

Dreamtime and Colonial Power

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Review Article

Reconciliation and Colonial Power.

Indigenous Rights in Australia,

by Damien Short.

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How can the destructive effects of colonial dispossession and marginalisation be overcome? This question assumes both that it *can* be overcome and that it *ought* to be overcome, a combination of causal and historical deduction and formulation of a moral and political imperative. The moral and political imperative of indigenous rights is recognised in 2007 United Nations ‘Declaration on the Rights of Indigenous Peoples’. The UN Permanent Forum on Indigenous Issues reflects the commitment of the UN’s member states towards eliminating human rights violations against the planet’s estimated 370 million indigenous people. The International Work Group for Indigenous Affairs, funded by the Nordic Ministries of Foreign Affairs and the European Union, promotes indigenous peoples’ right to self-determination. Resistance to the principle of self-determination for indigenous groups has come from former colonies and African states concerned with the cost of restitution and compensation, and the threat to territorial integrity. Despite the moral and political imperative to alleviate the marginalisation of indigenous peoples, the peremptory right to self-determination and autonomy can pose a threat to the self-determination of the entire people of an existing State (see Nakata 2001; and Sing’Oei 2007).

One thing that the Left and Right wings of the political spectrum can

agree upon is that the expansion of Europe was the transforming force in human history of the last 500 years. As Immanuel Wallerstein remarks, there is perhaps no social objective that can find as nearly unanimous acceptance today as that of economic development (Wallerstein 1994: 3). From the opening pages of the *Communist Manifesto* (1848), where the achievements of modern capitalism dwarf the pyramids of Egypt, to contemporary *laissez-faire* fundamentalism, development means the efficient (and now sustainable) utilisation of industrial technology. How to realise this potential is the bone of contention amidst echoing claims of realism and charges of utopianism or worse¹. Attempts to reject the Rosetta Stone of development are presumed guilty of obscurantist nativism and other forms of reckless nostalgia.

In the wake of colonialism the primacy of developmentalism feeds into a vindictory discourse that confronts the call for indigenous self-determination. In the Australian context the argument is made that Australia – its economy, society and polity – is a construction of European civilisation. John Hirst's *Sense and Nonsense in Australian History* argues that Aborigenes were not civilised, not because they were subhuman (they were not) but rather because they did not constitute a civilisation. Civilisation is about the city (*civitas*) and what cities involve; the concentration of a market, of skills, and incentive for surplus production; administration and taxation; writing and record-keeping; people as citizens united by law, responsibilities and rights. These elements of civilisation were absent from the face-to-face society of hunter-gatherers such as Aborigines. Civilisation came with the arrival of Europeans, and the narrow exploitation of others is an ingredient of greatly increased human capacity. The indigenous social order may well have been more just or egalitarian but it could not match the ability to control and harness natural forces of European civilisation which has brought undreamt-of levels of prosperity and comfort (see Hirst 2009: 60-3).

The argument concedes that certainly the Aborigenes, originating in Asia, were the first to settle Australia, but they constituted separate tribes and did not have a notion of the continent as a whole or their relation to the

¹ Witness the debate around the United Nations proclamation of the 2015 Millennium Development Goals (see Cheru & Bradford 2005; and Amin 2006); and the recent United Nations Climate Change Conference (COP 17/CMP7) held in Durban.

globe. Europeans explored and mapped the whole globe, their competitive acquisitiveness fuelled by a faith in progress at odds with philosophies adapted to the dominance of nature. History proper begins with the arrival of European civilisation and the clash between incompatible ways of the life and the catastrophic displacement of one form by another. Colonialism is a brutal part of development (i.e. of history), and postcolonial nation-building and reconciliation are synonymous with development.

