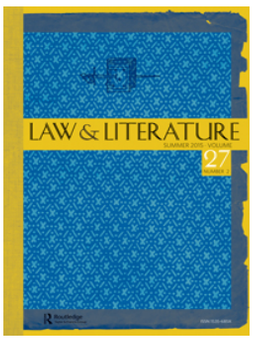

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Encountering Law's Harm through Literary Critique: An Anti-elegy of Land and Sovereignty

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Encountering Law's Harm through Literary Critique: An Anti-elegy of Land and Sovereignty

Honni van Rijswijk

Abstract, This article focuses on the significance of practices of representation to law's role in adjudicating harm — both the role of representation in the adjudication of past harms, and in law's present-day assertions of authority. I focus in particular on the ways in which questions of harm to the person, relation to land, and sovereignty have been separated in law, and the effects of these practices in constructing legal authority. I turn to Wright's *The Swan Book* (2013) to provide a reading of the "undoing" of narratives of harm based on the person, and to thereby critique law's representations of harm. I argue that, as an anti-elegy in the Modernist tradition, Wright's novel provides a metaphor of harm and responsibility that reorganizes time, destabilizes law's claims to authority over the adjudication of harms, and queries law's claim to authority over other legal systems and sovereignties. This reading takes the framework of harm beyond the personal, to include the violent histories that have produced legal concepts including "land," "sovereignty" and even "law" itself — histories and contexts that are separated and obscured in law.

Keywords, Modernism and representation, anti-elegy, Alexis Wright, colonization, representations of land, figure of the child

LAW'S VIOLENT JURISDICTIONS

> This was the place where the mind of the nation practiced warfare and fought nightly for supremacy, by exercising its power over other people's land.
> This is where it begins as far as I am concerned. This is the quest to regain sovereignty over my own brain.
>
> (Alexis Wright, *The Swan Book*, 2013, p. 165 and 4)

Set in the post-apocalyptic landscape of 2088, and focalized through an Aboriginal teenage girl, Oblivion Ethylene, nicknamed "Oblivia," Alexis Wright's novel *The Swan Book* (2013) is a dystopic history of our future. *The Swan Book* unfolds in the

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Northern Territory within "the world's most unknown detention camp,"[1] where Oblivia and her community live in the wake of catastrophic climate change and widespread war. Oblivia has survived rape, environmental devastation, and continuing colonization. These intersecting harms are figured as "a virus"[2] that invades her mind and that she cannot eradicate. This article argues that by figuring such harms to the person, to the land and to Aboriginal sovereignty in the genre of the anti-elegy, *The Swan Book* offers a counter-imaginary to law's representations of harm. Law, I argue, has an elegiac structure: it figures harm as having occurred in the past, as something to be resolved and put behind us, and consequently it has no framework for allocating responsibility for continuing harms. In contrast, *The Swan Book*'s representations of loss and harm are framed as ongoing conditions of evisceration, which are a heightened but familiar version of our present. The novel indexes major traumas of the 20th century, which have still to be resolved, and also looks 70 years into the future, at a moment in which we are confronted with losses that further exceed our frameworks of meaning. I argue that literary texts such as Wright's anti-elegy enable us to consider what an alternative framework of harm might mean to law, and to the development of a jurisprudence of harm sufficient to meet the losses of our present and our future.

Through practices that draw on the modernist tradition, as well as Aboriginal lore, *The Swan Book* opens out from Oblivia's trauma to offer a representation of the interconnectedness of harms, providing a domain from which to question and critique law's genres. The anti-elegiac structure provides a framework within which to connect questions of harm, agency and land, and to re-orient the question of harm beyond a personal and even human framework. The novel thereby makes visible law's "jurisdictions" of representation, and the implicit claims to authority made through law's response to harms. Wright's anti-elegy provides an alternative way through loss, offering a form that questions law's assumptions regarding the nature and temporality of harms. It provides a framework of harm that is capable of more completely representing harm in post-traumatic and postcolonial contexts, compared to legal processes: of taking proper account of the violent histories that have produced legal concepts such as "land," "sovereignty" and even "law" itself – histories and contexts that are separated and obscured in law.

Reading *The Swan Book* as anti-elegy is a challenge to law's claim to an exclusive jurisdiction over the adjudication of violence, a claim that is central to understanding the constitution of law's authority in modernity.[3] This alternative reading of harm is necessary if we are to understand law's role in the adjudication of violence within the historical context of modernity and, since this is an Australian archive, under postcolonial conditions – an understanding that involves tracing law's role in adjudicating violence through time. From the Enlightenment onwards, law has been given a greater jurisdiction over violence, with increased social and political expectations that acts of violence will be regulated through legislation, and adjudicated in the courts. The recent past has seen the development of criminal and

tort law into novel areas of culpability and suffering, as well as the development of transitional justice processes designed to respond to the calamities of modernity. But law's role here is complex and implicated, and law's adjudication of violence can itself lead to further violence.[4] Indeed, for Walter Benjamin, most law comes from acts of genocidal exclusion. Acts of lawful violence are required for the continuing formation of the state: "All violence as a means is either lawmaking or law-preserving," and is "implicated in the problematic nature of law itself."[5] In modernity, law's assertion of a jurisdiction over harms has been central to the constitution of its authority, and yet, through these adjudications, law's own violence is heightened.[6] In his later reading of Benjamin's essay, Jacques Derrida focuses on those moments in which "justice" is asserted as a response to violence. While these moments are neither inherently "just nor unjust," Derrida says, they are *represented* as just, through a "discourse of self-legitimation."[7] Representational practices are central to assertions of law's jurisdictions – such acts are "*said* to found law or state."[8] It is the control over the means of representation that is crucial, both to the "emergence of justice"[9] and to the violence that is inherent in these adjudications. Such legal and state narratives of violence and justice are also supported by a teleological, cause–effect "homogenous [and] empty" temporality.[10]

In this essay, I am interested in how an emphasis on genre can deepen this analysis. Law's assertion of jurisdiction over violence can be thought of as aggressive realism. Law is aggressive in its assertion of an exclusive jurisdiction over violence, making an implied claim that it alone can access the truth, punish offenders and repair harms. Law's assertion of jurisdiction is also representational, excluding other genres and representational practices in responding to violence. We need ways to encounter and intervene in the complexity of legal imaginaries of violence and harm – imaginaries that are not available through law's own accounts. The following reading of law through anti-elegy reveals law *as* representation, and more particularly, as a genre produced through specific historical practices. Reading law via anti-elegy also shows the effects of the teleological temporality that underpins law's claims to this authority.

