

In Her Death She Remains as the Limit of the System[†]

Notes Towards an Ethical Writing of Collective Sexual Violence

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But if there were a lesson to be drawn, a unique lesson among the always singular lessons of murder, from even a single murder, from all the collective exterminations of history (because each individual murder and each collective murder is singular, thus infinite and incommensurable) the lesson that we can draw today — and if we can do so then we must — is that we must think, know, represent for ourselves, formalise, judge the possible complicity between all these discourses and the worst ...¹

Jacques Derrida, "Force de loi: Le 'Fondement Mystique de l'autorité'"

Why did she have to be the way she was? People don't do things out of nowhere. Ricko's life is ruined. Total. Total wipeout. Fifteen years locked up because she didn't know the limits.²

A Property of the Clan

1. *An Occasion of the Greatest Regret: the Webster Proceedings*

On Wednesday 24 October 1990 Justice Wood, sitting in the Criminal Division of the Supreme Court of New South Wales, sentenced an 18 year old man, Matthew Webster, to a minimum term of 14 years penal servitude, with an additional term of six years during which Webster would be eligible for release on parole: *R v Matthew Grant Webster*.³ Webster had entered a plea of guilty to the murder of a 14 year old girl, Leigh Leigh, on Friday 3 November 1989 at North Stockton beach, near Newcastle, on the central coast of New

† "In her death she remains as the limits of the system in which she was killed": Drucilla Cornell, "The Philosophy of the Limit: Systems Theory and Feminist Legal Reform" in Drucilla Cornell, Michel Rosenfeld, David Gray Carlson (eds), *Deconstruction and the Possibility of Justice* (1992) at 89.

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1 Jacques Derrida, "Force de loi: Le 'Fondement Mystique de l'autorité'", "Force of Law: The 'Mystical Foundation of Authority'", (1990) 11 *Cardozo LR* 919 at 104-5; Drucilla Cornell, Michel Rosenfeld, David Gray Carlson (eds), *Deconstruction and the Possibility of Justice* (1992) at 63.

2 Nick Enright, *A Property of the Clan* (1994) at 51.

3 *R v Matthew Grant Webster*, unreported, Supreme Court of New South Wales, Wood J, 24 October 1990, 70012/90.

South Wales. He was the first murderer to be sentenced under New South Wales' "truth-in-sentencing" legislation.

An inspection of the published reasons for his decision reveals that Justice Wood found the case remarkable. On the facts as found by Wood J, the immediate circumstances of the murder were unusually "callous and brutal":⁴

... [Webster] forcibly removed her [Leigh's] clothing for the purpose of having sexual intercourse. He placed a finger in her vagina. She resisted and the prisoner then placed his hands around her throat and choked her to the point of rendering her unconscious. He then walked about five feet away and picked up a large piece of rock weighing approximately six kilograms, walked back to where she was lying and threw the rock, striking her twice on the left side of the head. These blows occasioned massive injuries, caving in the left side of her face and head and bringing about instant death.⁵

The other factor which, in the judgment of Wood J, placed this case in a distinct moral category was that the killing took place at a teenage party; a party which, moreover, was free from adult supervision. The abandoned clubhouse of the North Stockton Surf Club on North Stockton beach was filled with teenagers celebrating a 16th birthday. Most of the partygoers were Year 10 students from Newcastle High. On the first page of his reasons for decision, Wood J noted that so far as anybody was deputed by the host Jason Robertson to supervise the party, it was the 18 year old Webster himself, together with another young man, Wilson. Wood J in his judgment addressed the events preceding the murder in the following way:

The victim, Leigh Leigh, was one who became affected by alcohol early in the night. At one stage she went to the sand dunes where sexual intercourse took place with a fifteen year old male person. She had previously been a virgin. The fifteen year old was later sentenced to community service for his sexual assault upon her.

Shortly after returning to the club house she spoke of having had sex with this young person and of being pregnant. She was obviously distressed but this led to her being subjected to verbal abuse by a number of male persons, including the prisoner and Wilson. This abuse extended to her being spat on and having beer poured over her as she lay on the ground. She was also kicked and a bottle was thrown at her at one stage as she tried to stagger away. She went inside the club house where she was again spat on and had beer poured over her by the prisoner and another person.

She then left the club house and sat on a grassed area a short distance away. The prisoner approached and walked her to a depression in the sand dunes approximately 100 metres away from the club house where he forcibly removed her clothing for the purpose of having sexual intercourse.⁶

There was evidence that Webster, at the time of the murder, was under the influence of alcohol and cannabis.⁷ Justice Wood found that Webster's motivation for killing Leigh Leigh was his fear that she would report Webster's

4 Id at 4.

5 Id at 3.

6 Id at 2-3.

7 Id at 5. Justice Wood stated that the disinhibiting effect of the alcohol and cannabis helped to explain but could not excuse the murder.

sexual assault upon her.⁸ Having pronounced the sentence to be imposed on Webster, Wood J returned to the theme of parental irresponsibility:

I wish to add it is an occasion of the greatest regret that a young man has to be sentenced to such a lengthy term of imprisonment but it is inevitable having regard to the appalling circumstances in which this killing occurred. In that regard I wish to repeat my observations made in the course of the proceedings on sentence that the greatest concern should be entertained in the community that this party should have been permitted to go ahead without proper parental supervision.⁹

Webster sought leave to appeal to the New South Wales Court of Criminal Appeal against the severity of his sentence. At the hearing on 15 July 1992 the Court comprised Gleeson CJ, Lee CJ at CL, and Allen J. The Court's reasons for decision were delivered on that day.¹⁰ Allen J gave the leading judgment proposing that leave to appeal be granted, but that the appeal be dismissed. These proposed orders became the orders of the Court. None of the boys who had been at the party were convicted of rape or sexual assault.¹¹

2. Introduction: Girl Slain in Sandhills

The rape and murder of Leigh Leigh was an extraordinary crime in terms of its sheer brutality, and the immaturity of the victim and perpetrator. Unusual too was the volume and duration of the discussion which has been generated by the case. The Newcastle and Sydney mass media, perhaps intrigued by the victim's exotically homographic first name and surname, reported Leigh Leigh's death widely, and with greater than usual persistence.¹² The sentencing of Webster almost a year after the event made news,¹³ perhaps partly because

8 A motivation that fits in with a recognisable "type" of masculine homicide: the killing of a witness to an (often lesser) offence as a means of silencing, a type of "conflict resolution". See Kenneth Polk, *When Men Kill: Scenarios of Masculine Violence* (1994) at 120-3.

9 *R v Webster* (1990) above n3 at 10.

10 *R v Matthew Grant Webster* (unreported, NSW Court of Criminal Appeal, Gleeson CJ, Lee CJ at CL, Allen J, 15.7.91, 060582/90).

11 Although Webster had been found to have sexually assaulted Leigh Leigh: *R v Webster* (1991), id at 9. A 15-year-old boy was convicted of sexual assault on Leigh Leigh. It was reported that his sentence of six months in a detention centre was reduced to 100 hours of community service after an appeal: see "Drunk, spat on, sexually abused — Leigh's last horrid hours", *Sydney Morning Herald*, Tuesday 23 October 1990 at 3.

12 See: "Girl slain in sandhills", *Sun-Herald*, Sunday 5 November 1989 at 7; "A night of savagery: Leigh's last hours", *SMH*, Tuesday 7 November 1989 (Late Edition) at 1; "Girl's murder: youths tested", *SMH*, Wednesday 8 November 1989 (Late Edition) at 4; Catherine Lumby, "Group rape: a crime that's far from rare", *SMH*, Thursday 9 November 1989 (Late Edition) at 13; "Leigh's classmates mourn to the tune of a Cher song", *SMH*, Friday 10 November 1989 at 1; "Tragic community suffers trial by rumour and suspicion", *SMH*, Saturday 11 November 1989 (Late Edition) at 3; "New lead in girl's death", *Sun-Herald*, Sunday 12 November 1989 at 32; "Leigh case — two men charged", *SMH* Friday 17 November 1989 (Late Edition) at 10; "Stockton men in court", *SMH*, Friday 15 December 1989 at 8. One suspects that even greater attention would have been accorded the case had it not been for the fact that the "granny killer" and the "backpacker murderer" were at large at the time of Leigh Leigh's death.

13 See "Drunk, spat on, sexually abused", above n11; "A daughter murdered, a family destroyed", *SMH* Thursday 25 October 1990 at 1, 10; "20 years for Leigh's killer", *SMH* Thursday 25 October 1990 at 10; Adele Horin, "Murder Exposes Cultural Bogies", *SMH*

of the novelty of truth-in-sentencing principles and the severity of the sentence. Newsworthy also was the decision of the New South Wales Court of Criminal Appeal when hearing Webster's application for leave to appeal;¹⁴ the murder has been established as an Australian "celebrity crime".¹⁵ The carriage of the police investigation into Leigh Leigh's death has attracted strong criticism from various academics working in legal and sociological fields — particularly from Dr Kerry Carrington from the University of Western Sydney.¹⁶ The research led by Dr Carrington has been used to support a civil claim for compensation brought by the relatives of Leigh Leigh. Further, as if to cement the significance of the case, the events surrounding the night of 3 November 1989 have, since the sentencing and subsequent appeal of Webster, been reworked into two "naturalistic" plays by Australian playwright Nick Enright.¹⁷ The first of these plays, *A Property of the Clan*, was commissioned by Freewheels Theatre-in-Education Company in Newcastle, and was first performed on 14 August 1992. It was later produced by the National Institute of Dramatic Arts (NIDA), in 1993. The second play, *Blackrock*, was produced by the Sydney Theatre Company in August 1995, five years after the murder took place. It was performed by the Sydney Theatre Company, again in August 1996, as part of their schools/education program. And the audience for the story is about to become wider still: it has recently been announced that *Blackrock* is to be made into a feature film. Scripted by Enright and directed by Steve Vidler, the film is to be funded by the Australian Film Finance Corporation.¹⁸

The purpose of this article is to examine the connections between some of these journalistic, legal, sociological and literary texts. Particular attention will be devoted to Enright's plays, which attempt to grapple with the unsettling legal and sociological implications of Leigh Leigh's rape and murder. Exactly how do Enright's plays respond to the legal texts from which they arise? How does Enright approach those questions of ethics, agency and responsibility which are now so central to thinking about law? After successive rewriting, what really is the "story" of Leigh Leigh's fatal induction into the symbolic realm of crime as entertainment? As the narration of Leigh Leigh's rape and murder progressed through the newspapers, television screens, police files, courtrooms and onto the stage, certain responsibilities were shifted between legal, academic and literary texts, resulting in the exposure of real ethical and

Tuesday 6 November 1990 at 16; Mark Riley, "In Cold Blood" *SMH, Good Weekend Saturday* 24 November 1990 at 8-17; Mark Riley, "Webster sentence a new benchmark", *SMH Monday* 26 November 1990 at 6.

