'SCIENTIFIC & CULTURAL VANDALISM'

Mark Harris

The Academy's failure to accept the validity of the return of Aboriginal cultural heritage material.

This article examines the recent controversy surrounding the return of Aboriginal cultural heritage materials to the Tasmanian Palawa community in the light of the discursive practices deployed by members of the academy, notably archaeologists from La Trobe University. It is argued that the deficiencies of the current cultural heritage legislation arise more from the failure of non-indigenous Australia to 'locate' Aboriginal peoples within the drafting and implementation of the legislation than the process of constructing Aboriginal people according to certain limited stereotypes. While there is increasing evidence of academics disavowing the eurocentric practices of earlier anthropologists, archaeologists and historians, it is argued that the controversy surrounding the Tasmanian Aboriginal cultural artefacts demonstrated the inability of those within the academy to acknowledge Aboriginal voices and to engage to any degree in what Marcia Langton has termed 'intersubjectivity'.[1]

The dispute

The dispute between the Tasmanian Aboriginal Land Council (TALC) and the archaeology department of La Trobe University arose when a member of the department sought to renew permits for the possession of cultural artefacts that had been removed from four cave sites in the Southern Forests region in Tasmania in the period between 1987 and 1991. The artefacts numbered more than 400,000 pieces and included food remains, stone and bone tools, animal faeces and bits of shell. There was not any skeletal material in the artefacts removed as part of the Southern Forests Collection. Several of the permits which granted Professor Tim Murray and Professor Jim Allen the right to remove the artefacts from Tasmania had expired and, despite certain misgivings on the part of Professor Allen that the TALC 'was going to be hard line', he sought to renew the permits.[2] The basis of Professor Allen's concerns was the fact that the Tasmanian Government had promised to return control of cultural heritage materials to the Tasmanian Palawa community. The application for renewal was rejected in mid-1994 and there seemed a strong likelihood that the cultural artefacts would be returned to TALC.

In the ensuing months negotiations continued between the La Trobe academics and TALC, although there seems to have been no attempt to convene a meeting between representatives of the two parties. The La Trobe archaeology department viewed the threat of TALC forcibly removing the artefacts with sufficient gravity to prompt the closure of the department on Friday, 30 June 1995. Defending the decision to send the department's students home, the head of the School of Archaeology, Professor Tim Murray, noted that 'we had heard they were looking for a truck to take the stuff back'. In response the TALC chairman, Mr Roy Sainty, observed that the department was a 'dinosaur' in its refusal to return cultural artefacts.[3]

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The decision

On 24 July 1995 the dispute between TALC and the La Trobe University archaeology department was heard in the Federal Court in Melbourne. It was argued by counsel for La Trobe University that the dispute and the 'sense of urgency' had been manufactured by TALC and that the Tasmanian Government had been at fault in failing to implement a new system of permits, when there had been an extension of the right to possession until such time as the new system was introduced.[4] It was argued by counsel representing TALC that the archaeologists had been in unlawful possession of the artefacts and that they had therefore been conducting unauthorised research. Olney J found on the facts that the four permits issued to Professor Allen had expired, the earliest on 31 May 1991 and the most recent on 30 January 1993 (*Roy Sainty & TALC v Allen & Murray & La Trobe University*, unreported, Federal Court, 28 July 1995, No VG643/1995). The permit issued to Professor Murray on 27 March 1990 had also expired on 12 March 1991.

Among the four permits issued to Professor Allen, the most recent had not authorised the removal of the relics from Tasmania. It was also found that the issue of the permits had been conditional on the materials being returned to the senior archaeologist of the Department of Parks, Wildlife and Heritage upon their expiry. In the light of the published writings and statements attributable to Murray and Allen, Olney J expressed 'grave doubts as to their willingness to return the relics until they have concluded their research' (at 5). While Olney J did not consider it to be appropriate for the materials to be removed from Victoria, he did require that they be held at the Museum of Victoria until such time as the Minister for National Parks and Wildlife made a decision about the custody of the artefacts. On 3 August 1995, the Minister, John Cleary, requested the Federal Court to return all artefacts to the Senior Cultural Heritage Officer in the Parks and Wildlife Service and they were subsequently returned to Tasmania and stored in a government store in a Hobart industrial suburb.[5]

The decision by the Minister to request the return of the artefacts prompted Professor Allen to accuse him and the Tasmanian Government of 'scientific and cultural vandalism' and to challenge the wasting of money in returning the heritage material to the Tasmanian Aboriginal Land Council.[6] In response, Mr Cleary noted that Professor Allen had been holding the material illegally since his permits had expired and that he had only 'himself to blame for this regrettable state of affairs', for his failure to liaise with the Aboriginal community and involve them in the research.[7] The Tasmanian Government resolved in November that the artefacts should be returned to the local Aboriginal custodians. Professor Murray expressed concern at this juncture at the prospect that TALC intended to scatter the materials in the area from which they were originally removed and emphasised that his department would still 'welcome a chance to complete our analysis'.