A recent turn in the sub-discipline of law and literature has focused on the significance of representation to the practice of criticism – particularly on ways in which a literary reading becomes a mode of critique of law.[11] Scholars in this area have gone beyond thematic readings of texts to examine the roles of form, metaphor, and narrative as modes of critique, and have given particular attention to the ways in which critique can be thought of "as a problem of genre."[12] Here, genre is understood not merely as a "stylistic device," but as constituting (and revealing) ways of being.[13] Genres not only construct "schematic world[s]" with their own "definition [s] of space, time, moral ethos, and players,"[14] but can reveal something of how worlds – including legal worlds – are created and maintained. Such a critique introduces a degree of self-consciousness into our practices of representation, providing a way to think through subjectivity and authority. Certain genres and modes

have the capacity to introduce a critical framework or sensibility, foregrounding and making visible certain narratives *as* narratives, which would otherwise be experienced as true and real.[15] Engaging exemplary counter-texts in this mode provides a way to challenge law's forms, not least through experiences of "affective dissonance."[16] Modernist works are singled out as exemplars of this critical mode because of their interest in, and critique of, histories and practices of representation, and their radical experiments with form.[17] In particular, their critique of the Enlightenment projects of philosophy and political thought hold a special relevance to how we understand the history and experience of colonization. These Enlightenment writings produced imaginaries and logics that justified Europe's place in the world; justified harms inflicted in the creation and protection of private property; and animated the ways in which the colonial other was encountered.[18]

THE ANTI-ELEGY AS A MODE OF CRITIQUE

The classical elegy's history moves from the Greeks through Shakespeare and into modern and postmodern forms, wherein the elegy comes to mean something more ruminative, cerebral, and darkly sublimating. The elegy works within a loss-consolation paradigm, providing a structure through which to move with loss through time, towards the resolution epitomized in the final line of John Milton's "Lycidas": "Tomorrow to fresh woods and pastures new."[19] The elegy provides a social mediation of harm, and social critique is part of the "elegiac inheritance."[20] We can think of law as having a classical elegiac structure: law figures harm as being located primarily in the person, as having occurred in the past, and as being capable of resolution. Thomas Pfau argues that the elegiac is "*the* defining characteristic of aesthetic production in Modernity," a mode that increasingly influenced literature, art and theory from the mid-18th century onwards.[21] Pfau locates the power behind this elegiac sensibility in a mourning of ideality, arising through disenchantment, especially with those practices of representation that supported Enlightenment logics and rationalities.[22] The significance of the elegiac is also due, Pfau argues, to modern temporality, present too, of course, in law, which, with its teleological approach, institutes clear "programmatic breaks" with the past, bringing about what Benjamin described as an "homogenous [and] empty" time that is inherently mournful."[23] The classical elegy was reworked by modernists as they sought new frameworks and metaphors to respond to the violence of modernity, especially the rupturing event of the Great War, which made existing representational forms seem redundant.[24] From Benjamin's angel of history, to Freud's theories of shock and psychoanalysis, and on to the transitional justice processes after World War II, legal and literary writers throughout the 20th century sought new forms to understand and adjudicate modern violence.[25]

With its continuous-present temporality, and its *refusal* to offer resolution, the anti-elegy form provides an alternative way through harm. If the classical elegy

structured the resolution of loss, then the modernist anti-elegy explores, in the words of Elizabeth Bishop, the "art of losing."[26] The modernist anti-elegy is characterized by resistance to the normative process of resolution: in Jahan Ramazami's words, it entails "not so much solace as fractured speech, not so much answers as memorable puzzlings."[27] Structurally, final closure is refused, and instead of loss being transcended or redeemed, the reader continues to be immersed in loss, inhabiting a state of "resistant mourning."[28]

The use of the anti-elegy as a structural device in the novel is exemplified in the work of Virginia Woolf: *Jacob's Room* (1922),[29] *To the Lighthouse* (1927)[30] and *Mrs Dalloway* (1925).[31] On the June 27, 1925, six weeks after the publication of *Mrs Dalloway*, Woolf wrote in her diary: "I have an idea that I will invent a new name for my books to supplant 'novel.' A new [–] by Woolf. But what? Elegy?"[32] Woolf engaged the anti-elegy to critique a number of social harms. Set in June 1923, *Mrs Dalloway* focuses on a single day in which Septimus Smith, a young, shell-shocked veteran of the war, is driven to suicide; his trauma is famously twinned with that of Clarissa Dalloway, who is hosting a party, and who has experienced her share of hidden losses. Instead of a conventional plot, characters are connected through their elegiac relation to a multitude of losses. The literary scholar Tammy Clewell argues that, "in her sustained effort to confront the legacy of the war, Woolf repeatedly sought not to heal wartime wounds, but to keep them open."[33] This refusal to represent the Great War as a discrete and resolved event means that across these novels, the war is not figured as exceptional – rather, war trauma is resituated as an extension of social institutions and everyday violence. *Mrs Dalloway* argues that, when looking for the causes of war, it is important to look at empire and social institutions, at the family, and civil society. Yet it is now difficult for us to fully access the nature of Woolf's project; the Great War, and even feminist projects of representation, have become familiar – we think we see these harms clearly. Her novels provide experiences of "affective dissonance,"[34] of discord and rupture that provoke the reader to reconsider what they think they know about harm and responsibility, and about the significance of harm to civil society and its institutions.

