Introduction

In this paper I will be broadly concerned to trace the relationship between squatters and law. More specifically, however, my aims are twofold. First, I examine the legislative process which rendered squatting illegal in NSW - the enactment of the *Summary Offences Act* 1970 - and argue that this *legal* process of criminalisation necessarily required and involved *extra-legal* media-political discourses to [re]produce itself. That is, I contend that the criminalisation of trespass in NSW can best be understood as an early manifestation of simulated 'law and order' media-politics.

Second, I trace a selective cultural-legal history of squatting in NSW in order to analyse how the emergent criminal trespass regime was negotiated by squatters throughout the 1970s and 1980s. Within this context, I argue that there has been a progressive and discernible movement away from legitimising squatting through *legal* discourse toward legitimising occupation through the *extra-legal* media and/or political discourses that the Law necessarily requires to order and [re]produce material legal outcomes. Contrary to most conventional legal analyses, therefore, in this paper I contend that these *extra-legal* discourses are *intrinsic* to the body of the law itself.

To develop these arguments the paper is divided into three sections. First - drawing mostly from the parliamentary debates on the introduction of the *Summary Offences Act* 1970 - I examine the criminalisation of trespass in NSW. In particular, I note how this Act was a manifestation of 'law and order' politics - legitimised as a response to a perceived 'age of lawlessness' and targeted at a 'violent student movement'. After briefly tracing the history of political protest in Sydney, I suggest that there was a marked *substantive disjuncture* between this official 'crisis' in lawlessness and the actual levels and severity of political protest and crime at that time.

Second, I examine how the criminal trespass regime was progressively negotiated by squatters in NSW throughout the 1970s and 1980s by outlining and analysing three case studies of particularly prominent squatting campaigns - in Victoria Street, Woolloomooloo; on the Pyrmont peninsula; and in the Glebe Estate, Glebe. Drawing mostly from relevant texts and newspaper articles, these chronologically-ordered case studies seek to provide a much-needed (albeit selective) historical and cultural record of squatting in NSW during this period. In particular, I focus on the various legal or extra-legal strategies progressively employed by the squatters to legitimise and secure their occupation.

Finally, I bring the material of the first two sections together and argue that they together illustrate how *extra-legal* media and/or political discourses play a *constitutive* role in securing and [re]producing material legal outcomes. Within this context I contend that the 'crisis' and 'violence' integral to the criminalisation of trespass were largely media-imported from the United States as part of a polemic 'law and order' discourse. Furthermore, I examine the role played by 'law and order' opinion polls in legitimising the criminal trespass regime, arguing that their function serves to illustrate the emergent logic of the informated mode of media-politics that characterises the contemporary cultural and law making milieu. Similarly, I argue that the three case studies indicate how squatters have progressively shifted away from *legal* discourse toward *extra-legal* media-political discourse. This shift, moreover, illuminates not only the limits and contingencies of a liberal-legal order aimed at the protection of exclusive private property rights, but also the pragmatic attempts of squatters to re-articulate a position of power beyond - but not in isolation from - the law.

1. Trespassers will now be prosecuted : the criminalisation of trespass in NSW

Traditionally, the common law of crimes had little to do with trespass to land – at least where there was no evidence that the person had any felonious intent – as it was generally not regarded as a matter between the individual and the Crown (or state). Instead, trespass to land was regarded as a civil matter – that is, as a dispute between individuals over the possession of property which the person legally entitled to possession (owner) had to sort out with the trespasser in occupation through a civil court.

If the criminal law was involved during trespass to land disputes at all, it was more often done so as an interim means of protecting alleged trespassers from being violently removed from the land in question. Under the *Forcible Entry Act 1381 (U.K)* - which is currently enshrined under NSW statute law in s.18 of the *Imperial Acts Application Act 1969* - "No person shall make any entry into any land except where such entry is given by law and, in such case, with no more force than is reasonably necessary". Within this context Halsbury's *Laws of England (1985:863)* states:

> A person commits an offence who enters forcibly upon any lands or tenements without due warrant of law. The offence is punishable with imprisonment and fine. The offence may be committed without any person being assaulted. If persons take possession of either house or land, and there is any kind of violence in the manner of entry ...that is sufficient. A mere trespass will not support an indictment for forcible entry; there must be evidence of such force ... as is calculated to prevent any resistance. If a person enters peaceably into a house but turns the occupant out of possession by force, that may, it seems, be a forcible entry. It is not

a forcible entry where entry is obtained through an unclosed window or by opening a door with a key.

Even a trespasser who was on the land where there was forcible entry, therefore, could prosecute for forcible entry. Furthermore, no trespasser could be convicted of forcible entry provided that no force was used to enter unoccupied property. Squatters in England throughout the late 1960's and early 1970's adroitly exploited this 'protective' aspect of the *Forcible Entry Act*. By securing occupied property through changing locks, squatters ensured that owners could not physically enter the premises and carry out evictions without resorting to the use of force and thus a violation of the criminal law. The 'protection' afforded to the squatters in this context, however, was temporary and limited – it normally secured occupation only until the matter was settled (and possessory rights were ascertained) in court.

To say that trespass was not traditionally considered a crime is not to suggest that owner's possessory rights have not been legally protected and prioritized. Civil trespass is still actionable by the owners of land without the need to first establish actual damage, and civil remedies remain on hand to assist the owner in recovering possession. The strongest of these remedies - the *writ of possession* – entitles the owner to specific recovery of the land or premises. Writs of possession, however, cannot be made against unnamed people and they can only be executed against the people named in the writ. English squatters also manipulated this procedural technicality in the years prior to 1970, with squatters swapping premises before the court bailiffs came to execute possession orders against the prior occupiers. As a consequence, new High Court and County Court rules were created in England in 1970 to allow owners to obtain possession orders against unnamed trespassers in

seven days (or less in cases of urgency) from the service of a summons. Thus, in order to counter the adroit manipulation of legal procedural rules by squatters, the English Courts simply rewrote the relevant procedural rules.

The disjuncture between Australia and England on the issue of squatting and trespass was marked. At that time, 'squatting' did not exist within Australian legal or political discourse other than as a term to describe the pastoral occupation of Crown lands in Australia during the nineteenth century. There were no visible and well-known instances of urban squatting and – unlike in England – there was no emergent 'squatters movement'[1]. As such, the legal 'loopholes' in civil trespass which had already been manipulated and subsequently removed in England, had yet to be even identified or articulated in the Australian context – for all intents and purposes, the problems did not exist in civil trespass law.

In 1970, however, the laws concerning trespass were radically reformed in NSW in a way that would not be formally considered in other countries (such as England) for some years to come. In that year the State Government led by Robin Askin enacted a specific criminal trespass offence. Under s.50 of the *Summary Offences Act 1970*:

> (1) A person who enters or remains in or upon any part of building or structure or land occupied or used in connection therewith, and has no reasonable cause for doing so is guilty of an offence.
>
> (2) A person who remains in or upon any part of a building or structure or any land occupied or used in connection therewith, which part or land is not a public place, and has no reasonable cause for doing shall, if he there:

[1] This is not to suggest that there were not any people unlawfully occupying property but rather that there was no public discourse on squatting at that time. The activities of what was to become the British Migrant Housing Co-operative in Sydney during the 1950s provide an interesting example of what would later be referred to as 'squatting'. See Vickas (1980:20) for a brief outline of their successful campaign for affordable, self-managed housing.

(a) Does any act; or

(b) Uses any language.

Which, if done or used by him in a public place, would be an offence under this or any other Act or any regulation, rule, ordinance or by law made under any other Act, be deemed to have committed that offence and may be convicted and punished accordingly.

(3) With out limiting the generality of the expression "reasonable cause" in subsection one or two of this section, it is not a reasonable cause for a person to remain in or upon any part of a building or structure, being a public building, or any land occupied or used in connection therewith, if that person is requested by a controller of the public building or land to leave the building or structure or land.

(4) A reference in subsection three of this section to a controller of a public building or any land occupied or used in connection therewith is a reference to a person authorised in writing by a Minister, or by the authority, body or Tribunal concerned, to make requests for the purposes of that subsection.

It is important to point out that the *Summary Offences Act 1970* [the Act] was the culmination and manifestation of a 'law and order' political campaign led by the Askin Liberal Government. The legislation was drafted, enacted and rhetorically justified and legitimised as a much-needed response to a perceived "age of lawlessness" [Press, NSW Parliamentary Debates (NSW PD) 18/11/70:7958]. The criminal trespass provisions contained with in s.50 were merely one (albeit significant and novel) part of a wide-ranging piece of public order legislation. Under the Act, for example, fines were significantly increased and discretionary prison sentences were introduced for a number of novel and pre-established summary offences - including offensive conduct and unseemly language (ss.7-9), wilful damage of public monuments or statues (s.14), vagrancy (s.22), prostitution (ss.27-34), unauthorised

public assemblies (ss.43-48) and assault, resisting, or hindering police (s.54). In addition, the Act bolstered police powers to stop, search and detain persons and vehicles upon "reasonable suspicion" (ss.56 59). In sum, the breadth and severity of these provisions – enacted during what one Liberal member described as "a mood of protest" (Brown, NSW PD 17/11/70:7908) – clearly mark the *Summary Offences Act, 1970* as a punitive piece of 'law and order' legislation. Indeed, the emergent legislation was represented as the "Law and Order Bill" in the print media at the time[2].

An examination of the Parliamentary debates on *Summary Offences Bill* clearly indicate that the legislation was primarily aimed at policing the social disorder and immorality purportedly 'unleashed' by (and associated with) the Sydney political protest movement. Whilst it may be substantively problematic to speak of such a unified 'movement', it is nevertheless clear that from the Askin Government's perspective such a movement existed and threatened the social fabric. In introducing the 'unseemly language' provisions contained within s.9, for example, one Liberal member declared:

> [s.9] is not directed against old fashioned casually used bad language in the street ... It is directed at ... that aspect of the revolutionary movement nowadays that conscientiously and deliberately uses the most outrageously filthy language ... the offence that the Bill seeks to catch is ... the sort of thing that one reads in some magazines that have been in dispute in recent months and the sort of thing that had its most heroic expression in the filthy speech movement in California. As this is an international movement, it is represented in Australia and in Sydney ... [However] I do not think they will have an adequate deterrent effect on people who engage in this sort of porno-political behaviour, for they expect and sometimes glory in penalties [and] they are conscientiously devoted to this sort of porno-political behaviour (Coleman, NSW PD 17/11/70:7883).

