

Land rights and Aboriginal voices

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This article explains Australian Aboriginal land rights as the just claim of a long historical movement, driven by Aboriginal voices of resistance to dispossession. The land rights movement — demanding the return of land stolen from Aboriginal communities, or compensation for dispossession — grew out of civil rights campaigns, stretching back to the beginning of the 20th century. National land rights claims grew in the 1960s and 70s, leading to a series of partial victories, but for a minority of Aboriginal communities. ‘Native title’, on the other hand, is a non-Aboriginal accommodation. It offers a weak form of title to some communities, but the ‘extinguishment’ of claims for the vast majority. State responses usually mediate popular demands, but the native title response is often misunderstood as actually representing ‘land rights’. Nevertheless, the land rights movement has survived the native title era, and the more recent attacks on existing community title. Recent advances, for example in Tasmania, demonstrate that strong Aboriginal voices can defend and extend land rights for Aboriginal communities

Introduction

Land rights are the just claim of a long historical movement, driven by Aboriginal voices of resistance to dispossession, supported at times by non-Aboriginal Australians, and fiercely opposed by the major beneficiaries of dispossession — those controlling the giant pastoral and mining companies. This opposition, combined with a narrow legal argument and illusions about the role of Labor, have created myths over land rights in Australia. Native title has been wrongly equated with land rights, and the origins of those rights are often misunderstood. Indigenous land rights gain support from the first article of the International Bill of Rights: the right of a people to self-determination, to control their natural wealth and resources and to maintain their means of subsistence (ICCPR/ICESCR Art 1). This article aims to set land rights in a proper perspective, and to explain the central role of Aboriginal voices in the land rights movement.

Aboriginal land rights (as ‘native title’) have been said to be a legal innovation of the courts, a ‘judicial revolution’ (Stephenson and Ratnapala 1993; Neate 2004); a heroic

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initiative of a Labor Government (Watson 2002); and even a non-Aboriginal socialist conspiracy (Hughes and Warin 2005). In fact, the land rights movement from its inception — from the concentration camps ('missions') of the late 19th century, through its rallying point in the mid-1930s, to the contemporary struggle from the 1960s onwards — has always been a claim by Aboriginal communities for the return of ancestral lands, or reparation for dispossession. It has been a sustained and historic act of resistance, in the face of the grand theft of the vital assets of all Aboriginal communities. Led by black voices, that claim has also been firmly linked to Aboriginal communities' rights to economic and political self-determination.

This article will discuss the origins of the contemporary land rights movement; the new character of this movement in the 1970s; the betrayal of Aboriginal communities by Labor in the 1980s; the myths of native title; and the challenges in both understanding and defending land rights. The discussion will demonstrate that, at each historical stage, the creative force of the land rights movement has been a long, popular struggle by Aboriginal people and their supporters. On the other hand, in each case the role of the state has been reactive and mediating, subordinating Indigenous land rights claims under a dispossession-based system of property relations. This process consolidated some land rights claims, but also caused regressions, including a renewal of dispossession under the doctrine of native title.

Origins of the land rights movement

The Australian Aboriginal land rights movement of the late 20th century grew out of civil rights and equal citizenship campaigns, stretching from the 1920s to the 1960s. As Aboriginal community control grew in these civil rights organisations, the demand for the return of land stolen from Aboriginal communities took a central place in the 1960s and early 1970s. There was a proliferation of campaigning, which shook Australian society and led to a series of policy changes. Yet the bureaucratisation of Aboriginal services and funding dependency slowed these campaigns in the 1980s. There are no clear dividing lines, but it might be convenient to talk of three phases, for the purpose of this historical overview: a civil rights and equal citizenship stage, from the 1920s to the 1960s; a land rights and self-determination phase, from the late 1960s to the 1980s; and campaigning in the current bureaucratic era of Aboriginal affairs.

Civil rights organisations began before World War I. A Sydney-based organisation called the Coloured Progressive Association (CPA) had been established by West Indian and African-American sailors and in 1907 and 1908 was involved in organising various functions for African-American Boxer Jack Johnson. They were joined by NSW Aboriginal wharf labourers Fred Maynard and Tom Lacey.

During the 1920s, the international black-consciousness advocate Marcus Garvey established a Sydney branch of his Universal Negro Improvement Association (UNIA). Garvey had established UNIA in 1914 and used converts among African, West Indian and African-American sailors to create branches all over the world. Aboriginal activists Fred Maynard and Tom Lacey joined the Sydney branch of UNIA and, in 1927, Maynard and Lacey founded the first Aboriginal political organisation of the modern era, the Australian Aborigines Progressive Association (AAPA). Catalysts for this formation were the dramatic reduction in Aboriginal reserve land, the tyrannical practices of the Aborigines Protection Board and an escalation in the taking of children from their families. Tom Lacey spoke of the emancipation of slaves in the USA and Cuba, while Fred Maynard declared that 'Aboriginal people are the original owners of this land and have overriding rights above all others' (Maynard 2004).

Until very recently, the AAPA has been regarded as a Christian-oriented organisation by non-Indigenous Australian historians because of its motto, 'One God, One Aim, One Destiny'. In fact, this motto is identical to Marcus Garvey's Universal Negro Improvement Association's motto. John Maynard, the grandson of Fred Maynard, recently revealed the extent of Garvey's influence on the AAPA (Maynard 1997). This research dispels the long-held misconception that the early Aboriginal political movement was both unsophisticated and strongly Christian (or white) influenced.

The AAPA was to be a significant influence on the ideas and activities of the next generation of activists and organisations that emerged in the 1930s. Bill Ferguson was aware of the AAPA, and said that 'they had been hounded out of existence by the police' (Horner 1994, 27). During the Depression years of the 1930s, emerging activists such as Jack Patten, Pearl Gibbs, Bill Onus, Doug Nicholls and Bill Ferguson were involved with a camp of Aboriginal refugees and activists at Salt Pan Creek, on the edges of metropolitan Sydney. This place was a crucible of political activity.

