



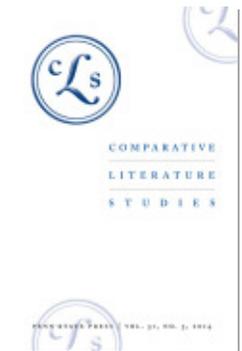
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AUSTRALIAN TRIALS OF TRAUMA:
THE STOLEN GENERATIONS IN HUMAN RIGHTS,
LAW, AND LITERATURE

Rosanne Kennedy

In recent years, there have been numerous calls for the field of trauma studies to expand beyond its European and North American origins. It is especially important, as the insights of trauma theory are extended to a wider range of geopolitical sites and conflicts and into resistant fields such as law, that critics attend to the ways in which the discourse of trauma travels, how it is used or resisted in specific national or local contexts, and with what cultural and political effects. To explore these issues, I offer a case study of Australian responses to the Stolen Generations in human rights, law, and literature—fields in which trauma theory has significant purchase. The term “Stolen Generations” refers to children of mixed descent who were removed from their Indigenous mothers and communities with the aim of assimilating them into white Australian culture. Children were sent to institutions run by churches or government missions, where they received limited education and were trained as domestics or station hands. Removal typically curtailed the children’s relations with Indigenous family and culture, since they were prevented from speaking their language and participating in cultural traditions. Many children faced difficulties integrating into white Australian society; they and their mothers often experienced lifelong feelings of loss.

In the 1990s, the Stolen Generations became something of a litmus test for how Australia would respond to its postcolonial legacy of violence, trauma, and injustice. As Dominick LaCapra has observed, for nations such as postapartheid South Africa and post-Nazi Germany—and, I would add, post-settler Australia—“the problem for beneficiaries of earlier oppression is how to recognize and mourn the losses of former victims.”¹ One of the most

significant efforts to acknowledge Indigenous losses was a 1996 national inquiry conducted by the Australian Human Rights and Equal Opportunity Commission, which investigated the policies, practices, and effects of child removal from the early twentieth century up until the 1970s. The publication in 1997 of the commission's final report, *Bringing Them Home*, was a major event in the moral life of the nation, bringing to public attention the nation's record on the treatment of Indigenous people and racial injustice. There followed national and community reconciliation events, such as Sorry Day, Stolen Generations test cases in the courts, and numerous productions in the arts.

From the perspective of the materials I consider, the challenge for trauma scholars today is not only to explore how literature bears witness to trauma. It is also to consider how and when authoritative institutions and players—Indigenous people and their advocates, judges and human rights commissioners, literary authors and the like—knowingly draw on the discourse of trauma to frame events and responses to them. In the first two sections of this article, I analyze the national inquiry and *Cubillo v Commonwealth* (2000) as cases in which the policy and practice of child removal was on trial. The national inquiry, conceptualized within a human rights framework, interpreted child removal as a traumatic experience that required healing and reparations. By contrast, *Cubillo* acknowledged the personal suffering of the applicants but denied the case for damages. *Cubillo* constituted a repetition rather than a resolution of trauma, and left members and supporters of the Stolen Generations feeling deflated. In the third section, I read Gail Jones's novel *Sorry*, which engages with trauma theory, as a reflection on the failure of the beneficiaries of colonialism to take responsibility for historical injustice. In concluding, I draw on Shoshana Felman and Lauren Berlant's opposing claims about trauma, law, and justice to consider the implications of this interdisciplinary Australian case study for the international field of trauma studies.

In this article, then, trauma theory comes into play both as a discourse to be analyzed for its effects and a tool of analysis. Kirby Farrell, who has pioneered a cultural approach to trauma, notes that when trauma moves out of the clinical domain and into culture its explanatory powers come to the fore.² My analysis of trauma as a discourse is informed by his observation that "whatever the physical distress . . . trauma is also psychocultural, because the injury entails interpretation of the injury."³ As a psychocultural concept, trauma is used to describe events that are considered, by a particular culture, to test the limits of human cognition and endurance. I engage most extensively, however, with Shoshana Felman's psychoanalytic approach to trials of trauma in law and literature. In *The Juridical Unconscious*, she extends

the insights of trauma theory to legal trials, analyzing juridical responses to acts of collective violence and genocide. In the wake of the Nuremberg trial, legal concepts such as “crimes against humanity” and “genocide” enable trials “to repair judicially not only private but also collective historical injustices.”⁴ Felman acknowledges, however, that law does not always rise to the demands of justice. Indeed, when a court confronts trauma, “it is often inflicted with a particular judicial blindness” that results in a repetition rather than a resolution of the original trauma.⁵ Felman’s analysis provides a productive framework for reading the national inquiry and *Cubillo* as trials of trauma. She also places legal trials in dialogue with literary texts, modeling an approach that is fruitful for analyzing *Sorry*.

The Australian materials foreground race and postcolonial trauma as conceptual issues that demand further attention in trauma studies. I share Ann Cvetkovich’s view that if the field is going to fulfill its promise of becoming cross-cultural, “The project of investigating racial histories needs to be part of an interdisciplinary trauma studies.”⁶ Incorporating histories of race and colonialism into trauma studies is challenging because acts of racist and colonial violence do not necessarily conform to the notion of the “traumatic historical event.” Although the American Psychological Association has abandoned the definition of trauma as an “event outside the range of ordinary experience,” the singular shocking event, such as 9/11, still stands as a paradigm in much trauma theory. On this model, intimate sexual and domestic violence against women and girls, which typically occurs in private, and racialized abuse and violence, often go unacknowledged as trauma. Cvetkovich’s insight that “everyday forms of racism . . . which are institutional or casual . . . don’t always appear visible except to those who are attuned to them” is particularly relevant to the Stolen Generations, who were routinely institutionalized.⁷ Abuse was hidden from view, and institutionalization was legitimated as “in the child’s best interests.” Today, in high-profile legal trials, it is excused on the grounds that it was acceptable according to the “standards of the time.”

An analysis of Stolen Generations trials and texts also entails addressing contested issues of childhood memory and injury, which merit further consideration in trauma studies. In recent decades, scandals concerning recovered memories of childhood sexual abuse and fraudulent memories of childhood trauma have incited skepticism concerning “the authenticity and reliability of testimony given by children, or by adults about childhood experiences of victimization.”⁸ Reported child abuse is often not believed, as it uncomfortably challenges normative assumptions about the innocence of children and the morals of adults in positions of authority and care. In the

national inquiry and in *Cubillo*, witnesses were remembering events that had occurred forty or fifty years earlier, often when they were young children, which raised doubts about the reliability of memory. Concerns about childhood memory are exacerbated by differences of language, belief, and experience—evident in Justice O’Laughlin’s evaluation of Lorna Cubillo’s testimony. In revisionist Australian fictions, including those only tangentially related to the Stolen Generations, the figure of the child is prominent. In *Sorry*, for instance, the child is a significant vehicle for conveying the ways in which traumatic violence ruptures both the innocence of childhood and cognitive frames of understanding. In concluding, I consider the ethical and political effects of trauma theory as a frame for understanding and responding to the nation’s settler colonial history.

