

people experience if it serves to function discursively, informing white common-sense understandings of Australia's tolerance instead of our reality of white possession. As Gaze argues:

The law's limited ability to deal with discrimination as a systemic practice is confirmed by the lack of provision for systemic remedies that can reach beyond the scope of a particular case and address problematic practices that extend beyond that case. Where discrimination results from weaknesses in personnel practices that may well occur in other cases, there should be power to require an employer to change its employment practices generally. However, Australian anti-discrimination laws do not allow such remedies. The remedial powers of the federal courts, for example in s 46PO(4) of the HREOC Act, are limited to actions and orders concerned with redressing the situations of complainant in the particular case—there is no power to make a broader order. This is an area in need of reform if systemic discrimination is to be addressed.²¹

Most Indigenous cases involving racial discrimination that are brought before the law are for the lack of customer service provision, such as the refusal of service within a department store.²² Leesa's case was one of the few concerning racial discrimination within the workplace. For Leesa, it took a great deal of strength and courage to take action. She could have chosen silence, and thus self-denial, as the only way to survive. Instead, she chose to stand on her sovereign ground. As in other cases where Indigenous people have taken legal action, there is great personal cost. Leesa no longer practices as a nurse.

8 THE LEGACY OF COOK'S CHOICE

CAPTAIN JAMES COOK looms large as an iconic figure in the Australian imaginary. His name is synonymous with "discovering" Australia, and his reputation has grown over time as the West's greatest seafarer. As an enduring icon, his face is displayed on water bottles, plates, and other paraphernalia in Australian popular culture. As a historical figure, he is placed at the beginning of Australian history.¹ Within the academy, there is an impressive array of literature about Captain Cook, but perhaps the most controversial is the debate between Marshall Sahlins and Gananath Obeyesekere. Sahlins argued in *How "Natives" Think: About Captain Cook, for Example*, that Captain Cook's death at the hands of the Hawaiians in 1779 was not premeditated; rather, it was a ritual sequel to the Makahiki because Cook was perceived as being Lono: a god in Hawaiian mythology who must be killed when he returns from his journey.² Obeyesekere, responding to Sahlins's earlier work, questioned whether the Hawaiians did perceive Cook to be their returning God; instead, he argues that the apotheosis of Cook has more to do with Western mythmaking than with Hawaiian mythology.³ This debate culminated in a special forum on theory in anthropology led by Robert Borofsky in the journal *Current Anthropology*.⁴ It is an interesting debate about who possesses the most knowledge, the most legitimacy, and the most evidence about Cook's death. In responding to the debate, Hawaiian scholar Herb Kawainui Kane argues that the one cultural fact overlooked is that within Polynesian languages there is no language equivalent for "western religious terms such as 'divine,' 'god,' 'adoration,' 'holy,' 'sacrifice,' and 'religion' . . . [He notes that] Cooks' men may be excused for their religious vocabulary, but social anthropologists may not be excused for perpetuating it as a scientific lexicon."⁵

This leads me to ask: If there is no Hawaiian language equivalent in relation to the concepts deployed by those who recorded the events of Cook's death, and these concepts are used as evidence for representing how the natives think, is it not reasonable to assume that it is not Hawaiian epistemology informing the debate? The "evidence" for how native Hawaiians thought about Cook's death illustrates how the "native" is an epistemological possession who is already known first by the white sailors and now academics. This chapter is not primarily concerned with the events surrounding Cook's death. Instead, it considers the epistemology and ontology informing Cook's choice to take possession of Australia in the name of King George III of Britain without the consent of, or treaty with, the "natives." His decision raises a question: What does the nonrecognition of Indigenous sovereignty impart about the constitution, currency, and circulation of white possession? In this chapter, I argue that possessiveness functions socio-discursively to inform and shape white subjectivity and the law.

