

Cultural Authenticity and Land Rights: The Colonial Appropriation of Indigenous Difference

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要 旨

オーストラリア大陸を植民地化した英国側は、その先住民族であるアボリジニーに土地の所有権を認めず、大陸が「無主地」と主張して入植計画を展開した。近代オーストラリア国家は領有化を正当化するために英国側が使ったこの無主地の論理をそのまま受け継いだ。それは漸く1990年代にオーストラリアの最高裁判所によって否定された。1990年代に最高裁が出した一連の判決は無主地の教義を覆し、植民地化当初の植民者が先住民の土地権を法的に認めるべきであったと判断し、さらに現代においても先住民の土地権が部分的であれ残存する可能性がある、とした。こうした判決を受けて先住民が土地権を請求する法制度が整備されたが、本稿では土地権請求の条件そのものに、植民地主義的先住民観が鮮明に見えるのではないかと論じる。

Keywords : indigenous peoples, land rights, colonialism

Introduction: the capitalist colonization of indigenous societies

Before the arrival of British settlers in the late-eighteenth century, several hundred linguistically distinct groups inhabited the Australian continent and its neighboring islands. Widely dispersed around the Australian continent and surrounds, most indigenous groups lived by hunting and gathering on their own lands. Although they did not engage in settled agriculture of a kind that would be recognizable to Europeans, it is argued that they did engage in what has been termed 'fire-stick farming', in which they would set fire to bush-land to remove unwanted scrub and allow grass to flourish and so provide food for game, as well as to encourage the germination of certain plants whose seeds required the application of heat in order to open.

In most parts of the country, the population density was low, and pressure on natural resources was also low. Food was bountiful enough that several hours a day of 'work' sufficed to meet needs. Instead of striving to achieve surplus economic production, life turned around ritual and myth, or storytelling concerning spiritual connections with land and ancestors, as well as highly complex kinship networks with other groups.

For the various indigenous groups, they and their land and ancestors were inextricably tied together—they came from their land and were bound to it by ritual, kinship, and descent. Land was

not 'owned' as an asset that could be possessed and sold, nor was it a resource to use for the maximization of profit and power. Rather, people belonged to the land collectively; knowing and living on the land with ancestors and kin gave meaning to life. That land might be bought and sold as a commodity, or indeed that people might move to lands other than those that were properly theirs according to ritual and kinship, were alien ideas introduced into their worldview by colonial settler society.²⁾

The colonial settlers who arrived on Australian shores in the 1770s understood little of the world that they were taking over. Joseph Banks, who had accompanied James Cook on his voyages to the Australian and the Pacific region in 1770, had believed that Australia was lightly settled, and that the indigenous residents felt few if any ties to particular tracts of land. Seen from the perspective of eighteenth century Europeans, come from the Old World in which there were no more tracts of ownerless land and possessing all the prejudices of the sedentary towards the unsettled, the vast expanses of forest and grassland in Australia appeared uninhabited, or perhaps more accurately, uninhabited enough that they could be taken over safely and secured without major opposition. This opinion of Banks, transmitted to the British authorities in the metropolis, saw the Australian continent 'discovered' to be a virtually unpeopled domain, ripe for legitimate colonization and development based on 'discovery'.³⁾

Racial prejudice combined with well-established civilizational assumptions in this so-called *terra nullius* policy that treated indigenous land as free to be claimed in the name of the British Crown. In the early seventeenth century, one of the pre-eminent figures of early international law, the Dutch philosopher and legal scholar Hugo Grotius, had opined that *terra nullius* could only apply to land that was literally unpeopled. Whereas the sea was the common property of all, land that was inhabited, whoever the inhabitants might be, could only be settled legitimately with their consent. Significantly, 'Grotius affirmed that the ability to enter into treaty relationships is a necessary consequence of the natural rights of *all* peoples, including "strangers to the true religion".' Grotius' writings were influenced by the thinking of the Spanish theologian Francisco de Vitoria, who in 1532 had written of the American Indians that they were rational, with organized politics and law, and thus possessed rights to their own land just as much as the Spanish held rights to their homeland. Vitoria's exception, however, was that the Spanish might conceivably exercise legitimate authority over Indian lands 'for the Indians' own benefit.'⁴⁾ Grotius' statements concerning the right of all peoples to negotiate and also to enjoy possession of their land were not, however, taken to heart by British colonizers, although they did have some influence on the stated policies of the British Colonial Office.

