics of the Gaze: Foucault, Lacan and Žižek’ (2010) 2 *Culture Unbound: Journal of Current Cultural Research* 91–102, at 98–9; Žižek, *Metastases of Enjoyment*, ch. 1.

⁴⁹ Bennett, *Hanging Man, Sleeping Man*.

⁵⁰ Royal Commission into Aboriginal Deaths in Custody, *National Report*, 5 vols. (Canberra: Government Printer, 1992).

custody; Fiona Foley might have been similarly inspired. In *Ask a Policeman*,⁵¹ Bennett refuses to distinguish between murder and suicide, the noose and the belt. From the point of view of a violently colonial legal system, the distinction is largely irrelevant. In *The Persistence of Language*,⁵² the shadowy figure of a hanged man in a cell, only dimly seen at first, forms a dark counterpoint to the blood-red lexicon of terms of racist abuse daubed like graffiti on the wall next to his body. Violence and despair are implicated in a whole matrix of institutional practices, legal, cultural, visual, linguistic. In 2016, graphic visual evidence of the abuse of young mainly Aboriginal juveniles held in detention in the Northern Territory garnered enormous media attention.⁵³ But the story was not new, either in its particulars or in general. The pattern of repetition and forgetting goes on, a long and sorry history that Indigenous Australians see very clearly. The figure of the hanged man looms over them all – Governor Arthur's rule of law, through a glass darkly.

Thus, another distinctive temporal strategy of colonialism comes into focus, characterized by repetitive fantasies on the one hand and repetitive violence on the other. This is not a cycle; there is something reassuring about cycles. The year and the body have their cycles. So does the economy, politics, or Halley's Comet. A cycle is recognized, predictable. This is different. Repetition is the consequence of repression – the performance of a trauma that, as Cathy Caruth has argued, has *not* been adequately represented, still less addressed, and for that reason continues to be compulsively and perhaps unconsciously performed in law and in politics.⁵⁴ Like artefacts in the tombs of ancient civilizations, to recall Freud's metaphor, repression not only buries memories, but preserves them intact.⁵⁵

This compulsive repetition is the consequence of a lack of consciousness of the forms and contours of our own history.⁵⁶ Six different prime ministers have continued and extended the policies adopted in 2007. Under the new title Stronger Futures in the Northern Territory Act,⁵⁷ laws that initially applied to 73 communities and 32,000 people, now extend over 600 communities and 45,000 people. By any serious measure, these laws have failed Aboriginal communities in

⁵¹ Bennett, *Ask a Policeman*.

⁵² Bennett, *Persistence of Language*.

⁵³ Australian Broadcasting Corporation, *Four Corners*, 25 July 2016; see Royal Commission into the Protection and Detention of Children in the Northern Territory (2016–).

⁵⁴ See *Unclaimed Experience: Trauma, Narrative and History* (Baltimore, MD: Johns Hopkins University Press, 1996); Roger Luckhurst, *The Trauma Question* (London: Routledge, 2008); Shoshana Felman, *The Juridical Unconscious: Trials and Traumas in the Twentieth Century* (Cambridge, MA: Harvard University Press, 2002), pp. 173–82; Simon Boag, *Freudian Repression, the Unconscious, and the Dynamics of Inhibition* (London: Karnac, 2012).

⁵⁵ See 'Sigmund Freud's Archaeological Metaphor and Archaeology's Self-Understanding', in C. Holtorf and A. Piccini, eds., *Contemporary Archaeologies: Excavating Now* (London: Peter Lang, 2009), pp. 33–45; Malcolm Bowie, *Freud Proust and Lacan: Theory as Fiction* (Cambridge: Cambridge University Press, 1987), pp. 20 and 22, quoting Freud's letters.

⁵⁶ Griselda Pollock, ed., *Visual Politics of Psychoanalysis* (London: IB Tauris, 2013), pp. 10–12.

⁵⁷ Stronger Futures in the Northern Territory Act, 2012 (Commonwealth of Australia).

the Northern Territory.⁵⁸ Domestic violence incidents are up. Children being removed from their families are up. Child hospitalizations are up. Indigenous incarceration levels in the Northern Territory are the highest in the country, and are increasing the fastest. Unemployment and welfare is rising; school attendance levels are not. Self-harm and suicide rates in Aboriginal communities have more than doubled since 2007.⁵⁹

But the government has responded with what has been termed a kind of ‘evaluation fetishism’.⁶⁰ It might better be described as evaluation legalism – less aimed at any sort of genuine consultation or evidence than in establishing a paper trail that will pass legal muster under international law.⁶¹ Several so-called evaluations have been done by private consultants given narrow briefs, or by government departments who have chosen to evaluate themselves on the basis of inadequate documentation. The resulting reports are repetitive and self-satisfied, suggesting an almost neurotic insistence on the supposed success of the programmes. Addressing the highly controversial imposition of the so-called ‘basics card’ on Aboriginal communities, the survey commissioned for the 2011 *Evaluation Report* ignores the difficulties and resentment the programme faced, instead drawing only on the anecdotal evidence of one respondent: ‘We’re happy people, transfer money to the Basic Card. People like it here. Can ring up Centrelink Income Management seven days a week to transfer money.’⁶² Like some image out of a colonial textbook, the image of the happy blackfella pleased to be rid of the responsibility of looking after himself, has too long and unpleasant a history to be trotted out with such nauseating ingenuousness. Even our fantasies have a depressingly repetitive quality to them.

Law, its rhetoric and its effects, repeats itself – in 2019 as in 2007; in 2007 as in 1989; in 1989 as in 1842 or 1829 – while appearing wilfully blind to its own repetition. *Echo*

⁵⁸ See in particular Jon Altman, ‘Tracking Indigenous Policy 2011–2014’ (2015) 15 *Journal of Indigenous Policy* 1–156; Eva Cox, ‘Evidence Free Policy-Making: The Case of Income Management’ (2012) 12 *Journal of Indigenous Policy* 1; Castan Centre for Human Rights (Faculty of Law, Monash University), *The Northern Territory Intervention: An Evaluation* (www.monash.edu/law/centres/castancentre/our-research-areas/Indigenous-research/the-northern-territory-intervention, last accessed 18 February 2016); Peter Billings and Anthony Cassimatis, ‘Redesigning the Northern Territory Emergency Response’ (2009) 27 *Law in Context* 58.

