Law, Story and Boundaries of Difference in *Bringing Them Home*

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In this article I suggest that ‘literary texts’ have the potential to respond to the contours of inclusion and exclusion developed and administered by the law. By applying the theory and methodologies of ‘law as literature’ studies to a quasi-judicial text (the 1997 *Bringing Them Home Report*), I will show that there is a demonstrated body of criticism which argues that law is made human when studied as story. I will call on ‘critical race theory’ and suggest an ‘alternative voice’ methodology to highlight the way that the Indigenous people of Australia have historically occupied the subject position of ‘outgroup’. By referring to the potentials of constitutive rhetoric, I will show that *Bringing Them Home* operates as a legal story that attempts to interpellate Indigenous and non-Indigenous communities in Australia through narrative and rhetorical strategy. Finally, I will contend that the constitutive rhetoric of *Bringing Them Home* offers new possibilities for Aboriginal subjectivity – that is, it offers a new space for discursive practice, one that redefines and remolds the concept of community and reconfigures the parameters of inclusion and exclusion.

Throughout this article I regard the *Bringing Them Home* narrative as a quasi-judicial text. The judicial reasoning of Australian High Court Justices Brennan, Dawson, Gaudron and Toohey supports such a position. They have stated (on an unrelated matter) that a quasi-judicial forum is one that has as its overriding consideration ‘whether there will emerge from its proceedings a determination of truth and justice [which are] a matter of public concern’.

Similarly, Penelope Pether has suggested that *Bringing Them Home* fits within the quasi-legal ‘epic’ genre because it is a text that attempts to ‘rewrite legal discourse so that it is capable of doing justice to alternative jurisprudences, compelling an audience for the voiceless’.

From this framework and this firm link with the cause of truth and justice, I want to suggest two things. First, that a quasi-judicial text facilitates multiple subjectivities and second, that these subjectivities (or narrative actors) speak with a constitutive voice to a series of communities that extend outward from the subject. The paper begins with a discussion of the theoretical underpinnings of the argument, followed by an applied analysis of those theories to the *Bringing Them Home* narrative.

Since the cultural turn of the 1970s there has been a concerted attempt to read law through the prism of literature. American scholar Robert Cover is widely considered to have pioneered this work through his ‘Nomos and Narrative’ article in 1982. In it he suggests that ‘Law may be viewed as a system of tension or a bridge linking a concept of reality to an imagined alternative … represented in their normative significance only through the devices of narrative.’ Through this approach, Cover argues compellingly on behalf of the value of narrative for drawing together lived experience and the law, because each gives meaning to the other. In an Australian context, academic Trish Luker has demonstrated convincingly that there is an intrinsic link between law and literature given that

Law is a discourse in which the world is presented in a narrativised form, emerging from a desire for order and coherence … Adjudication specifically entails the choice of one party’s story over another, delivered by legal advocates using rhetorical strategies.

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2. Mann vs O’Neill (1997) 191 CLR 204. Importantly, a quasi-judicial inquiry is not subject to the same rigours of procedure as a formal judicial tribunal (there is not normally a requirement for the cross-examination of evidence or testimony) and its powers of prosecution are limited (if negligible).
3. P. Pether, ‘Comparative Constitutional Epics’, *Law and Literature*, vol. 21, no. 1, 2009, pp.114. According to Pether, an epic is a narrative about an imagined community, a site from which the laws of the nation are constituted and interrogated.
This essay will consolidate and build on Luker’s foundational work by engaging with the Bringing Them Home text and suggesting that it should be read as a performance of law, or as a story of law. According to Justin Evans, to do this should be obvious, because ‘Language is our means of producing truth, and law is an essentially linguistic entity; it has no basis outside of language, whether spoken or written. Law arises from a performative act.’ The ‘performance of law’ in Bringing Them Home has implications for inclusivity and exclusivity that I will explore in this article.

**Destabilising Boundaries: Interdisciplinarity**

Law and literature studies represent a destabilisation of disciplinary boundaries because of its cross-disciplinary methodology. It is a movement that operates at the peripheries of theoretical space—between studies of law and studies of literature. I suggest that it seeks to bridge an intellectual gap across disciplines and between theoretical spaces. I argue that to read a legal text as story is to invest it with a human aspect and further, a rhetorical inclusiveness that is not forthcoming to legal rhetoric.

