De-facing Terra Nullius and Facing the Public Secret of Indigenous Sovereignty in Australia

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The study of sovereignty is the study of an idea … not the history of the “sovereign state”. Before the twentieth century, the idea of sovereignty was not established as a principle of the political communities and so international society. Only in the process of modernity did people consciously understand it as such. It was in this process that the idea of state sovereignty took shape in peoples’ minds and constituted their thoughts and behavior. (Shenoda 2000: 346)

Rather than evade his or her position within the hegemonic culture, the western individual should display it, expose it, question it, and put it into relation to the “third world” culture he or she needs to hear. This is the first step toward unearthing the privileges of imperialist culture. (Spivak, 1998: 119)

Whites can accept that Aboriginal people have politics (albeit not fully) but do not recognize that we equally have theologies, epistemologies, knowledge systems, pedagogy and history. These are all collapsed into mere “perspective”, thus making actual the white falacy of Aboriginal inferiority. (Monture-Angus, 2000: 28)

Introduction

1. Prior to recent debates about globalization, refugees, international human rights and the US-led war on terrorism, discussion of sovereignty was largely confined to the barracks of political philosophy, law and international relations. Rapid changes to the geo-political world order, however, have made sovereignty a relevant concern to theorists in a range of interdisciplinary academic arenas such as queer theory, cultural studies and post-colonial studies. The very word ‘sovereignty’ has been enjoying unprecedented currency in Australia since the election of the conservative Liberal-National coalition government on the issue of ‘border security’. In a recent speech on Australia’s position on the establishment of an International Criminal Court, Prime Minister, John Howard, referred to ‘national sovereignty’ no less than seven times. Yet in the midst of all this sovereignty speech, Australia’s borders have rarely been so malleable - as evidenced in a controversial proposal recently put before Parliament to excise hundreds of tiny Islands from the nation’s migration zone lest a boatload of ‘illegal’ immigrants lands on one and its human cargo requests asylum. However what is striking in the current sovereignty debate is the absence of references to the sovereignty struggles Indigenous people have waged and continue to wage in and over this place since 1788. Following Foucault, (1876) I will approach this silence as a positive production of the power-saturated field of Australian race-relations.

2. Before proceeding, I need to explain that what follows is not a translation or interpretation of what Indigenous Australians mean when they stake sovereignty claims. This article is deliberately written against such a project, which would a) reduce an esoteric and requiring the mediation of white historians, anthropologists and lawyers. (See Brady, 2001: 23-24)

3. My refusal to perform the role of white expert/translator however does not mean that Indigenous sovereignty is an issue with little relevance to other Australians. In order to demonstrate why Indigenous sovereignty matters to everyone, it is first necessary to deconstruct a misleading opposition between concepts and values deriving from European traditions which are supposed to be universally understood and applicable and those deriving from Indigenous traditions which are regarded as particularistic and esoteric and requiring the mediation of white experts for communication to a wider public. For trapped within the terms of this universal/particular binary, sovereignty becomes a ‘European concept’ - on one hand – and an Aboriginal ‘problem’ – on the other. And this opposition effectively precludes recognition of sovereignty as the object of everyday contestation in a power relationship between Indigenous and non-Indigenous Australians.

4. By unsettling and making visible the racialized epistemology, which makes sovereignty an ‘Aboriginal problem’, I hope to problematize the theory and practice of white sovereignty in Australia. Sovereignty can only be contained as an Aboriginal problem insofar as it is seen as something Indigenous people want but which, for a variety of reasons, they are never going to get. In contrast, the understanding from which my analysis proceeds is that Indigenous sovereignty claims come less from a desire for European concepts, institutions and values than from a refusal to recognize the legitimacy of the sovereignty in the name of which their invasion was and continues to be justified. Thus reframed as a challenge to the legitimacy of non-Indigenous inhabitation and governance, Indigenous sovereignty becomes recognizable as a problem with national and international dimensions.

5. Globalization theorist, Saskia Sassen, reflects on political, economic and social transformations of the last decades of the twentieth century, asking:

Has not sovereignty itself been transformed? Can we continue to take it for granted, as much of the literature on the state does over and over again, that the state has exclusive control over the entry of non-nationals? Is the character of that exclusive authority today the same as it was before the current phase of globalization and the ascendance of human rights? (Sassen, 1996: xvi)

One of the effects of the ‘ascendance of human rights’ to which Sassen refers is that global links forged between Indigenous sovereignty struggles in different parts of the world are in heightened tension with many national governments’ attempts to domesticate their Indigenous issues. This highlights an urgent need for work on how the current global ‘crisis of sovereignty’ articulates with Indigenous sovereignty struggles past and present against the national and international structures that continue to contain them.
6. The editors of Political Theory and the Rights of Indigenous Peoples argue:

[The] assertion of indigenous peoples’ rights intersects in a number of ways with other contemporary challenges to the understanding and forms of exercise of sovereignty. The prevailing view ... [of] ... the state as the embodiment and agent of sovereign power in a global political state system based entirely upon such states [has] come under increasing moral as well as political pressure in recent years. (Ivison et al., 2000: 14)

I’d suggest that such generalizations about the dire predication of sovereignty be approached with a degree of skepticism. As I write this article, the global community is celebrating the bicentennial of East Timor – the first sovereign state to emerge in the 21st century and Australia’s closest neighbor. Watching the Indigenous people of East Timor celebrate their escape from the grasp of a colonizing/post-colonial Indonesian state, suggests to me that the resistance with which Indigenous sovereignty claims have met here is inextricably linked to the fact that Australian governance has been and continues to be constitutively white.