⁵⁹ See in particular Altman, *Tracking Indigenous Policy*; Jon Altman and Susie Russell, ‘Too Much “Dreaming”: Evaluations of the Northern Territory National Emergency Response Intervention 2007–2012’ (2012) 3 *Evidence Base* 1.

⁶⁰ Altman and Russell, ‘Too Much “Dreaming”’, 9.

⁶¹ Initially, the laws sought to exclude the operation of the Racial Discrimination Act 1975 which was enacted in 1975 to give effect to the International Convention on the Elimination of All Forms of Racial Discrimination. Reinstating it raised questions as to whether the Intervention could be justified as a ‘special measure’. The UN Committee which oversees the Convention has advised signatories that the ‘informed consent’ of minority groups is paramount. The UN Declaration on the Rights of Indigenous Peoples goes further, requiring governments to obtain from them ‘free, prior and informed consent’.

⁶² Bowchung Consulting, *Community Safety Well Being Survey Consolidated Report* (Canberra: Government Printer, 2011), p. 58, commissioned for Australian Government, *Northern Territory Emergency Response: Evaluation Report 2011* (Canberra: Government Printer, 2011).

and *Narcissus* is Bennett's diagnosis of this tragic repetition.⁶³ He imagines Narcissus as colonial Australia. In standard versions of the myth, such as those by Poussin or Waterhouse or Picasso,⁶⁴ Narcissus is depicted in a haze of self-absorption, Echo reduced to the status of a yearning bystander. But Bennett turns the story on its head. Black Echo rises up out of the water, caressing Narcissus's white cheek with fond desire. Echo is none other than Narcissus's own reflection. This makes doubly tragic the non-relation to which they are each condemned. The tragedy is not the image that Narcissus sees, but his failure even to see himself. The Australian Narcissus is not in love with his own reflection. He is *blind* to his own reflection, which is a very different matter – blind to the encounters that have actually constituted his own history and existence. Repetition is the temporal loop to which this blindness condemns us.

By staging the drama of colonial Australia in the realm of myth, Bennett intensifies this feeling of repetitive failure, of a discourse that is fatally stuck. Colonial time is on a treadmill, going nowhere fast. But as between white settlers and Aboriginal people this repetition is experienced very differently. For most Australians and for Australian law, repetition condemns time to two related qualities: first, a constant sameness for all eternity; second, through the operations of repression, each repetition seems to appear as if for the first time. The repetition is compulsive, while its repression is amnesiac.

Isn't it queer: there are only two or three human stories, and they go on repeating themselves as fiercely as if they had never happened before; like the larks in this country, that have been singing the same five notes over for thousands of years.⁶⁵

The curse of colonialism lies in this strange temporal dualism, like the song of the lark.

On the other hand, Aboriginal people – as the work of contemporary Aboriginal artists including Bennett makes incontrovertibly clear – do not have the luxury of forgetting. Trauma is a *temporal* phenomenon, the name for an event that has not been reduced to the past or to meaning and is therefore experienced as *continually* present. It is no surprise that the trauma of colonial violence is rehearsed so obsessively by Aboriginal artists such as Bennett. The violence of the noose has not gone away. Each repetition is as the opening of a wound that will not heal. Their experience of the colonial legal system does not get better or more distant over time. Law keeps worrying the same infected spot, hurting the patient not less and less but

⁶³ Gordon Bennett, *Echo and Narcissus*, 1988, oil and synthetic polymer paint on canvas, 179.5 cm × 200 cm (Collection: Paul Eliadis Collection of Contemporary Australian Art, Brisbane). See Rex Butler, 'Echo & Narcissus: Gordon Bennett and His Critics' (2000) 16 *Postwest* 46–51.

⁶⁴ Nicolas Poussin, *Echo and Narcissus*, oil on canvas, 74 cm × 100 cm (Paris: Musée du Louvre, 1628–30); J. W. Waterhouse, *Echo and Narcissus*, oil on canvas, 109.2 cm × 189.2 cm (Liverpool: Walker Art Gallery, 1903); Pablo Picasso, *Girl before a Mirror*, oil on canvas, 162.3 cm × 130.2 cm (New York: MOMA, 1932).

⁶⁵ Willa Cather, *O Pioneers*, pt. II, ch. 4 (Boston, MA: Houghton Mifflin, 1913).

more and more. So, if trauma and repetition characterize colonial law, these temporal anomalies are nevertheless experienced very differently by Aboriginal and settler societies.

RE-PRESENTATIONS OF COLONIAL TIME

Bennett shatters the illusion of time as linear and progressive, showing that this shattering is already at work in colonialism, in its art and its law alike. He illuminates how colonial representations fold and crease time. Colonialism's primal scene is imbued with a fabulous retroactivity. The colonial Pantocrator postpones the promise of rights and the rule of law in the interests of an unforgiving and punitive violence exacted on black bodies. Everyday colonial law is governed by repetition and repression. The combination provides the colonial experience with its peculiar characteristic *apathy*, condemned to a sameness that is nevertheless experienced as if it were a novel response to an entirely unique set of circumstances. In each case, Bennett's art explores how the colonial imaginary is deeply implicated in temporal logics and visual rhetorics, and that this relationship is not something which can be relegated to historical time or wiped clean by historical progress.

But Bennett does more than just diagnose the haunting effects of colonial representation. By re-presenting those effects, he creates a visual space in which the viewer can engage with their own subject position in a way that is psychological and contemporary rather than only analytic and historical. The temporal complexity of much of his art is not just critical but constitutive – in other words, the art itself is caught up in a temporal paradox that is essential to its productive effects. This is what I mean by distinguishing how Bennett's art works as representation from how it works as re-presentation. But to develop the point we need first take a step back and reflect on a certain debate within art history and theory.

More than almost any artist, Bennett believed that visual regimes are vital tools of colonial ideology. The aesthetic and the legal for him were two sides of the same coin. In this he surely betrays the influence of Erwin Panofsky, to whose essay on 'perspective as symbolic form' Bennett's work frequently gestures.⁶⁶ Panofsky famously argued that the development of perspective was a master trope that both drew on and framed the whole structure of Renaissance knowledge, and continues to govern how we perceive the world and our relationship to it. In painting after painting Bennett traces geometric figures and perspective schema over the top of Aboriginal landscapes and Aboriginal bodies. He suggests that western modes of perception – abstract, imperial, and objectifying – were therefore blind to the relations between land and people of the original inhabitants and complicit in their erasure.⁶⁷ In a painting like *Terra Nullius*

⁶⁶ Erwin Panofsky, and Christopher Wood, *Perspective as Symbolic Form* (New York: Zone Books, 1991); Hubert Damisch, *The Origin of Perspective*, trans. John Goodman (Cambridge, MA: MIT Press, 1994).

