

University of Wollongong Summer Research Project:

Claiming and Contesting Sovereignty in Australia and New Zealand: Reviewing Recent Theory

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Law is like history in that there are dominant, almost mythical ways of talking about it, but when you scratch the surface, you will find many subversive narratives, overlooked, forgotten, smothered by the dominant story.

Behrendt 304

My summer scholarship has allowed me to prepare an extensive bibliography on the area of Indigenous sovereignty, and to narrow my scope from these readings to work through literature reviews of four of the articles which I found to be the most influential, controversial or suitable for my needs. The four articles I have chosen are also necessarily from authoritative voices in the field.

My interpretations of the four pieces I have focused on here would not be possible without the further texts I have been introduced to over the last ten weeks. Readings from the related areas of whiteness studies and critical race theory have guided me towards finding ways to ‘scratch the surface’ of the main texts for my honours thesis, as well as helping me in the process of evaluation of other theorists. I have been informed by wide reading of post-colonial theorists (some of whom I had encountered previously) who enabled me to gain a better understanding of the broad issues involved in working in an area concerning Indigenous rights as well as the responses of colonial powers and those who benefit daily from colonialism (myself included) to demands for these rights. Further, this has included several readings which have detailed the process of applying

postcolonial theory to literature and, most importantly, the role of the text in a post/colonial society.

I have also been able to research the history of Maori/Pakeha relations: from the Treaty of Waitangi and different opinions on the role the treaty does/has play/ed in defining the nation; through the more recent Land Wars and protest periods including the debates over Maori rights to fisheries and foreshores; as well as the roles of Maori politicians today. I have also read several non-fiction novels and edited collections of writing and poetry, as well as tracking down several films concerned with sovereignty issues in Australia and New Zealand, to gain a sense of the area into which the authors I will be studying are writing. Alongside all of these, of course, was a wide selection of theory and debate on sovereignty itself, from legal viewpoints concerned with Native Title and land claims, to literary analyses, to more philosophical writing on the nature and practice of sovereignty.

Informed by many different views, I have, however, had to focus on a relatively small selection, and use the writing of Aileen Moreton-Robinson, Fiona Nicoll, Andrew Sharp and Witi Ihimaera (as well as contributors to Ihimaera's collection *Growing up Maori*) to sketch out the differing notions of, and claims to, sovereignty in Australia and Aotearoa/New Zealand as well as some points on which Indigenous and non-Indigenous writers may disagree. These literature reviews will serve as the basis for a study of novels by Larissa Behrendt, Witi Ihimaera, Philip Gwynne and Maurice Shadbolt. Such reflection will enable a smoother literature-based thesis which does not require the interjection of large pieces of theoretical background to sovereignty.

Further to allowing me the time to read widely, the summer scholarship has given me the opportunity to work with Associate Professor Paul Sharrad – an expert in the field of Pacific Literatures. Paul Sharrad has directed me to key texts in the field and helped me build on the very limited knowledge I had of Aotearoa/New Zealand history – particularly in regards to the much-contested area of claims to sovereignty.

In Australia, the issue of sovereignty has been contested ground in academic debate and public opinion for several decades, since early land rights cases, the erection of the Aboriginal Tent Embassy in Canberra and calls for a treaty between Indigenous and non-Indigenous people. However, in the terms of Larissa Behrendt, above, Reconciliation has been promoted as the dominant story, with which to smother the voices that demand Indigenous sovereignty. Fiona Nicoll has argued that the debate over sovereignty has been sidelined by white politicians who posit a more ‘inclusive’ concept in race relations in Australia – Reconciliation – to intentionally draw public attention away from the issue of Indigenous sovereignty (Nicoll 2004: 17-18).

Fiona Nicoll is a well respected figure in Australian literary, historical and cultural criticism, critical race studies and whiteness studies, confirmed by her position as a former Vice President of ACRAWSA – the Australian Critical Race and Whiteness Studies Association – and the reception of 2001’s *From Diggers to Drag Queens: Configurations of Australian National Identity*.

Nicoll’s “De-Facing *Terra Nullius* and Facing the Public Secret of Indigenous Sovereignty in Australia” was published in *Borderlands e-journal*, a relatively new refereed publication from the University of Adelaide which aims to “create an open,

productive space for the transdisciplinary enterprise” (Burke). The issue in which it appears (1.2) was titled “On What Grounds? Sovereignties, Territorialities and Indigenous Rights”. In a further attestation to her authority on this topic, Fiona Nicoll was co-editor of this issue.