In their work, law and literature scholars aim to provide a point of access to law through literature. As Aboriginal author and lawyer Larissa Behrendt remarks:

> Law is a language. It becomes less mysterious the more you study it and speak it. You come to understand what the jargon means and how the arguments counter each other. You can understand how powers flow through society if you understand the power of legal rhetoric.

The study of law as literature and in this instance, reading the quasi-judicial Bringing Them Home text as a story, is a credible response to the contours of difference built up by the law because it allows one to assess the ‘historical inscription of cultural divides and the law’s participation in the creation of difference’. To draw this conclusion I have called on Canadian academic Isobel Findlay who asserts that interdisciplinary work on law and literature functions as an ‘interruption’ that can

… usefully unsettle disciplinary formations, terms, and assumptions and help unpack and unsettle more thoroughly Eurocentric systems within law and literature—systems that sustain oppression and suppress relationality without acknowledging their own role in the process.

Findlay perceptively identifies that an interdisciplinary, postcolonial law and literature studies framework is a means through which to interrogate the existing structures of Western law. By reintroducing the subaltern (literary) voice to the legal or quasi-legal space, there is an opportunity to challenge what Findlay describes as the Eurocentric systems of the law.

Related to this apparently inherent link between law and language (or literature), Australian academic Justin Evans has suggested that there is a structural deficiency in Australian law and its use of language. He suggests that Western law is predisposed to affirm Western hegemony, because

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7 This may be because legal language is said to be restricted exclusively to those who are trained to read and understand it. Peter Goodrich suggests that ‘To claim that law is a distinct enterprise … and requires institutions and experts … is a fairly constant claim within the Western legal tradition.’ P. Goodrich, *Reading the Law: A Critical Introduction to Legal Method and Techniques*, Basil Blackwell Publishing, Oxford, 1986, p.4.


Indigenous peoples who appear before a law court are in an impossible position, engaged in a differend; their voice marginalised to the major language game, their forms of narrative knowledge incommensurable to the (new) Western tradition of knowledge.¹¹

In this article I suggest that a quasi-judicial body, or an alternative jurisprudence, is sufficiently removed from the traditional judicial body and its associated rigours and therefore makes concessions in order to address the inequities inherent (according to Evans) in Australian law. I suggest that, through its infrastructure and dynamics, the inquiry from which the Bringing Them Home narrative is drawn showed itself to be accommodating of Indigenous voices and, indeed, became a forum for storytelling, since ‘the nature of the Inquiry process and of the information sought and provided meant that evidence could not be tested as thoroughly as would occur in a courtroom.’¹² The function of the quasi-judicial forum in this respect is more attuned to Indigenous law ways (where law is explicated through story) and it becomes a vehicle to transport stories and claims of injustice.

The Outgroup: A Theoretical Response to Boundaries of Difference

In Australia (and moreover, throughout the colonial world) race has been used historically as a marker of difference. The law has used constructions of race to justify what is now regarded as (and certainly was) discriminatory practice. This essay will adopt the ‘critical race’ theory of Richard Delgado and Jean Stefancic and suggest an ‘alternative voice’ theory in an effort to emphasise the links between the study of ‘law as literature’ and its potential to respond to the manifestation of boundaries of difference.

Delgado has argued that

People of different races have radically different experiences as they go through life … well-told stories describing the reality of black and brown lives can help readers to bridge the gap between their worlds and those of others. Engaging stories can help us understand what life is like for others and invite the reader into a new and unfamiliar world.¹³

Their argument for the relationship between law and story speaks intimately to Bringing Them Home which is framed by a number of narratives and which seeks to address (or redress) past silence and injustice.