Bringing Them Home: *Legitimizing Stolen Generations Trauma*

The national inquiry was initiated in response to lobbying by Aboriginal activists and organizations such as Link-Up, which helped members of the Stolen Generations make contact with separated family. In 1995 Michael Lavarch, the attorney general of Australia, tasked the Human Rights and Equal Opportunity Commission with “trac[ing] the past laws, practices and policies which resulted in the separation of Aboriginal and Torres Strait Islander children from their families by compulsion, duress or undue influence, and the effects of those laws, practices and policies” and with “examin[ing] the principles relevant to . . . compensation.”⁹ The national inquiry was headed by Sir Ronald Wilson, previously a justice of the High Court of Australia, and Mick Dodson, Australia’s first Aboriginal and Torres Strait Islander social justice commissioner, and included several Indigenous and non-Indigenous commissioners. The national inquiry was neither a legal trial nor a truth commission. It did, however, expose to public judgment the historic treatment of Indigenous people, particularly women and their children, and the regime of compulsory assimilation, which gave it the status of a historic “trauma trial.” Trauma trials, Felman argues, grant “authority . . . to trauma” by transforming individual into collective trauma, and private into public trauma.¹⁰ The national inquiry was groundbreaking in articulating and transmitting the traumatic memories of child removal and in identifying the devastating effects on Indigenous lives and communities that persist to this day. It legitimated a new idiom in Australian culture—the

Stolen Generations—that provided a “collective framework of perception” and a “vocabulary of collective memory.”¹¹ It brought feelings and events that had been experienced as purely personal into the public sphere and transformed private memory into a larger collective story that had national and international significance.

Viewed from the distance of fifteen years, it is clear that the key feature of the national inquiry that gave it the status of a trauma trial was the credibility it granted to Stolen Generations testimony. Commissioners traveled to major cities and regional centers, where they heard testimonies from over five hundred survivors of child removal.¹² The testimonies described childhoods scarred by physical, sexual, and emotional abuse and adulthoods marred by unstable relationships and violence. Like sexual trauma, the kinds of affective experiences associated with child removal “are lost in discourses of trauma that focus only on the most catastrophic and widely public events (war, genocide, the Holocaust).”¹³ As a public record, the historic significance of the national inquiry resides, in large part, in its unprecedented creation of a public “archive of feelings” that documents and transmits the emotional and psychological effects of child removal and its legacy in the present.¹⁴ *Bringing Them Home* opens by acknowledging that it contains material that “is so personal and intimate that ordinarily it would not be discussed” in the public sphere.¹⁵ It legitimated these confidential testimonies by presenting extracts as evidence of the harm done to the Stolen Generations and their families. This national archive of Indigenous feelings constituted a collective emotional and moral truth that supported a demand for collective recognition and justice.

State and commonwealth policies authorized child removal on the grounds that it was in the “best interests of the child.” Challenging this presumption, the national inquiry drew on the testimonies and the submissions of Indigenous organizations such as Link-Up in New South Wales to articulate child removal as a traumatic event: “Separation and institutionalization can amount to traumas. Almost invariably they were traumatically carried out with force, lies, regimentation and an absence of comfort and affection. All too often they also involved brutality and abuses. Trauma compounded trauma” (196). Citing evidence from psychiatrists and psychologists, *Bringing Them Home* acknowledged that an intergenerational legacy of trauma was continuing to manifest in Indigenous communities in high levels of violence, alcohol, and drug dependency, family breakdown, self-harm, and suicide. By interpreting child removal and institutionalization as traumatic stressors, the national inquiry made Indigenous suffering visible and endowed it with the moral

authority typically reserved for victims of recognized historic injustice, such as the Holocaust. Indeed, Link-Up's submission to the national inquiry, cited in *Bringing Them Home*, draws an analogy between the experience of child removal and the Holocaust, rhetorically declaring "This is our Holocaust."

The national inquiry also exhibits characteristics of a trauma trial in its use of international legal concepts. It contentiously found that the removal of children of mixed descent constituted a grave human rights abuse and that removal, in certain cases, could be classified as genocide under the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide (271–72).¹⁶ The convention, informed by Raphael Lemkin's definition of genocide, encompasses "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group," including by "forcibly transferring children of the group to another group" (271–72).¹⁷ This understanding of genocide recognized the destruction of the cultural life of a group through a means other than mass killing.¹⁸ By foregrounding the traumatic effects of child removal, the national inquiry contributed to a revisioning of the history of settlement in Australia from a critical rather than a monumental perspective.

Like other historic trauma trials and truth and reconciliation commissions, the national inquiry had both a pedagogical and moral dimension. The national inquiry had a significant impact on Australian collective memory of settler colonialism. It recognized that "the actions of the past resonate in the present and will continue to do so in the future" and that "the alienation of Indigenous societies today" is a product of "the laws, policies and practices which separated Indigenous children from their families" (3). It aimed to educate non-Indigenous Australians about the catastrophic effects of dispossession and child removal on Indigenous peoples. William Deane, the governor general at the time, mediated the reception of *Bringing Them Home*, positioning Australians as a witnessing public.¹⁹ He cautioned that the legacy of child removal "cannot be addressed unless the whole community listens with an open heart and mind to the stories of what happened in the past and, having listened and understood, commits itself to reconciliation" (3). *Bringing Them Home* made fifty-four recommendations for reparation and prevention of future wide-scale removals. A change of government in 1996, however, meant that many of the recommendations were not implemented. Favoring "practical" rather than "symbolic" reconciliation, John Howard, then prime minister, notoriously refused the recommendations for a federal parliamentary apology and a reparations tribunal. Consequently, members of the Stolen Generations who wanted recognition of and compensation for the harms they suffered choose to litigate their claims in court.

