

Burning Effigies: Treason and sedition in visual culture

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Abstract

The laws of sedition and treason, newly ‘reinvigorated’ for the modern Australian context by the Anti-terrorism Act (No2) 2005 (the Act), are decidedly pre-modern. This paper looks at the terms of these provisions in regard to their ideological use; terms such as sovereign, government or constitution are used as rallying points for ideology and become markers against which to define the Other, the terrorist. In a modern society where power is shared by and through society the pre-modern notion of an individual representing the authority of the law is surprisingly anachronistic.

This paper looks at another pre-modern anachronism still prevalent in our society, the effigy. The effigy becomes a physical manifestation of the sublime object of ideology. Looking at Zizek and Althusser’s notions of the object of ideology, the effigy is used as a starting point to discuss how the terms Sovereign, Government, Constitution are received in society. The effigy represents a visual system that is irreducible to ‘language’ and seems to ‘embody’ these terms in a more direct way than words in the Act.

The effigy, through the work of Kantorowicz, Freedberg and Agamben, is shown to be historically and juridically linked to the Sovereign and outlaw nexus. If the Government legislators feel that treason and sedition laws are an important way in which to reinvokethe nation’s signifiers, then they should probably look more seriously at effigies; the two systems of enunciation of the sovereign have so much in common that not to control the effigy may put the symbolic system of treason and sedition at risk. Burning an effigy is not an action of merely ‘political communication’ but is the actual killing of the sovereign’s symbolic body and it is this symbolic body, not the natural body, to which treason and sedition refers.

1.1 Introduction

The Australian Federal Government through the *Anti-Terrorism Act (No 2) 2005* (the Act), has recently added sedition to the *Criminal Code* (Cth). In an effort to combat the threat of terrorism this Act criminalises certain acts and augments the powers of law enforcement. Other state and international ‘anti-terror’ legislation, have eroded many fundamental freedoms, associated with a democratic state, in the name of security (Donohue 2005). Legal commentators have focused much of their work on the amorphous and confusing terms surrounding this legislation where crimes are defined through ideology and intention rather than strict criminal behaviour (McCulloch 2003, p. 288). A binary semiotics of terror/anti-terror, patriot/terrorist,

outlaw/sovereign operates within this legislation with each term helping to define the other; what is apparent is that both terms are ideological markers and do not describe a concrete object of the law. In fact these terms are defined by their extra legal position. Carl Schmitt, using the binary of friend/enemy, suggests that in order to define or recognise the enemy one first had to create it through imagination (1996). W.T.J Mitchell particularly has looked at the process of 'enemy creation' within the field of law and visual culture (Mitchell 2005). A corollary of the imaging of the Other is the fortressing of the images of the majority, the nation or the sovereign as the Other's opposite.

For a long time we have believed that any discussion of politics and law must start only at the King's beheading (Foucault 1977, p. 121). However at the instigation of anti-terror laws it is not surprising that sedition laws come so close behind (Donohue 2005). Recent scholarship has revitalised the discussion of the place of the sovereign and sovereignty in politics and law (see generally Zizek 1989, Zizek 1999, Agamben 1998). These philosophers have noted the transgressive nature, of the sovereign. As Derrida and Agamben have noted the sovereign is at once of the law but at the same time external to it; it is a position the sovereign shares with the outlaw/terrorist (see generally Agamben 2005, Derrida 1992b). Further the sovereign is a term that is invisible, magical, fictitious, unassailable and unsayable. Zizek in particular has, through the work of Althusser, looked at how this ideological apparatus, here the sovereign, is communicated and used in the social (Zizek 1999). Mitchell has eloquently called for a 'secular divination' of these contemporary icons of 'the war on terror' (Mitchell 2005, p. 925).

1.2 The Anti-terror Act, the Sovereign and the Symbolic

This paper looks at the implications of s80 of the *Criminal Code* to our society using our reception of visual culture as a tool visual culture. Treason and sedition are crimes against the sovereign or sovereignty. Perhaps no country has a more confused approach to their source of sovereignty than Australia (see Galligan 1995). This dual approach to sovereignty, the simultaneous acceptance of both monarchical sovereignty and popular sovereignty, is apparent in the drafting of the new sedition laws. Sedition was added, in an effort to "modernise" the laws of treason, it was as if sedition became the Derridean supplement to the perceived lack in the crime of treason. The history of Commonwealth approaches to these two laws becomes a yardstick for our understanding of key terms such as the sovereign.

