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RESPONSE TO *DANSE MACABRE: TEMPORALITIES OF LAW IN THE VISUAL ARTS* BY DESMOND MANDERSON

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ABSTRACT
In responding to Dr. Desmond Manderson's book *Danse Macabre* Dr. Rachel Joy engages with his third chapter, Governor Arthur's Proclamation: Utopian Time. In deploying Governor Arthur's Proclamation to explore ideas of race, representation, law, time and space, Joy argues that Desmond Manderson offers an insightful methodology for making meaning of these historical and deeply political relationships. Today, as in the past, refusal to accept the settler occupation and the laws that belong with it means no access to protections under those laws. Joy call on the powerful truths offered by visual art, to show us that which remains hidden concerning race relations and notions of justice in Australia.
Her response to Manderson moves back and forth between the historical frontier and the present day malevolence of 'the intervention' and the 'BasicsCard' to argue that the racist tropes that informed the violent dispossession of the First Peoples from their country were drawn from the same wellspring that spawned our legal system. As such it is perhaps not entirely surprising that a system devised by the invader in the interests of the settler requires a transaction of assimilation in return for the occupier's justice. Not only must Indigenous peoples assimilate to expect protection under the laws of a sovereign entity that dispossessed them of their country, they must effectively become refugees in their own lands. Should Aboriginal people wish to obtain the limited legal powers that native title law would afford them over their traditional lands, they must first give up their sovereignty and using the system of 'possessive logics' designed by the perpetrators of their dispossession, prove their claim. They must in effect be deterritorialised in order to be re-territorialised on the occupier's terms.

KEYWORDS
Decolonisation, sovereign exception, intervention, relationality, ethics.

As a visual artist who works with both philosophy and the law it was with some excitement that I received my copy of *Danse Macabre* because it is a work that makes a serious project of the interaction between visual images, law and thinking. Moreover, it does so with the intent to better understand how such dynamics work, at least in part, in an Australian context. While there are a great many interesting

aspects of Desmond Manderson's oevre to engage with, here I will limit my attentions to one chapter of this book (Chapter 3, Governor Arthur's Proclamation: Utopian Time) in an attempt to give it the attention it rightly deserves.

In his use of Governor Arthur's Proclamation (fig.1) to explore ideas of race, representation, law, time and space Desmond Manderson offers an insightful methodology for making meaning of these historical and deeply political relationships. It is always a fraught project to attribute meaning to historical objects from the comfortable distance of our contemporary setting and we risk falling prey to the accusation made so pertinently by Jacques Derrida that we cannot help but use the dead for our own ends.[1] While some historians have suggested alternative methods of reading and thus also attributed new meanings to the text,[2] I concur with Manderson's conventional reading of the proclamation. The proclamation was, as are all cultural products, born of its political, historical and social millieu. In this case it was the product of a culture deeply embedded in reading narrative structures from left to right and top to bottom. A commanding example of such narrative structures are the stained glass windows in Christian cathedrals that were intended to tell biblical stories to both the illiterate masses and the powerful alike. The designers of such magical spectacles most certainly understood the illuminated power of the image to convey critical information concerning the temptations of the devil and the ways of the saints, and these images were designed to be read top to bottom and left to right as if in a western style book. The first books printed in Europe were bibles; the Gutenberg bible printed using mass production moveable type was first printed in 1454. The book, being arguably the most important repository of knowledge and power in western culture up until the digital age, set the rubric for the 'reading' of both texts and images. Whether Governor Arthur really wanted genuine communication of British law to the Palawa peoples of Van Demon's Land is arguable - although Manderson's assertion that Surveyor-General George Frankland was inspired to create the board after seeing local bark paintings certainly seems to suggest this – what is important to note is that Arthur wanted to be *seen* to be communicating the law clearly. He was under pressure from missionary and anti-slavery activists[3] as well as others in the House of Lords to act with restraint towards the native population. In order to achieve communicative efficacy it is logical that someone brought up within the bibliophilic culture of European church and state bureaucracy would employ the power of the image to deliver his message and this would in turn rely on the conventions of reading images after the western norm. To suggest otherwise is, I think, rather fanciful. Essentially what the proclamation board shows is that to receive European justice an Aboriginal person needed to assimilate.

[1] Jacques Derrida, *The Work of Mourning*, trans. Pascale-Anne Brault and Michael Naas, (Chicago, University of Chicago Press, 2001).3

[2] Khadija von Zinnenburg Carroll, *Art and the Time of Colony* (London: Ashgate, 2014), 77.

[3] James Boyce, *1835: The founding of Melbourne and the conquest of Australia* (Black Inc: Collingwood, 2013), 36-7.

Refusal to accept the occupation and the laws that went with it meant no access to protections under those laws.