Wright's novels *Plains of Promise* (1997), *Carpentaria* (2006)[35] and *The Swan Book* (2013) all draw on this modernist legacy, but also update it and depart from its concerns, moving into a domain that is uniquely postcolonial and even posthuman. Wright's novels work to escape the "colonising spider's trap door"[36] of political, legal and historical discourses, which assert an exclusive claim to represent reality. *Carpentaria* and *The Swan Book* in particular engage both modernist and indigenous representational practices and thematize the significance of practices of representation to the constitution of authority, and to the legibility of harms.[37] Even more than *Carpentaria*, *The Swan Book* rejects plot as an organizing structure. Instead, the narrative is held together through a connected recounting of losses, the novel's multiple points of view expressing a chorus of injuries. Oblivia's is the main consciousness of the novel. She has been mute ever since she was gang-

raped as a young child by a group of petrol-sniffing youths. The loose plot of the novel is based on her attempt to regain "sovereignty" over her own mind.[38]

The novel begins with the violent internal displacement of Aboriginal people. Oblivia's home is a rusted boat on the periphery of an Aboriginal community that has been pushed onto a swamp and surrounded by government razor-wire. Hers is just one of the many Aboriginal communities that have been targeted by the Australian army, which has been sent in "to intervene and control the will, mind and soul of the Aboriginal people."[39] These harms are connected to those of a devastated Europe, where "whole herds of deer [are] left standing like statues of yellow ice while blizzards stormed."[40] The Europeans who flee this disaster by boat become "the uncharted floating countries of condemned humanity,"[41] and die at sea, "[m]en, women and children captured forever in the ghost nets of zero geography."[42] Among the European refugees is "the maddest person on Earth," Aunty Bella Donna of the Champions,[43] a rare survivor who walks deep into the interior of Australia to find Oblivia, and who cares for her for some time. In an effort to stay sane, Oblivia befriends thousands of black swans who have come to live in the swamp, drawn there by their own law. The novel shifts from the connected elegiac consciousness of a dying world population to the point of view of the land, which is falling away. The harms suffered by the land as a result of human action (climate change, war) provoke the land to respond, and it has the authority to do so. Not only is the land, in Christine Black's terms, a "source of law,"[44] but is also a grieving subject: "It was land screaming with all of its life to the swans."[45] Land is excessive, rebellious and law-making. Land rebels by producing plagues of rats, owls, butterflies and locusts, which flourish and then are cut down; droughts kill Australia's green coastal areas; and floods overwhelm the continent's desert centre.

ENCOUNTERING HARM BEYOND THE PERSON

The Swan Book's anti-elegy disrupts law's teleological narrative of violence through an engagement with "the apocalypse" as a trope of harm, not only revealing law as a particular genre, but also its purported claim over past/present/future. The apocalypse has emerged as a significant figure in contemporary cultural and political life, signifying the vanishing point of history, and marking a sublime moment in which harm exceeds the explanatory capacity of humanist frameworks.[46] But *The Swan Book* refuses the exceptionalism of apocalyptic logic, bringing the apocalypse into civic institutions and private life. Harm is represented not as a rupturing event, but as continuous with the everyday: continuous with racism, assimilation, gender violence, and state law. We are not located in a world of eviscerated institutions and frameworks. The post-apocalyptic world of the novel is continuous with ours; its legal and social structures, and its institutions, are merely heightened versions of our own. As the novel begins with this already devastated world, we are located in a post-apocalyptic landscape, but with none of the "eventfulness" of an apocalypse.

The Swan Book's anti-elegy considers how representation has operated, and continues to operate, in the context of ongoing colonization; it engages the modernist project of challenging Enlightenment categories and histories of representation. Representations of state law, of army violence, of rape, of harms to asylum seekers, and of environmental damage – all concerns of *The Swan Book* – are heavily mediated by the histories of Western representational practices. The novel reveals and critiques these practices.

One of Wright's stated aims is to represent the continuing harms suffered by Aboriginal people – to describe the "the living hell" of many Aboriginal lives.[47] While Wright's work provides a thematic critique of the harms of postcolonial Australia, it also goes beyond thematic readings to connect questions of harm to questions of representation and authority. Her work asserts not only alternative claims to truth from legal narratives, but also challenges the modes in which those truth claims are made. By representing harm as a question of "sovereignty," the novel reveals law's narrow representation of harm as relying on a specific kind of personhood, and offers an alternative to this framework. Oblivia is trying to "regain sovereignty over [her] own brain."[48] To imagine harm fully, the book requires us to go beyond the framework of an individual victim to include the "mind" of colonization, of the land, and of sovereignty. The concept of "the sovereignty of [the] mind"[49] represents harm to the person as something that cannot be separated out from the harm that has been done to land, animals, languages, sovereignties, cultures and laws. The category of "person" is opened up, so that personhood – in this case, Oblivia's suffering subjectivity – is represented as an effect of land and law, as well as of human violence. The novel foregrounds questions that are occluded by the law, including the relationship of past harms to the present; the connection of harms to the land to harms to the person; and law's role in causing harm when it responds to suffering. This broader perceptual framework challenges law's violent assertions of authority based on its claims to have an exclusive jurisdiction over harms to Aboriginal populations, jurisdictions evidenced especially from the early 20th century to the present.

Between 1995 and 1997, an Australian federal government agency, the Human Rights and Equal Opportunity Commission (HREOC), conducted an inquiry into the 20th-century practices in which Aboriginal children were forcibly removed from their parents.[50] HREOC's final report, *Bringing Them Home*, published in 1997, found that from approximately 1910 to 1970, between one and three of every ten indigenous children had been forcibly removed from their families, and that this led to ongoing physical and psychological harms. *Bringing Them Home* found that removals in the different states and territories were justified through a range of legislative regimes, including "protectionist" legislation that was specific to Aborigines,[51] and more general welfare-based legislation.[52] In removing children, officials often relied on claims of abuse or neglect, evidence for which was either not required, or which was justified on the sole basis that the child was Aboriginal, or

was living in poverty.[53] A number of survivors of these removals gave evidence to HREOC that they had not been abused or neglected, and some stated that they were sent to foster homes or institutions which were much more violent and abusive than their family of origin.[54]