Representations of 'Aboriginalism'

The dispute involving the Tasmanian Palawa cultural heritage materials was notable for a number of reasons. The first issue for consideration is that of 'ownership' of cultural heritage materials. While the *TALC* decision was ostensibly about the interests of Aboriginal cultural heritage being privileged over the scientific research of archaeologists, the central issue of 'ownership' of the materials was not seriously raised. The second point for consideration concerned the definition of 'relics' and the extent to which the legislation takes account of Aboriginal perceptions or voices. The *TALC* case was significant because it did not involve human skeletal remains or sacred items and therefore challenged non-indigenous conceptions of what constitutes 'cultural heritage materials'. The final issue that emerged concerned whether such cultural heritage materials were the common property of all humankind or were the 'cultural heritage' of Tasmanian Palawas. Closely linked to a consideration of this issue was the question of whether archaeologists (and other academics) had a right of access to the material. Put more succinctly, the question was one of 'who owns the past?'.

These questions can only be addressed meaningfully if we accept that implicit within the argument, consideration and resolution of the *TALC* case were modes of discourse which represented Aboriginal people in a certain way — the discourse of 'Aboriginalism'.[8] In the same manner that Said's *Orientalism* detailed the manner in which the Orient was an Occidental construction,[9] so too can the production of knowledge about Aborigines be seen as resulting in the images of 'Aboriginalism'. The knowledge production which generates 'Aboriginalism' can be traced to the Foucaultian notion of discourse, which is the 'practices which systematically form the objects of which they speak',[10] concerned with revealing 'the level of 'things said': the condition of their emergence, the forms of their accumulation and connection, the rules of their transformation, the discontinuities that articulate them'.[11] Muecke has identified some of the European discourses of Aboriginalism as being the 'Anthropological, the Racist and the Romantic'.[12]

Adapting Said's formulation of 'Orientalism' it can be argued that Aboriginalism is manifested in a number of ways. First, it is in the work done by those who research or write about Aboriginal people. Second, 'Aboriginalism' is established through distinctions made between Aborigines and non-Aborigines. Finally it can be seen in the establishment of corporate institutions for dealing with Aboriginal people.[13]

The construction of 'Aboriginalism' has occurred in every aspect of Australian life since the commencement of white invasion. In every academic discipline the representations of Aboriginal peoples have occurred without any reference to the voices of Aboriginal people. The construction of Aboriginal people as the 'Other' is done in their absence and confirms a relationship of power that is manifested in domination and subordination between, respectively, non-Aborigines and Aborigines. In the course of constructing Aboriginal people a process of binary opposition is deployed. Everything that the Aboriginal person is, defines what the non-Aboriginal is not. Invariably the representations made about Aborigines are that they are savage, imbecilic, childlike, lazy, or untrustworthy. So the Aboriginal is, as with Said's Oriental, 'contained and represented by dominating frameworks'.[14] The texts and images in the Aboriginalist tradition are therefore productive of essentialist representations of Aborigines. All Aborigines are reduced to the image constructed by the non-Aboriginal authors and there is no space for Aboriginal voices to contest the legitimacy of the representation. Within the hegemony of Aboriginalist discourses there is no latitude allowing, to borrow from Spivak, for the subaltern to speak.

This article is not intended merely to identify cultural heritage legislation as a manifestation of colonialist 'Aboriginalism'. Rather it seeks to question the 'location' of Aboriginal people within the legislation and to challenge the

notion that academics have divested themselves of the attitudes and approaches which characterised earlier 'Aboriginalist' writings.

Who defines and who 'owns' cultural heritage material?

