

ART
DESIGN
RESEARCH

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Select Committee on the Aboriginal Flag Late Submission

Dear Committee Secretariat,

Last week I learnt that my PhD research on the Aboriginal Flag was cited as part of the evidence given to the Select Committee on the Aboriginal Flag.

My research represents the first and only full-length academic study of the Aboriginal Flag. The thesis received high commendations from its three Indigenous examiners. It was awarded the Power Institute Power Publications Dissertation Prize for Indigenous Art Research in 2018. Melbourne University Press is currently reviewing a book publishing proposal based on my research.

Please find attached my late submissions to the select committee:

- The Aboriginal Flag thesis' Introduction
- The thesis' final chapter: 'Who Owns the Aboriginal Flag?'

The Introduction summaries the thesis' research findings.

The thesis was submitted in late 2017, and as such it does not discuss the current Wam Clothing controversies. Its contents, nevertheless, provide important historical contextualisations to the Select Committees' Terms of Reference. The thesis reproduces documentation, for example, that reveals that Harold Thomas has pursued significant financial remuneration for the use of the flag since the mid 1980s.

The full thesis is also available via the following open access Sydney University library link:

<https://ses.library.usyd.edu.au/handle/2123/17227>

Yours sincerely,
Mathieu Gallois

Sydney College of the Arts
The University of Sydney

DOCTOR OF PHILOSOPHY
2017
THESIS

THE ABORIGINAL FLAG

By

Matthieu Gallois

March 2017

Aboriginal and Torres Strait Islander persons are respectfully advised that this thesis contains names and images of deceased persons, and culturally sensitive material.

The Aboriginal Flag

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Abstract

Is the *Aboriginal Flag* art? And, if it is, to what end does that claim serve? ‘Art’ is not a helpful noun, and certainly a risky one on which to base an argument. Yet, to fail to read the *Aboriginal Flag* as art – or, more precisely, to fail to read it as Indigenous activist art – is to fail to understand the *Aboriginal Flag*, and more broadly the role of culture in Indigenous activism, post European settlement. The *Aboriginal Flag*’s Indigenous and Western art epistemologies are instrumental in shaping its form and semantics. As Aboriginal art, the flag represents a continuum with traditional Aboriginal themes and aesthetic values. In a Western context, it is read as a flag, and it exists as a mass-produced object. In all its guises the *Aboriginal Flag* has melded itself into many aspects of popular imagination and become one of Australia’s significant symbols. The contested history of the *Aboriginal Flag* – evident in the passion it evokes on both sides of Australia’s race-based cultural divide – demonstrates that both white and black Australians understand the *Aboriginal Flag* to be a powerful political symbol. The *Aboriginal Flag* is therefore two things simultaneously: a work of art and an activist symbol. As a successful pairing, this alliance is rare because each entity or discipline has different values and agendas: activism seeks to bring about social change, art-making is concerned with the subject of art. To confuse matters further, as a work of social and political art the *Aboriginal Flag* achieves something very rare: it brings about social change. Understood in this way, the *Aboriginal Flag* has three conceptualising foundations: art, activism and social change. In its totality, the *Aboriginal Flag* represents evidence of a particular type of art – of which it is exemplary – that remains largely unrecognised as an artistic genre. In light of these factors, it is necessary to define the *Aboriginal Flag* as distinct from other social and political contemporary works of art that have emerged in recent decades. These art-based interpretations of the *Aboriginal Flag* constitute the architecture or, more precisely, the armature of this thesis. They give form and structure to the flag’s histories and meanings that in their totality form a cohesive reading of the *Aboriginal Flag* that is whole and distinctly Indigenous.

Introduction

The *Aboriginal Flag* has influenced and shaped race relations, and changed Australian society. Its power in part derives from its particular, acute resolution, which has afforded it a multiplicity of meanings and associations. The symbolism of the flag describes the relationship of people to land, land to culture and culture to identity: concepts of great profundity for Indigenous Australians. By association, the *Aboriginal Flag* is an affirmation of pride. It claims and asserts Aboriginal land rights, advocates Indigenous self-determination, repudiates the insidious policies and culture of assimilation and has come to symbolise the complex notion and claim of Indigenous sovereignty. In both everyday interpersonal interactions, and complex social cultural political forums, the flag is not a passive symbol. Rather it is a catalyst that sets the agenda, argues the point and brings about social change. Worn on the self in the form of a T-shirt or tattoo, the flag represents a deeply personal refutation of assimilation. Flown after winning Olympic gold in front of a TV audience of over a billion people, the flag affirms Aboriginal Australians' rightful place as Australia's first nations people; it affirms Aboriginal land rights, sovereignty, power and pride. More broadly, the *Aboriginal Flag* has transcended race relations and acted as both a symbol and catalyst for change in attitudes towards multiculturalism in mainstream Australian society. The latter is perhaps the flag's greatest legacy. The contemporary practice of flying the Aboriginal and Torres Strait Islander flags in the public domain represents the fracturing of Anglo-Celtic cultural hegemony in Australia society. Or as phrased by the flag's designer, Luritja/Wombai custodian Harold Thomas, it has contributed to 'a shift to Australians being more accepting of different people' (Thomas, 2009 p. 39). As described, the *Aboriginal Flag* has three concurrent and interdependent themes: art, activism and social change. The flag's definition as art reveals its indigeneity. Activist art offers a conceptual framework for understanding the *Aboriginal Flag*, and, in turn, the flag acts as proof of the validity and need for an activist category of art. The *Aboriginal Flag* has brought about social change.

Thomas designed the *Aboriginal Flag* in 1971. Its history falls into two distinct periods. The flag's first 25 years witness its seemingly effortless conception and dissemination across the Australian physical and political landscape, Indigenous Australia's immediate and unanimous claim of ownership of *their* flag, and the flag's

incremental but seemingly inevitable eventual triumph over institutionalised bigotry and racism. By contrast, the proclamation of the *Aboriginal Flag* as an official flag of Australia in 1995, and Thomas's assertion of his copyright ownership of the flag in 1996 mark a divisive crossroads in its history. The flag that once symbolised all causes Aboriginal has become the flag of multiculturalism, reconciliation (most notably at the Olympics), copyright ownership disputes, state appropriation and symbolic colonisation.

As the first long-form academic study of the Aboriginal Flag, this thesis documents the key facts and historical events that establish the flag's evolution from idea to national symbol. This task finds itself at the crossroad of Indigenous oral histories and ways of thinking and European inscribed academic traditions. Historically, European perspectives and interpretations of Indigenous issues have dominated Australia's official histories. In recognition of this historical bias, and my position as a non-Indigenous researcher, this thesis gives sustained precedence to the statements of Aboriginal activists and scholars. Their statements have been studied to identify and establish key Indigenous perspectives and views on the social, political and cultural context of the *Aboriginal Flag*'s conception, meaning and distribution. Their words, often quoted at length, serve as testimonials to Indigenous histories. Their inclusion has the added benefit of affording the reader a sense of the syntax of Indigenous activism in Australia.

A central contention of this thesis is that the *Aboriginal Flag* is a work of art. As such, throughout 'Aboriginal Flag' is given in italics, in accordance with the standard practice for the titles of works of art. For most non-Aboriginal people, this argument is counter-intuitive. When they see the *Aboriginal Flag*, they only see a flag within Western vexillological (the study of flags) points of reference. In this sense, the flag represents a shared cross-cultural object that is understood differently by Aboriginal and non-Aboriginal Australians.

Counter-intuitively, Western art historical and theatrical frameworks can also be used to substantiate an emerging consensus among art professionals that the *Aboriginal Flag* is indeed art. Thomas's views, within these frameworks, are the most substantive opinion on the flag's status. As an artist, Thomas has jurisdiction over the classification of the things he makes. He has consistently and emphatically stated that he conceived the flag as art. His claim is substantiated by Indigenous academic, activist and artist, Brenda Croft, and Indigenous activist, lawyer and senior initiated

Indigenous man Michael Anderson, both of whom have a deep understanding of the role of art in Indigenous activism.

The acceptance of the flag as art has second- and third-tier repercussions for our understanding and reading of the flag. Understood and accepted as a powerful activist ensign, the flag, by extension, also has to be accepted as activist art. In this study, activist art is identified as a distinct category of art-making within the larger set of social and political contemporary art practices that have emerged in recent decades. This idea of activist art serves to inform our understanding of the *Aboriginal Flag* in ways that differentiate it from other social and political works of art, and it is a means of highlighting the flag's very considerable achievements as a dynamic symbol. For the purposes of this thesis, activist art combines the values and agendas of both art and activism.

The alliance of activism and art is not common, in part because the practice of activism and the discipline of art have different values and agendas: whereas activism seeks to bring about social change, art-making is concerned with the subject of art. In contrast to social and political artists, activist artists seek to go beyond being cultural producers and commentators on society – agents who are satisfied by the effects of their work – to become active forces of change in society. Just as activists launch campaigns with clear quantifiable goals, activist art has similarly quantifiable objectives. As an extension of this rationale, as a genre of art-making, activist art can only be identified retrospectively, when a clear link between a work of art and social change in society can be identified. This can take decades to determine, as shown by the example of the *Aboriginal Flag*. Activist art that tries but fails to bring about change exists simply as social and political art, a far larger grouping of practices. In Australia, very few works of art can be said to have brought about social change. Two prominent examples of activist art are David McDiarmid's gay and AIDS-activist art posters and Peter Dombrovskis's environmental art photograph *Morning mist, Rock Island Bend, Franklin River, South-West Tasmania, Australia* (1979).

Both Richard Bell's *Pay the rent* and the *Aboriginal Flag* share land rights themes, however, a great gulf separates these work's efficacy as activism. *Pay the rent*'s political agency is absorbed and nullified within its institutional 'home' and art discourses. There is no expectation that *Pay the rent* has any agency in the recompense of stolen Aboriginal land. There is, however, an unfortunate sense that Western institutions or individuals who purchase Bell's art are purchasing something

akin to Catholic indulgences for past colonial sins. Bell's work highlights many of the shortcomings of social and political art, from an art-activist perspective. By contrast, the identification of the *Aboriginal Flag* as a catalyst for social change, its description as activist art and the identification of other similar works all serve to illustrate a powerful alternative set of expectations and parameters of what a genre of social and political art can achieve.

This study's focus on activist art bears out the role of Aboriginal culture in Indigenous activism. This idea is partly indebted to Michael Anderson, who asserts that Indigenous artefacts are 'Certificate of Title' to land. Whereas many Aboriginal and non-Aboriginal art practitioners, theorists and historians have commented on the relationship of art and politics in Aboriginal cultural practice, their statements are characterised by their brevity. The role of Aboriginal culture in Indigenous activism, and the meaning and potential political power of Indigenous artefacts, deserves sustained research and discussion.

