

Chapter 13

The Absurd Proposition of Aboriginal Sovereignty

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In Australia in the 1990s, ‘reconciliation’ emerged as an organizing discourse for political debate and policy-making in relation to Aboriginal affairs and the unfinished business of decolonisation. Unlike in countries such as Chile and South Africa, however, reconciliation was not pursued in the wake of a new constitutional settlement. Rather, reconciliation was proposed as an alternative to a treaty (between indigenous people and the state), which had been pursued by Aboriginal activists (at least) since the 1970s. Conservative and Labour governments entertained the proposition of a treaty or ‘Makarrata’ in the 1980s. By the 1990s, however, the claim to Aboriginal sovereignty, which underwrote the demand to negotiate a treaty, was deemed unreasonable by both major political parties. During the debate about a treaty in 1988, John Howard (Australian prime minister, 1996–2007) declared: ‘It is an absurd proposition that a nation should make a treaty with some of its own citizens. It also denies the fact that Aboriginal people have full citizenship rights now’ (Howard 1988, 6). In this chapter, I take Howard’s notion of an ‘absurd proposition’ seriously as a characterization of the ‘agonic relation of colonial governance vis-à-vis indigenous resistance’ in Australia (Tully 2000, 13). In particular, I unpack the sense in which the claim to Aboriginal sovereignty might be characterized as an absurd proposition in terms of Lyotard’s conception of the differend and Jacques Rancière’s conception of disagreement.

For both Lyotard and Rancière, politics is agonistic since it involves the struggle to delimit the speech situation in which a political claim can be raised. Politics is struggle within and over the discursive conditions in which a claim appears as reasonable or absurd. Rather than presupposing a speech situation in which parties implicitly agree on the criteria of validity in terms of which each other’s claims might be redeemed, for both Lyotard and Rancière political conflict paradigmatically arises in the context of a speech situation originated by a wrong. As such, there is an absence of shared procedures in terms of which the conflict might be regulated. The agon concerns the possibility of making visible the wrong on which the speech situation is predicated.

However, there are important differences between the agonism of Lyotard and Rancière (see Jenkins in this volume). Lyotard characterizes political agonism in terms of the problematic of the differend between incommensurable genres of discourse. A case of the differend occurs when a conflict between two parties is

regulated by the idiom of one party while the wrong suffered by the other party cannot be signified in that idiom. A wrong consists not only in the fact that a party is harmed but that the injured party is divested of the means to make visible this injury as an injustice. For Rancière, in contrast, the condition of possibility for the agon is a situation of misunderstanding in which one party cannot understand the other because he does not recognise her as a speaking being. Lacking the power of speech (*logos*), the other is supposed to have only voice (*phôné*) in which pain and pleasure might be expressed but claims about justice cannot be articulated. Political agonism arises when those who are supposed to have only voice act as if they have speech. In doing so, they demonstrate (i.e. make visible and audible) what was previously unseen and unheard: both the wrong of the social order and their appearance as political subjects.

I will suggest that from a legal perspective, the appearance of the claim to Aboriginal sovereignty as an absurd proposition does indeed appear as a case of the differend. This was exemplified in the High Court's response to an indigenous woman that it 'will not hear' her protest that if Aboriginal people cannot get justice in the highest court of the country then that court must be a party to the genocide. And yet, the establishment of an 'Aboriginal embassy' in front of Parliament House in Canberra in 1972 testifies to the ongoing possibility that the wrong of colonization might be redressed politically.

'It Started off as a Joke' (Paul Coe)

In characterizing the idea of a treaty as an absurd proposition, Howard seems to suggest that it is both unreasonable and illogical, 'plainly opposed to reason, and hence, ridiculous silly' (OED). As an *unreasonable proposal*, the proposition of Aboriginal sovereignty would be an attempt to justify a particular claim by appealing to principles that are not shared by the co-members of society to whom the claim is addressed. In Rawls's terms, in staking political claims within a plural society one can legitimately appeal only to reasons that all members of that society might reasonably accept. For Howard and most Australians, it is unreasonable for Aborigines to expect anything other than the same share of the benefits of social co-operation that all citizens are entitled to. While they have a valid claim to adequate health, welfare and preservation of their culture, it is unreasonable for Aborigines to expect differential treatment based on a claim to special status as the traditional owners of the land. Following from this presumption of co-citizenship, as an *illogical assertion* the proposition of Aboriginal sovereignty would be a conclusion based on contradictory reasoning. Howard's characterization of the illogic of Aboriginal sovereignty would go something like this: Treaties are made between two sovereign peoples. But Aborigines are already Australian citizens and hence co-members of the one sovereign people of Australia. In seeking a treaty with the Australian state, therefore, Aborigines (absurdly) come to treat with themselves.