⁶⁷ See Simon Ryan, *The Cartographic Eye: How Explorers Saw Australia* (Cambridge: Cambridge University Press, 1996).

(*Teaching Aid*): *As Far as the Eye Can See*,⁶⁸ legal appropriation is tied, both literally and metaphorically, to the invisibility of cultures and peoples, and to the perspective grid through which they were viewed. Sight, organized through the dictates of western perspective, abstracted, disciplined, ordered, prioritized – owned – space. Aboriginal people, whose relationships to land were unable to be represented in these terms, were seen to be incapable of possessing legal title. The doctrine of *terra nullius* was not just a legal term; it encapsulated a way of seeing, or rather of failing to see.

There is no doubt that Bennett, an artist who went to art school relatively late in life, was considerably influenced by the theoretical material he encountered there. But this influence could sometimes come across as a trifle heavy-handed. There is no doubt that Panofsky inaugurated a revolution in art history due to the enormous breadth of his scholarship and his determination to always situate the artwork in its conceptual and historical context. For Panofsky, the key question was that of ‘*meaning in the visual arts*’;⁶⁹ art is treated as part of the history of ideas. But so forceful a presence was he, that generations of art historians have been trying to get out from under the weight of his influence. Considerable scholarship in recent years, such as that of Svetlana Alpers, has insisted that Panofsky radically overstated the hegemony of Renaissance perspective; indeed, to the extent that that hegemony has persisted, it was not so much artists but critics like Panofsky (and before him, Vasari) who were *responsible* for it. Alpers argues for a distinctly northern form of representation, in the golden age of Dutch art for example, which does not take the single spectator as its point of view and whose guiding metaphor might be the map, not the window.⁷⁰

If, for Alpers, Panofsky’s problem was one of over-generalization, for others, notably Georges Didi-Huberman and Hubert Damisch, the problem lay in his preoccupation with the matter of meaning.⁷¹ Their assault has been both more comprehensive and angrier. Alpers’s ‘referential bias’ is no more satisfactory than Panofsky’s ‘semiotic bias’.⁷² The former treats art as mimetic, the description of things in the world; the latter treats art as iconographic, code for some other thing.⁷³ Both imagine art history as a kind of detective work in which final answers can be given and ‘*meaning in the visual arts*’⁷⁴ conclusively determined. And this assumption, they argue, misses what art does, is, and how it works.⁷⁵ The difference goes back to the two great founding fathers of twentieth-century art criticism, Panofsky

⁶⁸ Gordon Bennett, *Terra Nullius (Teaching Aid): As Far as the Eye Can See*, 1993, synthetic polymer paint on canvas, 175 cm × 414 cm (Collection: Private, Melbourne).

⁶⁹ Erwin Panofsky, *Meaning in the Visual Arts* (Chicago, IL: University of Chicago Press, 1955).

⁷⁰ Svetlana Alpers, ‘Is Art History?’ (1977) 106 *Daedalus* 1–13; Svetlana Alpers, ‘Taking Pictures Seriously’ (1978–9) 10 *Simiolus* 46–50; Svetlana Alpers, *The Art of Describing* (Chicago, IL: University of Chicago Press, 1983).

⁷¹ Didi-Huberman, *Confronting Images; Devant le temps*; Hubert Damisch, *The Origins of Perspective; Théorie de la peinture. Pour une histoire de la peinture* (Paris: Seuil, 1972).

⁷² Didi-Huberman, *Confronting Images*, p. 244.

⁷³ *Ibid.*

⁷⁴ Panofsky, *Meaning*.

⁷⁵ Didi-Huberman, *Confronting Images*, p. 231.

and Aby Warburg – between explanation and expression, symbol and symptom.⁷⁶ Damisch associates Panofsky's project with the ideology of perspective that he analysed. Both represent efforts to 'fix the eternal world in space and extend the sphere of the ego into it'.⁷⁷ He emphatically rejects the attempt to reduce art to content and aesthetic effects to mere 'signifiers' of some underlying, legible, meaning.⁷⁸ So, too, according to Didi-Huberman, 'one cannot disentangle "pure reason" from "pure unreason" . . . except by disincarnating the intrinsic power of images'.⁷⁹ Note that word 'incarnation', which connects art to something bodily and material rather than symbolic and conceptual – we will have occasion to return to it.

To the contrary, they argue that an essential part of the experience of art is not and never has been reducible to questions of content or meaning. In this, they resist a wholly narrative or semiotic understanding of aesthetic experience; sustained perhaps by Walter Benjamin's often-quoted remark that 'history breaks down into images, not into stories'.⁸⁰ Works of art are not just depictions of a place or representations of a story or an idea. They are not simply signs that mimic or represent other, specifically linguistic, things. Instead, they constitute, incarnate, or open up a *space* in which the spectator experiences a disturbance in their equilibrium. The encounter that takes place is not with a narrative or history, but with an event that cuts through time. As I discussed in the Foreword, the study of artists' treatment of the Annunciation in Renaissance and pre-Renaissance art,⁸¹ that moment when according the Christian tradition, the angel of God became *present* to Mary, is telling. The idea of incarnation, of embodiment or material form, is an integral component of the relationship between Christian thought and art. It corresponds to a *mystical* presence that the artwork seeks not to represent or explain or remind us of, but rather to *summon*. It establishes art not as the mimetic representation of the past but as the space of an event made present. For Didi-Huberman as for Damisch well before him, all art is therefore an annunciation. Perhaps another way of putting this is to recall Hans Belting's famous distinction between an image as symbol or as icon; between its function as a 'likeness' – which since the Renaissance we have come to imagine as the only thing a painting can be – and its much earlier power as a 'presence'.⁸² Belting describes this is the history of the image 'before the era of art', but this temporal dividing line is, as we have seen,

⁷⁶ Particularly the Warburg of the late and incomplete *Mnemosyne Atlas*. See Georges Didi-Huberman, *L'image survivante: Histoire de l'art et temps des fantômes selon Aby Warburg* (Paris: Minit, 2002).

⁷⁷ Damisch, *The Origin of Perspective*, p. 287, quoted in David Packwood, 'Dream Perspectives – Hubert Damisch', in Nigel Saint and Andy Stafford, eds., *Modern French Visual Theory: A Critical Reader* (Manchester: Manchester University Press, 2013), p. 92.