Art's relationship to politics has called forth a wide body of literature in Western academia that dates back to the late eighteenth century (when Australia was first colonised). That literature, however, does not consider Australian Aboriginal social and political cultural practice. Jacques Rancière, for example, affirms that 'there is no criterion for establishing an appropriate correlation between the politics of aesthetics and the aesthetics of politics' (Rancière, 2004 p. 64). The *Yirrkala Church Panels* (1962–63), the *Bark Petition* (1963), the *Aboriginal Flag* (1971), the Tent Embassy (1972), the *Ngurrara Canvas* (1997) and *Karlamilyi* (2010) are works that contradict this view. In these Indigenous works, art and politics, in their colonial contexts, fold in on themselves and become one and the same entity.

Between January and July 1972, three flags, each articulating quite different interpretations and visions of the Aboriginal cause were flown at the Tent Embassy in Canberra. One was a version of the Pan African flag created in 1920 by the Universal Negro Improvement Association led by Marcus Garvey; the other was a flag created by an activist from Nowra, New South Wales. And the third was the iteration here titled the *Aboriginal Flag*. The *Aboriginal Flag*'s emergence as the Aboriginal flag reveals much about the premises, values and goals of Indigenous activism in the early 1970s. Through the Pan African flag, the *Aboriginal Flag*, and more broadly Australian Indigenous activism, is contextualised within the international Black Power movement. That history affirms that Australian Indigenous activism did not

emerge in isolation. It was responsive to, and influenced by, international social and political movements that recast the politics of race relations the world over in the twentieth century. Despite their shared experiences, goals and friendship, great social, cultural and historical differences differentiate the Black Power movements of the United States and those in Australia. Significantly, African Americans, not Indigenous American Indians, dominated the civil rights movement in the United States. Henceforth, civil rights, not land rights, dominated the agendas of American protest movements.

Land rights, sovereignty and self-determination frame the central platforms of Indigenous political struggles of the twentieth and twenty-first centuries. In its symbolism, the *Aboriginal Flag* relates to and references these themes. These platforms are introduced through the concept of *terra nullius* as it relates to Australia's colonisation. The idea of *terra nullius* transcended its legal context and permeated social relations between Aboriginal and non-Aboriginal people. The colonialists, through passive and active means, conscious and unconscious acts, attempted to will the fiction of *terra nullius* into reality. For much of Australia's colonial history, Aboriginal people were the continent's invisible constituents. The *Aboriginal Flag* affirmed in the 1970s and 1980s, in the first instance, the survival and non-invisibility of Aboriginal people.

The *Aboriginal Flag*'s composition represents, as Thomas puts it, 'black people's connection to the red land' (Thomas, 2002). In and of itself, the flag's symbolism is a powerful argument for land rights, and it has been used as a rallying call since it was adopted as the pan-Aboriginal flag at the Tent Embassy in 1972. The *Aboriginal Flag* and the Tent Embassy colluded thematically. Both symbolically affirmed what was then the central platform of Indigenous activism: land rights. In 1974, just a few years after the initial Tent Embassy action, land rights went from being a political demand to being a reality when Gough Whitlam's Labor government returned land to the Gurindji people of the Northern Territory. Over the ensuing decades, all Australian states and territories passed land rights acts (Commission, 2013). With the benefit of hindsight, however, the genesis of these victories is more firmly rooted in the groundbreaking actions and campaigns that predate both the Tent Embassy and flag. The *Bark Petition*, the Wave Hill strike (1966) and general Indigenous political mobilisation of the 1960s and early 1970s all share a claim in the ensuing land rights victories. By the time the flag was launched into the public

domain at the Tent Embassy, land rights activism already had considerable momentum.

For most contemporary non-Indigenous Australians, the term ‘sovereignty’ does not have the day-to-day meaning and significance that it holds for Indigenous Australians. The term has come to represent, as noted by Larissa Behrendt, self-determination, recognition of culture, and a recalibrated relationship with the Australian state. Increasingly, as land rights were incrementally granted across Australia, the *Aboriginal Flag*’s meaning shifted and, for many Aboriginal Australian people, it came to symbolise their claims for sovereignty. Implicit in the display by Aboriginal Australians of their flag is the statement to the wider community that Indigenous ‘Australians’ have never relinquished their sovereignty either to the British Crown or to the Australian state.

For much of the nation’s history, Australian race relations have been dominated by policies of assimilation. In the form it has taken in Australia, assimilation represents an attack on Aboriginal identity and culture that many Aboriginal people describe in terms of cultural genocide. It was successful in its aims in part because it was enforced, one to one, by Anglo-Celtic citizens who supported the government’s assimilationist objectives. Harold Thomas has stated that the policy and culture of assimilation had the effect of making Aboriginal people feel ashamed of their Aboriginal identity (Thomas, 2002). The *Aboriginal Flag*, particularly when Aboriginal people wear it (as badge, T-shirt or tattoo), is a deeply personal rejection of assimilation and an affirmation of black identity. It has played a significant role in rupturing the culture of assimilation in Australian society and instilling pride in Aboriginal identity.

A number of case studies demonstrate the argument that the *Aboriginal Flag* has brought about social change. Principal among these case studies are the burning of the *Aboriginal Flag* by the mayor of Shoalhaven, New South Wales, in 1982 and Cathy Freeman’s flag-waving activism at the 1994 Commonwealth Games. The latter culminated in the flag – and the issues it represents (sovereign Aboriginal culture and identity, land rights, a defiance of the culture and policies of assimilation) – achieving greater acceptance by the wider non-Aboriginal community. The flag’s contemporary power as an activist symbol can also be demonstrated through a comparative study of the *Aboriginal Flag* and the dendroglyphs located in the small urban rural community of Wellington in central New South Wales. Both the *Aboriginal Flag* and the carved

trees mark and claim Indigenous custodianship of land in Wiradjuri country. These trees constitute the focus and flashpoint of race-based tensions relating to land ownership between the local Wiradjuri people and the settler farmers of the region. Relative to the dendroglyphs, in the second decade of the twenty-first century, the *Aboriginal Flag* is shown to have little legal or symbolic power in Wiradjuri country.

The proclamation of the *Aboriginal Flag* as an official flag of Australia in 1995, and Thomas's assertion of his copyright ownership of the flag in 1996, mark significant crossroads in its status and reading. As it now stands, the *Aboriginal Flag* is perhaps the only flag in the world that is owned by an individual, but which represents a whole people. Western laws have made Thomas the flag's sole gatekeeper. The values of copyright law – as they relate to notions of ownership – are diametrically opposed to Indigenous community values emphasising group ownership and the sharing of resources. Yet, were it not for Thomas's copyright claim, the *Aboriginal Flag* would be an official flag of Australia, but with no Aboriginal organisation or individual having jurisdiction over its use or meanings: this could only be a disastrous outcome for Indigenous Australians. As a work of art, and as a flag that represents Indigenous Australians, the *Aboriginal Flag* has come to sit in an awkward and lonely place that traverses seemingly irreconcilable sets of values and cultures.

Local, state and federal governments have earned cheap symbolic mileage from the use of the *Aboriginal Flag* since 1995. In turn, they have dramatically raised the flag's visibility and profile and thereby placed themselves in a vulnerable position. The flag now inhabits a space created and determined by Australian governments and Western copyright laws, over which Thomas has ultimate control. Thomas has the power to lower the *Aboriginal Flag* to half-mast to memorialise over 220 years of brutal colonisation. He could elect to withdraw the flag's use altogether from all Australian government buildings and public spaces, until such a time that Australia's first nations people have constitutional representation, a treaty and meaningful land rights. The *Aboriginal Flag* has, arguably, more power now than at any other point in its history to shape Australia's race relations. In identifying the flag's dormant potential, this final argument completes the narrative arc of this thesis, so that it ends where it started, exploring the *Aboriginal Flag*'s reading and power as activist art.

The fact that this thesis is the first academic study of the *Aboriginal Flag* has meant that an important prerequisite has been to research and document the flag's history. It has also meant that the central contentions of the thesis – that the flag is art, that the flag is activist art, that the flag has brought about social change – have had to be formulated independently of an established body of literature. Concurrently, a number of other factors have also been determinant. Historically, non-Aboriginal people have dominated the literature and theory relating to Aboriginal art and Aboriginal history. International Western art theory and history relating to social and political art rarely considers the circumstances and histories of the cultural practice of Australian Aboriginal people. The role of art in Indigenous activism, despite being identified by Indigenous and non-Indigenous Australian scholars as being central to the meaning of Aboriginal art, has only a minor body of literature relating to its discussion. And, finally, a central argument of the thesis – that activist art brings about social change – is not an established way of thinking about art, or genre of art, in the art world. These factors, collectively, make for an unconventional literature review. Three key repositories of information/knowledge that do relate directly to the topic of the *Aboriginal Flag* are discussed. They are the interviews of Harold Thomas, Michael Anderson; and Nicole Watson, Djon Mundine and Maurice Ryan's panel discussion, which I either personally conducted or helped research; Brenda Croft's three essays discussing the *Aboriginal Flag*; and the University of New South Wales School of Sociology's 1982 first-year study and publication *The Burning of the Aboriginal Flag: A Study of Racism in Shoalhaven (NSW)*. The aforementioned interviews constitute over 25,000 words relating directly to the topic of the flag, and as such were a critical foundation of this research. They are reproduced as transcripts in the Appendix of this thesis. *Crux Australis*, a quarterly vexillological magazine produced by the Flag Society of Australia, has published articles on the *Aboriginal Flag* since 1984. Their 2009 panel interview with Thomas is quoted several times in the thesis. The remaining 280 or more individual research references listed in the thesis's bibliography encompass histories and arguments that circle and inform the topic of the flag, rather than, for the large part, comment on its subject directly. Finally, I document how my publication *Country, Spirit and Belonging, The Wiradjuri in Wellington Valley* (2013) shaped and influenced my research thinking and methodologies for this study.