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[2] For example, see Goff, W. "Willis defends new Law and Order Bill" in *The Australian* 11/11/70:6

Similarly, the unauthorised procession provisions contained in ss.43-48 of the Act were prefaced with this notion of a threatening revolutionary movement :

> The demonstrations say they are out to occupy the streets ... it is perhaps a minority, but a significant section, who look on demonstrations...as rehearsals for revolution. They think that the opportunity should be seized to occupy the streets ...These people talk about the need to produce counter-law and order, and counter-culture, to occupy the streets and to show the police and ordinary authorities that they themselves represent the new society and can run the streets and society without the help of what they call reactionary groups or neo-fascist groups ... People of that sort are causing the trouble [and] I believe that any trouble that these people threaten can be contained (Coleman, NSW PD 17/11/70:7885).

It was within this context of 'lawlessness' perceived on the part of the State Government that the criminalisation of trespass occurred. There is no evidence in the Parliamentary debates to suggest that the *Summary Offences Act 1970* - and the criminal trespass provisions it contained - was specifically directed at criminalising squatting. Indeed, as mentioned earlier, there was no highly organised squatting movement or visible and contentious squat occupations within NSW during the years immediately prior to the enactment of the legislation. Rather, s.50 of the *Summary Offences Act* was directed at criminalising the related and purportedly novel offence of the 'sit–in' :

> Clauses 49 and 50 [of the Bill] are intended to apply to persons who enter buildings, either public or private, and refuse to leave. Sit-ins and gate crashing are examples ... These new provisions will provide relief for the owners and occupiers of premises which are invaded by those who have no reasonable excuse to be there, or at least who remain in their after they have been requested to leave. At the present time when persons are on premises and refuse to leave, the occupier must rely on the common law of trespass. The new provision will facilitate his [sic] obtaining police assistance and action against intruders (Willis, NSW PD 17/11/70:7870).

Whilst the reference to gate-crashers is relatively ambiguous, it is clear that sit-ins were seen by the State Government as a particular manifestation of counter-cultural dissent :

> Much has been said about the right to dissent and the right to demonstrate, but ... I do accept it to be the right of people to block streets, enter offices, throw papers about, sit-in and prevent people from going about their normal vocations. I certainly do not regard that as a right, and I do not intend to let it be a right (Brown, NSW PD 17/11/70:7907).

The victims of sit-ins were – according to the views of the Liberal State Government - seemingly twofold :

> During the unruly and wild moratorium demonstration ... groups of people had a sit-in at a busy crossing, preventing thousands of people from getting home in the normal way. The community cannot tolerate this sort of thing ... I was prevented from going about my lawful business and I bitterly resented it (Furley, NSW PD 10/11/70:7965).

Here it is the 'public at large' or the 'rights of the majority' which are seemingly threatened by the purportedly violent minority involved in sit-ins. In addition, however, it seems that any office worker (public or private) was also at risk of being inconvenienced by a sit-in:

> Any person in his (sic) office going about his normal work, whether a member of Parliament or some other citizen, would not like to be disturbed by a number of people coming in and tossing him out of the place where he rightfully was (Brown, NSW PD 17/11/70:7907).

The purported threat posed by the sit-in protest was clearly articulated in the passage of the *Summary Offences Act* 1970. That is not to suggest, however, that there was much parliamentary discussion specifically on the topic of the sit-in. Whilst there was a great deal of parliamentary debate surrounding the increase of penalties for unauthorised public processions - with the Labor opposition rejecting and seeking to

amend key elements – the criminal trespass provisions enjoyed bipartisan support and were introduced relatively uncontested. Here, the Labor Party simply declared:

> The opposition considers that provision should be made in the law to control [sit-ins] and we have no objection to the proposition that persons who unlawfully enter premises, whether at a party or in other circumstances, should be dealt with by the law (Hills, NSW PD 17/11/70:7881).

The apparent inconsistency of the Labor opposition in professing to uphold political demonstration as a democratic right - "Nothing must be inflicted on the people of New South Wales to stop or in any way restrict or inhibit their right to demonstrate or protest" (Einfeld, NSW PD 17/11/70:7887) – whilst at the same time supporting the criminalisation of trespass through public order legislation did not pass unnoticed :

> If the leader of the opposition believes that there should be legislation against sit-ins and he accepts the fact that there are people who believe in this sort of violence, he must agree that the same sort of people conscientiously believe in violent demonstrations (Coleman, NSW Parliamentary Debates, 17/11/70:7885).

Irrespective of any logical inconsistencies in policy, it is significant that there was never an explicit acknowledgment – by either the State Government or the opposition – that s.50 of the *Summary Offences Act 1970* aimed at effecting something as radical and unprecedented[3] as the criminalisation of trespass. Instead, there is only one ambiguous reference to the gravity of the change – where one government member stated that s.50 was drafted to cover the "new offence" known as the sit-in

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[3] Unprecedented, that is, in an Australian context. Trespass had been a crime in some common law countries for time - for example, in Scotland [under the *Trespass (Scotland) Act* 1865]. There have also been repeated attempts to criminalise trespass in England, more recently with the *Criminal Justice and Public Order Act* 1994. In contrast to the Australian experience, however, resistance to the criminisation of trespass in England has been consistent and widespread. Whilst squatting is unlawful in England it is currently not a criminal offence. For comprehensive accounts on the history of criminal trespass in England see Vincent-Jones, P. 1986. "Private Property and Public Order : The Hippy Convoy and Criminal Trespass" in *Journal of Law and Society* 13(3):343; and Wade and Wolmar (eds). 1980. *Squatting : The Real Story* Bay Leaf Books : London

and that it was "probably the most significant provision in the whole bill" (Coleman, NSW PD 17/11/70:7881). Outside of this candid and lone admission, however, the radical reforms contained within s.50 were not discussed. Amidst much public and parliamentary debate on lawlessness, dissent and democratic rights, the *Summary Offences* Act was assented to on 9 December 1970 and trespass was quietly and uncontroversially criminalised in New South Wales thereafter.

Whilst the notion of a 'lawless age' was a crucial element in the rhetorical justification and legitimation of the *Summary Offences Act 1970*, there is little substantive evidence to suggest that such an 'age' ever actually existed outside of the Government's populist rhetoric, the public imagination and the media discourses which represented and channelled information flows between these two bodies. As Grabosky (1977:142) points out in his study of crime and dissent in Sydney, the period between 1960 and 1970 was marked not by a uniform increase in all kinds of criminal behaviour, but rather by developments of much greater diversity. In particular, during this period industrial protest – which had been a major source of unrest in Sydney since the last decade of the nineteenth century – was largely replaced by forms of more explicitly political protest and demonstration. From the Parliamentary debate already cited in this paper, it is clear that it was this political protest movement – as a potential catalyst for social disorder – which the *Summary Offences Act 1970* and the criminal trespass provisions it contained sought to emasculate. It was additionally claimed, however, that this containment was in line with and directly responsive to public or community expectations.

Two days before the *Summary Offences* legislation was introduced into the NSW Parliament, a Gallup Opinion Poll was published in the Sun-Herald newspaper. This poll was particularly significant in that it was the very first poll to survey Australian

public opinion on the issue of 'Law and Order'. In response to the question/statement, "we need stronger laws for controlling demonstrations *or* we have enough laws for controlling demonstrations", 66 per cent of those surveyed declared that stronger laws were necessary. Unsuprisingly, this result was subsequently cited in Parliament by the State Government's Chief Secretary as evidence of most Australian's belief in the right to "more laws against" those who "resort to violence" and "seek to disrupt the community" (Willis, NSW Parliamentary Debate 17/11/70:7873). In a legislative environment otherwise marked by vague and conjectural political assertions, the Gallup Poll was a crucial means of facilitating the exhibition of public support for more punitive laws against 'violent protestors'.

There clearly *was* a noticeable change in the level and style of political protest in Sydney towards the latter half of the 1960's. The years following the reactivation of conscription laws in 1965 and the deployment of Australian troops to Vietnam, saw numerous student-based rallies and marches in Sydney. Two or three major protests with over 1000 participants were staged each year from 1965 to 1970, while smaller scale demonstrations – which coincided with visits to Sydney by controversial public figures – occurred more frequently. In response to the rise of such dissent, the NSW Police Department began documenting 'Protest Demonstrations' in their annual reports form 1969, thus providing concise information on the size and frequency of protest movement activities until 1973.

Sit-ins were used as a popular protest technique in NSW for the first time during 1968-9. Inspired perhaps by the May 1968 demonstrations in Paris, university students began holding sit-ins in Sydney from June 1968, with the largest sit-in involving 140 people occupying the Commonwealth Centre Building in Chifley Square to protest against conscription policies [*Sydney Morning Herald (SMH)*

26/6/68:1]. Again, in April 1969, 103 people were arrested in an anti-Vietnam demonstration which included two attempts (by about 50 students) to hold a sit-in the Federal attorney – General's offices and the Wentworth Hotel (*SMH* 12/4/69:1;9). The only other sit-ins which occurred in this period were relatively minor incidents against conscription and involved no more than twenty occupiers.