Background

[While] the court demolished the concept of Terra Nullius in respect of property, it preserved it in respect of sovereignty... For 200 years Australian law was secured to the rock of Terra Nullius. One pinned arm represented property, the other sovereignty. With great courage the High Court recognized native title in the Mabo judgment and released one arm from its shackles. The other remains secured as ever and seems destined to remain there for some time but in the long run the situation will prove unstable. What is more, the resulting legal pose will become increasingly uncomfortable as time passes. (Reynolds, 1996: 3510)

We need to go further with rights. We need to adopt a rights approach that [has] the capacity to transform social, economic and political relations in Australia. We need to adopt social policies aimed at achieving equality, rather than assuming it, and we need to give full recognition to Indigenous peoples’ inherent rights, in particular native title. (Jonas, 2002)

7. To appreciate the current situation of Indigenous rights in Australia, some background on ‘treaty’ and ‘reconciliation’ is required. Aboriginal protests against the expropriation of their land-base came from the beginning of colonial occupation in Australia and took various forms, from armed guerilla resistance through to written petitions to colonial and British government authorities. However Australia was a unique case of colonialism in comparison with New Zealand and the Americas where treaties had been negotiated with the original owners. Although the terms of these treaties were often unjust and a mere pretext for expropriating natural and human resources, they nevertheless recognized Indigenous peoples as the holders of certain rights. As nations formed in these colonies, the treaties became the basis for a type of ‘domestic sovereignty’, which persists today in New Zealand, Canada and the US in the form of rights such as reserved parliamentary seats and the right to establish and run casinos. Apart from John Batman’s purchase of the lands around Melbourne for some blankets in 1835, there were no treaties negotiated with Indigenous Australians. Instead, the land was taken under the legal doctrine of Terra Nullius – which means ‘land owned by no-body’.

8. In 1979 the National Aboriginal Conference, the group elected to advise the Ministry of Aboriginal Affairs, called unanimously for a treaty between Aborigines and non-Aborigines to be negotiated. At the same time a group of prominent non-Aboriginal Australians formed an Aboriginal Treaty Committee, which labored unsuccessfully during the 1980s to put a treaty on the agenda of Australia’s bicentennial celebrations. In 1983 the Senate Standing Committee on Constitutional and Legal Affairs recommended against a treaty, Makarrata or compact, between Aborigines and Torres Strait Islanders and the Commonwealth, on the basis that: ‘The attitudes of non-Aboriginal Australians towards Aboriginal and Torres Strait Island people and vice versa lie at the heart of the situation and until they can be properly oriented a compact no matter what its form and content will at best only create superficial improvement (1983: 3.46) So, in contrast to the treaty which both of the major parties saw as a potential wedge between Indigenous and non-Indigenous Australia, reconciliation was promoted as an inclusive process. Following the recommendations of the 1990 Royal Commission into Aboriginal Deaths in Custody, which found Indigenous people were disproportionately represented as prisoners and fatalities within Australian gaols, the Council for Aboriginal Reconciliation Act, was passed in 1991 with bi-partisan support.

9. The definition of ‘treaty’ is: ‘negotiation: a formal agreement, esp. between states.’ A treaty is a document that records the outcome of a particular negotiation and a promise that both parties to the negotiation will honor this outcome. Reconciliation has a very different meaning. There is an important distinction within the verb ‘reconcile’, depending on whether the latter is conjoined by with’ or ‘to’. To reconcile with, conveys the idea of harmonizing ‘healing’ or ‘making friendly after estrangement’. To reconcile ‘to’, is to ... make [another] resolved or contentedly submiss...’ (Oxford, 1964) Thus, reconciliation ‘to’ implies a relationship of unequal power whereby a dominant agent can render another submissive, whilst reconciliation ‘with’ does not necessarily imply such a relationship. In contrast to the vigorous debates surrounding reconciliation, there has been a deafening public silence on Indigenous sovereignty since the celebrations and Aboriginal protests during the bicentennial year in 1988.

10. The semantic ambiguity of ‘reconciliation’ has proven to be extremely convenient for politicians of all colors anxious to indefinitely defer the constitutional recognition of Indigenous rights. Like the two texts of the treaty of Waitangi, the concept of reconciliation is conducive to parallel conversations conducted at cross-purposes that nevertheless always seem to deliver power and resources to the colonial party. Current Australian Prime Minister, John Howard, constantly exploits this ambiguity. (Howard, 1998) As he put it in his 1998 re-election speech: ‘We may differ in debate about the best way in achieving reconciliation, but I think all Australians are united in a determination to achieving it.’ (Howard, 1998) However, in a context where race-relations are structured by the rhetoric of reconciliation, Indigenous sovereignty might be precisely in not having to reconcile either with non-Indigenous people or with other Indigenous nations.