In Melbourne in 1934, William Cooper, Doug Nicholls and others established the Australian Aborigines League (AAL). Other people of eminence in the early AAL included Shadrack James and Marge Tucker. White supporters in the AAL included trade unionist A P Bordeu, a collection of Christians and various individual members of the Communist Party of Australia (CPA). In 1938, the APA and the AAL would work together to challenge white Australia's celebrations of the 150th Anniversary of white settlement. William Cooper declared the occasion a 'Day of Mourning' and a protest meeting was organised in Sydney. This protest was the first significant Aboriginal political action of the 20th century in that it received reasonable media coverage. Prime Minister Joe Lyons met a deputation of Aboriginal people.

In organising the National Day of Mourning in Sydney in 1938, Jack Patten and Bill Ferguson demanded the abolition of the Aboriginal Protection Boards and a 'new deal' for Aborigines. With the slogan 'keep your charity, we want justice', Patten and Ferguson pointed out that Aboriginal people could vote in a state election, but a racist regime deprived them of most citizens' rights (see Ferguson and Patten 1938). They also demanded Aboriginal control of Aboriginal missions and reserves. These were camps to which most Aboriginal people in New South Wales had been driven, by the 1880s, and which were ruled by white mission managers (see Miller 1985; Goodall 1996).

The APA campaigns sparked a revision of federal policy. The 'protection' era began to be wound up, but it was replaced in 1937 by a broader policy of 'assimilation'. Welfare Boards took over from the old Protection Boards in the domination of Aboriginal life (Read 1982). One of the architects of the assimilation policy asserted that 'the destiny of the natives of Aboriginal origin, but not of the full blood, lies in their ultimate absorption by the people of the Commonwealth' (Hasluck 1988, Ch 4). Nevertheless, inspired by the Progressive Associations, Wiradjuri people at Cumeragunja (NSW) walked off their mission in 1939, demanding citizens' rights and controls over their own reserve (see Clark 1972, 102-18; Goodall 1996; and a fictional account in Maris and Borg 1985, 93-135). Aboriginal and non-Aboriginal people from Melbourne supported the group with food and blankets, as they camped in Barmah state forest. In 1940, in a similar action, Wangkumata people walked off their station at Brewarrina (see Goodall 1996). Aboriginal peoples were starting to reclaim their land, beginning with the mission stations and reserves.

Post-World War II struggles focused on regaining control of the reserves and addressing racism in civil rights and services. In 1946, there was a strike of Aboriginal stock workers in the Pilbara area of Western Australia, where most of the Indigenous workers were receiving no cash wages at all. The strike affected 6500 square miles of sheep farming country. Aboriginal strikers were seized by police at revolver point and put in chains. The Pilbara strike was supported by 19 unions in Western Australia, seven federal unions and four Trades and Labour Councils. In the east, Bill Onus was involved in organising support for the strikers. The Western Australian branch of the Seamen's Union placed a ban on the transport of wool from stations affected by the strike, winning almost immediate concessions from the pastoralists. The Pilbara strike inspired Indigenous stock and station workers throughout regional Australia to seek better wages and conditions, and was partly the inspiration for the legendary Gurindji action two decades later in 1966.

In the Northern Territory, on 27 November 1950, Aboriginal workers in Darwin staged a well-organised native strike in Darwin. The Aboriginal workers had

organised the strike themselves and then sought advice from the North Australia Workers Union (NAWU). The two strike leaders were identified as a man named 'Lawrence' and a striking police tracker named Billy Palata. In mid-January 1951, Darwin police 'dispersed' an armed group of more than 50 Aboriginal strikers who were 'marching on Darwin'. Lawrence and Billy Palata were arrested and police refused to bail the two men to NAWU officials, saying that as Aborigines the men could only be bailed to the Native Affairs Department or their employers (Tatz 1979; Gardiner-Garden 1999).

In the early 1950s, Pastor Doug Nicholls formed the Victorian Aboriginal Advancement League, with church backing. Trade unions also backed Aboriginal struggles. Councils for Aboriginal Rights were formed in each state capital — though they didn't last long (Horner 2004). Then, during 1957–58, a 12-member Federal Council for Aboriginal Advancement (FCAA, later FCAATSI) was formed, with three Aboriginal members: Doug Nicholls, Bert Groves and Jeff Barnes. The FCAA's aims were equal citizenship rights, a decent standard of living, equal pay, education and retention of the remaining reserves. However, within its first year the FCAA had adopted the Sydney-based Aboriginal-Australian Fellowship's campaign for a petition to change the Australian Constitution (Horner 2004), striking out one provision that retained the states' power over Aboriginal people (s 51(xxvi)) and another that did not count Aboriginal people in the Census (s 127).

It took 10 years for success in the campaign to change Australia's constitution. The 1967 referendum passed that proposal with a more than 90 per cent vote, and was a huge exercise in public education over Aboriginal civil rights (see Bandler 1989). But the referendum was not (as is popularly but wrongly believed) about the right to vote (that had been guaranteed, for federal elections, under an amendment to electoral law in 1962), but rather allowing the federal government (and not just the states) to legislate and provide services for Aboriginal people. The referendum campaign was symbolically about a broader notion of Aboriginal citizenship (Bandler 1989; Sykes 1989). The capacity of the federal government to override the states remains an important issue in Australian politics. For example, had the 1967 referendum not been passed, then according to the Constitution, the 1975 *Race Discrimination Act* (Cth) could have been said to apply to all races *except* Aboriginal peoples.