Throughout Bringing Them Home, historicised voices are called upon to demonstrate historical objection to the practice of forcible removal. The words of Aboriginal activists Fred Maynard, John Patten and William Ferguson, when they addressed the New South Wales Government in the 1930s, resonate for contemporary readers of Bringing Them Home: ‘By your cruelty and callousness towards the Aborigines you stand condemned … If you would openly admit that the purpose of your Aborigines Legislation has been, and now is, to exterminate …’¹⁴ Similarly, the tone of voice of the Commissioners of the Report is scathing when they declare that ‘Legislation authorised the majority of removals. It authorised what would otherwise have been gross breaches of common law right … Sadly even where a court hearing was required, courts were often less than vigilant about these abusive practices.’¹⁵ The narrative presents repeated evidence to show that the judiciary was indifferent and highly discretionary in its dealings with Aboriginal people into (and after) the 1950s, such that ‘Even where a court hearing was necessary … almost invariably courts failed to ensure

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¹¹ Evans, 2002, p.135: Evans calls on the theory of Jean Francois-Lyotard, who describes the ‘language game’ and differend. When language games compete, they are engaged in a differend, ‘a case of conflict between (at least) two parties, that cannot be equitably resolved for lack of a rule of judgement applicable to both parties’. Where one language game dominates, the differend is permanent, and one language game occupies the marginal voice. See: J.F. Lyotard, The Differend: Phrases in Dispute, trans. G. Van Den Abbeele, Manchester University Press, Manchester, 1988, p.xi.

¹² Bringing Them Home, p.20.


¹⁴ Bringing Them Home, p.46.

¹⁵ Bringing Them Home, p.256.
that the families were aware of their right to attend ... and that they had an opportunity to be legally represented.'

As part of their work in critical race studies, Delgado and Stefancic describe an outgroup as any group other than that of the dominant one. On the relationship between story and the outgroup, Delgado and Stefancic reflect on those groups whose marginality defines the boundaries of the mainstream and

whose voice and perspective ... has been suppressed, devalued and abnormalized. The attraction of stories for these groups should come as no surprise. For stories...represent cohesion, shared understandings, and meanings.17

The ‘ingroup’ (for my purpose, an historically white-Australia) defines its boundaries, and itself, against the outgroup: ‘Its narratives remind it of its identity in relation to the outgroup, and provide it with a shared reality in which its own superior position is seen as natural.’18 In this context, I suggest that there is a gap or silence in the way that the ingroup has conceived of the outgroup in their identity.

This article identifies Indigenous peoples in Australia as being historically a group outside the broad Australian community (historically Indigenous peoples have been denied the same legal rights as non-Indigenous people).19 This experience is relayed through the text of the story itself. Bringing Them Home demonstrates most basically that there has been a series of flawed and discriminatory policies targeted at Aboriginal and Torres Strait Islander peoples throughout Australia’s history and that, because of race, these were sometimes represented to be justified. The narrative begins by noting that ‘The laws, policies and practices which separated Indigenous children from their families have contributed directly to the alienation of Indigenous societies today.’20 The scope of the narrative expands to show that prior to the referendum of 196721 the states (and at an earlier time, the colonies) had legislated for the establishment of Aborigines Protection Boards (through various Aborigines Protection Acts) which assumed control over such issues as access to a paid wage for labour, freedom of movement and marriage, claims to redress for sexual assault and the legal guardianship of stolen children. The report highlights the (historical) procedural inequities of the Australian court system for Aboriginal people: ‘Almost invariably courts failed to ensure that the families were aware of their right to attend, that they knew the date, that they understood the nature of the proceedings.’22 The courts (as the judicial arm of the law) were in a position to resign Indigenous peoples to lives of suffering because of a structural and discretionary inequality. This is plainly a boundary of difference perpetuated through the law.

Delgado and Stefancic’s brand of critical race theory has been criticised by academics such as Daniel Farber and Suzanna Sherry. Farber and Sherry oppose the ardency of critical race theorists (who argue that racism has contributed to a racialised voice) and suggest that there is no ‘raced’ voice.23 They are unconvinced by the proposition that ‘members of different groups have different methods of understanding their experiences and communicating their understandings to others ... [and that] abstract analysis and formal empirical research are less appropriate than stories for communicating the understandings of ... people of color.’24 In this essay I accept that, when applied, critical race theory may be narrow in its diagnosis of the raced experience and that critical race theory has positioned

16Bringing Them Home, p.266.
18Delgado & Stefancic (eds), Critical Race Theory: The Cutting Edge, pp.60.
20Bringing Them Home, p.4.
21When the Federal Government assumed control of Indigenous service management.
22Bringing Them Home, p.266.
24Farber & Sherry, pp.810.
itself at the radical end of the postcolonial studies spectrum by insisting on a strict and essentialist white/black race binary.\footnote{See P. Price, ‘At the Crossroads: critical race theory and critical geographies of race’, \textit{Progress in Human Geography}, vol. 34, no. 2, 2010, pp.152: Price suggests that the experiences of non-black minority groups have been conceptually overlooked by critical race theory. The conceptual white/black binary utilised by critical race theory may also fail to accommodate for the wide breadth of experience within the raced voice—for example, a privileged ‘black’ voice.\,\footnote{Kennedy, pp.72}.