"Missed Encounters": Stolen Generations in the Courts

In 1996, two plaintiffs from the Northern Territory, Lorna Cubillo and Peter Gunner, brought a test case for the Stolen Generations against the Commonwealth of Australia in the Federal Court of Australia. Counsel for the applicants summarized the charge:

These cases concern great injustice done by the Commonwealth of Australia to two of its citizens. By the actions of the Commonwealth, Lorna Cubillo and Peter Gunner were removed as young children from their families and communities. They were taken hundreds of kilometres from the countries of their birth. . . . They were made to live among strangers, in a strange place, in institutions which bore no resemblance to a home. They lost . . . the chance to grow among the warmth of their own people, speaking their people's languages and learning about their country. They suffered lasting psychiatric injury. . . . Decades later, the Commonwealth of Australia says in this case that it did them no wrong at all.²⁰

A high-profile trial, *Cubillo v Commonwealth* presented the court with the opportunity to pass judgment on historic practices of child removal and compulsory assimilation. The community saw the case as determining whether members of the Stolen Generations could expect justice from the Australian legal system. Here, I focus on law's confrontation with trauma in Cubillo's case.

In 1947 Lorna Cubillo was removed from Philip Creek Native Settlement in the Northern Territory, when she was eight years old, along with sixteen other children of mixed descent. After traveling on the back of the truck for two days, the group arrived in postwar Darwin, and Lorna was committed to the Retta Dixon Aboriginal home, where she remained until she was eighteen. Philip Creek and the Retta Dixon Home were both administered by the Aborigines Inland Mission. The director of Retta Dixon, Amelia Shankelton, orchestrated the removal of the children from Philip Creek. Les Penhall, a cadet officer in the Director of Native Affairs office, drove the truck that transported the group. Cubillo, who recalled a happy childhood prior to her removal, felt that she had been taken from a loving family to be raised in a cold and uncaring institution (para. 650). While an inmate at Retta Dixon Home, she lost her language, her Aboriginal heritage, and her relations with family. She only saw her Aboriginal mother, Maisie, once before she died and was unable to communicate with her. The court

accepted that she suffered a serious beating by one of the staff. When she left Retta Dixon, she faced a number of hardships, including marriage to a violent, alcoholic man, sons who were in and out of prison, and cancer. Nonetheless, Cubillo had pursued education and gained employment in the Public Service.

Cubillo, Gunner, and their legal team faced the challenge of translating their pain, suffering, and loss into recognizable legal claims. As Justice O’Laughlin noted, “a matter of social conscience” does not necessarily translate into “a legal cause of action” (para. 79). Identifying an actionable legal claim was particularly difficult because, in the so-called first Stolen Generations case—*Kruger v Commonwealth* (1998)—the High Court of Australia upheld the constitutionality of the Northern Territory’s Aboriginal Ordinance (1918), which authorized the removals of Cubillo and Gunner. This ordinance appointed the Director of Native Affairs the legal guardian of all Aboriginal children, including children of mixed descent, regardless of whether they had a living parent. The ordinance granted the director, or those acting on his behalf, the discretionary power to remove a child from its mother, where he deemed removal to be “in the best interest of the child”; the mother’s consent was not required. In *Krueger*, the High Court rejected the applicants’ claim that the ordinance authorized genocide by permitting the transfer of children of a racial group to another group with the intent of destroying the culture. All justices concurred that the ordinance lacked genocidal intent; it was not “punitive legislation” but was designed to benefit the children. Thus, *Krueger* blocked further cases on the grounds that removals of mixed descent children were neither unconstitutional nor genocidal.

Cubillo and Gunner did not challenge the legality of their removal. Instead, they claimed that the Director of Native Affairs, or those acting on his behalf, did not in practice exercise the powers of guardianship in their best interests. They sued the commonwealth for wrongful imprisonment and for breaches of statutory duty, fiduciary duty, and a duty of care. They sought damages arising from mental and emotional distress and post-traumatic stress, loss of cultural, spiritual, and social life, and loss of entitlements under the Native Title Land Rights Act. Cubillo sought exemplary and aggravated damages for the commonwealth’s “wanton, cruel and reckless indifference to her welfare and rights” and for causing “substantial humiliation, distress and injury to her feelings” (para. 28). The case raised legal issues relating to evidence, the various duties the applicants claimed they were owed, and vicarious liability. The cases were tried together before Justice O’Laughlin over three months in 1998. By then, the issue of the Stolen Generations had achieved significant visibility, and the findings of the national inquiry were

fresh in the minds of the public. In an opinion of several hundred pages, Justice O’Laughlin finds in favor of the commonwealth.²¹

One of the achievements of *Bringing Them Home* was that it brought into visibility the systemic nature of child removal and recognized it as a collective injury. In his opinion, O’Laughlin mentions the Stolen Generations and *Bringing Them Home*, thereby indicating to the public that the court was not blind to what had been taking place (para. 80).²² He resolutely refuses, however, any notion that the case might be representative of the Stolen Generations. “The trial,” he states, “is . . . limited to the personal histories of Lorna Cubillo and Peter Gunner and . . . the implementation of the policies of the Commonwealth . . . between 1947 and 1963 . . . and [how they] affected the applicants in these proceedings” (para. 69). By narrowing the focus to “two individuals cases” he rejects the framing of child removal as a collective injury. Citing the judgment in *Nulyarimma v Thompson*, a case involving land rights, O’Laughlin seeks to dampen expectations that the trial will pass judgment on history or make reparations for the past: “It is not within the Court’s power, nor is it its function or role, to set right all of the wrongs of the past.”²³ He rejects the claim that child removal was systemic, finding no evidence of a “blanket policy” of removal in the cases of Cubillo and Gunner. The absence of “crucial witnesses” and “documentary records” makes it impossible for him to determine precisely why Cubillo had been removed (para. 442). Nonetheless, he finds that her removal broadly accorded with the policy operating at the time, which was to remove illegitimate children of white fathers. He speculates that since her biological mother had died, Lorna might have appeared to outsiders who were unfamiliar with Aboriginal kinship networks to be an orphan.

One striking feature of O’Laughlin’s opinion is the tension between the recognition and the denial of trauma. He explicitly uses the term “trauma” several times throughout the opinion, appearing to legitimate Cubillo’s claims of pain, suffering, and post-traumatic stress. For instance, he refers to “the emotional and psychological trauma that may be occasioned” by child removal and describes the removal of the children from Philip Creek as “a traumatic event” (para. 107). If damages are warranted, he maintains they would arise “from the trauma of being forcibly removed . . . where the children did not want to leave and . . . were aware that their families did not want them to leave” (para. 1536). He criticizes Shankelton’s description of the removal for “understat[ing] grossly the sorrow and despair of that day” (para. 443). O’Laughlin acknowledges the potential of child removal to produce traumatic effects and to that extent appears to authorize trauma. In his devastating assessment of Cubillo’s testimony,

however, he reveals a limited understanding of the effects of trauma on memory, logic, and behavior. He repeatedly uses the discourse of trauma without considering the implications of trauma for legal methods or issues of justice. The denial of trauma is most evident in his approach to and assessment of testimony.