14 See "Murderer appeals", *SMH Friday* 30 November 1990 at 5.

15 See David Fraser, "I Want My Court TV" (1994) 6 (2) *Current Issues in Criminal Justice* 299-302.

16 See Kerry Carrington and Andrew Johnson, "Representations of Crime, Guilt & Sexuality in the Leigh Leigh Rape/Murder Case" (1994) 3 *Aust Fem LJ* 3-29; Kerry Carrington, "No Justice for Leigh Leigh: Judicial, Executive and Police Sexism Intersect" (1995) 4 *Aust Fem LJ* 135-40; Kerry Carrington and Andrew Johnson, "Some Justice for Leigh Leigh" (1995) 5 *Aust Fem LJ* 126-32.

17 Nick Enright, *A Property of the Clan*, (1994); Nick Enright, *Blackrock* (1996).

18 "Part of what makes it so confronting is the fact that the boys are so likeable and funny and sexy, so I don't see any difficulty in making it a popular film": Steve Vidler quoted in Jo Litson "Triple Threat" *The Weekend Australian* 23-24 December 1995 at rev 12. See also *SMH*, 14 June 1996 at 15; *SMH*, 22 August 1996 at 4.

discursive inadequacies. How do you confront collective sexual violence of the sort inflicted on Leigh Leigh? "What is a legitimate fiction?"¹⁹

3. *Without Proper Parental Supervision*

The story of Leigh Leigh's death was, from the outset, one of parental blame. Immediately after the killing, Leigh Leigh's de facto stepfather, Mr Brad Shearman (who discovered Leigh Leigh's body) was, by some accounts, the principal suspect.²⁰ Before Matthew Webster was apprehended, newspaper and television reports implicitly and explicitly engaged in an attempt to isolate a culpability other than that of the perpetrator.²¹ In the days after the murder, the *Newcastle Herald* and the *Sydney Morning Herald* both ran front page stories which foregrounded the fact that there had been no adult presence at the party.²² The investigation into Leigh Leigh's rape and murder was diverted by reports of the activities of a mysterious gang that had been prowling Newcastle.²³ Even after Webster had signed his confession on 17 February 1990

19 Derrida, above n1 at 12. The filming of *Blackrock* in Stockton, during September and October 1996, has prompted a renewal of the discussion of the issues surrounding the Leigh Leigh case in the media. See, eg, "Threats force murdered girl's mother to leave" *SMH* Thursday 17 October 1996 at 5; "Art imitates death" *Daily Telegraph* Thursday 3 October 1996 at 5. Responses from the Stockton community include a resistance to the re-opening of the case and to the filming: "There has been a strong response, a sense of violation by members of the community ... a sense of being exploited by the film being made here. It is interesting that the way that the film company is presenting themselves up here is that this is just a really good place to make a film ..."; Brian Joyce, director of Freewheels Theatre-in-Education Company in Newcastle, in an interview on *Life Matters*, ABC Radio National, 1 October 1996. In the same programme John Boersig, legal representative of the Leigh family, indicated that the family felt that their daughter's death was being exploited for commercial purposes by the film makers and that they would prefer a documentary of the real events, rather than what the family perceived as a distortion of what happened. *Background Briefing*, ABC Radio National, broadcast such a documentary on 29 September and 1 October 1996.

20 See Riley, "In Cold Blood", above n13 at 16: "In lieu of a real culprit, kangaroo courts in the bars and lounge rooms of the city tried and convicted their own murderers. The most popular convict was Robyn Leigh's de facto, Brad Shearman ... The most popular rumour was that Shearman had been sleeping with the girl for some months before her death. He had found Leigh walking along the beach after the party and, overcome with rage when she told him she had been sexually assaulted, his rage grew to violence, violence to murder. Sergeant Chaffey admitted that the rumour had been told so often to police that Shearman became a prime suspect. The community suspected him up until the time Webster was charged, even after Shearman had faced a court for having beaten Guy Wilson in a Stockton street."

21 See, for example, "Girl slain in sandhills", above n12 at 7: "Jason Robertson admitted some alcohol had been consumed at the party, but said it had been taken by four or five older surfing mates ... 'Mum and dad thought it would be a good way for me to celebrate my birthday'". See also "A night of savagery: Leigh's last hours", above n12: "'I'm looking at 60 suspects,' said Detective Sergeant Lance Chaffey. 'But only two parents have bothered to contact us to assist us in what their kid might have seen.' Asked why that might be, he said: 'It's just like letting the kids go to that sort of turnout. It's a fairly good idea of their lack of supervision over their kids.'" Detective-Sergeant Chaffey continued his criticism of Stockton parents: see "20 years for Leigh's killer" *SMH* Thursday 25 October 1990 at 10, where he is reported to have "complained ... of a perceived lack of willingness among parents to offer information about their children's movements on the night."

22 "A night of savagery: Leigh's last hours", above n12.

23 See "New lead in girl's death" *Sun-Herald* Sunday 12 November 1989 at 32: "Detectives

and a year later had been brought before a court for sentencing, attempts continued to be made in order to find an extraneous agency responsible for the catastrophe. In passing sentence Justice Wood expressed his abhorrence for Webster's crime, but also went to great lengths to underscore his view that "the greatest concern should be entertained in the community that this party should have been permitted to go ahead without proper parental supervision".²⁴ Indeed, had not the murderer himself stood *in loco parentis*?

In uttering these hortative remarks, Wood J might almost have been quoting from the very newspapers which had reported the crime; and which, after sentencing, then proceeded to draw on his authority in an effort to enjoin the parents of Australia to meet their supervisory responsibilities. At a metaphorical level, teenage male sexuality was characterised as a dam about to burst, an imminent explosion, a disembodied force which only a parent can hope to restrain: "A duty is owed to all young persons to ensure that they are protected from the inevitable peer group pressures at functions such as this, to experiment with and to abuse alcohol and drugs and to engage in sexual promiscuity of the kind which occurred here. Those pressures are exceedingly strong."²⁵

A month after sentencing, an article about the murder in the *Sydney Morning Herald* pursued, once again, the notion of parental shortcoming and the irrepressibility of teenage male sexuality.²⁶ It quoted Justice Wood as having made a "scathing attack"²⁷ on the parents of the partygoers: "every parent involved really wears this on their conscience",²⁸ going so far as to say:

It was a murder that questioned the free and easy Australian ethic, begging revision of the modern freedom of children, the reluctance of parents to be authoritative, the breakdown of the family unit — issues that exposed human frailty to inhuman brutality.²⁹

At this point it became clear that a sort of collective self-castigation was taking place, in which all parents of the young people at the party shared the responsibility for Leigh Leigh's death. And, even more disturbingly, the article married parental blame with the well-documented notion that the rape victim herself is presumably to blame for her attack:

... Robyn [Leigh Leigh's mother] maintained her open mother-daughter relationship with Leigh. Leigh developed quicker physically than her friends, assuming the body of a woman at age 14 that made her the subject of admiration among some girlfriends and the target of acute jealousy among others. It also ensured that she acquired a trail of male admirers.³⁰

want to trace two schoolgirls who fought off attackers trying to abduct them the night pretty Newcastle schoolgirl Leigh Leigh was raped and murdered. Police believe there may be a connection between Leigh Leigh's brutal end and the attempted abduction. The schoolgirls managed to save themselves when a gang tried to drag them into a car about 3am on the morning of Saturday, 4 November."

24 *R v Webster* above n3 at 10.

25 *Ibid.*

26 "How the murder of 14 year old Leigh Leigh forced a small community to face the truth about itself": "In Cold Blood", above n13.

27 "20 years for Leigh's killer", above n13.

28 "In Cold Blood", above n13 at 9.

29 *Id* at 10.

30 *Id* at 15-6.

It should be noted however, that from the outset the reported "causes" of Leigh Leigh's death were contested. Even while newspapers were reporting the death of "drunk", "pretty" Leigh Leigh, the then Co-ordinator of the Sexual Assault Unit at Royal Prince Alfred Hospital, Claire Vernon, was quoted as saying in relation to the Leigh Leigh case:

... let's face it, victim-blaming is alive and well ... Reports of rapes are often qualified by comments on how attractive the victim was and by speculation on whether she consumed alcohol ... The media stereotype of the assailants is drunk working-class boys ... It's seen as a western-suburbs-based crime. There's nothing to sustain that. The evidence is that it happens across the board.³¹

After Webster's sentencing, feminist activist Eva Cox wrote a letter to the *Sydney Morning Herald* which is worth quoting in full:

SIR: The reports of the trial judge in the Leigh Leigh murder case and your coverage (*Herald*, October 25) both appear to miss the main point of the case. How have we created a society where young boys/men, however drunk, see girls/women as objects to be used and discarded?

Leigh Leigh's case is not unique. Janine Balding and Anita Cobby are other public victims of the extremes of a male culture which sanctions objectifying women. In many homes, in playgrounds, in advertisements and in media stories women are treated as things, not people.

The real challenge we face is changing the ways in which women are seen. Until men recognise women as their peers and accept our common humanity, our daughters are at risk of the violence that is the end result of all the small violations.³²

In a similar vein, *Sydney Morning Herald* columnist Adele Horin commented:

If all we learn from the horrific murder of 14-year-old Leigh Leigh is that parents should supervise their children's parties, we will miss the crucial lessons ... If we look below the horror of that night when a young girl lost first her virginity then her life at a beachside party near Newcastle, we can see at work the bogies of Australian culture: men's hatred of women, women's hatred of themselves ...³³

Certainly the moral undercurrent of parent- and victim-blaming was deplored by Dr Kerry Carrington and Andrew Johnson, writing in the *Australian Feminist Law Journal* in late 1994. The nub of Carrington and Johnson's argument was that "Justice Wood's judgement made no reference to sexual violence, and considerably diminished the extent of collective violence inflicted upon Leigh at the party just prior to her murder".³⁴ Carrington and Johnson were of the opinion that the obsession with parental responsibility which up until that time had surrounded the case served to draw attention away from what they saw as the real issue at stake, the "prolonged and collective physical, sexual and verbal abuse inflicted upon the victim prior to her brutal murder".³⁵

31 Lumby, "Group rape: a crime that is far from rare", above n12 at 13.

32 Eva Cox, "Sex objects", Letter to the Editor, *SMH* Thursday 1 November 1990 at 12.

33 Adele Horin, "Murder Exposes Cultural Bogies", above n13.

34 Carrington and Johnson, "Representations of Crime", above n16 at 12.

35 *Id* at 16. It is worth noting that Allen J, in the New South Wales Court of Criminal Appeal, rehearsed the facts of the case at some length before dismissing Webster's appeal. At no

[S]urely one of the lessons drawn from the brutal sexual assault and murder of Leigh is not that parents ought to supervise their teenagers more closely (most teenagers regularly attend unsupervised parties), or that mothers and daughters ought to be responsible for predicting and avoiding such sexual attacks, but why is it [sic] that a group of boys could select the most vulnerable of victims, subject her to a relentless torrent of callous brutalisation and then find it "funny" ...³⁶

Simultaneously with the criticism of parenting standards within the Stockton community the blame was directed specifically towards the family of Leigh Leigh, and towards Leigh Leigh herself for having attended the party. Carrington and Johnson identify, in their first article, a manifestation of the tendency to place blame on the rape victim herself for having been a participant in an ambience of profligacy.³⁷ Justice Wood himself was amongst those who were singled out for this criticism. The effect at the community level seemed to be an ostracising of the family of Leigh Leigh, in contrast to support given to Webster's family. Carrington and Johnson suggest that the collective sentiments surrounding the crime represented a reversal of the classic Durkheimian formulation: here, it was the punishment of the victim and her family which promoted the health of the collective conscience of Stockton,³⁸ and, by implication, the health of the collective conscience of Australia.

