



Moments of Decolonization: Indigenous Australia in the Here and Now

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Abstract

This article traces some of the ways in which Australian law in the post-*Mabo* era has functioned to discursively historicize Indigenous Australia, that is, to construct Indigenous Australia as a historical relic. I argue that despite law's continual historicization of Indigenous Australia, there have nonetheless been "moments of decolonization," as there have been since the colonization of Australia began, in which Indigenous Australia asserts its contemporary presence in opposition to and outside of colonial Australia. Drawing on Doreen Massey's conceptualization of place and space and three examples, I argue that in these moments, Indigenous activists do not only resist the ongoing project that is settler Australia, they also create an elsewhere to it.

Keywords: law, decolonization, native title, space, resistance

Résumé

Cet article examine quelques-unes des façons dont l'Australie indigène a été historicisée, sur le plan discursif, par la législation australienne dans l'ère après-*Mabo*, c'est-à-dire représentée comme un vestige historique. Malgré le fait que l'Australie indigène est continuellement historicisée par la législation, je soutiens qu'il y a tout de même eu des « moments de décolonisation », tel qu'il y en a eu depuis le début de la colonisation en Australie, où l'Australie indigène affirmait sa présence contemporaine, à l'extérieur de l'Australie coloniale et opposée à celle-ci. M'appuyant sur la conceptualisation de lieu et d'espace de Doreen Massey ainsi que sur trois exemples, je soutiens que dans ces moments, non seulement les militants autochtones résistent au projet en cours de l'Australie coloniale, mais ils créent également un « ailleurs ».

Mots clés : législation, décolonisation, titre foncier autochtone, espace, résistance

Decolonization can be difficult to imagine in the Australian context. Twenty years after *Mabo*¹ overturned the doctrine of *terra nullius*, Australia is still colonial in

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

the sense that the nation's prosperity is overwhelmingly built on land stolen from Indigenous Australians. Indigenous Australians still have a life expectancy some seventeen years shorter than non-Indigenous Australians,² are fifteen times more likely to be imprisoned than non-Indigenous Australians,³ and are significantly more likely to live in poverty than non-Indigenous Australians.⁴ It is clear that, as many others have argued,⁵ the logic and scheme of recognition established by *Mabo* failed to give rise to a genuinely postcolonial, let alone decolonized, Australia. In this article, I echo these critiques by outlining some of the significant ways in which Australian law in the post-*Mabo* era has functioned to discursively historicize Indigenous Australia, that is, to construct Indigenous Australian culture, practices, and laws as historical relics belonging to a time now past. On this construction, Indigenous Australia—Aboriginal and Torres Strait Islander people, their cultures, and their land—becomes a part of (colonial) Australian history, one minority's story within the grand narrative of white-dominated, multicultural Australia. This historicization has occurred through native title jurisprudence and through other realms of Australian law, notably the recent Northern Territory "Intervention."

However, as well as adding to these critiques of law in post-*Mabo* Australia, in this article I also argue that despite law's persistent production of a colonial Australia, there have been "moments of decolonization," as there have been since the colonization of Australia began. These moments tend to be left out of academic/institutional histories, and to comprehensively map out all of these moments would require an extensive oral history project in multiple languages. Such a project is far beyond the scope of this article, which outlines just three examples of what, I argue, can be productively understood as moments of decolonization, namely the Gurindji walk-off, the Aboriginal Tent Embassy, and the Ampilatwatja walk-off. Each of these moments—which have differed in their duration—was produced by Indigenous Australians resisting the ongoing colonization of their land. Drawing on Doreen Massey's conceptualisation of place and space, I argue that in these moments, Indigenous activists did not only resist the ongoing project that is settler Australia, they also created an elsewhere to it.

Such decolonizing moments have not been enough to change the order of the world in the way in which Frantz Fanon instructs that decolonization—a necessarily totalising, violent, and successful process—requires.⁶ Nor have they been frequent, disruptive, or legally significant enough to be analogous to the "varied and heterogeneous series of events" that Sundhya Pahuja argues constituted decolonization in

² Australian Institute of Health and Welfare, "Indigenous Life Expectancy" (Canberra: Australian Government, 2013), accessed 22 May 2013, <http://www.aihw.gov.au/indigenous-life-expectancy/>.

³ Australian Bureau of Statistics, "Prisoner Snapshot" (Canberra: Australian Government, 2013), accessed 22 May 2013, <http://www.abs.gov.au/ausstats/abs@.nsf/Products/5087123B0CCE48C1CA257B3C000DC7CE?opendocument>

⁴ Australian Bureau of Statistics, "Poverty and Deprivation in Australia" (Canberra: Australian Government, 2013), accessed 22 May 2013, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/featurearticlesbyCatalogue/5D709B83B7F7C25ECA2569DE00221C86?OpenDocument>.

⁵ See for example Stewart Motha, "The Failure of 'Postcolonial' Sovereignty in Australia," *Australian Feminist Law Journal* 22 (2005): 107–25; Irene Watson, "Buried Alive," *Law and Critique* 13 (2002): 253–69.

⁶ Frantz Fanon, *The Wretched of the Earth* (New York: Penguin, 1985).

the context of the wave of independence achieved by former colonies in the post-World War II international legal landscape.⁷ However, I argue that in the Australian context, the totalising process of decolonization has begun with these moments that have produced Indigenous places that are elsewhere to the colonial regime; places led by and for Indigenous Australians in the here and now, places produced in part through their opposition to law and its historicization of Indigenous Australia. Understanding these moments shows that decolonization is not only imaginable but also attainable in the Australian context. While it is important for those of us in the settler-dominated institution of academia to identify and critique the structural and incipient ways in which law continues to colonize, it is also important that we do not in that process erase from view Indigenous activism, scholarship, and struggle that is actively undoing this historicization and producing moments of decolonization.

The Place that is Australia

While the historic *Mabo* decision recognized that Indigenous people lived on the continent now known as Australia for thousands of years before the arrival of the British, it did not recognize Indigenous Australia as a separate place, coeval with today's "Australia." Legal borders define Australia as stretching out to every shore of the land mass and surrounding sea and islands. Against this legal geography, Indigenous Australia is presumed to constitute a part of Australian history.