In the meantime, in 1963, a group of Aboriginal peoples at Yirrkala (NT) presented a bark petition to federal Parliament, protesting the 'excision' of much of their land and its delivery to a mining company. They said that 'the land in question has been hunting and food gathering land for the Yirrkala tribes from time immemorial; we were all born here' (Wells 1982, 127–28). A similar resistance was brewing in Cape

York, where the Mapoon and Aurukun peoples were being moved from their lands by the federal government (with the help of mission managers) to make way for aluminium companies (Mapoon People 1976).

The early 1960s in Victoria had seen a dispute over the planned closure of Lake Tyers mission, under the policy of assimilation. Doug Nicholls had joined Lake Tyers elders, including Laurie Moffat, to demand 'community control' of the mission. In 1970, the Victorian Government finally handed the Aboriginal residents freehold title to their reserve (Clark 1972, 218–28). In 1965, Charlie Perkins was leading students in the Freedom Rides through country New South Wales, confronting apartheid practices in swimming pools, theatres and bars. In 1966 the Gurindji people walked off Wave Hill station, initially over a claim for equal wages from their British pastoral company employer, but this became a claim for the return of ancestral land. The Gurindjis gathered support from Aboriginal and non-Aboriginal organisations, contributing to the equal pay cases of the late 1960s (see Hardy 1968, Chs 8 and 10; Rowley 1971). Ten years on, the Gurindji claim was partly met when the Labor Government handed back some sections of their land. However, the Larrakia claim (in Darwin) did not advance, and the Yirrkala claim was rejected by the courts in 1971 (Blackburn in *Milirrpum v Nabalco Pty Ltd*, 1971).

Land claims expanded in the north and the south. These had not begun in the 1960s, but they began to intensify. Heather Goodall (1988, 181–97) maintains a longer view, insisting that Aboriginal civil rights and land rights movements have been intertwined for many decades. However, the land rights movement of the late 1960s was developing a new national character.

Black power and the Tent Embassy

From these moves in the Northern Territory, combined with intense mobilisation in the major cities, came the modern land rights movement. The strongest voices were in Sydney, Brisbane and Melbourne, where thousands of Aboriginal people had migrated in the late 1960s (Foley in YAPA 1992, 17–21). Chicka Dixon and Kath Walker were demanding Aboriginal control of FCAATSI (the Federal Council for the Advancement of Aboriginal and Torres Strait Islanders) — against the resistance of non-Aboriginal members, such as future Aboriginal Affairs Minister Gordon Bryant — and young Aboriginal activists were drawing on the 'black power' movement in the USA to launch their demands for empowerment.

The black power movement (like the AAPA of the 1920s) drew its inspiration in part from African-American advocates, and was influenced by the ideas of Marcus Garvey, Malcolm X and the US Black Panther Party. It adapted these ideas to develop

a concept of 'land rights' that would, if implemented, enable Aboriginal people to develop their homelands into economically independent enclaves, thus enabling people to maintain their cultural integrity and exercise genuine self-determination. The white Australian media continued to focus on what they perceived as the violence and black racism of such a movement. Nevertheless, black power activists developed a whole new range of self-help organisations such as free legal services, medical clinics and housing associations that spread across Australia over the next decade (Foley 2005).

In Sydney, there was an activist focus around the Foundation for Aboriginal Affairs in Elizabeth Street, Surry Hills, and the Empress Hotel in Regent Street, Redfern. In Melbourne, the focus was in Fitzroy, around Gore Street and the Advancement League Centre. Bruce McGuinness was a prominent leader of the black power movement in Melbourne, which argued that Aboriginal people were 'more likely to achieve freedom and justice for themselves by working together as a group'. Victoria's Aboriginal Advancement League, as well as FCAATSI, was being 'Aboriginalised' (Richardson 1969).

Through examination of the obvious problems facing these urban communities, a focus on legal and medical issues became central. Aboriginal people, especially youth, were (and still are) being harassed, arrested and jailed. In 1970, volunteer lawyers in Melbourne and Sydney were organised into the first Aboriginal Legal Services, led by activists such as Gary Williams and Paul Coe. These groups had 'volunteer lawyers working under the guidance of an Aboriginal-controlled committee' (Foley 1991, 5). These were the forerunners of community legal centres which, together with the ALS, gained access to federal funds under a Labor Government in 1973.

Similarly in 1971, volunteer doctors were organised to create the first Aboriginal Medical Services. In their first few years, these organisations operated on a shoestring, with mainly voluntary labour, and became an important activist base. The AMS had an ethos of 'self-determination through community control', parallel to the ALS, and was 'initially staffed by rostered volunteer doctors, nursing sisters and Shirley Smith as Field Officer'. Through the 1970s, almost 50 new health services were set up and they all joined the National Aboriginal and Islander Health Organisation (NAIHO). Naomi Meyers and journalist John Newfong played important parts in building the AMS, and later the NAIHO. The success of the NAIHO led to a re-evaluation of Department of Aboriginal Affairs health programs in 1979 (Foley 1991, 4–12). A similar national coordinating body, NAILLS, was set up for the Aboriginal Legal Services. Other cultural, educational and social organisations grew. In the early 1980s under Kevin Cook, Tranby College in Sydney

shifted from a church-run to an Aboriginal-controlled institution. Under Bruce McGuinness, Koori College began training health workers in Melbourne. SNAIC and Link Up, organisations to help Aboriginal children (taken away by the state) find their parents, came into existence in 1979–80 (Edwards and Read 1989).