4. *Carrington and Johnson: Sociology and Something More Consequential*

They respond, it seems to me, to the most radical programs of a deconstruction that would like, in order to be consistent with itself, not to remain enclosed in purely speculative, theoretical, academic discourses but rather ... to aspire to something more consequential, to *change* things and to intervene in an efficient and responsible, though always, of course, very mediated way ...³⁹

Jacques Derrida, "Force de loi: Le 'Fondement Mystique de l'autorité'"

Carrington and Johnson devote the second half of their article entirely to a discussion of the police investigation into the murder, and the possibility of police suppression of evidence relating to the activities of other boys who attended the party on the night that Leigh Leigh was killed:

On the basis of our knowledge about this case, we believe there is considerable evidence to support re-opening a prosecutorial investigation against two boys (X & Y) who both had a motive to kill Leigh, both being involved in previous assaults upon her (one of which was the sexual assault Leigh complained about), and neither of whom had reliable alibis for the time of the murder.⁴⁰

point in his reasons for decision does he attempt to lay blame at the feet of the parents of Leigh Leigh or the parents of the other party-goers.

36 Id at 12.

37 Id at 14, 16.

38 Though as Carrington and Johnson note, the response of the community was not uniform: there were members of the community who actively participated in the research process that was to lead to the first of the fictional texts: *A Property of the Clan*. See Carrington and Johnson, "Representations of Crime", above n16 at 10.

39 Derrida, above n1 at 8.

40 Carrington and Johnson, above n16 at 23.

These suggestions had clearly been made as early as Webster's sentencing: the then Director of Public Prosecutions, Mr Reg Blanch, felt it necessary to state after the successful prosecution of Webster, that "the DPP would not act on suggestions that charges should have been laid against other youths who attended the party. Calls for further charges were based on rumour and supposition."⁴¹ By 1994 Carrington and Johnson were clearly of the view that the investigating police, as actors within a notoriously patriarchal law enforcement bureau, had an interest in divesting the crime of its psycho-social importance. In advancing these arguments, Carrington and Johnson's article is both academic and activist, sociological and legal.

However, their text shifts away from sociological explanation to a narrower framework of legal reparation. The authors suggest first that the sexual intercourse in which Leigh Leigh had participated earlier in the evening was not consensual and they argue that there was evidence to suggest this. They question the decision of the police to bring charges against the boy involved under a carnal knowledge provision,⁴² rather than bringing a charge of sexual assault.⁴³ Second, Carrington and Johnson question the police decision to allow three months to elapse between the murder and the laying of charges against Webster. They allege there was strong eyewitness evidence of Webster's involvement, and that the police had enough evidence to charge Webster with an assault on the victim two weeks after the murder.⁴⁴ Tied up with these two criticisms of police procedure in the Leigh Leigh case is a suggestion that more than one boy had sexually assaulted Leigh Leigh on the evening in question. Carrington and Johnson allege that "vital forensic and witness evidence pointing to a more serious, and perhaps collective, sexual assault has either been ignored, discounted, not investigated or possibly sacrificed."⁴⁵

The following year, Dr Carrington published a second article on the Leigh Leigh murder, "No Justice for Leigh Leigh: Judicial, Executive and Police Sexism Intersect",⁴⁶ an article in which the language of sociology is all but abandoned in an attempt to explain the legal significance of certain aspects of the police investigation. In this short article Carrington states that the evidentiary material to which she and Johnson had referred in the latter part of their first article had been submitted to the Royal Commission into the NSW Police Service. Her submission to the Commission contained evidence which she says indicated that specific police officers from the Newcastle Homicide Unit and the Major Crime Squad responsible for the carriage of the homicide investigation into Leigh Leigh's murder had acted in violation of their responsibilities of public office under section 1(f) of the terms of reference of the Commission.⁴⁷ However, because the Royal Commission had communicated

41 See Riley, "Webster sentence a new benchmark", above n13.

42 Section 66C, *Crimes Act* 1901 (NSW).

43 However Justice Wood had noted that the 15 year old was "sentenced to community service for his sexual assault upon her", *R v Matthew Grant Webster* (unreported, Supreme Court of New South Wales, Wood J, 24.10.90, 70012/90) at 2. We understand that this sentence was overturned on appeal.

44 Carrington and Johnson, "Representations of Crime", above n16 at 23.

45 *Id* at 22.

46 Carrington, "No Justice for Leigh Leigh", above n16.

47 *Id* at 135.

to Carrington its refusal to address the issues that she had raised, she decided to make public some of the "material" which was in her possession, "given that all other avenues for correcting the grave travesties of justice in this case, including the NSW Ombudsman, have now been exhausted".⁴⁸ This second article in the *Australian Feminist Law Journal* is the vehicle for Carrington's desire to publish her material, which she then proceeds to set out in detail.⁴⁹

5. *Some Justice for Leigh Leigh: Carrington and Johnson Disappear*

So the 'Other' appears. The 'Other' is that upon which the 'Law' acts, but which it never completely absorbs, that which remains when the 'Law' has spent itself. The 'Other' may be called 'Society'.⁵⁰

Anthony Carty, "Post-Modern Law"

Kerry Carrington and Andrew Johnson wrote and published a third article on the Leigh Leigh investigation: "Some Justice for Leigh Leigh".⁵¹ In this article they report that in criminal injuries compensation proceedings in the District Court of New South Wales,⁵² Judge Moore had "vindicated"⁵³ the conclusions of their research published previously in the *Australian Feminist Law Journal*. Carrington and Johnson state:

On 31 May 1995 Justice [sic] Moore handed down a landmark decision in the Newcastle District Court, awarding a total of \$150,000 as compensation to relatives of Leigh Leigh. Justice Moore found Leigh was subject to a number of criminal assaults in the hours before her murder on 3 November 1989. The first was a rape by a boy aged 15 years, charged only with carnal knowledge. The second act of violence involved a number of boys who spat, kicked, and verbally abused Leigh on the ground outside and then inside the club-house. The Judgement named Jason Robinson, Fat Mat (Matthew Webster), Jay Hume, Shane Price, Guy Wilson and Higgo (Craig Higginson) as some of the boys involved in the assaults. Justice Moore pointed out that, 'One of the assailants, and only one, has been detected and charged with assault'. The third act of violence was described as an act of sexual assault 'related to the act of murder', 'by persons who have not yet been detected'. Justice Moore's comments also support our argument that compelling witness and

48 Ibid.

49 Id at 135 ff.

50 Anthony Carty, "Introduction: Post-Modern Law" in Anthony Carty (ed), *Post-Modern Law: Enlightenment, Revolution and the Death of Man* (1990) at 7.

51 Carrington and Johnson, "Some Justice for Leigh Leigh", above n16.

52 *Jessie Leigh and Robyn Leigh v Victims Compensation Fund Corporation*, District Court of New South Wales Civil Jurisdiction, Newcastle, 31 May 1995, 166/93, 167/93. The outcome of the civil proceedings, the work of the Newcastle Legal Centre and the work of Carrington formed the basis of a 7.30 Report on ABC Television, 23 June 1995. The campaign to have the case re-opened was prominent in the Sydney media during October 1996. Since this article was written the NSW Minister for Police has announced that an investigation into the case is to be conducted by the NSW Crime Commission: "Inquiry into Leigh murder gets go-ahead" *SMH* Wednesday 16 October 1996 at 3; "Letter says two youths killed Leigh" *Daily Telegraph* Wednesday 16 October at 5.

53 Carrington and Johnson, "Some Justice for Leigh Leigh", above n16 at 126.

forensic evidence of sexual violence had been edited out of the police construction of the case.⁵⁴ (footnotes omitted)

At this point it is clear that Kerry Carrington and Andrew Johnson have abandoned their inquiry into the question of why it is that a group of boys could select the most vulnerable of victims and subject her to a relentless torrent of callous brutalisation. Apart from a short section of their first essay, they write as sociologists turned lawyers, or rather sociologists turned legal activists. Drawn into the more immediate issues of "justice for Leigh Leigh", Carrington and Johnson find themselves without time and space to meet their stated aims: analysing some of the complex social aspects of punishment by examining the emotional responses to the murder of Leigh Leigh, and interrogating the production of a continuity between and blurring of the public and private symbolic dimensions of the crime.⁵⁵ In responding to the needs of Leigh Leigh's family, Carrington and Johnson really cannot pursue their pre-conceived topic: "representations of crime, guilt and sexuality in the Leigh Leigh rape/murder case". Thus read against themselves, Carrington and Johnson also participate, however unavoidably, in a process of sacrifice and discounting: once drawn into the specific question of compensation for the family of Leigh Leigh, they can no longer afford to concentrate upon the social and broader ethical questions which the case opens up.⁵⁶ This gravitation towards legal discourse and *l'esprit légiste*⁵⁷ is in itself worth noting; it is a testimony to the seductive power of the law,⁵⁸ a facility that enables the law to draw those who would position themselves just outside its discursive boundaries.⁵⁹ The announcement by Carrington and Johnson of Judge Moore's decision acknowledges a victory which even as a matter of criminal justice is small; viewed in the context of the cultural meanings which had at that stage attached themselves to Leigh Leigh's murder, Judge Moore's "vindication" by way of compensation is of diminished value. "Fat Mat"⁶⁰ Webster and his colleagues were still obscure, but eyes were transfixed by the afterglow of "pretty Newcastle schoolgirl Leigh Leigh",⁶¹ not a celebrity killer but a celebrity

54 Ibid.

55 Carrington and Johnson, "Representations of Crime", above n16 at 4-5.

56 See Peter Goodrich, *Reading the Law* (1986) at 204: "It is the very essence of legal rhetoric that it individualises the issues before the Court. Legal meaning is always attached to individual acts and legal explanation is correspondingly biographical and moral rather than sociological or historical and contextualizing".

57 See de Tocqueville, *De la Démocratie en Amérique*: "Judicial language becomes, in a certain sense, the popular language; the legal spirit, born in the schools and courts ... infiltrates, as it were, all of society, down to its lowest ranks, and the entire people ends up by adopting part of the habits and tastes of the magistrates."