It was undoubtedly the Vietnam Moratorium marches, however, which were the largest and most publicly visible acts of protest in Sydney prior to the introduction of the *Summary Offences Act, 1970.* In the first March on 8 May 1970, twenty-thousand people attended and only seven arrests were made, prompting Premier Askin to declare : "The crowd in Sydney, including spectators, was no larger than the Saturday afternoon football attendance and there were fewer incidents than those that generally occurred on the Hill at the Sydney Cricket Ground" (*SMH* 9/5/70:1). The second Moratorium march, held in September of the same year, was more violent and almost 200 people were arrested. The violence began, however, after police tried to force demonstrators off the roadways and onto the footpaths – a crowd control policy quite at odds with the policy used in the earlier marches. Despite widespread allegations of police provocation, Premier Askin declared that the police had done "a magnificent job in preventing a scruffy minority from holding Sydney to ransom" (*SMH* 19/9/70:9).

It is important to note, however, that by international standards the Sydney protest activities were *non-violent* and *small.* The only protest related fatality occurred when a Commonwealth Police Officer died of a heart attack while carrying sit-in protestors from the Commonwealth Centre Building in June 1968. Injuries were infrequent and the numbers of arrests varied substantially from one demonstration to the next – largely dependent upon mutual expectations and hostilities between the participants

and the police (Grabosky 1977:144). Whilst the second Moratorium march in September 1970 provoked a strong official response and almost 200 arrests, this was a particularly violent exception to the non-violent norm and can be attributed to the proactive tactics employed by the NSW police just as much as to the behaviour of the protestors.

It is true that a great majority of the 1965-1970 demonstrations were student led. Both of Moratorium marches and many of the anti-conscription protests, for example, began with participants assembling at Sydney University (Grabosky 1977:143). It would be problematic to conclude from this, however, that students were engaged in subversive political activities *en masse* or that the demonstrations were illustrative of some unified, campus-based revolutionary vanguard movement. Whilst it is clear that such an idea of student revolutionaries saturated the public and political imaginary, Australian student protest actually tended more to be the province of a highly vocal and visible student minority whose activities were received with tacit campus support (Stephens 1998:7; Gerster and Bassett 1991:41). University campuses at that time were still overwhelmingly conservative institutions. The University of New South Wales, for example was described by one Government Minister in 1969 as a "hotbed of dissent" (Cameron in *SMH* 13/3/69:3). However, a poll taken at that University during the height of the anti-war protests revealed that 50 per cent of the students actually "favoured" the Liberal Party (Gerster and Bassett 1991:44). The gap between politically significant rhetoric and substantive actuality could not be more evident.

I will discuss the factors underlying this disjuncture later in this paper, for they are factors crucial in understanding how and why trespass was criminalised. At this point it is sufficient to note that both the 'crisis in Law and Order' and 'violent revolutionary

movement' purportedly responsible for 'it' – that is, the two most evocative body of images which were evoked to create the conditions for, and to legitimise, the *Summary Offence Act, 1970* – were substantively problematic notions indeed. Thus far I have detailed why they were substantively problematic. In the following section, however, I want to examine how the criminal trespass regime - which these images helped create and secure - has been progressively negotiated by the squatters which have emerged in NSW since 1970.

2. Legalising Squatting

a) Victoria Street

The years following the Liberal Party's ascendancy to State Government in 1964 were marked by a notable increase in the level of urban redevelopment and construction in Sydney. Within this context, one of the largest and most ambitious plans for 'urban renewal' was contained within the Woolloomooloo Redevelopment Plan – a plan prepared by the Askin Government's State Planning Authority (SPA) and approved by the conservative–controlled Sydney City Council in 1969. This plan

sought to overcome restrictions on the expansion of the Sydney central business district by encouraging private developers to purchase property and build the 'necessary' corporate/residential infrastructure in the nearby Woolloomooloo basin.

The subsequent Woolloomooloo Redevelopment Project - proposed by a consortium of amalgamated property developers in 1971 – outlined plans to carry out widespread demolition of the historic Woolloomooloo area to facilitate massive construction of high-rise commercial developments worth more than $600 million. The project was to be largely funded by a Russian Bank (through a deal personally brokered by Robin Askin himself), and was plainly acknowledged by the consortium as "offering a unique opportunity for private enterprise to master-plan central city redevelopment" (4D Planning and Design 1971:1.1).

One of the companies with interests in the scheme was Victoria Point Pty Limited. – owned by Frank Theeman and his family. Using funds borrowed largely from international financiers, Theeman bought up whole stretches of terrace houses in Victoria Street and Brougham Street, Woolloomooloo and in 1972 submitted a Development Application to the SPA seeking approval for demolition of existing houses and the construction of three forty-eight storey office/apartment blocks on Victoria Street. These plans, however, were refused. Consequently, Theeman promptly drafted a second proposal for three twenty-storey buildings on three-storey bases. These modified plans gained SPA and City Council approval in March 1973, and in the following month Theeman began to institute a mass eviction of over 400 Victoria Street and other Woolloomooloo tenants.

Whilst some tenants left 'voluntarily', others defiantly stayed in their homes and an action group was formed [Victoria Street Residents Action Group (VRAG)] to support their opposition to the evictions. Street patrols were organised to both protect the

remaining tenants from intimidation by Theeman's security company, and to protect the empty houses from vandalism. In addition, VRAG quickly gained the support of the National Trust who "classified" the Victoria Street area and declared its preservation to be of "national importance". Most importantly, however, VRAG approached the communist-led Builders Labourers Federation (BLF), who immediately placed green bans on the threatened houses of Victoria Street and effectively prevented them from being demolished.

With the project at a standstill and $12,000 interest payments for outstanding loans having to be made each week, Victoria Point Pty Ltd capitulated. A third set of vastly modified plans were submitted which gained the approval of the SPA, the City Council, and National Trust. It was within this context – amidst renewed calls for the BLF to drop the green bans and allow the project to go ahead – that the action group responded by squatting in Victoria Street.

On 10 June 1973, the first group of squatters moved into no. 57 Victoria Street and, over the next seven months, the rest of the twenty-two houses in the street were occupied by a diverse collection of people – including VRAG members, 'hippies' and libertarians, itinerant visitors, homeless people and original tenants. In short, during this time Victoria Street became one of the first publicly visible examples of an urban squatting community in NSW.

The Victoria Street squats were self-consciously organised in a communal fashion (Mundey 1981:110). Meetings were held every Sunday morning in an old stable behind one of the houses. There was no chairperson and no voting – anyone could [theoretically] speak from the floor and decisions were [purportedly] reached collectively through consensus. Fences were taken down and a communal eating area and child minding centre was established. In addition, a food co-operative and

rotational cooking roster was established and a room in one of the houses was redeveloped to hold regular film nights. As one of the squatters pointed out :

> Something flourished in the street. Despite the continual threats, the ubiquitous violence of the area, the numerous freakouts and difficulties caused by people with disastrous and personal problems, and the relatively high turnover of residents, a community had developed (Summers 1974:395).

In an interesting tactical gesture – developed perhaps to counter the relative novelty of squatting at that time – the Victoria Street Squatters attempted to legally legitimise themselves as tenants. VRAG collected nominal 'rents' on the squatters houses (25 per cent of personal income to a maximum of $10) and deposited the total amount (approximately $200/week) into the account of a company owned by Frank Theeman. It was hoped that if Theeman accepted the money - or at least failed to explicitly refuse it - then an implied contract or tenancy agreement would come into force, thus somewhat securing the squatters position. Whilst not returning the 'rent', however, Theeman was adamant that no tenancy agreements could be implied: "Their [ie, the squatters] actions can in no way be regarded as a legal landlord and tenant situation" (Nicklin 1973:3). For Theeman, the collection and payment of rent did "not alter the fact that these people are illegal trespassers" (Nicklin 1973:3).

Contrary to Theeman's conjecture, the "fact" that the Victoria Street squatters were "illegal trespassers" had yet to be judicially confirmed. In October 1973, however, Theeman decided to run a test case on the issue and took legal action against one of the squatters, John Cox, under s.50 (1) of the *Summary Offences Act.* The original magistrate who presided over the matter found against the defendant, who subsequently appealed against the conviction to the Criminal and Special Jurisdiction of the District Court. The ensuing case – reported as *In the Appeal of Cox* [(1973) 3

NSW DCR 208(*Cox*)] – was probably the first case that sought to determine whether or not squatting was a criminal offence in NSW.

The primary question for determination in the appeal was whether Cox (the appellant) had "a reasonable cause" – pursuant to s.50 (1) of the *Summary Offences Act* 1970 – for remaining in one of the Victoria Street terraces after being repeatedly requested to leave by the agent for Victoria Point Pty Ltd, Michael Theeman (the respondent). Henchman J. heard evidence submitted by the respondent concerning the appellants repeated refusal to leave – "According to Mr Theeman, whom I accept, the appellant said 'There is no way you are going to get me out. You will have to put a bullet in my head to get me out'". Henchman J. also heard evidence from the appellant concerning his reasons for believing that he had "reasonable cause" to remain in the premises – including the protection of the buildings from vandalism, the maintenance of the character of Victoria Street, opposition to the corporate redevelopment of the area, and protection of the low income residents of Woolloomooloo.

Ultimately, however, Henchman J. unproblematically accepted Theeman's evidence whilst excluding "a great deal of hearsay and to my mind irrelevant evidence relating to the opinions and beliefs of the appellant". In evidence, Cox had conceded that he approved of squatting and that he had actively encouraged others to squat in the Victoria Street area. For Henchman J. this admission was *in itself* enough to cast doubt on the veracity of Cox's reasons for remaining in the premises, declaring : " I simply *do not believe the evidence* of the appellant as to his stated reasons *in view of his actions and of his advice to persons to 'squat'* in other people's property" (my emphasis added). The message of this decision was clear : The evidence of squatters (as opposed to property owners) should be categorically distrusted

because they intend to remain in occupation as squatters with or without 'reasonable cause' (and thus, legal sanction).

The exclusion of Cox's evidence was also facilitated through the adoption of strict and ostensibly objective criteria for determining 'reasonable cause'. According to Henchman J. "reasonable cause must be shown to exist, not merely a belief that there is reasonable cause". Within this context, "reasonable cause" means "some cause which gives a right in law" for the person to remain in occupation (as per Porter LJ in *Shelley v London County Council* [(1949) A.C. 56 at 67)]. In addition it was declared that a lack of reasonable cause could be inferred from an occupiers refusal to leave at the demand of the person entitled to possession.