Unlike Farber and Sherry, however, I am convinced of the bond between story, minority voice and the law, as advocated by critical race theorists and its potential to carry claims of injustice. I suggest than an ‘alternative voice’ methodology is a theoretical framework better equipped to accommodate the diversity of minority discourse, without the strictures of critical race theory and with a recognition that each person has a different lived experience which is reflected in their voice and in their stories—the minority voice extends beyond the raced voice. This methodology, while calling on the broad precepts of Delgado’s and Stefancic’s argument (and particularly the role of the outgroup) takes a rather liberal approach to narrative voice and aims to examine group and individual lived experience. According to the judgment of the Australian High Court, this preference for multiple voices is the guiding principle of the quasi-judicial text genre—a commitment to truth and justice.

A comparable approach to the one adopted by this paper is that of Mark Sanders with regard to the South African Truth and Reconciliation Commission. He considers the way that institution operates as a public forum to perform story and as a way to address legal injustice. His study, \textit{Ambiguities of Witnessing: Law and Literature in the Time of a Truth Commission}, reflects on the role of story and its constitutive potential in the South African Truth and Reconciliation Commission. Convincingly, he cites Desmond Tutu who has argued that ‘the Commission is said to listen to everyone’.\footnote{R. Kennedy, ‘Subversive Witnessing: Mediating Indigenous Testimony in Australian Cultural and Legal Institutions’, \textit{Women’s Studies Quarterly}, vol. 36, no. 1, 2008, pp.59.} Truth and Reconciliation Commissions, such as the one conducted in post-apartheid South Africa, encourage ‘outgroups’ (as defined by Delgado) to record their story through an official channel—one facilitated by the government: ‘We carefully report what we have heard so that the community generally will know the perspectives on what has occurred … We have ensured that our findings … are supported by the overwhelming weight of the evidence.’\footnote{Kennedy, pp.72} In this model, evidence or testimony is accepted by a quasi-court without cross-examination in an attempt to engage the ‘outgroup’.

By referring to \textit{Bringing Them Home} and the \textit{Cubillo v Commonwealth} case, Australian researcher Rosanne Kennedy describes perceptively the way that ‘semi-judicial processes such as truth commissions and national inquiries tend to take a dialogic approach’, where to speak story is to ‘address another, to impress upon a listener, to appeal to a community’.\footnote{J. Brooks, ‘This story’s right, this story’s true…’ in ‘Remember Me’: \textit{Commemorating the Tenth Anniversary of the Bringing Them Home Report}, Secretariat of National Aboriginal and Islander Child Care Inc., Fitzroy, 2007, p.32.} Kennedy refers to the way that cultural institutions have been particularly accepting of Indigenous testimony, yet for structural reasons ‘the law in Australia is, more often than not, suspicious of and hostile to Indigenous testimony’.\footnote{See: P. Price, ‘At the Crossroads: critical race theory and critical geographies of race’, \textit{Progress in Human Geography}, vol. 34, no. 2, 2010, p.152.} In this essay, however, I argue that Australian law has been increasingly accommodating of Indigenous means and modes of testimony.\footnote{M. Sanders, \textit{Ambiguities of Witnessing: Law and Literature in the Time of a Truth Commission}, Stanford University Press, California, 2007, p.3: Within the framework of the South African Truth and Reconciliation Commission, Sanders has considered the way that verification is a prerequisite for evidence tendered to a court of law—this is not the case for ‘story testimony’ provided to the \textit{Bringing Them Home} inquiry. As a result, the report has been subject to derisory criticism regarding its legitimacy.} Aside from the existence of the quasi-judicial body itself, this inquiry made itself available to Indigenous and non-Indigenous communities seeking to tell their stories, through its infrastructure:

Frequently those wracking stories of grief … and emotional and psychological damage were poured out to a tired Commissioner or staff member doing their best in a cramped meeting room or a staffer’s motel room.\footnote{http://www.limina.arts.uwa.edu.au}
There was a demonstrated commitment from this alternative mechanism of jurisprudence to a greater promise for justice and a willingness to adapt procedures to ensure that stories were heard.