58 See generally Carol Smart, *Feminism and the Power of Law* (1989) at 160: "The feminist movement (broadly defined) is too easily seduced by law and even where it is critical of law it too often attempts to use law pragmatically in the hope that new law or more law might be better than old law ... it is important to resist the temptation law offers, namely the promise of a solution".

59 See Steve Redhead, *Unpopular Cultures: The Birth of Law and Popular Culture* (1995) at 87: "In the ends of law, the entrails of law, we search for an answer to questions blurred by the phenomenal speed of change in popular and youth culture."

60 A nickname apparently given to Webster by his fellow students. The beauty and the beast myth is apparently alive and well. See Lisa A. Binder, "'With More Than Admiration He Admired': Images of Beauty and Defilement in Judicial Narratives of Rape" (1995) 18 *Harv Women's LJ* 265 at 272.

victim *par excellence*. Whatever the legal outcomes, Leigh Leigh was an "attractive"⁶² girl who, brought up by irresponsible/absent parents, chose to attend an unsupervised beach party⁶³ in a revealing T-shirt with a bottle of bourbon whisky;⁶⁴ she thus embraced, *willed* her own vulnerability and victimhood.⁶⁵

6. *The Form of Fiction: A Property of the Clan*

In what is increasingly being seen by cultural critics as 'post-modern culture' — 'post-literate' culture to many other writers — in which, as we have seen, a visually-oriented mass media loops soundbites, public opinion survey results and news-as-entertainment for a global audience glued to television and video screens, it may seem somewhat perverse to concentrate ... on law, crime and deviance as concepts which are now best portrayed in the form of fiction.⁶⁶

Steve Redhead, *Unpopular Cultures: The Birth of Law and Popular Culture*

A Property of the Clan, a play which takes its name from the psychiatric evidence given at the trial on behalf of Webster,⁶⁷ attempts to address the issues of collective sexual violence that Carrington and Johnson see as having been avoided in the public media representations of the crime. On the face of it *The Clan* is distinctly pedagogic, having been commissioned by the Australia Council⁶⁸ and produced by a "Theatre-in-Education" company in Newcastle; it embodies a speedy and direct response to the crisis precipitated by Leigh Leigh's rape and

61 "New lead in girl's death" *Sun-Herald* Sunday 12 November 1989 at 32. See generally Binder, *id* at 265: "Images of the victim's physical beauty and the male's bestiality pervade legal descriptions of violent crimes against women".

62 See "Girl slain in sandhills", above n12 at 7: "... Sandy Nickerson, 14, of Stockton, said Leigh was 'a very attractive girl which tended to make her the target of a lot of boys and we used to have to protect her'".

63 The seaside landscape in which Leigh Leigh died was central to the publicity surrounding the case, no doubt confirming in the public mind Leigh's frivolity: see Kristen Bumiller, "Fallen Angels: The Representation of Violence Against Women in Legal Culture" (1990) 18 *Int'l J Soc L* 125-42.

64 See "A night of savagery: Leigh's last hours", above n12: "Police have no doubt Leigh was drunk as she walked off into the night to her death."

65 "In this construction of the social interaction, there are 'spaces' opened for speculation about typical behaviour that allows the defense to draw upon images in society that hold women responsible for their own victimization": Bumiller, above n63 at 137.

66 Redhead, above n59 at 87.

67 Enright: "[The title is] a gift. It's a quote from the psychiatrist who gave evidence in court ... I thought it was fantastic, and there's a hidden pun in the title anyway on the sense of 'attribute' — that it's also about maleness and the explosion of testosterone that happens in adolescent males" in "'A form of music': an interview with Nick Enright" Veronica Kelly, (1994) 24 *Australasian Drama Studies*, at 68. Enright is referring to the following passage from the judgment of Wood J at first instance: "Webster attacked Leigh Leigh, not so much because she would not let him have sex with her but because she became the living proof that even a slut, the property of the clan, thought he was not good enough to have sex with her. It is for this reason that he proceeded to strangle her. All the pent up rage which Webster had managed to control for most of his life was unleashed, not only by the drugs and alcohol, but by what he perceived to be an extreme rejection." Evidence of Dr Strum, *R v Matthew Grant Webster* (1990) above n3 at 5. This evidence was rejected by Justice Wood as capable of providing an explanation/exculpation of Webster's behaviour.

68 See "Playwright's Note", Sydney Theatre Company Programme 1995 for *Blackrock*.

murder. The play contemplates an audience which has been directly or indirectly affected by Leigh Leigh's death; indeed, so focused and specific is Enright's play in its aims that it constitutes, in a very real sense, a commission of inquiry in itself, a forensic re-examination of the causes and results of the murder. It is a play to get people talking. According to Enright, he originally refused the offer made to him by the artistic director of the Freewheels Theatre-in-Education Company:

... I said I couldn't take it on, it horrifies me too much. The difficulty of what I call movie-of-the-week writing is that it's victims and villains, and to get any sort of dialectic going is very hard, because what kind of response can you have to rape and murder but the conventional one? And he said this fantastic thing: you don't understand what's happened in this community as a result of that event; there's a whole group of sixteen and seventeen-year-old kids who cannot speak to each other, or to any adult, about the issues that it raised for them. They have been so damaged by being participants in this experience, or witnesses, or through having a sister or a brother who was in the class or at the party or whatever. And it's become a taboo subject.⁶⁹

While the setting of the play is ambiguous, Enright notes on the acknowledgments page of the published script that "[m]any people in the Newcastle community helped in the research for this play". From Enright's description of the writing process, which included interviews with groups of children and mothers⁷⁰ who had been affected by the killing, and with school teachers and counsellors, a picture of the writer as ethnographer emerges.⁷¹ Enright suggests that the basis of his dramatic material is an "authentic" community response, and that his play is, therefore, very close to the bone;⁷² indeed, for many, it was too close to the bone.⁷³

The play takes place in "a large Australian industrial city",⁷⁴ and the characters are, for the most part, either students at a local high school or members of

69 Enright, "Interview with Nick Enright", above n67 at 66.

70 In the same interview Enright remarks that none of the fathers wished to participate in the research process, *id* at 67.

71 "[The ethnographer] presents languages, cultures, and societies in all their opacity, their foreignness, their meaninglessness; then like the magician ... he clarifies the opaque, renders the foreign familiar, and gives meaning to the meaningless", Vincent Crapanzano, "Hermes' Dilemma: The Masking of Subversion in Ethnographic Description", in Clifford and Marcus (eds), *Writing Culture: the Poetics and Politics of Ethnography* (1986) at 51.

72 "Property of the Clan [sic] ... walked among the young people it represented and divided them. An early reading in the Stockton lounge-room of one of the families that had assisted in research was a "potent night", according to [Freewheels' director] Brian Joyce. Couples who arrived for performances holding hands were separate bodies by halfway through. A private preview was attended by members of Leigh Leigh's family who'd found out about the play. Some of them hadn't seen each other for two years and were once again confronting their nightmares": "Bearing Witness" *SMH* 26 August 1995 at 8A. It should be noted that Enright is careful to stress that it is not a play "about" Leigh Leigh — it is a play about the responses to an event: "it's a technical given of the play that the girl is murdered and never appears". Interview with Enright above n67 at 67. Nevertheless, there are numerous details in the text, beyond the title, that bring the audience back to "real life" rape and murder.

73 "A Property of the Clan was not taken by Leigh Lee's [sic] school, Newcastle High. Says Freewheels' director, Brian Joyce: 'Basically, the administration and senior staff said no, because they said it was too soon after the event to open a wound.'" Sandra Hall, "The Enright Stuff" *The Australian Magazine* 10-11 June 1995 34 at 38.

74 Above n2 at 1.

the students' predominantly working-class families. A Year 11 history class is studying the persecution of minorities; as the play opens a lesson is taking place on the subject of the "assimilationist" relocation of Aboriginal girls as domestic servants for white families. But in the schoolyard, the news is that Ricko, 19, a popular dropout of the school, has returned from travelling in Queensland, and is throwing himself a welcome home party at the surf club. The mood is one of excitement. Ricko is greeted enthusiastically by his 16 year old friend Jared.

From the outset, the language used by the boys in the play is sexist, and menacingly so; it is the language of woman-hatred. Jared's 13 year old sister Jade complains to Jared that her friend Tracy has been invited by another boy, Scott Abbott, to Ricko's party, whereas she herself has not been invited. This exchange takes place:

JARED: Scott Abbott's a bloody little root-rat.

JADE: He told her he likes her! And she really likes him.

JARED: And she's a moll. A fucken —

She swings at him with her schoolbag.

JADE: Don't swear at me. I'll tell Mum.

JARED: Yeah? Well, first you tell her you want to go the Surf Club Saturday night, and see what she says. Zit-face.⁷⁵

In the very next scene, Jared is making a report to the history class. The juxtaposition is marked, for the topic of discussion is now the Holocaust:

JARED: "... The Germans believed they were a threat to the master-race. The master-race had to be racially pure to achieve its aim of dominating Europe and the world. Traditionally Jews were money-lenders and bankers because they were shut out of all professions. This control of finance was something the Nazis set out to break. They made a "systematic campaign of hatred against Jews". They made them the national enemy. Jews were beaten in the streets. Their shops were attacked. Many were robbed of their homes and money ... They were branded in many ways, sometimes by being made to wear a yellow Star of David ... In many cities they were driven into ghettos where their movements could be policed. And by the outbreak of war they were already being sent off to camps called concentration camps, which were really death camps. By 1945, when the Germans were finally defeated, about six million Jews had been murdered in the many death camps set up throughout Nazi-occupied countries."

TEACHER: Very good, Jared. We're discovering that prejudice and discrimination are based on assumptions. The value systems of power ... Who else did the Nazis send to the camps? Did you find that out in your research? [*JARED shakes his head.*]⁷⁶

75 Id at 5.

76 Id at 7-8.

Prominent among other inmates of the Nazi death camps, of course, were homosexuals. Glen, in Jared's year at school, is suspected by the other boys of being homosexual, and is ostracised. He keeps a record of the insults he receives at school, which he discloses to Rachel, Jared's girlfriend. Glen and Rachel work on the school paper, and are both aware of the power of (abusive) language. But in the early scenes of the play it seems clear that linguistic competence is of minimal value; when Rachel objects to Jared's description of Tracy, Jared is secure in his knowledge and is dismissive of her opinion. Rachel's academic capabilities are more likely to be co-opted than acknowledged; it is implied that Rachel has provided the information for Jared's report.

Jade's mother, Diane, forbids her from attending the party. The party itself is only represented by a short scene between Ricko and Jared but during that night Jade wakes in fright. She has had a nightmare:

JADE: Faces. Full of hate. I was all wet. They were looking down at me, throwing things. Cigarette butts. Hate everywhere.⁷⁷

We then learn that Tracy, Jared's putative "fucken moll", had been killed at the party. The circumstances of Tracy's murder are unclear; the audience is left to dwell upon the schoolyard language of woman-hatred, and to remember the events leading up to Leigh Leigh's death.