This legal violence continues to be present in contemporary regimes. The Northern Territory Intervention was implemented following the publication of the *Little Children are Sacred Report* (2007),[55] following an Inquiry into child sexual abuse.[56] Although the language of the legislation refers to Aboriginal welfare and wellbeing,[57] the Intervention legislation introduced measures that affect land rights, welfare benefits, and access to services, issues that are essentially about power and authority. The real suffering documented in *Little Children Are Sacred* is explained in the subsequent legislation and surrounding public debates not as an effect of poverty, structural racism or continuing colonization, or of the intergenerational effects of past traumas caused by the state, such as those documented in *Bringing Them Home*, but as effects of aberrant family structures, sex crimes, and by the effects of pornography and alcohol. Claiming a role merely in the adjudication of harms taking place in Aboriginal communities, the state asserts its jurisdiction and thereby inflicts harms on those communities. In doing so, it disguises its own violence. The adjudication of harm against the individual becomes an occasion through which the scope of "legitimate" violence by the state is in fact expanded.[58]

Wright's anti-elegy provides a structure for harm that re-orients law's assumption (and the assumption of the classical elegy) that the figure of the individual should necessarily be at the centre of understanding harm. It also demonstrates the ways in which refusing this centrality makes visible harms that are otherwise disguised in law. As a "little Aboriginal kid,"[59] Oblivia holds a difficult position within the Australian legal imaginary. It is impossible for her to tell the story of her rape – by members of her own community – without that story being interpreted as a narrative of community or familial dysfunction, and used as the occasion for yet more state intervention. So Oblivia never tells the story of her rape. The harms she suffers are never remedied; and the perpetrators are not brought to justice. Her story does not fall within the genre of a trauma or healing narrative. Rather, *The Swan Book* narrates harm from Oblivia's position of representational *impossibility*. Refusing the rape narrative, the novel explains Oblivia's suffering through a world of interconnecting environmental, political and legal harms: "like any other longstanding conflict around the world, one act of violation becomes a story of another."[60] To tell the story of her rape as an event set apart, as a matter of violence between individuals, would omit the intersectionality of its causes – particularly the interrelation of sexual violence with colonialism, poverty and structural racism. It would also reinforce law's habit of instrumentalizing violence – the history of law's violent interventions being justified on the basis of the story of one Aboriginal subject harming another, a practice evident from the Aborigines Protection Acts of the 20th century to the Northern Territory Intervention still in force.

As an anti-elegiac text, The *Swan Book* leaves the psychoanalytic model of trauma behind. The attack on Oblivia's mind's sovereignty is figured as a "cut snake virus"[61] – interconnected, infectious, mutable, and uncontainable – in contrast to the structural aesthetic of the psychoanalytic trauma paradigm, in which suffering is contained within the person, and can be resolved. Oblivia says: "If you want to extract a virus like this from your head – you can't come to the door of its little old-fashion prairie house with passé kinds of thinking […]."[62] In the late 20th century, trauma theorists such as Shoshana Felman, Dori Laub and Cathy Caruth extended the psychoanalytic framework of trauma beyond the individual psyche to account for the collective and intergenerational trauma of events such as the Holocaust.[63] These theorists emphasize the role of representation in responding to trauma, and, in particular, the role of the literary domain in finding new forms and frameworks to make suffering legible, emphasizing the ways in which the representational work of witnessing articulates historical losses. However, these theories and responses do not fully account for the harms of dispossession caused by the history of settler colonialism, and through continuing colonial techniques. The harms of colonization call for different kinds of legal and ethical responses from those modeled on rupturing, traumatic events such as war: clear events with a start and a finish. The harms of colonization instead develop through accretion.

The quasi-judicial, transitional justice process of the HREOC Inquiry and the subsequent *Bringing Them Home* Report tried to find new forms to respond to harm, and psychoanalytic frameworks were central to this process. *Bringing Them Home* explicitly drew on the experiences of the Shoah Foundation, and its belief in the significance of testimony to the process of healing and resolution.[64] The Report's framing narrative begins with the transgressions of violence and removal, and ends with the resolution of harms and obligations, in which "all are sorted back into their proper places and all debts are paid."[65] *Bringing Them Home*'s narrative of tracing a journey home, suggesting that all journeys and losses return to the same place, imposes closure on a process that necessarily cannot (and should not) be closed.[66] This narrative has the effect of separating out "events" of forced removal of children from their ongoing context, and creates a false distance between policies of past and present. Policies regarding the Stolen Generations are better understood as a series of ongoing practices.[67] The emphasis in the work of *Bringing Them Home* is on witnessing harm through these narratives. *The Swan Book* uses very different strategies. The reader is blocked from a sentimental identification with Oblivia. We do not have ongoing access to her mind; and we are not taken on a journey of healing or resolution. As a number of scholars have noted, transitional justice responses such as *Bringing Them Home* tend to be framed through a particular genre – that of the sentimental[68] – and even, in Robert Meister's terms, of "melodrama."[69] Far from encouraging experiences of "affective dissonance,"[70] Meister argues that transitional justice is a genre through which witnesses engage in a problematic self-focused ethics, which is evidenced as sentimentality. The power in this argument

lies in its analysis of the vesting of authority: it is neither the victim nor the perpetrator but rather the *beneficiary* who becomes the main figure addressed and interpellated through the melodrama, who "can understand themselves as bystanders who are capable of feeling compassion without fear."[71] And of course, it is the nation-state that is at the heart of the process, the authority given the power to adjudicate the meaning of past suffering. Such aesthetic practices produce the Australian nation as a nation of benevolent bystanders and beneficiaries regarding the harms of the past. Non-indigenous Australians become interpellated into a relationship with indigenous Australians through their own demonstrations of bystander compassion, rather than through responsible and responsive action. *The Swan Book*, however, refuses to employ the sentimental figure of the child. Oblivia is not a traumatized subject set apart from her environment, but shown to be an effect of intersecting processes, which include the legal and social institutions of the white state. Wright rewrites the concept of the "mind" that suffers harm, showing that the history of land, law, and sovereignty are inseparable from personal suffering.