Such is the self- confirming argument, familiar from the dreamtime of other colonial contexts, that glides over the possibility that capitalism contributes to underdevelopment – indeed, according to Rosa Luxemburg, is premised on pre-capitalist formations which it digests but cannot do without (see Luxemburg 1913; and Bond *et al.* 2007)². That Hirst's example of civilisation is the Roman Empire – an example which also inspired British imperialists and Hitler – signals the normalisation of colonisation as violence since the Roman *vici* which grew up around military garrisons, essential for the security of the *civitas*, echoed the settlements of retired troops that manned the *coloniae* (Young 1995: 29)³. And of course the Roman model does not exclude the question of land reform. For example, in the second century BC Tiberius Gracchus attempted to redistribute public land (claimed by the patricians) to the poor, and was assassinated by the Senate when his land commission seized the wealth bequeathed by Attalus III of Pergamum to fund his *lex Sempronia agraria*. The idea of agrarian reform and democracy

² Relevant here is the argument that colonialism, far from inaugurating modernity in Africa, in fact halted it (see Táíwò 2010).

³ See Hegel's portrait of Rome as embodying the soulless and heartless severity of abstraction (positive law), a selfish harshness, the cold abstraction of sovereignty and power: the Roman State as resting on the element of force, and culminating in self-destructive despotism; Romulus and Remus were themselves freebooters, a primal robber-community, and the Romans reduced family relations to those of property. Hegel compares the oppression of the Roman people by their own rulers to the oppression of the Irish (Hegel 1831: 278-340). See also Karl Marx (1852) on the invocations of Rome, and Jonathan Sacks (2009: 33) on the ideology of imperialism in which conflict and struggle are muted in an effort to describe a coherent national identity.

resurfaced in the French Revolution with Babeuf's concern with the *loi agraire* (see R.B. Rose 1978: 90-107).

Equivocal terms such as 'civilisation', 'history proper', 'writing', 'law', 'tribes', 'continent', 'globe', 'dominance of nature', 'human capacity', 'prosperity and comfort' are tenuous discursive anchors held in place by the very assumptions they are supposed to confirm. The elements of civilisation enumerated here can as well be seen as the indices and devices of barbarism and dehumanization (see Lévi-Strauss 1955). And yet of course a weak argument is not necessarily incorrect, just as self-serving motives do not necessarily invalidate an argument. The *ad hominem* charge against ideology, reducing everything to self-interest – here that of settler descendants – quickly undermines its own claim to transcend self-interest. Doubtless from the perspective of the accused, those who continually accuse also undermine reconciliation. Hence the deadlock of (non)reconciliation.

On the other hand, when the tide of apology recedes, does anything ever really change?

This is the central issue addressed by Damien Short's *Reconciliation and Colonial Power. Indigenous Rights in Australia*. Short is suspicious of the cult of apologising for the Australian colonial past, and subjects the apologisers to careful scrutiny, tracing the web of consequences that flow from the dramatic gesture. He argues that it is not enough to include Aboriginals in the official cultural fabric of the nation, as symbols of spirituality and connection with the land, and to protect cultural and intellectual property rights, the medicinal use of native flora and fauna, etc. This cultural recognition works simultaneously to indigenise settler culture, and displaces substantive, material restitution for the genocided Aboriginal Australians. Those who apologise might be sincere, but nothing changes⁴.

Reconciliation and Colonial Power brings together previously published material concerning Aboriginal Australian human rights, legal disputes and political and legislative history, with particular focus on the question of land rights. While this leads to some repetition of material and argument, the detail of Short's presentation makes this book indispensable for those concerned with colonialism and the paradoxical logic of liberal

⁴ For some of the many South African parallels to these issues see, for example, Normann *et al.* (1996), and Berckmoes (2008).

oppression and its critique. It is at once concerned with the narrative of activism, official responses, and also with theorising human rights in a post-colonial context. Australia, unlike New Zealand and North America, was colonised purely through brute force rather than negotiated settlements or treaties. The campaign for a treaty between indigenous peoples and the Australian state that gathered momentum in the 1980s was more than symbolic and had implications for property rights and nationhood. So far it has failed to produce the desired outcome, for while indigenous land rights have been legally recognised they have also been rendered meaningless and ineffective. How has this situation come about?