O'Laughlin's approach to testimony is, in many ways, diametrically opposed to that of the national inquiry. Human rights commissioners listened with "open hearts and minds"—exemplifying Dori Laub's psychoanalytic insight that empathetic listening can aid healing.²⁴ They did not subject the testimonies to a process of proof, nor corroborate them with documentary evidence or the testimony of other witnesses. O'Laughlin distinguishes the forensic process of the court from an empathic approach. "The task of the Court," he asserts, "is to examine the evidence—both oral and documentary—in a clinical manner, devoid of emotion." He further clarifies his forensic approach: "Where evidence has a logical probative value, a judge will rely on it; where it contains discrepancies, displays inadequacies, is tainted or otherwise lacks probative force, the judge will, in all probability reject it." (para. 118). The experience of trauma, however, is frequently marked by difficulties in remembering, gaps in narration, and an inability to recall with precision the scene of violence, all of which could produce "discrepancies" that would reduce narrative coherence. Moreover, trauma frequently gives rise to belated memory, in which survivors experience intrusive memories of traumatic events long after they occurred.

The belated nature of the case raised concerns about the fallibility of memory, particularly regarding memory of events from early childhood. O'Laughlin repeatedly questions and rejects sections of Cubillo's testimony, which did not always conform to the court's expectations of consistency and rationality. While he doesn't believe she was "deliberately untruthful" he expresses concern about her "ability to recall, accurately, events that occurred so many years ago," when she was a small child (para. 125). One example that particularly troubled him was her testimony about an alleged experience dating from her early childhood at Banka Banka, a station some twenty-five miles from Philip Creek. She testified that she was with her grandmother when two patrol officers stopped her and washed her leg. One then identified her to the other as a "half-caste." She claimed that the officers, whom she named, took her from her grandmother to another depot. This testimony was not material to the case, since the trial concerned her removal from Philip Creek four years later. O'Laughlin, however, doubts its veracity, and questions how she—a four-year-old who spoke little English—could understand or remember the word "half-caste" (para. 402). The opposing counsel had

questioned Cubillo's psychiatrist on what a four-year-old would remember, and he agreed that she would be unlikely to remember the details of such an incident. O'Laughlin describes this testimony as "subconscious reconstruction" (paras. 405, 446, and 593). Cubillo and Gunner, he speculates, had on numerous occasions "unconsciously engaged in exercises of reconstruction, based, not on what they knew at the time, but on what they have convinced themselves must have happened or what others may have told them" (para. 125). Ironically, although Cubillo and Gunner had been removed and institutionalized and had suffered as a result, the judicial methods for assessing their testimony effectively put them, rather than the commonwealth, on trial.

Cubillo reveals a clash between two differing approaches to testimony. In advocacy contexts such as the national inquiry, oral history, and testimonial archives projects, testimony is valued for the subjective insights it provides about a person's experience of an event, regardless of whether the testimony is factually correct in every detail. In the courtroom, however, testimony is judged and valued in terms of factual veracity. In the courtroom, Cubillo's testimony's was questioned under cross-examination. She may have felt that the constant questioning of her interpretation of events silenced her before the law. For instance, she testified that at Retta Dixon she was "flogged" for speaking her native language. In response to cross-examination, Cubillo reiterated testily: "I was flogged, I was flogged, I know what happened to me. . . . [P]eople like you removed me" (para. 588). In this exchange, Cubillo testified that she was punished for speaking her language: in other words, she would be silenced unless she conformed to Western cultural norms by speaking English. In the courtroom, when she asserted "I know what happened to me," she was attempting to force the court to hear her on her own terms. This is the crux of the matter: that her experience was being questioned and judged by the same colonialist regime that deemed it acceptable to remove her in the first place. To be heard, she had to conform to the expectations of the court, just as when she was a child, she had to drop her native language and learn to speak English. When she and the other children were removed from Philip Creek, the wailing of the children, their mothers, and the community was not "heard" by authorities. Felman argues that when a court confronts trauma, "it is often inflicted with a particular judicial blindness that unwittingly reflects and duplicates the constitutional blindness of culture and of consciousness toward the trauma. A pattern emerges in which the trial, which tries to put an end to trauma, inadvertently performs an acting out of it."²⁵ When O'Laughlin interprets Cubillo's testimony as "subconscious reconstruction," and claims that she is prone to "magnifying" events and allowing her unhappy memories of Retta

Dixon to distort her testimony, he rejects her accounts of her experience for failing to conform to legal expectations. The legal methods of questioning, cross-examining, and rejecting parts of her testimony may have constituted a repetition rather than a resolution of the original trauma of removal. This interpretation is suggested by Cubillo's own words in court: "I feel defeated" (para. 650).

While O'Laughlin acknowledges the trauma of child removal, he denies that the trauma stems from racial abuse or discrimination. He alleges, for instance, that Cubillo and other children of mixed descent were removed not because of their race but because they were the illegitimate children of white fathers who had deserted them and who were "living in tribal conditions with their Aboriginal mothers" (para. 162). They were removed out of a "sense of responsibility, perhaps misguided and paternalistic," in the belief that caring for them in institutions where they could receive a Western education would promote their integration into white Australian society (para. 162). For Cubillo, however, race was at the heart of her allegations. She clearly linked the trauma she suffered to racial identity, as it was conceptualized by authorities. Her testimony, taken as a whole, reiterated the point that she was selected for special treatment—for removal, transportation, institutionalization, and flogging—on the grounds that she was regarded as neither indigenous nor white but of mixed descent. This was the import of her claims about the incident at Banka Banka. Whether her account is factually true in all its particulars, children like her were identified by patrol officers as "half-caste" and on that basis were identified for removal. Indeed, a few years later, Lorna was removed from Philip Creek Native Settlement because she was of mixed descent.

O'Laughlin recognizes the potential for child removal to produce trauma and acknowledges that Cubillo has a "lasting psychiatric illness from which she will not recover" (para. 1537). He focuses, however, on her individual reactions rather than the violence to which she and other children were subjected. For instance, he points out that some of the inmates of Retta Dixon spoke highly of the staff and their experience; thus, not everyone who was removed was as "sensitive" and negative as she was. In describing her post-traumatic stress as an individual reaction, O'Laughlin denies the collective nature of the events and the traumatic effects they had on individuals and communities around Australia. Through the technique of individuating trauma—largely a result of the structure of the trial—*Cubillo* reverses the findings of *Bringing Them Home*, which represented removal as a systemic, collective injury. In his opinion, O'Laughlin renders

trauma banal: he equates it with any other injury that can be the subject of a torts claim.