From this position, Cox was neither a legal occupier nor quasi-tenant, but simply a criminal trespasser – he merely held a *belief* that he had reasonable cause to squat, rather than any *legal right* empowering him to do so. The illegality of Cox's actions further arose simply from his refusal to leave requested to do so by Theeman. Whilst acknowledging the possibility of an occupier establishing reasonable cause, Henchman J. severely circumscribed the ostensibly flexible scope of this provision by narrowly conflating it with a right in law and by declaring that a refusal to leave at the request of the occupier was *prima facie* evidence of illegality. Not only, therefore, did the Cox case serve to declare squatting illegal in NSW, but also it also severely limited the scope of potential defences that would have been possible for future criminal trespass cases.

With Cox's appeal dismissed and the illegality of squatting seemingly confirmed, Theeman decided to take action against the 'trespassers'. On 3 January 1974 – less than two weeks after the failure of Cox's appeal - a 30 person team of private security guards and scores of police came together to forcibly evict the Victoria Street

squatters. Using sledgehammers and crowbars to penetrate the barricaded doors and windows, the guards took possession of most places in less than 15 minutes. Once inside, the guards identified themselves as "controllers" for Victoria Point Pty Ltd and ordered the squatters to immediately leave. Those that subsequently refused to go were forcibly removed. Within two hours, almost the entire street had been cleared and 44 squatters had been arrested and charged – one for assaulting police, six for 'unseemly language', and thirty seven for criminal trespass. The squatters were released on bail later in the day, on the condition that they would not return to occupy premises at 55-115 Victoria Street. By evening, all of the squats had been secured and occupied by the "controllers". The first squatters siege in New South Wales was [apparently] over.

The Victoria Street squatters, however, again sought to move the question of squatting's legality/illegality into a judicial context. Five of those convinced of criminal trespass appealed to the District Court. Thorley J. of the District Court in turn referred the determination of the case onto the Court of Criminal Appeal. The questions of law which this appeal - known as *R v Bacon* [(1977) 2 NSLR 507(*Bacon*)] - sought to answer were twofold. First, whether or not "reasonable cause" was simply confined to legal right (as per Henchman J. in the *Cox* case). Second, whether the "genuine beliefs" of the appellants were relevant in determining "reasonable cause".

Contrary to the *Cox* case, the court in *Bacon* held that "reasonable cause" was not synonymous with "legal right", thereby opening a space for considering the reasonableness of the squatters beliefs. The squatters here believed that there was an unwarranted interference by the owner in "the status and dignity" of the buildings, the "rights of the legal tenants", and the "facility of low priced rentals" in the

Woolloomooloo area. On the basis of these beliefs, the squatters concluded that they had a right to squat in Victoria Street – a right, grounded in the common law defence of necessity, the notion of a bona fide mistake in law, and the use of self-help remedies to protect legal tenants from forcible eviction. The Court of Criminal Appeal, however, disagreed.

Street C.J (at 511E) rejected the possibility of the first claim by simply declaring that "the facts of the present case fall significantly short of constituting necessity" and by reproducing Lord Denning's infamous dictum in *Southwark Common Borough Council v Williams* [(1971) Ch. 734(*Southwark*)] as to how the doctrine must be "carefully circumscribed" :

> If homelessness were once admitted as a defence to trespass, no one's houses could be safe. Necessity would open a door which no one could shut ... so the courts must, for the sake of law and order, take a firm stand. They must refuse to admit the plea of necessity to the homeless, and trust that their distress will be relieved by the charitable and good (Denning L J. in *Southwark* at 744).

The 'defence' of mistake was also rejected. Whilst acknowledging that the squatters had made a bona fide mistake in law – in holding a "genuine belief" in the validity of squatting – Street CJ. held that this was in itself insufficient to constitute "reasonable cause". Finally, the court discarded the squatters claimed right to self-help – that is, that their actions were "reasonable" because they were aimed at physically asserting the rights of the legal tenants in Victoria Street - declaring (at 513B) :

> It is a clear policy of the law that legal rights should ordinarily be enforced and protected by due process, and not by taking physical initiative. To accept it as reasonable that every individual can intervene physically to prevent a breach or to procure observance of civil law would involve dangerous overtones capable of leading to ... actual disorder (Street CJ. in *Bacon*).

Having discarded the squatter's possible defences and answered the legal questions requiring determination, the Court could now dismiss the case. The conclusionary remarks chosen by Street CJ. are particularly significant :

> [The appellants] deliberately and provocatively, by active physical intrusion, intermeddled officiously with the rights and claims of others ... *no matter how bona fide their belief* that they were entitled to do so, whether in aid of persons suffering a civil wrong or in the public, *the law would not countenance as reasonable* such conduct as that of the appellants in this case. They had no right to "squat" ... nor was there any reasonable basis for their believing that they had such a right (Street CJ. in *Bacon* at 513D; my emphasis added).

At one level these remarks simply sum up the case at hand and confirm that the actions of the Victoria Street squatters were illegal under the *Summary Offences Act.* On a broader and more connotative level, however, they serve to *predict* the possibilities of encoding squatting as a legitimate activity within the judicial discourses of law. Here, the Law is unequivocal: It will never countenance the idea that squatting is "reasonable" and thus capable of being legitimately incorporated into the Body of the Law. Whilst this reading of Street's CJ. comments is necessarily hyperbolic, it is somewhat verified by the subsequent actions and movements of squatters in NSW. Indeed – as I go on to illustrate in the following sections – the post-Victoria Street squatters were much more reluctant to legitimate their actions using legal language.

b) Pyrmont Point

With the election of the Wran Labor Government in 1976, the Woolloomooloo Redevelopment project was largely abandoned. Despite this shift in political control, however, the facilitation of large-scale 'urban renewal' redevelopment continued to be a high priority for the State Government. Similar (albeit less ambitious)

redevelopment strategies were prepared and employed for other areas that were located close to the central business district. In particular, one area targeted for strategic renewal was the Pyrmont peninsula.

In 1977 plans were announced for a joint Sydney City Council - State Housing project using land already owned by the Council together with additional plots recently purchased by the State Land Commission (LandCom). With the closure of various roads, this land was to be combined with other land in the Pyrmont peninsula to become the site for a major public housing development - known as the Pyrmont Point project - comprising of more than 600 residential units.

One impediment to this project was the small precinct of Council-owned housing on and around Point Street, Pyrmont. These houses and flats (built 1850-70) had been earmarked for demolition for a factory in the 1950s, but were instead preserved for housing by the Council's purchase. The Sydney City Council of the late 1970s, however, had different priorities. With the initial land consolidation phase of the Pyrmont Point project already begun, the last of the public tenants that had been living in the buildings were evicted and relocated. The Council, which once had acted to preserve the buildings, was now preparing to demolish them.

With the Point Street buildings empty, in late 1978 the squatters moved in. Originally only a small number of people occupied the buildings. Unlike in Victoria Street, these squatters did not represent their actions as part of any political campaign to preserve the historic parts of Pyrmont from the 'urban renewal' of the Pyrmont Point project. At that point, their aims were more immediately concerned with temporary accommodation (McInerney 1983:40). Soon after having been notified of the squatters' occupation, however, the council acted to effect their removal. Using anti-squatting techniques commonly used by English Councils in the early 1970s, the

council disconnected the electricity supply to the Point Street houses and sent teams of workers to remove the roofs. Early in 1979, moreover, the squatters were served with notices by the Council to leave the buildings or risk being charged with criminal trespass (Fitzgerald and Golder 1994:121). Soon after, however, a LandCom-Sydney City Council disagreement over funding of the Pyrmont Point project served to stall redevelopment plans in the area. As a consequence, the Council's legal proceedings against the occupants were deferred and the squatters remained in the buildings.

With the redevelopment plans and legal action indefinitely suspended, more people came to occupy and repair the buildings. Indeed, by early 1981 nearly 50 people were squatting in the Point Street terraces and nearby flats. Concerned at the renewed influx of squatters into the area, the Council promptly began renegotiating with LandCom and in August 1981 a 'Heads of Agreement' between the two bodies was outlined for the Pyrmont Point project. Under this outline, construction was to commence in January 1982. By the end of 1982, however, nothing had been built and the squatters remained at Pyrmont Point.

It was not until March 1983 - almost five years after the squatters had begun their occupation - that the plans for the housing project were publicly re-announced. By this time, however, there had been a shift in thinking about how the project was to be carried out. In particular, third parties of private developers were invited to become involved. What had hitherto been a major public housing project was now going to be a largely privatised development involving the multinational corporation CRI. The new public-private housing development was expected to return at least $40 million and a proportion of the profits made were to be used to fund public housing elsewhere (Fitzgerald and Golder 1994:121). It was at this point that the Sydney City

Council re-initiated legal proceedings to regain possession of the buildings on Pyrmont Point. In June 1983, at the behest of the council, the Supreme Court issued summonses to 18 of the Point Street squatters (Simpson 1984:). Several adjournments followed and by March 1984 the Court was prepared to hear the case.

Up until the point of potential legal 'capture', the Pyrmont squatters had been self-consciously fostering their own public invisibility. With the Supreme Court case pending and their eviction seeming likely, the Pyrmont squatters began a campaign to gain public support for their occupation. The privatisation of the Pyrmont Point project had the effect of generating a considerable degree of community opposition. A lot of this opposition, moreover, was on the grounds of the diminishing provision of housing for the traditional working class, low-income inhabitants of Pyrmont. In the months prior to and after their March 1984 court case, the Pyrmont squatters strategically and successfully drew upon this anxiety in order to gain support for their continuing occupancy.