In the second decade of the twenty-first century, non-Aboriginal academics continue to dominate Aboriginal art criticism. This reflects the complex statuses and dynamics of race relations in Australia, as well as the traditions, norms and demographics of each culture. It is estimated when Australia was colonised in 1788, its Indigenous population comprised between 300,000 and 1 million people, representing over 300 distinct Indigenous language groups or cultures, spread across the continent and surrounding islands. These diverse peoples shared a significant trait: knowledge was shared and maintained predominately via oral traditions. Through forced assimilation over many generations, Aboriginal people have come to adopt European academic traditions. Once the continent's dominant demographic group, Aboriginal people now make up just 2.5 per cent of the Australian population. The dominance, now receding, of Aboriginal art discourse by non-Aboriginal people, continues to be a form of intellectual colonisation. This argument is endorsed by artist, writer and activist Fiona Foley. She states in her publication *The Art of Politics, the Politics of Art: The Place Of Indigenous Contemporary Art* (2016) that the lack of 'real analysis' of, and 'engagement' with, the contribution Indigenous artists make to the political discourse of the nation reflects a 'new form of colonial power' (Foley, 2006 p. 25). An increasing number of non-Aboriginal citizens and academics are now partners in pursuing de-colonising discourse that have reshaped Australia's race relations. The celebrated Freedom Riders of 1965, were led by Indigenous Australian Charles Perkins, but most of the activists were non-Aboriginal university students (Curthoys, 2002). A more recent example is non-Indigenous historian Peter Read's coining of the term 'The Stolen Generations' (Read, 1981). This shaped and transformed the way Australians talk and think about Australia's history of race relations (Ginsburg and Myers, 2006 p.36). The oral tradition in traditional Aboriginal culture, the relatively small contemporary population of Aboriginal peoples and Western colonial agendas and vestiges all go some way towards explaining Indigenous people's relatively small representation in Western academia.

Representative of much Western literature on intercultural Aboriginal cultural practice, Vivien Johnson's essay 'When Papunya Painting Becomes Art' stresses the evolution and metamorphosis of Western interpretations of Papunya painting from ethnographic material to 'high art' (Johnson, 2007 p. 29). In other words, she emphasises the biases of Western readings of Aboriginal art to the exclusion of Aboriginal readings and meanings. In her essay, Johnson only briefly acknowledges

the potential political purpose of painting as ‘title deeds’ for the Papunya painters. Despite stating that ‘title deeds perfectly sums up’ the purpose and meaning of ‘mid to late 1970s Papunya painting’, she fails to explore and expand this reading and place it at the centre of the reader’s understanding of Papunya painting (Johnson, 2007 p. 32). Over the essay’s ten pages, just a few sentences are concerned with reading the works as ‘title deeds’. As in Ian McLean’s anthology *How Aborigines Invented the Idea of Contemporary Art*, Aboriginal art in Johnson’s essay is read in Western terms. Its significance and meaning as political statements by their Aboriginal authors is largely ignored, or at least not emphasised. This approach risks being another form of Western colonisation.

In their collaborative article ‘A History of Aboriginal Futures’, Faye Ginsburg and Fred Myers discuss the ‘political turn’ against Indigenous Australians during the Howard era (1996–2007) (Ginsburg and Myers, 2006 p. 27). Ginsburg’s area of research is media, culture and history, while Myers’s is anthropology. Both are American academics based at New York University. The article’s tone and arguments contrasts with some of Myers’s earlier public statements, quoted in Chapter 2, regarding Aboriginal art-making dating from the 1970s, when he was posted at Yayayi outstation as an anthropologist. In his earlier statements, Myers argued that the phenomenon of Aboriginal art was perceived by remote community artists as being ‘whitefella business’ (Myers, 2007 p. 43). In ‘A History of Aboriginal Futures’, the writers state that the sale and commissioning of remote communities’ works of art convey ‘value and political potential to the Indigenous project, and their objectifications have become loci of identification for the broader Australian community’. To illustrate this point, Ginsburg and Myers describe how Michael Nelson was able to use the threat of destroying his 1988 Bicentenary mosaic to protest changes to native title in 1993 (Ginsburg and Myers, 2006 p. 40). The commissioning of Nelson’s work thus gave him a national platform to address his political concerns. The article concludes, however, that the success and acceptance of Aboriginal art in Australian society was paradoxical during a period that saw the Aboriginal arts industry grow. ‘[T]he wider conditions of their lives remain poor, and in danger of further immiseration’ (Ginsburg and Myers, 2006 p. 36). Recognition of Aboriginal art, in their views, in the form of sales and commissions, is separate from meaningful political agency and power. Ginsburg and Myers’s arguments contrast with my research in that they fail to consider non-commercial works of Aboriginal art, such as

the *Yirrkala Church Panels*, the *Bark Petition*, the *Aboriginal Flag*, the *Ngurrara Canvas* and *Karlamilyi*, and the potential use of Aboriginal artefacts in Indigenous activism. In the first instance, these works serve the pressing political agendas of Indigenous Australians. Ginsburg and Myers, like many other commenters on Indigenous Australia art, do not take into account Indigenous cultural practice that operates outside Western art frameworks.

Like the *Aboriginal Flag* itself, the relationship between Indigenous art and politics does not have a wide body of literature. Exhaustive anthologies and reference books, such as *The Oxford Companion to Aboriginal Art and Culture* (Kleinert and Neale, 2000) and *How Aborigines Invented the Idea of Contemporary Art* (2011), have only small sections – a few short essays each – that cover this important relationship. This pertains despite both publications containing essays by Indigenous authors that stress the importance of Indigenous art's relationship to politics. Hetti Perkins and Victoria Lynn make a forceful point: 'The function of art as an agent for social change is embodied in all Aboriginal and Torres Strait Islander art. It is this collectively implied or stated position that is probably the only instance where a homogeneity of cultural expression can be suggested' (Perkins and Lynn, 1993 p. x). However, this argument comes in an article that is only two pages long and mainly deals with the labels 'traditional' and 'urban' (Perkins and Lynn, 1993 p. x-xii). The section titled 'Politics' in *How Aborigines Invented the Idea of Contemporary Art* is foregrounded by two 'reflective statements' on seminal essays written over 25 years ago by Anne-Marie Willis and Tony Fry ('Art as Ethnocide: The Case of Australia' and 'Aboriginal Art: Symptom or success', 1988–89). This editorial decision leaves the reader speculating over whether or not the editor believes anything of any significance has since been written on the subject in the intervening years.

Prominent Indigenous art critics include academics, anthropologists and curators such as Djon Mundine, Marcia Langton, Margo Neale and Hetti Perkins. These Aboriginal theorists and critics have been instrumental in shifting the discourse away from modern and postmodern readings of Aboriginal art towards a focus on the work's 'indigeneity' (McLean, 2011 p. 61). They have not, however, discussed the *Aboriginal Flag* as a primary topic in long-form essays or articles. In light of this deficit, the interviews with Thomas, Anderson and the panel discussion between Watson, Mundine and Ryan included in the appendix, Croft's essays, and *The*

Burning of the Aboriginal Flag: A Study of Racism in Shoalhaven played a critical role in setting the historical and theoretical parameters of this thesis.

Thomas, Anderson, Watson, Mundine and Ryan's transcripts related to the topic of the *Aboriginal Flag*. I interviewed Anderson, Korrie Radio presenter Lola Forester, interviewed Thomas, Watson, Mundine and Ryan with my research assistance. These interviews document much of the flag's history for the first time, and they contain many key statements upon which the arguments of this thesis are based. Thomas categorically states that he conceives the *Aboriginal Flag* to be art. Anderson asserts one of the central ideas of the thesis: that the products of Aboriginal culture have the potential to act as title deeds to land. Watson, Mundine and Ryan discuss issues relating to the flag's ownership. These interviews, however, constitute a series of insightful statements, rather than long-form critical or academic analysis.

The most sustained analysis of the *Aboriginal Flag* is by Brenda Croft. In the following articles/government records, she discusses the *Aboriginal Flag* and makes a number of repeated claims: 'Revolutionize me (and you, and you, and you)' (2012), 'Eora Journey International Review: International Review of Contemporary Interpretation Practice' (2010) and 'The intervention: an anthology' (2015). Croft states that the flag is of great significance, that the flag is a successful work of public art (by inference the flag is a work of art) and that the flag is a significant work of activist art. However, these articles are all relatively short (just a few hundred words each, or consist of quoted statements within articles), and they are concerned principally with other topics (public art, the intervention, the history of Aboriginal activism). Croft writes:

I already considered the Aboriginal Flag to be the most successful piece of public art ever created in Australia – John's [Croft's activist nephew] actions convinced me of this position. Art as cultural activism, no matter how small the steps may seem at the time, compounds, widening and strengthening the pathways we all travel in our countries and traditional lands.

(Croft, 2012)¹

¹ I was unable to view the published article, *Revolutionize me (and you, and you, and you)* published in the exhibition catalogue *Decolonize me*. Croft kindly forwarded me her draft copy of the essay. Hence the absence of a page number in the citation.

Croft's claims, though significant and fully supported by the findings of this study, are not substantiated by long-form arguments that locate her claims within histories and theories relating to Aboriginal art, political and social art or to Indigenous practice.

The Burning of the Aboriginal Flag: A Study of Racism in Shoalhaven (1982) is the only academic study of the *Aboriginal Flag* on which this thesis has been able to draw. That study, by a student group led by Dr Alex Kondos, involved an extensive 'systematic stratified random sampling' survey in which 10 per cent of the Shoalhaven and Nowra community were sent a one-page questionnaire containing six questions and four demographic questions. The 'scientific' methodology of the survey offers a relatively objective, historic record of community attitudes towards the flag and Indigenous affairs in New South Wales during the early 1980s. In the early 1970s and 1980s, the key platform for Indigenous activism was land rights. The symbolic focus of that contest in Nowra was the *Aboriginal Flag*. *The Burning of the Aboriginal Flag* is a sociological study of racism – by default, it provides insight into Indigenous peoples' struggle for land rights at a critical juncture in the history of Indigenous activism.

Part of the basis for this study was my earlier research project 'Wellington', completed over a three-year period (2010–13). It culminated in a number of interpretative works of art, and a 50,000-word publication titled *Country, Spirit and Belonging: The Wiradjuri in Wellington Valley* (2012). The project's focus was the history and community of Wellington, a small town located in that part of central New South Wales that is home to the Wiradjuri people. Ernest Moulton, my maternal grandfather, a British migrant, settled in Wellington in 1944. He purchased the local paper, the *Wellington Times*, and as its editor was a prominent conservative voice in the community for the next 21 years. The study represents an intimate history of Wellington's race relations, the processes of colonisation and the community's tentative steps towards reconciliation, highlighting some of the complexities of cross-cultural engagement as well as issues of censorship and selective historicising in the *Wellington Times* between 1944 and 1965. The publication involved interviewing close to 100 Aboriginal people living in Wellington, researching their histories, seeking to understand their experience and, most importantly, establishing sustained interpersonal relationships with them.

Before engaging the Aboriginal community in Wellington, statements such as ‘assimilation is genocide’ (Anderson, 2014 p. 15, Foley, 2014), stood as distant abstractions that reflected the still significant cultural and social divisions in understanding and knowledge – between Indigenous and non-Indigenous Australians – in Australian society. Key to bridging those histories was the ambassadorship of senior Wiradjuri Elder (Aunty) Joyce Williams. Joyce as friend, mentor and project partner communicated the fuller meaning of myriad issues to the wider community, as recorded in *Country, Spirit and Belonging: The Wiradjuri in Wellington Valley*.