Setting the limits of Australian law's recognition of native title, Brennan J famously put large parts of Indigenous Australia in the past tense by stating in *Mabo*, "[W]hen the tide of history has washed away any real acknowledgment of traditional law and any real observance of traditional customs, the foundation of native title has disappeared."⁸ Australian law can only protect the interests of Indigenous people when those interests conform to "traditional laws and customs" and when those laws and customs are still being observed today, despite two centuries of "the tide of history," that is, two centuries of state-driven, systematic dispossession of Indigenous people from their land, law, and culture. Indigenous law and practice is the foundation of native title, but Indigenous Australia is constructed as an almost mythical place located in the distant past and only capable of being rescued by (settler) law in limited circumstances. As descendants of a historical place, Indigenous people's claims to land and sovereignty are constructed as grasping at the past and refusing to move on. Australia is in turn constructed as a modern, postcolonial, multicultural place, with vibrant, responsive, and ever-evolving laws.

However, this construction does not go unchallenged—the place that is "Australia" today is not fixed or finished. The very fact that law continues to develop new ways to de-legitimate Indigenous claims to land and sovereignty demonstrates that Australia is an ongoing process, a process that requires continual practices of

⁷ Sundhya Pahuja, "Decolonization and the Eventness of International Law," in *Events: The Force of International Law*, edited by Fleur Johns, Richard Joyce, and Sundhya Pahuja (New York: Routledge, 2011), 91.

⁸ *Mabo v Queensland [No 2]* (1992) 175 CLR 1; [1992] HCA 23 at paragraph [66] per Brennan J.

dispossession. In thinking through the place that is Australia, I find it useful to draw on geographer Doreen Massey's work on space and place. Massey calls for an understanding of place that embraces its own internal divisions (rejecting the conflation of place with community), and defines itself not through physical boundaries or internalized histories but rather through interaction with the world outside.⁹ According to this understanding, place is a process rather than an artifact, and correspondingly, space is dynamic and heterogeneous, rather than static and fixed in meaning. Massey writes

... "here" is no more (and no less) than our encounter, and what is made of it. It is, irretrievably, here and now. It won't be the same "here" when it is no longer now.¹⁰

In another piece, she writes that places are best understood as "articulated moments in networks of social relations and understandings" where most of those relations and understandings are constructed on a far larger scale than what for that moment is defined as the place itself.¹¹ This understanding of place is consistent with Massey's theorisation of space as "dynamic heterogeneous simultaneity," so space as the ever-unfolding dimension of multiplicity, and place as a specific constellation or moment within space¹²—place as event, as a particular negotiation of the here and now, rather than a fixed area or community with boundaries around it.¹³ It could be argued that there is a level of inconsistency in describing place as a "process," a "moment," and an "event," but each of these descriptions conceptualizes place in a way that emphasizes its temporality—as something that happens rather than an object that exists indefinitely or a fact that exists in the abstract.

According to Massey's understanding of place, the place that is Australia today is necessarily still in process. The historicization of Indigenous Australia is a part of that process, but it is not inevitable or complete. Even the settler state of Australia, with its deeply entrenched, structural production of a settler-dominated place, may shift in the course of its own process and become a different place in the future. Following Massey's conceptualization of place as process, moment, or event,¹⁴ Australia today is necessarily a different place from Australia tomorrow. While the insightful work of settler colonial theorists such as Patrick Wolfe, who points out the structural nature of settler colonialism and its genocidal effects,¹⁵ provides valuable analytical and political

⁹ Doreen Massey, *Space, Place and Gender* (Cambridge: Polity Press, 1994), 146.

¹⁰ Doreen Massey, *For Space* (London: Sage, 2006), 139.

¹¹ Doreen Massey, "Power-Geometry and a Progressive Sense of Place," in *Mapping the Futures: Local Cultures, Global Change*, edited by Barry Curtis, Jon Bird, Tim Putnam, George Robertson, and Lisa Tickner (New York: Routledge, 1993), 66.

¹² Ibid.

¹³ Massey, *For Space*, 140.

¹⁴ As discussed above, there is a level of conceptual ambiguity here, as "process" and "event" are not interchangeable terms. Massey uses various temporal terms to explain her understanding of place, all of which emphasize that place is not fixed in time.

¹⁵ Patrick Wolfe, "Settler Colonialism and the Elimination of the Native," *Journal of Genocide Research* 8, no. 4 (2006): 387–409.

tools in campaigns for Indigenous justice, it is important that such work is not used to construct settler colonialism as structurally inevitable.¹⁶ As Alissa Macoun and Elizabeth Strakosch point out in an important article on the ethical demands of settler colonial theory, settler scholars seeking to challenge colonial power relations must be wary of making the assumption that settlers have clear access to the knowledge of Indigenous people, and that we already legitimately control the entire space of the settler colony.¹⁷ Consistent with these cautions, in this article I want to encourage a cautiousness that those of us who are settler scholars do not assume, firstly, that within the legal borders that enclose Australia, there is no outside to it, or, secondly, that decolonization is a utopic goal located only in the distant future.

In a recent article on decolonization and settler colonialism, writers Eve Tuck and K. Wayne Yang argue that “decolonization is not an ‘and.’ It is an elsewhere.”¹⁸ Writing against the use of the term decolonization as a metaphor for settler-led social justice movements, Tuck and Yang argue that decolonization “specifically requires the repatriation of Indigenous land and life,”¹⁹ and such repatriation is incommensurable with the structural dispossession of settler colonial states as they exist today. That is, decolonization cannot simply be added to a list of anti-oppression goals that might be achievable within a settler colonial framework—goals such as wealth redistribution or the improved protection of human rights. It is *outside of* rather than *in addition to* such goals that can be achieved without the repatriation of Indigenous land and life. Understood as an “elsewhere,” decolonization is both a place and a process outside of settler colonialism. Putting Tuck and Yang’s argument in conversation with Massey’s, in this article I analyse moments where this elsewhere was reached. That is, moments of decolonization in which Indigenous Australians produced places outside of the settler colonial regime.

Each of these moments of decolonization involves the production of an elsewhere, as both place and process. Consistent with Massey’s understanding of space, each of the moments of decolonization discussed below is articulated out of networks of social relations and understandings that extend far beyond the moment itself. While moments of decolonization are not enough to destroy Australia as settlers know it, by producing an elsewhere, they show that Australia is a place separate from and coeval with contemporary Indigenous Australia. The Indigenous activists who create these moments assert a presence and claim a future in a way that counters and undoes law’s historicization of Indigenous Australia. And as will be shown below, while these moments of decolonization exist outside of law, they are also constituted in part by Indigenous activists’ very rejection of and resistance to law.

¹⁶ Alissa Macoun and Elizabeth Strakosch, “The Ethical Demands of Settler Colonial Theory,” *Settler Colonial Studies* 3, no. 3–4 (November 2013): 426–43.

¹⁷ *Ibid.*, 434.

¹⁸ Eve Tuck and K. Wayne Yang, “Decolonization Is Not a Metaphor,” *Decolonization: Indigeneity, Education & Society* 1, no. 1 (2012): 36.