White possession operates discursively within knowledge production through universals, dominant norms, values, and beliefs. Racialized knowledge was already operating as a discourse before Cook left England. In the sixteenth century, modernity gave rise to the construction of "blackness" as skin color,⁶ which arose primarily because the contact between Englishmen and Africans was in West Africa and the Congo, "where men were not merely dark but almost literally black."⁷ However, the meaning of "black" had currency before the trade in Africa. In the sixteenth century, it was identified in the *Oxford English Dictionary* as being "deeply stained with dirt; . . . Foul, iniquitous, atrocious, horrible, wicked. . . . Indicating disgrace, censure, liability or punishment, etc."⁸ Over the next century the meanings attached to "blackness" as a color became transposed ephemerally to represent the black body as the signifier of inferiority. By the time Cook "discovered" Australia, the black/white binary had become a part of the English language and the inferiority of black people was entrenched in discourse.

The Constitutive Elements of White Possessiveness

James Cook came from a lower-class white family. His father worked on a farm near Whitby, where the young James attended school. He later worked as a haberdasher before taking up an apprenticeship in the coal trade, where under the tutelage of Quaker John Walker he

studied mathematics and navigation. By the time he was twenty-eight years old, he had been offered the job of commander of a collier but chose instead to join the Royal Navy.⁹ Beaglehole states that Cook

volunteered just as the Seven Years' War was breaking out. He saw Channel service. In a few months he was promoted master's mate, and then master; he crossed the Atlantic and was one of the men responsible for sounding and charting the St. Lawrence river before the fleet went up with Wolfe's men for the assault on Quebec; and on the American station he had a period of wintering at Halifax that gave him a chance to read more deeply in mathematics and in astronomy, the foundations of the higher navigation. More, he met a military engineer famous in his day, Samuel Holland, who introduced him to the theory and practice of surveying. . . . His charts became known; the commodores and admirals began to take notice, and shortly after the war Cook had his first independent command.¹⁰

Beaglehole argues that it is difficult to ascertain Cook's character from his letters, but exploring the letters of those who worked for, or with him, provides insights. Cook was a meticulous planner, followed instructions, believed in taking calculated risks, was patient and observant, incorporated new technology, acquired new knowledge, and was passionate about exploring new horizons and creating new charts of new lands. He ran his ship on the basis of equity and fairness. He was concerned about the welfare of his crew and the maintenance of his ship. Cook took care of the things and people within his control and possession.¹¹ He was a disciplined subject who possessed the necessary skills, knowledge, and abilities to fulfill his goals in the service of the Crown, as he stated on his trip south to the Antarctic on January 30, 1774: "I whose ambition leads me not only farther than any other man has been before me, but as far as I think it possible for man to go."¹² Cook's words reveal a man who knew his achievements were great and his place in history secured.

History tells us that taking possession of Indigenous people's lands was a quintessential act of colonization. After crossing the Atlantic to chart the shores of Newfoundland in the schooner *Grenville*, James Cook was promoted to lieutenant and commissioned by the Royal Society in 1768 to travel to the south sea with two astronomers on board to observe the transit of Venus in 1769. While the commission was originally from the Royal Society, the Admiralty decided to extend the mission to include charting Tahiti and New Zealand and finding the great southern continent.¹³ Cook's instructions from the Royal Society

were clear should he encounter any "natives." James Douglas, president of the Royal Society, stated: "They are the natural, and in the strictest sense of the word, the legal possessors of the several regions they inhabit. . . . No European Nation has a right to occupy any part of their country, or settle among them without their voluntary consent. Content over such people can give no just title."¹⁴ The Admiralty's secret instructions were, if Cook found the great southern continent and encountered "natives," to "endeavour by all proper means to cultivate a friendship and alliance with them. . . . You are also with the consent of the natives to take possession of convenient situations in the country in the name of the King of Great Britain, or, if you find the country uninhabited take possession for his Majesty."¹⁵

Both sets of instructions acknowledge that the "natives" had existing proprietary rights, but should they wish to forgo them by consent, then their lands could be possessed in the name of the king. Underpinning both sets of instructions is an assumption that the "natives" would agree to give up their sovereignty, which suggests, in turn, that the "natives" are already known in a particular way. As Cook made his way up the east coast of Australia, he wrote that the Indigenous people were small in number and were less technologically advanced than other Indigenous groups he had encountered elsewhere. They did not cultivate the land, were unwarlike, and were not interested in trade. He believed that they existed in a state of nature, noting that "we never were able to form any connections with them. . . . They had not so much as touch'd the things we had left in their huts on purpose for them to take away. . . . [They] set no value upon any thing we gave them, nor would they ever part with anything of their own for any one article we could offer them."¹⁶