Already in the case of the Americas, early settlers such as the English puritan John Winthrop had formulated a simple way of bypassing the need to negotiate and obtain approval, declaring that most of the land of America was 'unsubdued', and therefore could not be considered to be inhabited and governed in a manner that afforded Indians proprietary rights. Such ideas became widespread in thinking about colonized lands and peoples. John Locke too, in 1690 held that societies without

political organization and private land ownership had no rights to political autonomy and indeed, to their land. His suggestions would allow colonizers to argue with regard to societies such as those constituted by the indigenous hunter-gatherer inhabitants of the pre-colonial Australian continent that they were not political societies, and that they did not have any concept of land being privately owned, thus legitimizing colonial domination and exploitation. Likewise, in 1765, the British lawyer William Blackstone averred that in order for occupiers to enjoy proprietary rights over land, they had to be permanent and exclusive occupiers who made productive use of the land.⁵⁾

Building on such learned opinions provided by the luminaries of contemporary international law, not only were the lands of the indigenous inhabitants taken over, but also instructions from the British Colonial Office concerning the need for colonizers to obtain the consent of inhabitants to settlement were ignored. The Colonial Office had instructed the first settlers who arrived in 1788 to 'open an intercourse with the natives, and to conciliate their affections, enjoining all our subjects to live in amity and kindness with them.'⁶⁾ But given that the first colonizers were basically taking over indigenous land, this was a highly unrealistic proposition. The first arrivals considered that the indigenous inhabitants were incapable of engaging in negotiations over treaties and land cessions. They were not seen as having organized governments, or as being settled. Further, Blackstone's criterion for possession stipulating that land had to be productively used was not met, at least, not if European-style agriculture or factories were taken to be the standard of measurement.⁷⁾ Colonial appropriation of land and the domination of indigenous peoples took place also in Canada, New Zealand, and the Americas. But unlike other indigenous inhabitants subjected by colonization, those resident on the Australian continent found that they were not considered to be worthy even of dialogue and negotiation concerning treaties; they were, for legal purposes, absent.

1. Debates over land

That Australia had been claimed according to the legal doctrine of discovery was immensely consequential in terms of indigenous groups' land rights. If Australia had been conquered through war and invasion, or if treaties had been signed between representatives of the British and concerned indigenous groups, then legally, sovereignty would have passed to the colonizers, but significantly, property rights would have been protected according to British law. That it had been a mistake to consider Australia a lightly peopled continent that was a virtual *terra nullius* was quickly evident to the settlers, who continually clashed with the indigenous population. It was also painfully clear to the British authorities, who were confronted through the nineteenth century with a steady stream of petitions, reports and newspaper stories drawing attention to the abuses and atrocities perpetrated on the indigenous inhabitants by the settler population.

In 1837, responding to concerns raised in reports and missives from the Australian colonies, the House of Commons Select Committee on Aborigines noted that the colonists had engaged in 'many deeds of murder and violence'. The Secretary of State for the Colonies wrote to the Governor

of New South Wales that 'all natives must be considered as subjects of the Queen', and to afford them protection consonant with that position, hinting at recognition of their rights to land under British common law.⁸⁾ The following year in 1838, the Aborigines Protection Society was established in London, while in 1842, Earl Grey, the British Secretary of State, instructed Australian Governors to spend up to fifteen percent of land-revenue 'for the benefit, civilization and protection of the Aborigines', as well as to set aside reserves for them. In 1846 Grey again directed the authorities in Australia to set aside land for the Aborigines, and to allow the coexistence of pastoral leases with traditional hunting and gathering practices, stating that pastoral leases 'are not intended to deprive the natives of their former right to hunt over these districts, or to wander over them in search of sustenance... except over land actually cultivated or fenced in for that purpose'.⁹⁾