In Joyce’s youth, the laws and culture of assimilation were inherently contradictory: they were both segregationist and assimilatory. A thousand quiet gestures and actions sustained an informal and formal system of racial apartheid in Wellington well up to the mid-1960s. In the face of Indigenous marginalisation and poverty, the dominant white community in Wellington was on the whole passive and silent about Indigenous issues (Gallois, 2012 p. 23). Within that silence, the effects of land dispossession, poverty and discrimination took the lives of Joyce’s four older siblings who all died – out of sight, out of mind – on Nanima mission before they reached 12 years of age. Under that strain, Joyce’s parents separated when she was six years old and she was sent to live with her grandmother. As described by Mahatma Gandhi, poverty is the worst kind of violence.

Asked to identify who was the first Aboriginal person to own land post-colonisation in this region, Joyce stated ‘They stole our land and now we have to buy it back’. In 1957 Albert Theodore May, after a long and bitter community debate in the *Wellington Times*, was allowed to take a loan and buy a small suburban house in Wellington (Gallois, 2012 p. 31). He was the first black person to cross the race divide and move from one of the many informal Aboriginal camps around Wellington, into the town main. To repossess his land, Theodore May had to demonstrate, at least on the surface, his willingness to act white, to assimilate. His mortgage payments – as articulated by Joyce – equated to a fortnightly humiliation. The premise of Wellington colonisation, the related denial and destruction of Wiradjuri culture and the cultures of assimilation are still in place and active in that community to this day (Gallois and Macdonald, 2012 pp. 10-16). As documented in this thesis, in Wellington, Aboriginal people represent 20 per cent of the local population, but own less than 1 per cent of the total 1,016,000 acres of land that makes up the local government area (Gallois, 2012 p. 27).

The Wellington project influenced this study's focus in profound ways. It resulted in this study's focus on Aboriginal art's political and social contexts', rather than its Western art related conditions and readings. Of this thesis' eight Chapters, only the first two relate to the flag's broad art contexts and readings. This position contrasts to Ian McLean's anthology *How Aborigines Invented the Idea of Contemporary Art* and many other books and articles on Aboriginal art (Caruana, 2012, Johnson, 2007, Fisher, 2016). McLean introduces his anthology thus:

Issues addressed are typical of most writings on fine art ... there is little discussion of such vexed issues as the contradictions between the beauty of the art and the often appalling conditions in which it was made.

(McLean, 2011 p. 13)

In a broader sense, the limited literature that this thesis has had to contend with is expressive and systematic of alienated relations. As stated by Langton in her 1994 essay 'Aboriginal Art and Film: The Politics of Representation' (Langton, 1994 p. 99), and echoed in meaning by Indigenous journalist Stan Grant in his biography published over 20 years later in 2016 (Grant, 2016 p. 4): 'Australians do not know and relate to Aboriginal people'. Langton asserts that although racial discrimination is a big problem in Australia, it is not 'the central problem' or hurdle for improved race relations. Rather, what is most at stake is 'the need to develop a body of knowledge and critical perspective to do with aesthetics and politics, whether written by Aboriginal or non-Aboriginal people' (Langton, 1994 p. 96). To these statements we should perhaps add the provisos that Australians do not know or understand Aboriginal culture, and that the *Aboriginal Flag*'s non-status as art reflects a poor understanding of the role of culture in Indigenous activism.

This thesis is divided into four parts. Part A explores the *Aboriginal Flag* as art and activist art. Part B contextualises the flag's genesis, history and political contexts as they relate to the Tent Embassy, land rights, sovereignty and assimilation. Part C documents the history of the *Aboriginal Flag* as a catalyst for social change. Part D appraises the *Aboriginal Flag*'s contemporary meanings and demonstrates how, by

inference, they form an evaluation – as viewed through the prism of the *Aboriginal Flag* – of contemporary Australian race relations.

Chapter 1, ‘The *Aboriginal Flag* as a work of art’, explores Harold Thomas’s life, Aboriginal cultural practice, and how Western art practice and theory frame and inform the *Aboriginal Flag* as art. Sitting at the intersection of two cultures and two mediums, the flag has a complicated and idiosyncratic reading. It shares few characteristics and meanings with other flags, works of art, and ‘flag-works-of-art’. The chapter concludes with a formal exploration that substantiates the argument that the design of the *Aboriginal Flag* represents the drawn-out considered process of a serious artist.

Chapter 2, ‘The *Aboriginal Flag* as activist art’, establishes the parameters and asserts the rationale for understanding the *Aboriginal Flag* as activist art. Particular attention is given to the role of art in Indigenous activism, as it exists within a contested colonial context. The latter serves the added purpose of firmly framing the *Aboriginal Flag* as characteristic of Indigenous cultural practice. Richard Bell’s social and political practice reveals the difference between social and political art and activist art. The *Aboriginal Flag* and Bell’s work *Pay the rent* share land rights themes; however, a great gulf separates the efficacy of these works as activism. The chapter reveals that Western ways of understanding activist art collapse before Indigenous works of art that, in the first instance, serve the political agendas of Indigenous Australians. In these Indigenous works, art and politics fold in on themselves and become one and the same entity. This pivotal chapter of the thesis discloses a broader idea: the role of art in Indigenous activism.

Part B contextualises the genesis, history and political contexts of the *Aboriginal Flag* as they relate to the Tent Embassy, land rights, sovereignty and assimilation. The three chapters in this section deepen the reader’s understanding of Australian race relations and of the flag’s place in that history. Chapter 3, ‘The international Black Power movement and the *Aboriginal Flag*’, begins with an account of how, at the Tent Embassy, three flags were flown, each of which articulated quite different interpretations and visions of the Aboriginal cause. The genealogies of these flags locate the *Aboriginal Flag*, and more broadly Indigenous activism, within the international Black Power movement and affirm that Australian Indigenous activism did not emerge in isolation – rather it was responsive to, and influenced by, international social and political movements that recast the politics of

race relations the world over in the twentieth century. The selection of Thomas's version of the Aboriginal flag as the pan-Aboriginal flag of Australia reveals much about the premises, values and goals of Indigenous activism, and the scope and limitations of the influence of the international Black Power movement on Aboriginal activism in the early 1970s. Chapter 4, 'Land rights, *terra nullius* and sovereignty', explores the doctrine of *terra nullius* as a profoundly important determining factor for Australian race relations. Conversely, the *Aboriginal Flag* is described in terms of its being a powerful counter-argument against the forces and premises of colonisation. This chapter explores the contrasting meanings of sovereignty as it relates to, and is expressed by, Aboriginal and non-Aboriginal Australians. Finally, Chapter 5, 'The interpersonal context and form of the *Aboriginal Flag*'s activism', explores how the policies of assimilation have dominated the culture of Australian race relations for much of Australia's history. For Thomas, the creation of the *Aboriginal Flag* was a personal act of defiance against the cultures and policies of assimilation that had so radically shaped his life. Thus contextualised, the display of the *Aboriginal Flag* has both public uses and meanings, and very personal meanings for Indigenous individuals.

In Part C, Chapter 6, 'Social change and the *Aboriginal Flag*', documents how the *Aboriginal Flag* has brought about social change. As was the case in most local government areas in the early 1980s, the *Aboriginal Flag* was not flown in the shared public domain in Shoalhaven. A statewide campaign in 1982 that sought to add political momentum to the campaign for what became the *Aboriginal Land Rights Act (NSW) 1983*, encouraged the state's then 177 councils to fly the *Aboriginal Flag* for a single day on National Aborigines Day. In response, the Shoalhaven mayor infamously burnt the *Aboriginal Flag*, claiming it represented a threat to social unity. A significant proportion of non-Aboriginal, land-owning Shoalhaven residents who perceived the proposed 1983 Land Rights Act and, by association, the flying of the *Aboriginal Flag*, as a threat to their land titles – supported the mayor's actions. These events are contrasted with Cathy Freeman's flag activism at the 1994 Commonwealth Games.

Part C, comprising the final two chapters of the thesis, offers an appraisal of the *Aboriginal Flag*'s contemporary meanings and, by inference, they form an appraisal – as viewed through the prism of the *Aboriginal Flag* – of contemporary Australian race relations. Chapter 7, 'Carved and Scar Trees and the *Aboriginal Flag*',

constitutes a comparative study of the meanings and statuses of dendroglyphs and the *Aboriginal Flag* in central and northern New South Wales. Central to this chapter's argument is Anderson's assertion that Aboriginal artefacts constitute title deeds to land. Finally, Chapter 8 asks the complex and revealing question 'Who owns the *Aboriginal Flag*?' In so doing, it reveals that only Thomas – as copyright owner of the flag – has the power to wrest back the *Aboriginal Flag* from the Australian government, which has commandeered its meanings since the mid-1990s.

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Who owns the *Aboriginal Flag*?

Matthieu Gallois: What, if anything, do white fellas not understand about the *Aboriginal Flag*'s significance for Aboriginal people in 2014?

Michael Anderson: Quite honestly, I think a lot of white people now understand the flag. I think back then a lot of people were confused about what it represented, what it was all about. My disappointment now is the fact that it's now a registered flag according to Australian law. We don't own it anymore ... It's a[n official] flag of Australia, it's not ours, so it's not a liberation flag anymore.

M. G: Do you think that it's lost some of its meaning and power?

M. A: From a revolutionary point of view, yes. However, one thing that the Australians have done in making this flag part of national psyche, what it's done is it's now showing to the world that the Australian government now recognises joint sovereignty over a nation.

M. G: Pretty significant.

M. A: Absolutely. And people do not understand the power of that. Unfortunately, we have to tell our people what the significance of that representation is. Our people haven't exercised that yet because they don't understand it. Just like we didn't understand the significance of our artwork.

(Anderson, 2014 pp. 8-9)

The making of an official flag of Australia

One of the great ironies of modern Australian race relations is that the *Aboriginal Flag* was made an official flag of Australia in 1995 by the Queen of England's representative, then Governor-General of Australia, Bill Hayden. This decision reflects the complexities of Australian law and governance as they presently span

three entities: the British crown, the Australian Federal government and Indigenous peoples of Australia. In this instance, the Governor-General was acting upon the instructions of the Keating Labor government, who in turn was acting on the advice of a government-appointed advisory panel made up of eminent Australians, both Indigenous and non-Indigenous. The Council for Aboriginal Reconciliation had been created via act of parliament initiated by the then Hawke Labor government in 1991. Chaired by Pat Dobson, the Council presented *Going Forward: Social Justice for the First Australians* to Prime Minister Keating in 1995. This document contained 78 recommendations covering a range of issues, including access to land, protection of culture and heritage, and the provision of adequate health, housing and other services. Recommendation 66 stated: ‘The Council recommends that the Flag Act, 1953, be amended to give official recognition to the Aboriginal Flag and to the Torres Strait Islander flag.’ The Aboriginal and Torres Strait Islander Commission (ATSIC) (1990–2005) in their Social Justice compensation proposal made similar recommendations to the Federal government (Attwood, 1999 p. 344).