This paper will introduce Delgado’s critical race theory to the *Bringing Them Home* text and assess the potential for its constitutive rhetoric to respond to the contours of inclusion and exclusion developed and maintained by Australian law.

**A Community’s Voice: The Limits of Inclusion and Exclusion:**

In the light of this theoretical material, I contend that *Bringing Them Home* offers new possibilities for Indigenous subjectivity – that is, it offers a new space for discursive practice, one that redefines and remolds the concept of community and reconfigures the parameters of inclusion and exclusion. Here I argue that the contours of social inclusion and exclusion operate in a state of ongoing flux – that they are built, adapted and reframed by the law, which is in an ongoing conversation with the society in which it exists. On this point, American academic and critical race theorist Robin West has suggested that ‘our legal texts—no less than our literary texts—reflect and constitute as well as convey our moral and cultural traditions’. 33 This suggests that there is a mutual interchange between law and social and moral traditions—that each informs the other. It is not to say that they are fixed, but that they are engaged in a process of change as prescribed by social discourse. Indeed, Australian academic Sangeetha Chandra-Shekeran has argued compellingly that since Australia’s Bicentenary, the debate over the Republic referendum and *Mabo*, we have witnessed ... an attempt to re-appropriate the Aboriginal subject within the much wider discourse of citizenship and nation-state. This move from the margins to the centre has been an uneven and awkward traverse.34

I argue that story has been a critical aspect of this ‘awkward’ move from the peripheries of national discourse to the centre given that a subject position materialises through a constant repositioning within competing discourses.35 An outgroup need not always be on the periphery of the mainstream—it is subject to a discursive tradition. This is why reading law through the prism of story is promising for an outgroup, in that their legal story might reach a greater audience.

At this point, one should ask: what are the limits of inclusion and exclusion and what role does the law/story relationship have in determining these? Critical legal theorist Mari Matsuda insists that ‘those who have experienced discrimination speak with a special voice to which we should listen’. 36 I suggest that by reading law (and legal texts) through the prism of story there is potential to address the boundaries of difference perpetuated by the law. Matsuda’s statement reflects a greater reality—that access to story (or a space to perform lived experience) equates to access to a constitutive rhetoric and a constitutive audience. This access to story is especially important since, historically, Indigenous peoples and their interests have been pushed outside the realm of public discourse. Until Australia’s recent history, Aborigines have struggled to be heard in a ‘national’ discourse. Plainly, then, *Bringing Them Home* represents a new space for Aboriginal engagement and participation in Australian discursive practice.

Where scholars elsewhere have chosen to assess *Bringing Them Home* through a historical37 or human rights38 framework, this paper approaches the text with a keen regard for its narrative and literary qualities and argues that the report lends itself to the narrative genre. Though it is a quasi-judicial text, I suggest that *Bringing Them Home* shares generic

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35Chandra-Shekeran, pp.128.
38See: Chandra-Shekeran.
conventions with the autobiographical and historical narrative genres. It is obvious that within the scope of the terms of inquiry (to ‘consult widely’) there is space for personal story and the report reflects this with extensive use of first-person narrative testimony.

‘Law as Literature’ Applied to Bringing Them Home:

The quasi-judicial forum should be understood as a medium to transport narrative claims of social injustice to a wide audience. The effect of ‘inviting’ Aboriginal people (and specifically those affected by forcible removal) to engage in a national discourse on Australia’s history is to highlight the extent to which Aboriginal people have been excluded from national discourse and are therefore, according to Delgado and Stefancic’s critical race theory, an outgroup. The voices of this outgroup feature prominently through the body of the narrative.

The release of the Bringing Them Home narrative coincides with a time when Aboriginal politics dominates national discourse—through survival celebrations at the bicentenary of Australia’s settlement and claims for self-determination, self-management and sovereignty. The widespread (and unprecedented) interest in the findings of the Inquiry bear testimony to its constitutive potential—‘It is the best-selling government publication ever, with some twelve thousand copies sold.’