11. The unresolved status of Indigenous rights has been a pressing political issue since Terra Nullius was overturned in the High Court’s 1992 ‘Mabo’ decision in which native title was recognized to exist on some areas of unoccupied Crown Land. The government’s panicked response to this finding was to pass laws that retrospectively extinguished native title on freehold property. The High Court’s Wik decision in 1996 created another crisis in Australian property law by finding that native title could co-exist with other rights on pastoral leases, which were created specifically to accommodate the requirements of the Indigenous people who lived and labored on them. There was further white panic after Wik and legislation was promptly passed to ensure that – where native title was recognized on pastoral leases – it could not override the interests of mining and other non-Indigenous users.
12. The recognition of native title means that Indigenous Australians have finally been recognized as potential holders of inherent rights. However these rights have to be demonstrated within a white legal system and consequently the vast majority of Indigenous people are unable to exercise them. Any other rights that Aborigines and Torres Strait Islander people might exercise such as heritage protection or land rights have been conferred upon them at the discretion of the Crown. In contrast to existing land and cultural heritage rights, the recognition of Indigenous sovereignty would require constitutional change through a legal instrument such as a treaty or – some have suggested – a bill of rights.

13. The past decade has also seen a major shift on the issue of the collective responsibility of non-Indigenous Australians for the dispossession and suffering of Aborigines and Torres Strait Islanders. In the International Year of Indigenous Peoples, then-Prime Minister, Paul Keating gave his famous ‘Redfern speech’ in which he said ‘We took the traditional lands and smashed the traditional way of life. We brought diseases. The alcohol. We committed the murders. We took the children from their mothers. We practiced discrimination and exclusion.’ (Keating, 1993) Since the Coalition government came to power, however, public statements of collective white responsibility have been increasingly denigrated as “black armband” and past and present racism has been recast in terms of individual pathology rather than systemic white behavior. (See Moreton-Robinson, 2000: 13)

14. The Aboriginal and Torres Strait Islander Commission (ATSIC) recently held a national conference on Indigenous rights, which was presented by the Australian newspaper as representing a major shift from a focus on collective self-determination to the government’s agenda of ‘practical reconciliation’ that targets individuals and families rather than Indigenous community organizations. The Minister for Aboriginal Affairs, Phillip Ruddock told the gathering “I am not about separateness, I am about inclusiveness” while his predecessor, John Herron, said “the old shibboleths of self-determination” were now recognized … and the next phase should be … “Giving Aboriginal people the opportunity for education and allowing them to integrate as part of a unified Australian society, rather than talk about self-determination. That has failed.”

15. ATSIC head, Geoff Clark’s, analysis was less simplistic. “[Practical reconciliation is the government’s agenda and obviously our agenda is about ‘separateness’. There is a chasm there that is pretty wide, but we would like to keep the dialogue going …We have let it be known publicly that we are happy to continue working with the Howard government on its practical reconciliation agenda. We have also made it clear that we will continue to pursue our rights agenda. The challenge for us is to demonstrate to the Federal Government and others, how one can inform the other.” (Australian, 28/3/02) In putting a treaty back on the table for discussion, ATSIC is working to reconcile human rights to health, housing, education and employment with Indigenous rights to land, language, culture and law. This does not represent a retreat from self-determination; rather it represents an attempt to enhance self-determination, so that Indigenous people might have the best rather than the worst of both worlds.

The Performative Assumption of Perspective: White Epistemology Against the Ground of Indigenous Sovereignty

Colonialism has not changed, just shifted, and it is now wearing judicial robes of respect for “perspectives”, … it is clear that the Court has no difficulty stepping over Aboriginal “perspectives” (as it calls them) if it is of benefit to the Crown’s assertion of sovereignty. (Monture-Angus, 2000: 134)

[For] all the generation of theory on racism and on whiteness, there remains a surprising disconnection of these issues to the ways in which we behave and act towards each other … there appears to be an inoculation of distancing that enables the readers of the theories to neutralize the impact of such issues on their everyday interactions. (Rains 1998: 78)

16. In a recent piece aptly titled ‘Still Call Australia Home: Indigenous Belonging and Place in a Postcolonizing Society’, Moreton-Robinson unsettles the pervasive trope of migration as the ground of national identification, arguing that the ontological specificity of Indigenous belonging needs to be recognized before Australia can be accurately described as ‘post-colonial’ rather than ‘post-colonizing’. This suggests that our knowledge of sovereignty is inextricably tied to our racially embodied ways of being in this place and that when white historians, cultural theorists, lawyers or philosophers deny the existence of Indigenous sovereignty, we are engaging in an active refusal to be within Indigenous sovereignty.

17. Australian colonialism has not only produced different knowledge about sovereignty, it has also attached different values to these knowledges. To better understand the epistemological hierarchy within which sovereignty debates are discursively embedded, it is useful to bring Judith Butler’s concept of performativity to bear: ‘Performative acts are forms of authoritariae speech: most performatives, for instance, are statements that, in the uttering, also perform a certain exercise and exercise a binding power… (Butler, 1993: 221) The political character of performativity lies in the political character of power to ‘produce the subject’ by assigning names’ in social contexts where power is unequally distributed. To speak or to refuse to speak about Indigenous sovereignty, then, is to produce concrete effects on the ground of racialization. While white race privilege is to be undone in Australia, then, the absolute value of Indigenous sovereignty – as the polar opposite of Terra Nullius – will need to be actively affirmed by all Australians. This is because ignoring or denying the existence of their sovereignty effectively prevents Indigenous Australians from exercising their collective and individual rights.