Reconciliation and Colonial Power exposes the tenacity and mobility of the forces ranged against the attempt to realise justice and human dignity. It is a story of official obfuscation and betrayal as the government and vested interests divert the treaty campaign into a more equivocal open-ended reconciliation initiative. To betrayal add deception, opportunism, and mendacity permeating the popular media, academic journals, and parliament and law courts. Short sets out to unravel the paradoxical dynamics of this process and apportion blame for the perpetuation of injustice. His aim is to 'develop a sociological understanding' (3)⁵ from the committed perspective of the aspirations of indigenous peoples. Looking back to a process of dispossession and genocide⁶ begun by the British in 1788, the specifics of

⁵ Hereafter unattributed page references refer to Damien Short, *Reconciliation and Colonial Power. Indigenous Rights in Australia*. England: Ashgate (2008).

⁶ Genocide here does not mean just physical extermination but also extends to actions that bring about the disintegration of the culture and social institutions, language and economic foundations of a national group as defined by Raphael Lemkin (1944). Lemkin's proposals, and the coining of the term 'genocide', were based on his research into the Armenian genocide, the massacre of Assyrians in Iraq in 1933, and the persecution of the Jews. He attempted to move beyond the criteria of barbarity and vandalism to consider the intention to annihilate (see Cooper 2008). As far as I can see Lemkin does not include Aboriginal Australians in his catalogue of the victims of genocidal legislation. 'Genocide implies destruction, death, annihilation, while discrimination is a regrettable denial of certain opportunities in life' (Lemkin quoted in Power 2007: 75f).

the Australian dilution of the treaty campaign are set within the imperative of addressing colonial dispossession and its legacy in order to de-colonise the indigenous/settler relationship⁷.

At issue are the stability of society and the relation of Aboriginal groups to the land from which they derive their spirituality and identity: 'return of their lands and political autonomy is considered crucial not only to their cultural survival as distinct peoples, but also for their physical and mental well-being' (5). In the wake of the 1997 Human Rights and Equal Opportunity Commission's report, *Bringing Them Home*, Short aims to deepen understanding of the cult of forgetfulness, the great Australian silence, concerning the forcible removal of 20,000 to 25,000 Aboriginal babies and children of mixed descent from their families between 1910 and the early 1970s. *Reconciliation and Colonial Power* argues that the issues of land rights and the Stolen Generations are part of the same process that must be addressed by any meaningful attempt at reconciliation. The fact that they have not, leads Short to claim that Australian reconciliation 'exhibited a subtle yet pervasive nation building agenda that appeared to offer "post-colonial" legitimacy via the "inclusion" of previously excluded Aboriginal peoples, but which actually served to weaken Aboriginal claims based on their traditional "separateness" from settler culture' (7). Those who don't apologise threaten the reconciliation between settlers and indigenes that is essential for Australian national building.

In other words, the pose of respect for cultural integrity and diversity has been integral to the resistance by dominant groups to any fundamental change to the legacy of colonialism⁸. Exposure of the ruses of cosmetic reconciliation aims to pave the way for reconciliation that would address the problem of internal colonialism. Short welcomes the restorative potential of

⁷ The notion of genocide is used by Genocide Watch to upgrade South Africa to stage 6 on its Countries at Risk Chart. Actual genocide rates as stage 7. The pre-genocide group is identified as Boer farmers, and truculent Julius Malema's singing of *Dubul' ibunu* ('Shoot the Boer') is taken as furnishing evidence of organised incitement to violence against white people (see <http://www.genocidewatch.org>).