Thirteen years before these events, Thomas sought to assert his ownership of the *Aboriginal Flag* and earn substantial royalty fees for its use. He did so in correspondence with Aboriginal organisations, such as Aboriginal Hostels, that had incorporated his design into their logos. Figure 8.1 relates to one such set of correspondence (Strookowsky, 1985). In the letter M.J. Strookowsky, Director Commonwealth State Relations Section, Department of Aboriginal Affairs asks Mr I. Harvey, Senior Assistant Secretary of the International Trade Law and Intellectual Property Branch of the Attorney-General’s Department to give advice on Mr Thomas’s claims. Accompanying documents reveal that Thomas had demanded \$10,000 from Aboriginal Hostels (a not-for-profit, government-owned company that provides temporary housing for Aboriginal people) and \$20,000 from the Aboriginal Development commission (a not-for-profit, government-owned organisation that seeks to further the economic development of Aboriginal people). At the time both these organisations refused to pay royalty fees to Thomas, but he chose not to assert his rights through the copyright tribunal. Either in the 1980s, in response to Thomas’s initial claims, or in 1995, Charles Perkins met with Thomas and advised him that he needed to prove his copyright of the *Aboriginal Flag* to the government using the ‘white man’s legal system’ before he could make royalty claims (Thomas, 2009 p. 40). Thomas did establish a licensing agreement and fee for the reproduction of the

Aboriginal Flag with the flag-manufacturing company, Flagworld, in the mid-1980s, before the flag's copyright registration.

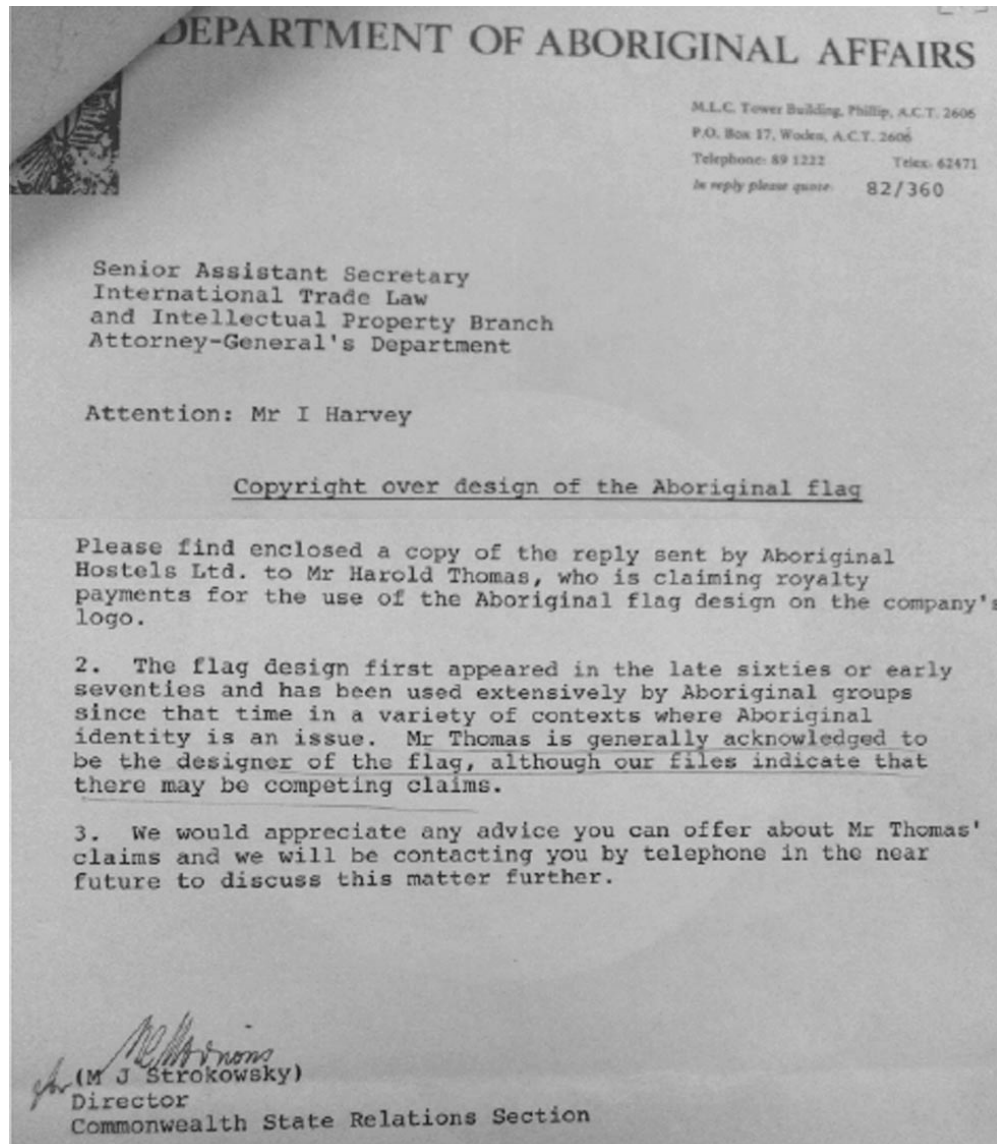


Figure 8.1: Letter from J. Strokowsky, Director Commonwealth State Relations Section, Department of Aboriginal Affairs, to Mr I. Harvey, Senior Assistant Secretary, International Trade Law and Intellectual Property Branch, Attorney-General's Department, 1985.

The decision to make the *Aboriginal Flag* an official flag of Australia was taken without a democratic mandate from either the general population or Aboriginal Australians. It is a decision that divides opinion across the Australian community to

this day. In 1995, the Tasmanian Aboriginal activist Michael Mansell stated that recognition of the *Aboriginal Flag* ‘was a poorly timed gesture that could give a false impression that blacks had achieved equality’. In his opinion, ‘The flags should be recognised at some stage but that can only happen when the struggle is over ... It takes away the ownership of the aboriginal struggle from the people themselves’ (AP, 1995). In 2016, far right political leader Pauline Hanson complained, ‘We as Australians have never been asked in a referendum whether we endorse or recognise the Aboriginal Flag’ (Davies, 2016). Thomas himself was not consulted about the decision. At the time of the proclamation Thomas was quoted in *The Australian* as describing the use of the *Aboriginal Flag* by the Australian government as ‘objectionable’ (Towers, 1996a). Some 20 years after the proclamation, Thomas still did not have a firm understanding as to why the Labor government decided to make the *Aboriginal Flag* an official flag of Australia.¹

It is worth citing the Governor-General’s proclamation under the *Flags Act* 1953 in full because of its brevity:

*I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and noting the fact that the flag reproduced in Schedule 1 and described in Schedule 2 is recognised as the flag of the Aboriginal peoples of Australia and a flag of significance to the Australian nation generally, appoint that flag, under section 5 of the Flags Act 1953, to be the flag of the Aboriginal peoples of Australia and to be known as the Australian Aboriginal Flag with effect from 1 January 2008.*²

The proclamation reveals very little about the motivations for making the *Aboriginal Flag* an official flag of Australia. It simply ‘not[es] the fact’ that the *Aboriginal Flag* ‘is recognised as the flag of the Aboriginal peoples of Australia and [that it is] a flag of significance to the Australian nation generally’. At the time of the

¹ In an informal unrecorded conversation, Thomas asked me: ‘Why do you think they made the *Aboriginal Flag* an official flag of Australia?’

² Owing to an administrative issue, the 1995 proclamation expired on 1 January 2008. It was replaced, on 25 January 2008, with effect as from 1 January. The revised proclamation lists the current Governor-General. Owing to an administrative issue, the 1995 proclamation expired on 1 January 2008. It was replaced, on 25 January 2008, with effect as from 1 January. The revised proclamation lists the current Governor-General.

proclamation, then opposition leader, John Howard, was reported in *The Canberra Times* as stating that the decision was ‘inappropriate and divisive’ (Cole-Adams, 1995). Prime Minister Keating retaliated with a press release in which he described Howard’s position as ‘mean spirited’. Keating’s press release also briefly outlines two reasons for the government’s decision: ‘Recognition of the flags is an inclusive act’ and ‘This change means that, for example, it will no longer be a breach of protocol for a young athlete like Cathy Freeman to carry the *Aboriginal Flag* with pride’ (Keating, 1995). Keating’s press release suggests that the decision to proclaim the *Aboriginal Flag* was driven by a narrow set of considerations.

Nation flags have important legal and symbolic roles in national and international law. They have been used for millennia to symbolise claims of land and sovereignty over peoples. Captain Arthur Phillip claimed Australia as a British territory by raising the Union Jack on Aboriginal soil in 1788 (Figure 8.2). When asked if ‘the symbolic premise of the *Aboriginal Flag* design repudiates British crown sovereignty and the doctrine of terra nullius?’, Michael Anderson responded:

In a nutshell, yes. Absolutely. And these fools fly it now as a flag of Australia and our people still don’t know how to take a political advantage of that because they don’t understand its symbolism and the power of it ... We need to teach the people more about understanding what sovereignty is and what the flag means and what standards mean and how important those things are in the Western world and how they are viewed in the legal world, in that Western world. When our people realise that, Australia has got something to be worried about.

(Anderson, 2014 pp. 15-16)



Figure 8.2: Algernon Talmage. *The Founding of Australia*. By Capt. Arthur Phillip R.N. Sydney Cove, Jan. 26th 1788. 1937. Oil Painting; 77 x 106.5 cm. Mitchell Collection, State Library of New South Wales. Call no. ML 122.

In his statement, Anderson is drawing upon his knowledge of Euahlayi and Gamilaroi law as a senior initiated Indigenous man, and the knowledge he acquired through his degree in Western law, both of which give him considerable insight into the meaning and power of ‘standards’ in both legal systems. Anderson asserts that Indigenous designs and art are ‘Certificate[s] of Title’ that affirm law and connection to land – they have some of the same function as flags in Western culture (Anderson, 2014 p. 1). The *Aboriginal Flag*, as established in Chapters 1 and 2, has root in both Indigenous culture and Western flag insignia. In both these cultural contexts, the flag asserts, in a general sense, Indigenous sovereignty. The Governor-General’s proclamation, however, is short and precise, and very narrow in its scope of meaning. It ‘recognises’ that the Aboriginal Flag is the flag of the ‘Aboriginal peoples of Australia’, and that it possesses ‘significance to the Australian nation generally’. Nothing more, nothing less. The proclamation, very deliberately in Australian law, does not imbue the *Aboriginal Flag* with any powers, let alone powers or significance like those of the Australian flag, to symbolise the claim of Indigenous sovereignty over Australia for Indigenous peoples. There are no clear public statements beyond

Anderson's claim, as to what the *Aboriginal Flag* means and claims for Indigenous Australians. Anderson acknowledges that in Indigenous communities, the use of 'standards', designs and art, as 'Certificate[s] of Title' is poorly understood. At best, we can suggest that, in relation to sovereignty, the *Aboriginal Flag* symbolises in general what Larissa Behrendt surmises that the word means for Aboriginal people, namely:

concepts such as representative government and democracy, the recognition of cultural distinctiveness and notions of the freedom of the individual that are embodied in liberalism. These claims take place by seeking a new relationship with the Australian state with increased self-government and autonomy, though not the creation of a new country.