18. White Australians are conditioned to exercise our sovereignty against that of Indigenous Australians through a process I call the ‘performatve assumption of perspective’. The deployment of perspective depends on one’s proximity to power. Thus, relatively powerful parties in relationships marked by differences of race, class, gender and, at times, all three are able to stake a claim to the ‘proper perspective’ in any given situation. The corollary of this is that members of dominated groups are deemed incapable of transcending their particular interests and seeing the ‘big picture’. This is apparent in the tension between these two statements, for example: ‘Joe kept everything in perspective’ and ‘Joeline expressed her own perspective.’

19. The salient point about the operationalization of perspective is that it enables relatively powerful subjects in a given situation to adopt a moral posture of ‘disinterested.’ And this posture makes it possible for white responses to Indigenous rights claims to be divorced from the collective interests of white people as a powerful group within Australia.
One result of this is that Indigenous resistance to colonization, past and present, is frequently misinterpreted. As Moreton-Robinson writes:

[Our resistances] are multifaceted: they can be visible and invisible, conscious and unconscious, passionate and incomplete, intentional and unintentional ... They often contain a logic that is incomprehensible to most white folk (of the right and left political persuasion), who want us to perform our politics according to their ideas about what constitutes correct and proper political action - and who are willing to couch such white "knowalls" is that Indigenous resistances are often strategic interventions in the dialectics of a racialized hierarchy where whiteness is centered, constitutes the norm and confers dominance and privilege. (Moreton-Robinson, 2000)

While Indigenous Australians refuse to surrender sovereignty through everyday acts of resistance and public political protest, white people performatively assume a position beyond the fray from which to interpret and evaluate Indigenous demands.

20. I describe the assumption of perspective by white people as performatve because it doesn't actually engage with Indigenous discourses but simply assumes an omniscient position above them. This produces bizarre scenarios of all-white debates on Indigenous sovereignty where both sides try to establish the Eurocentric bias of their opponent – as though it were somehow possible to be less-white-than-thou. Thus, conservative commentator Keith Windschuttle criticizes former economist, public servant and Aboriginal advocate, H.C. Coombs' defence of Indigenous sovereignty on the grounds that he ‘…recommends not an Aboriginal program but that strand of the Western intellectual and political tradition that is romantic, revolutionary and utopian.’ 

21. The performative assumption of perspective extends beyond articulations of the major political parties reported in the national media to the academy and can be seen in two articles by political philosopher Paul Patton. Patton saw in the conjunction of the 1992 Mabo decision and post-structuralist theory, the possibility of displacing ‘…a negative understanding of difference in which difference is recognized and evaluated from the standpoint of an implicit standard of prior identity, and a positive, or relational understanding of difference in which neither term is marked or prioritized’ (Patton, 1995: 105). Drawing on a range of poststructuralist theorists from Foucault and Derrida through to Lyotard, Deleuze and Iris Young, he explored the prospects for a post-modern Australian republic where differences between Indigenous and non-Indigenous Australians might become value neutral rather than negatively loaded against the former. However, for Patton this pleasant prospect was clearly predicated on the impossibility of Indigenous sovereignty.

22. Mabo is presented as a means by which other Australians have been made to recognize that Indigenous rights in land and culture might be ‘different’ but that this recognition is tempered by the pragmatic subordination of Indigenous to non-Indigenous land uses. As Patton acknowledges 'Mabo retains a fundamental asymmetry between the common laws and the form in which Indigenous laws that are the ultimate ground of native title.' (Ibid) What he doesn’t address is Indigenous theorists’ refusal to recognize a legitimate basis for this subordination of Indigenous rights.

23. It seems that, for Patton, Aboriginal claims to sovereignty remove the very grounds for their assertion of difference from non-Indigenous Australians. And this becomes the basis of the opposition he draws between ‘relatively autonomous Indigenous socialities’ – on one hand - and ‘an Aboriginal nation’ as a ‘monolithic conception of the appropriate political form’ – on the other. Not only does this efface networks of exchange, which connected Indigenous people across the continent prior to colonization; it also fails to recognize the fact that many contemporary Indigenous Australians identify as members of different Aboriginal nations.

24. I’d suggest that APG calls for a separate Aboriginal state need to be understood in the context of existing relationships between different Indigenous nations. In the absence of an Aboriginal state - these relationships have been and continue to be mediated by non-Indigenous structures of governance, which recognize difference only insofar as it can be rendered commensurable with and subordinated to the requirements of the State. For Patton to dismiss the possibility that the Mabo decision might imply Aboriginal sovereignty without addressing the corollary of the Crown’s continuing power over the continent, seems to amount to an implicit acceptance of High Court Justice Toohey’s finding that, as far as most Aboriginal communities are concerned, in the absence of traditional law and customs, ‘…the tide of history has washed away the foundation of native title which cannot be revived.’ (Toohey, 1992)

25. Finally – and perhaps most importantly - Patton’s conflation of a sovereignty that is actively possessed and violently defended by white people – on one hand – with the performative assumption of sovereignty by Aboriginal activists and theorists – on the other – seems to willfully ignore the mechanisms through which white race privilege is essentially maintained in Australia. As we will see, it is not that the sovereignty assumed by the APG and other Indigenous activists is less real for being performative. However it is distinguished from white sovereignty because it is assumed without the permission of the State. And this precludes it – by definition – from being monolithic.