Going somewhat further than Grey, George Augustus Robinson, who served as Chief Protector of Aborigines in Victoria during the 1830s and 1840s, proposed that the original owners should be given 'a reasonable share' in their former country. During the course of his work protecting the indigenous peoples of Victoria, Robinson had come to see Aborigines as a nation-type group who owned the land that the settlers had taken over. Some degree of restitution was due to them, he argued.¹⁰⁾

Such proposals were far from common, and, it goes without saying, found little support within settler society. But they were to find somewhat more international support, if not domestic support, some considerable time later. In a 1927 petition to the federal government, a certain Colonel J.C. Genders, a committee member of the Aborigines' Friends' Association of South Australia, which had been founded in 1858, made a proposal concerning the future of indigenous people. In his view, Arnhem Land in the far north of Australia should be turned into a state reserved for Aboriginal people. If this first experiment succeeded, then other Aboriginal states might also be created where traditional lifestyles still survived. Territory should be granted also to the detribalized Aborigines alienated from their traditional lands, he stated. Aboriginal peoples, Genders argued, needed to have self-government within these proposed states, and also special representation in parliament. In this program for the resolution of the Aboriginal issue, indigenous peoples were to be incorporated into the federal system of Australia with their own state. In a manner somewhat reminiscent of the Wilsonian principle that peoples had the right to self-determination, they were to enjoy self-rule, presumably to develop in directions of their own choosing. Failing to obtain AFA backing for his proposal, Genders had established the Aborigines Protection League of South Australia in 1925, and presented the plan to the government as coming from this organization. At the time, it gained some support from the Aboriginal Advancement Association, as well as from the anthropologist and politician Herbert Basedow.¹¹⁾ The Communist Party of Australia put forward similar ideas. Roughly in line with the position of the Communist International on colonized peoples, the CPA announced a 14 point program calling for the abolition of forced indigenous labour, equal wages for all, the abolition of the Aboriginal Protection Boards that ran the assimilation and segregation programs, and 'the restoration to Aborigines of central, northern and

north-west Australia with the rights of independent republics; and the development of Aboriginal culture.¹²⁾

It is obvious that these proposals and suggestions of the first half of the twentieth century were directly inspired by international events. The establishment of the League of Nations and the International Labour Organization were two obvious factors that can be posited as stimuli that encouraged talk of indigenous states and decolonization. Australia, an independent state since 1901, was a founding member of both of these organizations, and not a few saw that actual Australian practice was far from the lofty principles espoused by these international organizations. Namely, article 23b of the Charter of the League of Nations bound member states to engage in the 'just treatment of the native inhabitants of territories under their control'. While perhaps the Australian indigenous population was not precisely what the article had in mind, clearly the analogy was not difficult to see. Similarly, Article 22 of the Charter stipulated that member states had a responsibility for the wellbeing and development of colonized and other protected people. This, despite the legal fiction of *terra nullius* upon which Australian settlement was founded, could clearly be applied to the case of the indigenous population.

Further, Australia ratified the League of Nations Convention Against Slavery in 1926, and the International Labour Organization's Convention Against Forced Labour in 1930. Given that native peoples continued to be massacred in rural areas, and often were forced to work for scanty rations with no pay, these international agreements meant that the issue of Australia's treatment of indigenous people became one that concerned its international obligations, and also its desired self-representation as an enlightened and civilized democratic state.¹³⁾ Evidently, these international norms reinforced existing domestic liberal doubt concerning the very propriety of Australian 'settlement', and brought some to suggest that the best practicable solution to the existing problem, given that the mass departure of the settler society seemed out of the question, was to accord indigenous people their own homeland, as per the then highly influential Wilsonian principles of self-determination for peoples, either in a federal structure joined with the other states, or in the form of independent indigenous republics.

