Birth of a Nation'Hood: Gaze, Script, and Spectacle in the OJ Simpson Case edited by Toni Morrison and Claudia Brodsky Lacour (London: Vintage, 1997) pages i–xxviii, 1–418. Price $19.95 (soft cover). ISBN 0 09 976551 9.

American sporting hero and media personality Orenthal James ('OJ') Simpson was tried in Los Angeles in 1995 for the murder of his wife Nicole Brown-Simpson and her friend Ronald Goldman.[1] In the United States, the proceedings were televised in full and subjected to analyses by 'specialist legal commentators' on the major networks. The massive public interest in the United States was unprecedented. The event — for it was an event — spawned numerous books.[2] By far the most sophisticated and thought-provoking commentary among these is *Birth of a Nation'Hood: Gaze, Script, and Spectacle in the OJ Simpson Case*, edited by Toni Morrison and Claudia Brodsky Lacour. The twelve contributions are from some of the most prominent commentators on race in America. In addition to the editors, authors include Drucilla Cornell and critical race theorists Patricia Williams and Kimberlé Williams Crenshaw. The predominant theme is race: the experience and meaning of race in the trial, verdict, and aftermath of the case, and the place of race in the constitution of the American nation. The collection is distinguished from other volumes on the *Simpson Case* because it approaches the case through culture, rather than through law. The essays do not engage in a discussion of the case for its own sake; rather they explore it as a cultural phenomenon where law, politics, and language collide in a historical moment that becomes a watershed in America's understanding of blackness, whiteness and race relations. It is this approach which makes the critical project undertaken by the editors relevant to law and race in Australia today.

Morrison's introduction does not provide the usual precis of the contributions. Treating her audience with more respect, the opening is instead thematic, suggesting the premises and critical framework which inform the analyses that follow. Morrison is a novelist and winner of a Nobel Prize for Literature. This background clearly informs her approach when she commences her exploration of the *Simpson Case* not with the legal issues but rather with an excursion into American literature, looking to Herman Melville for an allegory of 'the shock of deception; the sudden transformation of the unbelievable into belief'.[3] The theme is one of return and reconstitution of the past, constructing and maintaining

[1] *California v Orenthal James Simpson* (Unreported, Los Angeles Criminal Courts, Ito J, jury verdict 4 October 1995) ('*Simpson Case*').

[2] See, eg, Alan Dershowitz, *Reasonable Doubts: The OJ Simpson Case and the Criminal Justice System* (1996); Lawrence Schiller and James Willwerth, *American Tragedy: The Uncensored Story of the Simpson Defense* (1996); M L Rantala, *OJ Unmasked: The Trial, the Truth and the Media* (1996).

[3] Toni Morrison, 'The Official Story: Dead Man Golfing' in Toni Morrison and Claudia Brodsky Lacour (eds), *Birth of a Nation'Hood: Gaze, Script, and Spectacle in the OJ Simpson Case* (1997) vii, viii.

understandings of race through prejudice and stereotype, as manufactured in the gaze, script and spectacle of the *Simpson Case*. The 'national narrative' no longer develops slowly as a national epic, 'written, sung, performed and archived in the culture as memory, ideology and art'.[4] Technology and culture has changed such that

> democratic discourses are suborned by sudden, accelerated, sustained blasts of media messages ... that rapidly enforce the narrative and truncate alternative opinion. The raison d'être of this narrative may vary, but its job is straightforward: the production of belief. In order to succeed it must monopolize the process of legitimacy. It need not 'win' hands down; it need not persuade all parties. It needs only to control the presumptions and postulates of the discussion.[5]

The book disputes the argument that either race was inserted into the trial, or that the direction and outcome of the trial became focussed on race. The authors work on the premise that race was always there. Morrison argues that Simpson has become representative of his race in the national narrative, in 'the official story':

> He is not an individual who underwent and was acquitted from a murder trial. He has become the whole race needing correction, incarceration, censoring, silencing; the race that needs its civil rights disassembled ... This is the consequence and function of official stories: to impose the will of a dominant culture.[6]

The existence of 'OJ' as a creature and creation of professional sport, advertising and Hollywood, and the related perceptions of his blackness, or his 'transcendence of colour', are seen as fundamental to the trial and the public perception of it. George Lipsitz asks how it is that the narrative is constructed through the spectacular aspects of the case, comparing it to that of another black man jailed for a murder:

> [The latter's] story is about politics, racism, and history; consequently, he remains unknown to most of the public, cannot get a rehearing of his case based on newly discovered evidence, and he sits in a prison cell. Simpson's story is about sex and celebrities, about professional sports, Hollywood films, and television commercials; consequently, his story is universally known.[7]

The trial itself is scrutinised carefully, commencing with a piece by US Court of Appeals Judge A Leon Higginbotham, Jr (with Aderson Bellegarde François and Linda Y Yueh) which examines the 'playing of the race card' as a matter of evidence and trial strategy.[8] Andrew Ross explores science and race in the trial.[9] Nikol G Alexander and Drucilla Cornell challenge the accepted wisdom ex-

[4] Ibid xvi.
[5] Ibid.
[6] Ibid xxviii.
[7] George Lipsitz, 'The Greatest Story Ever Told: Marketing and the OJ Trial' in Morrison and Lacour (eds), above n 3, 3, 6–7.
[8] A L Higginbotham, Jr, Aderson François and Linda Yueh, 'The OJ Simpson Trial: Who Was Improperly "Playing the Race Card"?' in Morrison and Lacour (eds), above n 3, 31.
[9] Andrew Ross, 'If the Genes Fit, How Do You Acquit? OJ and Science' in Morrison and Lacour (eds), above n 3, 241.

pressed by prosecutor Marcia Clark that '[l]iberals don't want to admit it, but a majority black jury won't convict in a case like this. They won't bring justice'.[10] Such a claim has been used to support suggested changes to the jury system, such as a requirement for 'more educated' jurors.[11] Alexander and Cornell argue that criticism of the jury in the *Simpson Case* 'assumed that African Americans as a group were a lesser form of human being, incapable of either reason or rationality and, thus, of the tasks demanded by citizenship'.[12] They conclude that 'the argument that African Americans are incapable of meeting the demands of jury duty legitimates their banishment from the normative political community established by our Constitution' and call for 'vigilance against letting racist fantasies pass into the discourse of our public culture as if they were reasons for reform'.[13]

The core theme of at least two essays, and emerging in over half the contributions, is a critique of liberal prescriptions for race relations. The most interesting of these is Crenshaw's study of the neutrality (or otherwise) of the post-Civil Rights concept of 'colorblindness' which is the dominant contemporary key to racial harmony and equality. [14] She claims Simpson's public persona was changed from a black but 'race-neutral celebrity'[15] into the demon negro and seeks to explain how this occurred within a narrative of liberal equality. Crenshaw explains that the structural reforms (presumably economic and social) which would be needed to accomplish anything which approximates the liberal dream of racial equality were not pursued with the same vigour as the dream itself. The resulting gap between 'dream' and 'reality' is complicated in the *Simpson Case* by

> the inability of the district attorney to persuasively present racist police and potentially unconstitutional police practices as alternatively nonexistent or inconsequential, the refusal of the celebrated color-blind defendant to offer a color-blind defense, the unwillingness of the African-American community in Los Angeles to suspend their suspicions about the LAPD, and the ultimate refusal of millions of whites to suppress their beliefs about black paranoia, lawlessness, and bias.[16]

The problem with the liberal project is that its focus on formal inequality does not of itself

> wholly disrupt deep historical and cultural patterns ... Race, suspended in the buffer zone, remains ready to reappear as an interpretive frame to justify racial

[10] Nikol Alexander and Drucilla Cornell, 'Dismissed or Banished? A Testament to the Reasonableness of the Simpson Jury' in Morrison and Lacour (eds), above n 3, 57, 89–90.
[11] Ibid 91.
[12] Ibid 84.
[13] Ibid 92.
[14] Kimberlé Crenshaw, 'Color-blind Dreams and Racial Nightmares: Reconfiguring Racism in the Post-Civil Rights Era' in Morrison and Lacour (eds), above n 3, 97.
[15] Ibid 100.
[16] Ibid 102.