26. Patton’s work illustrates how the pre-empitive power of whiteness against Indigenous sovereignty claims is underpinned by an epistemological certainty that the form of any
future Indigenous sovereignty is always known in advance. What this pre-emptive act does not acknowledge is that Indigenous people have ‘sovereignty issues’ precisely because white people have never seen the forms their sovereignty might take. As William Jonas, Aboriginal and Torres Strait Islander social justice commissioner, argues: ‘The call to abandon [inherent] rights assumes that they have been tried and failed. That is incorrect. Indigenous rights – ones that recognize Aboriginal people for what they are, and have the capacity to change their dire living circumstances – have never been embraced as a way forward.’ (Jonas, 2002, 27).

27. The fact that no Australian government has been prepared to seriously consider Indigenous rights is not due to a lack of models of what Indigenous sovereignty might look like however. The problem is that insofar as Eurocentric values of ‘territory’ and ‘property’ define while understandings of sovereignty, the latter will fail to address Indigenous aspirations. As Patricia Monture-Angus argues in the Canadian context:

[Rejecting a western territorially based definition of sovereignty is not to say that Aboriginal people do not aspire to having a land base that will make our nations economically stable and self-sufficient. It's hard to be sovereign when you cannot even feed your own children from your own resources…] (Monture-Angus, 2000: 36)

This highlights the fact that, rather than deriving from Eurocentric epistemologies, Indigenous sovereignty claims are formulated within Indigenous discursive frameworks. The challenge that Tewathata:wi poses to everyday white discourse is that it directly refutes our performative epistemological stance of sovereignty: the best way for Indigenous people to demonstrate ‘traditional ties’ is to “we carry ourselves.” This Aboriginal definition of sovereignty is about responsibilities and not just rights. I have heard many other Aboriginal people from many other Aboriginal nations say that this is also true, even if in their language. (Monture-Angus, 2000: 36)

Facing Public Secrets and Private Fears

Sovereignty has always been little more than an effective fantasy that power maintains about itself whereby it magnifies itself as necessary rather than contingent; that is “sovereignty” functions to deny that power remains always subject to the vicissitudes of struggle, subject to the logic of war. (Sharpe, 2002: 99)

The factor of secrecy is something that drives those with power. It places knowledge out of their reach. And they have to have control over knowledge, regardless of the cost to the keepers of it. The West peddles a myth of its own openness and freedom from secrecy, the idea being that all knowledge is free. But there are many areas where the cost of knowledge to most people is prohibitive, for example: areas of ‘expertise’ in the legal profession, medical, engineering and computer studies…In contrast, Nungas have a system where the law is layered, parts are for public knowledge and other parts are veiled in secrecy. (Watson, 1999: 237)

28. The moral transparency of white people that white people adopt in the history of exploitation exemplified in the question that is also the title of his book, Why weren’t we told? is somewhat disingenuous and the more pertinent question for white people to ask ourselves is ‘What is it we know but refuse to tell?’ (Nicoll, 2001) For if there is cause for shame, it may be due less to our ignorance than to the fact that – in spite of knowing better – we continue to disavow the existence of rights that derive from Indigenous sovereignty. So we need to recognize the performative dimension to public displays of white naiveté. In this sense, the corollary of the white performative disavowal of knowledge encapsulated in the question ‘why weren’t we told?’ Faced with this question, Indigenous people often ask: ‘How many times do you people need to be told?’ And this is what makes repetition so central to the performative politics of Indigenous sovereignty.

29. We have seen that early hopes that the Native Title Act and the common law. (Jonas, 2002) would begin to redress the effects of Terra Nullius, were disappointed. As Aboriginal and Torres Strait Islander Social Justice commissioner, William Jonas recently commented:

When an opportunity did arise to recognize inherent rights through native title it was immediately encased in a legal armature that gave it no room to deliver real outcomes. It’s capacity to provide economic opportunities for indigenous people, to provide equal respect for indigenous culture, to provide governance structures for Aboriginal communities has been severely limited through the Native Title Act and the common law. (Jonas, 2002)

This is because native title legislation places the burden of proof on Indigenous claimants to demonstrate ‘traditional ties’ to unoccupied Crown Land and pastoral leases. In privileging the anthropological value of ‘tradition’ native title hearings reprise a gap between a timeless ‘oral’ Aboriginal culture – on one hand – and a dynamic ‘documentary’ white history – on the other.

30. This opposition is challenged by Heather Goodall’s investigation of the intimate and complex relationship between documentary history and oral testimony. Beginning from the premise that: ‘Listening to Aboriginal voices requires dialogue with Aborigines at an analytical as well as an empirical level,’ Goodall tries to understand why she and other researchers visiting NSW reserves from the 1930s through to the 1970s and beyond:

...We were repeatedly given instructions to search for the deeds for land which so many people were completely convinced had been handed over to their grandchildren by Queen Victoria... They still held the old understandings of what these reserves were: a recognition of traditional land ownership, compensation for dispossession and a promise from the English Crown of inalienable security of tenure. (Goodall, 1996: 334)

31. In accounting for this unacknowledged conviction, Goodall explains that at the end of the nineteenth century, land given to Aborigines to farm... was not [inalienable freehold as Aborigines had demanded but was Crown Land reserved for [their] use... [which] was explained by local police, the agents of the Aborigines Protection Board, as land given to them by Queen Victoria (that is Crown Land) to be theirs forever if they continued to reside or farm it. So when the government started to encroach on these lands in the early twentieth century, ‘Many Aborigines made the logical assumption that as the land had been given to them logically, deeds... must exist somewhere... to confirm their
32. As well as demonstrating that reserve residents and their ancestors understood the mechanisms of European property law, this highlights the nineteenth century colonial authorities' use of the language of sovereignty in dealing with dispossessed Kooris. As Wendy Brady argues ‘Aboriginal people understood the power relationship to Queen Victoria. It was of her as a senior woman with acknowledged authority in relation to all of Australia and the land. Yet many non-Aboriginal people would say, ‘well Aboriginal people obviously did not understand the situation.’ (Brady, 2001: 25) What this history suggests is that while they were busily alienating lands for the Crown, colonial authorities were actually telling Aboriginal people that the Crown was returning their lands to them.