2. The question of land rights

Although few concrete benefits flowed from talk about indigenous states or republics in the first half of the twentieth century, indigenous policy reform did see gradual improvements. Racist segregation policies were phased out through the mid-part of the twentieth century. During this time, full citizenship rights were also gradually extended to all indigenous people, such that all could enjoy, at least in principle, rights regarding voting and welfare. Remote area residents faced problems with regards to access to education, health and education, although services were upgraded over time. But as ever, land continued to be the main focus of dispute.

Pastoralists held (and still do) large tracts of the Australian continent, and they wield

considerable influence in politics and over the national imaginary too. Many not only acquired indigenous land for a pittance historically, but also through until at least the 1960s, tended to exploit indigenous inhabitants as cheap labour. For the owners of large cattle stations, indigenous land rights were anathema, to be fought at all costs. Such stations were also among the first sites to be targeted by organized struggles for indigenous land rights.

In 1966, the Gurindji people working on Wave Hill station in the Northern Territory began a strike for equal pay. Aboriginal people had made such claims around the country since at least 1946, when protests had resulted in a major increase in indigenous salaries being granted in 1949, while the Wave Hill station in particular had been the subject of Northern Territory government criticism for its treatment of indigenous workers who were poorly paid and housed in atrocious conditions. The Gurindji strikers gradually extended the scope of their claims to include the return of their land. Whereas the Liberal-National coalition government of the late 1960s displayed little interest in responding positively to their demands, public opinion was tending to become more sympathetic to indigenous claims, with public support not just from intellectuals, but also from civil society especially in the southeastern metropolitan areas.¹⁴⁾

During the same time that the Wave Hill saga was unfolding, another indigenous group known as the Yolngu people of the Gove Peninsula in far northern Australia (in the general area where some half-a-century earlier, Colonel Genders had proposed that an Aboriginal state be established) was seeking legal recognition of their ownership of their homelands. Their actions were taking place in the context of moves by the Australian government of the 1960s to sell off parts of their ancestral lands to mining companies, who were drawn by some of the world's largest bauxite reserves. In this struggle, the presiding Justice Blackburn found that there was no basis for Australian law to recognize Yolngu ownership of the land, and that therefore it was not possible for them to stop mining operations. This is to say that their ownership, which the Yolngu claimed as being based on indigenous customary law, was not, in the opinion of Justice Blackburn, recognizable by Australian law. This was because Australia was held, at least in principle, to have been a settled colony, in which there had been no prior inhabitants. Since no prior inhabitants were recognized, even though there were many such prior inhabitants whose descendants were the claimants in this case, this position was widely criticized, but at this point, Justice Blackburn clearly felt unable to overturn the whole legal basis of colonization and subsequent state-building.

However, partly responding to this odd legal position, the federal Labour Party government that came to power in 1972 in fact had as part of its election platform the promise that it would legislate to grant indigenous peoples some form of land rights. One of its early achievements was the establishment of an inquiry into Aboriginal land rights under Justice A. E. Woodward in 1973, whose purview was limited to the Northern Territory. Woodward's interim report of 1973 proposed the establishment of Aboriginal Land Councils 'to promote and represent the land claims of the various communities' of the Northern Territory, while his second report in 1974 stated that Aborigines had a right to land and also to financial support to use as they saw fit. He proposed that

Aborigines be granted freehold title over reserve land, and that an Aboriginal Land Fund be established. As for mining on Aboriginal land, he suggested that this be allowed over Aboriginal objections 'if the national interest required it.' Exactly what the legal status of indigenous law as a possible basis for land claims might be remained unclear, but the Whitlam government drew up legislation based on Woodward's findings. In the case of Wave Hill station and the Gurindji people, the government returned 26 square kilometers of the station (out of over 15,000 square kilometers) to them, while the station's owner, Lord Vestey, returned a further ninety square kilometers. The Prime Minister, Gough Whitlam, handed over a further 2,500 square kilometers of land in 1975, and that land, under the provisions of the Aboriginal Land Rights Act (Northern Territory, 1976), which was passed by the Fraser Liberal government after the Governor-general John Kerr dismissed the Whitlam government in 1975, was made inalienable freehold land.¹⁵⁾