Palawa artist Julie Gough makes powerful use of the images in Governor Arthur's Proclamation in many of the art works she made for the exhibition *The Missing*, in 2011. Gough's works reveal the inequality of the application of the law to frontier interactions. Her work, *The Missing (Midlands silhouettes)* (2011) (fig.2) shows two of the images from the proclamation laser cut in steel in silhouette: the shooting and the spearing images. In their stripped back graphic forms these life-sized silhouettes appropriate the genteel language of 19th century decorative cameo brooches, revealing the truth behind their narrative as being unmistakably one of frontier violence. The work *The Promise* (2011) (fig.3) similarly makes use of silhouette images from the proclamation but this time they are projected as shadows through a colonial era wooden chair onto a wall. The world of memory is invoked through the use of shadows and historical time is called to mind through the use of colonial furniture. In both *The Missing* and *The Promise*, the viewer is confronted with historical truths, the power of the images transformed and reclaimed in the hands of an Indigenous survivor. Gough's work is evidence that art, as Manderson repeatedly argues throughout the book, has the capacity to reveal truths.

Manderson's reading of the 1830's proclamation board deftly explicates the cultural normativity of settler colonial notions of equality before the law. He problematises the idea that an equality based in European ways of being would be desired by Aboriginal people even if it were possible within the dynamics of a colonial legal system established under circumstances that were questionable even by the standards of contemporaneous European jurisprudence pertaining to colonisation. Manderson posits that the Van Demonian equality before the law proclaimed in Arthur's panel was conditional upon assimilation into the white world and that the situation remains as such today. Anthropologist WEH Stanner noted in the 1950's that Aboriginal people might not want to lose their identity, cease to be themselves and become as we are.[4] Indeed, as was put so forthrightly by John Daly, Chair of the Northern Land Council in evidence to the Senate Standing Committee on Legal and Constitutional Affairs, 'Does every Aboriginal person necessarily want to be like you guys?'[5] It would seem, as is evidenced by the outrageously high rates of indigenous incarceration and deaths in custody in this country, that in order to access justice in Australia the answer to such a question must be, yes. Those Aboriginal people who resolutely reject assimilation and live on their own terms are

[4] W.E.H. Stanner, *White Man got no Dreaming* (Canberra: Australian National University Press, 1979), 50.

[5] Commonwealth of Australia, Senate Standing Committee on Legal and Constitutional Affairs, 10 August, John Daly (former Chair, Northern Land Council), p. 47.

perceived, through a deficit model of thinking,[6] as a problem to be solved by social workers, or the welfare and criminal justice systems.

While attempts by the settler colonial state to force the assimilation of Indigenous peoples in Australia are not new they did reach a new extreme with the implementation of the NTER - Northern Territory Emergency Response or 'Intervention', as it has come to be known. Manderson draws clear parallels between the assimilationist 'justice' depicted in the proclamation and that which is promised but yet to come, under 'the Intervention'. While the events might be almost 200 years apart, the thinking behind them is equally racist and colonialist. The implementation of a cashless welfare card - known as the BasicsCard - which effectively quarantines a percentage of the recipient's benefits for purchases made at designated stores is not only a totalitarian wet-dream but displays an especially humiliating paternalism towards a particular group in the community who have been excised from the body politic as regards their rights as citizens. This group of people have been scapegoated on very flimsy evidence of family violence and child abuse that plays into racist tropes of Aboriginal people being portrayed as bad parents. These tropes retain their currency and are repeatedly wheeled out to protect occupier interests - like a grandparents' racist jokes at a family barbeque that somehow still get a laugh, because deep down we haven't substantially changed who we are. Such racist motifs provide/d the justification to remove children from their families under the historical policies that created the stolen generation and still persist today in the form of welfare surveillance and child protection audits. The Aboriginal communities targeted by the intervention have been hugely traumatised by the invasion of their communities by the armed forces. Keep in mind that it was the police and other agents of state services that carried out the abduction of Aboriginal children from their families within living memory. Such outrages can be perpetrated on Aboriginal communities because the people in those communities are viewed as problems to be solved, expendable and exceptions to the protections of the rule of law.

Some of those impacted by the Intervention have made not only visual records of the event but expressed in paint the fear and the injustice of their experiences. The exhibition 'Ghost Citizens: Witnessing the Intervention', which was staged in 2012 at Counihan Gallery in Melbourne, included Kylie Kemarre's Painting *The Intervention at Arlparra Store, via Sandover Highway, Utopia Community, NT* (2010)(fig.4), which depicts the chaotic scenes as police and soldiers herded local people into the store. Sally M. Mulda's *Policeman*, (2012) (fig.5) and Dan Jones', *Loading Truck, Utopia*, (2009) (fig.6) show the arrival of police and with them huge amounts of resources to supply the influx of 'whitefellahs'. In *All dressed up and nowhere to go* (2012) (fig.7), Terese Ritchie presents us with a full length

[6] Cressida Fforde, Lawrence Bamblett, Ray Lovett, Scott Gorringe and Bill Fogarty, "Discourse, Deficit and Identity: Aboriginality, the Race Paradigm and the Language of Representation in Contemporary Australia," *Media International Australia* 149 (November 2013): 164.

photographic portrait of an Aboriginal woman dressed in an evening gown decorated with a design of green BasicsCards. Alongside the image is a text from Rachel McDinny, a Yanyuwa woman from Borroloola who explains to whitefellahs the humiliation of trying to live using the BasicsCard,

> you are talking on and on about this BasicsCard, you do not stop talking about it, all day and night. That card is now the boss, it forces me, it rounds me up when I go to buy food and other things. There are shops that have outside, the words No BasicsCard Here, how is this? I feel dreadful, this is unpleasant to say but white people are now above me and I am low down.[7]