Yet, we might also understand the absurd proposition of Aboriginal sovereignty in a further sense that was unintended by Howard. While we usually understand the word proposition to refer to an act of speech (assertion or proposal) there is also an older, less common sense of the word which means ‘the action of setting forth or presenting something to view or perception; presentation, exhibition, display’ (OED). As a ridiculous presentation, the absurd proposition of Aboriginal sovereignty would be a display of sovereignty that at the same time testifies to its lack. Such a proposition might be absurd either in seeming silly (a demonstration of what one does not have) or in being a form of ridicule.

Indeed, the establishment of an Aboriginal Embassy on the lawns of Parliament House by four men carrying a beach umbrella on 26 January 1972 might be understood to exemplify an absurd proposition in the sense of a ridiculous presentation. Although these four men risked appearing silly, they initiated the most symbolically powerful political demonstration in Australia’s history. In parodying the sovereignty of the Australian state, the tent embassy became a serious political threat to the government of the day, a ‘diplomatic coup’ according to a journalist for the New York Times (Trumbull 1972). Within the hegemonic discourse of the settler society, the proposition of Aboriginal sovereignty could only amount to an unreasonable proposal or illogical assertion (a case of the *differend*). As a ridiculous presentation, however, it has the potential to contest the political unity in terms of which social relations between settler and indigenous societies are represented (the staging of a *disagreement*) (cf. Feltham 2004).

It was an irony lost on Howard in 1988, when he described a treaty as an absurd proposition, that the founding of the Aboriginal tent embassy ‘started off as a joke’ (Paul Coe cited in Waterford 1992, 1). As one historian observes: ‘the encampment was an Aboriginal twist on the larrikin sense of humour which throws rough-hewn insolence in the direction of Australian authority. As Dr Roberta Sykes reflected, “it was only a wag’s act to put it up anyway, *in the beginning*”’ (Robinson 1994, 51). The tent embassy was initiated as a protest against the refusal of the conservative McMahon government to grant land rights to Aboriginal people. In the early 1970s there was an increasing militancy on the part of a younger generation of Aboriginal activists who, taking inspiration from the Black Power movement in America, demanded land rights for indigenous people (see Foley 2001). This new militancy was apparent when Paul Coe addressed a predominantly white anti-Vietnam protest in 1971, criticizing the demonstrators for being prepared to march for oppressed peoples all over the world, except those in Australia: ‘You raped our women, you stole our land, you massacred our ancestors, you destroyed our culture, and now – when we refused to die out as you expected – you want to kill us with your hypocrisy’ (Coe quoted in Goodall 1996, 267).

On 25 January, the day before Australia Day, Prime Minister McMahon made his first major policy statement on Aboriginal affairs. The statement followed a recent ruling by the Supreme Court in the Northern Territory (*Milirrpum v Nabalco Pty Ltd* 1971), which upheld the doctrine of *terra nullius*, finding that Aboriginal people had no claim to native title in Australian law. Agreeing with the spirit of the

judgment, McMahon (1972, 12–13) outlined an assimilatory policy, according to which Aborigines should be assisted ‘to hold effective and respected places within one Australian society’ with equal rights and responsibilities as non-indigenous Australians. ‘The concept of separate development’, he insisted, ‘is utterly alien to these objectives’. Far from acknowledging Aboriginal land rights, McMahon promised only to make available ‘general purpose leases’ to some Aboriginal groups on condition that they made ‘reasonable economic and social use of the land’. Companies were to be allowed to continue mining any Aboriginal land without consent of its occupiers since this was taken to be in the national interest.