This Act provided for existing reserves, which covered about 15% of the Northern Territory, to be registered as inalienable freehold land held in trust for Aboriginal people, and also set up a process for indigenous people to lay claim to unalienated crown land and Aboriginal-owned land. Other states implemented similar grants of land rights, with New South Wales, for example, providing for reserve land to be reclassified as indigenous owned freehold land, and also allocating 7.5% of state land taxes for fifteen years to buy land for dispossessed Aboriginal people. This fund amounted to between 400 and 500 million Australian dollars by 1998.¹⁶⁾ At the federal level, after the Mabo judgment discussed below, Paul Keating's Labour government set up a land purchase fund through the 1994 Indigenous Land Corporation Act, which was allocated 1.5 billion Australian dollars over 10 years to buy land.¹⁷⁾

The process of recognizing the right of traditional owners to their homelands continues. As of 2006, around 44% of the Northern Territory was Aboriginal land.¹⁸⁾ Of the Australian continent as a whole, while some large land claims are still pending, it is estimated that around 16% of the land area is owned, managed or controlled by indigenous Australians, with some two-thirds of this land being 'desert', in terms of climate, and the rest being tropical coastline or island territory.¹⁹⁾ Australian state and federal governments of the 1980s and 1990s, both Labour and Liberal, have as a whole continued on with the trend to grant land rights to Aboriginal peoples still living on their traditional lands, as well as to endow land purchase funds whose function is to acquire land for the dispossessed with no possibility of returning to ancestral domains. This process was greatly advanced by two legal cases of the 1990s, in which the Australian High Court rejected the notion that Australia had been a *terra nullius*, and on that basis found in favour of Aboriginal claims that indigenous land rights had survived colonization.

According to the Mabo and Wik High Court judgments of 1992 and 1996 respectively, indigenous groups could gain land rights on condition that they demonstrated, to the satisfaction of the courts, genealogical ties with the original owners, and also proved that they continued to maintain customary law and other traditional practices.

The Mabo decision of 1992 found by a six to one majority that the Meriam people of Murray

Island formed a permanent community, with social and political organization, who had continuously and exclusively enjoyed possession of the island. Whereas the Crown, in the High Court's opinion, had gained sovereignty in 1879, the Meriam people's land rights had survived, and were protected by the common law.²⁰⁾ The Mabo decision constituted formal legal recognition of the fact that indigenous groups had inhabited Australia prior to colonization. It recognized that the contemporary descendants of such groups could still have ongoing proprietary interests in land in specific areas, provided that they lived in the same areas and followed the same customs and traditional law as before. This judgment meant that indigenous land rights were eliminated as a legal question in areas where people had been forced to leave their land. The court's recognition of pre-colonization indigenous land ownership, and its acceptance of the claim that such ownership could continue on into the present, given specific conditions, were advances on the legal doctrine of *terra nullius* and its legal consequences as seen in the contradictions of the Yolgnu case in the early 1970s. But the conditions for recognizing land claims were such that only a very small number of indigenous groups could gain any benefit from the High Court's decision.

The Wik and Thayorre people's suit against the Australian government went a step further than the Mabo decision in that it involved claims to land that was not Crown Land, but rather land on pastoral leases that the Crown leased to private corporations and individuals for the purposes of stock raising and so on. In what became known as the Wik decision, the High Court of Australia found in 1996 that native title could coexist with pastoral leases where the land was never farmed, or was wild and neglected.²¹⁾ As suggested a century and a half earlier by Earl Grey, pastoral leases were not meant to exclude indigenous peoples from engaging in customary practices on their own land; pastoralist economic activities and indigenous hunter-gather practices were deemed largely compatible with each other. Thus the scope of the Mabo decision was extended.