READING AUTHORITY AND LAND AS CENTRAL TO HARM

By rejecting the traditional elegiac narrative of normative healing, *The Swan Book* opens up other means of engaging with loss, offering a new way of understanding land and its discursive production in Australian law. As a concept, "land" is innately connected to past and present personal harms inflicted on Aboriginal people, as well as to the harms that have been done to their laws and sovereignty. Australian legal concepts of property and title have been produced through the processes of colonization – through the harms inflicted on Aboriginal people, and through harms inflicted on the land itself. But law's focus on land as property, on the technicalities of title and interests, and its reduction of sovereignty to matters of territory, means that land's relation to this violence is disguised. The harms of assimilation, including those suffered by the Stolen Generations, are adjudicated separately from Native Title claims regarding land and title, although they are innately imbricated. In Australia, Native Title has been the domain in which Aboriginal sovereignty is encountered (and then displaced) in the common law. In these cases, state law has read Aboriginal sovereignty as finite and as superseded, law refusing to entertain the possibility of a plurality of sovereignties and laws.[72] At best, Aboriginal law is recognized as having been supported by a sovereignty that once existed, but which has no authority now. Following these failed encounters between Aboriginal and non-Aboriginal laws, Aboriginal authority becomes coded not as law, but as "custom."[73]

In *The Swan Book*, land and harm are deeply imbricated, and the land becomes a grieving, sometimes vengeful subject. When the ecology changes, the narrator asks whether it is Law, "doing something to the country?"[74] When the plagues begin, the "law spirits" begin travelling the country, trying to "keep the balance."[75]

Animal life and land are agents who suffer, make law, and attest to a different authority from that of the state. To understand Oblivia's suffering means to mourn land and animals, laws, language and culture; and also to understand that land, animals and laws mourn. *The Swan Book* expands the web of grief, fusing and implicating the blindness of Western law, the violence of the Intervention, and the desecration of the environment.

At present, there is no space in state law for Aboriginal authorities to adjudicate either present claims of violence in Aboriginal communities, or the historical claims of the Stolen Generations. These claims are solely heard according to state law. There have only been a handful of cases dealing with compensation for survivors of the Stolen Generations, and only one has succeeded.[76] In cases such as *Cubillo*[77] and *Trevorrow*,[78] harms are framed as only personal, and as disconnected from communities' removal from their land, and from their laws, thereby failing to properly account for the policies of assimilation that motivated child removals – policies that went to the heart of Aboriginal sovereignty, and to Aboriginal rights to land.[79] These occlusions mean that the connection between past and present state practices regarding Aboriginal subjects are also more difficult to see. The state has targeted Aboriginal sovereignty, and then erased this violence from the legal record.

In *The Swan Book*, as in the earlier *Carpentaria*, state law is represented not as a general source of authority but as a particular assertion of authority represented through a particular genre, contextualized alongside and against Aboriginal legal authorities that are also operating within Australian territory. The world of *The Swan Book* is animated by multiple laws and authorities. The swans move around the country, "following stories for country that had been always known to them" because "Swans had Law too,"[80] they have their own "Law scriptures."[81] The landscape is permeated by "law spirits" who "scrutinize" the country.[82] The country has "law music," brought up by "old powerful chants."[83] Law is innately bound up with the materiality of the landscape. Men and women are "keepers of Country," belonging "wholly" to "old laws" of Country;[84] they "were Country."[85] The novel's thick description of intersecting authorities and laws produces a version of Australia that is plural and post-national. This plurality is emphasized by *The Swan Book*'s use of genre, as questions of harm and authority are represented in a number of different modes, placed side by side. Loss is registered in tones alternatively mournful, comedic, vengeful and horrific. There are realist details and descriptions, and realist representations of characters, but there are also multiple excesses to this mode. The fantastical is evoked as the child Oblivia sleeps inside a Eucalyptus tree for ten years, like "Rip van Winkle,"[86] and a pet monkey is abandoned after "predicting colossal wars that started to frighten the life out of everyone."[87] The dystopic is represented by the violent upending of the nation's weather patterns: the weather has "flipped sides, swapping southern weather with that of the north";[88] and black swans have migrated to the north of Australia, where they have never lived before. The epic is evoked as refugees are led from a European mountaintop by a holy white

swan, who whispers "a greeting of good day and good fortune."[89] The swan guides the refugees to the water and across the seas. And the anti-elegy is evoked as the losses of the world increase, and are noted and honored, as the novel progresses. The novel adopts a critical self-consciousness regarding its status as representation, which law as a genre rejects.

Dorsett and McVeigh suggest that in Australian law, "[s]overeignty is a matter of authority, and of submission to authority, and it is inextricably linked to territory."[90] Wright's anti-elegy opens up an alternative reading of Australian authority and sovereignty, which explains the production of sovereignty not only through territory, but also through past and continuing harms. Wright's anti-elegy connects the history of invasion, and the violence that was committed against Aboriginal laws and land, to harms in the present, refusing the "homogenous […] empty time" of state law.[91] The *Swan Book*'s temporality works against the linear time of modernity, representing the relationship between law, authority and violence as continuous, rather than through discrete periods of past, present, and future.

CONCLUSIONS: TOWARDS A 21ST-CENTURY JURISPRUDENCE OF HARM

Oblivia fails to regain her sovereignty. Losses only intensify as the novel progresses: Bella Donna dies; Warren Finch is assassinated; and nearly all the swans Oblivia has loved are taken. Oblivia moves back to the swamp where she originated, holding the broken body of the last remaining swan. Then time shifts again and she appears as a haunting figure who may or not still be living. When the novel ends, she is still possessed by the virus, leaving her, and the world, in a continuing state of harm. In contrast, law employs rigid frameworks for resolution that insist on a break with the past. Even the transitional and human rights processes that have attempted more creative forms to respond to catastrophe have failed to move away from this problematic temporality of resolution. For Meister, the main tropes of these processes, including reconciliation and redemption, have an affective logic that is about "buying more time" for beneficiaries, buying more time "after evil" but "before justice."[92] Anne Orford contends that transitional justice processes are "centrally concerned" with time;[93] she argues that the *Bringing Them Home* report produces a narrative of closure, a view of "a unified past and a shared future within the liberal democratic nation-state."[94] The anti-elegiac form provides a metaphor that frames harms as both proximate and continuing, rather than as distant and in the past. It leaves resolution as an open question, and demands ways of relating to harm in the present. The anti-elegy provides a form to meet harms that focuses on process, contingency and possibility, in contrast to law's genre of aggressive realism, which fails to take into account its relation to representation.*The Swan Book* provides a domain in which to critique, encounter and re-vision legal imaginaries of harm. Moving the framework of harm beyond the person weakens law's violent jurisdictions, and loosens law's aggressive representational practices that go to the