However, a piece of reactionary politics was to catalyse the most symbolic development in the Aboriginal movement of the early 1970s. Prime Minister McMahon had been so unnerved by 1971's anti-apartheid activism and the court consideration of the Gove land claim case that in 1972 he felt the need to make a major statement on Aboriginal land rights. McMahon chose the highly contested and symbolic day of 26 January (Australia Day to whites, 'Invasion Day' to Aborigines) to make his statement, in which he rejected the notion of Aboriginal land rights. Within hours of the Prime Minister's statement, black power activists from Sydney had established a protest on the lawns in front of Parliament House in Canberra. The protest was dubbed the 'Aboriginal Embassy', in an expression of alienation and rejection of the Australian Government's authority over Aboriginal people.

The Aboriginal Tent Embassy was to become a turning point for the land rights movement. The activists said the embassy drew attention to the fact that they were regarded as foreigners in their own land. Government ministers described the 'embassy' as a type of 'apartheid', and tried to close it down. However, the embassy remained for several months, and there was no legal basis for closing it down. In February, embassy spokesman John Newfong (1972, 5) announced a five-point plan for land rights, involving the creation of an Aboriginal state in the Northern Territory, legal title and mining rights to all reserve land and settlements, the protection of sacred sites and compensation for land that could not be returned. In April, spokesman Ambrose Brown (1972) noted: 'We've achieved recognition just by being here.'

In July 1972, an ordinance was passed in the middle of the night to form the pretext for two violent police interventions, involving hundreds of people and over 20 arrests (see the film *Ningla A Na*). It did not in fact close the embassy, which ran on for two more years, and has been resurrected at different times over the subsequent three decades. The Aboriginal Tent Embassy gave a voice to a new generation of Aboriginal leaders (including Bob Bellear, Paul Coe, Gary Foley, Roberta Sykes, Dennis Walker, Billie Craigie, Gary Williams and Isabel Coe) and became a focal point for the land rights movement. This was not about land that no-one else wanted or no-one else had claimed (as in native title), but rather about the return of stolen ancestral land, or compensation for the theft of that land.

Following the massive attention given to the embassy, the Labor opposition was

encouraged to make promises to Aboriginal people. As Shirley Smith (Mum Shirl) put it: 'The Labor Party was jumping up and making promises of what they could give to Blacks if they got in at the next elections at the end of the year' (Smith and Sykes 1981, 110–17). In fact, the Labor Government in office (1972–75) moved very cautiously, establishing a Department of Aboriginal Affairs (DAA) and then the Woodward Commission of Inquiry into land rights. The DAA almost immediately came into conflict with Aboriginal activists. The first Minister, Gordon Bryant, had opposed the push for Indigenous control of FCAATSI (Foley 2001). Kevin Gilbert noted Aboriginal criticisms of the terms of reference of Labor's land rights Commission:

... the lack of Aboriginal representation on and participation in its deliberation, that the inquiry was to be restricted to the Northern Territory, that mineral rights would continue to be reserved to the Crown, the lack of consideration of their claims for compensation, and so on. [Gilbert 1977, 269.]

A Bill was prepared in 1975 but was not passed until 1976, under a Liberal Government, and after the rights of communities to control entry, the building of roads, fishing and mining had been further watered down. Nevertheless, the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) was widely recognised as a significant 'step forward' (Gilbert 1977, 271). In 1975, Aboriginal Senator Neville Bonner secured a Senate resolution on prior ownership and compensation:

... the indigenous people of Australia ... were in possession of this entire nation prior to the 1788 First Fleet ... [the Senate] urges the Australian Government to admit prior ownership by the said indigenous people, and introduce legislation to compensate the people ... for dispossession of their land. [Quoted in Harris 1979, Ch 1.]

Land rights agitation in the early 1970s created broad support for land rights, and helped develop a series of 'homelands movements', in the mid-1970s. In central Australia, Aranda, Pitjantjara, Warlpiri and other Aboriginal communities began to leave the missions and settlements established by the churches and colonial authorities, returning to camp on and claim their ancestral lands. This was viewed with alarm by the mission managers and some governments, as it was seen as a move away from 'civilisation' and from the limited infrastructure those missions and settlements enjoyed. However, the people were going back to reclaim their land, and they were not asking anyone's permission. This had already occurred at Yirrkala in 1969. Now in the centre, country and city camps sprang up, as Aboriginal people — often for the first time in many decades — began to make decisions about where they would live. A few government services were towed along in the wake of this mass movement (Nathan and Leichleitner Japanangka 1983). A similar reoccupation was

carried out, at the same time, by the Mapoon people in Cape York, thousands of kilometres away (Mapoon People 1976).

State governments responded either cautiously or with hostility to the land rights movement. Both Labor and Liberal administrations were driven, by the widespread popular support that had been mobilised, to some form of legal recognition. Legislation in South Australia in 1981 and 1984 — the *Pitjantjatjara Land Rights Act 1981* (SA) and the *Maralinga Tjarutja Land Rights Act 1984* (SA) — returned substantial land (but desert land) to some Aboriginal communities. The *Land Rights Act 1983* (NSW), on the other hand, was a hybrid of acknowledging title to some reserves, ‘validating’ the theft of other reserves (which had been reclaimed for such important purposes as golf courses), allowing some limited claims on Crown land and giving a proportion of land tax for 15 years, so that land councils (established under the Act) could buy back some freehold land. The chairman of the NSW Land Council, Kevin Cook, said the Act was ‘not what we wanted ... [it] has forced a compromise on us ... [but] our traditional right to lands ... have never been ceded by treaty or overturned by conquest ... we maintain they still exist’ (Cook in Wilkie 1985, v).

In 1984, the National Party Government in Queensland passed a law specifically to block land claims in the Torres Strait. The *Queensland Coastal Islands Declaratory Act 1984* (later disallowed as in breach of the 1975 *Race Discrimination Act* by the High Court in the *Mabo* case) aimed to block the claim of several Meriam Islanders, including Eddie Mabo. It was explicitly racist legislation, by the openly racist Bjelke-Petersen Government. Subsequently, a Labor Government in Queensland passed a weak *Aboriginal Land Act 1991*, designed to placate the critics (see Tatten and Djinbah 1991).