Although the immediate human cost of the military incursion into Indigenous communities can be tallied alongside those items one cannot buy using a BasicsCard, the political cost of loss of self –determination may be more far-reaching. As Manderson points out, under the NTER Act 2007, "The control and administration of land held by Indigenous people in a large number of communities and 'town camps' was taken over by the government." This was effectively stealing a second time, land, that had been stolen previously, and preventing its freehold title owners from exercising their property rights in determining who could access the land. The acronym itself tells us something about how the operation was perceived by those who conceived it: they were planning to NTER (enter) someone else's land for the purposes of dispossession. This act destroyed any remaining vestiges of Aboriginal control that had been instituted in the 1970's through the outstation movement whereby many Aboriginal peoples had moved out of town camps and back onto Country with the support of Federal government infrastructure programs and Aboriginal Corporations forming self-governing institutions.

Like Manderson, I have made the argument elsewhere, that Giogio Agamben's state of exception is a useful framework for understanding not just how juridical processes were manipulated to enable British sovereignty over a continent with the planting of a flag on a remote island but that by extension Indigenous Australians are also excepted from full legal rights under settler colonial law. Despite the fact that the doctrine of *Terra Nullius* has been overturned by the *Mabo* judgement, the juridical and political agents of the occupation have contrived to continue to deny Aboriginal people political sovereignty. Prior to occupation Indigenous populations already had their own forms of social and political organisation, so in order for colonization to occur "they needed to be 'deterritorialized' before they could be 're-territorialized' as dependent colonies of the relevant European state."[8] The juridical process by which this was realised in Australia occurred through a number of judgments, the most significant of which are arguably the *Mabo* and *Wik* decisions of the High Court of Australia and the parliamentary responses to these decisions, the

[7] Therese Ritchie, 'All dressed up and nowhere to go' (2012) 118 *Arena Magazine* 30, 30-31.

[8] Paul Patton, *Deleuzean Concepts: Philosophy, Colonization, Politics* (Stanford: Stanford University Press, 2010), 103.

Native Title Act 1993 and the *Native Title Amendment Act* 1998. However, I would argue that the *Northern Territory Emergency Response Act* (2007) now joins this invidious list as having a profoundly detrimental effect on Aboriginal land rights and self-determination. In 1992 *Mabo v Queensland* (No. 2) found that the Meriam people of the Murray Islands in the Torres Strait did in fact have a concept of land ownership and that this sovereignty had not been extinguished by the Crown.[9] In making this ruling the High Court introduced to Australian law the concept of 'native title'.[10] As Elizabeth Povinelli points out "Aboriginal Australians did not have native title prior to English settlement. Whatever practices and beliefs organized indigenous bodies and lands prior to settlement, these were not the thing we now call "native title.""[11] In response to this recognition of sovereignty, the Parliament legislated the *Native Title Act* 1993, which effectively limited the recognition of Aboriginal sovereignty to those claimants who could prove through their traditional laws and customs that they have maintained a continuing connection to land or waters.[12] Those limited rights were further circumscribed, to achieve 'certainty' and 'workability' for the benefit of miners and pastoralists,[13] by the Howard government's *Native Tile Amendment Act* 1998. Commonly known as the 'ten point plan', it was drafted to limit the High Court's 1996 *Wik* decision that native title and pastoral leases could co-exist. The Ten Point Plan "provided for the subordination of native title to other interests" and was "directed to the wholesale diminution of native title rights."[14] Thus it is clear that in exercising 'possessive logics' as agents of the occupation,

> both the Parliament and the courts have been responsible for the alternating delineation, expansion and curtailment of the rights of indigenous Australians. This serves as a reminder that native title, from a settler point of view, is as much about politics as it is about law.[15]

[9] "Appendix six. Extracts from Mabo and Ors vs Queensland, (no.2)" High Court of Australia, Brennan J, (107 ALR1), pp43-47, in ed. Galarrwuy Yunupingu, *Our Land is Our Life , Land Rights – Past, Present, Future*. (St. Lucia: University of Queensland Press, 1997), 233.

[10] "Appendix six. Extracts from Mabo and Ors vs Queensland, (no.2)," P233.

[11] Elizabeth Povinelli, *The Cunning of Recognition: Indigenous Alterities and the Making of Australian Multiculturalism*. (Durham: Duke University Press, 2002), 156.

[12] "Appendix seven. Summary of the main provision of the Native Title Act, 1993," in ed. Galarrwuy Yunupingu, *Our Land is Our Life , Land Rights – Past, Present, Future.* (St. Lucia: University of Queensland Press, 1997), 235–7.

[13] Office of Indigenous Affairs, *Towards a More Workable Native Title Act*, Department of Premier and Cabinet Commonwealth of Australia: Canberra, 1996, Para 18.

[14] Richard H. Bartlett, *Native Title in Australia* (Chatswood: LexisNexis Butterworths, 2004), 53.

[15] Maureen Tehan, "A Hope Disillusioned, an Opportunity Lost? Reflections on Common Law Native Title and Ten Years of the Native Title Act," *Melbourne University Law Review* 27, no. 2 (2003), 524.