The resolution of the dispute concerning the Tasmanian Aboriginal cultural heritage materials on one level could be seen to be a positive result for that State's Palawa community. In the case before the Federal Court, Olney J criticised the conduct and motives of the respondents while the Minister for Parks and Wildlife resolved that the materials should be returned to the local Palawa community. Cultural heritage legislation generally remains limited, however, by the fact that it is a 'European construction'.[15]

To argue, as was noted above, that the cultural heritage legislation in Tasmania is constructed by the discourse of Aboriginalism appears at one level to be justifiable. The legislation was drafted and implemented with little if any involvement by Aboriginal people. It is the legislation which dispenses rights over artefacts to Aboriginal people. While the cultural heritage legislation creates the framework for the control of Aboriginal artefacts it does not, however, create the artefacts. They exist of themselves and are not produced solely as a result of the discourse of Aboriginalism. In terms of the construction of Aboriginalism, it might also be argued that there is a tendency to replicate the same tendencies towards essentialism that are being criticised. To merely argue that cultural heritage legislation constructs a binary opposition of Aboriginal/non-Aboriginal does not take account of the fact that the *TALC* decision appears to have acknowledged Aboriginal voices in the ultimate destination of the artefacts.

A more useful critique of the cultural heritage legislation might be gained by reference to the theories of Homi Bhabha, who focuses on the space between the 'Colonialist Self' and the 'Colonized Other'.[16] It is this moment of indeterminancy and insufficiency which can, in the words of Perrin,[17] be 'prised open in order to dislodge the certainties of a colonial encounter between those with power and those without'. Just as Perrin seeks to 'locate' indigenous peoples within the framework of the 'Declaration on the Rights of Indigenous Peoples', so it might be argued that there are similar anxieties in the assertion of identity in the Tasmanian cultural heritage legislation.

In the *TALC* case it was not questioned by either party that the 'property in the relics is vested in the Crown' and that the Minister had the right to determine the question of control of the materials (per Olney J, at 3). These powers are vested in the Minister in the right of the Crown pursuant to the *Aboriginal Relics Act 1975* (Tas.), s.11. The administration of the Act also required that the five-member Aboriginal Relics Advisory Council should include *one* Aboriginal person chosen from a list submitted by an organisation which the Minister deems to represent persons of Aboriginal descent (s.4(2)(b)). In both of these requirements the assertion of Aboriginal identity is made contingent on the exercise of the non-indigenous Minister's power. The cultural heritage legislation can therefore be seen as an example of what Said has termed 'positional superiority', where the non-indigene is put in a series of possible relations with the 'Other' without ever relinquishing the upper hand.[18]

The other piece of cultural heritage legislation in Tasmania, the *National Parks and Wildlife Act 1970* (Tas.), contains similar provisions for the recognition of Aboriginal cultural heritage matters which also privilege the non-indigenous voices. 'Aboriginal relics', for example, are deemed to be under the control of the Secretary of the Department of Parks, Wildlife and Heritage. Significantly this legislation requires that the Governor should try to secure the services of an archaeologist as a member of the National Parks and Wildlife Advisory Council but there is no requirement for there to be a representative from the Aboriginal community on the Council (s.10(3)(i)). So the nature of Aboriginal cultural heritage materials is defined by reference to the parameters set by white legislators and there can be, as in the case of the two pieces of Tasmanian legislation, significant divergence in the definitions used. In the dispute concerning the Tasmanian cultural heritage materials the definition of 'relics' assumed significance as certain sectors of the media questioned the veracity of material that is 'neither human nor sacred but simply cultural'.[19] While the artefacts in the TALC dispute were covered by the Tasmanian legislation, it is evident that many sections of non-indigenous Australia have difficulties in comprehending the more holistic view of cultural heritage of Aborigines.[20] It should be stressed also that the emphasis upon control and ownership of Aboriginal cultural heritage materials being vested in the Minister or the Crown is not limited to Tasmania.

Who 'owns' the past?

The exclusion of Aboriginal voices from the discourse about Aboriginal people has meant that, until recently, the past and history were constructed solely in Western or European terms. As Swain has observed, '[u]ntil the 1960s, Aborigines were almost totally non-existent in history'.[21] The conspiratorial shunning of Aboriginal voices by the disciplines of history and anthropology was the subject of the Boyer lectures by eminent anthropologist W. Stanner. This occlusion of Aboriginal voices has not been confined, however, to the disciplines of history and anthropology. In 1983 one of the respondents in the *TALC* case observed that archaeologists argue that '. . . the past only exists in the sense that it is created by people in the present, whether from historical documents, oral traditions or archaeological evidence'.[22] Professor Allen then asked rhetorically whether the denial by Aboriginal people to archaeologists of access to sites could constitute a form of censorship. In the course of the dispute over the Tasmanian cultural heritage materials similar allegations were again raised. The differing conceptions of the importance of the cultural heritage materials were exemplified in the media treatment of the prospect of repatriation to Aboriginal communities of the cultural heritage material.