(Behrendt, 2003 p. 54)

In the absence of clear statements from the Indigenous community, the flag's meanings are easily appropriated. In 2015 the Victorian government decided to permanently fly the *Aboriginal Flag* above the state parliament. Victorian Labor Premier Daniel Andrews's press release stated:

Aboriginal people are the traditional owners of this country. It's only right that we acknowledge their continued connection as the custodians of this land ... Flying of the flag is a clear statement of Aboriginal culture and identity. The oldest living culture in the world continues as ever – strong, resilient and proud.³

(Premier, 2015)

Keating's and Andrews's statements suggest that making the *Aboriginal Flag* an official flag of Australia and flying it on some public buildings, has no significance in Australian law. It is, at best, a symbolic act of inclusion and a gesture of reconciliation. Email correspondence with Megan Rocke, Customer Service Officer of the Victorian parliament, confirms this. In response to my queries, she stated: 'As

³ Andrews's press release incorrectly states that the *Aboriginal Flag* was created in 1972.

far as I'm aware, the flying of the flag at Parliament House carries no legal or constitutional implications' (Rocke, 2016 see Appendix).

Copyright registration of the *Aboriginal Flag*

The year following Governor-General Bill Hayden's 1995 proclamation, Thomas filed an application to the Copyright Tribunal to assert his copyright ownership of the *Aboriginal Flag*. He alleged that the Commonwealth had 'authorised or permitted copies of the artistic work to be made for its own purposes as well as by others generally, particularly non-Aboriginal people' (Sheppard, 1997). The case was soon transferred to the Federal Court because the Copyright Tribunal's legal jurisdiction gave it powers to fix terms of remuneration for the reproduction of works such as the *Aboriginal Flag*, but not to determine copyright ownership. As part of standard court proceedings, notices were published in *The Weekend Australian*, *The Northern Territory News*, *The Adelaide Advertiser* and *The Koori Mail* advertising the case and encouraging claimants to come forward. Letters were also sent to David Brown and to Gary Foley who were known by the Commonwealth at the time to have claimed authorship or part-authorship of the *Aboriginal Flag* (Sheppard, 1997). Two individuals came forward to make a counter-claim for copyright ownership of the flag: David Brown, an Aboriginal man, and a former non-Aboriginal art student of Thomas's, James Tennant. The latter's claim was soon dismissed by Judge Sheppard as 'entirely improbable' (Sheppard, 1997). Brown was born in 1950 and was 46 years of age at the time of the hearing (he is three years younger than Thomas). In court, he appeared to be much older and to be in ill health, in part, it is implied in the court report, as a result of a lifetime's heavy consumption of alcohol. The habit was so severe that it had dramatically impaired his memory and left him for periods of his life confined to a wheelchair. Judge Sheppard's court report states: 'He presented a pathetic picture. He is extremely thin and drawn' (Sheppard, 1997). Brown had spent periods of his life in juvenile detention centres and prisons, and by 1996 he was a divorcee and the father of three children. There seemed to be little to substantiate Brown's claims until late in the proceedings, when an old non-Aboriginal friend of his, Andrew Rennie, with whom he had spent time together in a boys' reformatory, wrote to the Copyright Tribunal claiming that while at McNally's Training Centre in 1967, Brown had shown Rennie a line drawing of the *Aboriginal Flag* he had done.

Under cross-examination, however, it emerged that Rennie's claim sprang from a deep sense of friendship and loyalty to an old friend rather than possessing any factual basis. The inconsistencies in Rennie's evidence led to Brown's case also being dismissed by Justice Sheppard.

Thomas's claim was corroborated by the testimonials given by three people – his 1971 colleague at the South Australian Museum, exhibitions officer Sandra Lee Hanson; Gary Foley; and Harold's wife, Shirley Thomas. Hanson confirmed in Court that she sewed the first *Aboriginal Flag* at Thomas's request shortly before it was first displayed in public at the National Aborigines Day Observance Committee (NADOC) march in July 1971. Hanson presented to the court offcuts from the rolls of fabrics she claimed to have used to create the original Aboriginal Flag. Hanson's production of these offcuts was the nearest the case came to identifying compelling hard evidence that Thomas was indeed the flag's creator, but even that was hardly irrefutable given that it would have been relatively easy to replicate such offcuts. Nevertheless, on 9 April 1997, based on the weight of circumstantial evidence, the court declared Thomas to be the author of the artistic work, namely the design known as the *Aboriginal Flag*, and declared that he was also the owner of the copyright subsisting in that work. The Federal Court decision enabled Thomas to make a new application to the Copyright Tribunal to 'determine the remuneration payable by the Federal Government in respect of its use of the flag' (Sheppard, 1997).

The *Harold Joseph Thomas v David George Brown & James Morrison Valley Tennant* hearing received national media attention, and as a result the case and its claimants represent a significant part of the *Aboriginal Flag*'s mythology in the fragmented memory and imagination of the Australian community (Dean, 1997, Towers, 1996b). The case reinforced negative stereotypes on both sides of the black/white divide. Rennie's claims that Brown, rather than Thomas, was the designer of the flag were reported as a sensational development, and contributed to the belief that has currency to this day that an alcoholic Aboriginal man designed the *Aboriginal Flag* (Dean, 1997). This myth plays into the tragically familiar archetype of a dispossessed, drunk, and frequently incarcerated, Aboriginal man who is visible on the streets of Australian towns and cities. Until I undertook research into the origins of the *Aboriginal Flag*, I believed that such a man had designed the *Aboriginal Flag*. Conversely, James Tennant's claim that he designed the flag reinforced the notion that white people seek to steal anything of value from Aboriginal Australians.

Thomas's decision to copyright, register and profit from the *Aboriginal Flag* remains controversial for some Aboriginal people. This was borne out in a panel discussion convened to inform this study on Koori Radio's national morning program, Blackchat, in 2017. The discussion was led by radio presenter Lola Forester, and the panellists were Nicole Watson, a lecturer in law at Sydney University; Maurice Ryan, an activist and grandson of Vincent Lingiari; and curator Djon Mundine. The panellists were chosen as broadly representative of Australia's Indigenous community, and as experts in their professional fields. Their expertise placed them in an informed position to discuss the *Aboriginal Flag*'s registration as an official flag of Australia, its copyright registration, ownership and royalties. The panellists had been forwarded a draft copy of this thesis chapter prior to the live discussion.

The panellists put forward a range of views. Ryan, the oldest of the panellists, is Thomas's contemporary. Whereas he is Gurindji, Thomas is Luritja /Wombai; both language groups come from the desert regions of the Northern Territory. Ryan started the discussion by congratulating Thomas for designing the flag. He went on to say that the flag gives 'pride to a lot of people of Aboriginal descent' and that he was proud 'to watch it ... when it's flown in Parliament House and everywhere'. He also said the 'Australian Government is illegal and fraudulent under our political laws of 60,000 years', and concluded that Thomas 'designed it, [so] why not take the credit and also royalties?' (Watson et al., 2017 pp. 7-8).

Watson expressed mixed feelings about the flag's contemporary status:

I am torn. I want to congratulate Mr Thomas for this incredible flag that he designed and the contributions that he has made. As any artist I think that he is entitled to make some remuneration for his work, but since he produced the flag for me it's difficult to isolate that piece of art from the activism that has gone with it. Generations of our people have marched with that flag, and for that reason I think that I have concerns that only one person gets to control its use. I think that all of us should have some say in how that flag is used, particularly when it is used by governments.

(Watson et al., 2017 p. 5)

Later in the panel discussion Watson returned to the issue of the Australian government's use of the *Aboriginal Flag*:

I have problems with parliaments flying our flag, and I think that they're largely empty gestures; they look like they're doing something for us when in fact they're not. I would feel far more comfortable if our flags were not flown by Australian parliaments until we have some treaty in place that recognises our right to self-determination.

(Watson et al., 2017 p. 7)

In Mundine's opinion it is a 'move forward' that the flag 'enters the game' as an official Australian flag (Watson et al., 2017 p. 9). However, he also stated, that while he was sympathetic to the opinion that Thomas as an artist should earn some remuneration from the flag, he also qualified that position:

Show me a black fella that doesn't have money problems. So I can understand he wants to get some payment for his efforts but I thought there would be some way to be magnanimous about that, that [the] money goes into [a] sort of trust fund or something for the benefit of a bigger thing ... if it is going to be national, for the Aboriginal nation, if there is such a thing, to represent all Aboriginal people, then it has to be bigger than one person saying I'm King Boom.

(Watson et al., 2017 p. 10)

Mundine further qualified his statement, arguing that flying the flag on a flag pole outside a council is 'different to actually having it on a letterhead or on a t-shirt that you then sell. That's what you pay the money for' (Watson et al., 2017 p. 12). In other words, commercial gain in commercial contexts is acceptable, but for Thomas to profit from the flag's use as a symbol that represents Aboriginal people in its relations of state with the Australian government and the world is not.

As a work of art, and as a flag that represents Indigenous Australians, the *Aboriginal Flag* sits in an awkward and lonely place. Copyright law is a construct of Western law, the values of which – as they relate to notions of ownership and property – differ from Indigenous community values. Many Aboriginal peoples do have strong notions of individual property and ownership, but ownership is linked to the requirement to share what one owns with those who have a right to ask

(Macdonald, 2000). In an article titled ‘Thoughts on assimilation’, which forms part of a critique of the adoption of neo-liberal values by Aboriginal Australians such as Noel Pearson, Foley argues that when Indigenous Australians go from thinking ‘What is ours!’ to ‘What is mine!’ a major shift has taken place in their ‘psyche’ (Foley, 2014). In Foley’s view, they have become assimilated into the neo-liberal values of Western society (Foley, 2014). To apply Foley’s judgement and critique to Thomas’s considerable profit from the *Aboriginal Flag* would seem – in the context of his life experience as a Stolen Generations person – to be harsh. Thomas, as stated in Chapter 1, was removed from his family at the age of six. It is important to acknowledge statements such as Foley’s as they are part of the internal discourse of contemporary Aboriginal communities, a discourse which is often judgemental. The history of the flag as it relates to its ownership and profit continues to be affected by the disruptive legacies of colonisation: in this instance, the cultural and social ruptures caused by the Stolen Generations and by the application of neo-liberal values to Indigenous life.