¹⁹ *Ibid.*, 21.

“Native Title” and the Production of a Tidal Wave *Mabo, Native Title Law, and Indigenous “Tradition”*

As has been much discussed and celebrated,²⁰ in 1992, the High Court of Australia overturned the legal fiction of *terra nullius* or “empty land,” which was the basis of the British acquisition of sovereignty through settlement. The overturning of *terra nullius* in *Mabo* was a highly significant development in Australian common law. However, as has been noted by numerous critical commentators,²¹ while the High Court in *Mabo* overturned *terra nullius*, it did not take the next step of overturning the intimately related legal fiction that the British Crown legitimately acquired sovereignty of Australia through settlement. The judicial compromise that was reached was to find that while the sovereignty of the Australian state remained untarnished, its common law courts would recognize that in areas where Indigenous people had managed to evade colonial interference, and to the extent that they were still today observing Indigenous laws and customs, they would be recognized as having native title to the land.²²

Thus, in order to establish native title, Indigenous claimants have to show that their ongoing connection to the land is a “traditional” one; native title is awarded only to claimants who can satisfy the Australian common law courts’ requirement that their pre-colonial relationship with the land has not been “washed away” by “the tide of history,” a tide that includes the transfer of land to individual settlers or the state.²³ Once the “traditional” connection is broken, the High Court held, native title is permanently “extinguished.”²⁴ As the tide of history began with the acquisition of British sovereignty, the native-title formula in *Mabo* constructs Indigenous laws and customs as pre-historic. The concept of Indigenous tradition featured heavily throughout the *Mabo* decision as the basis for native title. While Deane and Gaudron JJ stated that traditional law and custom should not be “frozen as at the moment of establishment of a Colony” so long as “any changes do not diminish or extinguish the relationship between a particular tribe or other group and particular land,”²⁵ the concept of tradition was not interrogated or defined. The Oxford Dictionary definition of tradition as a “long established and generally accepted custom or method of procedure, having almost the force of a law . . . an embodiment of an old established custom or institution, a ‘relic,’”²⁶ fits with the *Mabo* decision’s use of the term. The characterisation of tradition as almost, but not quite, having the force of law, and as being old and fragile—a “relic”—sets up a temporal framework in which Indigenous Australia is a fragile creature of the

²⁰ See for example Duncan Ivison, “Decolonizing the Rule of Law: Mabo’s Case and Postcolonial Constitutionalism,” *Oxford Journal of Legal Studies* 17, no. 2 (1997): 253–79; M. J. Detmold, “Law and Difference: Reflections on Mabo’s Case,” *Sydney Law Review* 15 (1993): 159; Nonie Sharp, *No Ordinary Judgment: Mabo, the Murray Islanders’ Land Case* (Canberra: Aboriginal Studies Press, 1996).

²¹ Watson, “Buried Alive,” offers a particularly compelling critique.

²² For a full summary of the formula for native title set out in *Mabo*, see chapter 1 of Strelein, *Compromised Jurisprudence: Native Title Cases Since Mabo* (Canberra: Aboriginal Studies Press, 2009).

²³ Paragraph [66] per Brennan J.

²⁴ Paragraphs [73] – [97] per Brennan J.

²⁵ Per Deane and Gaudron JJ at paragraph [58].

²⁶ *Oxford English Dictionary Online*, s.v. “tradition,” June 12, 2013, <http://www.oed.com/view/Entry/204302?rskey=zn30PT&result=1&isAdvanced=false#eid17871398>.

past capable of salvation and preservation by the progressive and modern common law.

Indeed, the *Mabo* decision retained a clear focus on settler futurity, that is, a future in which settlers not only materially prosper on Indigenous land but also retain an illusion of innocence.²⁷ As Valerie Kerruish and Jeannine Purdy have argued, the *Mabo* decision's reduction of Indigenous law and culture to historical fact, which could be judged as either true or untrue by colonial power, re-inscribed rather than challenged settler dominance in Australia.²⁸ The use of the idea of a "tide of history" that washes away Indigenous laws and customs also suggests the uncertainty and stagnancy of those laws and cultures, in contrast to the inevitable linear temporality of unending colonial rule. Settler law operates in a way that is alive and forceful, invoking an image of linear time similar to how Carol Greenhouse imagines it, namely as "the image of time as an irreversible progression of moments, yielding ordinal conceptions of past, present and future as well as duration."²⁹ The linear time constructed for settler law in *Mabo* appears to be external to the Australian social setting being described—the tide of history happens naturally and by its own force, inevitably and innocently washing away large parts of Indigenous Australia.³⁰ A number of important thinkers have critiqued the way in which the concept of continuous, linear time is used to produce a particular understanding of political community and to legitimate and naturalize the authority of the contemporary secular state (which replaced the church as the ultimate arbiter on judgment day).³¹ Although tides are arguably more circular than linear in nature, the tide of history of Brennan J's judgment evokes an image of colonialism as the irreversible progression from the past of Indigenous Australia to the present of settler colonialism and toward a future of "postcolonial," settler-dominated Australia, where Indigenous laws and customs would be recognized only within the colonial legal system.

Native Title Jurisprudence Since Mabo: The Tidal Wave Continues

In the wake of the *Mabo* decision, the federal government passed the *Native Title Act 1993* (NTA), which established a national process for Indigenous people to bring native title claims, and a formula for validating both "past acts" of government that had dispossessed Indigenous people up until 1 January 1994 and "future acts" that could execute such dispossession only after a formal negotiation process.³² The *Act's* division of time into a clear past (when Indigenous Australians were wantonly dispossessed) that has now ended and a (better, fairer) future that began on 1 January 1994 sets up a temporal framework in which Australian law

²⁷ Tuck and Yang, "Decolonization is Not a Metaphor."

²⁸ Valerie Kerruish and Jeannine Purdy, "He 'Look' Honest—Big White Thief," *Law/Text/Culture* (1998): 146–71.

²⁹ Carol J. Greenhouse, *A Moment's Notice: Time Politics Across Cultures* (London: Cornell University Press, 1996), 20.

³⁰ David M. Engel, "Law, Time, and Community," *Law and Society Review* 21, no. 4 (1987): 605.

³¹ Stacy Douglas, "The Time that Binds: Constitutionalism, Museums and the Production of Political Community," *Australian Feminist Law Journal* 38 (2013): 78–79.

³² *Native Title Act 1993* div 3.

began a new post-*Mabo* era, leaving the old days of colonialism behind and entering an era of postcolonialism. However, the reality of post-*Mabo* Australia has been a continuation of the linear temporality of pre-*Mabo* Australia, with law's focus remaining on settler futurity, and native title jurisprudence coming primarily to follow Brennan J's tidal wave formulation.