⁷⁸ See Packwood, 'Dream Perspectives'.

⁷⁹ Didi-Huberman, *Confronting Images*, p. xxv.

⁸⁰ Walter Benjamin, *The Arcades Project* (Cambridge, MA: Harvard University Press, 2002), p. 467.

⁸¹ Didi-Huberman, *Confronting Images*, pp. 13–52; Georges Didi-Huberman, *Fra Angelico – Dissemblance and Figuration* (Chicago, IL: University of Chicago Press, 1995).

⁸² Hans Belting, *Likeness and Presence: A History of the Image before the Era of Art* (Chicago, IL: University of Chicago Press, 1997).

problematic. We cannot understand art's effects while we continue to seek to master its meaning and to rigorously police and compartmentalize a temporal distance that was and is alien to it. 'The history of art will fail to understand the visual efficacy of images so long as it remains subject to the tyranny of the visible.'⁸³

This traversal across time is key to art's force. Michel Serres has described the artwork as like a crumpled handkerchief.⁸⁴ Rather than an ordered topography, the folded cloth brings into close proximity otherwise distant times and objects, creating new juxtapositions and associations through the continuity of signs over time.⁸⁵ And it is worth remembering that Aby Warburg stands as the wellspring of this tradition no less than the semiotic and analytic approach raised to such a pinnacle by Panofsky. Warburg's *Mnemosyne Atlas* was driven by synchrony not diachrony. He wanted to explore the interplay of similar signs in different times, rather than the interplay of different signs at the same time. Neither can we approach works of art now except through the layers of meaning that have been added to it over time, creating a variety of complex links between the work and the present-day spectator through which a more total and intimate relationship is developed.⁸⁶ 'You cannot acknowledge the memorial dimension of history', wrote Didi-Huberman, 'without accepting at the same time both its anchoring in the unconscious and its anachronic dimension'.⁸⁷

With this in mind, we can begin to see that Bennett does not just *study* colonial representations. His art brings them into the present moment, queering the history of law, art, and colonial history in complex ways, making space for the viewer to encounter them anew, and in the process transforming their power. In other words, he does not merely insist on the contemporary salience of the colonial image archive. At every moment, we are in the presence of a new and equally primal scene, the possibility of a new start. 'Faced with the image, we are faced with time . . . faced with the image, the present and past are ceaselessly reconfigured.'⁸⁸ The 'fabulous retroactivity' of the colonial encounter, therefore, is not only the source of its hold over us, but also the site of its potential disruption.

Rupturing Time: Requiem

Reading art as a material presence that unscabs the wound in time is the first part of Didi-Huberman's twofold strategy to move beyond the reduction of art to

⁸³ Didi-Huberman *Confronting Images*, p. 52.

⁸⁴ Michel Serres, *Conversations on Science, Culture, and Time/Michel Serres with Bruno Latour*, trans. Roxanne Lapidus (Ann Arbor, MI: University of Michigan Press, 1995), p. 60.

⁸⁵ Mieke Bal, 'Dreaming Art', in Griselda Pollock, ed., *Psychoanalysis and the Image* (Oxford: Blackwell, 2006), p. 55.

⁸⁶ Ralph Dekoninck, 'Daniel Arasse's Joyful Visual Science', in Saint and Stafford, eds., *Modern French Visual Theory*, pp. 82–3.

⁸⁷ Didi-Huberman *Confronting Images*, p. 37.

⁸⁸ Quoted in Dekoninck, 'Daniel Arasse's Joyful Visual Science', p. 86.

iconography or iconology, in other words to accommodate its potential to disrupt the relationship between past and present.⁸⁹ *Requiem* (Figure 6.8), for example, juxtaposes a familiar image of the face of Truganini against a harsh landscape redolent of a flayed and ruined body, on which has been superimposed schematic Euclidean shapes drawn using standard perspective techniques and an alphabetic schema often deployed in renaissance textbooks – from whence, indeed, it quickly gravitated to law textbooks as a common way of visually schematizing property relationships.⁹⁰ Bennett marks the point of their convergence ‘CVP’, a reference to the Renaissance concept of the central vanishing point.⁹¹ Again, Bennett creates a network of resonances that float and collide. Obviously, the genocide of the Tasmanian Aborigines was in part a result of the limited nature of western legal perspective, its tendency to reduce landscapes and people to abstractions, either conformable to standard definitions of property, authority, and law; or if not, rendered invisible. Soon enough, of course, and particularly in Tasmania, this piece of abstract legal thought had very real material consequences. The ‘central vanishing point’ is a symbol for the disappearance of Tasmania’s first nations, lines of perspective critiquing a certain temporal logic which throughout the nineteenth and twentieth centuries was used to justify the fate of Aboriginal peoples, supposedly ‘doomed’ to extinction by the inevitable march of the modern world, left behind by modern art which was thought to have progressed further than theirs, and by modern law – ditto.

But this sense of the violence that dwells in the language of progress does not quite account for the image’s uncanny power. Truganini, often called the last full-blood Tasmanian, does not simply vanish over the horizon. She rises like a sun, sublimed among the clouds. Bennett’s use of an iconic image, here as elsewhere, interrogates the lazy cultural lexicon that we absorb and that unconsciously frames our worldview. But Truganini’s severe gaze nonetheless maintains a spectral authority. She continues to reprove the eyes trained on her and trained, likewise, to see past her. One might treat her ascension at the very moment of her requiem as a Levinasian move, ‘the face of the other’ which constitutes my own subjectivity and imposes an ethical responsibility.⁹² Such a reading oversimplifies I think the problem of representation. Bennett offers viewers not a face but an image and an icon, the

⁸⁹ See the discussion of Walter Benjamin’s ‘dialectics of images’ in Anthony Auerbach, ‘Imagine No Metaphors: The Dialectical Image of Walter Benjamin’ (2007) 18 *Image [C] Narrative* [e-journal]; Walter Benjamin, *The Arcades Project*, trans. Howard Eiland and Kevin McLaughlin (Cambridge, MA: Harvard University Press, 1999); Nigel Saint, ‘Didi-Huberman – Images, Critique and Time’, in Saint and Stafford, eds., *Modern French Visual Theory*, pp. 226–7.

⁹⁰ See several fifteenth- and sixteenth-century examples in Widener and Weiner, *Law’s Picture Books*.