Nicoll’s paper discusses the issue of Indigenous sovereignty through related topics such as the possibilities of treaties and Reconciliation, the Aboriginal Tent Embassy and White Australia’s representations of Indigeneity. She explores the notion of continuing Indigenous sovereignty that has denied, and continues to deny, white Australia’s attempts to dismantle Indigenous claims to land. Nicoll applies Taussig’s theory of the “public secret” (from his 1999 book, *Defacement*) to the notion of *Terra Nullius* to Australia. That is, the falsity of *terra nullius* in Australia is not a secret *per se* – simply a truth obscured by a lie; that *terra nullius* does not apply to Australia and never did is ‘generally known’ yet impossible to articulate (Taussig 5), a repressed truth or ‘public secret’. Nicoll convincingly argues that white Australians need to recognise Indigenous sovereignty so as to uncover the public secret over ownership of land and to recognise the white privilege that has continued to allow the fallacy of *terra nullius* to replace or obscure the truth.

Similarly, Aileen Moreton-Robinson is an academic working to expose not just the fact of Indigenous sovereignty, but also how the discourse of many non-Indigenous Australians work to conceal and deny this fact. Moreton-Robinson discusses Native Title, the Yorta Yorta decision and sovereignty as displayed in, and in the discourse surrounding, a recent Indigenous legal claim to sovereignty – the Yorta Yorta case. She begins her discussion in “The Possessive Logic of Patriarchal White Sovereignty: The

High Court and the Yorta Yorta Decision” by denying the validity of current public discourse perpetuating a myth of a ‘tolerant’ majority of white Australians. It is a discourse, she argues, that promotes the nation as a ‘tolerant’ space based solely on the removal of explicit racial discrimination in law. Moreton-Robinson forcefully argues that white privilege, which has supported the unlawful theft of Indigenous land for over two hundred years, permeates the beliefs and knowledge of the nation – and that this privilege is most obviously manifest in the patriarchal judicial system which rules and protects the white nation-space.

Moreton-Robinson draws on the work of Richard Dyer and Carol Pateman to theorise a ‘patriarchal white sovereignty’ that is at work in Australia. This ‘patriarchal white sovereignty’ has actively refuted Indigenous sovereignty and the rights of any but white, able-bodied heterosexual men since the nation was proclaimed a possession of the King of England. Further, Moreton-Robinson argues that this sovereignty acts to reaffirm its own power by continuously denying that which it cannot own – the ontological sovereignty of Indigenous peoples. Moreton-Robinson used the Yorta Yorta decision of the High Court as a clear illustration of the patriarchal white denial of Indigenous sovereignty at work.

Moreton-Robinson concludes by pointing out several major flaws in the High Court’s rejection of the Yorta Yorta appeal. The most apparent of these is the Court’s assumption that the Yorta Yorta people ceded their sovereignty when petitioning for the return of their land, based solely on the fact that they recognised that their land was inhabited by non-Indigenous people *who did not own it*. Moreton-Robinson takes issue with the double standards within law on this point; an object when stolen, and recognised

as stolen, does not become the property of the thief, unless the property in question is Indigenous land. Moreover, she concludes that the High Court's decision is little more than an attempt to perpetuate the fallacy of white sovereignty. Patriarchal white sovereignty, she argues, protects its own interests. The Yorta Yorta decision, like the petition, by no means diminishes the Yorta Yorta's Native Title nor their sovereignty, reflecting her standpoint that the ontological sovereignty of Indigenous peoples can no more be taken away by today's judges and courts than it was by the white men of two centuries ago.

Aileen Moreton-Robinson, President of ACRAWSA (Australian Critical Race and Whiteness Studies Association) and a Geonpul woman from Quandamooka (the Moreton Bay area), is widely published in the areas of feminist and critical race theories. Moreton-Robinson is a recent recipient of an ARC grant for her current research into social constructions of race, which explores, among other topics, the question of whether western theoretical frameworks can ever explain Indigenous sovereignty, or whether these attempts are simply neo-colonial practice. This tension will no doubt prove to be central to my thesis – how can western frameworks explain sovereignties outside western epistemological boundaries?

Sovereignty in Australia was the starting point for thinking about my honours thesis. However, this project has now expanded into a comparison between Australian and New Zealand sovereignty debates. To this end, this review now turns to two significant, though discordant, voices in sovereignty debates in New Zealand.