Adapting to the augmented post-*Mabo* legal landscape, Indigenous groups from many different areas brought forward legal claims for native title. One such group was the Wik people of far-north Queensland, who began their native title claim soon after the *Mabo* decision was handed down. Decided by the High Court in 1996, some see *Wik Peoples v Queensland*³³ as a high point in native title jurisprudence, the majority finding that pastoral leases did not automatically extinguish native title (the pastoralists would have to prove that they were in fact in exclusive possession in order to extinguish native title). The decision flagged the possibility of the co-existence, on the same area of land, of the rights of Aboriginal people (native title) and the rights of pastoralists (non-exclusive leasehold), though it also clarified that where the native title rights of Aboriginal people were inconsistent with the leasehold rights of the pastoralists, the pastoralists' rights would prevail.³⁴ The possibility of contemporary co-existence raised by *Wik* caused a political furore.³⁵ The conservative government responded by promising to pass legislation that would deliver "bucketloads of extinguishment," which it did via the *Native Title Amendment Act 1998*.³⁶

While there is much to be said in relation to the *Act* and the political circumstances surrounding its passage, it is notable for the purposes of this article that this draconian legislative response came when coequality was contemplated. Unlike the *Mabo* case, which concerned land in the Torres Strait Islands that was still predominantly populated by (Indigenous) Torres Strait Islanders, the dispute in *Wik* involved land that non-Indigenous Australians had found a use for. That use was in fact fairly minimal—the pastoralists did not permanently reside on the land subject to the leases, and although the land was designated for running cattle, the High Court found that there was a sparse average of "one beast per 60 hectares."³⁷ The land subject to the leasehold spanned an area significantly larger than most farms.³⁸ With such an enormous expanse of rural land, it might seem surprising that there was such an outcry at the possibility that two distinct sets of rights to it might exist at the same time. The Australian government at the time spoke of the need for "certainty" for pastoralists, rather than identifying any practical problems with allowing the co-existence of native title with non-exclusive pastoral leases. The feeling of "uncertainty" had begun with *Mabo* and been exacerbated by the possibility, presented by *Wik*, that Indigenous law and custom might be allowed to seep out of the well-contained Torres Strait Islands and rugged landscapes of the

³³ (187) CLR 1; [1996] HCA 40

³⁴ See Toohey J at paragraphs [70]–[76].

³⁵ Peter H. Russell, *Recognizing Aboriginal Title: The Mabo Case and Indigenous Resistance to English-Settler Colonialism* (Toronto: University of Toronto Press, 2006), 279–314.

³⁶ *Ibid.*, 325.

³⁷ See Toohey J at paragraphs [50]–[52].

³⁸ Kirby J at paragraph [216].

largely unsettled north and centre of the mainland to permeate spaces where settlers were today doing business. The threat to the certainty of settler entitlement was both spatial and temporal—that Indigenous Australian entitlement might exist here and now, coeval with settler life and property. The *Native Title Amendment Act 1998* and the native title jurisprudence that has followed it demonstrate law's move away from the coevality and co-existence briefly contemplated in *Wik*, and toward a more limited recognition of “traditional” Indigenous laws and customs.

The 2002 case of *Yorta Yorta v Victoria*³⁹ is perhaps the most notorious native title case in terms of its production of a devastating tide of history. The trial judge, Olney J, directly invoked Brennan J's tide of history in his finding of fact and dismissal of the Yorta Yorta's claim.⁴⁰ In dismissing the Yorta Yorta's appeal, the High Court found that the changes in the group's laws and customs broke their connection with the land, which was no longer adequately traditional. As has been argued by others, the *Yorta Yorta* decision ruled that for contemporary observances of Indigenous laws and customs to be recognized as traditional, they must match European colonialists' accounts of them.⁴¹ In this case, the courts relied on the racist writings of nineteenth-century settler “pioneers” who were personally and politically invested in the destruction of Indigenous laws and customs.⁴² The penalty for adapting those laws and customs to the drastic social and environmental changes directly caused by colonial settlement is failing the test of “tradition” required for native title. Although the Federal Court has since declared that change and adaptation will not necessarily be fatal to a native title claim (so long as the applicants continue to sustain the same rights and interests that existed at the acquisition of British sovereignty),⁴³ the precedent set by *Yorta Yorta* and its insistence on a non-Indigenous understanding of Indigenous tradition remains.⁴⁴ Native title jurisprudence thus continues its linear march toward settler futurity, saving the relics of Indigenous Australia when they can be integrated into the understandings and practices of contemporary settler Australia.

“Land Rights Not Native Title!”

Australia in the post-*Mabo* era continues to be a colonial place. To return to Massey, while native-title jurisprudence has added a new and still unfolding history to the heterogeneous constellation that, in each moment, constitutes Australia, the constellation has continued to structurally dispossess Indigenous Australians of their land. As well as the outcomes of the native title cases, preparing

³⁹ 214 CLR 422.

⁴⁰ *Members of the Yorta Yorta Aboriginal Community v Victoria and Others* [1998] FCA 1606

⁴¹ Bruce Buchan, “Withstanding the Tide of History: The Yorta Yorta Case and Indigenous Sovereignty,” *Borderlands E-journal* 1, no. 2 (2002), http://www.borderlands.net.au/vol1no2_2002/buchan_yorta.html.

⁴² See Aileen Moreton-Robinson. “The Possessive Logic of Patriarchal White Sovereignty: The High Court and the Yorta Yorta Decision,” *borderlands e-journal* 3, no. 2 (2004), http://www.borderlands.net.au/vol3no2_2004/moreton_possessive.htm.

⁴³ *Bodney v Bennell* [2008] FCAFC 63.

⁴⁴ Strelein, *Compromised Jurisprudence*, 135.

for litigation is costly, time-consuming, and sometimes productive of altered understandings and practices relating to the land in question.⁴⁵ It is unsurprising that this increasingly narrow jurisprudence has been accompanied by an increasingly visible movement against native title by Indigenous activists and scholars. In a piece titled “What Do We Want? Not Native Title, That’s for Bloody Sure,” Nicole Watson argues that the difference between land rights movements and native-title claims is that land rights movements involve grass-roots struggles not just for land but for sovereignty, whereas native title creates a perception of Australian postcolonialism without recognising Indigenous sovereignty or meaningfully redistributing the national wealth from settlers to Indigenous people.⁴⁶ Native title thus retains a focus on settler futurity while land rights movements offer the possibility of something different.