State and federal governments reacted in various ways to mediate and contain pressures from the land rights movement. Where there was not hostile, ideological opposition, or direct pressure from powerful corporate interests (such as mining and pastoral companies), states adopted elements of land rights, where there was least resistance. In doing so, they associated themselves with the groundswell of support for the just claims of the land rights movement.

Labor’s betrayal

In 1983, the stage appeared set for national land rights legislation, but Labor betrayed Aboriginal Australia. The federal Labor Party had promised national land rights legislation in its 1983 election platform. Once Labor was in office, Minister for Aboriginal Affairs Clyde Holding confirmed this, in a December 1983 resolution

passed by the Parliament:

[This Parliament] acknowledges that ... the Aboriginal and Torres Strait Islander people of Australia were the prior occupiers and original owners of Australia ... special measures which must [now] be taken include ... the recognition by Parliament of Aboriginal and Torres Strait Islander people's rights to land, in accordance with the following five basic principles:

- (i) Aboriginal land to be held under inalienable freehold title;
- (ii) protection of Aboriginal sites;
- (iii) Aboriginal control in relation to mining on Aboriginal land;
- (iv) Access to mining royalty equivalents; and
- (v) compensation for lost land to be negotiated.

The human rights of Aboriginal and Islander Australians must take precedence over state rights. [Holding 1984, 1–8.]

This was almost a decade *before* the High Court's 'judicial revolution', in the *Mabo* decision. Labor's December 1983 resolution in Parliament was the strongest commitment by an Australian Government to comprehensive Aboriginal land rights — before or since. However, the plan was quickly under attack from mining companies in Western Australia. Land rights were portrayed in television advertisements as an attack on suburban backyards. The Western Australian Labor Government led by Brian Burke soon buckled, followed by the federal Labor Government (CLC 2006).

Prime Minister Bob Hawke, who claimed to have 'held the cause of Aboriginal rights as the nation's greatest priority', met with the Australian Mining Industry Council and began to water down his proposed law (Tickner 2001, 21, 295). However, Premier Burke threatened to resign if the law was not ditched entirely (Jaensch 1989, 116). Rather than construct a public education campaign to 'sell' their policy, the Hawke Cabinet gave in. This Cabinet was dominated by economic rationalists who had 'very little empathy with Aboriginal aspirations', according to one of their ministerial colleagues (Tickner 2001, 23). Hundreds of Aboriginal people mobilised in Canberra for a week of demonstrations in May 1985. But Labor's policy was dead, and relations between Aboriginal organisations and Labor had been poisoned (Read 2001, 297–99).

Labor flicked the issue to the conservative states. Minister Clyde Holding announced in March 1986 that:

Following consideration by the Government of some 260 submissions from interested parties ... the Government made clear its preference for land rights to be implemented by state action broadly consistent with the Commonwealth's principles, rather than by overriding legislation. [Holding 1986.]

So much for Aboriginal human rights taking precedence over 'states rights'. The *Canberra Times* (6 March 1986) called it a 'shameful backdown'.

Aboriginal activists began to mobilise in the lead-up to the planned celebration of the bicentenary of colonisation, in January 1988. With the experience of (banned) demonstrations at the 1982 Commonwealth Games in Brisbane, groups from around the country planned convoys into Sydney. Meanwhile, international networks were reactivated, and the claim of 'sovereignty' took a more central place. A National Coalition of Aboriginal organisations (NCAO) was formed, to coordinate campaigns over sovereignty, land rights and the return of human remains, artworks and relics held in other countries. Activists in Western Australia and New South Wales joined forces to push for a Royal Commission into Aboriginal Deaths in Custody. Led by Helen Boyle and Arthur and Leila Murray, and with a beginning focus on the deaths of John Pat and Eddie Murray, this 1983–87 campaign secured the inquiry. However, the long and expensive Royal Commission (see Johnston 1991) did not lead to any reduction in jailings or deaths in custody.

In an attempt to defuse the campaigns in the lead-up to the Bicentennial, the Hawke Government announced the creation of an Aboriginal and Torres Strait Islander Council (ATSIC), with elected representatives but an appointed chairperson and deputy. The move fell flat. Fifty thousand Aboriginal people and their supporters marched into the centre of Sydney, and as the fireworks were set off along the Harbour, they held their own 'Survival Day' celebrations. The demonstration was largely ignored by the Australian corporate media, which focused on the official celebrations, but the Aboriginal statement was covered widely by the international media. Survival Day celebrations in Sydney have carried on every year since 1988, initially at La Perouse, then at Redfern. In early 1990, ATSIC was imposed on an Aboriginal community which 'stayed away in droves' from the election (Foley 2001).

Apart from the symbolic handback of Uluru, in 1985, nothing more on land rights was heard from federal Labor, until the 1992 *Mabo* judgment forced them to act. The *Mabo* case forced Labor to deal with the new (and long overdue, but limited) common law recognition of traditional rights, but even more importantly, to deal with fear and uncertainty over title among big non-Aboriginal land owners. The state project was to somehow codify the *Mabo* principles in national law, while maintaining the *Mabo* decision's spirit of extinguishment.

Native title and land rights

One consequence of the myth that native title equals land rights is that land rights are often now seen as the creation of the High Court in 1992 and the subsequent *Native Title Act 1993* (Cth). Focus by lawyers on the *Mabo* judgment (for example, Stephenson and Ratnapala 1993) has led to the popular misunderstanding that Australian law recognised Aboriginal land rights for the first time in 1992. Graeme Neate, head of the Federal Native Title Tribunal, suggests an equivalence between native title and land rights:

The Mabo decision made a fundamental change ... Before Mabo some groups of Indigenous Australians had title over or rights to specific parcels of land ... [but] the decision in the Mabo case was the first time that an Australian court had recognised the entitlements of Indigenous people to their traditional lands under their traditional laws. [Neate 2002.]