Historically the Commonwealth laws of treason and sedition have always been connected. Using the exceptional circumstances of the First World War the Commonwealth legislated for certain crimes through the *Crimes Act 1914*, s24 described the crime of treason. Under the similarly exceptional *War Precautions Act 1914*, sedition became a Commonwealth offence (Regulation 27A was inserted into the War Precautions Regulations 1915 through Statutory Rule no. 86, 1918). After the repeal of this Act (and its regulations) it was decided to keep sedition as a Commonwealth offence; the *War Precautions Act Repeal Act 1920*, inserted after treason, sections 24A-24E into the *Crimes Act 1914*. 24A(2) included provisions for exceptions based on acting in 'good faith' as seen in the new provisions.

Before proceeding to the new sedition provisions it is worth noting two more revisions to our concept of treason in the interim period. In 1986 following the *Royal*

Hope Commission treason was amended so as not to apply to the king as head of the Empire, but merely as the Australian head of state. Second, as recently as 2002, the prime minister was added as a subject of treason. This strange conflation of a pre-modern king and its democratic counterpoint s80.1(1) in effect equate the (monarchical) sovereign and the prime minister (as a representation of popular sovereignty), as the symbolic markers of sovereignty. These important and recent shifts have gone largely overlooked. In addition the manner in which the ‘modernisation’ has occurred with Section 80 now changed to read “Treason and Sedition” tends to highlight their similarity and shared history, through the notion of sovereignty, and violence against the sovereign.

1.3 *The Body Politic*

The imaging and symbolic representation of the sovereign as a primary manifestation of the power of the sovereign has a long history. Treason is understood as distinguishable from the crimes of murder and even regicide; treason is a symbolic crime against a “symbolic body” or “second body” of the king. Kantorowicz quotes Sir Edward Coke in *Calvin’s Case* (1608) and suggests:

Moreover, treason, that is, “to intend or compass *mortem et destructionem domini Regis*, must needs be understood of his [the king’s] natural body, for his body politic is immortal and not subject to death.”

Those arguments certainly reflect sound reasoning, although an attack against the king’s natural person was at the same time, an attack against the body corporate of the realm. (1957, p. 15)

Further Kantorowicz explains that in 1649, in relation to King Charles, the crime of treason was committed ‘by the king against the King’ (Kantorowicz’s emphasis) (1957, p. 39). Treason is an attack on the symbolic body, the second body *through* the body of sovereign’s natural body (see also Agamben 1998, p. 102) Like blasphemous libel, which is connected to treason through notion of divine right, there need not be an *actus reus*. It is in these two laws that theology and criminology meet uneasily especially for a modern jurisprudence. First codified in England by the 1351 Statute of Treasons (25 Edward III, St 5, c 2) during the reign of Edward III, treason has as a central aspect the *imagining or compassing* the death of the King. (It is still on this Act that the New South Wales treason offence in the *Crimes Act 1900 (NSW)* relies). In 1534 Henry VIII passed legislation which made it possible to commit treason by words or writing (Act of Treasons Henry VIII c 13) further clarifying the ways in which such an “imagining” could be manifest.

Similarly if we look to the objects of s80.2 of the Act, at ss80.2(1)-(2), they are the constitution ss80.2(1)(a), government (b) and the ‘lawful authority of Government’ (c). It is impossible to “overthrow” these concepts because they are being used primarily as ideological monikers. First, the term ‘lawful authority of Government’ seems to be merely a ‘modernised’ form of the concept of sovereignty (following Bentham, Hobbes et. al). This ‘mystical authority’ as Derrida suggests is extra legal and can be defined as the originary violence behind the law that is directly linked to the power of the sovereign (see Derrida 1992a; Agamben 2005). “Constitution” and “Government” seem also here to refer to a notion of democratic sovereignty. Mark Neocleous has recently made a thorough study of the resurgence of

the body politic as a concept in contemporary political thought (Neocleous 2005). The way in which the Act has been drafted seems to assume the analogous nature of these symbols of sovereignty.

1.4 The Symbolic and the Master Signifier

Following Althusser, Zizek in *The Sublime Object of Ideology* suggests ideologies work to identify individuals with rallying political terms, which Zizek terms “master signifiers” (1989). It is a term similar to Deleuze and Guattari’s *mot d’ordre*, or order word. Zizek argues that the inability of subjects to explain the nature of what they believe in politically does not indicate any problem; on the contrary this inability only proves that the sublime object is transcendent of the everyday and sacred. As a term merely defined by ideology the sovereign creates the same problem for legislative drafting as the terrorist; it does not describe behaviour or an act but merely an amorphous ideological system.