To the Redfern-based Aboriginal activists, the timing of the prime minister’s statement (for Australia Day, which is mourned by indigenous people as Invasion Day) was ‘a very provocative move’, which demanded a quick response (Foley 2001, 14). With the loan of a car and \$70 from a local branch of the Communist Party, four young men (Michael Anderson, Bertie Williams, Billie Craigie and Gary Williams) left Sydney late that night, arriving in the early hours of the morning to plant a beach umbrella on the lawns in front of Parliament House. Erecting a sign saying ‘Aboriginal Embassy’, they declared that since McMahon’s policies confirmed that Aboriginal people were aliens in their own land they needed an embassy to represent them in Canberra like people from other countries do (Foley 2001, 15).

The tent embassy quickly captured the imagination of the Australian public and eventually also the international media (e.g. Trumbull 1972). As days and then weeks went by, tents were erected in place of the umbrella and other Aboriginal people began to arrive to staff the embassy. The recently designed Aboriginal flag was flown, an office tent was established and a letter box was installed, which began receiving international mail. In addition to large numbers of tourists, visitors to the embassy included Soviet diplomats, a representative from the Canadian Indian Claims Commission, an IRA cadre, and opposition leader Gough Whitlam (Robinson 1994, 54; Foley 2001, 16). A five-point plan for land rights was formalized by the tent ambassadors, which called for Aboriginal control of the Northern Territory, legal title and mining rights on all existing reserves and settlements, preservation of sacred sites and compensation for alienated land in the form of a lump sum payment of six billion dollars and a percentage of the gross national product (Newfong 1972).

The tent ambassadors did not initially assert Aboriginal sovereignty. Isobell Coe (2000), who participated in the original protest, reflects that:

it took a while for us to understand the difference between land rights and sovereignty. Sovereignty means, you know, you own the land, it’s your birthright, and that traditional owners have a connection to that country that goes back to the beginning of time.

However, the symbolism of the tent embassy was not lost on the Government. Peter Howson, Minister for Environment, Aborigines and the Arts, said that the term embassy had a ‘disturbing undertone’ since it ‘implied a sovereign state

and cut across the Government's expressed objection to separate development' (Waterford 1992, C1).

'No, We will Not Hear that Sort of Thing' (Gummow J)

'It is in the nature of a victim', writes Lyotard (1988, 8), 'not to be able to prove that one has been done a wrong. A plaintiff is someone who has incurred damages and who disposes of the means to prove it. One becomes a victim if one loses these means.' While a plaintiff is the subject of a litigation, a victim is the subject of a differend. Both plaintiff and victim have suffered damage. However, the plaintiff is able to seek redress for this damage by appealing to a tribunal to arbitrate. In litigation one appeals to commonly held norms to represent one's particular experience of suffering as an injustice. In the case of a differend, however, the original injury suffered by the victim is accompanied by 'the impossibility of bringing it to the knowledge of others' (Lyotard 1988, 5).

In settler colonies, such as Australia, indigenous people become the subject of a differend by virtue of the fact of internal colonization. While indigenous people experience colonisation as invasion, the colonizing society understands its occupation of their land as settlement. As James Tully (2000, 39) explains, with internal colonization the land, resources and jurisdiction of indigenous people are appropriated not only for the sake of exploitation but for the 'territorial foundation of the dominant society itself'. Liberation from external colonization is possible by overthrowing the occupying imperial power. However, such a strategy of direct confrontation is ineffective in the context of internal colonization in which 'the dominant society coexists on and exercises exclusive jurisdiction over the territories and jurisdictions that the indigenous peoples refuse to surrender'. As such, both colonizers and colonized view the system of internal colonisation as a temporary means to an end. Indigenous people would resolve this irresolution by 'regaining their freedom as self-governing peoples'. In contrast, the settler society would resolve the irresolution by the 'complete disappearance of the indigenous problem, that is, the disappearance of indigenous people as free peoples with the right to their territories and governments' (Tully 2000, 40). Tully distinguishes between two kinds of strategies by which settler societies typically seek to resolve the contradiction of internal colonization: those that seek to *extinguish* indigenous rights (such as the presumption of Crown sovereignty and the doctrine of *terra nullius*) and those that seek to *incorporate* indigenous people as members of the dominant society (assimilation and reconciliation). Strategies of extinguishment and strategies of incorporation are both ways in which indigenous people are deprived of the means to prove the damages they have incurred. One loses these means, writes Lyotard (1988, 8), 'if the author of the damages turns out precisely to be one's judge'.