heart of law's authority. These deconstructive practices can themselves be thought of as essentially anti-elegiac in mode, "locating the very possibility of reading and writing in an impossible desire for presence, completion, and coherence […]."[95] We need a 21st-century jurisprudence that rethinks legal relation through a new model of harm – one that reorganizes the category of personal harm by contextualizing the human in relation to law, land and sovereignties, and comprehends the specific histories through which law has enacted judgment, and through which law continues to act. This strategy is imperative if we are ever to develop a jurisprudence of legal relation and authority in continuing colonial contexts, not to mention the context of the Anthropocene era, in which we can anticipate unprecedented human-caused harm to the land.[96]

DISCLOSURE STATEMENT

No potential conflict of interest was reported by the authors.

1. Alexis Wright, *The Swan Book* (Artarmon: Giramondo, 2013), 40.
2. Ibid., 1.
3. The inherent connection between law's assertions of authority and its assertion to have an exclusive jurisdiction over the adjudication of violence is made by Walter Benjamin, *Critique of Violence*, *Selected Writings; Volume 1;* 1913–1926 (London: Belknap/Harvard University Press, 1996), 278, a critique that is developed and extended by scholars throughout the 20th century.
4. For readings of law's relation to violence, see, for example, *Law, Violence and the Possibility of Justice*, ed. Austin Sarat (Princeton: Princeton University Press, 2001); and Paul W. Kahn, *Sacred Violence: Torture, Terror, and Sovereignty* (Ann Arbor: University of Michigan Press, 2008).
5. Benjamin , *Critique of Violence*, *Volume 1*, 278.
6. Ibid.
7. Jacques Derrida, "'Force of Law': The Mystical Foundation of Authority," in *Deconstruction and the Possibility of Justice*, trans. Mary Quaintance, ed. Drucilla Cornell, Michael Rosenfeld and David Gray Carlson (New York: Routledge, 1992), 2–67, 36.
8. Ibid. (added emphasis).
9. Derrida , "Force of Law," 37.
10. Walter Benjamin, *Illuminations*, trans. Harry Zohn, ed. Hannah Arendt (New York: Schocken, 1968), 264.
11. For examples of this turn, see Desmond Manderson, *Kangaroo Courts and the Rule of Law: The Legacy of Modernism* (Abingdon: Routledge, 2012); *Genres of Critique*, ed. Karin Van Marle and Stewart Motha (Stellenbosch: Sun, 2013); Mark Antaki, "Genre, Critique and Human Rights," *University of Toronto Quarterly*, 82, no. 4 (2013), 974–96.
12. Stewart Motha and Karin Van Marle, "Introduction," in *Genres of Critique*, ed. Karin Van Marle and Stewart Motha (Stellenbosch: Sun, 2013), 18.
13. John Frow, *Genre* (London: Routledge, 2006), 2. See also Jacques Derrida, "The Law of Genre" *Critical Inquiry*, 7, no. 1 (Autumn 1980): 55–81.
14. Ibid., 7.
15. Antaki , "Genre, Critique and Human Rights," 977.
16. Ibid.
17. See especially Manderson, *Kangaroo Courts and the Rule of Law*, 15. Also Ravit Reichmann, *The Affective Life of Law: Legal Modernism and the Literary Imagination* (Stanford: Stanford University Press, 2009).
18. Dipesh Chakrabarty, *Provincialising Europe* (Princeton: Princeton University Press, 2007); Richard Begam, Michael Moses (ed.), *Modernism and Colonialism: British and Irish Literature, 1899–1939* (Durham: Duke University Press, 2007); Nigel Rigby and Howard J. Booth (ed.), *Modernism and Empire: Writing and British Coloniality 1890–1940* (Manchester: Manchester University Press, 2000).