⁹¹ In addition to sources cited above, see Samuel Edgerton, ‘The Renaissance Discovery of Linear Perspective’ (1978) 3 *Journal of Aesthetics and Art Criticism* 377.

⁹² In a vast literature, see Emmanuel Levinas, *Otherwise than Being, or Beyond Essence*, trans. Alphonso Lingis (Pittsburgh, PA: Duquesne University Press, 1981); Roger Burggraeve, ‘Violence and the Vulnerable Face of the Other: The Vision of Emmanuel Levinas on Moral Evil and Our Responsibility’ (1999) 30 *Journal of Social Philosophy* 29–45.



FIGURE 6.8 Gordon Bennett, *Triptych: Requiem*, 1989. Oil on canvas, 120 cm × 120 cm. (Collection: Queensland Art Gallery, purchased 1989 under the Contemporary Art Acquisition Program with funds from Hill & Taylor, solicitors through the Queensland Art Gallery Foundation, Brisbane; © Estate of Gordon Bennett)

re-presentation of a person who has themselves become the representation of a history. The symbolic and therefore artificial nature of ‘Truganini’, a woman whose fame rests on the sheer fact that she died, is a necessary component of the painting’s provocation.

The colonialist is a voyeur, as I argued in Chapter 3 in relation to August Robinson. He desires to see everything without ever being seen; he treats the colonized native like a picture or an object. But Jacques Lacan makes the point that the object – or the objectified subject – nevertheless gazes back at us, whether intentionally or otherwise, arousing in us an uncomfortable anxiety.

The gaze I encounter is not a seen gaze, that is, not an eye that I see looking at me, but a gaze imagined by me in the field of the other . . . the sound of rustling leaves heard while out hunting . . . a footstep heard in a corridor. And when are these sounds heard? At the moment when he has presented himself in the action of looking through a keyhole. A gaze surprises him in the function of voyeur, disturbs him, overwhelms him and reduces him to a feeling of shame.⁹³

Truganini's portrait returns to us the image of a figure we had thought to define and observe in this way. From the point of her disappearance, she turns back on us a gaze that elicits a feeling of shame – of having been caught out in the act of looking – rising unbidden like a blush.

And something more is going on. Lacan's famous discussion of Hans Holbein's *The Ambassadors* focuses on the extremely distorted anamorphic shape in the foreground that 'from some angles appears to be flying through the air, at others to be tilted . . . It is then that turning round as you leave, you apprehend in this form . . . What? A skull.'⁹⁴ The skull, in other words, is not visible from the standard position of the viewer but only comes into focus at the moment that we reorient ourselves in accordance with *its* perspective.⁹⁵ The sudden horror of our own mortality opens a rupture in the authority of our own perspective, our own right to look. This rupture is temporal no less than positional. Death stares back at us from a time at once unknown yet certain, slashing through the narrow temporal confines of the painting like a knife. We lose our control over the image and over our life.

So, too, Truganini's uncanny gaze confronts us from the other side, beyond her own death. She is a *memento mori*, an anamorphic death's head or the voice of conscience that whispers in our ear: *respice* – watch out.⁹⁶ Floating like Holbein's skull above and against the naturalism of the picture plane and incommensurable to its objective perspective and linear time, her forbidding countenance reminds us of our own inevitable dissolution in space and time. Her gaze cuts through the conventional temporal timeline of the picture, sending a shiver up and down the spine – a frisson of bad conscience on the one hand, and a frisson of our own CVP on the other. One has to change one's perspective, leave the room, and glance backwards over one's shoulder, to be caught in its trap.⁹⁷

It is easier to think of "Truganini" as a symbol than as a person; to think of her as *representing* the death of a people than as a flesh and blood individual whose death – as an event rather than as a 'meaning' – was real, not symbolic. Bennett challenges her function as pure representation and in the process brings her human life and ours into proximity. She interpellates the viewer, demanding that we look deep

⁹³ Lacan, *Four Concepts*, p. 84.

⁹⁴ *Ibid.*, p. 88.

⁹⁵ *Ibid.*, p. 92.

⁹⁶ Hendrik Simon Versnel, ed., *Triumphus: An Inquiry into the Origin, Development and Meaning of the Roman Triumph* (Leiden: Brill, 1970).

⁹⁷ Packwood, 'Dream Perspectives', pp. 93–4. The key point for Damisch is the removal of conscious authority within the dream, which therefore subjects the ego to a structure outside of it.

inside ourselves, to locate the ticking time bomb of our own mortality. Only once the trauma of that event is made *present* to us in the only way it can, which is to say outside of linear time, can we truly mourn the death of another human being – not only Truganini but each one of the thousands of Indigenous people who have died through some combination of colonial cruelty and indifference. *Requiem* creates a tension between these two versions of the gaze: the scopic regime of colonialism in art and law, which constitutes the terms of the temporal annihilation of Aboriginal people; and death's anachronic time and anamorphic perspective, troubling our distance from that history. Bennett opens the space for an annunciation: not a historical fact or a representational fantasy, but a trauma of loss made present.

Pan, *Flesh*, and *Irony*: Possession Island Revisited

The second element of this subversive strategy – this effort to replace art as meaning with art as event – lies in recuperating the materiality of the painted surface. A *symbol* forms part of an intelligible unity that makes sense of the whole of the work. But a *symptom* destabilizes this unity; it is the physical and material manifestation of something unresolved.⁹⁸ Even in works as detailed and scrupulously descriptive as Vermeer, in other words, art which according to Alpers is entirely comprehensible as a minutely accurate description of a thing or place, moments of painterly disruption disrupt its epistemological surface. This is the second way in which art breaks through the prison of historicity. The word Didi-Huberman uses is *pan*, by which he means the non-representational flesh of a painting which brings together two ecstatic moment: the artist's experience at the moment of its creation, and the viewer's experience at the moment of its reception.⁹⁹ A *pan* is a splash or a blur, a patch of colour or texture which is in and of the art rather than in and of the object being painted – the 'shimmer' of light on water, or the riotous 'shimmer' of colour on the surface of Vermeer's *Girl with a Red Hat*.¹⁰⁰ The very excess of colour over and above its representational meaning disturbs our ability to maintain mastery of the image. The *pan* or intrusion of materiality on the surface is experienced as a shock – it resonates as witness to an event that takes place *equally* in past and present. What we are drawn to is not the signified object but the act of signification itself, the picture's own speech act or utterance. "The detail is a semiotic object tending toward stability and closure, while the *pan* by contrast, is semiotically labile and open ... The *pan* reveals only figurability itself, in other words a process, a power, a not yet."¹⁰¹ It vibrates as pure body and pure potential.