Cook's statement provides an insight into his decision to take possession in the name of King George III on August 22, 1770. Following Cook's logic, if Indigenous people did not value the possessions he offered and were not interested in trade, then they did not have an understanding of the exchange value of goods. Thus he could deduce that they must be living in a state of nature with a sense of property that did not go beyond satisfying their immediate needs. Thus, taking possession did not require their consent. Cook proclaimed possession of the whole of the eastern coast from the thirty-eighth-degree parallel in the name of the king after he landed on an island he named Possession situated off the tip of Cape York Peninsula. Taking possession involved

the firing of guns, the raising of a flag, the crew bearing witness, and Cook's written record of the events. Although symbolic in nature, this performative act of sovereignty on Possession Island existed epistemologically and materially only for Cook and his crew, not for Indigenous people. It did not require the consent of the natives because Cook had already determined their willingness to forgo their sovereignty because of his perception that they did not display the kind of possessiveness that he knew and demonstrated.

Cook's subjectivity was the product of the transition from feudalism to modernity, which precipitated the emergence of a new white subject into history in Britain. Major social, legal, economic, and political reforms had taken place, changing the character of the persons and property relationship. "These changes centered upon the rise of 'possessive individualism,' that is, upon an increasing consciousness of the distinctness of each self-owning human entity as the primary social and political value."¹⁷ Private ownership of property, both tangible and intangible, operated through mechanisms of the new nation-state in its regulation of the population and especially through the law. By the late 1700s, people in Britain could legally enter into different kinds of contractual arrangements whereby they could own land, sell their labor, and possess their identities, all of which were formed through their relationship to capital and the state. A new white property-owning subject emerged and became embedded in everyday discourse as "a firm belief that the best in life was the expansion of self through property and property began and ended with possession of one's body."¹⁸

Thus, within the realm of intrasubjectivity, possession can mean control over one's being, one's ideas, one's mind, one's feelings, and one's body, or within intersubjectivity it can mean the act or fact of possessing something that is beyond the subject, and in other contexts it can refer to a state of being possessed by another. Within the law, possession can refer to holding or occupying territory with or without actual ownership, or a thing possessed, such as property or wealth, and it can also refer to territorial domination of a state. Thus white possession functioned socio-discursively as a regime within Britain, enabling Cook's voyages and the spread of empire.

White possession operated through a socio-discursive regime that ontologically shaped the formation of white subjectivity regulated through various discourses, such as the law. Within modernity, subjectivity became constituted by two particularities: the substantive and

the abstract. Substantive subjectivity is characterized by gender, race, sexuality, and nationality, but these characteristics are secondary to how we are constituted through the abstract formal particularity of beings, which is institutionally embedded and invoked "when we function as citizens, as legal subjects or as participants in the market economy."¹⁹ At an ontological level, the structure of subjective possession occurs through the imposition of one's will-to-be on the thing that is perceived to lack will; thus it is open to being possessed. This enables the formally free subject to make the thing its own. Ascribing one's own subjective will onto the thing is required to make it one's property, as "willful possession of what was previously a will-less thing constitutes our primary form of embodiment; it is invoked whenever we assert: this is mine."²⁰ To be able to assert "this is mine" requires a subject to internalize the idea that one has proprietary rights that are part of normative behavior, rules of interaction, and social engagement. Thus possession, which constitutes part of the ontological structure of white subjectivity, is also constituted socio-discursively. For Cook to be able to take possession of the east coast of Australia without the consent of the "natives" means that he had to position Aboriginal people as will-less things in order to take their land in the name of the king. Thus Cook's white possessiveness operated ontologically and epistemologically by willing away Indigenous people's sovereignty in order to make them appear will-less.