33. The fact that these nineteenth century property transfers were conducted in the language of sovereignty unsettles Justice Toohey’s argument that a ‘lack of history’ mysteriously washed away native title at some unspecified time in the past. It suggests that following the official line of Terra Nullius - non-Aboriginal Australians were cognizant of the sovereignty inherent in Aborigines and Torres Strait Islanders every time our incursions met with resistance. And I think this is one reason why Indigenous performativity so often addresses the secrecy surrounding the contested status of sovereignty in Australia. But how are we to understand the obstinacy of this secrecy, its capacity to withstand exposure over and over? Or, to pose the question another way: what kind of secret is Indigenous sovereignty?

34. Rather than understanding secrecy as a façade behind which truth is hidden, Michael Tausig asks: …what if the truth is not so much a secret as a public secret, as is the case with the most important social knowledge, knowing what to know? Then what happens to the inspired act of defacement? Does it destroy the secret, or further empower it? (Tausig, 1999: 3)

He goes onto argue that defacement paradoxically reinforces the power of public secrecy: Defacement is like Enlightenment. It brings insides outside, unearthing knowledge and revealing meanings. But that … to say this, however … it may also animate the thing defaced and the mystery revealed may become more mysterious. This reconfiguration of repression in which depth becomes surface so as to remain depth, I call the public secret, which, in another version, can be defined as that which is generally known, but cannot be articulated. … There is no such thing as a secret: it is an invention that comes out of the public secret … to see the secret as secret is to take it at face value, which is what the tension in defacement requires … (Ibid: 5-8)

35. Tausig proceeds to illustrate the interdependence of public secrecy and defacement by citing the decapitation of a public sculpture of Queen Elizabeth and Prince Phillip sitting on a park bench in the nude. In the exposure of naked sovereignty and in the violent desecration, he discovers a double defacement that reinforces the public secret of monarchical power in a nation, which on the surface appeared to be moving closer to the inevitable accomplishment of a republican identity.

36. But in facing the public secret of Indigenous sovereignty, we also need to look at the positive facialization of white national ontology. (See Nicoll 1997) The face of the “digger” (WWI soldier) was an important site on which the virtuous of a while Australian race were inscribed and celebrated during the interwar period. (Nicoll 2001) And there is perhaps no more explicit representation of the violent theft of Indigenous sovereignty than the male and female Aboriginal heads mounted on the wall of memory at the Australian War Memorial in the national capital, Canberra. The practice of decapitating and exporting to Britain the heads of Aboriginal guerrilla fighters such as Pemulwuy, Jandamarra and Yagan tends to confirm historian Humphrey McQueen’s suggestion that the Memorial’s “…sculptured human heads represent battle trophies, a statement of the settler’s success at scalp-hunting and that they should be removed.” (McQueen, 1995: 74) Yet insofar as he evokes a unidirectional violence against Aborigines, McQueen’s description of these heads as “battle trophies” fails to register Indigenous resistance to white invasion. (See Nicoll, 2001)

37. The confidence with which white philosophers, lawyers, politicians and journalists dismiss Indigenous sovereignty claims might belie their fears of its enduring power. Perhaps the public assumption of perspective by white politicians and intellectuals is counterbalanced by their private fears of just how far Indigenous sovereignty activists are prepared to go. Keith Windschutte provides a small glimpse of these fears when he writes: ‘Since the past fifty years have seen international relations very favourably disposed towards anti-imperialism, there is little doubt that, once launched, [an Aboriginal] secessionist movement would make many friends around the world.’ (Windschutte, 2000: 15) The spectre of dispossessed white farmers in Zimbabwe loomed over the debates about Mabo and Wik in the 1990s and continues to shadow current discussions of treaty in Australia. The problem with these racialised fears is that Indigenous sovereignty will be identical to what white sovereignty has been is that they effectively prevents us from finding out what Indigenous sovereignty might be.

De-facing Terra Nullius: The Performative Assumption of Sovereignty

[The] call had long been for Aborigines to begin acting sovereignty rather than continuing to use rhetoric. The Aboriginal Provisional Government plans to change the situation in Australia so that instead of white people determining the rights of Aboriginal people, it will be the Aboriginal people who do it [so that] each Aboriginal community would determine its own form of legal system appropriate to its community situation. (APG, 1992: 228-6)

We need something in whitefella law, which is strong and lasting and faithful to our law. The closest whitefella law, which can do this is the Constitution. (Yunupingu, 1998)