After the murder, the responses of the characters polarise and are mirrored in the gradual separation of Rachel and Jared. The girls, Jade and Rachel, are obviously deeply disturbed by the murder. Rachel, with the support of Glen, attempts to raise a discussion of it in class. She is prevented from doing so by the teacher: "It's more of a personal development issue. Not a topic for history class."⁷⁸ Rachel and Glen are actively engaged in confronting the implications of the death — they are writing a report for the school paper in an attempt to challenge conventional, sensationalist interpretations of the event.⁷⁹

RACHEL: You know what I get from all these reports? It's like it never happened before. Like it happened just this once, shock horror. This stuff goes on all the time, doesn't it?⁸⁰

In contrast, Jared is extremely angry with Rachel for having made a fool of him by raising the topic in class. His response — "I don't want to hear one more fucken word about Tracy Warner"⁸¹ — stands for the boys' denial of the event, a collapse into the rhetoric of woman-hatred and the enforced solidarity of mateship. The descriptions of Tracy from the boys become progressively more vicious and they are preoccupied with the traditional "mateship" ethic of "don't dob".⁸²

77 Id at 15.

78 Id at 20.

79 Id at 21.

80 Id at 35-6. The boys' vernacular bears Rachel out: "Davo and Wayne Hanley. Watching. Barracking. Cheering him on. Fighting about who was going to be first ... first with the sloppy seconds": Id at 30.

81 Id at 24.

82 Id at 28, 30. "JARED: It's a madhouse. Davo and them running round saying don't be a dobber, and then the posters on telegraph poles. Shame Black Rock Shame ... / RICKO: They're your mates. Forget about it./ JARED: I'm not a dobber. But I had to tell someone./ RICKO: Why the fuck did you tell me names!" "The 'wall of silence' began to

Jared's actual knowledge of what happened during the party is revealed soon after in a confession to Ricko that he had seen what happened at the party: Scott raping Tracy on the sandhills, together with "Davo" and "Wayne Hanley". Ricko, alarmed, replies:

RICKO: I didn't hear any names. Forget you even saw it. Nobody knows you were there ... It's just the way things happen. The way she came, with a bottle of bourbon, and her little earrings bobbing, and her tits poking out of her T-shirt. She was up for it. She was always horny, mate, a horny bitch. She was always a bloody moll. You've seen her round. You've called her that and worse. She was a slut, mate.⁸³

The extent of Jared's complicity is thus revealed early in the text and he is reminded of his collusion by Ricko: "You've called her that and worse." Scott, Davo, and Wayne Hanley eventually confess to having raped Tracy and this is soon followed by Ricko's confession to the murder. There is a clear re-iteration of the violence to which the girls are subjected, with a steady progression from the language of woman-hatred to rape to murder ("it's just the way things happen").⁸⁴

The competing cultures of honesty and denial converge in the violent break up of Rachel and Jared, precipitated by Rachel's persistence in attempting to identify the broader meaning of Tracy's death. She is confronted by Jared's revelation of his direct involvement, and he torments himself in front of her:

JARED: You got to listen to me. I'm going away tomorrow and I want to tell you. I was there. Not at the end, not with Ricko. But when the three of them ... I watched. Saw it all. Well, heard it all. Everything you read in the paper. But afterwards ... They pulled their duds up and headed back to the party to tell everyone how they'd paid out on Tracy. And she went stumbling off home. I could have gone down there. Any time. I could have stopped them, maybe. Only I wouldn't. I didn't. But afterwards, I could have taken her home. And then she never would have died.⁸⁵

The play ends with Jade and Rachel at Tracy's grave some months later.

RACHEL: Have you got other friends now?

JADE: Heaps. This is over. This is history. There's only one thing I wonder now.

RACHEL: What?

JADE: You'll think I'm really off.

RACHEL: What? I bet I've thought about it, too.

JADE: Well. What was the last thing she saw?

dominate the headlines. 'It's not Australian to dob in a mate' one middle aged male voice told radio identity Warwick Teece on 2HD", "In Cold Blood", above n13 at 16.

83 *The Clan*, above n2 at 30.

84 As a further iteration, Jade's commentary on the boys' arrests includes a description of her Christmas: a forced change of telephone number because of violent threats from her father: Id at 34.

85 Id at 51-2.

RACHEL: What was the last thing she saw?

JADE: Yeah. Before the end.

RACHEL: Hatred. Just Hatred. Blind hate.

*Jared appears at a distance ... He has a small bunch of flowers. The three look at each other in silence.*⁸⁶

7. Forget you even saw it: Blackrock

One of the most obvious differences between *A Property of the Clan* and *Blackrock*, the "extended adult version",⁸⁷ is that the size of the cast is greatly increased; perhaps hardly surprising given that a transition is being made from the context of "theatre in education" to that of a major theatre company, just as a transition is being made from provincial Newcastle to metropolitan Sydney.⁸⁸ The centre of action has shifted also, with *Blackrock* devoting much more attention to the parents of the schoolchildren involved. Rachel's middle-class parents, Stewart (advertising executive) and Marian (an academic writing about initiation rites), enter our view. Diane (Jared's mother) has a sister, Glenys. In *Blackrock* we also see much more of the domestic relationship between Jared and his mother, Diane, a relationship which now appears to be much closer, though she is unable to tell him that she has been diagnosed with breast cancer and is shortly to have a mastectomy. We see Jared's father, a boxing instructor. Other changes include the disappearance of Glen, while Rachel in *Blackrock* has a brother Toby and Jade has become Cherie, Jared's cousin. Part of the reason that the cast has expanded, one presumes, is that *Blackrock*, unlike *The Clan*, attempts to dramatise some of the events at the well-attended surf club party.

However there are curious differences between the two plays which are not matters merely of scale. First, the barbed language of boys in the schoolyard has been sanitised and somehow defused in *Blackrock*. There are no "fucken moll" outbursts from Jared; indeed there is little sexual menace. There is a marked difference in the relationship between Jared and Rachel. They are smart and sexy, and she can hold her own against the tide of abuse while Jared more explicitly aligns himself with her against the other boys. Cherie is similarly able to hold her own and "talk back" to the boys from the outset. With the loss of Glen, the homophobic catalogue of abuse in *The Clan* is also excised.

Ricko is transformed from a foul-mouthed lout into a knockabout lad, with all the rough and eloquent charm of the Australian larrikin; he is now, though unemployed, a keen surfer and amateur mechanic. Ricko has, between *A Property of the Clan* and *Blackrock*, been domesticated to the extent that he

86 Id at 53. The image of Jared mirrors Jade's earlier report of Scott Hanley, one of the boys charged with the rape, appearing at the grave with flowers: Id at 34.

87 "Deracinated but not decaffeinated", *SMH* 20 March 1995 at 17.

88 "Wayne Harrison and John Howard ... offered me the chance to develop the material ... for a production at The Wharf. I decided to write a new play, *Blackrock*, incorporating the original triad of protagonists, Jared, Diane and Ricko. David Berthold as Director of New Stages led the piece through many drafts and four workshops." Enright, "Playwright's Note", *Blackrock* Programme, Sydney Theatre Company 1995, reprinted in *Blackrock* (1996) at vii.

has acquired a girlfriend.⁸⁹ Furthermore we learn from Jared that Ricko once, at some personal cost, rescued his younger "mate" from a severe injury. He is thus reborn in *Blackrock* as the affable altruist. He is now older, 22, no longer Jared's contemporary, and he occupies an elder brother/father role in relation to Jared.

There are other revisions. The play opens with the return of Ricko, but there are none of the schoolroom scenes of *The Clan*. The boys all meet on the beach, and Ricko is told that one of their number has recently committed suicide. A competition between Ricko and Toby leads to the idea of a party to be held in order to celebrate the 18th birthday of Toby, Rachel's brother (no longer to commemorate Ricko's return). We see Toby trying to persuade his parents that the party should be held at the surf club rather than at his parents' house. Stewart and Marian, perhaps concerned about "cigarette burns on the rugs",⁹⁰ acquiesce: "Well, if you don't mind us not being there ...".⁹¹ Diane articulates her own philosophy of child supervision: "I'll cook your meals and wash your clothes, but I won't be a policeman. I've got worries of my own."⁹²

We then arrive at the scene of the party. The mood is one of excitement, and in particular, sexual excitement: it is clear that both the boys and the girls who have attended regard the party as an opportunity for sexual contact. Jared and Toby come into conflict over Tracy. There is an atmosphere of general euphoria and confusion bordering on farce, with repeated exits, entrances and chases across stage. At various points Tracy's friend Cherie expresses concern as to Tracy's whereabouts. But then the party is over; it is the next morning, and Diane announces the news to Jared. Tracy is dead, killed. Jared seems, much to Diane's disgust, to be indifferent to the calamity.

The structure of the narrative after the death differs markedly from *The Clan*. Where *The Clan* becomes preoccupied with questions of responsibility, the drama of *Blackrock* at this point becomes twofold: first, the search for the identity and location of the killer; and second, Jared's desire to ignore the reality of Tracy's death. The play becomes a detective thriller, with Jared's estrangement from mother and girlfriend being an important secondary concern. The confession of rape offered by Davo and Scott to Ricko is accompanied by a throwing of suspicion on Jared. The arrest of Toby (and Davo and Scott) is followed by Ricko's confession of murder to Jared. It is only at this stage that a real ugliness emerges in Ricko, as he recalls his encounter with Tracy:

RICKO: She says she's going home, she's hurting. I say hurting from what? Guys, she says, those guys. Take me home, Ricko. Tells me I'm a legend, says she feels okay with me. Look after me, Ricko. Take me home. Puts her arms round me. I put mine round her. I feel okay now, Ricko. She feels more

89 This is in a marked contrast to *The Clan* where Ricko is a loner, and something of a paedophile. Ricko's treatment of Tiffany in *Blackrock* is, from the outset, dismissive and insulting, but the seriousness of her character is undermined. She is presented as a caricature, the working class girl who talks too much.