Cook described Indigenous people in terms of their range of color, from dark chocolate to soot, the further north he traveled. Cook's racialization of the Indigenous "other" is simultaneously a white proprietary exercise. When Cook deployed racialized discourse to mark the Indigenous "other" as will-less and black, he is producing through knowledge a subject of his own making, one that he interprets for himself. This process violates the subjectivity of Indigenous people by obliterating any trace of our ontological and epistemological existence. In other words, the Indigenous "others" are represented and constituted in discourse as white epistemological possessions. This epistemological possessiveness operated as an inhibitor to reduce the capacity for Indigenous people to be recognized as having a will, as property-owning sovereign subjects possessing different knowledges, which is why Cook perceived us as living in a "state of nature," where our possession was recognized only as satisfying our immediate needs.

Possessing Cook

Possessiveness as a constitutive element of white subjectivity is evidenced within Indigenous oral history, whether it relates specifically to Cook and his voyage or to subsequent acts of dispossession, suppression, and oppression. In July 1770, Cook spent time on the *Endeavour* River undertaking repairs to his ship *Endeavour*. During his stay, he ordered some of his men to catch fish and turtles in order to feed the crew. Over a number of days, the "natives" visit the *Endeavour* and on July 18, after returning from shore to the ship, Cook notes that they seemed curious, taking more notice of the twelve turtles on deck than anything else. On July 19, when a number of "natives" came on board the ship, he wrote:

Those that came on board were very desirous of having some of our turtle and took the liberty to haul two to the gang way to put over the side but being disappointed in it this they grew a little troublesome, and was were for throwing every thing overboard they could lay their hands upon; as we had no victuals dress'd at this time I offer'd them some bread to eat, which they rejected with scorn as I believe they would have done any thing else excepting turtle—soon after they all went a shore Mr Banks my self and five or six more of our people being a shore at the same time, emmediatly upon their landing one of them took a handful of dry grass and lighted it at a fire we had a shore and before we well know'd what he was going about he made a large circuit round about us and set fire to the grass on the ground in this way which and in an instant burst like wild fire the whole place was in flames, luckily at this time we had hardly any thing ashire besides the forge and a sow with a Litter of young pigs one of which was scorched to death in the fire—as soon as they had done this they all went to a place where some of our people were washing and where all our nets and a good deal of linnen were laid out to dry, here with the greatest obstinacy they again set fire to the grass which I and some others who were present could to prevent until I was obliged to fire a musquet load with small shott at one of the rig leaders which sent them off. as we were apprised of this last attempt of theirs we got the fire out before it got head, but the first spread like wild fire in the woods and grass. Notwithstanding my fireing in which one must have been hurt because we saw some a few drops of blood on some of the linnen he had cross'd gone over, they did not go far from us for we soon after heard their voices in the woods upon which Mr Banks and I and 3 or 4 more went to look for them and very soon met them comeing [*sic*] toward us as they had each 4 or 5 darts a piece and not knowing their intentions we seized upon six or seven of the first darts we met with, this alarmed them so much that they all made off and we followd them for near half a mile and then set down and call'd to them and they stop'd also; after some little unintelligible conversation had

pass' between us they law down their darts and came to us in a very friendly manner we now return'd them the darts we had taken from them which reconciled every thing. We now found there were 4 strangers among them that we had not seen before and these were interduce'd to us by name by the others: the man which we suppos'd to have been wounded struck with small shott was gone off, but he could not be much hurt as he was at a great distance when I fired. They all came along with us abreast of the ship where they stay'd a short time and then went away and soon after set the woods on fire about a mile and a half and two miles from us.⁷¹