In this way, it seems the law’s primary purpose is to underscore and to legitimate the primary master signifiers in order to help define its opposite. The new Act in Australia becomes just another process of identification and sets out to again prosaically enunciate certain signifiers that the legislators feel are important. The amorphous nature of these terms is no bar to their effectiveness. As Zizek writes in *The Indivisible Remainder*, political identification is identification through a process of believing, ‘identifying with the nation we signal our acceptance of what others accept, with a master signifier which serves as the rallying point for all the others’ (Zizek 1996, p. 142).

2.1 The Invisible/Visible Object of Treason

In an attempt to illuminate these concepts this paper will focus on the visual representations of the master signifier. The visual arts has been concerned by the recent changes to the laws of sedition in this country; the furore prompted discussion papers from various arts bodies and the preparation of exhibitions in protest.¹ There is a fear that artworks that use certain images linked to the sovereign, government, or constitution will be connected to s80 of the Act. What the artists have intuitively seen is that the visual representations of the master signifiers are important ideologically. Like religious icons the images of power, flags, coats of arms and effigies, become a mediating form between the (abstract) word and a citizen’s apperception of power. It is this power of images to make sensorious what is abstract and conceptual that has led in the past to religion’s great mistrust of images.

Post-modernism is used to seeing power as invisible. Foucault in his paradigm of the *Panopticon* does not see and argues against such a centralised “second body” of the sovereign. What Foucault sees instead is power ‘dispersed through the capillaries of the social body’ (1977, p. 26). Bentham’s *Panopticon* shows some similarity to Roman Orthodox Churches designed and studied by his brother Samuel (Werret 1998). In these churches even the preacher is hidden from view to highlight the invisibility of the sublime object of God. What is presented to the viewer, however, is

¹ see Submission by the National Association of Visual Arts to the Australian Senate Legal and Constitutional Committee Department of the Senate Inquiry into the Anti-Terrorism (No 2) Bill 2005, 11 November 2005; many exhibitions were mounted but notable examples were *Artists Against Seditious Laws*, Casula Powerhouse, 12-17 December 2005 and the pvi collective’s *Terror Bus Tour* which went to sites of interest’ in Perth, Melbourne, Sydney and Adelaide, 2003-2005

the icon; similarly the panopticon still imaged the sovereign on the crest on the tower. Foucault saw the importance of the tower as a source of a visible yet unverifiable power, 'the inmate will constantly have before his eyes the tall outline of the central tower from which he is spied from' (Foucault 1977, p. 202). Bagehot in 1867 too saw the importance of keeping the trappings of monarchy in his notion of the disguised republic. For Bagehot the monarch's real power had ceased in the modern era and was kept merely as a symbolic signifier:

A republic has only difficult ideas in government; a constitutional monarch has an easy idea too; it has a comprehensible element for the vacant many, as well as complex laws and notions for the inquiring few... To state the matter shortly, royalty is a government in which the attention of the nation is concentrated on one person doing interesting actions. A Republic is a government in which the attention is divided between many, who are all doing uninteresting actions. (Bagehot 1963, pp. 85, 86)

Art and spectacle become a very powerful way to 'embody' the symbolic second body of the king. The term effigy has not been adequately looked at by jurisprudential or art historical discourses. The artwork, sculpture or painting in addition to its ideological position becomes a physical representation of the unrepresentable, a secular icon. It is a strange object, that exists somewhere between art and legal history, and is responded to not only as a semiotic system but also as an object or 'body'. Although not in the scope of this essay it is no wonder that certain artists during the twentieth century used the effigy's potential to reinvigorate the sublime and magical qualities of ritualised art in opposition to the scientific and secular modern world.

As W J T Mitchell suggests:

Vision is as important as language in mediating social relations, and it is not reducible to language, to the "sign," or to discourse. Pictures want equal rights with language, not to be turned into language" (1997, p. 213).