Of course, land rights movements can take different forms, from total demands for the abolition of colonial space and its racialized divisions and systemic violence (decolonization proper as Fanon, Tuck, and Yang would define it), to a far less threatening demand to be recognized within the colonial scheme. In the Australian context, it could be argued that the first and still most significant land rights legislation—the *Aboriginal Land Rights (Northern Territory) Act 1976*—was a way of placating Indigenous activists at the time and ending claims to sovereignty. The almost decade-long strike by the Gurindji people for land at Wattie Creek, which preceded the *Act*, was far more threatening to Australia than the *Land Rights Act* itself, which defined and limited the struggle for land and sovereignty that had preceded it.

The Gurindji strike itself, in which the Gurindji people walked off a nearby cattle farm and occupied land from 1966 to 1975 with the demand that their land be returned, was a moment of decolonization in Indigenous Australian history.⁴⁷ The strike created an elsewhere to the place that is Australia, through the Gurindji people’s literal walking away from law and industry, their demands for land and power, and their creation of a space where Indigenous Australians ran their own lives free of settler control—with autonomy over food supply, accommodation, and the social and cultural activities that accompany day-to-day life. As historian Minoru Hokari, assembling the Gurindji’s oral history of the strike, writes:

The walk-off was the Gurindji mode of decolonization of their land, planned and conducted by the Gurindji people and those related to the Gurindji country. Their aim was to physically leave European authority, to regain autonomy and sovereignty over their country, to establish their own community, and to run the cattle stations by and for themselves.⁴⁸

⁴⁵ For an in-depth discussion of one group’s preparation for a native-title claim, see chapter 5 of Elizabeth A. Povinelli, *The Cunning of Recognition: Indigenous Alterities and the Making of Australian Multiculturalism*, Politics, History, and Culture (Durham, NC: Duke University Press, 2002).

⁴⁶ Nicole Watson, “What Do We Want? Not Native Title, That’s for Bloody Sure,” in *The Aboriginal Tent Embassy: Sovereignty, Black Power, Land Rights and the State*, edited by Gary Foley, Andrew Schaap, and Edwina Howell (New York: Routledge, 2013).

⁴⁷ Minoru Hokari, “From Wattie Creek to Wattie Creek: An Oral Historical Approach to the Gurindji Walkoff,” *Aboriginal History* 24 (2000): 98–115.

⁴⁸ *Ibid.*, 113.

In contrast to the native title framework that would follow it two decades later, the Gurindji strike involved a contemporary adaptation of the Gurindji's traditional connection to land, and the production of their own space outside of colonial Australia rather than a claim to be recognized by it. The strike was not just a demand for, but also a material production of Indigenous Australia in the here and now, *outside of and coeval with* Australia. The strike was brought to an end through the translation of the Gurindji's actions into a demand for recognition that could be met by the Australian state through the granting of land rights, thus bringing the elsewhere of the walk-off back into the space of Australia and concluding that moment of decolonization.

Spurred by the growing Indigenous land rights movement, the Aboriginal Tent Embassy, a permanent protest located on the lawns of Old Parliament House in Canberra, was established in 1972. Watson contrasts native title recognition with the Embassy, which has been demanding land rights and sovereignty since 1972.⁴⁹ Empowered by and in conversation with the Black Power movement of the time, and in direct response to the then-prime minister's Australia Day address to the nation dismissing the call for land rights, the protestors declared that they would remain at the newly-formed Embassy until the government granted land rights to Aboriginal people.⁵⁰ In a perhaps unwittingly insightful response, the police remarked, "[T]hat could be forever."⁵¹ Despite various attempts to remove it, the Embassy remains on the lawns of Old Parliament House today, its defiant demands and refusal to move producing a place and an enduring moment of decolonization in the heart of Australia's political system.⁵²

The Embassy is in many ways the exemplary "elsewhere" of Australian colonialism, existing symbolically outside of law's paradigm of recognition, and physically on the fringes of the institutions that enforce it (new Parliament House and the High Court of Australia both being within a few hundred metres of the Embassy), demanding and creating something different. Begun twenty years before the *Mabo* decision, it continues more than twenty years after it. Whereas native title constructs Indigenous Australia as a historical relic, Watson argues that movements such as the Embassy give Aboriginal people "the ability to imagine a future beyond colonization"⁵³:

⁴⁹ Paul Muldoon and Andrew Schaap, "The Constitutional Politics of the Aboriginal Embassy," in *The Aboriginal Tent Embassy: Sovereignty, Black Power, Land Rights and the State*, edited by Gary Foley, Andrew Schaap, and Edwina Howell (New York: Routledge, 2013).

⁵⁰ Scott Robinson, "The Aboriginal Embassy: An Account of the Protests of 1972," in *The Aboriginal Tent Embassy: Sovereignty, Black Power, Land Rights and the State*, edited by Gary Foley, Andrew Schaap, and Edwina Howell (New York: Routledge, 2013), 5.

⁵¹ Ibid.

⁵² The initial demands were (1) Aboriginal ownership of all existing reserves and settlements (including rights to mineral deposits); (2) ownership of areas of land in the capital cities including mineral rights; (3) preservation of all sacred sites in all parts of the continent; (4) six billion dollars in compensation; and (5) full rights of statehood for the Northern Territory: John Newfong, "Camping Indefinitely at the Embassy (February–June 1972)," in *The Aboriginal Tent Embassy: Sovereignty, Black Power, Land Rights and the State*, edited by Gary Foley, Andrew Schaap, and Edwina Howell (New York: Routledge, 2013), 139.

⁵³ Watson, "What Do We Want?"

Whereas the native title recognition process squeezes and distorts Aboriginal aspirations so that they linger at the bottom of the property “totem pole,” if at all, the Embassy’s platform gave voice to the lived experience of Aboriginal people. Justice on Aboriginal terms required more than mere cracks in the law. Rather, those at the Embassy aspired to a transformation of relationships between Aboriginal people and the nation-state.⁵⁴

Though this passage is written in the past tense, Watson and others are keen to emphasize that the Embassy remains politically relevant and powerful today.⁵⁵ The Embassy has a growing presence on social media and remains vocal in its refusal to recognize the legitimacy of the Australian state in its present form.⁵⁶ By physically punctuating the highly manicured Canberra landscape, vocally and visibly rejecting native title, insisting on sovereignty for Indigenous Australians, and creating a space of sovereignty at the Embassy itself, the Embassy constitutes a moment of decolonization that interrupts the linear time of Indigenous past, native title present, and settler future, as laid out in *Mabo* and the native title jurisprudence that has followed it. This particular moment has proved an enduring one, maintaining a place on the Parliament lawns that is both a practical and symbolic “elsewhere” for Indigenous activists to work, plan, and be away from settler control.