Cubillo stands as an example of a ‘missed encounter’ between law and trauma. Explicating Felman’s analysis, legal theorist Austin Sarat observes that violence is sometimes done “directly by legal officials . . . and by citizens acting under a dispensation granted by law.”²⁶ Yet, because violence occurs “with all the normal abnormality of bureaucratic abstraction, the blood spilled is often untraceably dispersed, and in this dispersal we see evidence of the “missed encounter” that is law’s relationship to violence.”²⁷ *Cubillo* starkly reveals the violence of law—that is, the way the law protects state-sanctioned violence through the “normal abnormality of bureaucratic abstraction.” *Cubillo* sued the commonwealth, but the commonwealth claims that “it played no part in her removal and it also says that it has no vicarious responsibility for the conduct of the Director or the conduct of the mission or its staff” (para. 118). O’Laughlin engages in a long and complex analysis of the issue of vicarious liability and of relations between Shankelton, the Aborigines Inland Mission, the Director of Native Affairs, and the commonwealth. Ultimately, however, he agrees with the commonwealth’s position that it cannot be held accountable. In refusing to hold the commonwealth responsible for actions undertaken in line with its policies, *Cubillo* legitimated the violence done to Indigenous people by statutory law and all the actions the law authorized and granted immunity to the government. Rather than bringing justice to members of the Stolen Generations or enabling closure or relief for them, *Cubillo* exacerbated the original trauma.²⁸ It mimicked the repetitive structure of trauma—deepening rather than healing the wounds of colonialism.

Cubillo was a “critical legal event” in that the legal crisis—the law’s refusal to address larger issues of justice—represented a larger cultural crisis.²⁹ While O’Laughlin limited the trial to narrow legal matters of liability and precedent, the Stolen Generations, their supporters, Indigenous people, and the public saw the trial as about something more than pedantic legal issues. They saw it as a test of whether the Australian courts could recognize the law’s complicity in colonialism, and could acknowledge its own blindness to injustice against Indigenous people. Thus, the trial provoked “a crisis of legitimacy and a cris[is] of truth . . . around a critical traumatic content.”³⁰ In refusing to acknowledge the collective dimension of the case, the court refused to acknowledge and hear the historic issues of injustice and trauma that the case raised.

"The Eye of Childhood": Traumatic Witnessing in Gail Jones's Sorry

While the Australian government and courts have refused reparations for past wrongs, novelists have pursued the work of revisioning the past and mourning Indigenous losses. Gail Jones's novel, *Sorry*, published in 2007, is offered as an act of literary reparation. It tells the story of a white Australian girl, Perdita, who struggles to remember and atone for her unwitting complicity in a crime that results in the wrongful incarceration of her Indigenous friend Mary. Perdita, the ten-year-old daughter of eccentric, alienated British migrants, impulsively stabs her father, Nicholas, when she witnesses him raping Mary. As her father's blood spurts on the girls, Perdita represses the horrifying knowledge of what she has done. Sixteen-year-old Mary, who has come from a convent to help the family after Perdita's mother, Stella, sinks into depression, confesses and is incarcerated. Perdita spontaneously develops a debilitating stutter, and the events that took Mary and her father from her become literally unspeakable. The novel narrates the story of Perdita's recovery of her memory and speech under the guidance of a gifted Russian doctor. *Bringing Them Home* positioned white Australians as witnesses to rather than as participants in the history of colonization and child removal. By contrast, *Sorry* is told from the perspective of the child of a perpetrator who is both complicit in the injustice and a beneficiary of it. The novel may be read as an allegory of the inability of white Australians, and of their institutions, to witness their own complicity in acts of violence against Indigenous people. Perdita benefits from Mary's sacrifice, but she also inherits—like Australians today—the responsibility of atoning for her father's crime, and her own unwitting crime against Mary. Oddly, however, Perdita is represented as psychologically complex while Mary is an anemic character. The rape she suffers is merely a vehicle for exploring Perdita's traumatic amnesia.

In *Sorry* complicity is explored in relation to the larger ethical issue of compassion—of recognizing and responding with "appropriate distress" to the suffering of others, both proximate and distant.³¹ The novel is set in and around Broome, a small town populated by Japanese and Malay pearl divers and Aborigines, with a minority of whites, in the remote northwest of Western Australia in the early 1940s. In February 1942, thousands of Dutch refugees from Indonesia were passing through Broome to Perth, seeking shelter from the Japanese. On March 3, 1942, Japanese pilots based in East Timor attacked Broome, killing scores of Dutch refugees crammed into flying boats on the harbor. This scene, which Perdita witnesses from the safe distance of the beach, forms an important historic context for the novel's

exploration of belated witnessing. Observing that “war may destroy scale altogether,” *Sorry* juxtaposes the intimate gendered and racialized trauma of sexual assault with the historic, public trauma of World War II and the Spanish influenza that kills Dr. Oblov’s two sisters when he is a boy (184).

Trauma discourse has become a favored metaphoric vehicle used by writers to explore experiences of and responses to personal and collective violence and injustice. In *Sorry*, Jones explicitly cites a clinical understanding of post-traumatic stress to fashion a narrative about the cultural and psychological obstacles to witnessing and narrating trauma. For instance, Dr. Oblov tells Perdita that the aim of the therapy is “that she should one day tell her own story with simplicity and lucidity” (174). What are the effects of representing white Australian complicity in colonial violence and racist injustice on the model of trauma and recovery? To explore the significance of speechlessness as a trauma trope in *Sorry*, I draw on Walter Benjamin’s analysis of historical trauma and silence. To consider the figure of the child and the sentimental politics of *Sorry*, I turn to Berlant’s analysis of the politics of “true feeling.”

Speechlessness as Trauma Trope in Sorry

Sorry signals “unspeakability” as a trope from its first sentence: “This is a story that can only be told in a whisper. There is a hush to difficult forms of knowing” (3). After Perdita stabs her father, Mary whispers: “Don’t tell them” (3). Felman’s reading of the life and thought of Walter Benjamin—a “story about the relation between silence and justice”—provides a surprising insight into this postcolonial Australian novel.³² Benjamin advances a theory of history as trauma and a correlative theory of the historical conversion of trauma into insight.³³ He recognizes that “the traumatized—the subject of history—are deprived of a language in which to speak of their victimization.”³⁴ Whereas “traditional theories of history tend to neglect the speechlessness of trauma,” Benjamin develops “the expressionless” as a literary concept to identify the ways that trauma is registered through gaps and ruptures in language and narrative rather than through direct statement. The “expressionless” are “those who . . . have been historically reduced to silence[,] . . . those whom violence has treated in their lives as though they were *already dead*.”³⁵

In *Sorry* Jones explores the ways violence and injustice render individuals “expressionless” in an Australian historical context. *Sorry* registers the

trauma of history—Benjamin’s insight that the traumatized are denied a language—metaphorically, through the disturbances to speech that afflict the characters. Perdita, with a severe stammer, becomes “historically expressionless”: “Perdita realised that the speechless, the accursed, gradually vanish. She noticed . . . how frequently she was overlooked” (146). Through her inability to be heard, she is aligned with Mary, who comments wryly that that “no one will believe a bush black unless they are confessing to a crime.” There is an important difference, however, between Perdita’s and Mary’s silence: Perdita, traumatized by what she saw and did, represses the events and cannot recall them; Mary knows what happened but remains silent so as to protect Perdita and perhaps also herself. Whereas Perdita and Mary both have insight into their own positioning as “speechless,” Stella’s speechlessness is of a different order: she responds to violence by reciting Shakespeare—who had answered “all the Big Questions”—substituting his impersonal literary language for her own expression. Perdita’s father, Nicholas, a Cambridge graduate, is also rendered “expressionless”—he writes only a few articles and not the magisterial work of anthropology he had fantasized.