⁸ Relevant in this connection is Ahmed's (2011) account of the colonial codification of Indian property law and the invention of tradition.

the reconciliation paradigm that ‘has accompanied democratic or less repressive regimes in El Salvador, Brazil, Chile and South Africa: South Africa’s TRC was an interesting innovation’ (12). Even though the TRC recommended monetary payments, the primary goal of restorative justice remains ‘restoration of victims’ civic and human dignity by publicly acknowledging the truth of what was done to them’ (14); ‘*repair* the injustice and to effect corrective changes in the record’ (15). Other reparation efforts stress the importance of restoring stolen properties that must follow from the acknowledgement of injustice. Despite the cathartic effects of the recognition of injustice, ‘in some circumstances, returning the victims actual possessions is perhaps the best form of reparation’ (15). Just as the redemptive language of the South African TRC and the confessions of culpability and remorse ‘had little effect on popular ideas of redistribution’ (16-17), Short adjudges the Australian reconciliation process to have had a negligible lasting impact. Uncovering the reasons for this involves scrutinising the structure of human rights discourse and its legal interpretation.

There is a tension between universal human rights and the recognition of the specific condition of indigenous peoples. In the terms of liberal democracies, individuals rather than groups are nominally the agents from which, and over which, the state exercises power. Where individuals may suffer because their group is persistently neglected or oppressed there can be recognition of group rights. Yet while the politics of recognition of group rights may offer ‘a degree of cultural protection unattainable through pure individualism’, Short warns that ‘beneath the veneer of such substantive liberal equality lays the spectre of colonialism’ (18). This double-bind can be formulated as follows: as an individual I am formally without a history, but identified as a member of a substantive group I am trapped in the history of discrimination. Indigenous peoples’ claim to cultural exceptionalism, backed by the moral appeal integral to dispossessed first nation status, can be used to undermine the claim to equality. That is, you cannot base your claim to equality on your claim to be exceptional. In this universe of discourse such exceptionalism precludes the right to appeal to universal principles that would call into question the basis of internal colonisation. Considering Aboriginal peoples to be cultural minorities who possess rights to intellectual property rather than an inherent right to self-determination perpetuates the past. No justice without reconciliation.

Short draws the conclusion that '[c]itizenship rights fail to do justice to the unique indigenous status, as, in the eyes of many indigenous peoples, such rights emanate from an illegitimate settler state that has subordinated indigenous laws, autonomy and forms of government' (21), and points to the need to articulate the idea of sovereignty in a way that acknowledges the colonial context. Uncritical acceptance of state granted citizenship merely adds to cultural erosion and assimilation, completing under a liberal guise the violent process of conquest. No reconciliation without justice.

The 1994 United Nations Declaration of the Rights of Indigenous Peoples forms the basis of arguments for self-determination and political autonomy. Although the 1998 session of the Working Group on the UN Declaration, 'fearful of providing ammunition to secessionist movements, suggested that indigenous peoples accept the "reality" before them and limit the concept to that of "internal" self-determination' (21), Short builds a case for the necessity of indigenous sovereign nations as the means to recognise those colonised without their consent. The 'restoration of land and political autonomy [is] key to indigenous cultural survival' (33). The following historical and contemporary factors lie behind the Australian situation.

When European colonisers arrived in Australia there were between 3000,000 and 1,000,000 Aborigines made up of some 500 different regional groups. The process of dispossession was shaped by a system of land tenure whereby settlers were allowed to use land only for grazing while the Aborigines had access to land for traditional practices and other activities. This developed into the concept of pastoral leases created in the 1830s and 1840s to control illicit settler squatting (see 41, and 65-66). Colonial dispossession makes land rights crucial to rectifying colonial dispossession, as Short quotes one activist: "'Land rights as symbol and substance of the fact that some amends to that black blood are due'" (quoted 34). Despite 40 per cent of Aborigines being urban dwellers, while the remaining majority live in remote or rural communities, the symbolic value of land is paramount: 'Aboriginal people I have spoken to while conducting fieldwork have expressed a longing to "reconnect" with their culture' (34 fn 6). And at the heart of their culture is the land⁹.

⁹ See Dannenmaier (2008) for an exploration of indigenous property rights and the distinctive connection between people and land in terms of deeper ecological values; culture, spirituality and livelihood.