Prior to *Mabo* the popular view among settlers was that Aboriginal peoples had no legal rights to land. As a judgement made by the agents of the occupation, *Mabo* will always be problematic for those who do not recognise the legitimacy of the High Court to make any ruling. However, the *Mabo* decision did change the political and legal landscape such that "Indigenous interests in land could no longer be ignored."[16] Indeed, then Prime Minister Paul Keating stated in his 1992 Redfern address that *Mabo* should be a '...building block of change...' that might herald new relationships between Indigenous and non-Indigenous Australians.[17] Almost thirty years later, neither the law nor politics have yet delivered even the limited sovereignty extended by *Mabo*, as Indigenous leader and Gugu-Yalanji[18] man Noel Pearson laments, "the failure of law to live up to the promise of *Mabo* is now apparent."[19] Even before Wik and the Native title amendment acts some commentators felt native title as figured by *Mabo* was too weak a form of land tenure to be useful to many Aboriginal groups.[20] As Prime Minister Paul Keating explained,

> It was not, however, of great practical benefit to the majority of Aboriginal peoples and Torres Strait Islanders. Most will not be able to prove the continuing association with their land necessary to claim native title. Many retain a strong attachment to their traditional country, but will be denied native title rights as a result of prior alienation of the land concerned. Many also remain on the margins of this country's economic, social and cultural life.[21]

As it stands, the occupier state remains legally sovereign under white law, and for Aboriginal people to make a land claim they must first relinquish their prior claim to land, their sovereignty, and stake a claim under the limited terms made available to them by the occupier's law. In this way Indigenous Australians are first deterritorialised, when their original sovereignty is denied and then reterritorialised, through the 'possessive logics' of *Mabo, Wik*, the *Native Title* acts and amendments, and most recently the *Northern Territory Emergency Response Act*, all of which gave very limited tenure on the occupier's terms. One might argue that 'the Intervention' once again sought to deny Aboriginal peoples their land rights and that they were being deterritorialised anew.

[16] Tehan, 525.

[17] Paul Keating, "Australian Launch of the International Year for the World's Indigenous People." *Aboriginal Law Bulletin* 3, no. 61 (1993), 5.

[18] The Gugu-Yalanji are an Indigenous people from Cape York in northern Australia.

[19] Noel Pearson"Where We've Come from and Where We're at with the Opportunity That Is Koiki Mabo's Legacy to Australia ," Speech, Alice Springs, N.T., June 3, 2003, <http://www.capeyork-partnerships.com/noelpearson/np-mabo-lecture-3-6-03.doc> 3–4.

[20] Ian Hunter, Hunter, Ian. "Native Title: Acts of State and the Rule of Law." *The Australian Quarterly* 65, no. 4, The Politics of Mabo (Summer 1993), 97.

[21] Paul Keating, "Land Fund and Indigenous Land Corporation (ATSIC Amendment) Bill, Second Reading," Speech, Canberra, ACT, February 1995, *Australian Indigenous Law Review* (1996), 46.

The process of deterritorialisation and reterritorialisation leaves Aboriginal people without country within their own country. They have been effectively made stateless and now have to prove ownership of their own land using a system designed to dispossess them and to work in the interests of the occupation.[22] It was partly to highlight this situation of internal exile, of being, as Gary Foley[23] puts it, "aliens in our own land,"[24] that Aboriginal activists set up the 'Aboriginal Tent Embassy' on the lawns outside parliament in Canberra in 1972. The conditions of Giorgio Agamben's concept of *sovereign exception* clearly pertain to the settler colonial legal frameworks that except Aboriginal peoples from the protections afforded other citizens and freehold property holders and attempt to alienate them from their own Country.

When people or places are excepted from the protections of the rule of law grave injustices invariably result. We have seen clear evidence of this in Guantanamo Bay and other US government 'black sites' and closer to home in Australian detention camps where people and places were excised from the care and responsibility that should have been afforded them by both international law and philosophical ethics. The state of exception also allows for governments to take further exceptional actions in order to achieve their aims, such that the invasion of Aboriginal townships by military force is deemed reasonable. The use by government of the military to solve a perceived problem should not perhaps be surprising, springing as it does from a political culture that has been deeply schooled in militarism from its outset. Fear of convict revolt and the very real threat posed by Aboriginal resistance especially in the precarious early years of the colony meant that marshal law and a heavy military presence were common tools of governance. A far cry from the English 'bobby'; police in Australia have always been armed and para-military mounted militias were frequently deployed against Aboriginal peoples in areas of frontier conflict.[25] The Van Demonian 'black line' and 'the Intervention' both involved the military, police and public servants along with the cooption of ordinary citizens to carry out the plans. Military force, it would seem, was historically viewed not only as a legitimate but reasonable response when 'normalizing' Aboriginal people and remains so today. Yet the idea of sending troops into the suburbs of our major capital cities to ostensibly deal with extraordinary levels of well documented domestic violence and child abuse in the non-Aboriginal community would be viewed with outrage. What is the difference? Some people it seems, need to be 'normalized' and

[22] Gary Foley, "The Australian Labor Party and the Native Title Act," in *Sovereign Subjects: Indigenous Sovereignty Matters* , ed. Aileen Moreton-Robinson (Sydney: Allen & Unwin, 2007), 123.