It is in this gap between the meaning of words and the perception of the effigy that represents these words, that is the area of this paper. To understand the import of the new Act and its sedition provisions, in relation to visual culture, a better understanding of how effigies represent the sovereign and sovereignty in Australia is necessary. As a supplement to the discussions regarding language such a study is invaluable not least because the treason laws seem built upon a notion of the 'symbolic second body' of the king rather than individuals. The words do not differentiate between the "natural" person or persons who are the sovereign, prime minister, or government and the temporally continuous, symbolic notions these words represent. Visually, an effigy becomes the *legally inscribed* object of ideology and, by definition then, the effigy *always* represents only the second symbolic body.

2.2 Sovereignty and the Effigy

There is not enough space in this paper to fully explore the term 'effigy'. Perhaps one would begin with Didi-Huberman's short but important essay that shows the classical distinction between the *imago* and the form we would consider portraiture (1999). In ancient Rome only certain classes were allowed to have their ancestors imaged. These sculptures, or effigies, were seen to embody the person represented and were used in

funeral rites of family members. Only in late classicism with the rise of the merchant class did sculpture as separate from familial ties come into existence. The central text, however, is Kantorowicz's *The King's Two Bodies* that describes the use of effigies, particularly on coins, medallions and in funeral rights as connected to the 'second body' of the king (1957). Kantorowicz makes a distinction between the 'body natural' of the king and the 'body politic' of the king that is the symbolically charged representation of the sovereign embodying the continuity of the legal and political system. For Louis Marin, in his discussion of Louis XIV, he saw that the king, or the second body, borrowing on the Christian tradition of the eucharist saw this symbolic body, in representation, as a sacred presence of the royal image. Marin called this the visual production of the 'king-effect' (1988). It is in David Freedberg's *The Power of Images* that he describes the strange response to this particular form of art. Linking the effigy of the king to other forms such as the votive and the voodoo doll, Freedberg highlights the magical qualities seen as embodied by the effigy (1989). There has been little work done on the effigy in relation to contemporary sculpture. Freedberg limits much of his discussion to pre-modern use, especially in Renaissance Europe. He does hint that this response can be extended into the contemporary world in relation to modern effigies (Charles de Gaulle, and a burning photograph of President Marcos in 1986)(1989, p. 413).

Perhaps the use of the term effigy is most associated with this form of iconoclasm in protest or riot. This usage has also a legal rather than an artistic history. As Freedberg notes it was quite common in Europe during the Middle Ages and the Renaissance to execute an outlaw *in effigio*, if and when the *corpus* of the criminal was not available, that is when he was not in custody; this act would then confirm the criminal's status as outlaw in that in the eyes of the law the execution had already taken place (1989, pp. 246-282). This legal term has been passed down to us in English strangely unchanged and complete with its original preposition seen for example in the phrase, 'John Howard was burnt *in effigy*.'

The effigy then seems to be used in rituals relating to the *homo sacer*, as discussed by Agamben, which is the outlaw or sovereign, who both share a position outside of the law (Agamben 1998, pp.91-103; for use in carnival see Agamben 2005, pp.65-73). Like the state of exception the *homo sacer* seems to define a strange relationship between law and anomy. It is in these liminal states of carnival or anomy that we most commonly see effigies, whether at funerals of kings (during an interregnum) or on Guy Fawkes Day.

Finally the form of the effigy does not work under the same formal constraints as other art works or sculpture. Some effigies are finely wrought, some directly from the death mask and others are merely scarecrow like creatures. Often the representation is so poor that the attached name written on a sign is the mode of nominal enunciation. In periods of Revolution in various countries the hung or burnt effigy has been the painting raided from the lord's castle, which was hung on a scaffold including its gilt frame.

What is intriguing is that this mystical and juridical history of the effigy seems to have been passed down in popular culture. Although perhaps no longer part of the juridical process any harm meted against the effigy deals 'with the feeling, unexpressed though it may be, that by damaging the representation one damages the

person who it represents. At the very least, something of the disgrace of mutilation or destruction is felt to pass on to the person represented,' (Freedberg 1989, p. 413). The case law suggests that in Australia there is no accounting for this particularity in apprehending the effigy and that it has been merely seen as a political communication like any other.