⁹⁸ See also Mieke Bal, 'De-disciplining the Eye' (1990) 16 *Critical Inquiry* 506–31.

⁹⁹ Didi-Huberman, *Confronting Images*, pp. 17–19.

¹⁰⁰ Johannes Vermeer, *Girl with a Red Hat*, oil on canvas, 23 cm × 18 cm (Washington: National Gallery of Art, 1666); the example of this work, and the analysis of it, are both thanks to Professor Richard Sherwin.

¹⁰¹ *Ibid.*, p. 269.

The brightness of the yellow corner of a wall in a Vermeer or the glossy luxuriance of the application of paint by a Rothko or Newman or Pollock: the question is not so much what this ‘zone of coloured intensity’ *means* but rather what it *does*.¹⁰² The intrusion of paint disrupts the detail, the unity, and the illusion of the image. Without paying attention to these disruptive elements, we cannot account for the intensity of its effects on us. Materiality sabotages the mimetic illusion and yet intensifies our subjective and affective relationship with it. Perhaps this is the real miracle and emotional appeal of cave painting. Not that those ancient humans could have drawn a bison so cleverly, but that they could have felt the same joy of colour and line that we feel before the same image now. Even at a distance of thirty thousand years, there is something in the pleasure of the action of daubing colour and shape on a wall that is not simply documented but shared.

Thus the potential of art shifts from a past description to a present event, and from ‘the visibility of the visible’ to its ‘sacred’ and ‘incarnate truth.’¹⁰³ Art is incarnated – it has a *body*, in flesh and blood, not in mimesis but in experience, which enables it to continue living in the world. Nagel and Wood say this:

A merely forensic reconstruction of the past . . . leaves the art trapped within its original symbolic circuits. It tends not even to notice that the artwork functioned as a token of power, in its time, precisely by complicating time.¹⁰⁴

Possession Island (Figure 6.1) should be understood in these terms. Bennett’s disorienting layering of a version of Pollock’s ‘action painting’ over the top of the original image, combined with the white dots that echo a familiar form of Aboriginal art, violently disrupts its representational surface. Ironically, Howard Morphy, in his influential work on the Aboriginal art of the western desert, talks about the three dimensionality of dot painting as creating a ‘shimmer’ of experience on the surface of the art.¹⁰⁵ Morphy’s language uncannily echoes the transcendentalism of experience we observed above. In Pollock or in Bennett, as in Vermeer or Emily Kngwarreye, the ‘shimmer’ of glossy paint, shiny dots, or lurid splashes, transports the viewer into the *utterance* of the work – its speech act, as it were – in order to recuperate aesthetic experience from something passive and historical into an ongoing event. The encounter is not historicized but rendered fully contemporary – ‘a process, a power, a not-yet’.¹⁰⁶

Materiality is of fundamental importance to Bennett’s work because he consistently connects the flesh of art to the flesh of Aboriginal lives, bringing together questions of representation, experience, and encounter across different timelines

¹⁰² *Ibid.*, pp. 267, 246–9.

¹⁰³ Didi-Huberman, *Confronting Images*, p. 29.

¹⁰⁴ Alexander Nagel and Christopher Wood, ‘The Plural Temporality of the Work of Art’, in Saint and Stafford, eds., *Modern French Visual Theory*, pp. 38 and 41.

¹⁰⁵ Howard Morphy, *Aboriginal Art* (London: Phaidon, 1998), p. 68; *Ancestral Connections* (Chicago, IL: University of Chicago Press, 1991).

¹⁰⁶ Didi-Huberman, *Confronting Images*, p. 269.



FIGURE 6.9 Jackson Pollock, *Blue Poles*, 1952. Oil, enamel, aluminium paint, glass on canvas, 212.1 cm × 488.9 cm, National Gallery of Australia, Canberra. (Courtesy of National Gallery of Australia; © Pollock–Krasner Foundation/ARS, licensed by Viscopy, 2017). For the colour version of this figure, please refer to the plate section.

and different traditions. He describes ‘the over-painted Modernist trace of a Pollock skein as a metaphor for the scar as trace and memory of the colonial lash’.¹⁰⁷ Where abstract expressionism sought to retreat from representation to the primal materiality of paint, Bennett insists on returning it to the primal materiality of flesh.

This might be thought to be a highly problematic move, but Bennett doubles down on it. His use of Pollock to complicate this work, and specifically to bring it into relationship with Indigenous art on the one hand, and with colonial history on the other, was not incidental in the slightest. Consider *Blue Poles* (Figure 6.9), one of Pollock’s undoubted masterpieces, alluded to here and cited directly in another of Bennett’s works from this time.

Blue Poles holds a privileged place in Australian cultural history. It was purchased by the fledgling Australian National Gallery in 1973, igniting public controversy at the time but marking now – again through the magic of the *futur antérieur* – the belated emergence of a modern Australian butterfly from the chrysalis of British provincialism. But how can Bennett conceivably assert a relationship between Pollock’s New York abstractions and Australian colonialism, appropriating in this endeavour a work that is often taken to signify the very moment that Australia finally turned its back on its colonial past?

In the first place, let us not forget that the works of Pollock himself are not so purely ‘abstract’ as one might first suppose. On the contrary, they were produced by and seem to contain a visceral fury of physical activity that the canvas receives like

¹⁰⁷ Gordon Bennett, 10 October 1996, quoted in Gellatly, *Gordon Bennett*.

the scar of some violent impulse.¹⁰⁸ The notion of the image as the aftershock of a physical effort is not far-fetched. Pollock's 'action painting' was not figurative, but neither was it abstract in the sense of immaterial or conceptual. In him, paint and flesh already trade places. His painting traces the effect of his body in motion, without *representing* it in motion. Indeed, one might say that what distinguishes the work of Kazimir Malevich, then in a later generation Mark Rothko and Pollock, is the fact that they make no attempt to conceal the *work* of art. There is no smooth surface, neither a flawless representation or a sublime abstraction. In each case, their art traces as a revelation the work that went into making it. The art object, in short, records not a final outcome but an incomplete process.