[23] Foley was one of a group of activists' instrumental in establishing the Aboriginal Tent Embassy. For more detail read G. Foley, A. Schaap and E. Howell, eds., *The Aboriginal Tent Embassy: Sovereignty, Black Power, Land Rights and the State* (London: Routledge, 2014).

[24] Foley, "The Australian Labor Party and the Native Title Act," 123.

[25] Henry Reynolds, *This Whispering in our Hearts*, (Allen & Unwin: St Leonards, 1998), 91-107.

"To normalize is not to be normal or to treat normally. It is to *make* normal"[26] (my italics) as Manderson points out. Apparently some violence is normal: some violence is justified. In 2019, 61 Australian women were murdered by their (male) intimate partner or ex-partner,[27] yet such figures did not provoke a whole-of-government emergency response. Although some might consider so many deaths at the hands of a clearly identifiable group of perpetrators, domestic terrorism, it has not provoked a military response because the murder of so many women in a patriarchal society is also, terrifyingly, deemed normal. If equality before the law is to be served then surely order must be restored to family homes so that rule of law can function? Women, it seems, must also wait for a 'Stronger Future' in which our rights will be protected against violence.

Legal protection for the most vulnerable in our community (be they Indigenous peoples, women, the mentally ill, the poor or homeless) should not be relegated to a future 'yet to come' in the immediate interests of patriarchal white sovereignty. Rather, if our laws were designed and applied with care for the interests of people and the planet today we could all be ensured a future worth living. To begin to create such a legal system requires decolonisation of our settler selves and our institutions. It requires thinking that would allow one to relate ethically to the 'other' or as Emmanuel Levinas states, to 'think for the other' by which he means not that one should do another's thinking for them but that one must engage in the act of thinking with the 'other' as one's highest priority. Thinking for the 'other' makes us attentive to our ethical obligations and in the context of occupied Australia, can "open settler subjects to the possibilities of relations of mutuality rather than domination."[28] Levinas' theory of obligatory ethics is a 'first theory' in that it concerns the ontological nature of human being or how one comes to be in the world. "Ethics comes before identity, which itself embodies intentions, political projects, relations and struggle."[29] For Levinas, human *being* is relational; we come into being because of others. For him ethical relation is itself the foundation of subjectivity; the subject "is not a subject but a relation."[30] The 'I' of subjectivity does not exist prior to this social relation but comes into being through it. The 'I' is established in response to and in responsibility for the call of the other.[31] Without the other there is no 'I'. Levinas's relational being is a particular kind of relationality that involves an

[26] Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Allan Sheridan (London: Allen Lane, 1977); Power/Knowledge, ed. Paul Rabinow (New York: Pantheon, 1980); History of Sexuality, trans. R. Hurley (New York: Vintage, 1998).

[27] Destroy the joint, 'Counting Dead Women Project,' https://www.facebook.com/DestroyTheJoint/

[28] Avril Bell, *Relating Settler Indigenous Identities: Beyond Domination* (Basingstoke: Palgrave MacMillan, 2014), 174.

[29] Bell, *Relating Settler Indigenous Identities* , 178.

[30] Emmanuel Levinas, *Basic Philosophical Writings* (Bloomington: Indiana University Press, 1996), 20.

[31] Levinas, 106.

inescapable obligation to the other and also substantiates the singularity of the subject. He explains that,

> To be an I means not to be able to escape responsibility, as though the whole edifice of creation rested on my shoulders. But the responsibility that empties the I of its imperialism and its egoism...confirms the uniqueness of the I. The uniqueness of the I is in fact that no one can answer for me.[32]

The great value of Levinas's ethics to the decolonisation of settler subjects is that the 'other' disrupts the centrality and certainty of the subject and initiates reflection and the possibility of transformation: "The relationship with the other puts me into question, empties me of myself and empties me without end, showing me ever new resources."[33] Levinasian ethics also entail a consciousness of the violence integral to relations based on knowledge.[34] To 'know the other' is a form of capture, it is a violence that relegates the other to existing settler-colonial concepts. Instead, Levinas asserts the centrality and singularity of the 'other', writing,

> Our relation with the other certainly consists in wanting to comprehend him, but this relation overflows comprehension. Not only because knowledge of the other requires, outside of all curiosity, also sympathy and love, ways of being distinct from impassible contemplation, but because in our relation with the other, he does not affect us in terms of a concept. He is a being and counts as such.

This respect and care for alterity, or the unknowable difference of the 'other' is the basis of Levinasian ethics. A response to the 'other' that shows attentiveness to their alterity is one of openness and hospitality. To welcome the 'other' is to engage without self-interest rather than with a sense of judgement or as a strategy to receive something in exchange. The relation to the 'other' is thus not reciprocal but one of "radical generosity."[35] While it may be possible to argue that Levinasian ethics are impossibly conjectural and thus too apolitical to be useful as an 'ethics in the world'[36] I argue that it is precisely from this gap between ethics and politics that the possibility for change arises. Derrida sees this distance between ethics and politics positively as both a rupture and a necessary connection,[37] providing an incitement to deduce a politics from ethics.[38] While refusing to be prescriptive, an engagement between politics and ethics can be a provocation to more self-reflexive forms of political engagement. In the search for a place of ethical encounter between settlers and Indigenous

[32] Levinas, 55.