19. John Milton, "Lycidas: A Lament for a Friend Drowned in his Passage from Chester on the Irish Seas, 1637," l. 193.
20. Peter Sacks, *The English Elegy: Studies in the Genre from Spenser to Yeats* (Baltimore: Johns Hopkins University Press, 1985), 8.
21. Thomas Pfau, "Mourning Modernity: Classical Antiquity, Romantic Theory and Elegiac Form," in *The Oxford Handbook of The Elegy*, ed. Karen Weisman (Oxford: Oxford University Press, 2010), 548 (Pfau's emphasis).
22. Ibid., 549.
23. Ibid., citing Benjamin's characterization of modern time, which criticizes Historicism's flat-line notion of history as nothing more than "a causal connection between various moments"; Benjamin, *Illuminations*, 264.
24. On the roles of legal and literary modernism in responding to the harms of modernity, see Reichman, Ravit. "'New Forms for Our New Sensations': Woolf and the Lesson of Torts," in *Novel: A Forum on Fiction* 36, no. 3 (2003): 398—422.
25. For example, Reichman, *Affective Life of Law*; Shoshana Felman, *The Juridical Unconscious: Trials and Traumas in the Twentieth Century* (Cambridge, MA: Harvard University Press, 2002); Honni van Rijswijk, "Neighbourly Injuries: Proximity in Tort Law and Virginia Woolf's Theory of Suffering," *Feminist Legal Studies* 20 (2012), 39—60.
26. Jahan Ramazani, *Poetry of Mourning* (Chicago: University of Chicago Press, 1994), 4 (citing the poet Elizabeth Bishop).
27. Ibid., ix; also 3—8.
28. Patricia Rae, *Modernism and Mourning* (Lewisburg: Bucknell University Press, 2007), 14.
29. Virginia Woolf, *Jacob's Room* (London: Hogarth, 1922).
30. Virginia Woolf, *To the Lighthouse* (New York: Harcourt, Brace & Co., 1927).
31. Virginia Woolf, *Mrs Dalloway* (New York: Harcourt, Brace & Co., 1925). See also Christine Froula, "Mrs. Dalloway's Postwar Elegy: Women, War, and the Art of Mourning," *Modernism/Modernity* 9, no. 1 (2002), 125—63.
32. Virginia Woolf, *The Diary of Virginia Woolf*, ed. Anne Olivier Bell and Andrew McNeillie, 5 vols (London: Hogarth, 1980), III, 34.
33. Tammy Clewell, "Consolation Refused: Virginia Woolf, The Great War, and Modernist Mourning," *Modern Fiction Studies*, 50, no. 1 (2004), 197—223, 198.
34. Antaki , "Genre, Critique and Human Rights," 977.
35. Alexis Wright, *Carpentaria* (Artarmon: Giramondo, 2006).
36. Alexis Wright, "On Writing *Carpentaria*," *Heat* n.s. 13 (2007): 79—95, 90.
37. For a detailed analysis of *Carpentaria*'s role in challenging the genre and authority of Australian law, see Honni van Rijswijk, "Stories of the Nation's Continuing Past: Responsibility for Historical Injuries in Australian Law and Alexis Wright's *Carpentaria*," *University of New South Wales Law Journal* 35, no. 2 (2012): 598—624.
38. Wright , *Swan Book*, 4.
39. Ibid., 47.
40. Ibid., 17.
41. Ibid., 34.
42. Ibid.
43. Ibid., 11.
44. Christine Black, "Maturing Australia through Australian Aboriginal Narrative Law," *South Atlantic Quarterly*, 110, no. 2 (2011), 347—62, 348.
45. Wright , *Swan Book*, 328.
46. The emergence of the apocalypse as an important trope can be seen in the popularity of Cormac McCarthy's novel *The Road* (New York: Vintage, 2007), and the film version (dir. John Hillcoat, 2009); Lars von Trier's *Melancholia* (2011); the proliferation of novels, films and television programs based on the figures of the vampire and the zombie; and even in critical works that evoke "the end," including Slavoj Zizek's *Living in the End Times* (London: Verso, 2010).
47. Alexis Wright, "Politics of Writing," *Southerly* 62, no. 2 (2002): 10—20, 15.
48. Wright , *Swan Book*, 4.
49. Ibid., 4.
50. *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (Sydney: Commonwealth of Australia, 1997).
51. Examples of these regimes include the Aboriginals Protection and Restriction of the Sale of Opium Act 1897 (Qld), s 9, 11, 13; Aborigines Protection Act 1886 (Vic); Aborigines Act 1890 (Vic); Aborigines Protection Act 1890 (WA); Aborigines Protection Act 1909 (NSW); Northern Territory Aboriginals Act 1910 (SA) 1910; and Aborigines Act 1911 (SA).
52. Ibid., 22—34.
53. Ibid.
54. Ibid., 22—42.
55. R. Wild and P. Anderson, *Little Children are Sacred: Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Child Sexual Abuse* (Darwin: Northern Territory Government 2007) ("the Report").
56. Northern Territory National Emergency Response Act 2007 (Cth) No. 129 (NTNERA); Family, Community Services, Aboriginal Affairs and Other

Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007 (Cth) No. 128; Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007 (Cth) No. 130; Families, Community Services and Aboriginal Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007 (Cth) No. 128; Appropriation (Northern Territory National Emergency Response) Act (No. 1) 2007 (Cth) No. 126 and Appropriation (Northern Territory National Emergency Response) Act (No. 2) 2007 (Cth) No. 127. When the Northern Territory Intervention came to the end of its five-year period in July 2012, it was immediately replaced by the Stronger Futures in the Northern Territory Act 2012 (Cth) (No. 100) and related laws: Stronger Futures in the Northern Territory Act 2013 (Cth) (No. 184); Social Security Legislation Amendment Act 2012 (Cth) (No 102). These laws will operate for a ten-year period: Stronger Futures s 118. Stronger Futures is broken up into a number of Parts that administer aspects of the lives of Aboriginal citizens in the Northern Territory. "Tackling alcohol abuse" (Part 2) is aimed at "reducing alcohol-related harm to those Aboriginal people"; "Land reform" (Part 3), is "aimed at facilitating the granting of rights and interests, and promoting economic development"; "Food security" (Part 4), and some miscellaneous matters (Part 5) are also covered. The legislation includes income management schemes, and provisions for the suspension of parents' welfare payments if children's attendance rate at school is considered unacceptable (Social Security Legislation Amendment Act 2012 (Cth) (No 102) Sch 2.). I use the term "Stronger Futures" to refer to this regime.

57. Section 5 of the Northern Territory National Emergency Response Act states that the aim of the Act "is to improve the well-being of certain communities in the Northern Territory."

58. For further discussions of legal exceptionalism in the context of the Northern Territory Intervention, see Desmond Manderson, "Not Yet: Aboriginal People and the Deferral of the Rule of Law," *ARENA Journal*, no. 29—30 (2008), 222; and Honni van Rijswijk, "Archiving the Northern Territory Intervention in Law and in the Literary Counter-Imaginary," *Australian Feminist Law Journal Special Issue: Evidence and the Archive: Ethics, Aesthetics and Emotion*, ed. Katherine Biber and Trish Luker 40(1) (2014), 117—33.

59. Wright , *Swan Book*, 2.

60. Ibid., 20.

61. Ibid., 1.

62. Ibid., 2.

63. Shoshana Felman, *The Juridical Unconscious: Trials and Traumas of the Twentieth Century* (Boston: Harvard University Press, 2002); Cathy Caruth, *Unclaimed Experience: Trauma, Narrative and History* (Baltimore: Johns Hopkins University Press, 1996); Dori Laub and Shoshana Felman, *Testimony: Crises of Witnessing in Literature, Psychoanalysis and History* (New York: Routledge, 1992). Dominick LaCapra queries the universalization of trauma as history in *Writing History, Writing Trauma* (Baltimore: Johns Hopkins University Press, 2001); and *Representing the Holocaust: History, Theory, Trauma, History and Memory after Auschwitz* (Ithaca: Cornell University Press, 1996).