2.3 Freedom of Speech

It seems that the artists are very aware of the use of representation in this way and perhaps understand the legal history of this imagery better than contemporary jurisprudential studies (see introduction to Douzinas and Nead 1999). Recent cases, and the Government response to criticism of the new provisions of the Act, seem to suggest that visual work on such political themes, even in an iconoclastic guise, would be covered by the implied freedom of political expression.²

In *Levy v Victoria*³ the High Court considered the extent to which the implied constitutional freedom of political communication protects conduct. The notion of the protest was discussed and effigies were directly mentioned. Chief Justice Brennan suggested that there were limits but that burning an effigy in political conduct would not be such a limit. The limits would only apply to such things as safety (from fire) or other laws such as property theft or destruction. The court did not distinguish between freedom of speech, the speech act, and the iconoclastic act. Burning an effigy was characterised as a communication within the political debate (at 595).

But this is to misunderstand the capability of the effigy to actually embody the person that it represents. When the court bowed to the Queen's coat of arms at the trial of *Levy v Victoria* they were bowing to the presence of the Queen in the court. The court here on one level maintained a positive ideological practice involving an effigy while suggesting that burning an effigy was reducible to a 'communication' of political language. As suggested above by Mitchell the visual representation, and its objecthood, cannot be reduced to the 'sign'. From the Australian examples below it is intriguing to see how wide spread the apprehension of the symbolic body as represented by the effigy is within contemporary culture.

3.1 Australia and a Confused Sovereignty

Australia has, as much of the debate surrounding the republic showed, a bifurcated approach to sovereignty. Perhaps no country in the world is more confused about the source of its sovereignty; it is unclear whether the authority of the State rests in the monarch or popular sovereignty (see generally Galligan 1995). In visual culture too this uncertainty is manifest. In numismatics the image of the Queen on our notes and coins is referred to as an effigy. We are surely the only country in the world that maintains two five-dollar notes one depicting the monarch, the other depicting one of the founders of the constitution. The Henry Parkes note issued by the Australian Mint to commemorate the centenary of nationhood coincided with the debate on the

² The High Court decisions of *Australian Capital Television v Commonwealth* [(1992) 177 CLR 106] and *Nationwide News v Wills* [(1992) 177 CLR 1] recognised an implied guarantee of communication on political matters in the Constitution. The guarantee was discussed in relation to defamation law in 1994 in *Theophanous v Herald and Weekly Times Ltd* [(1994) 182 CLR 104], in *Stephens v West Australian Newspapers* [(1994) 182 CLR 211], and in *Lange v ABC* [(1997) 145 ALR 96].

³ [1997] 189 CLR 579

republic. What was most intriguing about this incident was that the Federal Government was not advised, nor seemingly had any control over, the choice of image on the note. Although the Parkes note was decommissioned after 2001, the autonomy of the Mint to replace the monarchical symbol, without further consultation, seems to suggest that not even the Federal Government sees the Queen's effigy as a "master signifier" that must be controlled. In our courtrooms, also, there seems to be a haphazard approach to the use of the Royal or Australian coat of arms.

3.2 The Queen's Image in Australia

On 11 April 1995 Greg Taylor installed a sculpture as part of the Canberra National Sculpture Forum entitled *Phil and Liz Down by the Lake*. The sculpture portrayed Queen Elizabeth II and Prince Phillip sitting on a park bench overlooking Lake Burley Griffin, nude. On the night of the 13th the head of the queen was decapitated and stolen and by the 16th, now vandalised more extensively, the sculpture was removed (see Shoemaker 2000). Perhaps more surprising than the violence of the symbolic "beheading" and the controversy that followed was the fact that no one knew whether the vandal was a monarchist or a republican, a mystery that was never solved. Neil Roberts, the forums convener, was shown tackling a monarchist who was valiantly trying to cover the nakedness of the Queen with a T-shirt, while the violence of the desecration suggested Republican motives. It is this confusion that characterises, in a broader sense, the Australian attitude to the imaging of the sovereign. Co-existing, but never simultaneously, two separate ideologies, one monarchical the other republican, creates a dissociative identity disorder in the Australian psyche.

A number of questions are raised by these events. Taylor seemed unaware that his sculpture would evoke such strong emotions. The overlooked nature of his sculpture was that any image of the Queen would be received as an effigy, at least in part; the fact that this effigy is indeed in the traditional effigy form of a sculptural bronze only exacerbates this reading. The monarchist covers the image's nakedness because that is not appropriate for an effigy. The republican beheads the sculpture also because it is an effigy. Taylor, who saw a sculpture of a famous couple relaxing by the lake was perplexed by both actions.