90 Enright, *Blackrock*, above n17 at 9.

91 Ibid.

92 Id at 15.

than okay. I say I'll take you home, babe, but first things first. I lay her down on the sand, but she pushes me off. Oh, she likes it rough. I'll give it to her rough. Then she fucken bites me, kicks me in the nuts. My hand comes down on a rock ...⁹³

The drama is then focused on the localised request for an alibi: the mateship trope, the preoccupation with "dobbing", shifts from being a response to the event to take centre stage as *the* dramatic focus. Eventually, having asked his father for advice⁹⁴ and witnessed a further example of Ricko's violence (an attack on his girlfriend, Tiffany), Jared refuses to provide Ricko with an alibi, which leads to a fight in which the death of Tracy is almost re-enacted.⁹⁵ At this point the police arrive and arrest Ricko. He is later found dead in his cell; he has hanged himself with a belt.⁹⁶

Ricko's death is announced to Jared by Rachel. In the argument that follows, Jared's concern is the person he thinks is responsible for Ricko's death: "Ricko's dead because some moll didn't know the limits."⁹⁷ Rachel is goaded into telling him that she is glad Ricko is dead. Jared demands that Rachel apologise. It is no longer a confrontation provoked by Rachel's broader inquiry into the rape and murder as in *The Clan*, but by a personal outburst of irritation. This difference is compounded: Jared does not confess his involvement to Rachel. They approach a reconciliation but he "misunderstands" the situation:

She's going. His face is in his hands. He sobs, retches. It's like a fit. She wants to go, can't. ... He puts his hand out. She kneels. She puts an arm round him, he round her. He embraces her. Their moment of intimacy starts to become sexual.

RACHEL: Jared, no. No. No!⁹⁸

They are interrupted by Diane, who demands that Jared apologise to Rachel. When he refuses she orders him from the house.

The play ends with a meeting between Diane and Jared at the beach. Jared is brought to confide in his mother that he watched the boys rape Tracy and did not intervene because they were his "mates". This confession is an act which achieves some sort of reconciliation between Jared and Diane. She invites him to help her to clean graffiti from Tracy's headstone, an invitation which he accepts.⁹⁹

93 Id at 45.

94 "LEN: Back him up. To the cops? That's another game altogether. You a good liar? No, you don't look it. You'd be bloody mad". Id at 50.

95 The violence that has killed Tracy has become "gender-neutral". See Robin West, *Narrative, Authority, and Law* (1993) at 180.

96 An action that brings the play back to the start — reflecting the report of suicide in the opening scene.

97 *Blackrock*, above n17 at 61.

98 Id at 62.

99 Id at 69.

8. *Departing From the Script: The Ethics of Blackrock*

The transition from *A Property of the Clan* to *Blackrock* raises several questions related to the role of the legal fiction and the manifestation of rape and murder as "textual effect". Both plays remain closely based on the Leigh Leigh rape and killing, but *Blackrock's* attempt to engage a wider audience by departing from the horrific "real life" script sees the drama becoming constrained, in various subtle ways, to enact certain meanings which are foreign to both Leigh Leigh's death and the conception of *The Clan*.¹⁰⁰ The result is a blunting of the political force of the drama.

A. *Echoes of the Media: Tracy and Leigh Leigh*

Blackrock echoes and replays much of the media representation of the well-developed schoolgirl who recklessly attended a party, who "acted like a victim" and was thus a candidate for disciplinary abuse.¹⁰¹ The attitudes of Marian and Glenys clearly articulate themes from the press coverage:

MARIAN: Rachel! Darling, you had a shocking experience. Nobody should have to see what you saw. But Toby wasn't responsible for that. He may have been stupid. But he's not evil. How was she with him? With the others? She was obviously drinking. How was she? ... The point is what you saw. Toby's eighteen. At the beginning of his life.¹⁰²

GLENYS: You douse yourself in kero, then start playing with matches, you can't blame anyone else when you set yourself on fire.¹⁰³

The descriptions of Tracy in *The Clan* come from the boys — they serve to reinforce a portrayal of the sexist culture that she inhabits. In *Blackrock*, however, the proliferation of characters has the effect that Tracy's behaviour becomes represented by the other girls at the party and in particular by Shana who teases the boys and "leads them on":

SHANA: Hey, Ricko! You know what this is, round my neck?

TIFFANY: It's a little bell.

SHANA: I asked Ricko. You know why I wear it? So when it rings —

SCOTT: "You'll know I'm coming."

...

SHANA: Did you hear the bell? Ricko? You can ring it if you like.¹⁰⁴

It is a picture of the sexy teenager which again accords with representations of Leigh Leigh in the newspaper coverage of her death. In *The Clan* these

100 Enright himself identifies the trend towards generalisation as he attempts to separate "life" and "art": "The personalities and histories of the events' real protagonists are of interest to the media and the jurists: the concern of my play was why *any* group of boys would abuse *any* girl": "Playwright's Note" *Blackrock* program, Sydney Theatre Company 1995; "Author's Note", *Blackrock*, above n17 at vii.

101 See Duncan Kennedy, *Sexy Dressing Etc.: Essays on the Power and Politics of Cultural Identity* (1993) 126–213.

102 *Blackrock*, above n17 at 39.

103 *Id* at 40.

104 *Id* at 21, 23.

representations of Tracy are media reports and sexist description; in *Blackrock* it is verifiable, taking place before our eyes.

It is not necessarily the case that the audience is invited to "agree" with Marian or "blame" Shana, but inevitably we are invited to consider these recycled images that appear in *Blackrock* as part of the range of possible explanations for the death. Indeed the tropes of *Blackrock* are very close to some of the more sentimental explanations of the Leigh Leigh killing. For example, a great deal of responsibility for Tracy's killing is shifted to the parents of the teenagers involved, who are forced to display their disregard for their children.¹⁰⁵ Instead of taking place against a historical background of institutionalised bigotry and a "systematic campaign of hatred"¹⁰⁶ which is indicated so poignantly by the classroom scenes in *A Property of the Clan*, *Blackrock* prefers simply to counterpose the activities of the children and their parents. Hence for example we have, interlaced with scenes of the teenagers pairing off and heading for the sand dunes at Toby's party, scenes of Diane with her friends at a pub watching strippers,¹⁰⁷ or scenes of Stewart at an awards night crowing over an unashamedly sexist advertising campaign. There is a conflation of individual behaviours: sexist advertising is the same as women watching strippers.¹⁰⁸ *Blackrock's* structure divorces the crime from a framework of institutionalised sexual(ised) violence and locates it in the narrow realm of a relationship between parents and their uncontrolled children.

One can suppose that the implication to be drawn from this is that the boys of *Blackrock* are acting out the lax behaviour of their parents; although the father figure is, for the most part, conspicuously absent from *Blackrock*.¹⁰⁹ It is clear enough that this explanation of delinquency, in which mothers are cast as "accomplice[s] by omission"¹¹⁰ comes directly from Justice Wood's judgment and the press commentary which followed Leigh Leigh's death, and is not far from the well-known apology for rape: "boys will be boys".¹¹¹

105 *Id* at 9.

106 *The Clan*, above n76.

107 *Blackrock*, above n17 at 24.

108 *Id* at 26.

109 At times *Blackrock* seems to adopt the supposed correlation between "father-absence" and rising levels of youth crime, delinquency and general yobbish behaviour, the subject of much recent literature: see Richard Collier, "Coming Together?: Post-Heterosexuality, Masculine Crisis and the New Men's Movement" (1996) 4(1) *Feminist Legal Studies* 3-48; Richard Collier, "'A father's 'normal' love': masculinities, criminology and the family" in R Emerson Dobash, Russell P Dobash and Lesley Noaks (eds) *Gender and Crime* (1995) at 213; Beatrix Campbell discusses the characterisation of this 'flight of the fathers' as a purge orchestrated by the mothers — an argument that can then hold these mothers responsible for the crimes of their (male) children and erases the masculine culture that seeks to dominate public space, see "Gender, Crime and Community", paper given at the Institute of Criminology, Sydney, 23 May 1996 (forthcoming in *Current Issues in Criminal Justice*).

110 Fraser, above n15 at 299.

111 See Drucilla Cornell, *Transformations: Recollective Imagination and Sexual Difference* (1993) at 84-5: "Law has the power to make itself true. A normative reality is created by who is or is not found guilty of rape and why. The justification 'boys will be boys' is only too well known and truly horrifying, particularly as used recently in situations of date rape. But there is also meaning to the statement that they are being boys ... None of us are

B. *Responsibility and Reconciliation: Jared*

The effect of *A Property of the Clan* is to place responsibility directly upon the bystander, Jared. Enright leaves the play open to the possibility of evidence offered by Jared which might support re-opening a prosecutorial investigation against other boys (the Scott, Davo and Wayne of the play) who may also have had a motive to kill Tracy, but who had not yet been identified. It is as if Enright had in mind the concerns that have since been voiced by Carrington and Johnson regarding Leigh Leigh's sexual assault prior to her murder. One might even suppose that *The Clan* operates, at one level, as a Mousetrap play, an attempt to prompt unforthcoming witnesses into action. In the terms of speech act theory, the play is "performative", a text which interrogates and seeks to impress the legal process upon which it is based.

By contrast the structure of *Blackrock* serves, in several strategic ways, to absolve Jared of this responsibility, most apparent in the way that the structure locates his involvement as a witness to Tracy's rape within the narrow framework of his relationship with his mother. The obvious parallel is not only between the mother's inability to communicate the cancer to her son and the reciprocal inability of the son to communicate his observation but between the cancer itself and the murder.¹¹² This juxtaposition reiterates the implication that Jared's confession is a trading of secrets with his mother rather than an acknowledgment of his complicity. The difference between the Jared of *The Clan* who refuses to speak about the events and the boys in *Blackrock* who can't speak is crucial. Far more explicitly than *The Clan*, *Blackrock* is presented and read as the tragedy of the boy(s) who can't articulate their feelings, and who can't speak out without peer approval.¹¹³ This emphasis on the psychological well-being of the boys in *Blackrock* seems misplaced and has the effect of downplaying, and even excusing, the violence for which they are responsible.¹¹⁴ The end of *Blackrock* asks the audience to believe that the private

free to just be beyond gender. It matters, however, whether we focus on how gender hierarchy is produced and reinforced by the legal system so as to harm women ..."

- 112 "It's the boys' story ... but it's a beautiful symbol, actually, that this mother brushes with death and Tracy, the girl who's killed and raped, who's gone permanently, we look at what that loss is to people — terrible loss and shock of abrupt and untimely death — and the breast cancer is like a small symbol of that" Angela Punch-McGregor (who played Diane in the 1995 Sydney Theatre Company production), "Bearing Witness", *SMH* 26 August 1995 at 8A.
- 113 Enright states that "Primarily it's a play about the boys. They're caught in this terrible nexus — no-one engages with them in a dialogue about how to be a man. No-one talks about how to be a man in relation to women, in relation to other men, in relation to your sexuality, your soft feelings. It's heartbreaking.": "Deracinated but not decaffeinated", above n87 at 17; "The boys suffer tremendous pain from absent or ineffectual male parenting, male models, male bonding, and the great need for that in the adolescent boy, and perhaps the violence that Nick is writing about is coming from this deprivation. The mateship and friendship that comes with their own peers is great but it's not enough", Angela Punch-McGregor quoted in "Bearing Witness", *ibid*.
- 114 A theme that is repeated in current sociological literature about boys "damaged" by masculinity. For a discussion of the current literature and issues see David Buchbinder *Masculinities and Identities* (1994) ch1; Nigel Edgely and Margaret Wetherall, *Men in Perspective: Practice, Power and Identity* (1995); Andrea Cornwall and Nancy Lindisfarne, "Dislocating Masculinity: Gender Power and Anthropology" in *Dislocating Masculinities: Comparative Ethnographies* (1994) esp 25ff. It is a theme that is congruent with

confession to the mother is enough. If *The Clan* is a Mousetrap play, engaging directly with the legal and criminological issues from which it arises, then *Blackrock* serves as a Jonsonian masque, an epilogue, a conservative if spectacular attempt to close the case.