Again, the alleged abstraction of western desert art, most notably in the tradition of dot paintings, is a familiar point of reference.¹⁰⁹ The corporeality of this art is far less appreciated. The correlation between flesh and paint, bodies, and canvas, lies at the heart – at once social, spiritual, and aesthetic – of many Aboriginal art practices. The relationship between identity and country is inscribed on the skin; the pliability of canvas and the bodily fluidity of ochre is not a metaphor for this relationship, but a tactile way of sustaining it, in ways that were traditionally smeared directly onto bodies and the land.¹¹⁰ Traditional Indigenous Australian art was also abstract but at the same time irreducibly material. In bringing together within a single frame familiar Aboriginal dot art on the one hand, and the palette and gestural abstraction of high modernism on the other, *Possession Island* offers not a facile appropriation of Pollock but a genuinely critical reading that works both ways.

Bennett's refusal to treat Pollock's work as abstract echoes a further critique. Abstraction, in law and in art alike, has tended to dismiss the material and the figurative from consideration, claiming for itself the mantle of purity, even of innocence.¹¹¹ Bennett's use of Pollock to render the scars left by a whip, or of Mondrian (in the *Home Décor* series) to construct the bars of an iron cage in which Aboriginal figures cavort,¹¹² categorically refuses to allow modern art this innocence. He draws the abstractions of western perspective, and the stereotyping of colonialism, into a larger critique of modernism,¹¹³ expressing a genuine ambivalence between the undoubted power of the western fine art tradition and the chilling

¹⁰⁸ Delia Ciuha, *Action Painting – Jackson Pollock* (Basel: Hatje Cantz, 2008); B. H. Friedman, *Jackson Pollock: Energy Made Visible* (New York: Da Capo Press, 1995).

¹⁰⁹ See Ian McLean, ed., *How Aborigines Invented the Idea of Contemporary Art* (Sydney: Power House, 2011).

¹¹⁰ Jennifer Biddle, 'Country, Skin, Canvas: The Intercorporeal Art of Kathleen Petyarre' (2003) 4 *Australian and New Zealand Journal of Art* 61–76; Jennifer Biddle, 'Breasts, Bodies, Art: Central Desert Women's Paintings and the Politics of the Aesthetic Encounter' (2006) 12 *Cultural Studies Review* 16; Biddle, *Remote Avant Garde*.

¹¹¹ Donald Kuspit, *Signs of Psyche in Modern and Postmodern Art* (New York: Cambridge University Press, 1993), pp. 87–8.

¹¹² Ian McLean, 'Gordon Bennett's Home Decor: The Joker in the Pack' (1998) 4 *Law Text Culture* 287.

¹¹³ The classic reference is Theodor Adorno and Max Horkheimer, *Dialectic of Enlightenment* (New York: Verso, 1997).

arrogance of its claims to transcend the corporeal, to define the universal, to hold the monopoly on novelty, and to progress inexorably towards the unchallenged heights of modernity.

Bennett returns abstraction back to the suffering body with which, he seems to say, it has always been surreptitiously implicated. Associating the lash of the paint as it hits the canvas with the lash of the whip as it sinks into flesh, connecting Pollock's oozing red dribbles and blue poles with welts and cicatrices left on human bodies, Bennett forces us to see legal and artistic history as mutually implicated: to consider the corporeal violence of which abstraction – abstract law, abstract logic, abstract humans, abstract ideologies, even abstract art – claimed ignorance. This has a particular salience in reassessing the narratives of colonialism. Modernist logic tells a story in which our societies progress closer and closer to *purity*. The counter-logic of colonialism, which as we have seen is the dark undertow of this ideal of purity, condemns more and more lives to be remaindered, or even sacrificed, because they fit so poorly with this *Bildungsroman*.¹¹⁴ Bennett exposes a gap between intentions and effects, vision and blindness, purity and violence. He brings the narrative triumph of abstract modernism, so exultantly argued by Clement Greenberg,¹¹⁵ into a closer proximity with traditional Aboriginal art, undermining the supposed gulf that exists between their manner and form. But at the same time he allows the shadow of colonial violence to fall between them, preventing any neat or theoretical assertion of their equivalence by reminding us of the violence of that relation, which a Whig version of history facilitated and that more recent art interpretations tend to forget.

Within the established canon of Australian art history, Bennett's incorporation of Pollock is equally subversive. To take one example: Frederick McCubbin is celebrated as one of the most important of the Heidelberg school, which in the late nineteenth century gave Australian visual art a distinctive vocabulary and colour. The work of McCubbin, like that of Tom Roberts and Arthur Streeton, introduced and applied the methods of Impressionism to Australian scenes and landscapes. But the work of the Heidelberg school is notable for its nationalist blind spots. Their art glorified the bush and celebrated the work of its white settlers – farmers, selectors, loggers, shearers. McCubbin never acknowledged the destruction of the physical environment or of the Indigenous people who had lived there for thousands of years.¹¹⁶ The colonial violence exercised against people and place is relentlessly

¹¹⁴ See Judith Butler, *Precarious Lives* (London: Verso, 2004).

¹¹⁵ See Clement Greenberg, *Art and Culture* (Boston, MA: Beacon Press, 1961); Clement Greenberg, *The Collected Essays and Criticism, Volume 4: Modernism with a Vengeance (1957–1969)*, ed. John O'Brian (Chicago, IL: University of Chicago Press, 1993).

¹¹⁶ See David Astbury, 'The Heidelberg School and Rural Mythology', 1982; Paul Foss, ed., *Island in the Stream: Myths of Place in Australian Culture* (New York: Pluto Press, 1988); Ian McLean, 'White Aborigines: Cultural Imperatives of Australian Colonialism' (1993) 7 *Third Text* 17–26; Robyn McCallum, 'Cultural Solipsism, National Identities and the Discourse of Multiculturalism in Australian Picture Books' (1997) 28 *Ariel: A Review of International English Literature*.



FIGURE 6.10 Frederick McCubbin, *Violet and Gold*, 1911. Oil on canvas, 72 cm × 130 cm, National Gallery of Australia, Canberra. (Courtesy of National Gallery of Australia). For the colour version of this figure, please refer to the plate section.

forgotten. Aboriginal people are wholly unrepresented. The work is nostalgic rather than realist, and historically naive.