In 1979, Paul Coe brought the tent embassy's nascent political claim to Aboriginal sovereignty before the High Court of Australia (*Coe v Commonwealth* 1979).

Among other things, Coe claimed that the proclamations of the representatives of the British Crown to sovereignty over the Australian continent were ‘contrary to the rights, privileges, interests, claims and entitlements of the aboriginal people’ (121). They ‘wrongfully treated the continent now known as Australia as *terra nullius* whereas it was occupied by the sovereign Aboriginal nation’ (122). In the leading judgment, Gibbs J found Coe’s claim to be ‘repetitious, confused and obscure and in some respects inconsistent with itself’, containing ‘allegations and claims that were quite *absurd*’ (127). The fundamental principle on which the claim to sovereignty was rejected was that the annexation of the Australian continent took place through ‘acts of state whose validity cannot be challenged’ (128). Moreover, given that the Aboriginal people of Australia were not organized as a ‘distinct political society separated by others’ the contention that there is a sovereign Aboriginal nation, even of a limited kind, was ‘quite impossible in law to maintain’. Finally it was stated that it was ‘fundamental to our legal system that the Australian colonies became British possessions by settlement and not by conquest’ (129).

In 1992, the Mabo judgment of the High Court was supposed to constitute a fundamental break with the colonial past by jettisoning the fiction of *terra nullius* from Australian common law and recognizing native title. As has been widely observed, however, continuity remains in the fundamental presumption of sovereignty of the Australian state by the court (Wolfe 1994; Motha 2002; 2005). The judgment retrospectively recognizes that ‘native title’ was not extinguished by the settlement of Australia and continues to exist where it has not been extinguished by the establishment of freehold property granted by the state or by the ‘tide of history’ (i.e. colonization) through which Aboriginal people have lost their traditional connection with the land. Yet it is precisely the legitimacy of the Australian state’s claim to jurisdiction that is at stake in the conflict between indigenous people and the settler society. Consequently, when brought before the formal process of a legal tribunal, the proposition of Aboriginal sovereignty becomes an instance of an ‘objection that cannot be heard’ (Christodoulidis 2004). Regardless of whether the Australian state seeks the legitimacy of its claim to sovereignty in the doctrine of *terra nullius* or (since 1992) in the retrospective recognition of native title, the acquisition of sovereignty is an act of state that is not judiciable in a municipal court (Brennan J cited in Motha 2002, 318). As Kerruish and Purdy (1998, 152) put it, in legal thought ‘the Australian nation’s existence is unquestionable and this unquestionability finds expression in terms of sovereignty.’

According to Lyotard the perfect crime would consist:

in obtaining the silence of the witnesses, the deafness of the judges, and the inconsistency (insanity) of the testimony. You neutralise the addressor, the addressee, and the sense of the testimony; then everything is as if there were no referent (no damages). If there is nobody to adduce the proof, nobody to admit it, and *if the argument that upholds it*

is judged to be absurd, then the plaintiff is dismissed, the wrong he or she complains of cannot be attested. He or she becomes a victim. (Lyotard 1998, 8 – emphasis added)

For Lyotard (1988, 14), every phrase presents a universe that is constituted by an addressee (that to which something is signified to be the case), a referent (what it is about, the case), a sense (what is signified to be the case) and the addressor (that ‘through’ which or in the name of which something is signified to be the case). In the case of the absurd proposition of Aboriginal sovereignty: the addressee would be the invaders; the referent, the ‘fact’ of Aboriginal sovereignty; the sense, that sovereignty was unjustly violated by the colonizing society; and the addressor, the sovereign Aboriginal people.

‘In the differend, something ‘asks’ to be put into phrases, and suffers from the wrong of not being able to be put into phrases right away’ (Lyotard 1988, 13). The positive phrase is replaced by a silence, which constitutes a negative phrase. The referent, the addressor, the addressee and the sense are negated (Lyotard 1988, 14). Each of these negations is apparent in Gibbs’s judgment:

Negation of the addressee: The situation in question is not the addressee’s business (he lacks the competence). ‘The annexation of the east coast of Australia by Captain Cook in 1770, and the subsequent acts by which the whole of the Australian continent became part of the dominions of the Crown, were acts of state whose validity cannot be challenged’ (128) Jacobs J adds: ‘These are not matters of municipal law’ (132).