Sovereignty is figured slightly differently in Aotearoa/New Zealand and Australia, but the discourse of sovereignty is always vital to a process of decolonisation.

For example, the struggle for Maori sovereignty in New Zealand (referred to as Tino Rangatiratanga – approximately translating as ‘self-determination’) has evolved out of land rights protests in the 1960s and 1970s and led to a nation of two names which is reflective of the tensions arising out of discourses on sovereignty, as two segments of society struggle to name their place and to gain, regain or maintain the power to freely govern it. Sovereignty in New Zealand is often thought of in relation to the terms of the Treaty of Waitangi. The signing of a treaty is the major point on which the colonisation of Australia differs from that of New Zealand, although the treaty itself is often considered invalid as a legal document, and in no case does it cede sovereignty to the Pakeha coloniser. The Treaty, at most, guarantees a shared sovereignty between Pakeha and Maori, each having the power to veto the other on matters of governing and law. Sovereignty, then, is often figured as more a matter of identity than politics in Aotearoa/New Zealand. Where sovereignty is discussed in literature and theory, the discussion is concerned less with land rights (although land rights are a major issue in New Zealand) and more with the right of Maoris to exercise self-government, and to refuse the governmental power of Pakeha systems of law. Witi Ihimaera is a Maori writer, academic and activist. His voice is an Indigenous perspective on sovereignty in New Zealand, taking up a discussion of sovereignty in relation to Maori identity.

Ihimaera’s introduction to the collection of histories in *Growing up Maori* introduces some of the contributors, most of whom are well-known as activists, writers, lawyers, judges, athletes, film-makers, historical figures, performers and academics; all of whom, Ihimaera points out, “identify themselves as being Maori” (14). Ihimaera stresses the importance of each contributor identifying themselves as Maori, rather than

taking part in an argument over blood and genealogy. The important point is not that there is a specific and narrow ‘way’ in which to ‘grow up Maori’, but that there are many different ways for many people to be Maori. However, a unifying characteristic of each contributor is that they each believe in ‘Maoritanga’. Maoritanga is, as Ihimaera says, “a sovereignty choice” that each contributor has made (14).

Jacq Carter’s contribution to Ihimaera’s collection, “None of us is What Our Tupuna Were: When ‘Growing up Pakeha’ is ‘Growing up Maori’”, further addresses this point. Carter struggles throughout her story to define herself – as Pakeha, Maori, ‘part’-Maori, ‘Pakeha-Maori’ or ‘Maori-Pakeha’. Carter rejects these popular notions of authenticity defined by genealogy and conformity to images of a ‘traditional Maori identity’; embracing and asserting her own Maori identity as a descendant of tangata whenua, unmitigated by the fact that she is also descended from people who are not tangata whenua.

Carter puts into practice a similar argument to that put forward by Aileen Moreton-Robinson in her discussion of the Australian High Court’s Yorta Yorta decision: ‘tradition’ can never be static. Moreton-Robinson uses this theory to illustrate the meaninglessness of the fact that the traditions of the Yorta Yorta have changed since European contact to the court’s decision that the Yorta Yorta are not deemed to be living in a ‘traditional’ style, whilst Carter grapples with the fact that her upbringing was more Pakeha than Maori in terms of ‘traditions’ which white people associate with being Maori. Carter fears that her presence at political demonstrations or her claim to a place within Maori communities will be questioned, and that her Maori voice will be rejected

for being inauthentic, as Gareth Griffiths identifies is a common silencing technique for voices which “menace the authority of the dominant culture” (Griffiths 241).

Carter eventually resolves her dilemma with the realization that a ‘traditional’ Maori upbringing is a fallacy. As her title suggests, sometimes ‘growing up Maori’ can appear the same as ‘growing up Pakeha’, appearing white, middle-class and well educated in opposition to misleading stereotypes of Maori that would reject Carter as ‘inauthentic’ as she does not conform, and would therefore dismiss her voice as ‘not Maori enough’. Carter collapses the boundaries created by white imaginations between Maori and Pakeha ‘ways of being’. Carter has made a sovereignty choice in identifying herself as Maori, and in doing so has asserted the falsity of common white views of authentic, or traditional, notions of what it means to ‘grow up Maori’, and thereby denied white audiences the opportunity to reject her view based on mythic perceptions of ‘authenticity’.

Carter’s argument becomes incredibly radical when it is placed in the context of claims to authenticity and sovereignty made by both Maori and Pakeha people. An example of a Pakeha claim to sovereignty (through a denial of Indigenous sovereignty) is University of Cambridge-graduate Andrew Sharp’s analysis of Maori claims to sovereignty.