In most traditional Aboriginal language groups, as outlined in Chapter 1, Aboriginal artists are understood to be custodians and conduits of knowledge between the spirit world and the mundane world. The individual artist is not seen as the source of creativity, or as the owner of his or her art designs. Rather, the events of the Dreaming provide the great themes of Aboriginal art, the designs of which are perceived to be ‘forms of knowledge’ that are owned in common by those who have been initiated in Aboriginal law. Within the social, religious and political roles of traditional Aboriginal art, there is no language or purpose for art as a commodity that is traded for profit. Yet across the spectrum of contemporary Aboriginal visual art practitioners – as expressed by Ryan, Watson and Mundine – there is common acceptance that individuals and groups sell their Aboriginal art (but not their ritual designs) in Western art markets for profit. Aboriginal art within colonial contexts has undergone profound transformations. In earning an income from his art, Thomas is doing what the great majority of Aboriginal artists have done to survive and prosper in Western society. Thomas has stated: ‘I’m an artist. All my art, you know, is about finance, it’s my occupation.’ The complication in this case is that the flag is also the symbol of Aboriginal identity, and that, in this context, the *Aboriginal Flag*’s ownership by an individual, as stated by Watson and Mundine, is contested.

Copyright registration of the *Aboriginal Flag* represented a significant rupture in its relations and meanings. As a result of the court case, the *Aboriginal Flag*

became possibly the only flag in the world that represents a people but which is owned by an individual. In turn, the ideal, strongly held by some Aboriginal people (for example, Anderson and Watson), that Indigenous Australians should control the flag was effectively annulled in Australian law. Through its proclamation the Australian government commandeered significant control of the flag's display and its meanings. The flag that once symbolised all causes Aboriginal – black pride, land rights, black unity and calls of sovereignty – also became the flag of copyright ownership disputes and the flag of state appropriation and symbolic colonisation.

The proclamation of the *Aboriginal Flag* was not the result of a long-term conspiratorial effort on behalf of the Australian government. Rather the proclamation represents a significant event in the historical meanderings of the flag, one that no person or group controlled. Without the Tent Embassy, the flag might never have attained currency. And without Freeman's flag activism at the Commonwealth games, it is unlikely that the Keating government would have sought to register the *Aboriginal Flag* in 1995. It is hard to imagine circumstances in which John Howard – who came to office the year after the flag's proclamation – would have proclaimed the *Aboriginal Flag* as an official flag of Australia. The decision to proclaim the flag, but not seek to register the designer, or assert any controls on its use on behalf of Aboriginal Australians by either the Council for Aboriginal Reconciliation or ATSIC, was in hindsight a very poor one. Were it not for Thomas's legal action, which he pursued at considerable personal effort, the *Aboriginal Flag* would be an official flag of Australia, with no Aboriginal organisation or individual having jurisdiction over its use or meanings; this would have been a disastrous outcome for Indigenous Australians. That has been the fate of the Torres Straits Islands flag, which has fallen into Australian government hands.

The Torres Strait Islander flag⁴ was designed in 1992 by Bernard Namok, a Torres Straits Island person (Figure 1.6).⁵ Unlike the *Aboriginal Flag*, it has never been formally registered under the *Copyright Act 1968*. No income has been generated by its licence or reproduction. Upon Namok's death in 1993 (he was 31

⁴ The Aboriginal and Torres Strait Islander Commission recognised the Torres Strait Islander flag in 1992 and gave it equal prominence with the *Aboriginal Flag*. It was also recognised alongside the *Aboriginal Flag* by the Australian government as an official 'Flag of Australia' under the *Flags Act 1953*.

⁵ Namok's design was the winning entry to the Cultural Revival Workshop initiated by the Torres Strait Islands' Coordinating Council in 1992.

years old), his family gave the flag to the Torres Strait Islander Regional Council. The council proudly states ‘We and our 15 communities own the copyright of the Torres Strait Islander Flag’ (Council, 2017). The Torres Strait Islander Regional Council mayor and councillors are principally Torres Strait Islander people. They manage lands transferred under Queensland *Torres Strait Islander Land Act 1991*.⁶ The council, however, remains a local government body. As such, it is an Australian government agency staffed by Australian public servants. Effectively, when Namok’s family gave their copyright rights to the Torres Islander flag to the council, they ceded ultimate control of the flag to the Australian government.⁷

Copyright registration of the *Aboriginal Flag* greatly enhanced Thomas’s personal power base. It has earned him income and lifted his status: once a relatively unknown artist/activist he has become a significant Aboriginal cultural figure and spokesperson on issues such as the Stolen Generations. In this sense, his legal initiative is an expression of Black Power, as he himself has affirmed: ‘Well, this artist is an educated man, a proud black man, a proud urban black man, and no one walks over me regarding something I created’ (Thomas, 2015 p. 7). The tension in this situation lies in his relationship with the people the flag represents: Aboriginal Australians. In the decade since Thomas asserted copyright ownership of the flag in 1996, his position on the public display of the flag in parliaments and other public spaces changed: it is no longer ‘objectionable’ but rather something to be ‘proud’ of. When Aboriginal protesters from the Tasmanian Aboriginal Centre tried to assert their ownership of the flag and demanded that it be taken down from the Tasmanian parliament in 2009 ‘because it had been hung without their permission’, Thomas contradicted the protesters’ stance (Brown, 2009). He was quoted in the Hobart *Mercury* newspaper stating that ‘permission did not have to be sought for the hanging of the flag under Commonwealth law’ (Brown, 2009). The article goes on to quote Thomas:

This is not a flag of demonstration, it is a flag that all people should be proud of. I think the Tasmanian Aboriginal Centre should be proud it is being displayed

⁶ The Queensland government retains ownership of the minerals and petroleum on all land in Queensland. It also retains certain rights in regard to forest products and quarry materials on some land transferred under the *Aboriginal Land Act 1991* and *Torres Strait Islander Land Act 1991*.

⁷ The council website states that permission to fly the Torres Strait Islander flag is not required, however permission to reproduce the Torres Strait Islander Flag requires council’s written consent (Council, 2017).

and respect is being shown to the Indigenous owners of the land, and that respect is coming from the top, the politicians of the state.

(Brown, 2009)

In this statement, Thomas is making it clear that it is he, and not Aboriginal people more broadly, who has authority over the *Aboriginal Flag*'s use and meanings.

Ownership

The operations of power can be well camouflaged, especially when they remain uncontested. Power is 'not a naked fact, an institutional right, nor is it a structure which holds out or is smashed' (Foucault, 1982 p. 792). Rather 'it is elaborated, transformed, organized: it endows itself with processes which are more or less adjusted to the situation' (Foucault, 1982 p. 792). In this Foucauldian reading the 'technique' and the 'form' of power and how 'certain actions [of power] modify others' is emphasised (Foucault, 1982 p. 788). When Thomas came to assert ownership over the *Aboriginal Flag* in 1996–97, he elected to use Western copyright laws to do so. Copyright registration of the flag is the principal 'form' and 'technique' through which Thomas has come to assert his authority and rights over the flag in his relations with both other Indigenous Australians and the Australian government. Thomas engages the services of lawyers who assert his royalty rights when needed (Thomas, 2009 p. 15). That said, the ultimate power dynamic between Howard Thomas and the Australian government is harder to determine, in part because it remains in large part uncontested beyond the flag's copyright registration.

Since 1997, Thomas has principally used his copyright powers to collect copyright revenue for the flag's reproduction, sale and use by businesses. The *Aboriginal Flag* has come to represent a small 'business' with many groups and individuals involved in its reproduction and profit. A standard *Aboriginal Flag* (900 x 1800 mm knitted polyester fabric) from Flagworld, the company with exclusive reproduction rights of the *Aboriginal Flag*, costs AUD \$99. Flagworld sells the *Australian Flag* and the Torres Islander flags (made to the same specifications) for AUD \$90 (2016 prices). The designers of the Australian and Torres Islander flags do not receive royalty payments. The discrepancy in sales prices relates to the *Aboriginal*

Flag's royalties. In principle, but not always in practice, commercial entities do not have permission to reproduce the flag as a flag, as a company logo or a symbol on a t-shirt without paying Thomas royalty fees. The *Koori Mail*, for example, pays Thomas for its use of the flag in its title banner. The not-for-profit, government-owned Aboriginal Hostels refuses to pay Thomas copyright fees for its use of the *Aboriginal Flag* in its logo. In his relations with Indigenous Australians, as revealed by the Tasmanian Aboriginal Centre's failed attempt to assert a measure of control over the *Aboriginal Flag's* display in the Tasmania parliament in 2009, Thomas has come to use his copyright registration to assert his authority over the flag use as a public symbol.

The tension that envelops the flag's use and royalty income could be partly abated by uncoupling these two entities, as suggested by Mundine. In this scenario Thomas would continue to earn royalty fees from the commercial sale and use of the flag, while handing over control of its use, and its meanings, to a peak Aboriginal body to be formed in the future. Eventually, when a treaty is signed between the Australian government and Indigenous Australians, an entity will have to be formed that represents Aboriginal and Torres Strait Island people. In this scenario, Aboriginal Australians would effectively control the flag's meaning and use. Concurrently, Thomas and his family could continue to earn royalty fees for its commercial reproduction, just as other Aboriginal artists earn income from their art and its reproduction.

Within the current *détente* determined by proclamation and copyright registration, the *Aboriginal Flag* finds itself in myriad contexts and situations within which its status and readings fluctuate greatly. As a personal emblem, the flag remains seemingly uncompromised by ownership ambiguities relating to its proclamation and copyright registration. Aboriginal people across Australia, perhaps ignorant of the flag's legal status, continue to adorn their bodies, clothes, homes, cars and anything else they can with the *Aboriginal Flag*, as a significant expression of cultural pride and self-identification.

In Wellington, New South Wales, as outlined in Chapter 7, the *Aboriginal Flag* appears to be accepted by the whole community and to serve both Aboriginal and non-Aboriginal agendas. It is a reminder that the region's first peoples are Wiradjuri, that all the land once belonged to them and that they have pride in their heritage and

culture. In the minds of those who desecrate the carved and scar trees, however, the flag appears not to be a powerful enough symbol to warrant attention.