Negation of the referent: This case does not exist. It never took place. ‘It is quite fundamental to our legal system that Australian colonies became British possessions by settlement and not by conquest’ (129).

Negation of the sense: This case does not exist. The situation is senseless, inexpressible. The claim to Aboriginal sovereignty ‘is quite impossible in law to maintain’ (129) Jacobs J adds: These matters ‘are *not cognizable* in a court exercising jurisdiction under that sovereignty which is sought to be challenged’ (132).

Negation of the addressor: This case does not fall within your competence. It is not the survivors business to be talking about it. ‘There is no aboriginal nation, if by that expression is meant a people organised as a separate state or exercising any degree of sovereignty’ (131).

In Tully’s terms, pre-Mabo legal reasoning can be read as a strategy of extinguishment. Yet, in his dissenting judgment, Murphy J insisted that ‘the claim to rights over land or compensation for loss of such rights is capable of being formulated and presented in an *intelligible* way’ (137). Indeed, the claim to native title was found to be intelligible in Australian common law in 1992. However, this newly discovered intelligibility did not amount to recognition of the wrong of the differend. Rather, it constituted a change in strategy, from extinguishment

(although it would enable more of that also) to incorporation, according to which the differend would be buried in litigation.

Law presupposes its own capacity to justly arbitrate conflicting claims within society. As such, it recognizes only plaintiffs who can be successful or unsuccessful in bringing their claims before its tribunal. A victim cannot be recognized in law since law is founded on the presupposition that all claims can be adequately represented in terms of public reasoning that is formalized in legal practice. 'A case of the differend between two parties takes place', however, 'when the 'regulation' of the conflict that opposes them is done in the idiom of one of the parties while the wrong suffered by the other is not signified in that idiom' (Lyotard 1988, 8). As such, the differend is 'not a matter for litigation' but rather signals the 'inability to prove' (Lyotard 1988, 10). One can find oneself in the role of plaintiff and yet be a victim. Indeed, the differend is characteristically 'buried in litigation' (Lyotard 1998, 13).

As such, the wrong to which one attempts to testify is treated simply as a damage that could be proved or disproved. Either way, one's testimony to have suffered a wrong is found to be false. Lyotard describes this double bind in the following way.

Either:

(a) the damages you complain about never took place and your testimony is false,

or

(b) the damages took place but since you are able to testify to them, it is not a wrong that has been done to you but merely a damage and your testimony is still false.

Aboriginal people who have brought their land claims before the Australian courts in the post-Mabo era have experienced this double bind of the differend first hand. Although the Mabo judgment found that native title *can* continue to exist after the establishment of Australian state, the onus remained on indigenous groups to bring their claims to native title before the Australian courts in particular cases to provide that native title *did* still exist. In order to be successful, indigenous people had to prove that they maintained a traditional association with the land that they claimed. This meant that the law afforded redress to those 'least' dispossessed by colonization. In fact, most native title claims failed, with courts effectively establishing that for these groups native title had been extinguished. As Kerruish and Purdy (1998, 152) discuss, in making available the legal identity of 'native title claimant/holder' to indigenous people, Australian property law effectively says:

Either

(a) Since you no longer maintain your traditional customs and laws, your claim is invalid. Although your ancestors suffered dispossession, you did

not. In fact, you are not real Aborigines any more but part of our society.

Or

(b) Since you have maintained your traditional customs and laws you have not been dispossessed. In fact, your native title claim has always been potentially redeemable within the law.

Whereas a plaintiff who lodges a complaint is heard, the victim is 'reduced to silence' since there is no phrase available in terms of which the damage suffered could be adequately represented. If the victim is heard at all, it is not as a victim but as a plaintiff.

In 1998, one of the original tent embassy protestors, Isobell Coe, together with several others who persist in viewing the conflict in terms of invasion rather than settlement, sought an order from the Supreme Court of the ACT that genocide was a recognized crime in Australian law. The application was dismissed. On appeal to the Federal Court it was held that the crime of genocide did not form part of the common law of Australia. The applicants sought leave to appeal before the High Court, which was refused. Isobell Coe was briefly able to address the court: 'if we cannot get justice here in the highest Court of this country, then I think that this Court is just a party to the genocide as well'. Gummow J responded: 'No, we will not hear that sort of thing' (cited in Coe 2000).