[33] Levinas, 52.

[34] Levinas, 11–12.

[35] Levinas, 56.

[36] Scott Lash, "Postmodern Ethics: the Missing Ground." In *Theory, Culture and Society* 13, no. 2 (1996): 100.

[37] Jacques Derrida, *Adieu to Emmanuel Levinas* , trans. P.A. Brault and M. Naas (Stanford: Stanford University Press, 1997), 113-117.

[38] Derrida*, Adieu to Emmanuel Levinas* , 115.

peoples Levinas's insistence on the primacy of ethics over politics makes us attentive to the fact that the abandonment of self-interest, and the care for the other's difference, are the foundation of ethical thinking.

Ethical thinking requires time and space in which to occur. Such spatio-temporal zones do exist in Australia but they are often under threat because they challenge the norm. Elsewhere I have argued[39] that art is one such transformative space that offers hope for relational ethics between Indigenous and non-Indigenous peoples. In the essay *Reality and Its Shadow,* Levinas writes "every artwork is in the end...a statue - a stoppage of time,"[40] but art does not reproduce time rather "it has its own time,"[41] the "eternal duration of the interval – the *meanwhile*;"[42] a space of possibility. Another radical spatio-temporal challenge to colonialism is the '*everywhen*'[43] of Indigenous ontologies. In the French painter, Benjamin Duterrau's painting *The Conciliation* (1840) (fig.8), the transformative space of art enables the viewer a consciousness of the 'everywhen' of Indigenous lore/law that both "precedes and outlasts the British."[44] Indigenous law/lore exists now in this country alongside settler colonial law notwithstanding settler inability to see or acknowledge it. In the space of the *meanwhile* the viewer is able to have an awareness of the *everywhen* that has not been extinguished despite the best attempts of the occupation. While Duterrau does employ the problematic 'noble savage' trope in this work, he also gives agency to the Aboriginal resistance fighters depicted negotiating with George Robinson. In doing so, art historian and Trawulwuy man Greg Lehman argues, Duterrau "shifts the Aboriginal nations of Tasmania from anthropological curiosity to players on the world's stage – with the same international rights to justice."[45] Yet I would argue that the painting does more than merely shift Aboriginal players into a space whence they can be understood on European terms, but rather, in the space of the *meanwhile* provided by the painting, viewers are presented with the possibility to acknowledge the *everywhen* of Indigenous law. This may not have been Duterrau's conscious intention – although there is evidence to suggest his deep distress at the demise of Aborignal people he knew while resident in Hobart at the time of Arthur's Proclamation and the 'black line'[46]- but it does not preclude the artwork operating in this way for twenty-first century viewers. It is all a matter of perspective. As Manderson explains, what Duterrau's painting shows us is indeed "a question of

[39] Rachel Joy, "Very Becoming: Transforming our Settler Selves in Occupied Australia" in eds. Christina Santos, Adrian Spahr, Tracey Crowe Morey. *Testimony and Trauma: Engaging Common Ground.* (Brill: Leiden, 2019).

[40] Emannual Levinas, "Reality and Its Shadow", in *The Levinas Reader*, ed. Sean Hand (Oxford: Basil Blackwell, 1989), 137.

[41] Levinas, 139.

[42] Levinas, 141.

[43] Stanner, p24.

[44] Desmond Manderson, *Danse Macabre.* (Cambridge: New York 2019), 156.

[45] Greg Lehman, 'Tasmanian Gothic', *Griffith Review* 39. pp193-205. 204.

[46] Lehman, 202.

temporal perspective, whether we imagine law as creating the empty time that will allow its emergence not yet but later, or on the contrary as entering a time that is already crowded with meaning."[47] This country is already governed by complex lores/laws that have protected the Country and all its inhabitants for hundreds, perhaps thousands of generations. Were settlers to resile from our occupier activities and pay attention to what is already all around us we might find a way to be a part of it instead of offering the hollow utopian legal future of a 'justice not yet' in order to justify the impossible terms of a brutal occupation.

[47] Manderson, 156.