However, the *Mabo* case did not even attempt to address the full claims of the land rights movement, let alone challenge the basis of the colonial land grab. As Michael Mansell says:

The Murray islanders did not argue against the claim by whites that the whole continent ... passed into the hands of the British when a flag was stuck in a beach at Botany Bay ... [or that] the common law of England applied throughout ... in fact the case was dependent on this being so ... the issue was whether the Crown also took over [all] native title as well as sovereignty, when the flag was struck. [Mansell 1992.]

The *Mabo* case removed the colonial fiction of an 'empty land' — a fiction that was used to justify dispossession. Some judges recognised the significance of this dispossession:

Aborigines were dispossessed of their land parcel by parcel, to make way for expanding colonial settlement. Their dispossession underwrote the development of the nation. [Brennan in *Mabo*, 1992, at 50.]

Yet in the same breath, the *Mabo* judgment sought to validate the overwhelming bulk of actual dispossession. Subsequent legal argument notoriously refers to this dispossession not as a deliberate policy process, or a failure to construct treaties, but rather as a natural 'tide of history' which has 'swept away' most Aboriginal claims (Brennan in *Mabo*, 1992; O'Loughlin in *Cubillo*, 2000).

The High Court said that the Meriam people were entitled to own and possess their islands, but it added that the Queensland Parliament had the power to extinguish their title, so long as it did not breach federal law. However, under this native title

doctrine, all dispossession of Aboriginal communities was declared valid. The one exception to this 'extinguishment' doctrine was racist dispossession by the states after the federal *Race Discrimination Act 1975*. Further, Aboriginal communities were not entitled to any compensation for this great robbery.

The *Mabo* case is commonly said to have established four principles: a rejection of the earlier *terra nullius* (land belonging to no-one) doctrine, recognition of a native title which may have survived a supposed change in sovereignty (but which had to be proved by Aboriginal people), the implicit 'extinguishment' of most native title (that is, legitimising all other title granted over Aboriginal lands) and an argument mostly opposing compensation for extinguishment. While overturning *terra nullius* meant recognition of Aboriginal law and land custodianship, in the same breath *effective* Aboriginal law was denied. Extinguishment was the chief finding of the *Mabo* decision. Apart from the successful Murray Islanders' claim, the principle reaffirmed was that, for the previous two centuries, all non-Aboriginal title granted over Aboriginal land was valid, and that all Aboriginal claims that faced non-Aboriginal competition were summarily extinguished. Only after the *Race Discrimination Act* of 1975 did the High Court allow that questions of compensation could arise.

What was most significant about the *Mabo* and *Native Title Act* processes was the relative absence of Aboriginal voices. Eddie Mabo and his country folk filed their claim in 1982, and a handful of selected Aboriginal advisers sat in with Paul Keating's administration in 1993 as the deal was done. The High Court had raised a spectre over land title in Australia and the placating of big property owners and investors was Labor's real crisis. The *Mabo* ministerial committee was chaired by Prime Minister Keating and dominated by Ministers for Resources, Primary Industry and Energy, Industry, Finance and Treasury. While the government went into sessions to resolve their problem, the Wiradjuri people in NSW and the Wik people in Queensland lodged large land claims. The then Aboriginal Affairs Minister Robert Tickner (2001, 108–10) later wrote that he was 'demoralised' by the economic rationalist ethos of Cabinet, and its lack of commitment to Indigenous social justice.

In August 1993, a major meeting of Aboriginal representatives from around the country issued a statement from Eva Valley Station (NT). This rejected the proposed Native Title Bill and called for 'legislation to advance Aboriginal rights to land' and for the states to be excluded from the process (in Coombs 1994, 231–34). Keating reacted angrily and restricted his consultations to a small group, including appointed ATSIC head Lois O'Donohue and persons from the few communities that stood to benefit from a limited *Mabo*-style native title law — Noel Pearson (from Cape York), Peter Yu (from the Kimberleys) and David Ross (from the NT). Important

representatives excluded included Paul Coe, Charles Perkins, Mick Dodson, Geoff Clark, Rob Riley, Michael Mansell and Aden Ridgeway — prominent people in the national land rights movement, but also representatives of the southern states. However, the support of this small and unrepresentative 'A team' gave the Keating Government the appearance of Aboriginal support for its native title law, which passed federal Parliament in late 1993.

The High Court's 1996 *Wik* decision, which extended its native title notion to pastoral leases, and subsequent attacks on the *Native Title Act* by the conservative opposition (later the Howard Government), would overshadow just how effective a barrier this native title had become to land rights. Even before the 1998 amendments to the Act had further weakened the bargaining position of the few communities that stood to benefit, the major mining companies had expressed their satisfaction with the Labor deal. Leon Davis, CEO of CRA, said he accepted native title in principle, and believed that the new concept provided a 'constructive path' to major mining developments. John Prescott of BHP said that 'basically our position has always been that we support native title ... we are prepared to work with government to resolve [any problems]' (Frith and Caruana 1995).

In many ways, this stunted 'native title' concept has become an effective substitute in dispossession for the 'terra nullius' concept it is supposed to have replaced. Yet not only is native title irrelevant to over 80 per cent of the Aboriginal population, it legitimises dispossession for the vast majority of Aboriginal people. For those few to whom it applies, it is a subordinate and weak title, presenting the false image of having met the aspirations of the land rights movement. Michael Mansell noted:

The Mabo decision would find support from those few Aboriginal groups in isolated areas who could take advantage of its narrow scope, and from those ... [who] remain loyal to whites, their institutions and forms. However more than 250,000 of the 300,000 Aborigines would get nothing. [Mansell 1992.]