What is interesting about this episode is that there was no thought of treason or seditious libel; the symbolic reading of the work, and the iconoclasm that it engendered, merely critically denoted the 'republican debate'. An attack against the Queen, here in visual culture, was not an attack against Australia, or the national interest. It is not within the scope of this paper to suggest why the Queen's 'second body' has ceased to represent Australia. Besides the strange fact that the Queen possesses 16 'second bodies,' each representing an independent nation, it is possible that transference has already occurred toward other images such as the prime minister or to the flag. To use Derrida's analysis in such cases the framing of the image, its *parergon*, will no doubt play an important part in how a particular effigy of the Queen will be received. The Sovereign of s80.1 of the Act seems, visually at least, disconnected from the Australian national imagery. If there were an effigy that better exemplified Australia's democratic society perhaps that would create a different response in regard to its desecration.

3.3 *Democracy, the Body Politic and the Effigy*

At the First Convention of the French Revolution September 1792 a major discussion was held over the imaging of the new Republic (Harden, 1995). Some suggested that any icons of government were inherently connected to the *Ancien Regime* and therefore anathema. It was finally decided however that the Republic did need to be imaged. As Bagehot suggested above it is a difficult thing to represent popular sovereignty. In French and American republican imagery the fasces and the axe were resurrected in a direct appropriation of the Roman Republic. Even the arms of Lincoln's "throne" in Washington have the fasces and sword as arm rests. Such a direct borrowing of classical imagery would not be useful in contemporary visual culture as it no longer represents a 'shared' cultural metaphor. An alternate strategy is to replace the monarchical sovereign with an effigy of a 'democratic sovereign'. The most obvious example is the French Marianne, broadly based on the allegories of liberty surrounding the first Revolution. The profile of 'Marianne' now takes the same place on France's stamps as the Queen's on English ones. Marianne represents a complete and disavowed reversal of the monarchical symbol or effigy. Zizek highlights that a new order must supplant the previous ideologies' sublime objects with new such objects (Zizek, 1989). As we have seen many times since the French Revolution a complete vacuum of visual naming of power could not be tolerated by the public. So that to topple the effigies of the king was not enough and its replacement could not just be in language.

A recent and interesting picturing of the democratic 'body politic' is seen in *V for Vendetta* a film based on the illustrated novel of Alan Moore and David Lloyd (1982-1985). The character 'V' is a terrorist that leads a popular uprising against a fascist dictatorship. Like other superheroes he has a mask that hides his identity, in this case his mask is a representation of Guy Fawkes. Moore and Lloyd have used the outlaw's effigy and inverted its use to become the representation of popular sovereignty (i.e. the monarch's opposite). In the story he distributes the same mask to the populace asking them to wear it as a protest (and to disturb his surveillance). In the final riotous overthrow of the fascist army a wave of protesters, all in the same mask, move in waves against the army in formation. The democratic 'second body' is seen to be atomic but connected through the effigy mask; the sovereign/outlaw position of *homo sacer* allows an elision of the Guy Fawkes effigy/mask and the sovereign position.

In Australia no accepted symbol of popular sovereignty has arisen. This is no doubt due to the mere fifty years in which we have distanced ourselves, as a nation, from the symbols of the monarchy. Although, especially during Federation, allegories of a young (female) Australia were found side by side with the allegory of Britannia, this allegorical approach did not last the century. Norman Lindsay's *Invitation to the opening of the Parliament of the Commonwealth by his Royal Highness The Duke of Cornwall and York to the Royal Gala for Federation 1901* is an example of the use of a young female and unadorned Australia, much like France's Marianne. In this image Norman Lindsay has represented her holding the constitution of Australia. Above both Britannia and Australia sits a female "Justice" in front of the Southern Cross. It is interesting to our study to see that the sovereign's crown and sceptre sit discarded at the feet of this "Australian Justice" (See generally McDonald 2001). Even here, in 1901, Lindsay highlights the difficulty in imaging the originary authority of the law, whether it is an unadorned justice or the sovereign Queen.

3.4 The Australian Government and the Prime Minister's Effigy

Australia then has no Marianne. Maurizio Cattelan, an Italian contemporary artist, exhibited a hyper-real effigy of JFK, barefoot in a coffin in 2004 entitled *Now*; he was asking the question whether our democratic, celebrity leaders are much like the ideological objects of monarchs or more recent Communist leaders such as Ho Chi Minh and Mao. Cattelan suggests that the leader, even in a democratic country, becomes the rallying point of ideology or its sublime object. It seems that the United States has been able to create a continuous and mystical position in the president, which can be described by the adjective 'Presidential'. Under s80.1, the prime minister is grouped with the sovereign and governor general as an object of treason. The office of prime minister is an identified individual who is associated with the 'master signifier' of democracy or the Commonwealth within Australia. This is a relatively assertive position in practice but it is what the present Federal and New South Wales treason laws presume. In these two jurisdictions one can draw a direct connection between the sedition provisions and treason in that these symbolic bodies end up representing the abstract notions of Commonwealth and Government of s80.2 of the Act.