Cook's version of events takes place in Guugu Yimithirr's country. More specifically, it is the land of the Bubu Gujin clan, and it is the only place on Cook's voyage up the east coast of Australia where he spends a number of days on dry land. Gerhardt Pearson from Hopevale explained to Peter Botsman that within Guugu Yimithirr's oral history the incident on the Endeavour River is remembered in the following way: "It was the taking of a dozen turtles by the desperate sailors that precipitated the only violent conflict in the brief sojourn on what is now the Endeavour River at Cooktown. Why? Wantonly killing a person's totem was akin to murder of the person itself. No permission was granted to take so many from the guardians of the turtle or its clan."⁷² According to their law, the Bubu Gujin were exercising their proprietary rights over the turtles that lay on the deck of the Endeavour. The sailors did not have permission to take what was not theirs and the Bubu Gujin retaliated. They consciously set fire to the area where Cook's possessions lay on land in order to destroy them. They understood that what was important to Cook and his men were the things that Cook and his men possessed. In order to protect his possessions, Cook responds by firing and wounding one of the Bubu Gujin, who then leave and subsequently return armed to do battle to defend their territory. After Cook calls out to the Bubu Gujin, they stop and begin to discuss the dispute, agreeing to end the conflict. Cook returns their spears. For the Bubu Gujin, the return of their possessions was taken as a reconciliatory act. However, they later set fire to the land as an act of purging and purifying the country of their unwanted guests who broke the law. Cook does not explain in his journal why this event happened; he only records that it did. He acknowledges the Bubu Gujin's interest in the turtles but appears to regard that interest only in terms of curiosity and the desire for food. In so doing, he misperceives the Bubu Gujin's surveillance of his crew's actions over a number of days;

they were watching what was being taken without their consent. Cook and his men did not understand the Bubu Gujin's sovereign proprietary rights in the turtles. Instead, Cook's idea of possession was informed by the logic of capital, according to which possessions are those things having an exchange value when they are sold or otherwise traded, usually man-made material objects or things occurring naturally and taken without constraint. This logic underpins Cook's perception of Indigenous people as being propertyless and living in a state of nature where possessions do not go beyond satisfying their immediate needs. Being perceived as living in a state of nature relegates one's existence to being an inseparable part of nature and therefore incapable of possessing it.

Cook's inability to understand the complexity of Indigenous sovereign law and the ontological possessiveness of his subjectivity is also expressed in the cultural logic of the Yarralin people of the Victoria River district in the Northern Territory. As Bird Rose argues, the origins of injustices committed against Indigenous people are perceived to be embodied within the persona of Captain Cook.⁷³ In several discussions with Rose, an old man named Hobbles speaks about Captain Cook:

And right up to Gurindji now we remember for you. . . . Captain Cook. I know. We're going to get a lot of people now. All over Australia, its belong to Aboriginal. But you made little mistake. Why didn't you look after London and big England? It's bigger than Australia. That's your country. Why didn't you stop your government, Captain Cook? You're the one bring it out now, all your government from big England. You brought that law.⁷⁴

You been bring that law. My Law only one. Your law keep changing. I know you keep changing now lotta law. You and Gilruth. That's another headquarters longa Darwin. That's the Gilruth. You, Captain Cook, you the one been bringing in now lotta man. Why didn't you give me fair go for my people. Why didn't you give it me fair go for my people? Should have asked them about the story. Same thing, I might go on another place, I must askem. I might stay for couple of days, you know. That's for the mefellow, Aboriginal people. But you the Captain Cook. I know you been stealing country belong to mefellow. Australia. What we call Australia, that's for Aboriginal people. But him been take it away. You been take that land, you been take the mineral, take the gold, everything. Take it up to this big England. And make all that thing, and make your big Parliament too.

Nothing. Captain Cook coming back big boss now. Bringing nother lot government belong you. Still you been bring your book, and follow your book, Captain Cook. We know you government. When you been bring it over to Sydney, there people been work it up. Government been work it up. You reckon: "white man's country." No. This not the white man's country. This Aboriginal country.⁷⁵

Bird Rose argues that Hobbles provides many different stories of Cook, but that they are "all are based in the fundamental problematic of invasion and Law; all rest on the proposition that Captain Cook is an outlaw, morally speaking. . . . Many of the stories detail a process whereby conquest led to control which allowed the means for conquest to be continually reproduced."²⁶ The discursive turn in Hobbles's stories about Cook illuminate a white possessiveness that is synonymous with those who descended on this land claiming it as their own, establishing the Australian nation in the form of parliament and law. The past and the present become blurred by the repetition of injustice enabled by government control of Indigenous lands and people that is an outcome of their willful possession beginning with Cook. Hobbles's way of knowing and being comes from a different law that informs his sense of the injustice committed against his people in the name of white law. Although he recognizes the theft of Indigenous land, he is adamant that Australia was and continues to be owned by Indigenous people. Indigenous sovereignty continues because only Indigenous people have the proper law for the country. Within Hobbles's narrative, the possessive nature of white people is evidenced by their continual "taking" of resources and land sanctioned by their own law, which illuminates how white possession operates ontologically and epistemologically within white subjectivity and nationhood driven by the logic of capital.