In *Sorry* complicity in trauma is also figured through the trope of blindness, signified through Perdita’s difficulty learning to look and to take on the ethical responsibilities of the witness. The novel positions her, an isolated, neglected child, as a reluctant witness to violence, both domestic and public. The first time she sees her father raping Mary, through a crack in the bedroom door, “Perdita was not really sure what it was that she saw[;] . . . she did not want to know. She turned her face to the wall and shut her eyes tight” (60). Reflecting on Perdita’s refusal to look, the narrator poses a fundamental ethical question of the novel: “What witness was this, that Perdita could not bear to contemplate?” (60). Shifting seamlessly between first-person and third-person indirect discourse, the narrative recounts Perdita’s struggles to become an active witness to violence as she emerges from childhood into adolescence. Part 4 opens with an older Perdita recalling the day she saw, from the distance of the beach, the bombing of the Dutch refugees. Both “witness and not witness,” Perdita has nightmares in which a baby disintegrates in her arms, as if she had seen the carnage at close range (135–36). Stella is also a blind witness: Perdita belatedly remembers, in the course of her therapy, the sound of her mother’s voice gleefully reciting *Macbeth* when she entered the room and saw that Perdita had stabbed her father. As national allegory, the novel engages readers in reflecting on how beneficiaries of settler colonialism fail to witness the violence and injustice inflicted on Indigenous people.

Jones, like Benjamin, is concerned with how the trauma of war renders individuals speechless. *Sorry* extends Benjamin's insights beyond war, linking the condition of speechlessness to gendered and racialized sexual abuse and domestic violence. (In this regard, the novel addresses some of the themes that Felman discusses in her analysis of the O. J. Simpson trial.) Unspeakability results not only from traumatic shock; it also signifies "difficult forms of knowing"—knowledge that is disruptive or unwelcome. Perdita's story can only be told in a whisper because it is incomprehensible within normative ideologies of race and gender, which dictate that white men do not rape black girls and that white daughters do not kill their fathers. Even when Perdita recovers her memory and is able to tell her story, she does so in a whisper because it is an unwelcome story, a story that disturbs the gendered and racialized norms of white Australian society. One effect of setting the scene of traumatic violence in the domestic sphere, however, is that it obscures the structural violence of the law, as demonstrated in *Cubillo*. It renders the violence and injustice that Mary suffers the chance result of a lone predator rather than the outcome of systemic injustice toward Indigenous people.

Sorry does not immediately reveal Perdita's complicity in her father's death and Mary's incarceration. Rather, the narrative mimics the structure of trauma as a belated memory that is not directly accessible to consciousness. Like Benjamin's writings about his young friend Heinle, who committed suicide as an act of protest against impending war, Perdita's story "keeps moving in circles, as though around an empty, silent center" (39). The narrator repeatedly describes Perdita's efforts to recall what exactly happened the day her father was killed: "So much depends on details that are forensically dim, and the blind-spotted nature of a child's recollection" (124). When she tells Aboriginal friends of Mary's incarceration, she "found it more and more difficult to speak; her mind was clouding over as if it was impossible to reach the details of what had occurred" (147). When she first attempts to tell Dr. Oblov her story, "she realized, with the force of a revelation, that she was not at all sure who had killed [her father]. . . . Her mouth became muddled; she could not speak" (165). As Dr. Oblov predicts, Perdita does learn to tell her story simply and with lucidity. As she narrates "the tale of her discovery . . . Perdita heard, to her amazement, her own verbal recovery. The knotted stutter was almost entirely gone" (195). In these explicit descriptions of her recovery lies the conundrum of the novel as witness to trauma. It is a commonplace of trauma theory that the bewildering affect of trauma is best registered through literary devices such as flashback, nonlinear structure, ellipses in language, and uncertainty about whether events occur in the register of the

real or the imaginary. For instance, Felman understands the expressionless in literature to be “an utterance that signifies although and because it has no possibility of statement.”³⁶ *Sorry*, however, represents the psychological effects of traumatic experience directly, through narrative description, rather than indirectly. The novel’s explicit, almost didactic representation of trauma and recovery reduces its affective impact—at least on this reader. It is a novel that engages the reader intellectually rather than emotionally, and, thus, it does not work on the level of what Toni Morrison calls “emotional memory.”

Trauma, the Figure of the Child and “National Sentimentality”

The point of departure for *Sorry*, never directly stated, is the issue of justice for the Stolen Generations, and John Howard’s refusal to offer a parliamentary apology.³⁷ Readers are told that Mary, of mixed descent, is taken from her Aboriginal mother when she is six years old and raised in a convent. Mary later learns that her mother dies of grief at the loss of her stolen child, rolling into a campfire and allowing herself to be consumed by flames. Mary’s removal and her mother’s tragic death are only mentioned in passing. The novel approaches the Stolen Generations indirectly, through the broader theme of “damaged childhoods.”³⁸ In *Sorry*, damaged childhoods, racial violence, and trauma are condensed onto the figure of the vulnerable and traumatized child. Perdita, Mary, and Billy, a deaf-mute, all suffer from damaged childhoods. The damaged childhood that the narrative relates in most detail is Perdita’s. Stella tells her, when she is a young child, that her name, Perdita—“the lost one”—comes from Shakespeare’s play *The Winter’s Tale*, in which the king steals his wife’s newborn infant out of jealous paranoia that the child is illegitimate. The infant is abandoned in a distant land, and her mother is presumed to have died of grief. Only many years later, in a comic twist, is Perdita reunited with her mother and father. Perdita reads into her name an allegory about her mother’s feelings toward her own marriage: like Hermione in *The Winter’s Tale*, who takes the form of a statue during the years her daughter is missing, Stella “was resigned to a life immobile and tyrannically fixed. She could have escaped my father but she did not” (28). Clearly, however, Perdita’s name also links her fate to Mary’s. Whereas Perdita is separated from her mother for long periods as a result of Stella’s mental illness, it is Mary who is literally stolen from her mother. In addition to the loss of her mother’s love, Mary suffers the violence of rape. The figure of the Aboriginal girl or young woman raped by a white man is

a recurrent symbol for the violence and hypocrisy of settler colonialism in postcolonial Australian fiction. What is more curious in *Sorry* is the projection of trauma, witnessing, and regret for failing to apologize onto the figure of the vulnerable but complicit white child. Why does a ten-year-old girl carry the burden of unwelcome knowledge? Of complicity? Of the need to say “sorry”? What work is done culturally by figuring historical trauma and injustice through the girl?