Violet and Gold (Figure 6.10) is emblematic of the style. It takes its place in the conventional triumphalist narrative of Australian art history. Its antipodean beauty is celebrated, its politics effaced. The colonization of the landscape is subtly but powerfully romanticized. But look more closely at its surface and the multicoloured and scratched surface of the paint, lined and splotchy, begins to shimmer in a new way. On the one hand, look close enough (Figure 6.11) and McCubbin's figurative meaning breaks up, revealing a palette and texture that seems unmistakably Pollock-like in its physicality and *pan*. Even the trees start to look a lot like blue poles. With Bennett's eye, the temporal linearity that compartmentalizes Aboriginal, colonial, and modern art, collapses. But, again, the trace of Pollock in McCubbin now leaves a haunting trace of colonial violence too. The scars of this violence, albeit steadfastly omitted by the artist, lash and punish the surface of the image just the same – like the angular dissonances of a piece by Stockhausen, or the uncanny silence of John Cage, in which, if we only listen hard enough, the world has irretrievably left its mark.¹¹⁷

I can only report the shock of revelation I felt on discovering these associations. Reading McCubbin through Pollock and Pollock through Bennett opened an entirely new reading of the painting to me. I saw the trace and memory of the

¹¹⁷ Composed the same year as *Blue Poles*; see Karl Stockhausen, *Four Piano Pieces* (1952); John Cage, *4'33'* (1952).



FIGURE 6.11 Frederick McCubbin, *Violet and Gold*, 1911 (detail). For the colour version of this figure, please refer to the plate section.

colonial lash¹¹⁸ in the interstices of McCubbin's bush. The dark and silent undergrowth now took on a new inflection, as if the Aboriginal communities that used to inhabit these places were still there in some way – gazing back at us from the impenetrable recesses of the scrub, or absent but present like ghosts. McCubbin's omissions were no longer oblivious or naive; they filled the image with a loss.

Bennett's work *queers* the tradition of Australian painting in the precise sense of impelling us to see that work in a new way, against the grain.¹¹⁹ It is not at all a matter of rereading artists' intentions, but of generating new associations which, once implanted, cannot be forgotten. By creating new juxtapositions, he invites a reassessment of the narrative and experience of viewing Australian colonial art.

This is also a mode of temporality – a temporal logic that Bennett uses to great effect, against the oppressive temporalities of colonialism. Its name is irony – the use of anachronistic or unintended associations to reconfigure our emotional understanding of an event or a history.¹²⁰ The soldier who sees a dead rat by the side of the

¹¹⁸ Gordon Bennett, 10 October 1996, quoted in Gellatly, *Gordon Bennett*.

¹¹⁹ See Nikki Sullivan, *A Critical Introduction to Queer Theory* (Edinburgh: Edinburgh University Press, 2003); Quo-Li Driskill, *Queer Indigenous Studies* (Phoenix, TX: Arizona University Press, 2011).

¹²⁰ Shoshana Felman, 'To Open the Question' (1977) 55/56 *Yale French Studies* 5–10.

road as he marches off to war is not aware that his future is thus accidentally prefigured and put into perspective.¹²¹ But the irony is observed and comes to fruition at a later date and when seen through other eyes. In life and in art, the new is immanent in the old, awaiting some future encounter capable of noticing it. The transfigurative powers of a fabulous retroactivity work not only with, but against the colonial grain.

Bennett proposes a ‘preposterous history’¹²² that retrospectively subverts the verities and silences of Australia art history. All art, as we have seen, constantly reconfigures the relation between past and present. This suggests, among other things, new curatorial possibilities. It would be a revolutionary act to see three of Australia’s pictorial masterpieces – Bennett’s *Possession Island*, McCubbin’s *Violet and Gold*, and Pollock’s *Blue Poles* – side by side. The ironies exposed by this radical juxtaposition will facilitate a new discourse, not only about the history of Australian art, but of Australian colonialism. If only we give it a chance, art allows us not only to see the fabric of colonial ideology but to unpick it. The power of this irony might go surprisingly far. As two students noted in a discussion on Bennett’s work, the seat covers on Sydney trains weirdly resemble *Possession Island* in colour and style. So, here we are, right back at Botany Bay, ground zero of British settlement in Australia, with a queer reminder of the colonial lash every time we take a seat.¹²³

‘Of whom and of what are we contemporaries?’ asks Giorgio Agamben.¹²⁴ The contemporary is not simply an unselfconscious experience of the present. On the contrary, to be truly *with* time, to see ourselves in relation to it, requires us to look past this repetitive aphasia, refusing to be ‘blinded by the lights of the century’¹²⁵ in order to make out the darkness of the present.

This means that the contemporary is not only the one who, perceiving the darkness of the present, grasps a light that can never reach it destiny, he is also the one who, dividing and interpolating time, is capable of transforming it and putting it in relation with other times.¹²⁶

That work the art of Gordon Bennett takes up. He is Australia’s most contemporary artist not, alas, because he is still with us, nor yet because he is modern, a discourse which assumes an unbridgeable gulf between past and present. He is contemporary in Agamben’s sense because he is interested in the precise relationship between

¹²¹ See the treatment of irony in Paul Fussell, *The Great War and Modern Memory* (Oxford: Oxford University Press, 1975).

¹²² Mieke Bal, *Quoting Caravaggio – Contemporary Art, Preposterous History* (Chicago, IL: University of Chicago Press, 1999).

¹²³ Thanks to David Barden and Lottie Clark for the observation, to the students in jurisprudence at University of Technology, Sydney, and to Ass. Prof. Penny Crofts for the invitation to speak to her students on this and other occasions.

¹²⁴ Giorgio Agamben, *What Is an Apparatus? And Other Essays*, trans. David Kishik and Stefan Pedatella (Stanford, CA: Stanford University Press, 2009), p. 39.

¹²⁵ *Ibid.*, p. 45.

¹²⁶ *Ibid.*, p. 63.

times and periods, not as a matter of historical interest, but as the enduring structure of present experience. To be contemporary is to be untimely;¹²⁷ to straddle time, to be paradoxically related to our past, our representations of that past, and the effects of those representations. Bennett does not just diagnose the representations of colonial time – its mystic foundation, its cynical deferral, its repetitive repression, its arc of fateful progress. He uses aesthetic resources to create a temporally layered space – an untimely space, an uncanny time – in which the encounter can be re-presented, and re-imagined, and begun anew. The complexity of his relationship to history and his willingness not just to study it, but to see it as lived and active now, as worthy of our contemplation and our transformation, means that even after his death, his art remains, in the fullest sense of the word, contemporary.

¹²⁷ Friedrich Nietzsche, *Untimely Meditations*, trans. R. J. Hollingdale (Cambridge: Cambridge University Press, 1997).