64. *Bringing Them Home*, 18.

65. Anne Orford, "Commissioning the Truth," *Columbia Journal of Gender and Law* 15 (2006), 851—83; 870—1.

66. Ibid., 873.

67. Orford, "Commissioning the Truth"; Anna Haebich, *Broken Circles: Fragmenting Indigenous Families, 1800—2000* (Perth: Fremantle Arts Centre Press, 2000).

68. See also R. Kennedy, "An Australian Archive of Feelings," *Australian Feminist Studies* 26, no. 69 (2011), 257—79; A. Orford, "Commissioning the Truth," *Columbia Journal of Gender and Law* 15 (2006), 851—83; Luker, "'Postcolonising' Amnesia in the Discourse of Reconciliation."

69. Robert Meister, *After Evil: A Politics of Human Rights* (New York: Columbia University Press, 2011), 63—4.

70. Antaki , "Genre, Critique and Human Rights," 977.

71. Ibid.

72. Stewart Motha locates this refusal in *Mabo v Queensland (No 2)* (1992) 175 CLR 1 ("*Mabo*"), in which, he says, "a singular, unassailable (non-justiciable) sovereign 'event' is proposed as the foundation of Australian law and society"; Stewart Motha, "The Failure of 'Postcolonial' sovereignty in Australia," *Australian Feminist Law Journal* 22 (2005): 107—125; 107, 108. Shaunnagh Dorsett and Shaun McVeigh suggest that following *Yorta Yorta Aboriginal Community v The State of Victoria* (2002) HCA 58, it seems clear that "[d]espite the use of the phrase 'traditional laws and customs,' there can only be one legal system"; Shaunnagh Dorsett and Shaun McVeigh, "An Essay on Jurisdiction, Jurisprudence, and Authority: The High Court of

Australia in *Yorta Yorta*," *Northern Ireland Legal Quarterly* 56, no. 1 (2005): 1—20; 12.

73. Dorsett and McVeigh, ibid, 12.
74. Ibid., 179.
75. Ibid., 202.
76. The Federal Court denied claims for compensation in *Kruger v Commonwealth* (1997) 190 CLR 1, and in *Cubillo v The Commonwealth* (2000) 103 FCR 1 and *Cubillo v The Commonwealth [No 2]* (2001) 112 FCR 1 ("*Cubillo*"). *South Australia v Lampard-Trevorrow* (2010) 106 SASR 331 ("*Lampard-Trevorrow*"), where the court dismissed the state's appeal against the decision of J. Gray in *Trevorrow v South Australia [No 5]* (2007) 98 SASR 136 ("*Trevorrow*"), has been the only successful Stolen Generations case. See H. M. Van Rijswijk and T. Anthony, "Can the Common Law Adjudicate Historical Suffering? Evaluating *South Australia v Lampard-Trevorrow* (2010)," *Melbourne University Law Review* 36, no. 2 (2012), 618—55. The Western Australian Supreme Court recently denied a claim for compensation in *Collard v The State of Western Australia [No 4]* (2013) WASC 455.
77. (2000) 103 FCR 1.
78. *South Australia v Lampard-Trevorrow* (2010) 106 SASR 331 ("*Lampard-Trevorrow*"), where the court dismissed the state's appeal against the decision of J. Gray in *Trevorrow v South Australia (No 5)* (2007) 98 SASR 136 ("*Trevorrow*"), has been the only successful Stolen Generations case.
79. These cases have been given significant scholarly attention in a number of contexts. For example, Ann Genovese, "Metaphor of Redemption, Myths of State: Historical Accountability in Luhrmann's *Australia and Trevorrow v South Australia*," *Griffith Law Review* 20, no. 1 (2011), 67—90; Pam O'Connor, "History on Trial: *Cubillo and Gunner v The Commonwealth of Australia*," *Alternative Law Journal* 26 (2001) 27, 30. See also Chris Cuneen and Julia Grix, "The Limitations of Litigation in Stolen Generations Cases" (Research Discussion Paper No. 15) (Sydney: Australian Institute of Aboriginal and Torres Strait Islander Studies, 2004); Antonio Buti, "Reparations, Justice Theories and Stolen Generations," *University of Western Australia Law Review* 34 (2008—09), 168—189; Barbara Ann Hocking and Margaret Stephenson, "Why the Persistent Absence of a Foundational Principle? Indigenous Australians, Proprietary and Family Reparations," in *Reparations for Indigenous Peoples*, ed. Federico Lenzerini (Oxford: Oxford University Press, 2008) 477, 520; Robert van Krieken "Is Assimilation Justiciable? *Lorna Cubillo and Peter Gunner v Commonwealth*," *Sydney Law Review* 23, no. 2 (2001), 239—260; Luker, "'Postcolonising' Amnesia in the Discourse of Reconciliation"; Antonio Buti, "The Stolen Generations Litigation Revisited," *Melbourne University Law Review* 32 (2008) 382; and van Rijswijk and Anthony, "Can the Common Law Adjudicate?"
80. Wright , *Swan Book*, 86.
81. Ibid.
82. Ibid., 40.
83. Ibid., 86.
84. Ibid., 102.
85. Ibid.
86. Ibid., 7.
87. Ibid., 40.
88. Ibid., 18.
89. Ibid., 28.
90. Ibid., 9.
91. Benjamin , *Illuminations*, 264.
92. Meister , *After Evil*, 70.
93. Orford, "Commissioning the Truth," 880.
94. Ibid., 881.
95. Kate Lilley: "'Living Backward': Slessor and Masculine Elegy," in *Kenneth Slessor*, ed. P. Mead (Brisbane: University of Queensland Press St Lucia Imprint, 1997), 246—64, 247.
96. The "Anthropocene era" posits that humans are no longer merely biological agents but have now become "geological agents" who shape the future planet; see Dipesh Chakrabarty, "The Climate of History: Four Theses," *Critical Inquiry* 35, no. 2 (2009): 197—215, 206; and Rosanne Kennedy, "Humanity's Footprint: Reading *Rings of Saturn* and *Palestinian Walks* in an Anthropocene Era," *Biography* 35, no. 1 (2012): 170—89.