In any case any attack on the 'master signifier' is impossible because it is this ideological construct that is the focus. Any minor attack on particular qualities of John Howard does not affect the place this individual occupies in the political system as a whole and it is the position of prime minister that gives John Howard his political power and authority.

3.5 The Flag

Finally it seems the flag has come to represent, to some extent, the notions of popular sovereignty and nationhood. Although traditionally the flag would have represented the notion of *patria*, or the country in the 'king and country' formulation, in the absence of other national symbols the flag has become all encompassing. As a digression on this issue it is worth noting that the Australian blue ensign is a "defaced," in official terminology, British ensign, with the Southern Cross merely added on.

Earlier this year the artist Azlan McClellan exhibited a burnt flag as an art piece in Footscray entitled *Proudly Un-Australian*; the work was "completed" by its removal by the Victorian Police (see Geczy 2005). The police were uncertain whether an offence had been committed but both the artist and the police realised something more than a political communication was being made. At the same time there is constant pressure to provide, like New Zealand and other jurisdictions in the United States, laws that do criminalise this offence (see *Flags, Emblems & Names Protection Act 1981, New Zealand*, s11). There is some history of the control of usage of flags; Australia did ban the socialist 'red flag' through the *War Precautions Act 1918*, in September of that year (which brings to mind the marvellous deconstruction of that particular icon in Charlie Chaplin's *Modern Times 1936*). There is something in burning the flag that is more than political dissent; artists and members of the public seem to respond to the physical destruction of the icon more violently than linguistic criticism. Perhaps they see it as a desecration of themselves; they see a symbol that they enjoy and associate with themselves being destroyed.

4 Conclusion

If the Government legislators feel that treason and sedition laws are an important way in which to reinvolve the nation's signifiers, then they should probably look more seriously at effigies; the two systems of enunciation of the sovereign have so much in common that not to control the effigy may put the symbolic system of treason and sedition at risk. Treason, sedition and effigies are weirdly anachronistic pre-modern concepts that nevertheless exist on our juridical landscape.

On the whole our society is distrustful of the sacred, particularly the sacred icon. We are too secular for the law to protect even the desecration of the image of Christ, as we saw with the *Piss Christ*.⁴ Freedom of political expression and this disbelief in the sacred image seem to suggest that any debasement of our political signifiers will also be seen as innocently abstruse. Yet paradoxically are the new sedition laws, connected to treason as they are, not a legal sermon proclaiming the existence of the sacred notions of constitution, prime minister and nation (in an effort to combat the 'evil wrongdoers', to use George W Bush's term). We no longer believe that the defacement or execution of a person *in effigio* is a legally symbolic and meaningful act; but at the same time it is this sacred body that is the historical basis of the laws of blasphemy and treason. Perhaps if we no longer can abide protecting the icon's of power then the treason and sedition laws can be seen, in language, also to be devoid of meaning or import in a secular world.

The final paradox, which follows from the previous argument, is that, on the other hand, we may think that these markers do not need such protection because they cannot be assailed. As the destruction of a religious icon does not kill God, similarly, no attack, not even against the natural body of the sovereign, can destroy the second symbolic body (which as we have seen is the object of this Act). This can also be described through the unassailable nature of the master signifier or order word that inscribes the whole order of discourse and is already outside it as the originating point. In this way treason and sedition are not criminal laws, pertaining to criminal behaviour, but merely reinscribe what is understood as the source of a society's authority. The sovereign, or any master signifier, is always safe. Even on Anzac Day, our national carnival, when illegal gambling is 'allowed', and as in a Saturnalia we become outlaws, it is the tails side of the penny that is crossed so as not to deface the sovereign's effigy. Who would dare to cross out the Queen?

⁴ (see *Pell v Council of Trustees of the National Gallery of Victoria*, [1998] 2 VR 391) the artwork at issue being Andres Serrano's *Piss Christ* 1987

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