Howard's assertion that the claim to Aboriginal sovereignty is an absurd proposition thus appears to be a well-established principle of Australian law. Moreover, it seems that, within the terms of the Australian law at least, this clearly signals a case of the differend. Within the law courts, the claim to Aboriginal sovereignty can only appear as an unreasonable proposal or an illogical assertion. The subject of the claim is denied the (legal) means to make the wrong of the social order visible. But if the wrong of colonization cannot be redressed legally, understanding the absurd proposition of Aboriginal sovereignty as a ridiculous presentation suggests how it might nonetheless be possible to redress the wrong politically.

'Action is Against Camping Not Against Demonstration or Protest' (Ralph Hunt)

As with most successful political acts, there was an element of good fortune in the staging of the tent embassy outside Parliament House in 1972. A Commonwealth ordinance existed which prohibited camping on Crown land without a permit but exempted Aborigines. Although the exemption was made with the Northern Territory in mind, it also applied to the Australian Capital Territory. As it happened, the lawns of Parliament House were Crown land, which effectively meant that the Aboriginal activists were entitled to camp there. Over the several weeks following Australia day, the tent embassy grew from a single beach umbrella to several tents, drawing Aborigines to protest in Canberra from all over the country. Jack Waterford

(1992, C1) recalls that it came to ‘look like any number of fairly dirty Aboriginal reserves: cooking in the open, bed linen spread about to dry, rather inadequate means of keeping clean. It was bringing the reality of Aboriginal Australia right to Australia’s front door.’ The Department of Interior was concerned with the impact that the protest was having on the lawns surrounding the Parliament, which it wanted to be in good condition for the impending visit of the Indonesian President. It sought, unsuccessfully, to move the protestors by turning on the sprinklers. Concerns were also expressed about the grass getting too long but an arrangement was reached whereby the protestors offered to mow the lawn themselves.

For Rancière, in contrast to Lyotard, politics is not the *threat* of the differend but rather comes about with the *demonstration* of a wrong, which he calls disagreement (see Jean-Lois Déotte 2004). To develop this argument, Rancière draws an important distinction between politics and police. Police refers to the social order that ‘defines a party’s share or lack of it’ (Rancière 1999, 29). It takes the population as its object, assigning each part of the population its proper place and role. In Rawlsian terms, police concerns the distribution of the benefits and burdens of political community. In his Australia day address, McMahon (1972, 12–13) gave voice to the police when he spoke of assisting Aborigines ‘to hold effective and respected places within one Australian society’. Since it is concerned with assigning members of society their proper part, the police is inherently inegalitarian.

Yet every inegalitarian order implicitly presupposes the fundamental equality of anyone with everyone. While every social order is based on a division between rulers and ruled, for the ruled to be capable of following orders there must be a fundamental equality in their capacity as thinking and speaking subjects. This is revealed in the double meaning of the verb ‘to understand’. As Rancière explains, “‘Do you understand?’ is a false interrogative.’ When the colonizers say to the colonized, ‘You have no claim to the land we have settled. Do you understand?’ they mean: ‘There is nothing for you to understand, you don’t need to understand’ and even, possibly, ‘It’s not up to you to understand; all you have to do is obey’ (Rancière 1999, 44–5). However, to be capable of obeying an order means that one is also capable of understanding its meaning as an order. Since an inegalitarian social order depends on the ability of the ruled to obey orders, it necessarily presupposes that the ruled have the capacity for political speech that it explicitly denies in order to justify their domination (Rancière 1999, 16).

Rather than coming about through the incommensurability of discourses (as in Lyotard), for Rancière a wrong refers to this torsion in the social order brought about by the radical equality that is necessary to sustain the inequality of social relations. The political always involves the presentation of this wrong. Politics is the ‘open set of practices driven by the assumption of equality between any and every speaking being and by the concern to test this equality’ (Rancière 1999, 30). Politics is what brings the contingency of the social order into view by staging a meeting of the logic of police with the logic of equality. The polemical space of a demonstration ‘holds equality and its absence together’ through the ‘staging of