The figure of the traumatized child in *Sorry* suggests the relevance of Lauren Berlant’s analysis of national sentimentality in the Australian context. Berlant is critical of “the place of painful feeling in the making of political worlds.”³⁹ She aims to challenge “a popular belief in . . . national sentimentality, a rhetoric of promise that a nation can be built across fields of social difference through channels of affective identification and empathy.”⁴⁰ “Sentimentality,” Berlant argues, “is the means by which mass subaltern pain is advanced in the dominant public sphere, as the true core of national collectivity. It operates when the pain of intimate others burs into the consciousness of classically privileged national subjects, in such a fashion that they feel the pain of flawed or denied citizenship as their pain.”⁴¹ In *Sorry*, subaltern pain and injustice is mediated through the frame of trauma, witnessing, and apology. Perdita’s blocked memory, as well as the unwillingness of her mother to corroborate her story to the police when she does recover her memory, prevents Perdita from the comfort of securing justice for Mary. What is particularly striking, however, is displacement of the trauma and pain that Mary might rightly feel onto Perdita, as if Mary’s pain burs into Perdita’s consciousness. The narrator describes Perdita’s anguish when she realizes that Mary, who is paying for her crime, is suffering an injustice: “She sobbed uncontrollably for what she believed was her heartless forgetting. She sobbed for her mother’s deception and her own self-delusion and . . . for Mary’s extraordinary sacrifice, and for Billy Trevor’s mute and lonely witness” (195). Striking in this passage is the language of sentiment: Perdita affectively identifies with each of these figures. Later, when she confronts Mary about her sacrifice, Mary responds: “Deeta, I chose. I chose to help you eh?” (203). Perdita later realizes “this was the point at which she should have said ‘sorry.’”

Perdita deeply regrets her failure to apologize to Mary, who pays for her crime. This scene of regret for an apology not offered can be described as a “fantasy reparation.” Berlant describes the logic of fantasy reparation as involving a “therapeutic conversion of the scene of pain and its eradication to the scene of the political itself.”⁴² Perdita imagines her failure to apologize as a failure of “affective identification and empathy.”⁴³ Reflecting on

Mary's incarceration, Perdita thinks she "should have imagined what kind of imprisonment this was, to be closed against the rustle of leaves and the feel of wind and of rain, to be taken from her place, her own place where her mother had died, to be sealed in the forgetfulness of someone else's crime" (204). Perdita imagines Mary's incarceration in terms of how it would feel not only to be deprived of liberty but also "to be taken from her place, her own place where her mother had died" (204). It's not only Mary's lack of freedom that Perdita tasks herself with imagining; it is also Mary's removal from "her place" and, ultimately, from her mother. In the context of a public debate about the prime minister's refusal to apologize to the Stolen Generations, the title of the novel, *Sorry*, completes the logic of "fantasy reparation": it connects the scene of suffering conveyed in the narrative to the external scene of the political—and offers itself as an act of reparation to all of those indigenous people who had been removed from their families and their place as a result of settler colonialism.

Conclusion

What is there—still—to say about trauma theory? What insights does this interdisciplinary Australian case study contribute to the field? The value of an interdisciplinary approach in trauma studies is that it invites critics to analyze the ways in which the language and discourse of trauma is being deployed in a range of authoritative sites—both political and aesthetic—and to consider its effects. What is striking across the range of materials I have examined is the way a clinical discourse of trauma is used to render incommensurate experiences of suffering and injustice intelligible across fields of social and historical difference. Berlant's critique of "trauma's seduction of politics" provides welcome insight into the cross-disciplinary appeal of trauma as an explanatory concept. She contends that in the United States, "questions of social inequity and social value are now adjudicated in the register not of power but of sincere surplus feeling."⁴⁴ As a result of the respect granted to painful feeling in the national public sphere, "subalternized groups attempt to forge alliances on behalf of radical social transformation through testimonial rhetorics of true pain."⁴⁵ Although "subaltern pain is not deemed universal," it is, Berlant contends, "deemed universally intelligible, constituting objective evidence of trauma."⁴⁶ These insights, I believe, have significant purchase in the Australian context—in some ways, *Bringing Them Home* exemplifies what Berlant describes as a "politics of true feeling." To bring Indigenous

pain and suffering into national visibility was, in the Australian context, potentially transformative for relations between white and Indigenous Australians. The universal intelligibility of true pain, as well as the desire of people to identify across sites of social difference, was demonstrated in the overwhelming public response to the Stolen Generations—manifested, for instance, in the outpouring of regret expressed in “Sorry Books” signed by thousands of Australians.

Berlant, however, is critical of a political strategy grounded in exposing trauma and suffering because it leads to the expectation, on behalf of subaltern groups and their advocates, that trauma is “reparable by the law and the law’s more privileged subjects.”⁴⁷ She questions this faith in law’s ability to repair trauma. It is unlikely that, for instance, the same law that protected legislation that discriminated against Indigenous people—and granted them far fewer rights than white Australians—would now find in their favor. In *Krueger* and *Cubillo*, the faith of Indigenous litigants and their supporters in the Australian courts to repair historic injustice and suffering was shown to be misplaced. In these cases, the violence of the law was exposed, and “in this very violence something rotten in law is revealed.”⁴⁸ In the Australian context, that “something rotten” is law’s complicity with and protection of colonial racism. At the end of his long judgment, O’Laughlin claims that Cubillo and Gunner wanted him “to impute improper motives to the Commonwealth” (para. 1557). This, he says, he was not prepared to do.

Bringing Them Home uses trauma discourse to explain the continuing effects of Indigenous child removal. By contrast, *Sorry* uses trauma theory to reflect on the position of the white beneficiary who is not only an unwitting perpetrator of violence but is also traumatized by the acts of violence she witnesses and commits. Mary’s position does not change, however, as a result of Perdita’s insight into her complicity. Readers are left with the sense that Perdita’s failure to apologize to Mary has more significance for Perdita’s image of herself as a friend than it has value for Mary. In representing Perdita’s desire to respond with “appropriate distress” to Mary’s sacrificial suffering, *Sorry* risks a sentimental response to the violence and injustice of settler colonialism—a response that grants the privilege of expressing compassion to the white character. *Sorry* can also be read, however, as a novel that challenges white Australians to consider the ethical and political obligations that are conferred on them as beneficiaries of colonialism.