Henceforth, indigenous land rights were recognizable by Australian law on Crown Land and on pastoral leases, subject to the conditions of firstly demonstrating genealogical ties to the traditional owners, as well as secondly demonstrating that traditional customs and law were being maintained into the present. While more groups were potentially able to claim land under these provisions, the conditions were still highly restrictive. And more problematic, of course, was the condition that cultural continuity had to be demonstrated to the satisfaction of the Australian courts.

Conclusion: colonialism and cultural authenticity

As Elizabeth Povinelli has pointed out, this last condition needs to be critiqued on the grounds that it does not apply to British common law-derived Australian law, but only to indigenous law. For the former is not considered to become invalid or unbinding when it changes, whereas indigenous law, according to this formulation, loses its validity or reality when it changes to adapt to new circumstances.²²⁾ What it does is to state that if land rights are to be recognized, then indigenous

people must follow their own indigenous laws, but not make them or change them.

This traditionalist model, as Kymlicka notes, traps indigenous people into a static model of the past.²³⁾ Only by presenting their laws as authentic laws identical to those of the past do they gain the right to follow them in the present and thereby lay claim to indigenous land rights. With regard to this problem, Behrendt notes: 'Despite a diverse cultural make-up, Indigenous people in contemporary Australian society are often perceived in one of two ways: as relics of the past; or, especially those of less than "full blood", as inauthentic and devoid of culture.'²⁴⁾

According to these two judgments, to obtain even a very limited legal recognition of indigenous land rights requires that indigenous persons conduct a satisfactory performance of pre-colonial indigenous being in the present. Furthermore, indigenous land ownership comes with a number of unusual conditions that do not generally apply to non-indigenous land ownership. A peculiarity of Australian recognition of indigenous land rights is that such rights have been granted in a form that is designed to replicate the communal land ownership patterns that are assumed to have prevailed in pre-colonial times. For example, land grants in the Northern Territory are generally given as inalienable communal title, which is to say firstly that the land becomes Aboriginal in perpetuity so long as the owners do not voluntarily cede it to the Crown, and secondly that the land does not belong to any particular individual but to the group in question.

On the one hand, it is possible to see this as being an unusual and progressive case in which the legal system of an advanced capitalist country has seen fit to accord a minority group rights as a group, thus helping to maintain group survival as a different group into the future. Given that most modern states have overall tended to work against such group maintenance, even in so-called multicultural states, any such state promotion of group rights would be noteworthy. However, there is a quite different and much less positive perspective that can be brought to bear on the case of indigenous group maintenance in the Australian context.

For most of Australia's post-independence history, nationalist discourse emphasized the settler struggle to establish Australia in the face of adversity. In particular, it focused on the feats of heroic pioneers 'opening up the country', battling a harsh natural environment and its droughts, fires, and floods. Whereas many nation-states had national narratives centered on wars of independence, Australia had one of a war waged by white settlers against nature. Self-evidently, this national narrative was based on the prior assumption of *terra nullius*; indigenous peoples were absent from this particular type of Australian story. But with heightened awareness of the indigenous presence, and especially due to the changes forced upon nationalist historical discourse by the Wik and Mabo judgments, the settler presence needed to find new narratives to re-establish the legitimacy of the Australian nation-state. While this search is by no means definitively ended, there are signs that the 'adoption' of the indigenous cause is, while not completely lacking in benefits to indigenous strategies, also a means whereby Australian nationalists can recover some lost ground.

To expand upon this point, Australian nationalist discourse has been unsettled by recent revisionist narratives, legal decisions and policy-making that present Australian colonial and

national history as characterized by dark secrets: invasion, massacre, illegal dispossession, and continued denial of justice to the original indigenous owners. In response to such claims, settler society can re-establish (at least partially) its own moral legitimacy by appropriating indigenous peoples into the narrative of Australian national development. Inclusion as full citizens has long been one of the stated goals of the indigenous rights movements. However, in this case, indigenous people are being incorporated into the story not as full citizens of contemporary Australia, but as *authentic* indigenous Australians who persist in living according to ancient customary practices. Colonial history is overcome, we might say, through this colonialist insistence that indigenous subjects in the present must not show signs of their colonization.