A Drawn-Out Emergency

The *Mabo* decision and native title jurisprudence have been subject to much academic critique, but other aspects of Australian law also target Indigenous spaces and work to discursively historicize Indigenous Australia. In particular, the Northern Territory Intervention—the set of emergency laws introduced in the Northern Territory by the Australian Commonwealth government in August 2007—affected a large number of Indigenous communities and constructed Indigenous Australia as backward and in need of modernization, in order to implement what many argue are distinctly colonial policies. As will be discussed below, while the Intervention was framed in spatial terms (operating only in specific areas of the Northern Territory), it was also justified through the historicization of Indigenous Australia as lagging behind contemporary Australia to the extent that its assisted modernization had become an urgent matter. But despite the extraordinary measures taken under the Intervention, Indigenous Australians affected by it still managed to maintain an elsewhere to it, producing moments of decolonization through their opposition to this particular set of laws and those laws’ historicization of Indigenous Australia. One particular moment, the Ampilatwatja walk-off, will be discussed below.

The Intervention was primarily enabled by the *Northern Territory National Emergency Response Act 2007* (Cth) (NTNERA), which followed a report containing allegations of widespread child sex abuse in remote Aboriginal communities in

⁵⁴ Ibid., 293.

⁵⁵ Ibid.; Kevin Gilbert, “The Continuing Presence of the Embassy Since 1992,” in *The Aboriginal Tent Embassy: Sovereignty, Black Power, Land Rights and the State*, edited by Gary Foley, Andrew Schaap, and Edwina Howell (New York: Routledge, 2013), 190–210.

⁵⁶ “Aboriginal Tent Embassy,” accessed 11 June 2013, <https://www.facebook.com/pages/Aboriginal-Tent-Embassy/210730945611610>.

the territory.⁵⁷ The Northern Territory has the highest proportional Aboriginal population of any Australian jurisdiction (over 30 percent compared to the next highest, 3.8 percent),⁵⁸ the highest number of native title land claims,⁵⁹ and is the site of the first and most significant Aboriginal land rights legislation in Australia (around 45 percent of the area of the Northern Territory is now Aboriginal-owned under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (*Land Rights Act*), a higher percentage than that of any other jurisdiction).⁶⁰ The Northern Territory is one of two mainland Australian territories, the other being the small area around the federal capital of Canberra, and although the territories are now self-governing, they are still subject to having their laws overridden by the Commonwealth government.⁶¹ Drawing on this power, the Commonwealth government announced on 21 June 2007 that the levels of child sex abuse in the Northern Territory's Aboriginal communities had become a national emergency to which the Territory government had failed to adequately respond. Thus, the Commonwealth government was to immediately pass emergency response legislation.

The NTNERA introduced a range of highly paternalistic measures to large areas of the Northern Territory. These measures applied to "prescribed areas" of the Territory, which are defined in the *Act* as all Aboriginal land⁶² as well as any other area declared by the relevant minister, with the exact co-ordinates for the prescribed areas listed in a schedule to the *Act*.⁶³ All prescribed areas are those of Aboriginal communities.⁶⁴ The NTNERA measures applicable in the prescribed areas include: a total ban on the possession and consumption of alcohol,⁶⁵ compulsory income management for all welfare recipients,⁶⁶ compulsory installation of anti-pornography filters on all public computers, obligatory record keeping of all computer users,⁶⁷ cutting back of the permit system for entry onto Aboriginal land,⁶⁸ federal government takeover of local services and community stores, ministerial power to suspend all elected councilors,⁶⁹ a ban on Northern Territory courts from taking customary law into account when dealing with bail applications and sentencing,⁷⁰ and compulsory, rent-free, five-year leases of Aboriginal land to

⁵⁷ P. Anderson and R. Wild, "Little Children are Sacred: Inquiry into the Protection of Aboriginal Children from Sexual Abuse," Northern Territory Government (Northern Territory, 2007).

⁵⁸ "A Statistical Overview of Aboriginal and Torres Strait Islander Peoples in Australia," *Australian Human Rights Commission* (Sydney, 2008), accessed 15 February 2010, http://www.hreoc.gov.au/social_justice/statistics/index.html#Heading34.

⁵⁹ "Northern Territory," *National Native Title Tribunal* (Canberra, 2010), accessed 15 February 2010, <http://www.nntt.gov.au/Native-Title-In-Australia/Pages/Northern-Territory.aspx>.

⁶⁰ B. A. West and F. T. Murphy, *A Brief History of Australia* (New York: Infobase Publishing, 2010), 85.

⁶¹ This Commonwealth power to override territory laws is enabled by section 122 of the Australian Constitution.

⁶² That is, land held on trust under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

⁶³ NTNERA s 4.

⁶⁴ Based on a search of all legislative instruments passed under NTNERA as of 15 February 2011.

⁶⁵ NTNERA s 12.

⁶⁶ *Ibid.*, s 126.

⁶⁷ *Ibid.*, pt 3.

⁶⁸ *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory Emergency Response and Other Measures) Act 2007* (Cth) Schedule 4.

⁶⁹ NTNERA pt 5 div 4; pt 7.

⁷⁰ *Ibid.*, ss 90, 91.

the federal government.⁷¹ The NTNERA made itself exempt from Australia's *Racial Discrimination Act 1975* (Cth).⁷²

In many cases, the relationship between the Intervention provisions and child protection remained "unexplained,"⁷³ and the Intervention has been criticized by the United Nations, a number of human rights organizations, and many activist groups.⁷⁴ It has also been noted that according to some statistics, the rates of Aboriginal child abuse in the Northern Territory are in fact *lower* than in most other Australian jurisdictions (and on a par with rates of non-Aboriginal child abuse in Queensland),⁷⁵ and the number of convictions for child sex abuse in the prescribed areas did not significantly rise during the Intervention despite increased police powers and surveillance.⁷⁶ This is not to deny that there are serious social problems in many remote communities in the Northern Territory; however, the characterization of the situation as an emergency seems disingenuous considering that women from these communities had been raising these issues at various levels of government for years.⁷⁷ Yet despite this, the Intervention remained in force for its full five-year period, ending in mid-2012 due to its sunset clause.⁷⁸ And while the NTNERA has now ended, the federal government extended the Intervention by passing the *Stronger Futures in the Northern Territory Act 2012* (Cth), which continues most of the NTNERA measures for a further ten years.

Constructions of and assumptions about time and Aboriginality have played an important part in conceptually justifying both the 2007 "Emergency" Act and the 2012 "Stronger Futures" Act. As has been argued by Nasser Hussein, emergency has long had an important function in the maintenance of colonial rule, with martial law often being used on the basis of emergency and necessity in colonies during the nineteenth century.⁷⁹ The declaration of an emergency suggests a serious and unexpected threat to everyday order and governance and justifies exceptional violence and special laws in order to restore order and governance. The purpose of emergency laws is to overcome the threat, end any transgressions that were part of it, and restore the general order as the state reconstitutes itself.⁸⁰ The Australian

⁷¹ *Ibid.*, pt 4 div 1.