During this period (June 1983 - March 1984) the National Trust, the Royal Australian Planning Institute and the Royal Australian Institute of Architects all wrote letters to the State Government and Sydney City Council expressing their official support for the Pyrmont squatters and their firm disapproval of the proposal to demolish their houses (Fitzgerald and Golder 1994:121). The local Pyrmont Residents Action Group also publicly defended the squatters, declaring that "they [the squatters] represent[ed] the low-income residents of Pyrmont ... [that are] increasingly being pushed out of their area" (Harrow 1985:4). More significantly, however, the Pyrmont Squatters sought to counter their relative invisibility by inviting the media to represent their situation. In a subsequent feature article entitled "Rightly or wrongly, the

Pyrmont squatters are fighting for their homes", Sally McInerney of the *Sydney Morning Herald* declared :

> The Pyrmont group of squatters consists mainly of Hungarians, Australians and New Zealanders. There seem to be no particular political consensus among them. They are a mixed collection of people, like the crowd you would find in a small country town. They are very tolerant, although they kicked out a "self-proclaimed Nazi" newcomer not long ago; and junkies are not welcome either ... The group is quite different to the "highly politicised" squatters at the Rocks, who were making a statement about unused housing ... Most of the people here are out of work; three are single parents; five have full-time jobs (some short-term) and six are casual workers. People mind each other's children, shop at the city markets for groceries, help out with house repairs and lend each other money when the welfare cheques run out ("Money goes round and round here", Gary said. "So do clothes") (1983:40).

According to this representation, the Pyrmont squatters are characterised as a diverse and tolerant community of unemployed/low-income people brought together by common need rather than political motivation. Whilst this article clearly suggests that the majority of the Pyrmont squatters were *poor*, it also suggests that they countered their poverty through circulating and sharing assets and skills (child minding, money, food, clothes) amongst the community. The latent gift society/contract society distinction, which this description clearly connotes, is furthered by reference to the image of the *small country town* - a nostalgic signifier of pre-modern community bonds and sociality. The photographs accompanying the article, for example, draw upon this small town/large city (place lived in /space moved through) distinction by depicting children playing in the streets and back gardens around the squats. It is in the conclusion of the article, however, that the *small town* motif is most explicitly evoked :

> It seem impossible to say precisely whether it is right or wrong that this unusual community, barricaded in quaint cottages, should be obliterated - like a small town drowned under an enormous lake (McInerney 1983:40).

The *small town* represented by the squatters could clearly stand for the *small town* of traditional Pyrmont itself - a town that had increasingly been pushed under the 'enormous lake' of Pyrmont redevelopment. Another theme implied in this media representation of the Pyrmont 'issue' was the notion of *historical continuity* between the Point Street squatters and the nineteenth century colonial squatters. McInerney (1983:40), for example, writes :

> While the first white residents of Ultimo and Pyrmont, surrounded by clear air and sparkling water, picnicked on their peninsula, other colonial aristocrats - the squatters - were busy mapping out their inland empires.

After noting the widespread nineteenth-century practice of extracting sandstone from the Pyrmont peninsula to build "imposing city buildings", and briefly introducing the plan for the LandCom-city Council project, McInerney (1983:40) goes on to introduce the Pyrmont squatters :

> On the prime spot for [the Pyrmont Point project] is a group of old stone workmen's cottages built in the 1860s of sturdy Pyrmont sandstone ... Forty or fifty people, comprising the largest *squatters colony* in Sydney, have occupied these cottages for about five years, conducting running repairs during this time ... Squatting is no longer an honourable activity but in this case the squatters are supported by the local Resident Action Group. The typical City squatter is generally regarded as a tattooed bikie-junkie from a broken home, or a nasty anarchic troublemaker; but this is not necessarily true (my emphasis added).

Here, therefore, historical continuity is used to defuse the threat of the typically troublesome City squatter. The 'squatters mapping out their inland empires' in the nineteenth century and 'the largest squatting colony in Sydney' of the 1980s are

historically connected through "the sturdy Pyrmont sandstone" itself. This notion of historical continuity was further publicly reinforced and encapsulated by the Reverend Glen Nicol of the Uniting Church, who publicly protested against the Council's removal of the squatters by declaring : "These people are merely part of a 200 year-old tradition"(Fitzgerald and Golder 1994:122). Together with the motif of *small town* sociality, the *Australian tradition of squatting* became an important rhetorical device in the task of publicly legitimating the activities of the Pyrmont squatters. The photograph accompanying an early-1984 newspaper article on the squatters provides an interesting illustration of this theme [see Figure 2.]. Herein, an Australian flag is prominently displayed for the reader above the heads of the Pyrmont squatters - coding and connecting an 'ordinary', though potentially transgressive, image of domesticity within a more specific context of traditional Australian activity.

The other main motifs employed by the Pyrmont squatters to publicly legitimise their occupation were the threats of *poverty* and *homelessness* concomitantly connected with their potential eviction. Whilst mentioned in newspaper articles at that time, it was during their appearance before the Supreme Court - in a case known as *Council of the City of Sydney v. Parker & Ors.* [(1984) Unreported, Supreme Court NSW, No. 13374 of 1983 (*Parker*)] - that the squatters most explicitly developed and elucidated these themes. Given the lengthy duration of the squatters occupation and the levels of popular community support that they had engendered, the Sydney City Council considered it most advantageous to bring a common law action in trespass seeking an order for possession for the buildings rather than actions in criminal trespass (Harrow 1985:3). At the time of the *Parker* case only a select few of the eighteen squatters appearing before the court had been in continual occupation of the Pyrmont buildings since 1978. The period of occupation for these select squatters,

however, was still only a little more than five years - that is, considerably less than the twelve year period required in law before the possibility of adverse possession can be seriously considered. After the certificates of title for the land in question were readily produced by the Council in the *Parker* case, therefore, the issue of possession was efficiently and unproblematically resolved by Cantor J. Unsuprisingly, perhaps, this decision went in favour of the Council and against all of the squatters occupying Pyrmont Point.

The primary substantive legal issue debated in the *Parker* case concerned whether or not the Court had the discretion to stay the execution of a writ of possession and - to that end - whether the hardship that was likely to be suffered (by either the plaintiffs or the defendants) was relevant for consideration. The Council cited Lord Denning - in the infamous English squatting case, *McPhail v. Persons, names unknown* [(1973) 3 A.E.L.R 393 (*McPhail*)] - to support their argument that in proceedings taken by an owner against squatters there was no discretion for the Court to grant any extension of time whatsoever to the squatters. This discretion, according to the Council, lay solely with the owner. The squatters, however, argued to successfully establish that under the *Supreme Court Rules* the judge may permit the issue and execution of the writ 'upon terms' - thus allowing for judicial postponement. After unproblematically accepting the defendants' arguments as to the existence of this judicial discretion, Cantor J. (at 2.) went on to examine the issue of hardship :

> It is appropriate at the outset to observe that it is not the function of this Court to criticise the level of unemployment benefits, sickness benefits and any other social service benefits ... I would only say in this regard that the evidence before me overwhelmingly suggests that the level of such pensions is inadequate in this community for people to live at a level which is probably above the poverty line ... That perhaps makes my task more distasteful but it does

> not mean that for that reason I am entitled to require the Council ... against its will to provide emergency accommodation or to supplement social service benefits to a particular section of the community (my emphasis added).

Whilst acknowledging the 'inadequate' levels of benefits, the judge is ultimately unequivocal in his reiteration of the familiar liberal-legalist refrain - that is, a judge cannot engage in or comment upon *policy* issues such as social welfare. The consideration of hardship, therefore, was decided in the negative - it was held not to be within the legitimate scope of the court to engage in such inquiries. After outlining the proper liberal role of the judge, however, Cantor J. went on to say :

> There has been evidence from a number of the defendants to demonstrate ... that if they were required to pay the rents which are likely to be sought in the city they would not have enough money to do so. The fact is that for varying periods of time these people have been benefited form living as squatters or trespassers in the land of the City Council and have paid no rent whatsoever ... None of the defendants .. has made, over this period of time, any provision whatsoever to meet what must to them have been the *inevitable* situation at some point in time : that they would no longer be able to occupy this group of houses owned by the City Council ... They did, however, put together from their meagre resources money to expend on legal costs in order to defend, or perhaps delay would be a more appropriate expression, the *inevitable* order which they must have known would be made ... And so it is said that ... they are unable to compete on the rental market ... because none of them has accumulated money to provide a bond and ... pay rent in advance (at 4.) (my emphasis added).

Whilst it was deemed inappropriate for the Court to substantively consider issues surrounding economic hardship, it was nevertheless clearly thought appropriate for the Court to criticise the economic activities of the squatters with reference to the *rational economic man* - that is, the man who saves a portion of his income in order to manage future contingencies and maintain a competitive edge in the volatile

private [rental] market. Continuing in his interrogation of the squatters' irrational behaviour, Cantor J. goes on to say (at 5.) :

> It appears to me that in those defendants who have given evidence, *and all the defendants generally*, there has been a demonstrated a considerable lack of respect for the property of others and not a great respect for the truth (my emphasis added).

Even the defendants who did not give evidence were herein said to disrespect 'the truth'. Such an assertion necessarily assumes that people who act outside the norms and rules of private property should be categorically distrusted - a bold assertion indeed for a judge that was self-consciously attempting to approximate the liberal-legalist norm of judicial neutrality.

In the *Parker* case, therefore, the Pyrmont squatters successfully managed to use the court as a forum for employing and discussing the twin threats of *poverty* and *homelessness*. Newspaper articles subsequently representing the case[4] highlighted both the "homelessness" facing the squatters and the "distaste" and "regret" felt by the judge in delivering the verdict - which was ultimately a two-month stay of execution on the writ of possession. In fostering this extra-legal discursive space, however, the Pyrmont squatters simultaneously opened themselves to unexpected (though unsuprising) sources of judicial criticism and reprimand. The typical 'squatter' [re]produced in the *Parker* case is one who faces the prospect of homelessness and poverty, but as a result of their own irrational and distrustful behaviour rather than as a result of any legal desire to guard the institution of private property and/or the ideal *rational economic man* that accumulates it. It is within this context that Cantor's J. earlier allusions to the *inevitability* of the squatters eviction can be best understood - that is, as a reiteration of the view (made evident in the

[4] For example, see Simpson, L. "Judge regrets, but squatters must go" in *SMH* 2/3/84:1

Bacon case) that a squatter cannot approximate the norm of the rational subject required for liberal-legal sanction and redress because they squat and/or have squatted. In quite a fundamental sense, therefore, the *Parker* case was already over before it had even begun because the Pyrmont squatters were asking an impossible request - for a liberal court of legal discourse (founded and grounded in private property) to countenance and sanction the language and behaviour of the irrational and excessive Other embodied by the squatter.