Indigenous Possessions

Hobbles, like other Indigenous people, shares a history of colonization whereby we became the legal possessions of the Crown. Under the legal fiction of *terra nullius*, the law of the colonizer prevailed and Indigenous people were placed under British jurisdiction as subjects of the Crown who were entitled formally to the rights associated with this status. Equality of status did not prevent Indigenous people from being murdered, nor did it ensure their legal protection. Few punitive measures were taken against European offenders who killed them, yet Indigenous people who took the lives of colonists were charged under British law and dealt with accordingly.²⁷ The actions of the British military and colonists were more akin to a state of war, in which combatants do not have equal rights. The legal status of Indigenous people as subjects of the Crown was not sanctioned by the normative expectations

of colonists who treated, constructed, and represented Indigenous people as less than human with no proprietary rights.

The diminished status of Indigenous people as subjects of the Crown was legally enhanced in the 1850s. New South Wales's Legislative Council denied Indigenous people civil rights even though the British House of Commons specifically legislated granting this right.²⁸ Within the racialized social contract between subjects and the Crown, it is civil rights that confer subjects with the right to own property and land as well as the right to representation within courts. The legislative council, in accordance with the colony's constitution and judiciary, revoked the British legislation because it was argued that Indigenous people were perceived as having no conception of the state and did not adhere to Christian beliefs. Indigenous people's proprietary rights became willed away through the deployment of white morality and the law. Effectively, Indigenous people were, in the absence of being subjects of the Crown, relegated to little or no more than living in a state of nature and thus, by definition, uncivilized. The prevention of Indigenous people from taking an oath also meant that white possession and title to land could not be legally contested. The actions of the legislative council had a powerful influence on the subsequent development of policy in other states and should be considered within the context of the appropriation of Indigenous lands. Transportation had ceased in 1840 and a colonial mode of production had been established that saw the rapid expansion of the wool industry from the 1820s.²⁹ Land grants until now had been in the hands of the governor, who acted on behalf of Britain. The British state had granted the formation of legislative councils in the colonies, appointing members who were largely landholders and whose primary concern was land ownership and the integration of the colony as a supplier of raw materials to Britain. These landholders began to push for the commodification of land by requiring that squatters purchase the land they leased from Britain. The outcome of this action was the Selection Acts of 1861.³⁰

It was not until the 1880s that a formal policy of intervention was developed to control Indigenous people in the colony of New South Wales. The establishment of the office of the Protector by the Colonial Government meant the further erosion of civil rights for Indigenous people. Through this legal mechanism, Indigenous people became possessions of the Crown as wards of the state. Indigenous people's lives

were controlled by the Protector; they received rations and clothes and had to reside on reserve land controlled by managers who worked for the state. For Indigenous people, the status of being a subject of the Crown became qualified through the assumption of legal guardianship by the state, the denial of civil rights, and vicarious assignment of their social rights. The rights of Indigenous people were vicarious in the sense that the government as guardian legally vested the rights in others who could exercise them on their behalf. The actions of the New South Wales colonial government toward Indigenous people set the precedent for other states. Indigenous people were the legal possessions of state and territory governments and were denied economic, civil, and political rights until the 1960s.