⁷² *Ibid.*, s 132.

⁷³ L. Behrendt, C. Cunneen, and T. Libesman, *Indigenous Legal Relations in Australia* (Sydney: Oxford University Press, 2009), 81–82.

⁷⁴ See for example J. Anaya, United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People "Observations on the Northern Territory Emergency Response in Australia" (2010); Amnesty International, "Discriminatory Aspects of the NTER Yet to Be Addressed" (Sydney, 4 February 2009), <http://www.amnesty.org.au/news/comments/20169/> (last visited 15 August 2011); Intervention Rollback Action Group (IRAG), "Rollback the Intervention" (Alice Springs, 2009), <http://rollbacktheintervention.wordpress.com> (last visited 18 August 2011).

⁷⁵ West and Murphy, *A Brief History of Australia*, 232.

⁷⁶ Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, "Closing the Gap: Monitoring Report July–December 2010" (2010), section 6.7.

⁷⁷ Harry Blagg and Giulietta Valuri, *An Overview of Night Patrol Services in Australia* (Canberra: Attorney-General's Department, Commonwealth of Australia, 2003).

⁷⁸ NTNERA s 6.

⁷⁹ Nasser Hussain, *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (Ann Arbor, MI: University of Michigan Press, 2003), 108.

⁸⁰ *Ibid.*, 112–20.

government's declaration of an emergency in 2007 constructed Aboriginal communities in the Northern Territory as a serious threat to the everyday order and governance of Australia. It also worked to historicize Indigenous Australia by constructing the communities in question as uniformly dysfunctional and backward, in need of urgent measures to bring them into the settler present. As Alissa Macoun has demonstrated in her analysis of the political discourse surrounding the Intervention, the government represented Aboriginality as savage, primitive, and in need of settler-imposed control and development. This discourse and representation situated Aboriginality in the past and provided moral justification for coercing Aboriginal people into the settler present.⁸¹ The fact that the "emergency" focused on the salvation of children reinforced the temporal logic of Australian law, as Macoun writes:

By representing the future, children are exempt from Aboriginality's assignment to the past and are a means by which Aboriginal people can be pulled into the present. Children, as vulnerable victims of savagery, also provide additional moral justification for settler action; the savage and primitive of the past must be addressed because they threaten the future, refusing to be appropriately superseded.⁸²

The emergency discourse that justified the exceptional legal measures of 2007 transitioned smoothly to the stronger futures discourse of the 2012 legislation, both being based on the restoration of the general order of settler modernity and futurity.

Resisting the Intervention through Law and Elsewhere

There continues to be significant resistance to the Intervention from the Indigenous communities it targets. Strategies of resistance have been both through and outside of the Australian legal system. In the legal arena, the compulsory leases were the focus of anti-Intervention campaigns. Notably, traditional owner Reggie Wurridjal brought a High Court challenge against the Commonwealth government, claiming that the lease of the Maningrida land on which he lives amounted to an unjust compulsory acquisition of property, contrary to section 51 (xxxi) of the Constitution. Along with other Aboriginal elders, Wurridjal was recognized under the *Land Rights Act* as a traditional owner of the land in question. Like all land under the *Act*, the fee simple title is held by an Aboriginal Land Trust for the benefit of the relevant Aboriginal people. The township of Maningrida was established as an instrument of government policy in 1957.⁸³ While many Aboriginal people have moved to the township of Maningrida itself, many also continue to live in outstations on the region, of which there are over thirty.⁸⁴ The Bawinanga Aboriginal Corporation operates a large and successful Aboriginal employment scheme whereby those living on the Maningrida outstations are paid to maintain

⁸¹ Alissa Macoun, "Aboriginality and the Northern Territory Intervention," *Australian Journal of Political Science* 46, no. 3 (September 2011): 519–34, doi:10.1080/10361146.2011.595700.

⁸² *Ibid.*, 528.

⁸³ J. C. Altman, "Fresh Water in the Maningrida Region's Hybrid Economy: Intercultural Contestation over Values and Property Rights" (Canberra: Australian National University, 2008), 1.

⁸⁴ *Ibid.*

them.⁸⁵ Due to the relatively short history of white settlement and the relatively well-resourced support of outstation living, Aboriginal residents' relationship with land in the Maningrida region is stronger than in other parts of Australia and also robustly defended in the face of encroaching white governance. In a long and complex decision, the High Court found that the compulsory lease of the Maningrida area did *not* affect any acquisition of property from Wurrildjal himself, and that although the leases did acquire property from the Land Trust, that acquisition was on just terms.⁸⁶

Further, Alice Springs town camp resident and community activist Barbara Shaw brought a case challenging the compulsory acquisition of leases under the NTNERA.⁸⁷ The land at stake in *Shaw* was that of the Alice Springs town camps, which are areas that have been built and inhabited by Aboriginal people since the late 1800s, and which have most recently been governed by local Aboriginal Housing Associations.⁸⁸ Having been pushed off their land by settlers, Aboriginal people from central Australia moved in to the fringes of Alice Springs, where they could access resources and find work while still maintaining a space relatively free of settler control.⁸⁹ At an initial hearing in August 2009, Shaw won an injunction against the government's acquisition of the town camp leases⁹⁰ on the bases that there had been a lack of procedural fairness afforded to residents, and that the lease arrangements would be in contravention of the affected Housing Associations' purpose of acting in the interests of their Aboriginal members.⁹¹ However, three months later, at the full hearing, the Court found against Shaw on both arguments, deciding that the legislature did not intend for Aboriginal residents to have procedural fairness under the NTNERA, and that the leases were capable of being in the interests of the Aboriginal members of the affected Housing Associations.

While both the *Wurrildjal* and *Shaw* cases were lost and the leases went ahead, the cases still functioned to slow down the acquisitions, to publicly challenge the Intervention, and to galvanize community resistance. Whatever the outcome, Indigenous legal challenges to the legitimacy of government action assert a presence that counters law's construction of Indigenous Australia as temporally located in the past, and as primitive or savage. As well as being the key plaintiff in the case against the government's acquisition of the Alice Springs town camp leases,

⁸⁵ "History," *Bawinanga Aboriginal Corporation* (Darwin, 2007); Sarah Keenan, "Blue Wristband View of History: The Death of Mulrunji Doomadgee and the Illusion of Postcolonial Australia," *Alternative Law Journal* 34 (2009): 248.