> disparities in American life and to legitimize, when necessary, the marginalization and the circumvention of African Americans.[17]

Crenshaw raises as a final problem the reduction of the case to race alone, which obscures the complex 'intersections of race, gender, and class'.[18] This takes us to pieces by Ishmael Reed,[19] Patricia J Williams,[20] Ann duCille,[21] and Armond White[22] which touch on the intersections of these issues, including the key theme of stereotyping with respect to blackness, whiteness and masculinity. These pieces suggest, as White puts it, a 'more complicated writing of history than the mainstream has ordained'.[23]

'The "Interest" of the Simpson Trial: Spectacle, National History and the Notion of Disinterested Judgment' is the contribution of Morrison's co-editor, Claudia Brodsky Lacour, and functions in effect as a conclusion.[24] Clever and adventurous, it is for a lawyer perhaps the most disturbing essay in the collection. Its implications challenge the foundations of our legal tradition by forcing a reappraisal of our understanding of power and reason, thus casting doubt upon the nature, validity and relevance of legal judgment and the separation of powers.

Using foundations of Enlightenment philosophy from Kant, Lacour contrasts notions of interest and spectacle, which characterised the Simpson trial, with that of disinterested judgment, which characterises the legal process and legal reasoning. In doing so, she offers reflections on moral action and the constitution of the nation in accordance with moral principles. In keeping with this theme, she explores Hannah Arendt's study of the trial of Adolf Eichmann in Jerusalem, focusing on Eichmann's justification of his actions through the philosophy of Kant, the contrast of interest, spectacle and disinterest in that trial, and ultimately the nature and possibility of the exercise of judgment itself.[25] The comparison views both trials as examples of not merely trying individuals, but of trying history. The history in the *Simpson Case* is the development of civil rights for African Americans.

The national narrative in America is built upon racial separation, claims Lacour. The lesson to be learned is the same as it was in the Eichmann trial, only 'inverted'.[26] The lesson is 'never again'.[27] That is, there must be 'no more rhetoric about colorblindness; absolutely no more non-color-blind affirmative action; and above, or underneath all, no more miscegenation'.[28]

17 Ibid 103.
18 Ibid 159.
19 Ishmael Reed, 'Bigger and OJ' in Morrison and Lacour (eds), above n 3, 169.
20 Patricia Williams, 'American Kabuki' in Morrison and Lacour (eds), above n 3, 273.
21 Ann duCille, 'The Unbearable Darkness of Being: "Fresh" Thoughts on Race, Sex and the Simpsons' in Morrison and Lacour (eds), above n 3, 293.
22 Armond White, 'Eye, the Jury' in Morrison and Lacour (eds), above n 3, 339.
23 Ibid 365.
24 Claudia Brodsky Lacour, 'The "Interest" of the Simpson Trial: Spectacle, National History and the Notion of Disinterested Judgment' in Morrison and Lacour (eds), above n 3, 367.
25 Ibid 384–90.
26 Ibid 391 (emphasis omitted).
27 Ibid 390–1.
28 Ibid 392.

This narrative is played out, argues Lacour, in the concept of freedom:

> In America ... national history is, brutally and blissfully, the complex history of freedom. In America this has meant — from the beginning — the freedom both to be free and enslave another people; the freedom to live where you want and kill another people already living there ... [A] nation that originated as a 'universal' democracy *for some people* ... as all its citizens do seem to notice, cannot afford to take freedom lightly. For they never know when 'theirs' will become the victim of someone else's.[29]

Birth of a Nation'Hood is a difficult work in some respects. The most frustrating — though simultaneously pivotal — aspect of the book is the presumptions it makes with respect to the reader. As noted earlier, Morrison treats her audience with respect; this is a sophisticated anthology which presupposes at least a basic knowledge of the case. For the reader without a working knowledge of the characters and plot — the *Simpson Case* in a legal sense — it is a text which does not always inform adequately and can be frustrating in so far as it requires one to recall the incidents or the people. Against this, the presumption perhaps underpins the point of the entire book; if the *Simpson Case* is a cultural phenomenon, then the required 'knowledge' of the case is a 'knowledge' of culture, an experience of the world, an understanding of meanings about race and culture with which the reader arrives when she or he turns the first page. The book does not so much claim that the trial has a certain meaning as contest and recreate meaning itself. The presumption of knowledge is thus problematic, but not a significant problem.

The legal and cultural impact of race in national history and national narrative in Australia has been dramatic since the *Mabo*[30] and *Wik*[31] decisions. As litigation over the constitutional 'race power' looms and legislative change is debated, the nation's understanding of itself and the place of indigenous people in it is undergoing a crucial reworking. The 'stolen generations' report by the Human Rights and Equal Opportunity Commission[32] and a national (if not government-sanctioned) day of apology to indigenous peoples fuel the cultural and political battles for the meaning of whiteness, Aboriginality and history. In this contemporary context, *Birth of a Nation'Hood* is instructive for its treatment of law and the legal process as cultural phenomena.