Despite legal recognition (the 1992 High Court judgement in the case of the Murray Islands) that the colonial doctrine of *terra nullius* (no man's, i.e., nation's, land that can be acquired through occupation, *occupatio*; or uninhabited by civilised peoples, or had never been owned, *res nullius*) was an offensive fiction, and that the British Crown's radical title gave it the right to distribute land but not the right to absolute beneficial ownership of it, native title has not gone uncontested¹⁰. The form of allodial title known as native title rights have been interpreted as different to private property right; customary law has to meet the requirement of being observable and currently in evidence, and the overarching sovereignty of the Australian state cannot be questioned in proceedings before an Australian court. At most, there has been a recognition that native title *may* continue to exist where there was continuing occupation or relation to traditional land. Short argues that 'we have to look behind the reconciliatory veneer and explore the contributions made by powerful vested interests who constructed a self-serving discourse' (43).

Prime Minister Paul Keating's public acknowledgement of the injustice perpetrated on the first Australians by Europeans sanctioned a new official rhetoric that many expected to have material effects in terms of legislation and legal decisions. In this national crisis industry groups, particularly the mining lobby, aided by the media generated a sense of hysteria regarding the economic consequences of recognising native title. No fewer than twenty-six major landowners are government MPS, Kerry Packer is Australia's seventh largest landowner, and Rupert Murdoch also owns vast quantities of land (69 fn5). Short presents convincing evidence of media distortion and misinformation that fed into settler anxieties: industrial planning will be swallowed by uncertainty, foreign investors will pull out; the future development of the nation will be sacrificed to the selfish interests of a minority, etc. The insecurity of the individual property owner coincided

¹⁰ The problem with the identification of land and indigenes is that it echoes the colonial perspective that assimilates the colonised culture and nature. In certain important ways, culture and land was what colonialism was all about (see Dirks 1992). See the essays collected by Jeff Malpas (2011) for the attempt to rethink this dynamic. And for the pitfalls of indigenous consciousness see Kunnie and Nomalungelo (2006).

with corporate interests, and political invocations of fairness and balance ‘provided a propagandist veneer used to veil the otherwise blatant prioritising of corporate interests’ (51, and see 69). Although the legal position was that native title was to yield when in conflict with commercial leases, residential leases, or freehold titles, the irresponsible and vindictive threat was clearly identifiable. Although they number less than 20,000 of Australia’s population of 17 million they claim 42% of the continent! For Short this is the fictitious essence of the manufactured national crisis. How did this deception work?

Keating’s consultation with Aboriginal representatives cast a selective net that excluded unreasonable elements that might challenge the terms of his engagement. Dissent was simply framed out, and discussion served manipulation. On the other hand, objections to Keating’s entertainment of Aboriginal land rights took a form familiar from the critics of the affirmative action policies in the U.S., that is, that restitution is one-sided, reverse-cheating. According to Short, what these attacks, in the Australia and the U.S., share is ‘the same empty logic’: ‘It is now a common retort when proposals for historically sensitive redress policies threaten to breach the “snapshot version of fairness” favoured by those who seek maintain existing inequalities’ (55):

The desire to proportionately accommodate *unequal* interests that have largely arisen out of the situation that is the focus of the reconciliation process itself, namely the act of invasion and dispossession, invokes a ‘snapshot’ version of fairness that is inimical to reconciliation as a normative concept (63).

As for Keating, such attacks merely served to strengthen the apparent fairness of his approach, and in essence he too adopted the ‘empty logic’ approach that refused to remedy injustice by perpetuating inequality in the present. The balancing of interests ‘conveniently ignored the temporal dimension [of] colonial injustice and its legacy. Keating sought to balance interests solely on contemporary entitlements assessed without reference to a past now washed away by the “tide of history”’ (160).