Few Aboriginal people spoke out against the creation of native title because they did not want to harm the claims of those few Aboriginal groups who stood to benefit — those in far North Queensland, the Torres Strait and the north of Western Australia.

In 1995, Justice Robert French, first President of the Native Title Tribunal, correctly observed that native title law must seem 'perverse' to many Aboriginal communities, as it made land rights dependent on historical 'accidents':

... the survival of native title on land which may today be vacant Crown land depends on accidents of historical land tenure ... states, territories and significant mining interests are

vigorous in their pursuit of extinguishing events against native title claims ... the process must seem perverse to those who maintain their association with their country and upon whom indigenous tradition confers responsibility for that country. [French in *Waanyi Peoples Native Title Determination*, 1995.]

Native title allowed only restricted land rights claims by a small number of Aboriginal groups, in situations similar to that of Eddie Mabo. Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Dodson denounced both the *Mabo* decision and the *Native Title Act*, saying it 'legalised the theft' of Indigenous land: 'The native title Act legalises injustice to indigenous Australians ... [but] the Native Title Act is not the last word on indigenous rights in this country' (Jopson 1995, 3).

What of the outcomes from a decade of native title? While acknowledging large non-native title gains before 1991, Native Title Tribunal chief Graeme Neate argues for the new doctrine:

The Pitjantjatjara and Maralinga lands comprise respectively 10.4% and 7.7% of South Australia [102,630 km² and 76,420 km², respectively]. The total area of grants under various Commonwealth, state and territory statutes is 1,101,623 square kilometres or 14.32% of the area of Australia. [Neate 2004, 19.]

This was almost all arid lands in the NT and SA. Neate goes on:

Similar outcomes have emerged from native title determinations. As at 1 November 2004 there were 54 determinations of native title ... So far, native title has been determined over a total area of 453,162 square kilometres, or 5.73% of the area of Australia ... Many groups of indigenous Australians who were ... invisible or marginalised are now seen and have seats at the negotiation table. [Neate 2004, 19, 34.]

However, half of this area is unwanted desert land in Western Australia, while three-quarters of the successful Queensland claims were in the islands and ocean of the Torres Strait.

By the end of 2004, 10 years after the *Native Title Act* came into force, there had been 37 successful claims (21 full and 16 partial) under the legislation. However, there were no successful claims at all in South Australia, Victoria, Tasmania and the ACT. There was one successful small claim in NSW. Tribunal claims that had delivered some land to Aboriginal communities were in the Northern Territory, arid regions of Western Australia and far north Queensland. Several of the claims covered existing Aboriginal reserves or missions. The top state in terms of successful claims

was Queensland. However, of the 21 successful Queensland claims, 17 were in Torres Strait islands — in similar conditions to Eddie Mabo's island. One was an extension of the Wik peoples' successful High Court action to some limited rights over pastoral lease country. The remaining three were in the Cape York area, involving Missions land and 'unallocated' state lands (AIATSIS 2005). With native title, most Aboriginal people were still unseen and had no 'seat at the negotiation table'.

Understanding and defending land rights

All the major advances of the long land rights movement *and* the civil rights movements have been driven by Aboriginal voices, and Aboriginal-controlled organisations. By this we do not mean Departments of Aboriginal Affairs, ATSIC or the latest National Indigenous Council, but community-based groups like the Advancement Leagues, FCAATSI, the ALS and AMS, NAILS, NAIHO, Aboriginal controlled colleges and community centres, some land councils and the National Coalition of Aboriginal Organisations. You would not know this by reading much of the existing history and analysis of Aboriginal affairs. Some non-Aboriginal historians have explained Aboriginal social movements well (for example, Hardy 1968; Nathan and Leichleitner 1983; Goodall 1988 and 1996). Others have become captured by the better documented roles of mission managers and non-Aboriginal advocates, in particular Labor politicians. Bain Attwood, for example, imagines that land rights 'first emerged as a concept amongst non-Aboriginal campaigners' (Attwood 2003, 216). The role of non-Aboriginal advocates, and the engagement of communities with white systems, has been a constant theme among older social scientists (for example, Rowley 1971), but one which has obscured the rise of Indigenous movements.

As important as the High Court's 'cheer squad' in elevating native title and obscuring the land rights movement have been the Labor apologists. By Don Watson's argument, for example, his old boss Paul Keating was the hero of Aboriginal land rights.

For Keating it was the big chance to make a difference, a chance that Hawke had squibbed in 1984. ... national legislation enshrining the Mabo judgement ... would lay a new foundation for Australia in the 21st century ... Australian law [now] reflected the truth of Australia's history ... No-one else in that Government, or for that matter in any previous one, would have got the legislation through. It was a monument not only to his political skill and integrity, but to his belief that sometimes it is your duty to be a head of public opinion and to ignore it, whatever the risk. [Watson 2002, 381–82, 453–54.]

Apparently Keating had no role at all in Labor's betrayal of 1984–85; apparently he was right to ignore all those Aboriginal voices in 1993. However, it seems unlikely that his electoral defeat of 1996 was due to his principled stand for all those ungrateful Aborigines.

The role of non-Aboriginal advocates is also seized on by bank- and mining company-funded 'think tank' reports that paint land rights as a non-Aboriginal socialist conspiracy. Right-wing ideologue Helen Hughes and her companions regard land rights as nothing to do with the just claims of Aboriginal people, but rather a 'socialist experiment' devised by Nugget Coombs and his Labor friends:

Since the 1970s Australia has been conducting a socialist experiment in remote communities with the lives of Aborigines and Torres Strait Islanders. Coombs, Brandl and Snowdon provided the blueprint in *A Certain Heritage* [1983], advocating communal land ownership, supported by substantial welfare transfers, to create an Aborigines and Torres Strait Islander hunter-gatherer utopia that would culminate in a nation independent from the rest of Australia. [Hughes and Warin 2005, 1.]