a non-existent right' (Rancière 1999, 89, 25). As such, politics always entails the 'manifestation of dissensus, as the presence of two worlds in one' (Rancière 2001, 21). The powerful symbolism of the tent embassy is due to the way in which it presents two worlds in one: the social world in which Aborigines are assigned their part in the settler society and the political world in which the Aboriginal nation addresses the settler society as its equal. The tent embassy invokes Aboriginal sovereignty as a right while testifying to the lack of sovereignty in fact. On the one hand, the embassy has the symbolic trappings of sovereignty: it flies its own flag and it claims the right to negotiate with the Australian state as the representative of a sovereign people. On the other hand, the embassy is a tent rather than a permanent building. Resembling the fringe dweller camps of rural Australian towns, the tent embassy also makes visible the dispossession of indigenous people, their lack of sovereignty over their lands.

When Parliament resumed from the summer break on 23 February 1972, after several weeks during which support for the demonstrators had grown, the Minister for the Interior, Ralph Hunt, announced that the Government would 'have to look at an ordinance to ensure that Parliament Place is reserved for its purpose – a place for orderly and peaceful demonstration, but not a place upon which people can camp indefinitely' (House of Reps, Hansard 23/2/72, 108). In late June, Hunt announced that the Government intended to enact legislation that would empower police to remove the tent embassy. He recommended that 'the campers' apply for a lease to build an Aboriginal club in the ACT and hoped that 'they accept this as a *reasonable proposition*' (cited in Waterford 1992, C2). A document drawn up by the Department of the Interior for a Cabinet meeting on 27 June 1972 outlined several pros and cons for removing 'the campers' should they persist with the demonstration. Among the pros were that the 'proposed action is tactful – directed at tents not the individuals' and that the action is 'against camping not against demonstration or protest'. At the meeting, it was decided to amend the Trespass on Commonwealth Lands Ordinance in order empower police to remove the tents.

As Peter Hallward (2006, 117) puts it, the counter-political action of the police is first and foremost *anti-spectacular*. It is less concerned with interpellating subjects (as Althusser argues) than with breaking up demonstrations. Rather than 'Hey, you there!', the police is more likely to say 'Move along! There is nothing to see here!'. The police 'asserts that the space of circulating is nothing other than the space of circulation' (Rancière 2001, 22). This quality of the police is vividly described by Roberta Sykes in the extraordinary documentary of the 1972 protests, *Nigla A-Na* ('Hungry for our Land'). On 20 July, within one hour of the amended Ordinance being gazetted, 150 police marched toward the tent embassy. In a violent confrontation with the protestors, the police removed the tents. Having been arrested by police as they forcibly dismantled the tents, Sykes found several hours later that she was to be charged with traffic offences so was unable to claim that she was a political prisoner. Although empowered to do so, the police deliberately avoided charging Aborigines with trespassing on Crown land since that would be too politically charged.

Against the policing of public space, politics consists in ‘transforming this space of ‘moving along’ into a space for the appearance of a subject ... It consists in refiguring this space, of what there is to do there, what is to be seen or named therein’ (Rancière 2001, 22). On Sunday 23 July 1972 two hundred Aboriginal people and their supporters marched to Parliament House to restore the tent embassy. Once erected, they defiantly encircled the tents to protect them. The demonstrators met the intimidation of state violence with ridicule. When it was rumoured that Minister Ralph Hunt was watching the proceedings from a window of Parliament House, ‘a chant started up, rhyming slang mocking the minister’s surname’ (Robinson 1994, 57–8). This time the demonstrators were met by 360 police who marched in formation, appearing from behind Parliament House. The demonstrators began to chant ‘*Sieg Heil*’. The tents were again removed in an even more violent confrontation. The demonstrators were dispersed, but vowed to return the following Sunday. On 30 July, around two thousand Aboriginal protestors and their supporters and one thousand tourists and onlookers returned to Parliament House and a tent was re-erected. Clearly outnumbered, on this occasion the police did not intervene. After several hours, two unarmed police were allowed into the crowd to remove the tent. A few moments later the police observed another embassy apparently being erected on the other side of the park. They ran over to tear it down, only to discover it was ‘just a whole lot of people standing up holding a piece of canvas on their heads’ (Sykes in Robinson 1994, 61). The police removed the canvas ‘to reveal a circle of Aboriginal people sitting smiling at them, making the then-popular raised V-sign of peace and holding aloft a placard designating the site as the Aboriginal Embassy’ (Robinson 1994, 62).