The eruption of the rights discourse in the 1970s was due to influences that were both global and national in character, influenced by events in the 1960s that challenged established norms, values, and social conventions. The antagonisms, confrontations, and struggles of the 1960s became represented strategically and tactically through a discourse of rights in the 1970s. In Australia, the effects were twofold: the formal assertion of Australia as an independent sovereign nation, and the rights claims of subjects within its borders. Australia's formal separation from British judicial review meant that the High Court of Australia was the final court of appeal. Discriminatory legislation affecting Indigenous people was revoked and our human rights were brought into a broader public discourse that encompassed racial and sexual discrimination. At the same time, what it meant to be an Australian was being redefined. The White Australia policy was formally abolished in 1972 and multiculturalism was promoted as Australia's new national policy.³¹

Since the 1970s, the national, territory, and state governments have implemented land rights regimes in one form or another, and in the 1990s native title became an aspect of Australian property law. The land rights and native title regimes currently in place hold that Indigenous title exists primarily in the form of traditional laws and customs or historical association and claims are restricted to vacant Crown land. While some mineral rights are acknowledged, as in the New South Wales Land Rights Act, the majority of land rights and native title regimes do "not come with commercially significant and legally recognised resource rights."³² The current form of land tenures is either inalienable freehold title or native title, neither of which constitutes an

asset or equity for purposes of capital development. The right to negotiate under native title and the right to consent under land rights regimes are nothing more than the right to a process. In the absence of equal proprietary rights and bargaining power, they cannot deliver economic development, locking Indigenous people into welfare. In their current form, the right to negotiate and the right to consent and receive royalties are insufficient to generate wealth, and the Crown reserves the right to determine if its interests or those of private enterprise prevail. The legislative and administrative arrangements that circumscribe Indigenous "ownership" in its current forms effectively reduce it to hunting-and-gathering rights and some rights of residence. This resonates with Cook's assumption that Indigenous people continue to live in a state of nature with a sense of property that is confined to our immediate needs. Nowhere is this more evident than in the findings of the United Nations Committee on the Elimination of Racial Discrimination (CERD) in March 1999, when the government led by then Prime Minister John Howard amended the Native Title Act.

The United Nation's CERD found that Australian common law is racially discriminatory because Native Title is a vulnerable property right that is less protected from interference and forced alienation than other land titles.³³ The main aims of the original Native Title Act, the protection and recognition of Native Title, have been diminished to the extent that the new provisions impair or extinguish Native Title rights and interests. The increased criteria for registration under the amended act reduce the ability of Native Title claimants to assert their native title rights. With regard to the validation of certain past invalid acts, the new amended act is discriminatory because it only provides for extinguishment of Native Title and no other titles. In effect, the Native Title Amendment Act 1998 discriminates against Indigenous native titleholders by validating past acts, extinguishing native title, upgrading non-Indigenous title, and restricting the Indigenous right to negotiate. The CERD decision has not been attended to by the federal government, which illustrates the degree to which white possession will be protected and reinforced as an attribute of white subjectivity and nationhood within Australia. Indigenous communal property rights are never accorded equal value because ontologically white possession requires that Indigenous people are not perceived as being out of a state of nature. White possession can only recognize Indigenous people as being out of nature through private property rights via the prism of citizenship.

Indigenous people can own property in this sense, but not a different epistemological and ontological embodiment of possession that is outside the logic of capital.

Conclusion

Since Captain Cook's original choice not to gain our consent, the legacy of white possession continues to function socio-discursively within Australian society. As a means of controlling differently racialized populations enclosed within its borders, white subjects are disciplined (though to different degrees) as citizens to invest in the nation as a white possession. As citizens of this white nation, they are contracted into, and imbued with, a sense of belonging and ownership. It is a sense of belonging derived from ownership, understood within the logic of capital, and, in its self-legitimation, it mobilizes the legend of Cook's discovery of an unpossessed land.

The current form of recognizing Indigenous communal property rights reinforces white possession because advantages continue to be accorded to "those who have profited most from present and post racial discrimination . . . especially through intergenerational transfers of inherited wealth that pass on the spoils of discrimination to succeeding generations."³⁴ The legacy of Cook's choice is the continual denial of Indigenous sovereignty rights and the creation of forms of communal title that continue to place Indigenous people within a state of nature attendant only to our immediate needs, such as hunting-and-gathering rights. Against this stands the continued willfulness of Indigenous people who have never ceded our sovereignty.

III. Being Property