Under the premiership of his successor, John Howard, the commitment to reconciliation was overshadowed by rejection of the

theatrical black armband view of history that spawned the masochistic guilt industry and disparaged the achievements of settlers battling great odds. What Short calls the ‘implicatory denial’ (168) of settler descendants did not deny the dispossession of the indigenes, but claimed to put it into context:

The notion of equality and the Australian slogan of a ‘fair go for all’ were frequently cited throughout all the studies as a reason for resisting ‘special’ rights and privileges for indigenous peoples. There was little evidence of an understanding of the difference between ‘formal’ and ‘substantive’ equality. There was no real appreciation of the necessity, or desirability, of conferring special treatment on a disadvantaged group in order to attain equality of outcome [nor] any propensity to agree to ‘special’ rights for indigenous peoples based on a notion of compensatory justice for historic mistreatment and contemporary dispossession (123).

Most importantly, no apology was forthcoming. What is there to apologise for? How can we be expected to apologise for others? What real use is an apology anyway? For Short, ‘Howard’s white blindfold view of history sought to sanitise the past and at the same time disconnect it from the present’ (173).

In other words, the empty logic of presentism *and* historical contextualisation serve the same end. Keating’s acknowledgement of historical injustice gave way to, or rather unfolded into, what superficially one might expect to be its historicising opposite. The claim that no genocide occurred and there was no intention to annihilate the indigenous population, but rather a (misguided) attempt to bring about their assimilation, is compatible with the claim that gross injustice did in fact occur. But in order to constitute acts of genocide these acts must be part of a plan to destroy all or part of the designated group (see Power 2007). For Short, implicatory denial based on limited acknowledgement that seeks to diminish the wrong with contextualisation serves the same end as its apparent opposite: ‘In this case the “contextualisation” involves the claim that “we thought it was in their best interests ... we were acting in good faith ... the ill effects are an unfortunate by-product of otherwise benevolent policies”’ (102; and see

Short 2010)¹¹. *Reconciliation and Colonial Power* shows that the prospect of conceding enclaves of cultural diversity certainly provokes fierce, multi-pronged resistance.

What, then, is the solution?

Short argues that since Australian indigenes have not legitimately surrendered their ‘indigenous nationhood and sovereignty’, the rational and just solution is to achieve reconciliation through ‘negotiations “nation” to “nation”’ (180). Indigenous peoples should be treated as (stateless) nations ‘equal in status to the settler state and consequently the ensuing treaties would be “international treaties”, which would open up the relevant international avenues for infringement redress’ (180). Recognition that ‘[a] primary focus on capitalist oriented solutions seems inimical’ (166) to a redistributive reconciliation process does not cancel out the hope that:

Dealing with indigenous nations on an equal footing would involve government ministers and mining executives entering into Aboriginal language, world-views, cosmologies and institutions, and accepting the different kinds of autonomy and modes of decision making among those peoples, rather than continuing the colonial project of arbitrary dispossession and nation building ... (181).

Short suggests that such an arrangement may lessen the chance of ‘ethno-cultural conflict’ (181). However, it is also arguable, I would suggest, that the reverse is as likely: that such balkanisation may increase the possibility of such conflict. The record of how states deal with ‘nations within’ is a cautionary tale, but Short suggests that the eventual possibility of a treaty or treaties ‘becomes more plausible when one considers the population explosion currently affecting the indigenous population’ (182). That this explosion may be the result of immiseration rather than the means to its solution is not considered. The invocation of demographic shift smacks of clutching at straws, a trusting to biology as destiny that is amenable to, and confirmation of, the racist world-view instrumental to the perpetuation of the injustice to be remedied.

¹¹ For a snap-shot of the Australian Government’s version see the entry for ‘Reconciliation’ at <http://www.australia.gov.au>.