38. Rather than writing off Indigenous sovereignty claims as ‘impractical’, ‘impossible’ or ‘dangerous’, I think that the challenge for non-Indigenous Australians in the twenty first century is to reconcile ourselves to the legitimacy and integrity of Indigenous belonging in and to this place. (Moreton-Robinson, 2002; 3) The thirty-year old Aboriginal Tent Embassy in Australia’s national capital Canberra provides compelling evidence of value and hope of Indigenous sovereignty. In stark contrast to the New Parliament House, which incorporates Indigenous culture as part of a common national heritage through Michael Nelson Tjakamarra’s beautiful mosaic in the forecourt, the Embassy is parked outside the Old Parliament house and is a ramshackle collection of tents, tarpsaulins and tin humpsies. Goodall describes the impact of this spectacle when it was first established in 1972 to highlight Indigenous rights issues: “The sight of the canvas and plastic Embassy on the neat parliamentary lawns was immediately recognized by Aboriginal people around Australia … As John Newfong said, ‘The Mission has come to town.’” (Goodall, 1996: 339)
39. The Embassy provides a concrete illustration of Butler’s point that “Performativity describes [a] … turning of power against itself to produce a [illusory] alternative allocation of power, to establish a kind of political contestation that is not a "pure" opposition, a "transcendence" of contemporary relations of power, but a difficult labor of forging a future from resources inevitably impure.” (Butler, 1993: 241) For over three decades, the Embassy has been the site of a performative struggle in which the privileged term is ‘sovereignty’. Far from being a “pure” opposition or “transcendence” of contemporary relations of power, the people at the Embassy are passionately engaged in the “difficult labor of forging a future from resources inevitably impure.”

40. When I visited the Embassy at the end of last year, I was given a cup of billy-tea and a tour of a reclaimed space that contained separate areas designated for women and men, with a fire in the middle of the area to provide a common meeting ground. Drug and alcohol restrictions were self-imposed and policed. I was also told that white people had to seek Aboriginal permission to camp in the Embassy grounds. Rather than being a symbolic ‘performance’ of Indigenous sovereignty, it seemed that the Embassy was creating a working model of it, producing an alternative vision of a country in which non-Indigenous people are reconciled with the cultural and environmental prerogatives of the first nations.

41. After local authorities attempted to dismantle the Embassy for the umpteenth time last year, a Commonwealth coat of arms affixed to the old Parliament House was removed and taken into Aboriginal custody. The effect of defacement in this context was to draw attention to the chasm that separates the grounds of Indigenous and white being in Australia. Embassy elder, Kevin Buzzacott, explained that, as totems for several groups of Indigenous people, the symbols of the Kangaroo and Emu should not have been stolen for use without permission by the Australian government. The coat of arms, with the profile of Queen Elizabeth II, is one of the most pervasive and banal signs of white sovereignty in Australia, stamped on all Commonwealth government institutions and papered over identifying the emu and kangaroo as elements of the process through which white sovereignty percolates invisibly through the nation brings into question the ownership of the other plants and animals that provide the face of Australia’s currency and government institutions.

42. I’m not arguing that the Tent Embassy is an adequate substitute for the deposition of white sovereignty that is required for justice to be done (rather than than be seen to be done) in Australia. What I am arguing is that the performative assumption of sovereignty that the Embassy embodies presents a direct challenge to white Australians who dismiss Indigenous sovereignty claims as ‘dangerous’ or ‘impractical’. And I’d suggest that the Embassy’s defacement of the white sovereign’s pervasive stamp of authority, rather than constituting an instance of what Taussig, following Hegel, calls the “labour of the negative”, was used to project the positivity of Indigenous sovereignty.

43. Far from reinforcing the mystery of white Australian sovereignty, the reclamation of the Emu and the Kangaroo from the coat-of-arms forced attention on aspects of the unresolved conflict between Indigenous and non-Indigenous forms of Governmentality that have both everyday and historical dimensions. As a permanent fixture within Canberra’s Parliamentary landscape, the Embassy faces the white sovereign embodied in Parliament buildings with the enduring sovereignty of Indigenous Australians. And the everyday comings and goings of Embassy personnel mimic the politicians and public servants who occupy the parliament’s corridors of power.

44. Finally, the Embassy’s defacement needs to be considered in relation to the Aboriginal heads on the Memorial’s Wall of Memory discussed above. Apart from the Aboriginal heads, all of the other heads are sculpted reliefs of “native fauna”. When the Memorial was opened in 1942, government policies were formulated on the basis that “full-blood” Aboriginal people were dying out and “part-Aborigines” were destined to forced assimilation in white Australian society. Individuals could exercise citizenship rights only by denouncing their Aboriginality and acquiring what came to be called a “dog-tag” – a certificate that told authorities that the holder was exempt from the regulations of the Aboriginal Protection Boards. In this context, the Aboriginal faces on the Wall of Memory commemorate a white nationalist project that dehumanized the people of this continent as it seized the plants and animals for its own totems. The Tent Embassy actions draw attention to this history by temporarily sanitising the emu and the kangaroo from their everyday appropriation by white sovereignty.