In chapter thirteen, “Absolute Maori Sovereignty”, of his 1991 book *Justice and the Maori: Maori Claims in New Zealand Political Argument in the 1980s*, Andrew Sharp sets out to explain three ‘doctrines’ at the centre of Maori claims to sovereignty – rangatiratanga, mana Maori and mana Maori motuhake. The assertion of all three – jurisdiction, supreme authority and self-determination – embodies a demand for absolute

Maori sovereignty as opposed to the divided sovereignty assumed to be in practice in Aotearoa.

Sharp goes on to explore the notion of a divided sovereignty as guaranteed by the Treaty of Waitangi, as well as some of the debates around the validity of the Treaty itself. Sharp explains several reasons, which have been discussed in many public forums, that the treaty may be considered obsolete. These include the questions of whether the signatories had the right to sign without the consent of all the Maori people or could speak as the leaders of their communities, whether the signatories were entering into a contract of which they did not have a full understanding on account of inaccuracies in translation, or, most compellingly, whether the Pakeha state has forfeited its right to an equal share of power by breaking the terms of the treaty and must thereby hand absolute sovereignty back to the Maori.

Sharp's writing becomes problematic when he analyses Maori voices making claims to sovereignty. Sharp briefly discusses the works of Donna Awatere, Ripeka Evans and Atareta Poananga, tracing the arguments of each for differing forms of Maori sovereignty, but also at times treating the women's words and demands as excessive. For example, his discussion of Awatere's "remarkable aggression which ran counter to Maori customs of politeness" tends to ignore the fact that in the very words he criticises for their extreme aggression Awatere explains her anger (Sharp 258). Awatere argues that the Pakeha are 'manuhiri' – visitors – and would be treated with respect and hospitality had they acted as such, but that she is compelled to respond with aggression because they "by force and corruption imposed visitors rules upon the Maori" (Awatere, qtd in Sharp 258). I would suggest that Sharp contributes to the continuation of this imposition by

demanding that her voice become subdued, even that Sharp is threatened by a voice which does not conform to popular notions of an 'authentic' Maori. This is most apparent as he suggests the 'problem' which must be overcome is that Awatere's voice is too influenced by "marked European elements [...] corrupted by a western world" (258-59). To return briefly to the work of Griffiths on the 'myth of authenticity', Sharp is enacting that with which Griffiths takes issue most strongly, a prohibition on "the hybridized subjects of the colonizing process to legitimate themselves" (Griffiths 241). Sharp demands the paradox of a Maori voice which is able to communicate within both Maori and Pakeha epistemologies, but without being affected by the western elements it must therefore possess.

Further to his attempts to fit Maori notions of sovereignty within a western theoretical framework, Sharp draws on Hobbes' 1651 treatise on sovereignty and governmental powers, *Leviathan*, to illustrate the differences between the ways that the 'modern nation-state' and the Maori exercise sovereignty. Adopting *Leviathan* as a model of the modern nation-state's application of sovereignty as complete coercive and legal control, Sharp contrasts this with Maori activists' calls for "areas of immunity" from crown control (251). Sharp also suggests that the claims for Maori sovereignty may have met with more success had they followed the Hobbesian model, adapting the modern nation state's notion of sovereignty.

Sharp concludes this chapter on 'absolute sovereignty' with a Derridian discussion of the elusiveness of a just 'solution' to the question of sovereignty in New Zealand/Aotearoa. Sharp illustrates the practical effects of either outcome, Pakeha sovereignty is just to the Pakeha majority but an injustice to the Maori tangata whenua;

absolute Maori sovereignty provides justice for Maori who have fought for the recognition of their rights to the land and to governing it, but would seem unjust to the Pakeha majority, whose democracy would allow them to prevent such a change of the governing system to take place (265). In simple terms, there is no such thing as justice for all in a society of individuals. Sharp suggests, but does not conclude, that a shared sovereignty is the ‘more just’ outcome, again reflecting the same fear of absolute Maori sovereignty apparent in his suggestions that Awatere, Evans and Poananga are too ‘extreme’ in their calls for absolute sovereignty, for the return of all their lands and for the power to govern them entirely.