The report asked of its audience that it actively ‘engage’ with its findings (that is, its story) and commit to destabilising the boundaries of difference formed by the targeted, race-specific policy of forcible removal of Aboriginal children. Australian academic Gillian Whitlock has argued that

The outpouring of testimony by ... Indigenous people has led to a politics of truth and reconciliation which demands a response. It demands from the second person an ethical performance of civic virtue that is cast in a particular discursive framework, and which is understood to be an engagement with emotion and a recognition of shame.

The result of speaking the stories of forcible removal is to break down the ‘boundaries’ that separate communities so that the stories of an Aboriginal minority community enter the consciousness of the majority community.

According to preliminary details provided by Bringing Them Home, ‘The Inquiry took evidence orally or in writing from 535 Indigenous people throughout Australia concerning their experience of the removal policies. In this report we relay as much of those individual stories as possible.’ Taking account of Delgado and Stefancic’s critical race theory, I suggest that this process of ‘story-gathering’ is important symbolically because it demonstrates a willingness to accept without qualification the stories of those people who belong to an ‘outgroup’. It also contributes to a constitutive rhetoric that is aimed at achieving social inclusion and cohesiveness.

A constitutive rhetoric requires that an audience be receptive to its messages. The audience should be both engaged and interpellated. Maurice Charland, a specialist in communication and studies of rhetoric, argues that subject positions are unfixed, and that the role of a constitutive rhetoric is to take advantage of this flexibility—that is, to convince or attempt to convince an audience of the moral value of a particular argument. The constitutive audience should be moved to engage with the argument in some way.

Bringing Them Home, facilitated for the purpose of addressing injustice, exists as a story itself, or as the performative expression of a series of wrongs committed against one group. It is a powerful text, the product of a gripping inquiry, with an emotive story arc that is heightened in intensity by the use of first-person narrative voice. Because of its sheer weight of story it reads as a catalogue of trauma, or as Bernadette Brennan describes it, as ‘a

41Bringing Them Home, p.21.
living, breathing petition’. As such, it is endowed with an ethical and communal character, that is to say, a socially constitutive nature. The text speaks constitutively since it calls for story or presents story from a range of voices—it demands inclusivity through its very nature.

Australian author Carmel Bird, who has published an extended anthology of the stories featured in Bringing Them Home, refers perceptively to the short quotes or anecdotes that puncture the body of the story and the authoritative narrative voice of the Commissioner. For example, one stolen child recalls that ‘Our life pattern was created by the government policies and are forever with me, as though an invisible anchor around my neck.’ Bird describes these candid and confessional remarks as ‘arresting little sentences that will chill you to the bone’. In various instances, the capacity of these anecdotes to ‘chill’ the reader ‘to the bone’ is intensified because of their juxtaposition with anecdotes from other sources—often historicised voices. The Bringing Them Home narrative quotes a Western Australian travelling Protector in 1909 who had said he ‘would not hesitate for one moment to separate any half-caste from its aboriginal mother, no matter how frantic her grief might be … They soon forget their offspring’ and sits this in direct opposition to the troubling testimony of a contemporary Aboriginal voice and the isolation that they feel as a forcibly removed person: ‘The issues are growing up not knowing any family history, growing up at school and being asked to bring photos of your family, and you can’t do it …’. Such ‘arresting little sentences’, along with the use of lyric verse poetry, newspaper and diary extracts, impart a human aspect to the quasi-judicial text and contribute to the plotting out of the personal stories of those children (and their families) affected by the forcible removal of Aboriginal children.

As a narrative, Bringing Them Home develops character through its incorporation of multiple short prose passages. These are first-person stories. I suggest that because of this narrative strategy there is a direct appeal from the storyteller to the reader: an interrogation of their humanity. The stories that make up the narrative encourage intrapersonal engagement from the reader. In her story, the ‘character’ Rose appeals to the reader: ‘Could you put yourself in the situation that we were put through?’ In this instance, the words speak from the page. Commissioner Sir Ron Wilson has discussed the power of the testimony and the way that

The stories we heard—all 535 of them—were not just coming out of the mouths of the storytellers … It was as if the words were being literally wrenched out of the heart … I found that it was impossible for me to just sit there calmly listening to the words, as I may have been able to do as a judge hearing a case in court … I found myself listening with my heart as well as my mind.