The media coverage of the La Trobe University archaeologist's views consistently focused on the prospect that the Palawa community might choose to deal with the cultural heritage material in a manner that would 'destroy' its scientific potential. One newspaper article, for example, referred to the possibility of the material being returned to its place of origin as the La Trobe archaeologist's 'nightmare' and noted that 'an alarmed Jim Allen' recalled that another prehistoric Tasmanian collection had been returned to its place of origin by its Aboriginal keepers by being 'thrown in a lake'.[23] The prospect of such an occurrence was also emotively equated by another academic, Professor Rhys Jones, with 'the burning of the books'.[24] The TALC did not deny the possibility that the cultural materials might be dealt with in such a manner and its spokesperson, Ms Karen Brown, noted that, 'We don't believe that if the Aboriginal

community decide to rebury it that that's actually destroying the material . . . in our eyes it's enhancing its cultural significance'.[25]

The manner in which the media chose to deal with the 'distress' of the archaeologists at the possible fate of the cultural heritage material only serves to emphasise a point made by a Koorie historian and land rights campaigner, Wayne Atkinson, as early as 1985, when he observed that:

> In today's scientific terms this [heritage] is regarded as archaeological evidence but really it is the tangible evidence of our ancestors' occupation of this continent . . . They are in fact Aboriginal sites, not archaeological sites. The term archaeological site is a convenient way of categorising sites in a European framework in which scientific significance assumes the main importance.[26]

Clearly scientific interests have been privileged above the rights or concerns of the Aboriginal community. This was also evidenced in the treatment by the ABC television science program *Quantum* of the dispute (14 November 1995). The report noted that the debate over the future of the Tasmanian artefacts 'has overshadowed the history the archaeological record was revealing. A story of how Ice Age man made a living in the harshest environment', and that the 'story was being pieced together by a team of archaeologists from Melbourne's La Trobe University'. The underlying premise of the *Quantum* story was clearly that only archaeologists have the credentials to 'tell the story of the past' and the dispute over the fate of the cultural artefacts simply served to 'overshadow' the higher purpose of scientific research.

It might certainly be argued that the archaeologists and the media here are engaging in another discourse of Aboriginalism. The binary opposition that emerges is clearly that of the scientific archaeologists compared with the 'unscientific' or emotive Aborigines. A more sinister aspect to the constructions of Aboriginalism that can be detected in this discourse is the inference that Tasmanian Palawas do not have a superior claim to the cultural material to that of non-indigenous Australians. Professor Jim Allen, for example, argued that:

> I have a legitimate claim on this material in the same way as the Tasmanian Aborigines have a legitimate claim on this material. How ownership can devolve down to one group of people who have a political view about this material doesn't strike me as being logical.[27]

An even more extreme articulation of the opposition to Aboriginal control of cultural heritage materials came from Professor Gough of the department of history at the University of Adelaide. The dispute between TALC and the La Trobe anthropologists, according to Professor Gough, was symptomatic of the creation of a new official religion from Aboriginal heritage legislation. The basis of indigenous claims to cultural heritage materials was ridiculed by Professor Gough, who argued that 'indigenous representatives own the remote past' and can 'forbid access to it by scientists'. Professor Gough also condemned the 'ritual abuse of the discipline of archaeology as a form of colonial exploitation' and observed that there would be astronomical odds against 'any present-day Aborigines in southern Australia having a close genetic affinity with the people who inhabited their regions 20,000 years earlier'.[28]

The Gough diatribe is illuminating because of the emphatic manner in which it seeks to diminish the connections between contemporary Tasmanian Palawas and the cultural heritage materials. The identity of Tasmanian Palawas is being questioned and, consistent with the Aboriginalist discourses of the past, Professor Gough attempts to deny Aboriginal people a voice in the representations that are made. While the address by Professor Gough can easily be consigned to the realms of colonialist writings there remains an element of uncertainty in the public pronouncements and writings of Professors Allen and Murray. As recently as 1992 Tim Murray seemed to advocate a closer relationship between Aborigines and archaeologists that might benefit the Palawa community in the task of hermeneutics. Murray urged that:

> . . . the tremendous dynamism of prehistoric Aboriginal societies can link with the demonstrated flexibility and resilience of Aboriginal people in the historic period to restore a cultural context other than the timeless Aboriginal person operating in timeless Aboriginal institutions.[29]

By the time that the *TALC* case had been resolved, Murray and Allen had shifted in their position and sought to validate their pre-eminent scientific claims to the materials. Allen maintained on the *Sunday* program, for example, that, 'I'm trying to extract out of it the story of the human past in the deep human past, which is involved in it and I think it's a story that doesn't simply belong to Aborigines, it belongs to all human beings'. Murray, on the other hand, warned that there was a tendency amongst Aboriginal activists to justify their exclusion of archaeologists through the practice of 'essentialism'.[30] The links which Murray had earlier spoken of forging between the 'timeless' Aboriginal presence and the contemporary Palawa community were suddenly questioned. In the same way that it might be argued that cultural heritage legislation cannot 'locate' the indigenous presence, so too do the La Trobe archaeologists seem confused as to whether their discourse should exclude or accommodate an indigenous presence.[31]

'A post-Mabo archaeology of Australia will be polyvocal . . .'[32]

Since the decision in *Mabo (No. 2)* was handed down on 3 June 1992 there has been an insistence from commentators in every academic discipline that this represents a new beginning for Australian society. The reality is certainly significantly less than that. Despite the fact that the *Native Title Act 1993* (Cth) purported to give legislative effect to the key tenets of the *Mabo* decision, there has yet to be a determination by the National Native Title Tribunal in favour of native title claimants. In fact the Federal Court's finding in the *Waanyi* case (*North Ganalanja Corp. & Bidanguu Aboriginal Corp. on behalf of the Waanyi v Queensland & Century Zinc* Federal Court, unreported, 1 November 1995, No. QG 34/1995) that the existence of a pastoral lease would be sufficient to extinguish native title can be seen as further evidence of the intention of the courts to read down and limit the scope of the *Mabo* decision. Similarly, recent cases involving native title rights to hunting and fishing have evidenced a very narrow reading of usufructuary rights in Australia. The dichotomy between what the *Mabo* decision promised and the reality that emerged has also been commented on by Henry Reynolds, who argues that the recognition of a native title right to property is inseparable from a continuation of the right to sovereignty.[33] In a similar vein it would seem apparent that cultural heritage matters should come within the ambit of native title rights. The insistence on some form of demarcation between cultural heritage issues and the custodianship over land must be viewed as an artificial, non-indigenous construction.[34] While Tim Murray might argue that the post-Mabo archaeology in Australia will

be 'polyvocal', it seems clear from the *TALC* case that the only voices of Aboriginal peoples will be those which the archaeologists will agree to. The stories being told in a post-Mabo Australia will remain those of non-indigenous Australians.

Conclusion

While the respondents in the *TALC* case were archaeologists, it was not intended that this article should seek merely to focus on one particular group of white 'experts'. The same tendencies to construct representations and to 'locate' Aboriginal people as different are evident in the discursive fields of anthropologists, historians and lawyers. Insofar as the *TALC* decision can provide lessons for the future, it is clear that the current review of the operation of the Commonwealth cultural heritage legislation under Elizabeth Evatt is long overdue. Similarly, the meeting of the Archaeologists Association of Australia in December 1995 could realistically be expected to take cognisance of Aboriginal rights to control, limit or exclude research in cultural heritage materials.[35] It can only be hoped that the recommendations from both forums take heed of the need for Aboriginal people to control cultural heritage materials in a meaningful way. In 1983 Rosalind Langford observed that; 'We say that it is our past, our culture and heritage and forms part of our present life. As such it is ours to control and it is ours to share on our terms . . .'[36] These views of Langford are even more pertinent today.

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23. Darby, above. The possibility of Aboriginal cultural heritage material being 'destroyed' is commented on several times by Murray, Tim, 'Creating a post-Mabo Archaeology of Australia', in B. Attwood (ed.), *In the Age of Mabo*, Allen & Unwin, 1995, p.86.
24. Darby, above. It is worth noting that the relationship between Rhys-Jones and the Tasmanian Palawa community is less than harmonious and the acrimony arising from his 1978 film 'The Last Tasmanian', which the Palawa community believes misrepresented their status and existence, is seen by some as the precursor to the recent dispute.
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