However, the Courts were only one specific domain within which the Pyrmont squatters sought to legitimise their activities and secure their occupation. As a result, the possibilities of their remaining within the disputed buildings were not closed with the decision against them in the *Parker* case. In April 1984, a large group of the Pyrmont squatters attended a City Council meeting where the Pyrmont Point project was being discussed (Fitzgerald and Golder 1994:122). Significantly, a number of the squatters directly addressed the councillors at this meeting seeking a suspension of their eviction orders on the grounds of the hardship (homelessness and poverty) its execution would cause (Harrow 1985:7). At this meeting, the squatters' requests were denied and the Labor-controlled Council reaffirmed their commitment to proceeding with the Council-LandCom-CRI redevelopment plan.

In the local government elections held late in April 1984, however, the Labor Party lost seats in the City Council and became reliant upon the support of two independent communist alderman - Jack Mundey and Brian McGrahen - for political control. With a political history of defending the interests of low-income residents against property developers[5], and the balance of power in their hands, these

[5] Mundey was head of the NSW branch of the BLF throughout the early 1970s and was an instrumental figure in securing the placement of green bans on proposed urban redevelopments across NSW during that time. See his autobiography - Mundey, J. 1981. *Jack Mundey : Green Bans and Beyond.* Angus and Robertson: Sydney - for a good account of Mundey's involvement.

independent aldermen successfully passed a motion agreeing to sell the Council's land at Pyrmont point to the NSW Housing Commission - seemingly overturning the plans for luxurious units on the site in favour of a moderate-scale, public housing development that was to be entirely devoted to low-income housing. In addition, moreover, the two independent aldermen (with the majority support of the Council) passed a motion allowing the squatters to provisionally remain in the disputed buildings until the negotiations with the Department of Housing (DOH) were finalised and they were directed to leave by the Council.

This radical reappraisal of both the Council's policy of involvement in the Pyrmont Point project, and their correlated policy of seeking to evict the Pyrmont squatters, serves to illustrate how successful the Pyrmont Squatters actually *were* in legitimising and securing their position outside of the strict confines of legal language and discourse. By the time that they were to be legally evicted in May 1984, the Pyrmont squatters had garnered enough extra-legal community/political/media support to render any future eviction attempt a political misnomer and a public relations liability for the evicting party. Indeed, Council-DOH negotiations over the sale of the Pyrmont peninsula land - which were not eventually finalised until April 1986 - had been specifically stalled over the issue of "vacant possession" - that is, over who should bear the onus of removing the Pyrmont squatters (Grealy 1986:17). It was not until the City Council publicly threatened to sell the land to private developers that the DOH finally purchased the buildings (Grealy 1986:17). Even after purchasing the land and publicly announcing plans for a $17 million development on the peninsula, moreover, the DOH was careful to avoid being seen supporting an eviction of the publicly supported squatters. Instead, the DOH quietly negotiated with the squatters to establish the Pyrmont Self-Help Housing Co-operative and quickly organised for the purchase of buildings in the Pyrmont-Ultimo area for the Co-operative's use

(Jamrozik 1991:3)[6]. Squatters who were not rehoused into the buildings of the new Co-operative were relocated into subsidised rental accommodation in the Pyrmont area (Jamrozik 1991:3). In this way, the Pyrmont squatters - and the political liabilities that their eviction had come to represent - were quietly *diffused*.[7]

[6] It was a State Government policy at that time to encourage squatting communities to instead form themselves into housing co-operatives. Indeed, a number of housing co-ops in operation today - in places such as Darlinghurst, Chippendale, Newtown and Leichhardt - originally came from squats that emerged throughout the 1980s. Whilst it would be an interesting area of analysis to follow up , there is very little (if any) written material on the Government 'co-option' of squatters during this time.

[7] The post-1986 history of the Pyrmont Point redevelopment is equally as fascinating as the 1979-1986 series of events. In December 1987, for example, the DOH announced that the Pyrmont development was to be a mixed public/private project. When plans were later submitted in September 1989, however, it became clear that the public housing component had been frozen and the DOH had withdrawn from active involvement in the project. The Jones Bay Apartments - as the redevelopment was now called - was to be a private venture funded by CRI on land which had previously been in the public domain.

c) Glebe Estate

The various 'urban renewal' schemes proposed by the NSW governments of the 1960s and 1970s were inextricably connected with an additional series of governmental plans for major freeway construction around and through Sydney. During this period, the NSW Department of Main Roads (DMR) proposed and began the construction of a number of 'distributors' which were to ultimately interconnect and form a major orbital freeway network around Sydney. Within this context, the DMR envisaged a system of elevated roads across Darling Harbour connecting with a Western Distributor at Wentworth Park in Ultimo. From Wentworth Park, the Western Distributor was to carve through Glebe, Annandale, Leichhardt and Burwood to connect with the Western Freeway at Concord. Hundreds of buildings in the traditionally working class inner-western suburbs thereby became 'DMR affected' and - despite widespread and vigorous community opposition - many were to be compulsorily acquired and demolished to facilitate the construction of the road. In 1974, however, the Whitlam Federal Government - who had opposed the DMR development - strategically purchased a large collection of houses in Glebe. As a result of this purchase/veto, extant DMR plans for the Western Distributor were necessarily suspended and later abandoned.

The Glebe Estate was intended to provide the basis for the Federal Government's own brave experiment in 'urban renewal'. The 730 terrace houses and small commercial properties that comprised the Estate were renovated and restored over a five-year period before being used for public housing. In this way, the traditional working class population of Glebe was to be given long term security against the

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For an excellent history of Pyrmont-Ultimo redevelopment see Fitzgerald and Golder (1994). For a brief discussion on the persistence of squatting in the Pyrmont peninsula area up to 1991, see Jamrozik (1991:3).

emergent processes of urban gentrification. Despite the initiation of restoration work and re-roofing projects, however, this vision of equitable inner-city development was not realised. In 1975 the Fraser Liberal Government announced severe funding cuts to the project and by May 1981 it was decided that the responsibility for the Estate would be relinquished and the properties sold to private developers unless the State Government intervened. However, the prohibitive purchase price of the Estate - which had risen from $17.5 million in 1974 to $70 million in 1981 - along with the high costs of necessary rehabilitative construction work - estimated to be $16 million by 1983 - served to effectively stall Federal-State negotiations for years (Totaro and Susskind 1984:3). Whilst a proportion of the Glebe Estate properties had been renovated and leased to public housing tenants, by 1984 at least 13 of the buildings had been empty for over 10 years (Crosthwaite 1984:5).

On 6 October 1984, in a well-planned and executed move, more than 100 people came together to effect an *en masse* occupation of 40 empty Glebe Estate Houses. The action was the culmination of a series of public meetings organised by the recently formed (and now defunct) Squatters Union of NSW. These meetings had aimed at recruiting potential squatters from the large pool of low-income people that were disgruntled with excessively lengthy DOH waiting lists and/or the excessively high costs of private rental accommodation (Crosthwaite 1984:5). Once inside the Glebe Estate Houses, the squatters immediately began working on necessary repairs and circulating information that explained their actions. A pre-prepared letter was widely distributed around the Glebe area to inform local residents about the diversity of the group - "We range in age from 2 months to 70 years ... there are about a dozen children, 10 families, some pregnant mothers and some migrants" - and their reasons for squatting - "Most of us are unemployed ... we were tired of waiting lists and paying rents for substandard housing ... We think that housing is a right which

we need to survive" (Susskind 1984a:3). Almost immediately after entry into the buildings, moreover, press releases were sent out through the Squatters Union headquarters announcing the squatters' actions and inviting the various media outlets to cover the 'event'. In addition, the Glebe squatters promptly contacted the Federal Department of Housing and Construction (DOHC) and organised for negotiations to be held forthwith. As a result, within 48 hours of initial occupation the Glebe Estate squats were being widely represented as "the biggest event in the history of squatting in Sydney" and the squatters' self-generated public-profile was such that they were able to command a meeting with DOHC to discuss their *future options* rather than simply their *impending evictions*.

Both the squatting of Glebe Estate and its media representation, therefore, were well thought out and comprehensively planned from the outset. The immediate issue of legal 'capture' had similarly been considered. By 1984 the criminal trespass provisions contained within s.50 of the *Summary Offences Act* 1970 had been repealed and largely rearticulated in a more restrictive form within s.4(1) of the *Inclosed Lands Protection Act* 1901 (NSW). The Glebe Estate squatters, however, carefully avoided the threat of *immediate* eviction and/or conviction contained within this criminal trespass legislation by only occupying properties owned by the Federal Government. Within this context, the NSW police were not authorised to act against the squatters unless requested to do so by the Federal Minister for Housing and/or the Federal police. Any possible future eviction was thereby ensured to be a protracted and publicly visible process that would necessarily require a certain degree of Federal-State Government negotiation. The legal strategy employed by the Glebe Estate squatters, therefore, was not directed at opening a discursive space for legitimising their actions through legal language. Rather, the strategy aimed at generating *time* for negotiation by highlighting and drawing upon the latent tension

and friction between the political bodies that were implicated in the 'resolution' of the Glebe Estate 'issue'. This strategy was not so much *anti-legal* as *extra-legal* - it evinced a sophisticated understanding of the way the judicial discourses of law interrelate with other politico-legal discourses to generate and secure material legal outcomes.