⁸⁶ *Wurrildjal v The Commonwealth of Australia* [2009] HCA 2.

⁸⁷ *Shaw v Minister for Families, Housing, Community Services and Indigenous Affairs* [2009] FCA 844 and [2009] FCA 1397.

⁸⁸ Frances Coughlan, "Aboriginal Town Camps and Tangentyere Council: The Battle for Self-Determination in Alice Springs" (Melbourne: La Trobe, 1991), 22.

⁸⁹ *Ibid.*

⁹⁰ As the land was leasehold, these were in fact subleases, but the principles remain the same. For a full exploration of the legal characteristics of the subleases, see Sarah Keenan "Property as Governance: Time, Space and Character in Australia's Northern Territory Intervention," *Modern Law Review* 76, no. 3 (2013): 464–93.

⁹¹ *Shaw No 1* at paragraphs [75]–[99].

Barbara Shaw is also an active member and spokesperson for the Intervention Rollback Action Group, an independent community group that meets regularly to discuss the impacts of the Intervention, take appropriate action, and raise awareness of the racist impacts of the intervention.⁹² The group contributed to the production of “An Alternative to the Northern Territory Intervention,” a document calling for an end to the Intervention, setting out concrete measures to restore control to Aboriginal communities and improve living standards, and calling for land rights and self-determination.⁹³

One remote Northern Territory Aboriginal community created an elsewhere to the Intervention by physically relocating outside the boundaries of the NTNERA. The community of Ampilatwatja, located some 300 kilometres north-east of Alice Springs, is a community of the Alyawarr people and land.⁹⁴ In June 2009, the Ampilatwatja community, supported by several Australian trade unions, walked off their town site in protest against the Intervention, and started building new accommodation and infrastructure on a site three kilometres away, just outside the boundaries of the Intervention’s “prescribed areas.”⁹⁵ Despite their physical move, the Ampilatwatja community retained its space of belonging, which is no doubt altered from what it was at the last site but is still a space where Aboriginal bodies and cultural practices belong. Spokespeople from the walk-off site have emphasized their rejection of the government’s regime, their spiritual connection to the land, and their intention to live under their own customs and laws forever.⁹⁶ Walk-off spokespeople have for example stated to the government that “we’re never ever going to go back to that community to live under your controls and measures,”⁹⁷ and that their action of walking outside the borders of the prescribed areas

leads us not to Canberra but to Country, not to further assimilation through dependency but to a continuing way of life, not to western law but to our own, not to hand fed scraps and the confines and indignities of the ration mentality and manufactured “real economies” but to self reliance, learning by doing and direct responsibility for self, Family and the coming generations.⁹⁸

⁹² IRAG, “Rollback the Intervention,” accessed 14 June 2013, <http://rollbacktheintervention.wordpress.com/irag/>.

⁹³ “Rebuilding from the Ground Up: An Alternative to the Northern Territory Intervention” (Sydney: Jumbunna Indigenous House of Learning, 2011), accessed 13 June 2013, <http://rollbacktheintervention.files.wordpress.com/2011/05/rebuilding-from-the-ground-up-working-doc-14-5-11.pdf>.

⁹⁴ “Ampilatwatja,” accessed 12 December 2011, Barkly Regional Council, <http://www.barkly.nt.gov.au/our-communities/ampilatwatja/>.

⁹⁵ “About,” *Intervention Walkoff’s Blog*, 23 July 2009, accessed 23 March 2010, <http://intervention-walkoff.wordpress.com/about/>; J. Dheerasekara, “Back to Country: Alyawarr Resistance,” 2009, accessed 12 December 2011, <http://vimeo.com/12577970>.

⁹⁶ “Ampilatwatja Walkoff—Aboriginal Australia Today,” *The Juice Media*, uploaded 25 October 2009, accessed 12 December 2011, <http://www.youtube.com/watch?v=8nJKEl9asqQ&feature=related>.

⁹⁷ R. Downs, “NT Aboriginal Leaders Condemn Intervention, Housing Program Failure,” *Intervention Walkoff’s Blog*, 7 October 2009, accessed 12 December 2011, <http://intervention-walkoff.wordpress.com/media-releases/>.

⁹⁸ J. Hartley, “Message from John Hartley,” *Intervention Walkoff’s Blog*, 2010, accessed 12 December 2011, <http://interventionwalkoff.wordpress.com/statements/>.

Ampilatwatja's location and declaration that they are not moving unsettled the Commonwealth government⁹⁹ and created media attention.¹⁰⁰

Like the Gurindji walk-off and the Tent Embassy, the Ampilatwatja walk-off was a moment of decolonization, creating a physical space of decolonization in combination with the social and conceptual space of decolonization that many campaigns of Indigenous resistance against the settler colonial project produce. That these spaces are temporary does not mean they are failures. While Povinelli's insightful argument that the NTNERA is an example of state killing through death by exhaustion and abandonment (a more insidious kind of violence than the overt killings that characterized earlier phases of settler colonialism) rings true,¹⁰¹ it is important to remember that the settler colonial state is also a temporary and incomplete one. And while law in post-*Mabo* Australia continues to construct Indigenous Australia as a historical relic to be saved by the common law as part of its march towards a multicultural settler future, Indigenous Australians continue to create places that are outside of this framework and elsewhere to settler colonial Australia. When thinking about decolonization in the context of Australia, it is useful to remember Doreen Massey's argument that place is a process constructed out of a particular constellation of relations, which like all relations, are neither fixed nor essential.¹⁰² By creating places that are elsewhere to the settler colonial state though still within the legal borders that formally contain Australia, Indigenous activists produce moments of decolonization that keep open the question of who and what constitutes "Australia" both now and in the future.

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⁹⁹ The minister has not released an official statement on the walk-off but is clearly aware of its presence. This video shows public servants from the Commonwealth government driving out to the walk-off site in order to inspect it, looking somewhat shocked at what was taking place, and being asked to leave by the residents. "Intervention Agents Evicted," *ForNowVision*, 17 February 2010, accessed 31 August 2011, http://www.youtube.com/watch?v=AB27NSgJEpY&feature=player_embedded.

¹⁰⁰ L. Murdoch, "A Community with Its Own Intervention," *Sydney Morning Herald*, 13 February 2010, accessed 19 December 2012, <http://www.smh.com.au/national/a-community-with-its-own-intervention-20100212-nxmp.html?skin=text-only>.

¹⁰¹ Elizabeth A. Povinelli, *Economies of Abandonment: Social Belonging and Endurance in Late Liberalism* (Durham, NC: Duke University Press, 2011).

¹⁰² Massey, "Power-Geometry and a Progressive Sense of Place," 66.