Conclusion

It may be argued that to suggest an ontological relationship to describe Indigenous belonging is essentialist … because I am implying an essence to belonging. From an Indigenous epistemology, what is essentialist is the premise upon which such criticism depends: the western definition of the self is not unitary or fixed. This is a form of strategic essentialism that can silence and dismiss non-Western constructions, which do not define the self in the same way. The politics of such silencing is enabled by the power of western knowledge and its ability to be the definitive measure of what it means to be human and what does and does not constitute knowledge. Questioning the integrity and legitimacy of Indigenous ways of knowing and being has more to do with who has the power to name power and whether their knowledge is commensurate with the west’s "national" belief system. The anti-essentialist critique is commendable but it is premised on a contradiction embedded within the western construction of essentialism: it is applied as a universal despite its epistemological recognition of difference. (Moreton-Robinson, 2002: 3)

The Indigenous person, the refugee and the new and old settler sit in an awkward arrangement of relationship, which is radically exposed through the reality of Indigenous sovereignty. Indigenous sovereignty insists the question is asked – Who are the strangers? The situation of the refugee insists the question is asked – Who is able to practice hospitality? And how can that be done? (Schrank, 2002 – in this issue)

45. What can we conclude from this examination of sovereignty struggles in Australia at a moment when the theory and practice of sovereignty is widely regarded as undergoing an unprecedented crisis of legitimacy? I have highlighted a tendency among white politicians, journalists and academics to see Indigenous sovereignty as the unrealized object of 1970s radicals who need to “move on”. I hope that the historical and contemporary examples I have presented demonstrate that this is a misleading, not only of Indigenous sovereignty struggles but also of the situation of sovereignty within globalization.

46. There is currently a postcard circulating as part of a protest against the Australian government’s incarceration of boatpeople. It has a picture of an eighteenth century tall ship with the caption “Boat People” written below. This not only suggests that – from an Indigenous standpoint - the distinction between the British arrivals in 1788 and the most
recent arrivals of "illegals" might be negligible. It also exposes the fine white line that separates the prisoners who first arrived here and were subsequently freed from those who are now arriving as free subjects and subsequently being detained as prisoners.

47. Contrary to the post-millennial hype, the world has been in a continuous process of globalization for at least the past five centuries. Analyses for at least this process has been driven by the powerful social construct that is whiteness. As Monica Beatriz Demello Patterson argues, whiteness is defined by:

...several strong features including a captivistic market society structure; belief in progress and science, possession of modern concepts of family and societal group structures based on individualism, competition, social mobility, and belief in Eurocentric cultural, philosophical and economic superiority. In a phrase, whiteness refers to ways of living that are discursive practices that were formed out of a culture associated with Western colonial expansion. (Patterson, 1998: 104)

In this context, then, exhortations to Indigenous rights activists to sacrifice their local interests so that Australia as a whole is better placed to compete in a competitive global economy are not new. Rather, as I have argued - they derive from a racialized distinction between the white subject of universal, disinterested perspective – on one hand – and those non-white Others who are seen to be confined to their particular, interested perspectives - on the other.

48. Whatever is positive in the current crisis of sovereignty will be 'glocal' (Probyn, 2000) rather than premised on the local/global oppositions that are modernity's colonial inheritance. Indigenous sovereignty struggles have always been fought on 'glocal' terrain, encompassing local ancestral grounds through to the Imperial sites of British colonial and twentieth century Australian state power (London and Canberra) and more recent sites of international pan-Aboriginal activism such as the United Nations (Geneva). The Tent Embassy's operations over the past three decades reflect this glocal orientation. Far from being fixed in the space and time of Canberra 1972, the Embassy has established branches in other sites including Cockatoo Island in Sydney Harbour and Sandon Point near Wollongong - the site of a proposed coastal development. The international media are a central target of Tent Embassy actions as seen in the 2000 Olympic protests analyzed by Brett Neilson:

... protests involved the strategic placement of Indigenous bodies at key urban and suburban sites – symbolic places like Port Denison and Kurnell associated with past Aboriginal suffering and the immediate wave of colonization in the late eighteenth century. They also encompassed mock Olympic ceremonies such as torch parades and flame-lighting ceremonies. In this respect they constituted citizenly performances that sought not simply to mock the rituals of Olympism but to utilise the global media apparatus associated with the Games to theatricalise local sites for transnational protest activities. (Neilson, 2002: 19)

49. On July 14, 2002, young saplings were planted and a plaque placed in Victoria Park, the site of the 2000 Olympic protests. The plaque was dedicated to the memory of peaceful co-operation between the NSW police, the South Sydney Council and the Aboriginal Tent Embassy. This reproduction of Aboriginal space articulated a vision of reconciliation vastly different from that of the Federal government by reconciling state (police) and local governmental (council) agencies with or to the Embassy's sovereignty agenda rather than vice-versa. The rhizomatic character of the Embassy project suggests that the glocal practice of Indigenous sovereignty needs to be re-considered by those non-Aboriginal historians, political theorists and cultural critics for whom the Indigenous is always already local relative to global processes which are understood as constitutively non-Indigenous.

50. Continuing high rates of Indigenous mortality and incarceration indicate that a constitutional instrument will be required to put an end to the genodidal effects of Terra Nullius: I mean 'constitutional' not only in a narrow legal sense but also in the deeper sense of that which both underpins and structures the nation and everything in it. It was from under the shadow of his experience of the European Holocaust that philosopher Emmanuel Levinas defined his project:

To contest that being is for me, not to contest that being is for the sake of man; it is not to give up on humanity, it is not to separate the absolute and humanity. It is simply to contest that the humanity of man resides in the positing of an I. Man par excellence - the source of humanity - is perhaps the Other (Levinas, 1996: 14).

As long as Terra Nullius continues to found the 'I' posited by white Australian national discourse, the absolute which is Indigenous sovereignty will continue to call for justice in the name of the human. To appreciate the re-orientation that ultimately awaits us we might reflect on this question posed by Moreton-Robinson (1999: 15): 'What might our nation look like if white people begin by seeing themselves as custodians of the land who are worth no more or no less than all other living things? (m.e.)

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