IMAGES

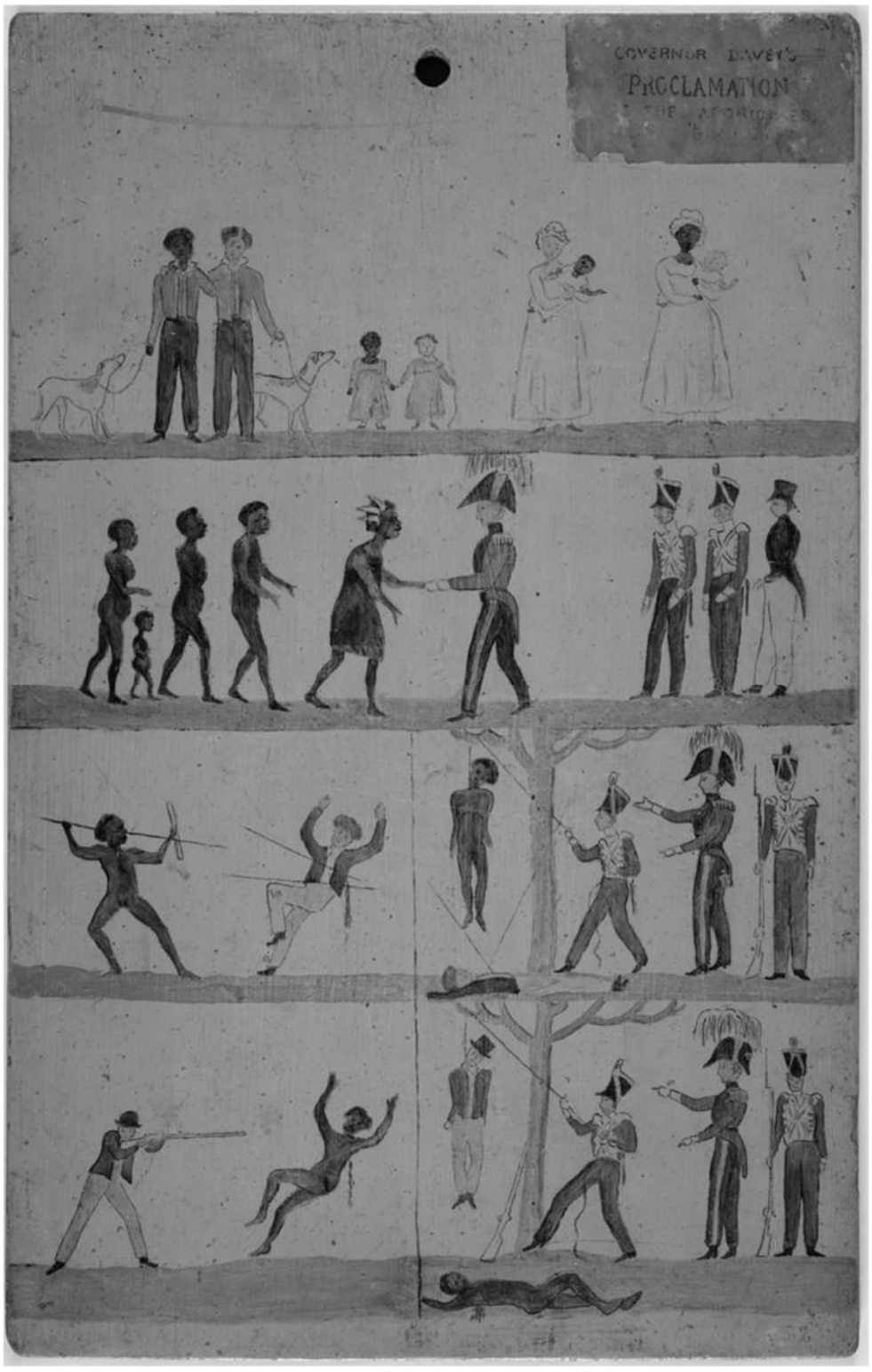

Fig.1. Governor Arthur's Proclamation to the Aboriginal People, c. 1830. Oil on Huon pine board, 35.5 cm Å~ 22.6 cm, State Library of NSW, Sydney. (Courtesy of Mitchell Library, State Library of NSW).

Fig. 2. Julie Gough. *The Missing (midlands silhouettes)* 2011 plywood & steel four items, approx installation: 287h x 420w x 16.5d cm.
https://www.bettgallery.com.au/artists/gough/missing/03missing.html

Fig. 3. Julie Gough. *The Promise* 2011 found chair, shadow casting LED light & kangaroo skin approx: 92h x 37w x 56d plus projection.
https://www.bettgallery.com.au/artists/gough/missing/05promise.html

Fig.4. Kylie Kemarre. *The Intervention at Arlparra Store, via Sandover Highway, Utopia Community, NT* (2010). https://www.crossart.com.au/archive/98-2013-exhibitions-projects/190-witnessing-the-intervention-counihan-gallery-melbourne-17-may-to-16-june-2013

Fig.5. Sally M. Mulda. *Policeman*, (2012) https://www.crossart.com.au/archive/98-2013-exhibitions-projects/190-witnessing-the-intervention-counihan-gallery-melbourne-17-may-to-16-june-2013