As the aftermath of the murder in *Blackrock* plays itself out in Jared's reconciliation with his mother, so does *Blackrock* itself force a social reconciliation over the murder of Leigh Leigh, effecting a process similar to that endorsed and practised by the "new republican" criminology of Braithwaite and others.¹¹⁵ At the end of *Blackrock*, Jared in effect undergoes a process of "reintegrative shaming" within the domestic framework that is so central to *Blackrock*. As the process takes place the possibility of a public avowal of responsibility, so acerbically raised by *The Clan*, recedes into the distance. In this closing reconciliation scene *Blackrock* itself can be said to embody an attempt to rebuild a community after Leigh Leigh, an attempt to render unnecessary the operation of law and politics by the expediency of "getting out in the open" those issues of sexual abuse which, in Enright's view, remain unresolved. But we perhaps should question the ability and authority of Diane and Enright to extend the sort of absolution that they offer to Jared — and to Webster. We might think that the Rachel of *The Clan* would not be able to comprehend the way in which Jared is, in effect, "reintegrated" in *Blackrock*.¹¹⁶

C. *Violence and Myth: Ricko*

Perhaps the most remarkable event in *Blackrock* which precipitates a closure of the text is Ricko's suicide in custody; within the framework of *Blackrock* this death is a sacrifice, an expiation which effectively relieves the community of Blackrock from the burden of having to accept collective responsibility. The denouement is incomplete. This is in direct contrast to *The Clan*, which reveals a predatory Ricko as the murderer early in the piece, leaving space for the real question which confronts Jared and others: how to respond to this collective male violence.

the criminology that focused on youth subculture as "resistance through rituals". See Judith Allen, "The 'Masculinity' of Criminality and Criminology: Interrogating Some Impasses" in Mark Findlay and Russell Hogg (eds), *Understanding Crime and Criminal Justice* (1988) at 1; Elizabeth Stanko, "Challenging the problem of men's individual violence" Tim Newburn and Elizabeth Stanko (eds), *Just boys doing business? Men masculinities and crime* (1994) at 32.

- 115 See John Braithwaite, *Crime, Shame and Reintegration* (1989); John Braithwaite, "The Political Agenda of Republican Criminology", paper presented to the British Society of Criminology, York, 27 July 1991; John Braithwaite, "Shame and Modernity" (1993) 33 *British Journal of Criminology* 1 (1993) 1-18; John Braithwaite and Kathleen Daly, "Masculinities, violence and communitarian control" in Newburn and Stanko, above n113: "One wonders how the Clarence Thomas hearings might have gone if American political culture would have allowed Anita Hill's allegations of sexual harassment to be handled in a community conference format. Would it not have been better for women if Thomas could have admitted his abusing [sic] Hill and apologised for his acts without his being stigmatised and professionally destroyed?" at 206.
- 116 If the vocabulary in which a resolution is effected is not intelligible to all parties to the dispute, then as Vijay Mishrah has pointed out recently in a similar context: "We must ... devise a language in which conflict resolution and consensus are replaced by an understanding of how opposing logics and procedures can be understood and addressed": Vijay Mishrah, "Postmodern Racism" (1996) 55(2) *Meanjin* 346 at 349.

The other mythic structure which is imported into *Blackrock* of course is that of the detective novel. At several points *Blackrock* flirts with the genre of crime fiction, the whodunnit, deriving momentum from prolonging the anonymity and then the elusiveness of Tracy's murderer. Just as the criminal justice system was satisfied with convicting Webster of murder, the logic of *Blackrock* is satisfied that Ricko is, eventually, apprehended and charged. It is worth remembering that the Leigh Leigh investigation itself has been written in terms of the detective novel, as a minor triumph in the history of detective work. Justice Wood himself offered his congratulations for "dogged and persistent police work".¹¹⁷ On the account of Carrington and Johnson, the Leigh Leigh case did not in fact present much of a challenge to the detectives of the Newcastle police; it was common knowledge, for example, that Webster had been involved in Leigh Leigh's death. Certainly it does not seem as if the police had any great difficulty in extracting a confession from Webster once they had called him in for questioning.

But more than anything else, Leigh Leigh's death as conventional crime fiction has the effect of drawing attention away from the issue of sexual assault, restoring Justice Wood's vision of rape as a crime of violence only: in the words of Robin West, rape as "sporadic, and conceptually continuous with gender-neutral pain".¹¹⁸ Thus is the female subject desexualised as she is killed. Ricko is no longer the rapist and woman-murderer; he is reincarnated as the criminal from central casting, the good boy gone wrong, the boy whose only crime is to have misread the signs. Just as Jared's expulsion from home is precipitated by a "misreading" of Rachel's embrace,¹¹⁹ Ricko at the party is dealing in a misrecognition of sexual signals that develop into an uncontrollable frustration with his inability to get a girl:

Shana comes onto me, then she backs off. Spider says it's a full moon, there's heaps of other chicks down the beach, take anyone on. I knew which ones were up for it, mate. We both did. We checked them out together. And they were checking us out, weren't they? You and me and every other prick. The whole fucken netball squad. ... One of them young babes, Leanne? I don't know, comes running up to me, calls my name, Ricko, hey, Ricko! She grabs me, pushes me off. She's on, no she's fucken not, she's with some fucken grommet. I head towards the rock. I hear my name again. Ricko, Ricko. It's Tracy. Tracy Warner. I go, right, Jared was here. It's cool. I'll take his seconds. ... My hand comes down on a rock ...¹²⁰

This is a characterisation that collects the imagery used in Webster's trial in the psychological evidence given on behalf of Webster, but bypasses both the deliberate savagery of Ricko in *The Clan* who pursues Tracy onto the

117 *R v Webster*, above n3 at 11.

118 Robin West, "The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory" (1987) 3 *Wisconsin Women's Law Journal* 81 at 82.

119 This dynamic evokes the characterisation of sexual harassment and rape as a "misunderstanding" between the parties. For a discussion of this type of argument and the argument that locates men's violence as an explosive reaction to women's resistance/complaint see Dru-cilla Cornell "Sexual Freedom and the Unleashing of Women's Desire" in *The Imaginary Domain: Abortion, Pornography and Sexual Harassment* (1995) at 168ff; Jenny Morgan, "Sexual Harassment and the Public/Private Dichotomy: Equality, Morality and Manners" in Margaret Thornton (ed), *Public and Private: Feminist Legal Debates* (1995) at 89ff.

120 *Blackrock*, above n17 at 44, 45.

beach ("it was easy to catch up with her. She didn't hardly know which way she was going"¹²¹) and of Webster who apparently strangled Leigh Leigh and then went to fetch a rock.¹²² Simultaneously Ricko is distanced from the rest of the boys by his representation in *Blackrock* as older, clearly potentially adult, but none-the-less immature and uncontrolled. This is a character typology which is very close to the portrayal of Webster by counsel for the defence at Webster's sentencing hearing. In this way *Blackrock* operates at some levels as an elegant tragedy, charting once again the demise of "mateship" and the Australian larrikin.¹²³

So, with the killer mythologised as jaunty hero/silent outsider/reluctant villain (a myth which is, of course, powerful and enduring in Australian culture¹²⁴), there is little hope for *Blackrock* to comprehend the ethical ramifications of Tracy's death. Where *The Clan* stares male sexual assault in the face, *Blackrock* veers away from it, disengaging from the real life script, the Leigh Leigh murder, which gives the play its authority. It is paradoxical that although *Blackrock* chooses to enact the surf club party, it depicts nothing of the woman-hating savagery that led to Tracy's death. The play no longer locates Leigh Leigh's death within a language of schoolyard woman-hatred. Rape and murder in the guise of holocaust nightmare — Jade's nightmare in *The Clan*, of faces full of hate — is a grim reckoning which *Blackrock* replaces with vague alarms off-stage.¹²⁵ *Blackrock* recoils from the narrative horror of the rape and murder, avoiding its "central reality",¹²⁶ adopting a stance which is curiously similar to that of Ricko in *The Clan*: "I didn't hear any names; forget you even saw it."¹²⁷ By the end of *Blackrock*, we are a long way away from Leigh Leigh.

D. "This is history. Our History":¹²⁸ Rachel

Thus, *Blackrock* is dehistoricised and abstract, another story through which myths and discourses of blame indeed "circulate",¹²⁹ disappearing from one

121 *The Clan*, above n2 at 45.

122 *R v Webster*, above n10 at 8–9.

123 As if it were a coda to, say, the plays of Ray Lawler, Alan Seymour, or perhaps David Williamson. See David Buchbinder, "Mateship, Gallipoli and the Eternal Masculine" in Patrick Fuery (ed), *Representation, Discourse and Desire: Contemporary Australian Culture and Critical Theory* (1994) at 115.

124 See Terry Threadgold, "Black man, white woman, irresistible impulse: media, law and literature making the black murderer" in Pheng Cheah, David Fraser and Judith Grbich (eds), *Thinking Through the Body of the Law* (1996) at 169.

125 That Leigh Leigh's murder took place at a party, a carnival, might explain why so many commentators seem to excuse the ritual degradation as a manifestation of youthful high spirits. It is as if the collective violence must be excused if one is to safeguard the possibility of boyish *jouissance*. See Slavoj Zizek, "Superego by Default" (1995) 16 *Cardozo Law Review* 925.

126 A psychological response which has been identified in the West's attitude towards the Holocaust: see, eg, Richard Weisberg, *Poethics and other Strategies of Law & Literature* (1992) at 127–43.

127 It is an approach which also echoes some of the public response to the rape and murder. One outraged reader of the *SMH* wrote to the editor: "SIR: I am appalled at the standard of journalism in the report on the brutal murder and rape of the young 14-year-old girl, Leigh Leigh (*Herald*, 23 October). It included loathsome details of the sexual humiliation to which she was subjected.": "Leigh Leigh" Letter to the Editor, *SMH* Saturday 27 October 1990 at 22.

128 *The Clan*, above n2 at 20.

129 Carrington and Johnson, "Representations of Crime", above n16 at 17.

text (legal, journalistic) to reappear in another (dramatic, literary). It is to be lamented that the backdrop of the Year 11 history lessons is removed from *Blackrock*, because in a very real sense it is this historical backdrop — Aboriginal resettlement and the Holocaust — which provides the only vocabulary with which to comprehend the horror of the Leigh Leigh rape and killing, and which is capable of confronting the myth of irrepressible male sexuality and the willing victim. Jared learns his Holocaust history by rote, not bothering to find out who else, apart from the Jews, the Nazis sent to the camps, but the Rachel of *The Clan* uses this vocabulary to ask questions:

RACHEL: ... This was meant to be on Australian attitudes to Asians, and the history of race relations in this country. But ... I want to change my topic. Is that okay?