Subsequent events in the Glebe Estate occupation serve to highlight the effectiveness of this *extra-legal* strategy. In the meeting that they organised with DOCH, the squatters were given very public assurances that the department *would not* "bring the police in and throw the squatters out" (Early, cited in Susskind 1984b:5). According to Len Early, private secretary to the DOCH minister at that time, it would have been "inappropriate" to direct either the Federal or NSW police to evict the squatters (cited in Susskind 1984b:5). Early - and the Federal ministry he represented - had acutely perceived the extent of the problem that the Glebe squatters had generated for them. Whilst eviction and criminal trespass charges would not have been *ultra-vires* if properly ordered and executed, it would indeed have been *inappropriate* and politically damaging for a Federal Department formally dedicated to servicing the housing needs of low-income citizens to be seen to promptly order and sanction a mass eviction of low-income persons and families from Federal housing that had been hitherto left abandoned. Rather than legally ordering immediate removal of the squatters under s.89 (1) of the *Crimes Act* 1914 (Cth), therefore, the Federal Government pursued a slower and more publicly acceptable course - they prepared to take the matter to Court :

> The squatters fear that they will be evicted this week. But Mr Early said there was no immediacy to the legal proceedings.

> "The Government is going to court later this week to get orders for possession", he said. "The writ may be through by Thursday. Then there are 14 days to decide if the squatters will put up a defence. If they do, they have 14 days to put it in. But we are optimistic that before it actually gets to the stage of eviction, the transfer of the Estate to the NSW Government will have taken place. The Commonwealth Government is making an offer to the NSW Government this week and I think agreement will be reached"
>
> Mr Early said he thought the transfer would solve the problem of what to do with the squatters (Susskind 1984b:5).

Early's prediction was correct. On 20 December 1984 - well before the Federal civil trespass case had advanced into legal argument - the Commonwealth Government transferred the Glebe Estate to the NSW Government. In what was described as "an excellent deal" by the NSW Minister for Housing at the time, the State Government managed to acquire the Estate for $28 million - considerably less than the $70 million that the Estate had been valued at in 1981 (Susskind 1984c:4). Under the terms of the transfer, the Federal government also agreed to provide $7 million from their following two budgets for the renovation of the buildings in the Estate. The "excellent deal" for the State Government, however, came with additional costs and liabilities not mentioned in the terms of transfer. If the Glebe Estate transfer 'solved' the problem of the squatters for DOCH, it clearly did so simply by deferring responsibility for the squatters' eviction onto the State Government and the DOH. The extent of the 'problem', moreover, had considerably magnified for by December 1984 there were more than 200 squatters occupying 120 of the Glebe Estate houses. It was at the press conference held to announce the Glebe Estate transfer that the NSW Minister for Housing first alluded to the discursive techniques that would be subsequently used to deal with 'the squatter problem' :

> It is shameful that there were 120 houses left to rot when tens of thousands are without proper housing. But if we are going to renovate and restore, we can't have the squatters in the houses ... There are 54 000 on the [public housing waiting] list who are entitled to feel aggrieved if they jumped the queue. They have rights too (Walker, cited in Susskind 1984c:4).

The discourse of 'housing rights' for low-income people in need - a discourse which the Glebe Estate squatters had been developing and drawing upon to legitimise their occupation - was now able to be easily appropriated by the NSW Government for the purposes of justifying the squatters' removal. Given that the Estate had been transferred and the funds for renovation were available and guaranteed, the State Government was able to forcefully and persuasively argue that it was the squatters *themselves* who - in their continuing occupation - were preventing deserving and needy low-income people on housing waiting lists from realising their right to affordable housing. Within this context, the squatters' refusal to leave and/or accept the alternative accommodation subsequently offered by the DOH was publicly represented as evidence of the squatters' own disengenuity and selfishness. Furthermore, it was becoming clear that the squatters were rapidly losing the support that they had gained from local residents. As Cribb (1985:113) points out, it was the squatters' perceived disunity and their reluctance to constructively negotiate with the Government which provide the impetus for this withdrawal of community support. With their own legitimising discourses effectively denied and turned against them, the Glebe Estate squatters simply conceded illegality and defeat and predictably 'prepared to do battle". As Squatters Union representative, Lachlan Cummings, declared at the time :

> We are not out yet ... We knew it was illegal to move in and most of us will stay until the times up. They are going to have to use the police to move us out ... We are not going to make it easy for them (cited in Susskind 1984c:4).

With the squatters' occupation now firmly characterised as illegitimate and lacking in community support, however, the task of effecting eviction was far easier than the squatters had anticipated . Early in February 1985 the DOH sent letters to squatters in 23 of the 130 occupied houses declaring that their buildings were now ready for renovation and requesting that they immediately "return to whence they came" or face being charged with criminal trespass (Susskind 1985:2). The squatters responded by publicly reiterating their commitment to "stand firm" and by barricading the buildings in preparation for a "siege" (Susskind 1985:2). On 28 February 1985 - almost five months after the first of the Glebe Estate buildings had been occupied - the evictions of the first 23 houses began. Squatters in each of the houses were formally requested to leave by DOH representatives. Those that refused were subsequently removed by the NSW police and the houses that they had been squatting in were promptly 'gutted' by teams of private wreckers that had been hired by the State Government. By the end of the day all of the squatters had been removed, 16 had been arrested and charged with criminal trespass, and the 23 houses that they had been occupying were internally destroyed and boarded up to prevent re-entry (Cribb 1985:113).

Some squatters continued occupying houses in the Glebe Estate until 12 August 1985 - whereupon they too were similarly requested to leave, removed, and arrested. In the weeks that followed the first evictions, however, many others left the Estate for the 'alternative accommodation' offered by the DOH. Either way their time was marked, for in suitably spectacular fashion the "biggest event in the history of squatting in Sydney" had for all intents and purposes already ended.

3. Becoming extra-legal : law, simulation and the tactics of resistance

One of the primary themes linking both the criminalisation of trespass in NSW and the ways these laws have been subsequently negotiated by squatters throughout the 1970s and 1980s is the *constitutive* role played by the extra-legal media-political discourses in facilitating and securing the various material outcomes. Whilst there are undoubtedly other bodies of idea and conceptual tools which encompass the material covered in the preceding two sections of this paper - for example, political economy, urban studies, critical geography and/or critical legal studies - it is this idea of media discourse as a constitutive moment in law which I develop in this concluding section.

The criminal trespass provisions contained within the *Summary Offences Act* 1970 were specifically introduced to counter a purported 'crisis' of social disorder and lawlessness 'unleashed' by a violent and revolutionary student protest movement. The protests which occurred in Sydney during that time were *small* and pre-eminently *non-violent* - thus substantively problematising both the 'crisis in law and order' and the 'violent revolutionary movement' purportedly responsible for it. To analyse the criminalisation of trespass solely at the level of this substantive disjuncture, however, would be to miss a crucial element of the law-making process. That is, that the 'crisis' and 'violence' did not so much originate from Sydney or even Australia; but rather from the United States.

The political discourse of 'law and order' was first given widespread public currency by the US Republican Government led by Richard Nixon in the late 1960s and early 1970s[8]. During that time, the United States was marked by a particularly high

[8] It is important to note that the constitutive elements of 'law and order' discourse were not in themselves new. As Hogg and Brown (1998:21) point out, the 'crisis in crime' – with its attendant themes of climactic social change, moral decline and nostalgia for a tranquil past – has perpetually

incidence of violent student-led demonstration and violent state coercion, enabling 'political violence' and 'revolutionary terrorism' to be employed by the US Government as the rationale for "new and strong laws that will put the violent minority where they belong - not roaming around in civil society, but behind bars" (Nixon, cited in Lipski 1970:1). These themes of 'crisis' and 'violence' were integral to the local modes of US governance employed throughout the late 1960s and were of central importance in the Republicans' successful 'law and order' campaign for the 1970 US elections.

In the relative absence of such violent social disorder and correlated political gesturing in NSW, local media outlets eagerly imported and [re]produced both images/information pertaining to US social disorder and images/information on the 'law and order' discourse that had been effectively developed and used to ostensibly counter the problem and bolster the electoral power of US politicians. The outbreak of 'violent political protest' and 'crises in law and order', therefore, were rhetorically drawn from the US and reterritorialised within NSW through the interconnected media/cultural channels extant at that time.

This idea of a *causal* - though not *determinative* - connection having existed between media-imported US events/themes/images and material Australian events of the 1960s and 1970s is one of the major factors that cultural historians have highlighted as accounting for Australian cultural change during that period (Gerster and Basset 1991:67). The development of the Australian 'counter-culture' - a phenomenon closely interrelated and associated with both 'lawlessness' and 'revolutionary protest' - affords an interesting illustration of this process. According to Altman (1977:455) "the counter-culture was a product of the United States, and it was exported to

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and repeatedly been 'discovered' in Australia over the last 150 years. Similarly, in his historical study of hooliganism in England, Pearson (1983) shows how crime has always been seemingly poised to overwhelm us and catalyse social disorder. Strictly speaking, however, it was in the late 1960s that these themes were first nominally grouped together under the discursive banner of 'law and order'.

Australia much as are other cultural phenomenon". Furthermore, after noting that Australia - in contrast to the US - lacked the requisite substantive social conditions for the development of the 'counter-culture', Sinclair (1980:4) similarly declares that "it was the mass-media which brought the counter culture to Australia". All this is to say that the United States had well become the dominant cultural influence in Australia by the late 1960s. Moreover, this influence was facilitated and maintained by the creation, dissemination and consumption of culture at that time - which had taken on a particularly global and media/informated character with remarkably strong American overtones.

Whilst it is well established that Australian counter-cultural politics were causally connected to US image/models/[re]productions of the late 1960s, it has been assumed that Australian legislative politics was somehow unaffected by these global cultural/media flows. The criminalisation of trespass by the Askin Government in 1970, however, directly problematises this notion of legislative transcendence. Just as the counter-culture had been imported into Australia through the media, so too was the political discourse and 'crisis in law and order' locally incorporated from pre-existent US models.