Higginbotham, François and Yueh are careful to point out that the Simpson trial did not create racial tensions, but rather uncovered them as the past was raked over: 'we ... stirred up the shallow grave where [are] stored the vestiges of centuries of slavery, segregation, racial oppression, biases, and prejudices'.[33] It is an apposite consideration for Australians. We currently find ourselves at a moment in Australian law and history where we are revisiting Aboriginal

[29] Ibid 402 (emphasis in original).

[30] *Mabo v Queensland [No 2]* (1992) 175 CLR 1 ('*Mabo*').

[31] *The Wik Peoples v Queensland* (1996) 187 CLR 1 ('*Wik*').

[32] Human Rights and Equal Opportunity Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997).

[33] Higginbotham, François and Yueh, above n 8, 51.

dispossession. While the 'darkest aspect[s]'[34] of that history — such as the violence of the frontier and the removal of Aboriginal children from their families — have given way to new social, political and legal relations with indigenous Australians, the rhetoric of contemporary politics continues to reach back to the past. Our Prime Minister leads the charge:

> I do believe ... in a process of reconciliation. ... But ... I profoundly reject the black armband view of Australian history. I believe the balance sheet of Australian history is a very generous and benign one. ... I think we have been too apologetic about our history in the past.[35]

More overt is Pauline Hanson's One Nation party, for which a return to the days of old — when indigenous people were thoroughly powerless — is a key platform.[36]

In the struggle to come to grips with the past and the attempts to determine the reading of history which should dominate the present, the legal reality of native title is peripheral. The authorised text of the judgments in *Mabo* and *Wik* yields to the manipulation of meaning in the political realm, where the Member for Oxley searches just below the surface for the prejudices of the past:

> [T]he time has come to concentrate on the dangerously and inappropriately named rights of the indigenous people. ... Aboriginality allows them to claim a share of the booty of the native title scam ... I have more English and Irish blood in me than most who claim to be Aboriginal have Aboriginal blood in them.[37]

It is a shallow grave indeed and the Hansonites are digging furiously.

The separation of powers in this country, criticisms — legitimate or otherwise — of judicial activism, and the varying political will and support for indigenous causes are all prominent in race relations in contemporary Australia. *Birth of a Nation'Hood* illuminates the complexities for our profession and our discipline in a time when law and culture are increasingly intertwined. Morrison and Lacour's book suggests a need to be wary of what we do as lawyers, and of what is done to us and our work. The understanding of power is particularly salient as the essays repeatedly highlight the role of the media in constructing a national narrative through manipulation of the players and script in the legal process. Ultimately, power as a cultural dynamic of race and racism is set as the stage upon which the Simpson drama is played out. To what extent is this the case in Australia? How much does it matter? These questions might well be worth further exploration, particularly with respect to the role of the media in the depiction of law and race where gaze, script and spectacle are both manifest and malleable.

[34] *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 109 (Deane and Gaudron JJ).

[35] Commonwealth, *Parliamentary Debates*, House of Representatives, 30 October 1996, 6158 (John Howard, Prime Minister).

[36] On Pauline Hanson and the past, see Michael Sullivan, '"Wake Up Australia": It's 1897' (1997) 13 *Policy, Organisation and Society* 180.

[37] Commonwealth, *Parliamentary Debates*, House of Representatives, 2 June 1998, 4503–4 (Pauline Hanson, Member for Oxley).

The book takes its title from a silent film made in 1915. *Birth of a Nation* portrayed the US Civil War and the period of Reconstruction, praising the Ku Klux Klan as 'the organisation that saved the south', with writer, director and producer D W Griffith reassuring us that 'the bitter enemies of North and South are reunited in common defence of their Aryan birthright'.[38] Morrison claims that the cultural, social and legal legacy of the OJ Simpson trial 'is *Birth of a Nation* writ large — menacingly and pointedly for the 'hood'.[39] Although the relative strengths and weaknesses of individual essays vary, the collection provides a compelling call to reflect upon the place of the law in constructing national narrative. It demands an examination of the role, nature and power of law (and lawyers), lest we become wittingly or unwittingly complicit in a project of which we would not approve.

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[38] *Birth of a Nation* (D W Griffith, 1915).

[39] Morrison, above n 3, xxviii.

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