Politics, Rancière insists, is:

primarily conflict over the existence of a common stage and over the existence and status of those present on it. It must first be established that the stage exists for the use of the interlocutor who can’t see it and who can’t see it for good reason *because* it doesn’t exist. Parties do not exist prior to the conflict they name and in which they are not counted as parties. (Rancière 1999, 27)

The tent embassy can be understood as an attempt to establish such a common stage. At first glance, such an interpretation is at odds with the spirit of the Aboriginal tent embassy and the ethos of Black Power that animated it. Aboriginal people might rightly insist that they do not owe their identity to the settler society and that it was their identity as traditional owners of the land that they were asserting or reclaiming. And yet, there is an important sense in which the sovereign Aboriginal nation in whose name the tent ambassadors planted their beach umbrella did ‘not exist prior to the declaration of wrong’ (Rancière 1999, 39). In doing so, the tent embassy demonstrators sought to speak from a subject position that was not afforded to them by the social order.

In Parliament, Hunt suggested that ‘the protagonists for Aborigines are frequently neither Aboriginal nor part-Aboriginal’, claiming that ‘the Communist

controlled unionists, the so-called peace movements, Maoists, Trotskyites and left-wingers generally are hell-bent on dividing the Australian nation on racist issues' (Hansard 23/2/72, 133, 129). Throughout the time the embassy was encamped outside Parliament House in 1972, Howson, the Minister for Aboriginal Affairs, had refused to negotiate with the 'unrepresentative militants' (Robinson 1994, 59). In August, he instead convened a national conference of Government-selected delegates, which he claimed was truly representative of all Aborigines. However, the conference voted to give the tent embassy representatives full speaking and voting rights and passed a motion calling for the tent embassy to be re-established.

There is a striking parallel here between the story of the tent embassy and that which Ranci re recounts about the secession of the Roman plebeians on Aventine Hill. According to Ranci re (1999, 23), in Ballanche's retelling of Livy's account, the 'entire issue at stake involves finding out whether there exists a common stage where plebeians and patricians can debate anything'. For the intransigent patricians, there can be no negotiating with the plebs for the simple reason that they are deprived of the *logos*. They have only voice, in which they can express pleasure or pain but lack speech, the fundamental political capacity according to which a distinction can be known between the harmful and useful, the just and unjust. In response, the plebeians constitute themselves as another political community and send an emissary to negotiate with the patricians. When one of the patricians, Menenius, comes to deliver an apology to the plebeians – a justification of the social order and the necessary inequality between patricians and plebeians – they 'listen politely and thank him but only so they can ask him for a treaty' (Ranci re 1999, 25). In the Roman senate, a secret council of wise men conclude that 'since the plebs have become creatures of speech there is nothing left to do but to talk to them' (Ranci re 1999, 24–5).

Contrary to Lyotard, Ranci re insists that although a wrong cannot be regulated it can be processed. This processing of a wrong occurs 'through the mechanisms of subjectification that give it substance as an alterable relationship between the parties, indeed as a shift in the playing field' (Ranci re 1999, 30). The tent embassy was extraordinarily successful as a symbolic enactment of Aboriginal sovereignty. As such it opened the possibility of such a shift in the playing field in settler–indigenous relations. However, Australian Aborigines have not been successful in their demand for a treaty. Indeed, it is no small irony that the formal reconciliation process ended in 2001 with a call for a treaty between indigenous people and the state. In 2008, the newly elected Australian Prime Minister Kevin Rudd gave a long awaited formal apology to Aboriginal people. While indigenous people generally regarded the apology to be appropriate, for most the issue of a treaty remains the 'unfinished business' of reconciliation. In this context, the tent embassy, and the shift in the playing field that it sought to bring about, perhaps provides an indigenous exemplar for conceptualizing reconciliation as decolonisation. For, although feared by conservatives as a demand for separation, in staging a disagreement the tent embassy also intimated a proto-political

community in which colonizers and colonized might address each other as equals. As such the enactment of Aboriginal sovereignty by the tent ambassadors might be understood to invoke the community-to-be-reconciled even as it makes manifest the wrong of colonization that divides indigenous and settler societies. The tent embassy thus remains a powerful exemplar of the possibility of processing the wrong of colonization in Australia today.

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