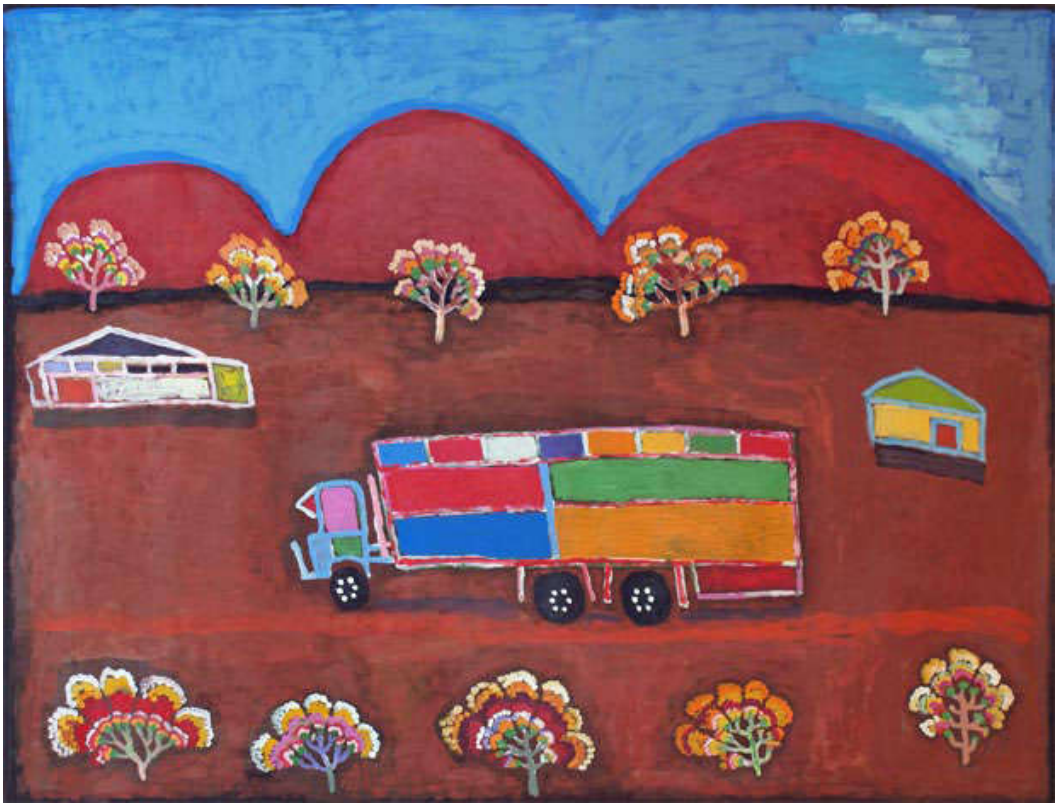

Fig.6. Dan Jones', *Loading Truck, Utopia*, (2009) https://www.crossart.com.au/archive/98-2013-exhibitions-projects/190-witnessing-the-intervention-counihan-gallery-melbourne-17-may-to-16-june-2013

Fig.7. Therese Ritchie, All Dressed Up and Nowhere to go. (2012) Therese Ritchie, 'All dressed up and nowhere to go' (2012) 118 *Arena Magazine* 30, 30-31.

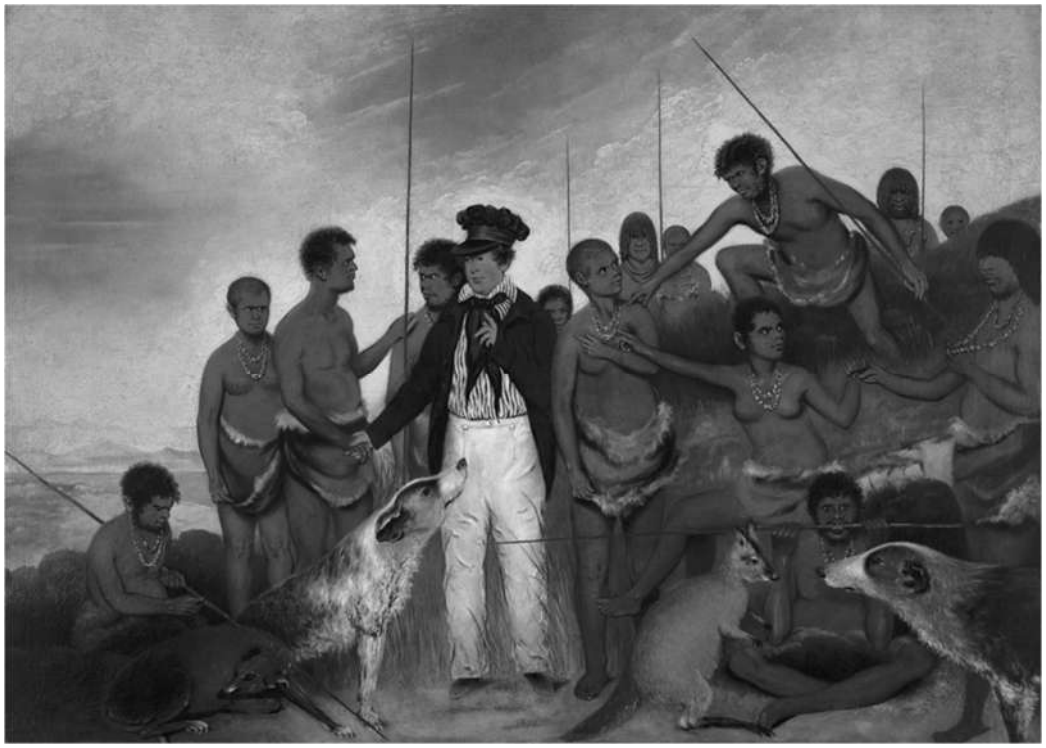

Fig.8. Benjamin Duterrau, *The Conciliation,* 1840. Oil on canvas, 121 cm x 170.5 cm, Tasmanian Museum and Art Gallery, Hobart.