Australian academic Penny van Toorn has argued that the testimony of the Bringing Them Home narrative produced an unprecedented public demand and became a ‘lucrative commodity and a potent moral and political force in the Australian community’. Van Toorn’s insight is particularly compelling because it references the cause of truth and justice by which the quasi-judicial forum is motivated. Following the release of Sally Morgan’s My Place in 1987, there began a proliferation of Aboriginal autobiographical narrative (Jackie and Rita Huggins’s Auntie Rita, for example) that was widely and popularly received.
Indeed, a number of academics have drawn links between the autobiographical style of much of the narrative voice of Bringing Them Home and the stolen generations narrative genre.

The framing of the story as both a narrative and legal text is particularly interesting. We can look at the text in its entirety or reflect on the way that stories within the structure of the wider narrative operate—that is to say, there is a micro and macro aspect to the story pursued in Bringing Them Home. Story is layered and there is a demonstrated, self-reflexive knowledge of the role of story outside of the narrative. The many first-person narratives which structure the trajectory of the report come in the shape of short anecdotal remarks made by unnamed and unknown characters, scattered through the text or as short prose passages, where character is more fully developed. These primary voices contribute to the thick narrative texture of the total story. The definitive tone of voice adopted by the Commissioners of the Report is both balanced and persuasive, never effacing the stories of the stolen children—stories which refer to the way that letters between mothers and their children were intercepted and censored or confiscated, languages were expropriated and stories were told to justify child removal: ‘I was trying to come to grips with and believe the stories they were telling me about me being an orphan, about me having no family’.

Interplay of story is discernible within Bringing Them Home, where the broad narrative of the text is consciously aware of the role of story in structuring identity (it is used to attack the relationship which forcibly removed children had with their culture) and its potential to build up or break down boundaries of difference.

I argue that such stories were supported by the mechanisms of law and politics in Australia through at least the first half of the 20th Century. A legal framework was set up, by which Chief Protectors and missionaries ‘colluded’ to prop up these baseless and damaging stories. As a rhetorical function of the narrative, the Chief Protectors and some foster givers or adoptive mothers are characterised as villains of the narrative with questionable and despicable motives. The character of Jenny describes her relationship with her adoptive mother:

When I was thirteen years old Mrs S. called this middle-aged male doctor to the house and said she wanted an internal examination of me. That was terribly shameful for me, I will not say anymore. During the time (with her) I was belted naked repeatedly, whenever she had the urge. She was quite mad.

The truth of the stories is often shocking and repugnant.

Clearly then, Bringing Them Home is significant and successful as a legal-literary text because it represents an opportunity for Aboriginal voices and stories to penetrate the domestic discourse. Through the story, multiple voices denounce the systemic government policies that were designed to denigrate (or destroy) the strength of Indigenous culture in Australia. The report also condemns the role of the courts (and the law) in propping up this system across half of the 20th Century. Based on these narrative accounts the report makes a judgment that the common law rights of Indigenous people and the fiduciary duty of the Chief Protector (in those states where he was legislated as the legal guardian of all ‘half-caste’ Aboriginal juveniles) were neglected. The Commissioner argues reasonably that ‘As subjects of the British Crown, Indigenous people should have been accorded these common law liberties and protections as fundamental constitutional rights.’

Within the body of the text, Bringing Them Home engages through its rhetoric a series of communities that I suggest extend outward concentrically from the subject. A constitutive rhetoric speaks differently to each of these groups and yet they are all linked, because the message extends across community boundaries. It speaks with great proximity, immediacy and candour to those Aboriginal and Torres Strait people directly affected by child separation and the Indigenous peoples indirectly impacted by child separation. Further out,

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53 A mass of ‘stolen-generations’ narratives has led some critics to conceive of this category as a genre of its own. See, for example: S. Barrett, ‘Reconstructing Australia’s Shameful Past: The Stolen Generations in Life-Writing, Fiction and Film’, LIGNES Journal, no. 2, 2005, pp.1-13.