CONCLUSION

Sharp, like the High Court judges in the Yorta Yorta case, asserts white patriarchal sovereignty through the denial of Indigenous claims to sovereignty. But, as the existence of collections such as *Growing Up Maori* attest to – Indigenous sovereignty is an ontological fact and white denials can not entirely eradicate its truth – sovereignty can only be a choice for Indigenous people, and Indigenous people in both Australia and Aotearoa/New Zealand have made that choice. The simple fact is that Indigenous sovereignty has always existed, and with the excellent and challenging work of academics such as Aileen Moreton-Robinson, Fiona Nicoll, Witi Ihimaera and Jacq Carter, the public secret of Indigenous sovereignty might one day be recognized publicly and openly. Only then can the negotiation about how to deal with contesting sovereignties begin. These debates, though, are not just political or academic. The

literatures of Australia and Aotearoa/New Zealand, covertly or otherwise, have always had issues of belonging, freedom and sovereignty at their core.

Following this introduction, my honours thesis will move into an examination of literature by Australian authors Larissa Behrendt and Philip Gwynne, and Aotearoa/New Zealand authors Witi Ihimaera and Maurice Shadbolt. In this way my thesis will explore the various ways non-Indigenous writers have attempted to frame the sovereignty claims of Indigenous authors, and have tried to deny these claims in their own work.

THESIS PLAN:

Essential to naming home in Larissa Behrendt's novel *Home* and Philip Gwynne's two novels *Deadly Unna?* and *Nukkin Ya*, which have been adapted to make the film *Australian Rules*, is the desire to construct a space which allows self-governance. These novels are the focus of the first chapter of my honours thesis.

Behrendt brilliantly details the trials her family does/has face/d to retain, and in some cases reclaim, sovereignty. Whilst Behrendt's novel has been acclaimed in certain circles – winning the David Unaipon Award for Indigenous Writers – it has been widely ignored by commentators of popular culture, as have many of the previous winners of the same award. Rather than tracing/evaluating Behrendt's claims to or comments upon sovereignty – for, as Fiona Nicoll has asserted, being non-Indigenous leaves me ill-equipped for this task (Nicoll, "Reconciliation in and Out of Perspective" 19) – my first chapter will examine white responses to these claims to identify the apparatuses of colonial power that Behrendt is writing against and the reactions of these to contain Behrendt's radical ideology.

This chapter will continue by contrasting reactions to Behrendt's writing and the reception of the recent film *Australian Rules*. This film, the making of which was funded by The Adelaide Festival in 2002 under the theme 'Truth and Reconciliation', has been aligned in the popular imaginary as a reconciliatory piece. It has been publicly lauded as an honest representation of Indigenous/non-Indigenous relations today, as well as an important milestone on the road to mending these relations. However, the second chapter of my thesis questions the reasons for these reactions, finding that *Australian Rules*, in the main, presents Australia as a white space, relegating Indigenous sovereignty to the fringes. The film, therefore, provides white Australia with an important tool with which to refute Behrendt's, and others, claims, whilst also allowing white Australia an element of comfort in thinking we are making a difference, improving the state of the nation. The major tension within Australian society that this chapter identifies is that there are always (at least) two conflicting, irreconcilable even, claims to sovereignty.

The social and political tensions over dual sovereignties are apparent in the writings of Pakeha Maurice Shadbolt's short story "The People Before" and his novel, *Season of the Jew*. The next chapter of my honours thesis will contrast Shadbolt's writings with Maori writer Witi Ihimaera's novel *The Matriarch* in order to show how the two writers have a very different relationship to individual, social and political sovereignty. Using the writing of Andrew Sharp, as discussed above, Shadbolt will be read as a Pakeha response to Maori sovereignty claims, such as those put forward in Ihimaera's novel. Shadbolt's treatment of Maori characters will be read in terms of their conformity to various Pakeha myths of an essential 'traditional' or 'authentic' Maori

identity. This chapter will continue with an evaluation of the practical effects of such representations, especially on Pakeha audiences seeking to feel 'at home' in Aotearoa.

Continuing with a study of Witi Ihimaera's writing, I will identify the ways in which Ihimaera claims Maori sovereignty as well as contesting Pakeha sovereignty, two related but actually quite separate actions. As in the Behrendt/Gwynne chapter above, I will not take part in the debate over the validity or otherwise of these claims, but will use the writing of Ihimaera to ground a discussion of white reactions to Maori sovereignty.

My thesis will conclude with a short chapter outlining the problematic discourse of sovereignty as I read it in Australia and Aotearoa/New Zealand, summing up my findings from the previous chapters and briefly discussing the representational value of text-based studies.

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