In the remote community of Daguragu, during the highly controversial 2007 Northern Territory Emergency Response (which came to be known as The Intervention), activists used the *Aboriginal Flag* as a symbol of defiance against the government's unilateral actions. Brenda Croft in her essay 'Revolutionize me (and you, and you, and you)', documents how her nephew John Leemans painted over a much-maligned 'NO LIQUOR, NO PORNOGRAPHY' government Intervention sign with the *Aboriginal Flag*. The sign, which was erected on the outskirts of their community, was interpreted to imply that all local Aborigines were 'possible/probable alcoholics, sexual predators and abusers' (Croft, 2012)⁸. For Croft, the flag's use in this way as 'cultural activism' reinforced its status as the 'most successful piece of public art ever created in Australia' (Croft, 2012). As powerful as Leemans's act was to Croft, and very possibly to many members of the local Indigenous community, this act did not transcend its remote context.

In the small town of Balranald located in the south-western border of New South Wales, a quiet but significant confrontation recently played itself out between local councillors and some of the community's Aboriginal elders. Between 2010 and 2011, octogenarian Besley Murray led a hard-fought, and ultimately successful campaign that petitioned the local council to fly the *Aboriginal Flag* permanently in front of council chambers (Holmes, 2017 see Appendix). In Campbelltown in 2016, one of outer Sydney's principal metropolitan regions, the council voted not to permanently display the *Aboriginal Flag*. Aboriginal Elder Lowitja O'Donoghue was reported to be 'gobsmacked and surprised' by the decision, adding 'I didn't think it was a question anymore, anywhere, because the flag does fly everyday in most council areas' (Abbracciavento, 2016). These two case studies affirm that well into the twenty-first century resistance to the display of the *Aboriginal Flag* in the public domain finds its expression in both remote and suburban contexts.

Across Australia the contemporary *Aboriginal Flag* is now also flown alongside the Australian flag in front of prisons. In this context, the flag of black pride, land rights and Aboriginal sovereignty is perversely juxtaposed with a legal system that

⁸ I was unable to view the published article, Revolutionize me (and you, and you, and you) published in the exhibition catalogue *Decolonize me*. Croft kindly forwarded me her draft copy of the essay. Hence the absence of a page number in the citation.

has the highest rates of indigenous incarceration anywhere in the world. The flag's meanings in this context are so entirely contradictory that they are reminiscent of Orwellian 'doublethink' slogans made famous in the novel *Nineteen Eighty-Four*: 'War is Peace', 'Freedom is Slavery', 'Ignorance is Strength'. Ostensibly flown as a symbol of respect for Aboriginal inmates and their families, the Aboriginal Flag in this context can also be read as a symbol of state violence and subjugation of Aboriginal people. Since the Royal Commission into Aboriginal Deaths in Custody (1987–91) Indigenous rates of incarceration have doubled across Australia from 14 to 28 per cent of the total prison population (Haughton, 2016). These men are predominately powerful young men in the prime of life. In front of prisons the flag ultimately communicates a colonial message: here Indigenous warriors are subjugated. As Orwellian prison propaganda, the *Aboriginal Flag* perversely suggests to the inmates and their families: 'Pride is Subjugation', 'Land Rights is Jail', 'Sovereignty is Incarceration'. That Aboriginal people are not outraged by the use of the *Aboriginal Flag* as tool of prison propaganda is a measure of how thoroughly demoralised one significant section of the Aboriginal community – those institutionalised within the prison system – has become.

In Canberra, within the Parliamentary Triangle of the modern federated Australian state, three flags that feature across Australian government buildings are on what appears to be permanent display in front of the High Court of Australia (Figure 8.3). Viewed objectively, as a foreign diplomat or tourist might regard the situation, the *Aboriginal Flag*, the Torres Strait Islander and the Australian flag (with its British ensign) could easily be mistaken to signify that Australia is a nation governed by the laws of three peoples, or that Aboriginal and Torres Islander people enjoy self-government and autonomy. Instead these flags represent a complex charade. The High Court of Australia, according to its Marshal, has only one flag, the Australian flag. It is displayed on top of the building, but it is not visible from the street front. The land upon which the flags are displayed falls under the jurisdiction of the National Capital Authority (NCA). On 7 March 2016, I wrote to the NCA asking them the following questions: 1) Why is the *Aboriginal Flag* displayed in front of the High Court? 2) Which tier of government, institution or individual made the decision to fly the *Aboriginal Flag* in front of the High Court? 3) Does the displaying of the *Aboriginal Flag* in front of the High Court have any legal or constitutional significance in Australian law? To which National Capital Authority's Freedom of Information

Coordinator Kylie Taylor responded, ‘After a thorough search of the NCA’s files and records management database, I have been unable to identify any documents containing the information you are seeking.’ Ms Taylor suggested I direct my enquiries to the Commonwealth Flag Officer, Honours, Symbols and Legal Policy Branch, Government Division, Department of the Prime Minister and Cabinet. By this time, I had already been in correspondence with the Honours, Symbols and Legal Policy Branch of government for over two years. When I contacted them once again they repeated their previously stated position:

As you have been advised the Australian Aboriginal Flag and the Torres Strait Islander Flag are official flags of Australia that were proclaimed under section 5 of the Flags Act 1953. In respect to flag protocol, this implies it has a special position in the order of precedence and there are specific days in the year where the display of the Australian Aboriginal Flag is encouraged by this Department such as Reconciliation Week and NAIDOC week.

While the Department of the Prime Minister and Cabinet issues advice to Australian government organisations on the special days for flying the Indigenous Flags, the flags may be flown at any time at the discretion of the organisation.

(Parry, 2016 see Appendix)

The above statement appears to represent the entirety of the Honours, Symbols and Legal Policy Branch’s policy on the display of the *Aboriginal Flag*. From this statement, we can deduce that the act of flying the *Aboriginal Flag* has no legal or constitutional standing in Australian law. The decision to display the *Aboriginal Flag* on Australian government-controlled land has no specific authority and can be undertaken without due process, consultation or consideration of its symbolic meaning or significance. These vague arrangements have come to serve the Australian government well. They afford maximum use and exposure of the *Aboriginal Flag* as propaganda – by all tiers of Australian government – while remaining free of responsibility for its meanings and use by governments or their departments. Whereas this arrangement could be perceived to be the result of a cunning plan, it is more likely that the Australian government has simply never given sustained long-term

consideration to the ramifications of the flag's proclamation. By chance, the flag's vague status as a national flag has worked well for the government, and it has not needed to detail or clarify its policy relating to the flag's use as a national symbol.



Figure 8.3: Matthieu Gallois. *Aboriginal Flag* in front of the High Court of Australia, Canberra. 2017.

In the contemporary examples cited above, the *Aboriginal Flag*'s meanings and significance have been shown to vary depending on its contexts. In all these instances, however, the flag has not transcended its immediate political contexts. Neither in Croft's remote community nor in front of the high court has the display of the flag commanded the nation's attention as it did at the Tent Embassy in 1972, in Shoalhaven Shire in 1982 or in Cathy Freeman's hands in 1994. In part, the flag's loss of resolution and of its power to matter can be attributed to its proclamation by the Keating Labor government, an act that has confused and exhausted its original semiotic resolution and purpose. The government has earned cheap symbolic mileage from the use of the *Aboriginal Flag* since 1995, and, in turn, it has dramatically raised the flag's visibility and profile. Through this process the Australian government has also unwittingly placed itself in a vulnerable position.

It is illustrative to compare and contrast the Tent Embassy and the *Aboriginal Flag* in terms of their histories and meanings as activist symbols. The Tent Embassy

continues to articulate to the world the unresolved rupture and wound at the centre of Australian race relations, Indigenous land dispossession and loss of sovereignty. As an idea, the Tent Embassy remains owned and run by Aboriginal Australians. In its politics, social structure and informal camp aesthetics, the Tent Embassy champions Aboriginality. Conversely, the *Aboriginal Flag*, when flown by the Australian government, represents the progressive ideals of reconciled relations rather than the reality. The nation that boos Indigenous footballer Adam Goodes flies the *Aboriginal Flag*. The nation that denies Indigenous Australians constitutional representation flies the *Aboriginal Flag*. The nation that denies Indigenous Australians a treaty flies the *Aboriginal Flag*.

For the past 30 years, while Harold Thomas focused his energies on his landscape painting in Humpty-Doo, just outside Darwin, the twists and turns of history have fated him with great responsibilities and power. Prior to its proclamation and registration, the flag adorned Aboriginal people, places and institutions. Its status is now omnipresent across the shared Australian public domain. As a result of his decision to assert individual control over the flag through copyright registration, Thomas alone stands before the Australian government as gatekeeper to *Aboriginal Flag* use and meanings. By choice, chance and coincidence, Thomas has the power to lower and raise, or suspend, that symbol at half-mast, or in whatever ways he sees fit. If Thomas were to put his paint brushes aside, and think once again like an activist, he could stipulate that every single *Aboriginal Flag* on government buildings be flown at half-mast on Australia day (or every day) to memorialise over 200 years of brutal colonisation. He could withdraw the flag's use altogether from all Australian government buildings and public spaces until Australia's first nations people have constitutional representation, a treaty and meaningful land rights. Koori Radio presenter and host Lola Forest put a version of this question directly to Thomas in 2015:

Harold, you being the owner of the copyright of the flag, I'll put this question to you: the *Aboriginal Flag*, could you think of deregistering the flag as the official flag until, say, first nations people of Australia have constitutional representation or a treaty out there?

In response, Thomas answered:

I think that's an interesting point. The first time I've heard of that. I would like to think about it. Deregistering? I don't know ... If I was – I was 24 at the time when I made the flag, I'd probably say yes, I wouldn't think twice about it. But it's working, I think, but I know what you are saying it's about symbolism, it's about getting it right. I mean, to respect the *Aboriginal Flag* by whites first by the government but not respecting the issues of treaty and stuff like that correctly and right, I understand that position, I understand it fully. I really don't know. I don't know what the answer to that is at this point. I would have to think more about it. I know there are more pending issues, more concerning issues, regarding treaties and the way we are being still treated. We still live in a very racist country. My children will experience racism, I know for a fact, and their children will also experience racism, whether on the footy oval or off the footy oval, it's a fact of life.

(Thomas, 2015 p. 8)

In his response, Thomas acknowledges and expresses the contradictions in the flag's status. He states that the flag's current status 'is working', but he does not address the question of 'for whom': Harold Thomas, the Australian government, Indigenous Australians? By his own admission, 'We still live in a very racist country.'

The space the *Aboriginal Flag* inhabits is analogous to the unregulated legal space that Michael Anderson, Billy Craigie, Bertie Williams and Tony Coorey discovered on the lawns in front of the Australian parliament on 27 January 1972; with the significant caveat that that space crowns the great majority of public space and building across Australia. It is a space created and determined by the Australian governments and by Western copyright laws. It is a space that offers the Aboriginal activist much opportunity. With a single letter to the Australian government, Thomas could reclaim the stolen flag, radicalise its meaning and quite possibly recalibrate the power dynamics of Australian race relations.

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