54 Bringing Them Home, p.155.

55 Bringing Them Home, p.54-55.

56 Bringing Them Home, p.251.
the narrative speaks with less immediacy but with equal resonance and clarity of purpose to the non-Aboriginal people indirectly impacted by childhood separation and the non-Aboriginal people unaffected by childhood separation. On the relationship between the narrative voice of the characters established through Bringing Them Home and the audience, I suggest that there are a series of speaker/reader dynamics: Indigenous person to Indigenous person; Indigenous person to white Australian; white Australian to Indigenous person and white Australian to white Australian. A number of historicised and contemporaneous actors (Indigenous and non-Indigenous) are developed through the scope of the narrative, such as Aboriginal activist Fred Maynard, Chief Protectors A.O. Neville and Dr Cecil Cook, as well as various missionaries and foster mothers and the contemporary voices of the stolen children who have become adults. The text offers multiple subjectivities.

Following the release of the Bringing Them Home narrative, there has been a wide and diverse engagement with its stories. Sympathetic readers of the text were drawn to respond practically, by making a pledge for reconciliation or pressing politicians to make a statement of apology in the parliament. Others responded by collating narratives of forcible removal and publishing them to satisfy wide public interest. Indigenous adults who had been taken as children chose increasingly to speak their story. Conversely, there has been an aggressive backlash from conservative Australian media and politics to the findings of the report and to the stories of the ‘stolen’ children. All forms of response to the Bringing Them Home narrative represent an engagement or interpellation with the constitutive rhetoric of the report. On the potential of a constitutive rhetoric, Charland argues compellingly that

They capture alienated subjects by rearticulating existing subject positions so as to contain or resolve experienced dialectical contradictions between the world and its discourses. The process by which an audience member enters into a new subject position is therefore not one of persuasion. It is akin more to one of conversion that ultimately results in an act of recognition of the “rightness” of a discourse and of one’s identity with its reconfigured subject position.  

Using the idea of ‘home’ (as in Bringing Them Home) as part of a constitutive rhetoric has the potential to embrace dispersed or marginalised members of a society into a community. When introducing the narrative, the omniscient voice of the Commissioners (Sir Ronald Wilson and Michael Dodson) remarks that ‘We remember and lament all the children who will never come home. We dedicate this report with thanks and admiration to those who found the strength to tell their stories.’ According to Australian academic Antonio Buti in his biography of the Commissioner of the Inquiry, Sir Ronald Wilson, the title of the report came after hearing Aboriginal poet James Miller give evidence to the inquiry in Sydney. In his testimony, Miller instructed that ‘We need to bring them home.’ The poem encourages Indigenous peoples, where possible, to reconnect with their country and culture. With regard to this constitutive potential, Jeremiah Hickey has succinctly argued, ‘Constitutive rhetoric focuses on the idea that in times of historical crisis, speakers possess the ability to repair the language of the community and reshape the identity of the community.’ I suggest that Hickey’s idea has a sharp resonance with the broader theme of Bringing Them Home—which aims to incorporate Indigenous stories within a wider national discourse—where they had been previously silenced. As a rhetorical strategy the use of the term ‘home’ in the narrative has an interpellative function.

In this article I have argued that the constitutive rhetoric of Bringing Them Home is committed to bridging the gap between Aboriginal and non-Aboriginal experience. Across Australia, because of this narrative, there has been recognition of the way that past laws have contributed to the development of boundaries of difference between Indigenous and non-Indigenous peoples. When former Prime Minister Kevin Rudd delivered his Parliamentary ‘Apology’ to the Stolen Generations he was performing a constitutive rhetoric, by

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57Bird.
58Charland, p.142.
60Buti, p.325.
acknowledging politically the laws of Australia that had caused harm and injustice. Rudd said: ‘We apologise for the laws and policies of successive Parliaments and governments.’ The use of the collective ‘we’ is critical to the constitutive rhetoric because it signals that he speaks for someone, or on behalf of a group of people. Rudd speaks for an actively engaged constituency—engaged sympathetically or antithetically to the findings and recommendations of the report.

Throughout this essay I have emphasised that reading legal texts as story imparts a human aspect on quasi-legal content. What is more, storytelling operates as a mechanism to facilitate inclusion in public discourse—for Bringing Them Home this is where private pain penetrates the public imagination. The report uses story in a dual sense—it both encourages victims of forcible removal (that is, victims of a targeted, discriminatory legal framework) to ‘tell their story’ and relays this ‘story’ through the prism of narrative in the report. We should not discount the potential for story (and legal storytelling, in any form) to develop a constitutive audience or rhetoric and to respond to boundaries of difference administered by the law.

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