TEACHER: Well, so long as it's to do with prejudice and discrimination ...

RACHEL: I want to talk about women. Women and men. The last two weeks, there's been one topic of conversation round this school. Tracy Warner. And why she died. As though there was a why. Like there was a logic to it. You know, somebody drinks too much, they drive too fast, there's an accident, somebody gets hurt, somebody gets killed. There's a sort of a logic in that. But Tracy. Why did she die? Or, actually, because she didn't die, like grandparents die, why was she killed?¹³⁰

Rachel here is reaching out towards an understanding of the crime which has been committed, an understanding which although it may be impossible or undesirable,¹³¹ is being sought after. At an ethical level she shows an awareness of the "responsibility toward memory" which, as Derrida points out, "regulates the justice and justesse of our behaviour, of our theoretical, practical, ethico-political decisions".¹³² It is an attempt, like others in the play, to move away from Justice Wood's metaphor of teenage male sexuality as an incipient explosion, inevitably fatal, without obvious social and historical conditions.¹³³

Certainly the historical parallels which are offered by the classroom in *The Clan*, and which Rachel seizes upon, are valid. The residents of Blackrock in *The Clan*, like the residents of Stockton in real life, close ranks behind the

130 *The Clan*, above n2 at 20.

131 See Zizek, "Superego by Default", above n125 at 942: "To 'understand' ... [the crime] means to transpose oneself into [the criminal's] self-understanding and to 're-experience' the way they perceive and justify their acts."

132 Derrida, in *Deconstruction and the Possibility of Justice*, above n1 at 20. For the development of an ethics which would enable a civil body to accept responsibility for its embodied history of sexual violence, see Moira Gatens, "Spinoza, law and responsibility" in Cheah, Fraser and Grbich (eds), *Thinking Through the Body of the Law* (1996).

133 Sexual abuse was a central element in the Nazis' commitment to the destruction of the Jewish people. Much recent Holocaust literature portrays Jewish women as doubly cursed in the Nazi universe as racial pariahs and sexual victims. "Beyond the starvation, disease, hard labor and physical violence endured by all victims, women were subject to gender-based suffering and degradation. They were sexually abused and subjected to medical experiments; pregnant women were killed or forced to undergo abortions; infants were systematically destroyed at birth; and young mothers were routinely murdered with their children rather than selected for slave labor." See S Lilian Kremer, "The Holocaust and the Witnessing Imagination", in Deirdre Lashgari (ed), *Violence, Silence, and Anger: Women's Writing as Transgression* (1995) at 231.

murderer in such a way as to resemble small-town white communities in the American South of the '20s accepting Klan lynchings; or citizens of Nazi Germany lending their tacit support to night pogroms and deportations.¹³⁴ Indeed the true horror of the Leigh Leigh case is that it has happened before; that it is, in a very important sense, *ordinary*. Matthew Webster and his milieu were, as far as anyone can tell, not the "inhuman" brutes relished by the popular press, but rather were unnervingly "normal".¹³⁵ Rachel realises that, just as relations between "women and men" can be the same as between Jew and Nazi, Aborigine and government, so is Tracy's death just one instance, one terrible instance, of relations between women and men going wrong. The problem was not that Tracy was unsupervised by her parents, nor that she was exceptionally "pretty"; the problem was that she was surrounded, like many women in Australian society, by angry men with faces which were, as Rachel and Jade in *The Clan* know, full of hate.¹³⁶ It is largely in the fact that Tracy's — and Leigh Leigh's — deaths are iterable, are themselves iterations, that the real horror lies: "group rape, a crime that's far from rare".¹³⁷

But in the end we are left with *Blackrock*. The Rachel of *Blackrock* offers no lyrical insight, no movement towards understanding, however partial.¹³⁸ Her sexual politics are resolved and unchanging from the beginning of the text. She seems, at times, to inhabit a different moral and ethical world that is

- 134 See Hans-Georg Gadamer, *Truth and Method* (1975) at 258: "understanding itself is not to be thought of so much as an action of one's subjectivity but as the placing of oneself within a process of tradition, in which past and present are constantly fused."
- 135 Hannah Arendt offers one of the best evocations of this phenomenon in describing war criminal Adolf Eichmann: "The trouble with Eichmann was precisely that so many were like him, and that many were neither perverted nor sadistic, that they were, and still are, terribly and terrifyingly normal": *Eichmann in Jerusalem: A Report on the Banality of Evil* (1963) at 253.
- 136 Rachel, in *The Clan*, has seen this hatred in her fight with Jared; her attempt to speak about the events and her ability to use words is provocation: JARED: It's just one moment. Wham. Could have been a fist or the back of his hand. And she would have copped a few bruises, and no-one would have heard a word about that night. But she got him going and he put his hand out, and there was a rock. And she's gone, and he's gone. Fuck. Fuck. Wham! ... Say something. Say something bitchy. Get back at me. You're never short of words. Say something. Fight back!: *The Clan* at 51.
- 137 See Catherine Lumby, "Group rape: a crime that's far from rare" *SMH*, Thursday 9 November 1989 (Late Edition) at 13. "... parties like this happen and incidents like this happen in a whole range of areas — when we toured [*A Property of the Clan*] round the country — yes — we found that. A North coast town we went to — they didn't have any knowledge of the incident that happened at Stockton and they actually thought it was about an incident that happened in their town ... a girl had been killed in exactly the same situation ... similarly a town in South Australia where a young woman was dumped for dead after being sexually assaulted and they thought, 'Oh, this was us ...'": Brian Joyce, director of Freewheel Theatre in Newcastle, quoted on *Background Briefing*, ABC Radio National 1 October 1996.
- 138 "I found that the girls, no matter how denuded they felt, at least seemed to have a better understanding of what is going on and know they can redefine their position. The boys are not encouraged to be self-analytical or understand their own emotion and behaviour, nor talk about sexuality with any degree of tenderness. Boys are in a lot of trouble ..." Enright quoted in Janet Hawley, "World of Interiors" *SMH: Good Weekend* 19 March 1994 at 38. The point is in *The Clan* this (self)analytical ability is gained through the play and in conjunction with active involvement, in *Blackrock* it appears fully formed and thus divorced from its context.

easily dismissed by Stewart, her father, who is perhaps standing in for the play's audience: "We are not interested in guilt or shame or political correctness."¹³⁹ Where *The Clan* contrasted the ethos of male solidarity with the actions of Rachel, Glen and Jade, the girls' action in *Blackrock* is muted by comparison. No longer an investigative journalist, Rachel is in therapy and recording her reactions in a private journal. The focus of activity is the collection of money to plant a memorial tree for Tracy — a gesture which, however strong its pathos, is unable to grapple with the ethical and political consequences of Tracy's murder.

9. Conclusion

Injustice is the crime combined with the perpetuation of the silence that erases it.¹⁴⁰

As a matter of hermeneutics, then, the field is nightmarishly circular: popular fantasy (journalism) feeds into legal discourse (Justice Wood's judgment) which is then replicated in a variety of texts, culminating in *Blackrock*. Points of resistance — letters to the editor, Carrington and Johnson's scholarship, *A Property of the Clan* — are not equal to the task of challenging conventional beliefs about rape and murder which are so good at corroborating each other. It is an intertextuality, a mixing of fiction and reality, which is neither diverse nor liberating. In the end, these texts point to one conclusion: the scripted¹⁴¹ stories that we have been telling ourselves about sexual violence no longer make sense,¹⁴² and are certainly no longer helpful. Their seamless self-enclosure will not admit an honest appraisal of the phenomenon of gang rape.¹⁴³

If it is not possible to understand a crime of such brutality, we must nevertheless try to speak it. Lyotard's idea of the *differend*¹⁴⁴ is useful here: the *differend* being that which has been shut out of traditional discourse and social conventions of meaning.¹⁴⁵ The legal proceedings following Leigh Leigh's murder confirm the view that expression cannot be given to a crime such as this simply by turning the raped and murdered girl into a litigant.¹⁴⁶ Nor, it would seem now, can expression be given to the crime by turning the raped and murdered

139 *Blackrock*, above n17 at 39.

140 Lyotard in Drucilla Cornell, *Beyond Accommodation: Ethical Feminism, Deconstruction and the Law* (1991) at 19.

141 See Kennedy, above n101.

142 See Žizek, above n125.

143 See Binder, above n60 at 286: "The [beauty-beast] paradigm, as used in the aggravated rape context, fosters the idealisation of female beauty and passivity and renders us less capable of perceiving more subtle types of sexual victimisation."

144 See Jean-Francois Lyotard, *The Differend: Phrases in Dispute* (1983). See also Redhead, above n59 at 81: "Attempts ... to write a postmodern sociology of law and criminology utilise all kinds of different creative writing styles ... without fully conquering the summit of Jean-Francois Lyotard's mountainous question for art theory and art history about representing/theorising what he called the 'postmodern condition' — in other words how to 'present the unrepresentable'".

145 For an account of women's suffering understood as the *differend*, see Drucilla Cornell, "The Doubly-Prized World: Myth, Allegory and the Feminine" (1990) 75 *Cornell Law Review* 644-99: "The harm to women literally disappears because it cannot be represented as a harm within the law. It is not so much, then, that we are lying as that we cannot discover the 'truth' of our experience in the current system of gender representation ..." at 669.

146 *Ibid.*

girl into a play. The crime has exposed an aporia.¹⁴⁷ If the overlaid and congested legal and literary texts surrounding Leigh Leigh's murder are anything to go by, it would appear that her death is a *differend* and still awaits the discourse in which it can be expressed.¹⁴⁸

... it is impossible to have a full experience of aporia, that is, of something that does not allow passage. An aporia is a non-road. From this point of view, justice would be the experience that we are not able to experience. We shall soon encounter more than one aporia that we shall not be able to pass. But ... I think that there is no justice without this experience, however impossible it may be, of aporia. Justice is the experience of the impossible.¹⁴⁹

147 See, generally, Derrida, in *Deconstruction and the Possibility of Justice*, above n1 at 16ff.

148 This does not mean that there is nothing to say. What becomes significant is the attempt to speak in the face of this failure of expression: see Cornell, above n111 at 11: "... the ethical affirmation of the feminine within sexual difference, *beyond accommodation* to current gender stereotypes, is only possible once we understand why and how rigid identity structures are constantly undermined by the very iterability that allows them to perpetuate their meaning ... feminism [operating] within the space kept open for rearticulation by the impossibility of a full account of Woman."

149 Derrida in *Deconstruction and the Possibility of Justice*, above n1 at 16.