It was in the State by-election for Georges River held in September 1970 that the Askin Government first awkwardly campaigned on the specific theme of 'law and order'. Political commentators at that time, however, noted both how Askin "wielded extravagant law and order phrases in broadaxe fashion" and how "ultimately unsuccessful" and "politically inappropriate" the 'law and order' issue actually turned out to be (Randall 1970:14). The awkwardness of 'law and order' discourse in Australia at that time was further illustrated in the Federal Senate elections held only two months later in November 1970. Herein, the Gorton-led Liberal Government

attempted to heighten the dramatic content of their Senate campaign by stressing the need for more 'law and order' in Australia - thus promoting polemic motifs such as peaceful community/violent individual, discipline and good order/permissiveness and deviance, legitimate demonstration/illegitimate protest. In this instance, however, the 'law and order' discourse was widely criticised and condemned on two grounds. First, from the obvious substantive fact that there "was no general situation of disorder and no sign of one developing" (Randall 1970:14). Second, the 'law and order' issue was criticised for unjustifiably reducing relatively complex socio-political issues into a simplified and inflated binary format. Gough Whitlam, who was then the Federal opposition leader, argued that any discussion of 'law and order' must "necessarily include such things as crime rates, resources devoted to criminology and related research fields, the status of enforcement agencies and the state of the law itself" - that is, extant contextual factors which can actually substantiate the demands for harsher public order legislation (cited in Randall 1970:14). These early attempts to [re]produce 'law and order' discourse in Australia, therefore, were marked by their awkwardness and their failure to gain public-political support.

With the criminalisation of trespass in NSW, however, the Askin Government had one crucial element on their side - *public opinion*. The Gallup Poll strategically published only days before the introduction of the *Summary Offences* legislation was fundamentally significant for at least three reasons. First, the fact that it was the first ever public opinion poll on the issue of 'law and order' clearly indicates the novelty of the discourse in Australia at that time, and further supports the notion that 'law and order' was media-imported from the US into Australia as a relatively ready-made discourse of images/information. Second, moreover, the opinion poll effectively functioned to reduce complex socio-political phenomena into a stable and simplified binary (question/answer) format (harsher laws/same laws). With opinion polls such

as these, the answer is *design-ated* in advance by the question; for the question is specifically designed to trigger response mechanisms in accordance with media media-nurtured stereotypical models (Baudrillard 1992 :62). Furthermore, these polls function to localise and structure not real, autonomous groups but rather *samples* which are already modelled socially and mentally by a barrage of polemic media messages. In short, the Gallup Poll on 'law and order' did not so much express the social *production* of opinion as it did *[re]produce* a simulacrum of public opinion in a concise, binary format. Third, the Gallup poll on 'law and order' was structurally homogenous to the way the Askin Government had been [re]producing the issue, rendering it easy for the two to circuit into one another. As a result, the Askin government was able to legitimise the *Summary Offences Act* 1970 with reference to the 'popular will' whilst simultaneously giving this simulated public opinion a 'real' tactical value and a material legal existence. The criminalisation of trespass - with its interconnected media-political-public opinion feedback loops - can therefore be clearly characterised as an early manifestation of simulated politics and law making.

The three case studies that I have outlined in this paper also serve to illustrate the central importance of the media and other extra-legal discourses in legitimising squatting before - though not necessarily through - the law. In particular, there has been a progressive and discernible movement by squatters from seeking to legalise their actions through the language of the Law 'properly so-called' (Victoria Street), to legitimising their behaviour through the manipulation of cultural beliefs/anxieties within politico-legal forums (Pyrmont), and securing their occupation by playing upon the inherent weaknesses and tensions in the integrated media-political circuitry (Glebe Estate).

In Victoria Street - with the *Cox* and *Bacon* cases - the squatters primarily attempted to legitimise their occupation under the 'reasonable cause' provision contained within s. 50 (1) of the *Summary Offences Act* 1970. Furthermore, the common law defence of necessity and claims of bona fide legal mistake were employed by the squatters in an attempt to determine and negotiate the severity of the criminal trespass legislation. The courts, however, consistently refused to countenance the reasonableness of squatting and were careful to minimise the scope of any possible legal justification or right for any future squatting action.

Although the Pyrmont squatters also attempted to legitimise their continuing occupation through the courts (with the *Parker* case), they were clearly more reluctant to solely use legal discourse and law 'properly so-called'. Instead, they self-consciously fostered a public and/or media profile built around the themes and motifs of *small town/community*, squatting as an *Australian tradition*, and the threats of *homelessness* and *poverty*. Whilst the Pyrmont squatters succeeded in developing their profile and these themes through the courts, they additionally developed them in other domains such as the local media institutions and the local government. Ultimately, it was this strategic *extra-legal* development which enabled them to secure their occupation for as long as they did. The fact that their potential eviction had become a public relations liability for both the Council and the DOH serves to confirm the effectiveness of this strategy.

In Glebe Estate this movement away from legal discourse toward media-political discourse reached its climax. The thorough consideration of the contingencies of the occupation - including the threat of immediate eviction, the need for local community support and the importance of media representation and information exchange - suggests that the Glebe Estate squatters were well aware of the logic of informated

media politics. From their initial entry to the final evictions, the Glebe Estate squatters sought to legitimise and secure their occupation within the field of this integrated media-political circuit. Their legal strategy, therefore, was not so much about *speaking through* the law or even *hiding from* the law as it was about *going beyond* the law and its threat of 'capture' - that is, beyond the strict confines of judicial law to the dynamic liminal space where this judicial discourse interacts with other politico-legal discourse to generate and secure material legal outcomes.

On the one hand this movement away from 'Law' and towards informated politics serves to highlight the textual closure of the law for those that threaten the sanctity of private property. In each of the cases examined in this paper, the courts have not hesitated in standing behind the owner's *right to exclude* squatters - and thus, uphold the legal form which expresses and constitutes their economic power of exclusive control and separation within a capitalist economy. Affording legal protection to exclusive private property rights is indeed one of the law's prime functions in a liberal-legalist system. As squatters have progressively come to understand, therefore, the law cannot countenance the question of whether squatting is 'reasonable' because to do so would necessarily raise questions about its own legal body and the private property rights it nakedly protects and [re]produces.

On the other hand this shift from legal discourse to media-political discourse can be seen to represent a pragmatic attempt by squatters to rearticulate a position of power and security from within an increasingly informated Australian culture and an increasingly performance orientated and gestural political sphere. Within this context "it is not what you do but the impression that you make - or the sign that you give - that counts" (Lasch and Urry 1993:151). The move from a rational politics of *production* to a performance and public-image politics of *reproduction* or *simulation*

had already well begun in NSW - as the criminalisation of trespass indicates - by 1970. The cultural history of squatting in NSW outlined in this paper, therefore, can be characterised by it's progressive attempts to locate, integrate and manipulate this diffuse form of power (simulation) for the purposes of legitimising squatting before the law.

Conclusion

Throughout this paper, therefore, I have outlined some of the various and particular relationships that have been negotiated between squatters and the law over the past three decades. In the first section of this paper I focused on the introduction of the *Summary Offences Act* 1970 and the novel criminal trespass offence that it introduced into NSW. This law was ostensibly passed as a specific means of countering an officially-perceived 'age of lawlessness' and was specifically targeted at a purportedly violent 'student protest movement'. Neither this 'crisis' nor this 'violent revolutionary movement', however, actually existed outside of the Askin Government's populist rhetoric, the public imagination (measurable through opinion polls), and the cultural/media discourses which channelled information flows between these two bodies. In spite of this *substantive disjuncture*, however, the criminal trespass laws were enacted in 1970, and remain in force (albeit under different legislation) today.

In the second section of the paper I chronologically developed three case studies to trace a selective cultural-legal history of squatting in NSW over the 1970s and 1980s. From these case studies of relatively prominent squatting campaigns - in Woolloomooloo, Pyrmont, and Glebe - I was able to examine how criminal trespass laws were progressively negotiated by squatters in NSW. These case studies – most of which have been compiled from disparate newspaper articles and portions of related texts – also go some way in countering the relative lack of written research on the topic of squatting in Australia, and it is hoped that they can stand alone as important contributions to a hitherto neglected area of urban/cultural history.

In the final section of the paper I drew from the material outlined in the previous two sections to argue that *extra-legal* media and/or political discourses play a *constitutive*

role in securing and [re]producing material outcomes. To develop this argument I examined the media-importation of 'law and order' discourse from the US to Australia during the late 1960s and early 1970s and traced how it was first awkwardly introduced by politicians and the media during that time. Furthermore, I examined the how - in the absence of any substantive 'law and order' crisis - *public opinion* was simulated and circuited into the Askin Government's politico-legal campaign to exhibit legitimation for the criminal trespass legislation. The criminalisation of trespass, therefore, can be best and most clearly understood as an early manifestation of simulated 'law and order' media-politics.

In addition, I concluded from the three case studies that there has been a progressive and discernible movement away from legitimising squatting through *legal* discourse toward legitimising occupation through the *extra-legal* media-political discourses that the law necessarily requires to order and [re]produce material legal outcomes. On the one hand, this shift serves to indicate how the limits of liberal-legal order - which is primarily aimed at the protection of exclusive private property rights – are continually asserted and legally [re]produced. Herein, the law cannot countenance the question of squatting as in any way 'reasonable' or justified by any right in law because to do so would necessarily raise questions about the liberal particularity of it's own body. On the other hand, this shift can be read as a pragmatic attempt by squatters to rearticulate a position of power *beyond* – but not in isolation from – the law. From this position, law is not powerful in and of itself. Rather, it is actively [re]produced – and thus, becomes 'Law' – in conjunction with *extra-legal* discourses, techniques and practices that can be located, resisted and appropriated well outside the strict confines of legal discourse and language. As law patches into the circuit of simulated media-politics, the tactics of legitimation before the law necessarily transforms.

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