Notes

1. Dominick LaCapra, *Writing History, Writing Trauma* (Baltimore, MD: Johns Hopkins University Press, 2001), 45.
2. Kirby Farrell, *Post-Traumatic Culture: Injury and Interpretation in the Nineties* (Baltimore, MD: Johns Hopkins University Press, 1998), 7.
3. Farrell, *Post-Traumatic Culture*, 7.
4. Shoshana Felman, *The Juridical Unconscious: Trials and Traumas in the Twentieth Century* (Cambridge, MA: Harvard University Press, 2002), 11.
5. Felman, *The Juridical Unconscious*, 5.
6. Ann Cvetkovich, *An Archive of Feeling: Trauma, Sexuality, and Lesbian Public Cultures* (Durham, NC: Duke University Press, 2003), 6.
7. Cvetkovich, *An Archive of Feelings*, 6.
8. Leigh Gilmore, "Jurisdictions: I, Rigoberta Menchu, The Kiss, and Scandalous Self-Representation in the Age of Memoir and Trauma," *Signs: Journal of Women, Culture and Society* 28.2 (2000): 695.
9. The terms of reference were formulated with regard to the Australian government's obligations under the Human Rights and Equal Opportunity Commission Act (1986).
10. Felman, *The Juridical Unconscious*, 7.
11. Felman, *The Juridical Unconscious*, 106.
12. Annette Wieviorka contends that whenever testimony is collected and archived today, including in trials and truth and reconciliation commissions, it bears the trace of a paradigm that gained legitimacy in the Eichmann trial (*The Era of the Witness* [Ithaca, NY: Cornell University Press, 2006], xiv–xv).
13. Cvetkovich, *An Archive of Feelings*, 3.
14. Cvetkovich, *An Archive of Feelings*, 244.
15. *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (Sydney: HREOC, 1997), 3. Hereafter cited by page number.
16. The national inquiry's finding of genocide has been extensively discussed and debated by historians and at law. For excellent analyses, see Ann Curthoys and John Docker, "Defining Genocide," in *The Historiography of Genocide*, ed. Dan Stone (New York: Palgrave Macmillan, 2008), 9–41, and Robert Van Krieken, "Cultural Genocide in Australia," in *The Historiography of Genocide*, 128–55.
17. Since Australian courts did not find "intent to destroy," the concept of "cultural genocide" is legally ineffective in Australia. Indigenous peoples strongly support its use to convey their "heartfelt . . . sense of inflicted violence, pain and suffering" from settler-colonialism (Van Krieken, "Cultural Genocide in Australia," 131).
18. Among historians working in the field of genocide studies, the finding of genocide has prompted a reexamination of Lemkin's analysis of colonization and genocide and has resulted in comparative studies of genocide in Australia and in pre-Nazi Germany, thereby expanding understandings of genocide beyond the popular image of mass killing most readily associated with the Holocaust. See A. Dirk Moses, *Genocide and Settler Society: Frontier Violence and Stolen Indigenous Children in Australian History* (New York, NY: Bergahn, 2004).
19. For further discussion of this point, see Rosanne Kennedy, "An Australian Archive of Feelings: The Sorry Books Campaign and the Pedagogy of Compassion," *Australian Feminist Studies* 26.69 (2011): 257–79.
20. *Cubillo v Commonwealth of Australia* (2000) FCA 1084, 174 ALR 97, para. 2, http://www.austlii.edu.au/au/cases/cth/federal_ct/2000/1084.html (accessed 1 September 2011). Hereafter cited by paragraph number.
21. There has been a good deal of insightful commentary and analysis of the *Cubillo* case. For an overview, see Ann Curthoys, Ann Genovese, and Alex Reilly, *Rights and Redemption: History, Law, and Indigenous People* (Sydney: University of New South Wales Press, 2008).

22. O' Laughlin mentioned *Bringing Them Home*, as well as the apologies offered by some state and territory parliaments, "so that members of the general public may appreciate that the Court has, at all times, been aware of these matters."
23. (1999) FCA 1192, 165 ALR 621 at 638–39.
24. See Shoshana Felman and Dori Laub, *Crisis of Witnessing in Literature, Psychoanalysis, and History* (New York: Routledge, 1992), 71–72.
25. Felman, *The Juridical Unconscious*, 5.
26. Austin Sarat, "On Missed Encounter(s): Law's Relationship to Violence, Death, and Disaster," in *The Claims of Literature: A Shoshana Felman Reader*, eds. Emily Sun, Eyal Peretz, and Ulrich Baer (New York: Fordham University Press, 2007), 391.
27. Sarat, "On Missed Encounter(s)," 391.
28. In their analysis of the trial, Curthoys, Genovese, and Reilly comment that: "The responsible scholarship to the judgement . . . challenges law to review its historical blindness to Indigenous experiences under settler colonialism. At the centre of this scholarship is a critique of law's inability to escape its complicity in the colonial project, and its ability to write out . . . the experiences of Indigenous peoples" 137.
29. Felman, *The Juridical Unconscious*, 4.
30. Felman, *The Juridical Unconscious*, 5.
31. Gail Jones, *Sorry* (North Sydney: Vintage, 2008), 185. Hereafter cited by page number.
32. Felman, *The Juridical Unconscious*, 5.
33. Felman, *The Juridical Unconscious*, 10.
34. Felman, *The Juridical Unconscious*, 33.
35. Felman, *The Juridical Unconscious*, 13–14.
36. Felman, *The Juridical Unconscious*, 13.
37. Jones discusses the issue of apology in an afterward to the novel (215–16).
38. Felman discusses damaged children in *The Judicial Unconscious*.
39. Lauren Berlant, "The Subject of True Feeling: Privacy, Pain and Politics," in *Cultural Studies and Political Theory*, ed. Jodi Dean (Ithaca, NY: Cornell University Press, 2000), 128.
40. Berlant, "The Subject of True Feeling," 128.
41. Berlant, "The Subject of True Feeling," 129.
42. Berlant, "The Subject of True Feeling," 132.
43. Berlant, "The Subject of True Feeling," 128.
44. Berlant, "The Subject of True Feeling," 132.
45. Berlant, "The Subject of True Feeling," 132.
46. Berlant, "The Subject of True Feeling," 144.
47. Berlant, "The Subject of True Feeling," 143.
48. Felman, *The Juridical Unconscious*, 16.