It seems to me that there are problems with Short's remedy, not least the suggestion that '[s]ignificant tracts of "crown" land and indigenous occupied reserve land could also be returned to indigenous ownership and control' (33). In South Africa, Bantustans, tribal homelands that were effectively labour reserves serving the settler controlled prime economic nodes, were also rationalised via paternalistic arguments for the maintenance of the cultural integrity of the natives. Short, of course, is not proposing Bantustans but as he himself argues it is not so much intentions that matter as results. Given the current distribution of economic, military and political power, what could prevent such an outcome in Australia? Given the power of the global inter-state system, its constraints and interests, can one afford to be sanguine about the ability of international, trans-national organisations such as the UN being able or willing to prevent such abuse (see Bardhan *et al.* 2006)? The connection between land and political autonomy in the Australian case marks it off from the land restitution issue in South Africa where the national liberation struggle aimed at a unified, democratic nation. Indeed the claim for political autonomy for a minority suggests a perverse affinity with secessionist Afrikaner attempts to realise a *volkstaat* independent of the South African nation.

Such a disappointing conclusion to a moving account of a struggle marked by significant victories suggests that more than vested interests and effective propaganda may be to blame for what Short sees as a stalled liberation process. At its best *Reconciliation and Colonial Power* suggests that overcoming the legacy of colonialism involves confronting its objective conditions and economic system that dehumanizes, terrorizes, and renders expendable human beings. Short bears witness to the willingness of people to mobilise in the cause of justice. Ultimately defeat offers its own solidarity in the form of moral authority.

A disappointing conclusion, then, but could there be any other destination within the terms set by the debate? Such an outcome—part of a reformism that shares the guilt for perpetuating the deplorable totality—is unlikely to present a fatal threat to the system that produced the need for such retreats. Is it not necessary to rethink the notion of sovereignty itself, as well place and the connection between indigeneity and racism? Reducing opposing forces to vested interests risks confirming the world-view of an enemy that would like nothing better than to dissolve everything in the

corrosive balm of (biological, cultural, economic, historical) self-interest. And while ‘vested’ implies vestments or the disguise of interests, a clerical conspiracy, it also alludes to the legal sense of a vested right, a right that is absolute and without contingency, eliciting duty or moral obligation; like human rights. In this sense there are vested interests on both sides of the reconciliation debate and the urgent battle for indigenous rights, and the therapeutic task of revitalising culture, serves as a useful distraction for the most disparate interests

Reading professions of concern for justice and fair play as a veneer for selfishness – predictably attributing predictable hypocrisy and bad faith to one’s opponent – is itself a reading that can both conceal and deceive. In the eyes of its opponents the campaign for the preservation of indigenous culture is also a façade, protective and decorative, that cannot see its own hypocrisy (i.e. wanting the benefits of modernity without footing the bill). And as *Reconciliation and Colonial Power* relentlessly shows, being apologetic is as little a sign of progress as being morally right is a sign of victory. In a world where colonialism is simultaneously part of development and under-development, a set of equivalences circulate the secret knowledge that it is the incompatibility between property rights and human rights that stands in the way of undreamt-of levels of basic human well-being for the world’s estimated 1.3 billion impoverished (see Sumner 2010). Alternatively, the concern with indigenous rights shelters and confirms the settler myth that private property, initially in the form of land, is essential for self-determination. But can there ever be enough private property for everyone? This terminus results from more than the fact that a polemic is dictated by the way one’s opponents phrase the questions, or the limitations of a given juridical context, for it points to the fundamental political question of the conflict between what we know is right and the system we inhabit. It would seem, on the evidence of *Reconciliation and Colonial Power*, that the colonial adventurer’s motto is confirmed: ‘You have to howl with the wolf, never against the wolf’ (Coloane 2008: 26). Is it too soon to say that what doomed the effort was precisely what motivated it?

Thus we are led back to the paleo-settler argument about the European origins of civilisation which is both a claim about the nature of progress and an argument about the nature of law. In terms of law the presupposition is: *ubi societas ibi ius* (where society, there law), which is to

say where there is society (rather than community) there is civilisation. Yet of course this rule can be reversed to claim where there is law there is society; which means that society is a legal category, a category of Roman law, as much as law is a social category (See Rose 1984: 48). So laws can be changed, for example from protecting private property at the expense of justice. But at what price, and to whom?

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