The historical claims of such an absurd story would not normally deserve a serious response, except for the fact that such arguments are now used to back corporate demands (in Australia and the Pacific) for the privatisation of Indigenous land. The proposal is for governments to force existing Indigenous land title into:

... an individual property rights land ownership framework ... to enable Aborigines and Torres Strait Islanders to develop enterprises and attract investment to create jobs and incomes. [Hughes and Warin 2005, 1.]

Based on this sort of argument, between 2002 and 2005 several conservative ministers have flagged a desire to shift their Indigenous policy emphasis 'towards individuals ... rather than community organisations' and towards a 'more workable' form of land rights, and to be 'looking more to private recognition' of land rights (Ruddock 2002; Vanstone 2005; Howard 2005). One NSW Aboriginal leader, Warren Mundine, has attached himself to this bandwagon, arguing that Indigenous community land 'should be able to be bought and sold' (Mundine 2005). The huge risk of a second dispossession (of those few communities who do have some land rights) should be obvious. Poor communities never benefit from individual get-rich-quick schemes.

All this points to the need to defend existing land rights, and extend them. Restoration of Aboriginal lands is essential for community self-determination, development and self-esteem. Native title has been irrelevant to most Aboriginal

The land rights movement and state responses

	Major Indigenous campaigns	State responses
Civil rights and equal citizenship: 1920s–60s	<ul style="list-style-type: none"> Aborigines Progressive Associations, 1924 and 1937 APAs 'National Day of Mourning', 1938 FCAA (FCAATSI) referendum campaign, 1957–58 	<ul style="list-style-type: none"> 'Protection' abandoned but 'assimilation' introduced, 1937 1967 referendum removes discriminatory provisions in Constitution — but little action over Aboriginal rights
Land rights and self-determination: 1960s–80s	<ul style="list-style-type: none"> Freedom rides in NSW, 1965–67 Gurindji land campaign at Wave Hill, 1965–66 Struggle for Aboriginal control of FCAATSI, 1969 Larrakia and Gove (NT) land claims, 1969+ East coast 'Black Power', 1968–70s Aboriginal Legal and Medical Services, 1970+ Aboriginal Tent Embassy, 1972 National and local land rights campaigns, 1970+ Aboriginal controlled health, education, arts and community organisations, 1970s+ Sovereignty (APG) and treaty campaigns, 1980s+ Campaigns to return Aboriginal remains and relics 	<ul style="list-style-type: none"> Gove and Larrakia (NT) land claims rejected, 1971 Partial recognition of Gurindji claims, 1975 Royal Commission into Aboriginal land rights, 1973+ ALS and AMS receive federal funding, 1973 NT <i>Land Rights Act 1976</i> NSW <i>Land Rights Act 1983</i> — validates dispossession SA <i>Land Rights Acts</i>, 1981 and 1984 Qld <i>Coastal Islands Act 1984</i> — blocks land claims Uluru handback, 1985 ALP reneges on national land rights promise, 1983–86
Campaigning in the bureaucratic era: 1980s+	<ul style="list-style-type: none"> Stolen Children campaigns — Link-up Corp, 1980+ CDBR and Watch Committee Aboriginal deaths in custody campaigns, 1983+ Tasmanian land claims, 1980s+ Meriam peoples (<i>Mabo</i>) land claims, 1982–2001 Mirarr campaign to close Ranger uranium mine at Kakadu (NT), 1990s+ 	<ul style="list-style-type: none"> HREOC Stolen Generation Inquiry, 1997–99 Inquiry into Aboriginal Deaths in Custody, 1987–91 'Self-determination' policy delays mainstreaming of services ATSIC created — inherits DAA bureaucracy High Court <i>Mabo</i> decision, 1992 <i>Native Title Act 1993</i> — native title and extinguishment

The land rights movement and state responses (continued)

	Major Indigenous campaigns	State responses
	<ul style="list-style-type: none"> • Yorta Yorta (Vic–NSW) land claims, 1990s+ 	<ul style="list-style-type: none"> • <i>Native Title Act</i> amended to further weaken claims, 1996 • Ranger mine supported by government, but fails • Handback of Tasmanian Aboriginal land, 1995 and 2005 • Federal government moves to privatise land rights, 2002+

people. What is worse, it legitimises dispossession for that great majority. Where it applies it is a subordinate and weak title, presenting the illusion of land rights. Yet despite the formidable legal obstacle of 'native title', there are signs that the land rights movement is still alive and well. There have now been two lots of land handbacks in Tasmania, after the *Native Title Act*, but which had nothing to do with native title. Tasmanian Aboriginal communities, which had to fight to be recognised as even existing as recently as the 1980s, have made some advances. Their long-term campaigns drew responses. In 1995, a conservative government returned 3900 hectares to Aboriginal groups. This was historically sensitive land at Risdon Cove, some areas in the Bass Strait Islands and some ice-age caves containing ancient Aboriginal sites in the South-West Wilderness. Activist Michael Mansell called the move an 'extraordinary and ironical change that catapults Tasmania from last to first place in the return of Aboriginal land' (Darby 1995). Then, in 2005, again after a long campaign, a Labor Government handed back the ownership of Cape Barren, Goose and Clarke (Lungtalanana) Islands to the Aboriginal community (ABC 2005). This demonstrates that strong Aboriginal voices — if sustained and not diverted into bureaucratic structures — can still make advances in land rights for Aboriginal communities.

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