Notes

- 1) Associate Professor, Department of International Relations, Faculty of Foreign Languages, Kyoto Sangyo University.
- 2) Council For Aboriginal Reconciliation, *Sharing history: a sense for all Australians of a shared ownership of their history* (AGPS, 1994), p. 3.
- 3) Stuart Macintyre, *A concise history of Australia* (Cambridge University Press, 2000), p. 33. Henry Reynolds, 'New frontiers—Australia', in Paul Havemann (ed.), *Indigenous peoples' rights in Australia, Canada, and New Zealand* (Oxford University Press: Auckland, 1999), pp. 130-131.
- 4) S. James Anaya, *Indigenous peoples in international law* (Oxford University Press, 2004), p. 11.
- 5) Paul Havemann, 'Chronology 1: Euro-American law of nations and indigenous peoples', in Havemann (ed.), *Indigenous peoples*, pp. 14-16.
- 6) Macintyre, *A concise history*, p. 31.
- 7) Lyndall Ryan, *The Aboriginal Tasmanians* (Allen and Unwin, 1981, 1996), p. 4.
- 8) Ben Kiernan, 'Genocidal violence in nineteenth-century Australia' in *Blood and soil: a world history of genocide and extermination from Sparta to Darfur* (Yale University Press, 2007), p. 286.
- 9) Josephine Flood, *The original Australians: story of the Aboriginal people* (Allen and Unwin, 2006), p. 221.
- 10) Henry Reynolds, *This whispering in our hearts* (Allen and Unwin, 1998), pp. 47-48.
- 11) See Reynolds, *This whispering*, pp. 227-230, as well as Bain Attwood and Andrew Markus, *The struggle for Aboriginal rights—a documentary history* (Allen and Unwin, 1999), pp. 15-16.
- 12) Attwood and Markus, *The struggle*, p. 17.
- 13) Reynolds, *This whispering*, pp. 217-220.
- 14) In 1967, the vast majority of the Australian population voted to grant the federal government the right to make laws for aboriginal people across the country, and to count them as full members of the population to be counted in the census. This should probably be taken, argue Goot and Rowse, to be an instance of the expression of the public's will to include aborigines politically, although not socially. 'That is, while Australians accepted that Aborigines were part of the Australian nation, with equal citizenship rights, they were much less accepting of the idea that Aborigines should share public space, and they mostly opposed the idea of Aborigines as marriage partners.' But at the very least, there was a considerable increase in public support for social justice for indigenous peoples, and for some kind of land rights as a part of indigenous social justice. Murray Goot and Tim Rowse, *Divided nation: indigenous Australians in Australian political culture* (Melbourne University Publishing, 2007), pp. 24-25.
- 15) Richard Broome, *Aboriginal Australians* (Allen and Unwin, 3rd edition, 2002), pp. 188-194; Flood, *The*

- original Australians*, pp. 216-217.
- 16) Broome, *Aboriginal Australians*, pp. 206-207.
- 17) Damien Short, *Reconciliation and colonial power—indigenous rights in Australia* (Ashgate, 2008), pp. 42-43.
- 18) That is, the amount of land owned, controlled or managed by Aboriginal peoples amounts to around 44% of the land surface of the Northern Territory. 'Introduction: Aboriginal Land Rights (Northern Territory) Amendment Bill 2006 (CTH)', online at Australian Indigenous Law Reporter <http://www.austlii.edu.au/au/journals/AILR/2006/33.html>.
- 19) Flood, *The original Australians*, p. 243.
- 20) Short, *Reconciliation*, p. 37.
- 21) Short, *Reconciliation*, p. 67.
- 22) Elizabeth Povinelli, *The cunning of recognition—indigenous alterities and the making of Australian multiculturalism* (Duke University Press, 2002), pp. 176-178.
- 23) Will Kymlicka, *Multicultural odysseys—navigating the new international politics of diversity* (Oxford University Press, 2007), p. 153.
- 24) Larissa Behrendt, *Achieving social justice—indigenous rights and Australia's future* (The Federation Press, 2003), pp. 62, 66.